

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 509**

BY SENATOR WELD

[Introduced March 3, 2017; Referred  
to the Committee on Finance]

1 A BILL to amend and reenact §32-2-202 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §32-3-305 of said code; and to amend and reenact §32-4-406 and  
3 §32-4-413 of said code, all relating to updating fee structure provisions for broker-dealers,  
4 agents and investment advisers; certain securities offerings and opinions; and increasing  
5 the fund cap associated with the fees.

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

1 That §32-2-202 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §32-3-305 of said code be amended and reenacted; and that §32-4-406 and §32-  
3 4-413 of said code be amended and reenacted, all to read as follows:

**ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS;  
REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.**

**§32-2-202. Registration and notice filing procedure.**

1 (a) A broker-dealer, agent or investment adviser may obtain an initial or renewal  
2 registration by filing with the commissioner an application, together with a consent to service of  
3 process pursuant to subsection (g), section four hundred fourteen, article four of this chapter. The  
4 application shall contain whatever information the commissioner by rule requires concerning  
5 matters such as: (1) The applicant's firm and place of organization; (2) the applicant's proposed  
6 method of doing business; (3) the qualifications and business history of the applicant and in the  
7 case of a broker-dealer or investment adviser, the qualifications and business history of any  
8 partner, officer or director, any person occupying a similar status or performing similar functions  
9 or any person, directly or indirectly, controlling the broker-dealer or investment adviser and, in the  
10 case of an investment adviser, the qualifications and business history of any employee; (4) any  
11 injunction or administrative order or conviction of a misdemeanor involving a security or any  
12 aspect of the securities business and any conviction of a felony; and (5) subject to the limitations  
13 of §15(h)(1) of the Securities Exchange Act of 1934, the applicant's financial condition and history.

14 The commissioner may by rule or order require an applicant for initial registration to publish an  
15 announcement of the application as a Class I legal advertisement in compliance with the  
16 provisions of article three, chapter fifty-nine of this code and the publication area or areas for the  
17 publication shall be specified by the commissioner. If no denial order is in effect and no proceeding  
18 is pending under section two hundred four of this article, registration becomes effective at noon  
19 of the thirtieth day after an application is filed. The commissioner may by rule or order specify an  
20 earlier effective date and he or she may by order defer the effective date until noon of the thirtieth  
21 day after the filing of any amendment to an application. Registration of a broker-dealer  
22 automatically constitutes registration of any agent who is a partner, officer or director, or a person  
23 occupying a similar status or performing similar functions, as designated by the broker-dealer in  
24 writing to the commissioner and approved in writing by the commissioner. Registration of an  
25 investment adviser automatically constitutes registration of any investment adviser representative  
26 who is a partner, officer or director or a person occupying a similar status or performing similar  
27 functions as designated by the investment adviser in writing to the commissioner and approved  
28 in writing by the commissioner.

29 (b) Except with respect to federal-covered advisers whose only clients are those described  
30 in paragraphs (A) and (B), subdivision (3), subsection (c), section two hundred one of this article,  
31 a federal-covered adviser shall file with the commissioner, prior to acting as a federal-covered  
32 adviser in this state, such documents as have been filed with the securities and exchange  
33 commissioner as the commissioner, by rule or order, may require along with notice filing fees  
34 under subsection (c) of this section.

35 (c) Every applicant for initial or renewal registration shall pay a filing fee of ~~two hundred~~  
36 ~~fifty~~ \$300 in the case of a broker-dealer and the agent of an issuer, ~~fifty-five~~ \$66 in the case of an  
37 agent, \$200 in the case of an investment adviser and \$75 for each investment adviser  
38 representative. When an application is denied or withdrawn, the commissioner shall retain all of  
39 the fee.

40 (d) A registered broker-dealer or investment adviser may file an application for registration  
41 of a successor, whether or not the successor is then in existence, for the unexpired portion of the  
42 year. A filing fee of ~~twenty~~ \$24 shall be paid.

43 (e) The commissioner may, by rule or order, require a minimum capital for registered  
44 broker-dealers, subject to the limitations of Section ~~fifteen~~ 15 of the Securities Exchange Act of  
45 1934 and establish minimum financial requirements for investment advisers, subject to the  
46 limitations of Section 222 of the Investment Advisers Act of 1940, which may include different  
47 requirements for those investment advisers who maintain custody of clients' funds or securities  
48 or who have discretionary authority over same and those investment advisers who do not.

49 (f) The commissioner may, by rule or order, require registered broker-dealers, agents and  
50 investment advisers who have custody of or discretionary authority over client funds or securities  
51 to post surety bonds in amounts as the commissioner may prescribe, by rule or order, subject to  
52 the limitations of Section ~~fifteen~~ 15 of the Securities Exchange Act of 1934 (for broker-dealers)  
53 and Section 222 of the Investment Advisers Act of 1940 (for investment advisers), up to \$25,000  
54 and may determine their conditions. Any appropriate deposit of cash or securities shall be  
55 accepted in lieu of any bond so required. No bond may be required of any registrant whose net  
56 capital or, in the case of an investment adviser, whose minimum financial requirements, which  
57 may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall  
58 provide for suit thereon by any person who has a cause of action under section four hundred ten,  
59 article four of this chapter and, if the commissioner by rule or order requires, by any person who  
60 has a cause of action not arising under this chapter. Every bond shall provide that no suit may be  
61 maintained to enforce any liability on the bond unless brought within the time limitations set forth  
62 in subsection (e), section four hundred ten, article four of this chapter.

