

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

ENROLLED

Committee Substitute for

SENATE BILL NO. 23

(By Mr. *James E. Pufferbarger*)

PASSED March 9 1974

In Effect ninety days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 3-22-74

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ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 23

(By MR. GAINER and MR. POFFENBARGER, *original sponsors*)

[Passed March 9, 1974; in effect ninety days from passage.]

AN ACT to amend and reenact chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter, designated chapter thirty-two-a, relating to securities generally; enacting the uniform securities act; prohibiting fraudulent and other practices with respect to securities; relating to and requiring the registration of broker-dealers, agents and investment advisers and securities; relating to various exempted securities and exempted transactions; relating to administrative procedures and investigatory powers; authorizing the issuance of subpoenas; relating to certain land sales and false advertising; relating to the business of issuing and selling checks, drafts, money orders, personal money orders or other instruments for the transmission or payment of money; requiring proof of financial responsibility to engage in such business and the deposit of adequate security; providing for an annual fee to engage in such business; providing certain exemptions; relating to judicial review; relating to judicial enforcement and injunctive relief; relating to civil penalties; providing criminal offenses and penalties; relating to indictments; and providing severability clauses.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new chapter, designated chapter thirty-two-a, all to read as follows:

CHAPTER 32. UNIFORM SECURITIES ACT.

ARTICLE 1. FRAUDULENT AND OTHER PROHIBITED PRACTICES.

§32-1-101. Sales and purchases.

- 1 It is unlawful for any person, in connection with the
- 2 offer, sale or purchase of any security, directly or in-
- 3 directly
- 4 (1) to employ any device, scheme or artifice to de-
- 5 fraud;
- 6 (2) to make any untrue statement of a material fact
- 7 or to omit to state a material fact necessary in order to
- 8 make the statements made, in the light of the circum-
- 9 stances under which they are made, not misleading; or
- 10 (3) to engage in any act, practice or course of business
- 11 which operates or would operate as a fraud or deceit upon
- 12 any person.

§32-1-102. Advisory activities.

- 1 (a) It is unlawful for any person who receives any
- 2 consideration from another person primarily for advising
- 3 the other person as to the value of securities or their
- 4 purchase or sale, whether through the issuance of an-
- 5 alyses or reports or otherwise,
- 6 (1) To employ any device, scheme or artifice to de-
- 7 fraud the other person; or
- 8 (2) To engage in any act, practice or course of business
- 9 which operates or would operate as a fraud or deceit
- 10 upon the other person.
- 11 (b) It is unlawful for any investment adviser to enter
- 12 into, extend or renew any investment advisory contract
- 13 unless it provides in writing
- 14 (1) that the investment adviser shall not be compen-
- 15 sated on the basis of a share of capital gains upon or
- 16 capital appreciation of the funds or any portion of the
- 17 funds of the client;
- 18 (2) that no assignment of the contract may be made
- 19 by the investment adviser without the consent of the
- 20 other party to the contract; and
- 21 (3) that the investment adviser, if a partnership, shall
- 22 notify the other party to the contract of any change in

23 the membership of the partnership within a reasonable
24 time after the change.

25 Subdivision (1) does not prohibit an investment ad-
26 visory contract which provides for compensation based
27 upon the total value of a fund averaged over a definite
28 period, or as of definite dates or taken as of a definite
29 date. "Assignment," as used in subdivision (2) includes
30 any direct or indirect transfer or hypothecation of an in-
31 vestment advisory contract by the assignor or of a con-
32 trolling block of the assignor's outstanding voting securi-
33 ties by a security holder of the assignor; but, if the in-
34 vestment adviser is a partnership, no assignment of an
35 investment advisory contract is considered to result from
36 the death or withdrawal of a minority of the members
37 of the investment adviser having only a minority interest
38 in the business of the investment adviser, or from the ad-
39 mission to the investment adviser of one or more mem-
40 bers who, after admission, will be only a minority of the
41 members and will have only a minority interest in the
42 business.

43 (c) It is unlawful for any investment adviser to take
44 or have custody of any securities or funds of any client if

45 (1) the commissioner by rule prohibits custody; or

46 (2) in the absence of rule, the investment adviser fails
47 to notify the commissioner that he has or may have cus-
48 tody.

ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS.

§32-2-201. Registration requirement.

1 (a) It is unlawful for any person to transact business
2 in this state as a broker-dealer or agent unless he is
3 registered under this chapter.

4 (b) It is unlawful for any broker-dealer or issuer to
5 employ an agent unless the agent is registered. The reg-
6 istration of an agent is not effective during any period
7 when he is not associated with a particular broker-dealer
8 registered under this chapter or a particular issuer. When
9 an agent begins or terminates a connection with a broker-
10 dealer or issuer, or begins or terminates those activities
11 which make him an agent, the agent as well as the

12 broker-dealer or issuer shall promptly notify the com-
13 missioner.

14 (c) It is unlawful for any person to transact business
15 in this state as an investment adviser unless (1) he is so
16 registered under this chapter, (2) he is registered as a
17 broker-dealer without the imposition of a condition under
18 section 204(b) (5), or (3) his only clients in this state
19 are investment companies as defined in the Investment
20 Company Act of 1940 or insurance companies.

