

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2851

BY DELEGATES WHITE, WESTFALL, MOORE, DEAN, LANE,

WARD AND FRICH

[Passed April 8, 2017; in effect ninety days from passage.]

1 AN ACT 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; to amend and reenact §32-2-406 of said code;
3 and to amend and reenact §32-4-413 of said code, all relating to increasing fees assessed
4 by the Auditor's Securities Division; and changing the threshold at which money in the
5 Auditor's Security Division's special revenue fund becomes excess and transfers to the
6 General Revenue Fund for the 2018 fiscal year.

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; that §32-2-406 of said code
3 be amended and reenacted; and that §32-4-413 of said code be amended and reenacted, all to
4 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 \$300 in the
36 case of a broker-dealer and the agent of an issuer, \$66 in the case of an agent, \$200 in the case

37 of an investment adviser and \$75 for each investment adviser representative. When an
38 application is denied or withdrawn, the commissioner shall retain all of the fee.

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

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

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

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

64 (h) Every broker-dealer and investment advisor registered under this chapter shall pay an
65 annual \$60 fee for each branch office located in West Virginia.

66 (i) Each agent, representative and associated person of a broker-dealer or investment
67 advisor when applying for an initial license under this section or changing employers shall pay a
68 compliance assessment of \$30. Each agent, representative and associated person, when
69 applying for a renewal license under this section, shall pay a compliance assessment of \$12. The
70 West Virginia State Legislature reserves the right to adjust the fees set forth in this section once
71 every four years in an amount reflecting the percentage increase in the cost of administering this
72 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 sixteenth of one percent of the maximum aggregate offering price at which the registered or
7 noticed securities are to be offered in this state, but the fee shall in no case be less than \$60 or
8 more than \$1800. When a registration or notice filing statement is withdrawn before the effective
9 date or a preeffective stop order is entered under section three hundred six of this article, the
10 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 \$420 or be more than \$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 \$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 \$60 fee for each amended statement,
73 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 eighth of one percent of the maximum offering price at which the
76 registered or noticed securities are offered in this state but the fee shall in no case be less than
77 \$240 nor more than \$1800.

ARTICLE 4. GENERAL PROVISIONS.

1 §32-4-406. Administration of chapter; operating fund for securities department.

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

6 (b) The Auditor shall set up a special operating fund for the securities division in his or her
7 office. The Auditor shall pay into the fund twenty percent of all fees collected as provided for in
8 this chapter. If, at the end of any fiscal year, the balance in the special operating fund exceeds
9 half of the prior fiscal year's appropriation, the excess shall be transferred to the General Revenue
10 Fund: *Provided*, That at the end of the 2018 fiscal year, if the balance in the special operating
11 fund exceeds twenty percent of the gross revenues from the special operating fund operations,
12 the auditor may first use the fund to repay any transfers made during the 2017 fiscal year from
13 the Revenue Shortfall Reserve Fund to the West Virginia Enterprise Resource Planning Board

14 created in section one, article six-D, chapter twelve of this code: *Provided, however,* That at the
15 end of the 2018 fiscal year, after any repayments made out of the special operating fund to the
16 Revenue Shortfall Reserve Fund, any balance in the special operating fund that exceeds half of
17 prior year's appropriation shall be transferred to the General Revenue Fund.

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

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

23 (d) It is unlawful for the commissioner or any of his or her officers or employees to use for
24 personal benefit any information which is filed with or obtained by the commissioner and which is
25 not made public. No provision of this chapter authorizes the commissioner or any of his or her
26 officers or employees to disclose any information except among themselves or when necessary
27 or appropriate in a proceeding or investigation under this chapter. No provision of the chapter
28 either creates or derogates from any privilege which exists at common law or otherwise when
29 documentary or other evidence is sought under a subpoena directed to the commissioner or any
30 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 \$120 fee for each interpretative opinion.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor