

1 **§32-5-502. Offers or sale of securities.**

2 Notwithstanding any other provision of law to the contrary, the offer or sale of a security by
3 an issuer is exempt from the requirements of articles one, two, three and four of this chapter if the
4 offer, sale, issuer and purchaser meet the requirements of this article.

5 **§32-5-503. Qualifications of issuer and purchaser.**

6 (a) In order to qualify for exemption under this article, the issuer shall:

7 (1) Be a for-profit entity organized under the laws of West Virginia with its principal place
8 of business in West Virginia;

9 (2) Be registered with the Secretary of State;

10 (3) Have at least eighty percent of its operating revenue for the previous two fiscal years
11 generated from inside West Virginia if it is an existing business entity;

12 (4) Generate at least eighty percent of its operating revenue for the next two fiscal years from
13 inside West Virginia if it is a newly formed business entity; and

14 (5) Ensure prior to completion of a sale that the purchaser is a qualified purchaser under
15 subsection (b) of this section.

16 (b) In order to qualify for the exemption under this article, the purchaser shall be a resident
17 of West Virginia or be an entity organized under the laws of West Virginia with its principal place
18 of business in West Virginia.

19 **§32-5-504. Qualifications of offers, sales and transactions.**

20 (a) The transaction must meet the requirements of the federal exemption for intrastate
21 offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C § 77c(a)(11) and SEC rule 147,
22 17 CFR 230.147.

1 (b) The sum of all cash and other consideration received from the issue of securities under
2 this exemption may not exceed \$1 million per annum.

3 (c) The issuer may not issue more than \$10,000 per annum to any single purchaser unless the
4 purchaser is an accredited investor as defined under rule 501 of SEC Reg D, 17 CFR 230.501.

5 (d) All funds received by issuer from purchasers under this article, shall be held in escrow
6 by an attorney licensed to practice law in West Virginia who shall deposit the funds in a depository
7 institution authorized to do business in West Virginia.

8 (e) All funds shall be used in accordance with the representations made to purchasers. The
9 attorney with whom the funds are held in escrow shall make a quarterly report to purchasers
10 describing all draws upon the funds by issuer.

11 (f) The issuer shall make a quarterly report to purchasers of the financials of the business
12 operations, including the specific use of any escrow funds.

13 (g) The issuer shall hold a meeting of all purchasers at least one time per year within West
14 Virginia.

15 (h) Prior to any general solicitation, or the sale of securities to the twenty-fifth person, the
16 issuer shall file a Notice of Issuer with Secretary of State, which notice shall contain the name of the
17 issuer, all persons involved in the offer or sale of the securities under this article and the attorney
18 who will act as escrow agent. When the Secretary of State receives a Notice of Issuer, he or she shall
19 promptly forward a copy of it to the auditor of the State of West Virginia.

20 **§32-5-505. Misleading filings, criminal penalties and civil liabilities.**

21 Notwithstanding the provisions of section five hundred two of this article, an issuer under
22 this article shall be subject to the provisions of sections four hundred four, four hundred nine and

1 four hundred ten of article four of this chapter.

2 **§32-5-506. Anti-fraud provisions preserved.**

3 Notwithstanding the provisions of this article, nothing in this exemption shall be construed

4 to alleviate any person from the anti-fraud provisions of articles one, two, three or four of this

5 chapter.

NOTE: The purpose of this bill is to create the West Virginia Small Business Capital Act. It exempts the offer and sale of certain securities from the Uniform Securities Act.

This article is new; therefore, it has been completely underscored.