21 (d) Every registration expires one year from its effec-
22 tive date unless renewed. The commissioner by rule or
23 order may prepare an initial schedule for registration re-
24 newals so that subsequent renewals of registrations effec-
25 tive on the effective date of this chapter may be staggered
26 by calendar months. For this purpose the commissioner
27 by rule may reduce the registration fee proportionately.

§32-2-202. Registration procedure.

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with the
3 commissioner an application together with a consent to
4 service of process pursuant to section 414(g). The appli-
5 cation shall contain whatever information the commis-
6 sioner by rule requires concerning such matters as (1)
7 the applicant's form and place of organization; (2) the
8 applicant's proposed method of doing business; (3) the
9 qualifications and business history of the applicant; in the
10 case of a broker-dealer or investment adviser, the quali-
11 fications and business history of any partner, officer or
12 director, any person occupying a similar status or per-
13 forming similar functions, or any person directly or in-
14 directly controlling the broker-dealer or investment
15 adviser; and, in the case of an investment adviser, the
16 qualifications and business history of any employee; (4)
17 any injunction or administrative order or conviction of a
18 misdemeanor involving a security or any aspect of the
19 securities business and any conviction of a felony; and (5)
20 the applicant's financial condition and history. The com-
21 missioner may by rule or order require an applicant for
22 initial registration to publish an announcement of the
23 application as a Class I legal advertisement in compliance

24 with the provisions of article three, chapter fifty-nine of
25 this code, and the publication area or areas for such pub-
26 lication shall be specified by the commissioner. If no de-
27 nial order is in effect and no proceeding is pending under
28 section 204, registration becomes effective at noon of the
29 thirtieth day after an application is filed. The commis-
30 sioner may by rule or order specify an earlier effective
31 date, and he may by order defer the effective date until
32 noon of the thirtieth day after the filing of any amend-
33 ment. Registration of a broker-dealer automatically con-
34 stitutes registration of any agent who is a partner, offi-
35 cer or director, or a person occupying a similar status or
36 performing similar functions, as designated by the broker-
37 dealer in writing to the commissioner and approved in
38 writing by the commissioner.

39 (b) Every applicant for initial or renewal registration
40 shall pay a filing fee of one hundred dollars in the case of
41 a broker-dealer, fifteen dollars in the case of an agent,
42 and fifteen dollars in the case of an investment adviser.
43 When application is denied or withdrawn, the commis-
44 sioner shall retain all of the fee.

45 (c) A registered broker-dealer or investment adviser
46 may file an application for registration of a successor,
47 whether or not the successor is then in existence, for the
48 unexpired portion of the year. A filing fee of five dollars
49 shall be paid.

50 (d) The commissioner may by rule require a minimum
51 capital for registered broker-dealers and investment ad-
52 visers.

53 (e) The commissioner may by rule require registered
54 broker-dealers, agents and investment advisers to post
55 surety bonds in amounts up to ten thousand dollars, and
56 may determine their conditions. Any appropriate deposit
57 of cash or securities shall be accepted in lieu of any bond
58 so required. No bond may be required of any registrant
59 whose net capital, which may be defined by rule, exceeds
60 twenty-five thousand dollars. Every bond shall provide for
61 suit thereon by any person who has a cause of action un-
62 der section 410 and, if the commissioner by rule or order
63 requires, by any person who has a cause of action not
64 arising under this chapter. Every bond shall provide that

65 no suit may be maintained to enforce any liability on the
66 bond unless brought within two years after the sale or
67 other act upon which it is based.

§32-2-203. Post-registration provisions.

1 (a) Every registered broker-dealer and investment
2 adviser shall make and keep such accounts, correspon-
3 dence, memoranda, papers, books and other records as the
4 commissioner by rule prescribes. All records so required
5 shall be preserved for three years unless the commissioner
6 by rule prescribes otherwise for particular types of
7 records.

8 (b) Every registered broker-dealer and investment
9 adviser shall file such financial reports as the commis-
10 sioner by rule prescribes.

11 (c) If the information contained in any document filed
12 with the commissioner is or becomes inaccurate or in-
13 complete in any material respect, the registrant shall
14 promptly file a correcting amendment unless notification
15 of the correction has been given under section 201(b).

16 (d) All the records referred to in subsection (a) are
17 subject at any time or from time to time to such reason-
18 able periodic, special or other examinations by representa-
19 tives of the commissioner, within or without this state, as
20 the commissioner deems necessary or appropriate in the
21 public interest or for the protection of investors. For the
22 purpose of avoiding unnecessary duplication of examina-
23 tions, the commissioner, insofar as he deems it practicable
24 in administering this subsection, may cooperate with the
25 securities administrators of other states, the securities and
26 exchange commission, and any national securities ex-
27 change or national securities association registered under
28 the Securities Exchange Act of 1934.

§32-2-204. Denial, revocation, suspension, cancellation and withdrawal of registration.

1 (a) The commissioner may by order deny, suspend or
2 revoke any registration if he finds (1) that the order is in
3 the public interest and (2) that the applicant or registrant
4 or, in the case of a broker-dealer or investment adviser,
5 any partner, officer or director, any person occupying a

6 similar status or performing similar functions, or any per-
7 son directly or indirectly controlling the broker-dealer or
8 investment adviser.

