

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 677

BY SENATOR SMITH (MR. PRESIDENT)

[Reported March 29, 2025, from the Committee on
Finance]

1 A BILL to amend and reenact §32-2-202, §32-3-304a, §32-3-305, and §32-4-406 of the Code of
2 West Virginia, 1931, as amended, relating to fee changes in the Uniform Securities Act;
3 adjusting fees to be remitted to the State Auditor; placing submission requirements on
4 certain issuers of securities; and adjusting fund distributions made by the State Auditor.

Be it enacted by the Legislature of West Virginia:

**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 §32-4-414(g) of this code. The application shall contain whatever information
4 the commissioner by rule requires concerning matters such as: (1) The applicant's firm and place
5 of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and
6 business history of the applicant and in the case of a broker-dealer or investment adviser, the
7 qualifications and business history of any partner, officer or director, any person occupying a
8 similar status or performing similar functions or any person, directly or indirectly, controlling the
9 broker-dealer or investment adviser and, in the case of an investment adviser, the qualifications
10 and business history of any employee; (4) any injunction or administrative order or conviction of
11 a misdemeanor involving a security or any aspect of the securities business and any conviction
12 of a felony; and (5) subject to the limitations of §15(h)(1) of the Securities Exchange Act of 1934,
13 the applicant's financial condition and history. The commissioner may by rule or order require an
14 applicant for initial registration to publish an announcement of the application as a Class I legal
15 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication
16 area or areas for the publication shall be specified by the commissioner. If no denial order is in
17 effect and no proceeding is pending under §32-2-204 of this code, registration becomes effective

at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions, as designated by the broker-dealer in writing to the commissioner and approved in writing by the commissioner. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer or director, or a person occupying a similar status or performing similar functions as designated by the investment adviser in writing to the commissioner and approved in writing by the commissioner.

(b) Except with respect to federal-covered advisers whose only clients are those described in §32-2-201(c)(3)(A) and (B) of this code, a federal-covered adviser shall file with the commissioner, prior to acting as a federal-covered adviser in this state, such documents as have been filed with the securities and exchange commissioner as the commissioner, by rule or order, may require along with notice filing fees under subsection (c) of this section.

(c) Every applicant for initial or renewal registration shall pay a filing fee of \$300 in the case of a broker-dealer and the agent of an issuer, ~~\$66~~ \$70 in the case of an agent, \$200 in the case of an investment adviser, and \$75 for each investment adviser representative. When an application is denied or withdrawn, the commissioner shall retain all of the fee.

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

(e) The commissioner may, by rule or order, require a minimum capital for registered broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements

for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(f) The commissioner may, by rule or order, require registered broker-dealers, agents, and investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts as the commissioner may prescribe, by rule or order, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 (for broker-dealers) and Section 222 of the Investment Advisers Act of 1940 (for investment advisers), up to \$25,000 and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action §32-4-410 of this code and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations set forth in §32-4-410(e) of this code.

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

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

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

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-304a. Federal-covered securities.

(a) Securities for which a registration statement has been filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal-covered security under Section 18(b)(2) of the Securities Act of 1933 may be offered for sale or sold to residents of this state upon the commissioner's receipt of: (1) A notice as prescribed by the commissioner by rule or otherwise or in lieu thereof a copy of the issuer's federal registration statement as filed with the securities and exchange commissioner; (2) a consent to service of process signed by the issuer; and (3) payment of a fee as provided for in §32-3-305(b) of this code: *Provided*, That up through October 10, 1999, or such other date as may be legally permissible, a federal-covered security for which a fee has not been paid or promptly remedied following written notification from the commissioner to the issuer of the nonpayment or underpayment of such fees, as required by this article, shall be required to register under this article.

(b) The commissioner, by rule or otherwise, may require the filing of any or all of the following documents with respect to a federal-covered security under Section 18(b)(2) of the Securities Act of 1933:

(1) Prior to the initial offer of such federal covered security in this state, all documents that are part of a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933; and

(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933, which shall be filed concurrently with the commissioner.

(c) With respect to any security that is a federal-covered security under Section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than 15

days after the first sale of such federal-covered security in this state, together with a fee as established by rule by the commissioner.

(d) The commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a federal-covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee for such document as appropriate under §32-3-305(m) and (n) of this code.

(e) An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A (17 CFR 230.251 through 17 CFR 230.263) and § 18(b)(3) or 18(b)(4) of the Securities Act of 1933 (15 USC § 77a) shall submit the following at least 21 calendar days prior to the initial sale in this state:

(1) A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with the U.S. Securities and Exchange Commission;

(2) A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and

(3) A filing fee of \$375 payable to the West Virginia State Auditor.

(1) The initial notice filing is effective for 12 months from the date of the filing with this state. For each additional 12-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

(A) The Regulation A – Tier 2 notice filing form marked "renewal" or a cover letter or other document requesting renewal; and

(B) A renewal fee in the amount of \$200 payable to the West Virginia State Auditor.

(2) An issuer may increase the amount of securities offered in this state by submitting a Regulation A – Tier 2 notice filing form marked "amendment" or other document describing the transaction.

50 ~~(e)~~ (f) The commissioner may issue a stop order suspending the offer and sale of a federal-
51 covered security, except a federal-covered security under Section 18(b)(1) of the Securities Act
52 of 1933, if it finds that: (1) The order is in the public interest; and (2) there is a failure to comply
53 with any condition established under this section.

54 ~~(f)~~ (g) The commissioner, by rule or order, may waive any or all of the provisions of this
55 section.

§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 \$1,800. When a registration or notice filing statement is withdrawn before the effective
9 date or a pre-effective stop order is entered under §32-3-306 of this code, the commissioner shall
10 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

upon the total amount of securities sold in this state and the total filing fees previously paid to the commissioner with respect to such registration or notice filing, but in no case shall the oversale assessment be less than \$420 or be more than \$1,800.

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

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

(g) In the case of a non-issuer distribution, information may not be required under §32-3-304 of this code or subsection (k) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

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

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

(j) Every registration statement is effective for one year from its effective date or any longer 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 §32-3-306 of this code. All outstanding securities of the same class as a registered
50 security are considered to be registered for the purpose of any non-issuer transaction: (1) So long
51 as the registration statement is effective; and (2) between the thirtieth day after the entry of any
52 stop order suspending or revoking the effectiveness of the registration statement under §32-3-
53 306 of this code (if the registration statement did not relate, in whole or in part, to a non-issuer
54 distribution) and one year from the effective date of the registration statement. A registration
55 statement may not be withdrawn for one year from its effective date if any securities of the same
56 class are outstanding. A registration statement may be withdrawn otherwise only in the discretion
57 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.

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

(o) Every registered issuer or notice filing shall annually file a sales report and shall pay a filing fee for that report of one eighth of one percent of the maximum offering price at which the registered or noticed securities are offered in this state but the fee shall in no case be less than ~~\$240~~ \$300 nor more than \$1,800.

ARTICLE 4. GENERAL PROVISIONS.

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

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

(b) The Auditor shall set up a special operating fund for the securities division in his or her office. The Auditor shall pay into the fund ~~20~~ 25 percent of all fees collected as provided for in this chapter. If, at the end of any fiscal year, the balance in the special operating fund exceeds ~~20~~ 25 percent of the gross revenues from the special operating fund operations, the excess shall be transferred to the General Revenue Fund.

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

(c) Moneys payable for assessments established by §32-4-407a of this code shall be collected by the commissioner and deposited into the General Revenue Fund.

(d) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is 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.