

RECEIVED  
1993 MAY 12 PM 4: 14  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

# ENROLLED

*Com. Sub. For*  
HOUSE BILL No. *2304*

(By ~~Delegate~~ *Mr. Spaka, Mr. Chambers,*  
*and Delegate Burk*)  
[*By Request of the Executive*]

Passed ..... *April 10,* ..... 1993

In Effect ..... *July 1, 1993* ..... Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2304**  
(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)  
[By Request of the Executive]

---

[Passed April 10, 1993; in effect July 1, 1993.]

---

AN ACT to amend and reenact section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to amend and to reenact section three hundred five, article three of said chapter; and to amend and reenact sections four hundred six and four hundred thirteen, article four of said chapter; all relating to the registration procedure for a broker-dealers, agents and investment advisers; increasing and adding fees, registration of securities; setting up a special operating fund to operate the securities division; specifying uses of the fund; and requiring that the special fund be appropriated by line item by the Legislature.

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

That section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, and reenacted; that section three hundred five, article three of said chapter, be amended and reenacted; and that sections four hundred six and four hundred thirteen, article four of said chapter, be amended and reenacted, all to read as follows:

**ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS.**

**§32-2-202. Registration procedure.**

1 (a) A broker-dealer, agent or investment adviser may  
2 obtain an initial or renewal registration by filing with  
3 the commissioner an application together with a consent  
4 to service of process pursuant to subsection (g), section  
5 four hundred fourteen, article four of this chapter. The  
6 application shall contain whatever information the  
7 commissioner by rule requires concerning matters such  
8 as: (1) The applicant's firm and place of organization;  
9 (2) the applicant's proposed method of doing business;  
10 (3) the qualifications and business history of the  
11 applicant and in the case of a broker-dealer or invest-  
12 ment adviser, the qualifications and business history of  
13 any partner, officer or director, any person occupying  
14 a similar status or performing similar functions, or any  
15 person directly or indirectly controlling the broker-  
16 dealer or investment adviser and, in the case of an  
17 investment adviser, the qualifications and business  
18 history of any employee; (4) any injunction or adminis-  
19 trative order or conviction of a misdemeanor involving  
20 a security or any aspect of the securities business and  
21 any conviction of a felony; and (5) the applicant's  
22 financial condition and history. The commissioner may  
23 by rule or order require an applicant for initial  
24 registration to publish an announcement of the applica-  
25 tion as a Class I legal advertisement in compliance with  
26 the provisions of article three, chapter fifty-nine of this  
27 code, and the publication area or areas for the publica-  
28 tion shall be specified by the commissioner. If no denial  
29 order is in effect and no proceeding is pending under  
30 section two hundred four of this article, registration  
31 becomes effective at noon of the thirtieth day after an  
32 application is filed. The commissioner may by rule or  
33 order specify an earlier effective date, and he or she may  
34 by order defer the effective date until noon of the  
35 thirtieth day after the filing of any amendment to an  
36 application. Registration of a broker-dealer automati-  
37 cally constitutes registration of any agent who is a  
38 partner, officer or director, or a person occupying a  
39 similar status or performing similar functions, as  
40 designated by the broker-dealer in writing to the  
41 commissioner and approved in writing by the

42 commissioner.

43 (b) Every applicant for initial or renewal registration  
44 shall pay a filing fee of two hundred fifty dollars in the  
45 case of a broker-dealer and the agent of an issuer, fifty-  
46 five dollars in the case of an agent, one hundred seventy  
47 dollars in the case of an investment adviser, and fifty  
48 dollars for each investment advisor representative.  
49 When an application is denied or withdrawn, the  
50 commissioner shall retain all of the fee.

51 (c) A registered broker-dealer or investment adviser  
52 may file an application for registration of a successor,  
53 whether or not the successor is then in existence, for the  
54 unexpired portion of the year. A filing fee of twenty  
55 dollars shall be paid.

56 (d) The commissioner may by rule require a minimum  
57 capital for registered broker-dealers and investment  
58 advisers.