9 (A) has filed an application for registration which as
10 of its effective date, or as of any date after filing in the case
11 of an order denying effectiveness, was incomplete in any
12 material respect or contained any statement which was,
13 in light of the circumstances under which it was made,
14 false or misleading with respect to any material fact;

15 (B) has willfully violated or willfully failed to com-
16 ply with any provision of this chapter or a predecessor
17 act or any rule or order under this chapter or a predeces-
18 sor act;

19 (C) has been convicted, within the past ten years, of
20 any misdemeanor involving a security or any aspect of the
21 securities business, or any felony;

22 (D) is permanently or temporarily enjoined by any
23 court of competent jurisdiction from engaging in or con-
24 tinuing any conduct or practice involving any aspect of
25 the securities business;

26 (E) is the subject of an order of the commissioner
27 denying, suspending or revoking registration as a broker-
28 dealer, agent or investment adviser;

29 (F) is the subject of an order entered within the past
30 five years by the securities administrator of any other
31 state or by the securities and exchange commission deny-
32 ing or revoking registration as a broker-dealer, agent or
33 investment adviser, or the substantial equivalent of those
34 terms as defined in this chapter, or is the subject of an
35 order of the securities and exchange commission suspend-
36 ing or expelling him from a national securities exchange
37 or national securities association registered under the Se-
38 curities Exchange Act of 1934, or is the subject of a United
39 States post office fraud order; but (i) the commissioner
40 may not institute a revocation or suspension proceeding
41 under subdivision (F) more than one year from the date
42 of the order relied on, and (ii) he may not enter an order
43 under subdivision (F) on the basis of an order under an-
44 other state act unless that order was based on facts which
45 would currently constitute a ground for an order under
46 this section;

47 (G) has engaged in dishonest or unethical practices in
48 the securities business;

49 (H) is insolvent, either in the sense that his liabilities
50 exceed his assets or in the sense that he cannot meet his
51 obligations as they mature; but the commissioner may not
52 enter an order against a broker-dealer or investment ad-
53 viser under this subdivision without a finding of in-
54 solvency as to the broker-dealer or investment adviser;
55 or

56 (I) is not qualified on the basis of such factors as train-
57 ing, experience and knowledge of the securities business,
58 except as otherwise provided in subsection (b).

59 The commissioner may by order deny, suspend or re-
60 voke any registration if he finds (1) that the order is in
61 the public interest and (2) that the applicant or registrant

62 (J) has failed reasonably to supervise his agents if he
63 is a broker-dealer or his employees if he is an investment
64 adviser; or

65 (K) has failed to pay the proper filing fee; but the
66 commissioner may enter only a denial order under this
67 subdivision, and he shall vacate any such order when the
68 deficiency has been corrected.

69 The commissioner may not institute a suspension or
70 revocation proceeding on the basis of a fact or transaction
71 known to him when registration became effective unless
72 the proceeding is instituted within the next thirty days.

73 (b) The following provisions govern the application of
74 section 204(a) (2) (I):

75 (1) The commissioner may not enter an order against
76 a broker-dealer on the basis of the lack of qualification of
77 any person other than (A) the broker-dealer himself if
78 he is an individual or (B) an agent of the broker-dealer.

79 (2) The commissioner may not enter an order against
80 an investment adviser on the basis of the lack of qualifica-
81 tion of any person other than (A) the investment adviser
82 himself if he is an individual or (B) any other person who
83 represents the investment adviser in doing any of the acts
84 which may make him an investment adviser.

85 (3) The commissioner may not enter an order solely
86 on the basis of lack of experience if the applicant or regis-
87 trant is qualified by training or knowledge or both.

88 (4) The commissioner shall consider that an agent who
89 will work under the supervision of a registered broker-
90 dealer need not have the same qualifications as a broker-
91 dealer.

92 (5) The commissioner shall consider that an invest-
93 ment adviser is not necessarily qualified solely on the basis
94 of experience as a broker-dealer or agent. When he finds
95 that an applicant for initial or renewal registration as a
96 broker-dealer is not qualified as an investment adviser,
97 he may by order condition the applicant's registration as
98 a broker-dealer upon his not transacting business in this
99 state as an investment adviser.

100 (6) The commissioner may by rule provide for an
101 examination, which may be written or oral or both, to be
102 taken by any class of or all applicants, as well as persons
103 who represent or will represent an investment adviser in
104 doing any of the acts which make him an investment ad-
105 viser.

106 (c) The commissioner may by order summarily post-
107 pone or suspend registration pending final determination
108 of any proceeding under this section. Upon the entry of
109 the order, the commissioner shall promptly notify the ap-
110 plicant or registrant, as well as the employer or prospec-
111 tive employer if the applicant or registrant is an agent,
112 that it has been entered and of the reasons therefor and
113 that within fifteen days after the receipt of a written re-
114 quest the matter will be set down for hearing. If no
115 hearing is requested and none is ordered by the com-
116 missioner, the order will remain in effect until it is modi-
117 fied or vacated by the commissioner. If a hearing is re-
118 quested or ordered, the commissioner, after notice of and
119 opportunity for hearing, may modify or vacate the order
120 or extend it until final determination.

121 (d) If the commissioner finds that any registrant or
122 applicant for registration is no longer in existence or has
123 ceased to do business as a broker-dealer, agent or invest-
124 ment adviser, or is subject to an adjudication of mental
125 incompetence or to the control of a committee, conservator
126 or guardian, or cannot be located after reasonable search,
127 the commissioner may by order cancel the registration or
128 application.

