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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 2973

(By Delegates H. White, Hrutkay and R. M. Thompson )



Passed April 5, 2005

In Effect Ninety Days from Passage

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FOR

**H. B. 2973**

(BY DELEGATES H. WHITE, HRUTKAY AND R. M. THOMPSON )

[Passed April 5, 2005; in effect ninety days from passage.]

AN ACT to repeal §33-8A-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-8A-2 and §33-8A-3 of said code, all relating to the use of clearing corporations and federal reserve book-entry system by insurance companies; defining terms; allowing broker-dealers to act as custodian of insurance company assets; establishing eligibility standards for broker-dealers to act as custodians; eliminating references to foreign deposit requirements; and repealing the internal effective date.

*Be it enacted by the Legislature of West Virginia:*

That §33-8A-8 of the Code of West Virginia, 1931, as amended, be repealed; and that §33-8A-2 and §33-8A-3 of said code be amended and reenacted, all to read as follows:

**ARTICLE 8A. USE OF CLEARING CORPORATIONS AND FEDERAL RESERVE BOOK-ENTRY SYSTEM.**

**§33-8A-2. Definitions.**

1 As used in this article, the term:

2 (1) “Agent” means a national bank, state bank, trust  
3 company or broker-dealer that maintains an account in its name  
4 in a clearing corporation or that is a member of the federal  
5 reserve system and through which a custodian participates in a  
6 clearing corporation or the federal reserve book-entry system,  
7 including the Treasury/Reserve Automated Debt Entry Securi-  
8 ties System (TRADES) or Treasury Direct Systems, except that  
9 with respect to securities issued by institutions organized or  
10 existing under the laws of a foreign country, “agent” may  
11 include a corporation that is organized or existing under the  
12 laws of a foreign country and that is legally qualified under  
13 those laws to accept custody of securities;

14 (2) “Clearing corporation” has the same meaning set forth  
15 in subdivision (5), subsection (a), section one hundred two,  
16 article eight, chapter forty-six of this code, except that with  
17 respect to securities issued by institutions organized or existing  
18 under the laws of any foreign country, clearing corporation may  
19 include a corporation which is organized or existing under the  
20 laws of any foreign country and is legally qualified under such  
21 laws to effect the transactions in securities by computerized  
22 book entry. Clearing corporation also includes the Trea-  
23 sury/Reserve Automated Debt Entry Securities System  
24 (TRADES) or Treasury Direct Book-Entry Systems established  
25 pursuant to 31 C.F.R., Part 357;

26 (3) “Custodian” means:

27 (A) A national bank, state bank or trust company that shall  
28 at all times during which it acts as a custodian pursuant to this  
29 article be no less than adequately capitalized as determined by  
30 the standards adopted by United States banking regulators and

31 that is regulated by either state banking laws or is a member of  
32 the Federal Reserve System and that is legally qualified to  
33 accept custody of securities in accordance with the standards set  
34 forth below, except that with respect to securities issued by  
35 institutions organized or existing under the laws of a foreign  
36 country, “custodian” may include a bank or trust company  
37 incorporated or organized under the laws of a country other  
38 than the United States that is regulated as such by that country’s  
39 government or an agency thereof that shall at all times during  
40 which it acts as a custodian pursuant to this article be no less  
41 than adequately capitalized as determined by the standards  
42 adopted by international banking authorities and that is legally  
43 qualified to accept custody of securities; or

44 (B) A broker-dealer that is registered with and subject to  
45 the jurisdiction of the Securities and Exchange Commission,  
46 maintains membership in the Securities Investor Protection  
47 Corporation, and has a tangible net worth equal to or greater  
48 than two hundred fifty million dollars. For the purposes of this  
49 subdivision, “tangible net worth” means shareholders’ equity,  
50 less intangible assets, as reported in the broker-dealer’s most  
51 recent annual or transition report pursuant to section 13 or 15(d)  
52 of the Securities Exchange Act of 1934 filed with the Securities  
53 and Exchange Commission (15 U.S.C. §78m or §78o(d));

54 (4) “Custodied securities” means securities held by the  
55 custodian or its agent or in a clearing corporation, including the  
56 Treasury/Reserve Automated Debt Entry Securities Systems  
57 (TRADES) or Treasury Direct Systems;

58 (5) “Direct participant” means a bank, trust company or  
59 other institution or other custodian which maintains an account  
60 in its name in a clearing corporation and through which an  
61 insurance company participates in a clearing corporation;

62 (6) “Federal reserve book-entry system” means the comput-  
63 erized systems sponsored by the United States Department of

64 the Treasury and certain agencies and instrumentalities of the  
65 United States for holding and transferring securities of the  
66 United States government and such agencies and instrumentalities,  
67 respectively, in federal reserve banks and through banks  
68 which are members of the Federal Reserve System or which  
69 otherwise have access to such computerized systems;

70 (7) "Member bank" means a national bank, state bank or  
71 trust company which is a member of the Federal Reserve  
72 System and through which an insurance company participates  
73 in the federal reserve book-entry system;

74 (8) "Securities" means certificated securities as defined in  
75 subdivision (4), subsection (a), section one hundred two, article  
76 eight, chapter forty-six of this code and uncertificated securities  
77 as defined in subdivision (18) of subsection (a), section one  
78 hundred two, article eight, chapter forty-six; and

79 (9) "Security certificate" has the same meaning set forth in  
80 subdivision (16), subsection (a), section one hundred two,  
81 article eight, chapter forty-six of this code.

### **§33-8A-3. Use of book-entry systems and clearing corporations.**

1 (a) Notwithstanding any other provision of law, a domestic  
2 insurance company may deposit or arrange for the deposit of  
3 securities held in or purchased for its general account and its  
4 separate accounts in a clearing corporation or the federal  
5 reserve book-entry system. When securities are deposited with  
6 a clearing corporation, certificates representing securities of the  
7 same class of the same issuer may be merged and held in bulk  
8 in the name of the nominee of the clearing corporation with any  
9 other securities deposited with the clearing corporation by any  
10 person, regardless of the ownership of the securities, and  
11 certificates representing securities of small denominations may  
12 be merged into one or more certificates of larger denomina-

13 tions. The records of any custodian through which an insurance  
14 company holds securities in the federal reserve book-entry  
15 system or a clearing corporation shall at all times show that the  
16 securities are held for the insurance company and for which  
17 accounts. Ownership of, and other interests in, the securities  
18 may be transferred by bookkeeping entry on the books of such  
19 clearing corporation or in the federal reserve book-entry system  
20 without, in either case, physical delivery of certificates repre-  
21 senting the securities.

22 (b) The Commissioner is authorized to promulgate rules  
23 governing the deposit of securities by insurance companies and  
24 custodians with clearing corporations and in the federal reserve  
25 book-entry system.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Candy White*  
Chairman Senate Committee

*D. Reuben Bunn*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Dorell Holmes*  
Clerk of the Senate

*Suzanne Bunn*  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
President of the Senate

*Robert E. Kis*  
Speaker of the House of Delegates

The within *is approved* this the *18<sup>th</sup>*  
day of *April*, 2005.

*[Signature]*  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/12/05

Time 3:00 p