59 (e) The commissioner may by rule require registered  
60 broker-dealers, agents and investment advisers to post  
61 surety bonds in amounts up to ten thousand dollars, and  
62 may determine their conditions. Any appropriate  
63 deposit of cash or securities shall be accepted in lieu of  
64 any bond required. No bond may be required of any  
65 registrant whose net capital, which may be defined by  
66 rule, exceeds twenty-five thousand dollars. Every bond  
67 shall provide for suit thereon by any person who has a  
68 cause of action under section four hundred ten, article  
69 four of this chapter and, if the commissioner by rule or  
70 order requires, by any person who has a cause of action  
71 not arising under this chapter. Every bond shall provide  
72 that no suit may be maintained to enforce any liability  
73 on the bond unless brought within two years after the  
74 sale or other act upon which it is based.

75 (f) Every applicant, whether registered under this  
76 chapter or not, shall pay a fifty dollar fee for each name  
77 or address change.

78 (g) Every broker-dealer and investment advisor  
79 registered under this chapter shall pay an annual fifty  
80 dollar fee for each branch office located in West

Virginia.

**ARTICLE 3. REGISTRATION OF SECURITIES.**

**§32-3-305. Provisions applicable to registration generally.**

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

7 (b) Every person filing a registration statement shall  
8 pay a filing fee of one twentieth of one percent of the  
9 maximum aggregate offering price at which the  
10 registered securities are to be offered in this state, but  
11 the fee shall in no case be less than fifty dollars or more  
12 than fifteen hundred dollars. When a registration  
13 statement is withdrawn before the effective date or a  
14 preeffective stop order is entered under section 306, the  
15 commissioner shall retain all of the fee.

16 (c) Every registration statement shall specify (1) the  
17 amount of securities to be offered in this state; (2) the  
18 states in which a registration statement or similar  
19 document in connection with the offering has been or is  
20 to be filed; and (3) any adverse order, judgment or  
21 decree entered in connection with the offering by the  
22 regulatory authorities in each state or by any court or  
23 the securities and exchange commission.

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

29 (e) The commissioner may by rule or otherwise permit  
30 the omission of any item of information or document  
31 from any registration statement.

32 (f) In the case of a nonissuer distribution, information  
33 may not be required under section 304 of this article or  
34 subsection (j) of this section unless it is known to the  
35 person filing the registration statement or to the persons

36 on whose behalf the distribution is to be made, or can  
37 be furnished by them without unreasonable effort or  
38 expense.

39 (g) The commissioner may by rule or order require as  
40 a condition of registration by qualification or coordina-  
41 tion (1) that any security issued within the past three  
42 years or to be issued to a promoter for a consideration  
43 substantially different from the public offering price, or  
44 to any person for a consideration other than cash, be  
45 deposited in escrow; and (2) that the proceeds from the  
46 sale of the registered security in this state be impounded  
47 until the issuer receives a specified amount from the sale  
48 of the security either in this state or elsewhere. The  
49 commissioner may by rule or order determine the  
50 conditions of any escrow or impounding required under  
51 this subsection, but he or she may not reject a depository  
52 solely because of location in another state.

53 (h) The commissioner may by rule or order require as  
54 a condition of registration that any security registered  
55 by qualification or coordination be sold only on a  
56 specified form of subscription or sale contract, and that  
57 a signed or conformed copy of each contract be filed  
58 with the commissioner or preserved for any period up  
59 to three years specified in the rule or order.

60 (i) Every registration statement is effective for one  
61 year from its effective date, or any longer period during  
62 which the security is being offered or distributed in a  
63 nonexempted transaction by or for the account of the  
64 issuer or other person on whose behalf the offering is  
65 being made or by any underwriter or broker-dealer who  
66 is still offering part of an unsold allotment or subscrip-  
67 tion taken by him as a participant in the distribution,  
68 except during the time a stop order is in effect under  
69 section 306 of this article. All outstanding securities of  
70 the same class as a registered security are considered  
71 to be registered for the purpose of any nonissuer  
72 transaction (1) so long as the registration statement is  
73 effective and (2) between the thirtieth day after the  
74 entry of any stop order suspending or revoking the  
75 effectiveness of the registration statement under section  
76 306 of this article (if the registration statement did not

77 relate in whole or in part to a nonissuer distribution)  
78 and one year from the effective date of the registration  
79 statement. A registration statement may not be with-  
80 drawn for one year from its effective date if any  
81 securities of the same class are outstanding. A registra-  
82 tion statement may be withdrawn otherwise only in the  
83 discretion of the commissioner.