129 (e) Withdrawal from registration as a broker-dealer,
130 agent or investment adviser becomes effective thirty days
131 after receipt of an application to withdraw or within such
132 shorter period of time as the commissioner may determine,
133 unless a revocation or suspension proceeding is pending
134 when the application is filed or a proceeding to revoke or
135 suspend or to impose conditions upon the withdrawal is
136 instituted within thirty days after the application is filed.
137 If a proceeding is pending or instituted, withdrawal be-
138 comes effective at such time and upon such conditions as
139 the commissioner by order determines. If no proceeding
140 is pending or instituted and withdrawal automatically be-
141 comes effective, the commissioner may nevertheless in-
142 stitute a revocation or suspension proceeding under sec-
143 tion 204(a) (2) (B) within one year after withdrawal
144 became effective and enter a revocation or suspension
145 order as of the last date on which registration was effec-
146 tive.

147 (f) No order may be entered under any part of this
148 section except the first sentence of subsection (c) without
149 (1) appropriate prior notice to the applicant or regis-
150 trant (as well as the employer or prospective employer
151 if the applicant or registrant is an agent), (2) opportunity
152 for hearing, and (3) written findings of fact and conclu-
153 sions of law.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-301. Registration requirement.

1 It is unlawful for any person to offer or sell any se-
2 curity in this state unless (1) it is registered under this
3 chapter or (2) the security or transaction is exempted
4 under section 402.

§32-3-302. Registration by notification.

1 (a) The following securities may be registered by
2 notification, whether or not they are also eligible for
3 registration by coordination under section 303:

4 (1) Any security, other than a security with a fixed
5 maturity or a fixed interest or dividend provision, whose
6 issuer and any predecessors have been in continuous
7 operation for at least five years if (A) there has been

8 no default during the current fiscal year or within the
9 three preceding fiscal years in the payment of principal,
10 interest or dividends on any security of the issuer (or
11 any predecessor) with a fixed maturity or a fixed interest
12 or dividend provision, and (B) the issuer and any prede-
13 cessors during the past three fiscal years have had
14 average net earnings, determined in accordance with
15 generally accepted accounting practices, (i) which are
16 applicable to all securities without a fixed maturity or
17 a fixed interest or dividend provision outstanding at the
18 date the registration statement is filed and equal at least
19 five percent of the amount of such outstanding securities
20 (as measured by the maximum offering price or the
21 market price on a day, selected by the registrant, within
22 thirty days before the date of filing the registration
23 statement, whichever is higher, or book value on a day,
24 selected by the registrant, within ninety days of the
25 date of filing the registration statement to the extent
26 that there is neither a readily determinable market price
27 nor a cash offering price), or (ii) which, if the issuer and
28 any predecessors have not had any security of the type
29 specified in clause (i) outstanding for three full fiscal
30 years, equal at least five percent of the amount (as mea-
31 sured in clause (i)) of all securities which will be out-
32 standing if all the securities being offered or proposed
33 to be offered (whether or not they are proposed to be
34 registered or offered in this state) are issued;

35 (2) any security (other than a certificate of interest
36 or participation in an oil, gas or mining title or lease or
37 in payments out of production under such a title or lease)
38 registered for nonissuer distribution if (A) any security
39 of the same class has ever been registered under this
40 chapter or a predecessor act, or (B) the security being
41 registered was originally issued pursuant to an exemp-
42 tion under this chapter or a predecessor act.

43 (b) A registration statement under this section shall
44 contain the following information and be accompanied
45 by the following documents in addition to the informa-
46 tion specified in section 305 (c) and the consent to service
47 of process required by section 414(g):

48 (1) A statement demonstrating eligibility for regis-
49 tration by notification;

50 (2) with respect to the issuer and any significant
51 subsidiary: Its name, address and form of organization;
52 the state (or foreign jurisdiction) and the date of its
53 organization; and the general character and location of
54 its business;

55 (3) with respect to any person on whose behalf any
56 part of the offering is to be made in a nonissuer distri-
57 bution: His name and address; the amount of securities
58 of the issuer held by him as of the date of the filing of
59 the registration statement; and a statement of his reasons
60 for making the offering;

61 (4) a description of the security being registered;

62 (5) the information and documents specified in sub-
63 divisions (8), (10) and (12) of section 304(b); and

64 (6) in the case of any registration under section
65 302(a) (2) which does not also satisfy the conditions of
66 section 302(a) (1), a balance sheet of the issuer as of a
67 date within four months prior to the filing of the regis-
68 tration statement, and a summary of earnings for each
69 of the two fiscal years preceding the date of the balance
70 sheet and for any period between the close of the last
71 fiscal year and the date of the balance sheet, or for the
72 period of the issuer's and any predecessors' existence if
73 less than two years.

74 (c) If no stop order is in effect and no proceeding is
75 pending under section 306, a registration statement under
76 this section automatically becomes effective at three
77 o'clock in the afternoon of the full business day after the
78 filing of the registration statement or the last amend-
79 ment, or at such earlier time as the commissioner deter-
80 mines.

§32-3-303. Registration by coordination.

1 (a) Any security for which a registration statement
2 has been filed under the Securities Act of 1933 in connec-
3 tion with the same offering may be registered by coordi-
4 nation.

