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
ENROLLED

COMMITTEE SUBSTITUTE

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That §33-8A-8 of the Code of West Virginia, 1931, as amended, be repealed; and that §33-8A-2 and §33-8A-3 of said code be amended and reenacted, all to read as follows: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

As used in this article, the term:

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

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

3. (3) “Custodian” means:

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

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

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

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

(6) “Federal reserve book-entry system” means the comput-
erized systems sponsored by the United States Department of
the Treasury and certain agencies and instrumentalities of the
United States for holding and transferring securities of the
United States government and such agencies and instrumentali-
ties, respectively, in federal reserve banks and through banks
which are members of the Federal Reserve System or which
otherwise have access to such computerized systems;

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

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

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


(a) Notwithstanding any other provision of law, a domestic
insurance company may deposit or arrange for the deposit of
securities held in or purchased for its general account and its
separate accounts in a clearing corporation or the federal
reserve book-entry system. When securities are deposited with
a clearing corporation, certificates representing securities of the
same class of the same issuer may be merged and held in bulk
in the name of the nominee of the clearing corporation with any
other securities deposited with the clearing corporation by any
person, regardless of the ownership of the securities, and
certificates representing securities of small denominations may
be merged into one or more certificates of larger denomina-
The records of any custodian through which an insurance company holds securities in the federal reserve book-entry system or a clearing corporation shall at all times show that the securities are held for the insurance company and for which accounts. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing the securities.

(b) The Commissioner is authorized to promulgate rules governing the deposit of securities by insurance companies and custodians with clearing corporations and in the federal reserve book-entry system.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 18th day of April, 2005.

Governor
PRESENTED TO THE GOVERNOR

Date 4/19/05
Time 3:00