

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2889

By Delegates Criss, Barnhart, and Hott

Introduced February 24, 2025; referred to the

Committee on Finance

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
 2 designated §32-4-402a, relating to authorizing the Commissioner of the State Auditor of
 3 West Virginia, or his or her designee, to conduct a fairness hearing for transactions
 4 involving the exchange of a security for one or more outstanding securities, claims or
 5 property interests or partly for cash, to determine whether the terms and conditions of the
 6 exchange are fair to the security holders participating in the exchange, which would allow
 7 the parties in the exchange to seek to qualify the exchange as exempt from registration
 8 under Section 3(a)(1) of the Securities Act, 15 U.S.C. § 77c(a)(10); providing definitions;
 9 providing for an application process to set fairness hearings; proscribing timelines for the
 10 Commissioner, or his or her designee, to issue decisions; proscribing notice requirements;
 11 proscribing filing fees and investigation fee caps; and authorizing the Commissioner of the
 12 State Auditor of West Virginia to promulgate rules necessary to carry out the provisions of
 13 this section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§32-4-402a. Application for permit to issue exchange securities or to deliver other consideration; approval of terms and conditions; hearing.

1 (a) For the purposes of this section, the term "reorganization," "recapitalization," and
 2 "refinancing" shall mean:

- 3 (1) A readjustment by modification of the terms of securities by agreement;
- 4 (2) A readjustment by the exchange of securities by the issuer for others of its securities;
- 5 (3) The exchange of securities by the issuer for securities of another issuer;
- 6 (4) The acquisition of assets of a person, directly or indirectly, partly or wholly in
 7 consideration for securities distributed or to be distributed as part of the same transaction,
 8 directly or indirectly, to holders of securities issued by such person or secured by the
 9 assets of such person; or

10 (5) A merger or consolidation.

11 (b) The Commissioner, or his or her designee, may consider and conduct hearings upon
12 any plan of reorganization, recapitalization, or refinancing of a corporation or limited liability
13 company organized under the laws of this state or having its principal place of business within this
14 state when such plan is proposed by such corporation, limited liability company or by any of its
15 shareholders, members or creditors and contains a proposal to issue securities in exchange for
16 one or more bona fide outstanding securities, claims, or property interests, or partly in such
17 exchange or partly for cash. The Commissioner, or his or her designee, shall be required to hold a
18 hearing on an application for approval within 30 days after the filing of the application and
19 supporting documents required by any rule of the Commissioner.

20 (c) The Commissioner, or his or her designee, may also approve the terms of such
21 issuance and exchange and the fairness of the exchange to the equity holders participating in the
22 exchange, after a hearing upon the fairness of the terms and conditions of the exchange at which
23 all persons to whom it is proposed to issue securities or to deliver such other consideration in such
24 exchange have the right to appear, if application for such a hearing is made by such a corporation
25 or limited liability company, by the holders of a majority in amount of its debts, or by the holders of a
26 majority in amount of any outstanding class of securities issued by it. Within 10 business days
27 after holding the hearing under subsection (b), the Commissioner, or his or her designee, shall
28 issue his or her approval or a statement that his or her approval will not be forthcoming.

29 (d) Securities issued in accordance with a plan so approved by the Commissioner, or
30 his or her designee, are exempt from the registration requirement of §32-3-301, et. seq. of this
31 code.

32 (e) Notice in person or by United States Mail, Postage Prepaid, at the time and place of
33 such hearing shall be given by the applicant to all persons to whom it is proposed to issue such
34 securities, or to deliver such other consideration in such exchange, not less than 10 days prior to

35 such hearing, and evidence that such notice has been given shall be filed by the applicant with the
36 Commissioner, or his or her designee.

37 (f) The application shall be in such form, contain such information and be accompanied
38 by such documents as shall be required by rule of the Commissioner. The applicant shall provide
39 sufficient information to the Commissioner regarding the value of the securities, claims, or
40 interests to be exchanged and the securities to be issued in the transaction. Upon filing an
41 application with the Commissioner, or his or her designee under this section, the applicant shall
42 pay a filing fee of one hundred dollars to the Auditor of the State of West Virginia, and shall further
43 deposit with the Auditor of the State of West Virginia such sum, not in excess of one thousand
44 dollars, as the Commissioner requires for the purpose of defraying the costs of the hearing
45 provided for in this section and of any investigation which the Commissioner, or his or her
46 designee, may make in connection herewith.

47 (g) The Commissioner may promulgate rules necessary to carry out the provisions of this
48 section, including rules and forms governing applications and reports, and defining any terms,
49 whether or not used in this chapter, insofar as the definitions are not inconsistent with the
50 provisions of this chapter.

51 (h) For the purposes of rules and applications, the Commissioner may classify securities,
52 persons, and matters within his or her jurisdiction, and prescribe different requirements for
53 different classes.

NOTE: The purpose of this bill is to authorize the Commissioner of the State Auditor of West Virginia, or his or her designee, to conduct fairness hearings for transactions involving the exchange of a security for one or more outstanding securities, claims or property interests or partly for cash, to determine whether the terms and conditions of the exchange are fair to the security holders participating in the exchange, which would allow the parties in the exchange to seek to qualify the exchange as exempt from registration under Section 3(a)(1) of the Securities Act, 15 U.S.C. § 77c(a)(10) .

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