5 (b) A registration statement under this section shall
6 contain the following information and be accompanied

7 by the following documents in addition to the information
8 specified in section 305(c) and the consent to service of
9 process required by section 414(g):

10 (1) Three copies of the latest form of prospectus filed
11 under the Securities Act of 1933;

12 (2) If the commissioner by rule or otherwise requires,
13 a copy of the articles of incorporation and bylaws (or their
14 substantial equivalents) currently in effect, a copy of any
15 agreements with or among underwriters, a copy of any
16 indenture or other instrument governing the issuance of
17 the security to be registered, and a specimen or copy of
18 the security;

19 (3) If the commissioner requests, any other infor-
20 mation, or copies of any other documents, filed under the
21 Securities Act of 1933; and

22 (4) An undertaking to forward all future amendments
23 to the federal prospectus, other than an amendment which
24 merely delays the effective date of the registration state-
25 ment, promptly and in any event not later than the first
26 business day after the day they are forwarded to or filed
27 with the securities and exchange commission, whichever
28 first occurs.

29 (c) A registration statement under this section auto-
30 matically becomes effective at the moment the federal
31 registration statement becomes effective if all the follow-
32 ing conditions are satisfied: (1) No stop order is in effect
33 and no proceeding is pending under section 306; (2) the
34 registration statement has been on file with the com-
35 missioner for at least ten days; and (3) a statement of
36 the maximum and minimum proposed offering prices
37 and the maximum underwriting discounts and the com-
38 missions has been on file for two full business days or
39 such shorter period as the commissioner permits by rule
40 or otherwise and the offering is made within those limi-
41 tations. The registrant shall promptly notify the commis-
42 sioner by telephone or telegram of the date and time when
43 the federal registration statement became effective and
44 the content of the price amendment, if any, and shall
45 promptly file a posteffective amendment containing the
46 information and documents in the price amendment.
47 "Price amendment" means the final federal amendment

48 which includes a statement of the offering price, under-
 49 writing and selling discounts or commissions, amount of
 50 proceeds, conversion rates, call prices and other matters
 51 dependent upon the offering price. Upon failure to receive
 52 the required notification and posteffective amendment
 53 with respect to the price amendment, the commissioner
 54 may enter a stop order, without notice or hearing, retro-
 55 actively denying effectiveness to the registration state-
 56 ment or suspending its effectiveness until compliance with
 57 this subsection, if he promptly notifies the registrant by
 58 telephone or telegram (and promptly confirms by letter or
 59 telegram when he notifies by telephone) of the issuance
 60 of the order. If the registrant proves compliance with the
 61 requirements of this subsection as to notice and posteffec-
 62 tive amendment, the stop order is void as of the time
 63 of its entry. The commissioner may by rule or otherwise
 64 waive either or both of the conditions specified in sub-
 65 divisions (2) and (3). If the federal registration statement
 66 becomes effective before all the conditions in this sub-
 67 section are satisfied and they are not waived, the regis-
 68 tration statement automatically becomes effective as soon
 69 as all the conditions are satisfied. If the registrant ad-
 70 vises the commissioner of the date when the federal
 71 registration statement is expected to become effective,
 72 the commissioner shall promptly advise the registrant by
 73 telephone or telegram, at the registrant's expense,
 74 whether all the conditions are satisfied and whether he
 75 then contemplates the institution of a proceeding under
 76 section 306; but this advice by the commissioner does not
 77 preclude the institution of such a proceeding at any time.

§32-3-304. Registration by qualification.

- 1 (a) Any security may be registered by qualification.
- 2 (b) A registration statement under this section shall
- 3 contain the following information and be accompanied by
- 4 the following documents in addition to the information
- 5 specified in section 305(c) and the consent to service of
- 6 process required by section 414(g):
- 7 (1) With respect to the issuer and any significant
- 8 subsidiary: Its name, address and form of organization;
- 9 the state or foreign jurisdiction and date of its organiza-

10 tion; the general character and location of its business; a
11 description of its physical properties and equipment; and
12 a statement of the general competitive conditions in the
13 industry or business in which it is or will be engaged;

14 (2) with respect to every director and officer of the
15 issuer, or person occupying a similar status or performing
16 similar functions: His name, address and principal occu-
17 pation for the past five years; the amount of securities
18 of the issuer held by him as of a specified date within
19 thirty days of the filing of the registration statement; the
20 amount of the securities covered by the registration
21 statement to which he has indicated his intention to
22 subscribe; and a description of any material interest in any
23 material transaction with the issuer or any significant
24 subsidiary effected within the past three years or pro-
25 posed to be effected;

26 (3) with respect to persons covered by subdivision (2):
27 The remuneration paid during the past twelve months and
28 estimated to be paid during the next twelve months, di-
29 rectly or indirectly, by the issuer (together with all
30 predecessors, parents, subsidiaries and affiliates) to all
31 those persons in the aggregate;

32 (4) with respect to any person owning of record, or
33 beneficially if known, ten percent or more of the out-
34 standing shares of any class of equity security of the
35 issuer: The information specified in subdivision (2) other
36 than his occupation;

37 (5) with respect to every promoter if the issuer was
38 organized within the past three years: The information
39 specified in subdivision (2), any amount paid to him with-
40 in that period or intended to be paid to him, and the
41 consideration for any such payment;