84 (j) So long as a registration statement is effective, the  
85 commissioner may by rule or order require the person  
86 who filed the registration statement to file reports, not  
87 more often than quarterly, to keep reasonably current  
88 the information contained in the registration statement  
89 and to disclose the progress of the offering.

90 (k) A registration statement relating to a security  
91 issued by a face amount certificate company or a  
92 redeemable security issued by an open-end management  
93 company or unit investment trust, as those terms are  
94 defined in the investment company act of 1940, may be  
95 amended after its effective date so as to increase the  
96 securities specified as proposed to be offered. The  
97 amendment becomes effective when the commissioner so  
98 orders. Every person filing an amendment shall pay a  
99 filing fee, calculated in the manner specified in  
100 subsection (b) of this section, with respect to the  
101 additional securities proposed to be offered.

102 (l) Every person changing the name or address of a  
103 securities registration shall pay a fifty dollar fee for  
104 change.

105 (m) Every person amending a registration statement  
106 or offering a document without increasing the dollar  
107 amount registered shall pay a twenty-five dollar fee for  
108 each amended statement or document.

#### 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  
2 of this state, and he or she is hereby designated, and  
3 shall be, the commissioner of securities of this state. He  
4 or she has the power and authority to appoint or employ

5 such assistants as are necessary for the administration  
6 of this chapter.

7 (b) The auditor shall set up a special operating fund  
8 for the securities division in his or her office. The  
9 auditor shall pay into the fund twenty percent of all fees  
10 collected as provided for in this chapter, not to exceed  
11 four hundred thousand dollars. If, at the end of any  
12 fiscal year, the balance in the operating fund exceeds  
13 one hundred fifty thousand dollars, the excess shall be  
14 withdrawn from the special fund and deposited in the  
15 general revenue fund.

16 The special operating fund shall be used by the  
17 auditor to fund the operation of the securities division  
18 located in his or her office. The special operating fund  
19 shall be appropriated by line item by the Legislature.

20 (c) It is unlawful for the commissioner or any of his  
21 or her officers or employees to use for personal benefit  
22 any information which is filed with or obtained by the  
23 commissioner and which is not made public. No  
24 provision of this chapter authorizes the commissioner or  
25 any of his or her officers or employees to disclose any  
26 information except among themselves or when neces-  
27 sary or appropriate in a proceeding or investigation  
28 under this chapter. No provision of the chapter either  
29 creates or derogates from any privilege which exists at  
30 common law or otherwise when documentary or other  
31 evidence is sought under a subpoena directed to the  
32 commissioner or any 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  
2 commissioner.

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

9 (c) The information contained in or filed with any  
10 registration statement, application or report may be



11 made available to the public under rules prescribed by  
12 commissioner.

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

21 (e) The commissioner in his or her discretion may  
22 honor requests from interested persons for interpreta-  
23 tive opinions. Copies of the opinions shall be filed in a  
24 special file maintained for that purpose and shall be  
25 public records available for public inspection. The  
26 Commissioner shall charge one hundred dollar fee for  
27 each interpretative opinion.

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

*[Handwritten Signature]*  
Chairman Senate Committee

*Ernest C. Moore*  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1993.

*Parsell Adams*  
Clerk of the Senate

*Donald S. Kopp*  
Clerk of the House of Delegates

*Walter Smith*  
President of the Senate

*Carl Albert*  
Speaker of the House of Delegates

The within *is* approved this the *12<sup>th</sup>*  
day of *May*, 1993.

*Lawton Chason*  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/20/93

Time

3:30 pm