63 (g) Every applicant whether registered under this chapter or not, shall pay a ~~ifty~~ \$60 fee  
64 for each name or address change.

65 (h) Every broker-dealer and investment advisor registered under this chapter shall pay an

66 annual  ~~fifty~~ \$60 fee for each branch office located in West Virginia.

67 (i) Each agent, representative and associated person of a broker-dealer or investment  
68 advisor when applying for an initial license under this section or changing employers shall pay a  
69 compliance assessment of  ~~twenty-five~~ \$30. Each agent, representative and associated person,  
70 when applying for a renewal license under this section, shall pay a compliance assessment of  ~~ten~~  
71 \$12. The West Virginia State Legislature reserves the right to adjust the fees set forth in this  
72 section once every four years in an amount reflecting the percentage increase in the cost of  
73 administering this article from the amount of such costs on the effective date of this article.

### **ARTICLE 3. REGISTRATION OF SECURITIES.**

#### **§32-3-305. Provisions applicable to registration and notice filing generally.**

1 (a) A registration or notice filing statement may be filed by the issuer, any other person on  
2 whose behalf the offering is to be made or a registered broker-dealer. A registration or notice filing  
3 statement filed under this chapter registering or noticing investment company shares shall cover  
4 only one class, series or portfolio of investment company shares.

5 (b) Every person filing a registration or notice filing statement shall pay a filing fee of one  
6  ~~twentieth~~  sixteenth of one percent of the maximum aggregate offering price at which the  
7 registered or noticed securities are to be offered in this state, but the fee shall in no case be less  
8 than  ~~fifty~~ \$60 or more than  ~~fifteen~~ \$1800. When a registration or notice filing statement is  
9 withdrawn before the effective date or a preeffective stop order is entered under section three  
10 hundred six of this article, the commissioner shall retain all of the fee.

11 (c) Every registration statement and notice filing shall specify: (1) The amount of securities  
12 to be offered in this state; (2) the states in which a registration statement or similar document in  
13 connection with the offering has been or is to be filed; and (3) any adverse order, judgment or  
14 decree entered in connection with the offering by the regulatory authorities in each state or by any  
15 court or the securities and exchange commission.

16 (d) In any case where securities sold in this state are in excess of the aggregate amount

17 of securities specified under subsection (c) of this section, the commissioner may require payment  
18 of an oversale assessment which shall be three times an amount which equals the difference  
19 between the filing fee that would have been payable under subsection (b) of this section based  
20 upon the total amount of securities sold in this state and the total filing fees previously paid to the  
21 commissioner with respect to such registration or notice filing, but in no case shall the oversale  
22 assessment be less than ~~three hundred fifty~~ \$420 or be more than ~~fifteen~~ \$1800.

23 (e) Any document filed under this chapter or a predecessor act within five years preceding  
24 the filing of a registration statement may be incorporated by reference in the registration statement  
25 to the extent that the document is currently accurate.

26 (f) The commissioner may by rule or otherwise permit the omission of any item of  
27 information or document from any registration or notice filing statement.

28 (g) In the case of a nonissuer distribution, information may not be required under section  
29 three hundred four of this article or subsection (k) of this section unless it is known to the person  
30 filing the registration statement or to the persons on whose behalf the distribution is to be made,  
31 or can be furnished by them without unreasonable effort or expense.

32 (h) The commissioner may by rule or order require as a condition of registration by  
33 qualification or coordination: (1) That any security issued within the past three years or to be  
34 issued to a promoter for a consideration substantially different from the public offering price, or to  
35 any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds  
36 from the sale of the registered security in this state be impounded until the issuer receives a  
37 specified amount from the sale of the security either in this state or elsewhere. The commissioner  
38 may by rule or order determine the conditions of any escrow or impounding required under this  
39 subsection, but he or she may not reject a depository solely because of location in another state.

40 (i) The commissioner may by rule or order require as a condition of registration that any  
41 security registered by qualification or coordination be sold only on a specified form of subscription  
42 or sale contract and that a signed or conformed copy of each contract be filed with the

43 commissioner or preserved for any period up to three years specified in the rule or order.