42 (6) with respect to any person on whose behalf any
43 part of the offering is to be made in a nonissuer distribu-
44 tion: His name and address; the amount of securities of
45 the issuer held by him as of the date of the filing of the
46 registration statement; a description of any material in-
47 terest in any material transaction with the issuer or any
48 significant subsidiary effected within the past three years
49 or proposed to be effected; and a statement of his reasons
50 for making the offering;

51 (7) the capitalization and long-term debt (on both a
52 current and a pro forma basis) of the issuer and any
53 significant subsidiary, including a description of each
54 security outstanding or being registered or otherwise
55 offered, and a statement of the amount and kind of
56 consideration (whether in the form of cash, physical as-
57 sets, services, patents, goodwill or anything else) for which
58 the issuer or any subsidiary has issued any of its securities
59 within the past two years or is obligated to issue any of
60 its securities;

61 (8) the kind and amount of securities to be offered;
62 the proposed offering price or the method by which it is to
63 be computed; any variation therefrom at which any pro-
64 portion of the offering is to be made to any person or class
65 of persons other than the underwriters, with a specifica-
66 tion of any such person or class; the basis upon which the
67 offering is to be made if otherwise than for cash; the esti-
68 mated aggregate underwriting and selling discounts or
69 commissions and finders' fees (including separately cash,
70 securities, contracts or anything else of value to accrue to
71 the underwriters or finders in connection with the offer-
72 ing) or, if the selling discounts or commissions are
73 variable, the basis of determining them and their maxi-
74 mum and minimum amounts; the estimated amounts of
75 other selling expenses, including legal, engineering and
76 accounting charges; the name and address of every un-
77 derwriter and every recipient of a finder's fee; a copy of
78 any underwriting or selling-group agreement pursuant
79 to which the distribution is to be made, or the proposed
80 form of any such agreement whose terms have not yet
81 been determined; and a description of the plan of distri-
82 bution of any securities which are to be offered otherwise
83 than through an underwriter;

84 (9) the estimated cash proceeds to be received by the
85 issuer from the offering; the purposes for which the
86 proceeds are to be used by the issuer; the amount to be
87 used for each purpose; the order or priority in which the
88 proceeds will be used for the purpose stated; the amounts
89 of any funds to be raised from other sources to achieve
90 the purposes stated; the sources of any such funds; and, if
91 any part of the proceeds is to be used to acquire any prop-

erty (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivision (2), (4), (5), (6) or (8) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(12) a copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;

133 (15) the written consent of any accountant, engineer,
134 appraiser or other person whose profession gives authority
135 to a statement made by him, if any such person is named
136 as having prepared or certified a report or valuation
137 (other than a public and official document or statement)
138 which is used in connection with the registration state-
139 ment;

140 (16) a balance sheet of the issuer as of a date within
141 four months prior to the filing of the registration state-
142 ment; a profit and loss statement and analysis of surplus
143 for each of the three fiscal years preceding the date of the
144 balance sheet and for any period between the close of the
145 last fiscal year and the date of the balance sheet, or for
146 the period of the issuer's and any predecessors' existence
147 if less than three years; and, if any part of the proceeds
148 of the offering is to be applied to the purchase of any
149 business, the same financial statements which would be
150 required if that business were the registrant; and

151 (17) such additional information as the commissioner
152 requires by rule or order.

153 (c) A registration statement under this section becomes
154 effective when the commissioner so orders.

155 (d) The commissioner may by rule or order require as
156 a condition of registration under this section that a pros-
157 pectus containing any designated part of the information
158 specified in subsection (b) be sent or given to each person
159 to whom an offer is made before or concurrently with (1)
160 the first written offer made to him (otherwise than by
161 means of a public advertisement) by or for the account of
162 the issuer or any other person on whose behalf the offer-
163 ing is being made, or by any underwriter or broker-dealer
164 who is offering part of an unsold allotment or subscrip-
165 tion taken by him as a participant in the distribution, (2)
166 the confirmation of any sale made by or for the account of
167 any such person, (3) payment pursuant to any such sale,
168 or (4) delivery of the security pursuant to any such sale,
169 whichever first occurs.

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

1 (a) A registration statement may be filed by the
2 issuer, any other person on whose behalf the offering
3 is to be made, or a registered broker-dealer.

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

13 (c) Every registration statement shall specify (1) the
14 amount of securities to be offered in this state; (2) the
15 states in which a registration statement or similar docu-
16 ment in connection with the offering has been or is to
17 be filed; and (3) any adverse order, judgement or decree
18 entered in connection with the offering by the regulatory
19 authorities in each state or by any court or the securities
20 and exchange commission.

21 (d) Any document filed under this chapter or a prede-
22 cessor act within five years preceding the filing of a
23 registration statement may be incorporated by reference
24 in the registration statement to the extent that the docu-
25 ment is currently accurate.

26 (e) The commissioner may by rule or otherwise per-
27 mit the omission of any item of information or document
28 from any registration statement.

29 (f) In the case of a nonissuer distribution, informa-
30 tion may not be required under section 304 or 305(j)
31 unless it is known to the person filing the registration
32 statement or to the persons on whose behalf the distri-
33 bution is to be made, or can be furnished by them without
34 unreasonable effort or expense.

