Committee Substitute
for
House Bill 2851

BY DELEGATES WHITE, WESTFALL, MOORE, DEAN, LANE, WARD AND FRICH

[Passed April 8, 2017; in effect ninety days from passage.]
Committee Substitute for House Bill 2851

BY DELEGATES WHITE, WESTFALL, MOORE, DEAN, LANE, WARD AND FRICH

[Passed April 8, 2017; in effect ninety days from passage.]
AN ACT to amend and reenact §32-2-202 of the Code of West Virginia, 1931, as amended; to amend and reenact §32-3-305 of said code; to amend and reenact §32-2-406 of said code; and to amend and reenact §32-4-413 of said code, all relating to increasing fees assessed by the Auditor's Securities Division; and changing the threshold at which money in the Auditor's Security Division's special revenue fund becomes excess and transfers to the General Revenue Fund for the 2018 fiscal year.

Be it enacted by the Legislature of West Virginia:

That §32-2-202 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §32-3-305 of said code be amended and reenacted; that §32-2-406 of said code be amended and reenacted; and that §32-4-413 of said code 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 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 paragraphs (A) and (B), subdivision (3), subsection (c), section two hundred 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 $300 in the case of a broker-dealer and the agent of an issuer, $66 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 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 $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 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 sixteenth 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 $60 or more than $1800. 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 $420 or be more than $1800.

(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.

5
(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 $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 nor more than $1800.

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 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 special operating fund exceeds half of the prior fiscal year’s appropriation, the excess shall be transferred to the General Revenue Fund: Provided, That at the end of the 2018 fiscal year, if the balance in the special operating fund exceeds twenty percent of the gross revenues from the special operating fund operations, the auditor may first use the fund to repay any transfers made during the 2017 fiscal year from the Revenue Shortfall Reserve Fund to the West Virginia Enterprise Resource Planning Board.
created in section one, article six-D, chapter twelve of this code: Provided, however, That at the end of the 2018 fiscal year, after any repayments made out of the special operating fund to the Revenue Shortfall Reserve Fund, any balance in the special operating fund that exceeds half of prior year's appropriation 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 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 notice filings and 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 the 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 a $120 fee for each interpretative opinion.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 24th day of April, 2017.

Governor