ENROLLED

SENATE BILL NO. 2003

(By Senators Tomblin, Mr. President, and Sprouse, By Request of the Executive)

PASSED June 13, 2003

In Effect from Passage
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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 reenact section three hundred five, article three of said chapter; and to amend and reenact section four hundred six, article four of said chapter, all relating to updating fee structure provisions for certain broker-dealers and agents; providing for annual sales report and filing fee by certain issuers of securities; and providing for disposition of special revenue.

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 section four hundred six, article four of said chapter be amended and reenacted, all to read as follows:
ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS; REGISTRATION AND NOTICE FILING FOR 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) subject to the limitations of §15(h)(1) of the Securities Exchange Act of 1934, 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 per-
forming similar functions, as designated by the broker-
dealer in writing to the commissioner and approved in
writing by the commissioner. Registration of an invest-
ment 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 invest-
ment 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 paragraphs (A)
and (B), subdivision (3), subsection (c), section two hun-
dred one of this article, 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 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, two hundred dollars in
the case of an investment adviser and seventy-five dollars
for each investment advisor 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 twenty dollars 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 fifteen 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 fifteen 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 twenty-five thousand dollars 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 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 the time limitations set forth in subsection (e), section four hundred ten, article four of this chapter.

(g) Every applicant, whether registered under this chapter or not, shall pay a fifty-dollar fee for each name or address change.
(h) Every broker-dealer and investment advisor registered under this chapter shall pay an annual fifty-dollar 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 twenty-five dollars. Each agent, representative and associated person, when applying for a renewal license under this section, shall pay a compliance assessment of ten dollars. The West Virginia state 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.

§32-3-305. Provisions applicable to registration and notice filing generally.

(a) A registration or notice filing 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 or notice filing statement filed under this chapter registering or noticing investment company shares shall cover only one class, series or portfolio of investment company shares.

(b) Every person filing a registration or notice filing statement shall pay a filing fee of one twentieth of one percent of the maximum aggregate offering price at which the registered or noticed 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 or notice filing statement is withdrawn before the effective date or a preeffective stop order is entered under section three hundred six of this article, the commissioner shall retain all of the fee.
(c) Every registration statement and notice filing 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) In any case where securities sold in this state are in excess of the aggregate amount of securities specified under subsection (c) of this section, the commissioner may require payment of an oversale assessment which shall be three times an amount which equals the difference 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 three hundred fifty dollars or be more than fifteen hundred dollars.

(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 nonissuer distribution, information may not be required under section three hundred four of this article 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 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 or her as a participant in the distribution, except during the time a stop order is in effect under section three hundred six 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 three hundred six of this article (if
the registration statement did not relate, in whole or in part, to a nonissuer distribution) 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.

(k) 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.

(l) 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.

(m) Every person changing the name or address of a securities registration or notice filing shall pay a fifty-dollar 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 fifty-dollar 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 tenth 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 two hundred dollars nor more than fifteen hundred dollars.

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. If, at the end of any fiscal year, the balance in the operating fund exceeds half of the prior fiscal year's appropriation, 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 section four hundred seven-a of this article 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 officers or employees to disclose any information except among themselves or when necessary or appropri-
ate 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 19th Day of June, 2003.

Governor