WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

ENROLLED
Com. Sub. for
HOUSE BILL No. 2304

(By Delegate
Mr. Speaker, Mr. Chambers,
and Delegate Burke)
[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.

(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application together with a consent to service of process pursuant to subsection (g), section four hundred fourteen, article four of this chapter. The application shall contain whatever information the commissioner by rule requires concerning matters such as: (1) The applicant's firm and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area or areas for the publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under section two hundred four of this article, 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
3 [Enr. Com. Sub. for H. B. 2304]

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 When an application is denied or withdrawn, the commissioner shall retain all of the fee.

(c) 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 twenty dollars shall be paid.

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

(e) The commissioner may by rule require registered broker-dealers, agents and investment advisers to post surety bonds in amounts up to ten thousand dollars, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond required. No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds twenty-five thousand dollars. Every bond shall provide for suit thereon by any person who has a cause of action under section four hundred ten, article four of this chapter 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 two years after the sale or other act upon which it is based.

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

(g) Every broker-dealer and investment advisor registered under this chapter shall pay an annual fifty dollar fee for each branch office located in West
Enr. Com. Sub. for H. B. 2304] 4

Virginia.

ARTICLE 3. REGISTRATION OF SECURITIES.

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

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

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

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

(d) 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.

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

(f) In the case of a nonissuer distribution, information may not be required under section 304 of this article or subsection (j) 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.

(g) 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.

(h) 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.

(i) 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 or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under section 306 of this article. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 306 of this article (if the registration statement did not
and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

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

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

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

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

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 twenty percent of all fees collected as provided for in this chapter, not to exceed four hundred thousand dollars. If, at the end of any fiscal year, the balance in the operating fund exceeds one hundred fifty thousand dollars, the excess shall be withdrawn from the special fund and deposited in the general revenue fund.

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

(c) 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 officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of the chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his or her officers or employees.

§32-4-413. Administrative files and opinions.

(a) A document is filed when it is received by the commissioner.

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

(c) The information contained in or filed with any registration statement, application or report may be
made available to the public under rules prescribed by commissioner.

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

(e) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions. Copies of the opinions shall be filed in a special file maintained for that purpose and shall be public records available for public inspection. The Commissioner shall charge one hundred dollar fee for each interpretative opinion.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1993.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 12th day of May, 1993.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 4/20/93
Time 3:30 p.m.