

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 741

By Senators Azinger, Oliverio, and Morris

[Introduced March 12, 2025; referred
to the Committee on Banking and Insurance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §32-4-402a, relating to authorizing the State Auditor as Commissioner under
3 the Uniform Securities Act, or his or her designee, to conduct a fairness hearing for
4 transactions involving the exchange of a security for one or more outstanding securities,
5 claims or property interests or partly for cash.

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 assets of
9 such person; or

10 (5) A merger or consolidation.

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

18 after the filing of the application and supporting documents required by any rule of the
19 commissioner.

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

29 (e) Securities issued in accordance with a plan approved by the commissioner are exempt
30 from the registration requirement of §32-3-301 et seq. of this code.

31 (f) Notice, of the time and place of the hearing, shall be given by the applicant not less than
32 10 days prior to the hearing, to all persons to whom it is proposed to issue the securities, or to
33 deliver such other consideration in the exchange. The notice may be given in person or by United
34 States Mail, Postage Prepaid. Evidence that the notice has been given shall be filed by the
35 applicant with the commissioner at the time and place of the hearing.

36 (g) The application shall be in the form, contain information and be accompanied by
37 documents required by rule of the commissioner. The applicant shall provide sufficient information
38 to the commissioner regarding the value of the securities, claims, or interests to be exchanged and
39 the securities to be issued in the transaction. Upon filing an application with the commissioner, the
40 applicant shall pay a filing fee of \$100 to the Auditor, and shall further deposit with the Auditor a
41 sum, not in excess of \$1,000, as the commissioner requires for the purpose of defraying the costs
42 of the hearing provided for in this section and of any investigation which the commissioner, or his
43 or her designee, may make in connection herewith.

- 44 (h) The commissioner may promulgate rules necessary to carry out the provisions of this
45 section, including rules and forms governing applications and reports, and defining any terms,
46 whether or not used in this chapter, insofar as the definitions are not inconsistent with the
47 provisions of this chapter.
- 48 (i) For the purposes of rules and applications, the commissioner may classify securities,
49 persons, and matters within his or her jurisdiction, and prescribe different requirements for
50 different classes.

NOTE: The purpose of this bill is to authorize the State Auditor as Commissioner under the Uniform Securities Act of West Virginia 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.