44 (j) Every registration statement is effective for one year from its effective date or any longer  
45 period during which the security is being offered or distributed in a nonexempted transaction by  
46 or for the account of the issuer or other person on whose behalf the offering is being made or by  
47 any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription  
48 taken by him or her as a participant in the distribution, except during the time a stop order is in  
49 effect under section three hundred six of this article. All outstanding securities of the same class  
50 as a registered security are considered to be registered for the purpose of any nonissuer  
51 transaction: (1) So long as the registration statement is effective; and (2) between the thirtieth day  
52 after the entry of any stop order suspending or revoking the effectiveness of the registration  
53 statement under section three hundred six of this article (if the registration statement did not relate,  
54 in whole or in part, to a nonissuer distribution) and one year from the effective date of the  
55 registration statement. A registration statement may not be withdrawn for one year from its  
56 effective date if any securities of the same class are outstanding. A registration statement may be  
57 withdrawn otherwise only in the discretion of the commissioner.

58 (k) So long as a registration statement is effective, the commissioner may by rule or order  
59 require the person who filed the registration statement to file reports, not more often than  
60 quarterly, to keep reasonably current the information contained in the registration statement and  
61 to disclose the progress of the offering.

62 (l) A registration statement relating to a security issued by a face amount certificate  
63 company or a redeemable security issued by an open-end management company or unit  
64 investment trust, as those terms are defined in the Investment Company Act of 1940, may be  
65 amended after its effective date so as to increase the securities specified as proposed to be  
66 offered. The amendment becomes effective when the commissioner so orders. Every person filing  
67 an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this  
68 section, with respect to the additional securities proposed to be offered.

69 (m) Every person changing the name or address of a securities registration or notice filing  
70 shall pay a ~~fifty~~ \$60 fee for change.

71 (n) Every person amending a registration statement or notice filing or offering a document  
72 without increasing the dollar amount registered shall pay a ~~fifty~~ \$60 fee for each amended  
73 statement, notice filing or document.

74 (o) Every registered issuer or notice filing shall annually file a sales report and shall pay a  
75 filing fee for that report of one ~~tenth~~ eighth of one percent of the maximum offering price at which  
76 the registered or noticed securities are offered in this state but the fee shall in no case be less  
77 than \$240 nor more than ~~fifteen~~ \$1800.

#### **ARTICLE 4. GENERAL PROVISIONS.**

##### **§32-4-406. Administration of chapter; operating fund for securities department.**

1 (a) This chapter shall be administered by the Auditor of this state and he or she is hereby  
2 designated, and shall be, the commissioner of securities of this state. He or she has the power  
3 and authority to appoint or employ such assistants as are necessary for the administration of this  
4 chapter.

5 (b) The Auditor shall set up a special operating fund for the securities division in his or her  
6 office. The Auditor shall pay into the fund ~~twenty~~ thirty percent of all fees collected as provided for  
7 in this chapter. If, at the end of any fiscal year, the balance in the operating fund exceeds ~~half of~~  
8 ~~the prior fiscal year's appropriation~~ twenty percent of the gross revenues from the securities  
9 division's fund operations, the excess shall be transferred to the General Revenue Fund.

10 The special operating fund shall be used by the Auditor to fund the operation of the  
11 securities division and the general operations of the Auditor's office. The special operating fund  
12 shall be appropriated by line item by the Legislature.

13 (c) Moneys payable for assessments established by section four hundred seven-a of this  
14 article shall be collected by the commissioner and deposited into the General Revenue Fund.



15 (d) It is unlawful for the commissioner or any of his or her officers or employees to use for  
16 personal benefit any information which is filed with or obtained by the commissioner and which is  
17 not made public. No provision of this chapter authorizes the commissioner or any of his or her  
18 officers or employees to disclose any information except among themselves or when necessary  
19 or appropriate in a proceeding or investigation under this chapter. No provision of the chapter  
20 either creates or derogates from any privilege which exists at common law or otherwise when  
21 documentary or other evidence is sought under a subpoena directed to the commissioner or any  
22 of his or her officers or employees.

**§32-4-413. Administrative files and opinions.**

1 (a) A document is filed when it is received by the commissioner.

2 (b) The commissioner shall keep a register of all notice filings and all applications for  
3 registration and registration statements which are or have ever been effective under this chapter  
4 and all denial, suspension or revocation orders which have been entered under this chapter. The  
5 register shall be open for public inspection.

6 (c) The information contained in or filed with any registration statement, application or  
7 report may be made available to the public under rules prescribed by the commissioner.

8 (d) Upon request and at such reasonable charges as he or she prescribes, the  
9 commissioner shall furnish to any person photostatic or other copies (certified under his or her  
10 seal of office if requested) of any entry in the register or any document which is a matter of public  
11 record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie  
12 evidence of the contents of the entry or document certified.

13 (e) The commissioner in his or her discretion may honor requests from interested persons  
14 for interpretative opinions. Copies of the opinions shall be filed in a special file maintained for that  
15 purpose and shall be public records available for public inspection. The commissioner shall  
16 charge a ~~one hundred~~ \$120 fee for each interpretative opinion.

NOTE: The purpose of this bill is to update fee structure provisions for broker-dealers, agents, investment advisers and certain securities offerings and opinions, and to increase the associated fund cap.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.