35 (g) The commissioner may by rule or order require
36 as a condition of registration by qualification or coordi-
37 nation (1) that any security issued within the past three
38 years or to be issued to a promoter for a consideration
39 substantially different from the public offering price, or
40 to any person for a consideration other than cash, be
41 deposited in escrow; and (2) that the proceeds from the
42 sale of the registered security in this state be impounded
43 until the issuer receives a specified amount from the sale
44 of the security either in this state or elsewhere. The

45 commissioner may by rule or order determine the condi-
46 tions of any escrow or impounding required hereunder, but
47 he may not reject a depository solely because of location
48 in another state.

49 (h) The commissioner may by rule or order require
50 as a condition of registration that any security registered
51 by qualification or coordination be sold only on a specified
52 form of subscription or sale contract, and that a signed
53 or conformed copy of each contract be filed with the
54 commissioner or preserved for any period up to three
55 years specified in the rule or order.

56 (i) Every registration statement is effective for one
57 year from its effective date, or any longer period during
58 which the security is being offered or distributed in a
59 nonexempted transaction by or for the account of the
60 issuer or other person on whose behalf the offering is
61 being made or by any underwriter or broker-dealer who
62 is still offering part of an unsold allotment or subscrip-
63 tion taken by him as a participant in the distribution,
64 except during the time a stop order is in effect under
65 section 306. All outstanding securities of the same class
66 as a registered security are considered to be registered
67 for the purpose of any nonissuer transaction (1) so long
68 as the registration statement is effective and (2) between
69 the thirtieth day after the entry of any stop order sus-
70 pending or revoking the effectiveness of the registration
71 statement under section 306 (if the registration state-
72 ment did not relate in whole or in part to a nonissuer
73 distribution) and one year from the effective date of the
74 registration statement. A registration statement may not
75 be withdrawn for one year from its effective date if any
76 securities of the same class are outstanding. A registra-
77 tion statement may be withdrawn otherwise only in the
78 discretion of the commissioner.

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

85 (k) A registration statement relating to a security

86 issued by a face amount certificate company or a re-
 87 deemable security issued by an open end management
 88 company or unit investment trust, as those terms are
 89 defined in the Investment Company Act of 1940, may be
 90 amended after its effective date so as to increase the
 91 securities specified as proposed to be offered. Such an
 92 amendment becomes effective when the commissioner
 93 so orders. Every person filing such an amendment shall
 94 pay a filing fee, calculated in the manner specified in
 95 subsection (b), with respect to the additional securities
 96 proposed to be offered.

§32-3-306. Denial, suspension and revocation of registration.

1 (a) The commissioner may issue a stop order denying
 2 effectiveness to, or suspending or revoking the effective-
 3 ness of, any registration statement if he finds (1) that
 4 the order is in the public interest and (2) that

5 (A) the registration statement as of its effective date
 6 or as of any earlier date in the case of an order denying
 7 effectiveness, or any amendment under section 305(k)
 8 as of its effective date, or any report under section 305(j)
 9 is incomplete in any material respect or contains any
 10 statement which was, in the light of the circumstances
 11 under which it was made, false or misleading with respect
 12 to any material fact;

13 (B) any provision of this chapter or any rule, order
 14 or condition lawfully imposed under this chapter has
 15 been willfully violated, in connection with the offering,
 16 by (i) the person filing the registration statement, (ii)
 17 the issuer, any partner, officer or director of the issuer,
 18 any person occupying a similar status or performing
 19 similar functions, or any person directly or indirectly
 20 controlling or controlled by the issuer, but only if the
 21 person filing the registration statement is directly or in-
 22 directly controlled by or acting for the issuer, or (iii)
 23 any underwriter;

24 (C) the security registered or sought to be registered
 25 is the subject of an administrative stop order or similar
 26 order or a permanent or temporary injunction of any
 27 court of competent jurisdiction entered under any other
 28 federal or state act applicable to the offering; but (i) the

29 commissioner may not institute a proceeding against an
30 effective registration statement under subdivision (C)
31 more than one year from the date of the order or in-
32 junction relied on, and (ii) he may not enter an order
33 under subdivision (C) on the basis of an order or in-
34 junction entered under any other state act unless that
35 order or injunction was based on facts which would
36 currently constitute a ground for a stop order under this
37 section;

38 (D) the issuer's enterprise or method of business in-
39 cludes or would include activities which are illegal where
40 performed;

41 (E) the offering has worked or tended to work a
42 fraud upon purchasers or would so operate;

43 (F) the offering has been or would be made with
44 unreasonable amounts of underwriters' and sellers' dis-
45 counts, commissions or other compensation, or promoters'
46 profits or participation, or unreasonable amounts or kinds
47 of options;

48 (G) when a security is sought to be registered by
49 notification, it is not eligible for such registration;

50 (H) when a security is sought to be registered by
51 coordination, there has been a failure to comply with the
52 undertaking required by section 303(b) (4); or

53 (I) the applicant or registrant has failed to pay the
54 proper filing fee; but the commissioner may enter only
55 a denial order under this subdivision and he shall vacate
56 any such order when the deficiency has been corrected.

57 The commissioner may not institute a stop order pro-
58 ceeding against an effective registration statement on
59 the basis of a fact or transaction known to him when the
60 registration statement became effective unless the pro-
61 ceeding is instituted within the next thirty days.

62 (b) The commissioner may by order summarily post-
63 pone or suspend the effectiveness of the registration state-
64 ment pending final determination of any proceeding under
65 this section. Upon the entry of the order, the commis-
66 sioner shall promptly notify each person specified in
67 subsection (c) that it has been entered and of the reasons
68 therefor and that within fifteen days after the receipt

69 of a written request the matter will be set down for
 70 hearing. If no hearing is requested and none is ordered
 71 by the commissioner, the order will remain in effect
 72 until it is modified or vacated by the commissioner. If
 73 a hearing is requested or ordered, the commissioner,
 74 after notice of and opportunity for hearing to each per-
 75 son specified in subsection (c), may modify or vacate
 76 the order or extend it until final determination.

77 (c) No stop order may be entered under any part
 78 of this section except the first sentence of subsection (b)
 79 without (1) appropriate prior notice to the applicant or
 80 registrant, the issuer and the person on whose behalf
 81 the securities are to be or have been offered, (2) oppor-
 82 tunity for hearing, and (3) written findings of fact and
 83 conclusions of law.

84 (d) The commissioner may vacate or modify a stop
 85 order if he finds that the conditions which prompted
 86 entry have changed or that it is otherwise in the public
 87 interest to do so.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

1 When used in this chapter, unless the context otherwise
 2 requires:

3 (a) "Commissioner" means the auditor of the state of
 4 West Virginia.

5 (b) "Agent" means any individual other than a
 6 broker-dealer who represents a broker-dealer or issuer in
 7 effecting or attempting to effect purchases or sales of se-
 8 curities. "Agent" does not include an individual who rep-
 9 resents an issuer in (1) effecting transactions in a security
 10 exempted by subdivisions (1), (2), (3), (10) or (11) of
 11 section 402 (a), (2) effecting transactions exempted by
 12 section 402(b), or (3) effecting transactions with existing
 13 employees, partners or directors of the issuer if no com-
 14 mission or other remuneration is paid or given directly
 15 or indirectly for soliciting any person in this state. A
 16 partner, officer or director of a broker-dealer or issuer, or
 17 a person occupying a similar status or performing similar
 18 functions, is an agent only if he otherwise comes within
 19 this definition.

20 (c) "Broker-dealer" means any person engaged in the
21 business of effecting transactions in securities for the ac-
22 count of others or for his own account. "Broker-dealer"
23 does not include (1) an agent, (2) an issuer, (3) a bank,
24 savings institution or trust company; or (4) a person who
25 has no place of business in this state if (A) he effects trans-
26 actions in this state exclusively with or through (i) the is-
27 suers of the securities involved in the transactions, (ii)
28 other broker-dealers, or (iii) banks, savings institutions,
29 trust companies, insurance companies, investment com-
30 panies as defined in the Investment Company Act of 1940,
31 pension or profit-sharing trusts, or other financial institu-
32 tions or institutional buyers, whether acting for themselves
33 or as trustees, or (B) during any period of twelve consecu-
34 tive months he does not direct more than fifteen offers to
35 sell or buy into this state in any manner to persons other
36 than those specified in clause (A), whether or not the of-
37 feror or any of the offerees is then present in this state.

38 (d) "Fraud," "deceit" and "defraud" are not limited to
39 common-law deceit.

40 (e) "Guaranteed" means guaranteed as to payment of
41 principal, interest or dividends.

42 (f) "Investment adviser" means any person who, for
43 compensation, engages in the business of advising others,
44 either directly or through publications or writings, as to
45 the value of securities or as to the advisability of investing
46 in, purchasing or selling securities, or who, for compensa-
47 tion and as a part of a regular business, issues or promul-
48 gates analyses or reports concerning securities. "Invest-
49 ment adviser" does not include (1) a bank, savings insti-
50 tution or trust company; (2) a lawyer, accountant, engi-
51 neer or teacher whose performance of those services is
52 solely incidental to the practice of his profession; (3) a
53 broker-dealer whose performance of these services is sole-
54 ly incidental to the conduct of his business as a broker-
55 dealer and who receives no special compensation for them;
56 (4) a publisher of any bona fide newspaper, news maga-
57 zine or business or financial publication of general, regular
58 and paid circulation; (5) a person whose advice, analyses
59 or reports relate only to securities exempted by section

60 402(a) (1); (6) a person who has no place of business in
61 this state if (A) his only clients in this state are other
62 investment advisers, broker-dealers, banks, savings in-
63 stitutions, trust companies, insurance companies, invest-
64 ment companies as defined in the Investment Company
65 Act of 1940, pension or profit-sharing trusts, or other finan-
66 cial institutions or institutional buyers, whether acting for
67 themselves or as trustees, or (B) during any period of
68 twelve consecutive months he does not direct business
69 communications into this state in any manner to more
70 than five clients other than those specified in clause (A),
71 whether or not he or any of the persons to whom the com-
72 munications are directed is then present in this state; or
73 (7) such other persons not within the intent of this para-
74 graph as the commissioner may by rule or order desig-
75 nate.

76 (g) "Issuer" means any person who issues or proposes
77 to issue any security, except that (1) with respect to cer-
78 tificates of deposit, voting-trust certificates or collateral-
79 trust certificates, or with respect to certificates of interest
80 or shares in an unincorporated investment trust not hav-
81 ing a board of directors or persons performing similar
82 functions or of the fixed, restricted management, or unit
83 type, the term "issuer" means the person or persons per-
84 forming the acts and assuming the duties of depositor or
85 manager pursuant to the provisions of the trust or other
86 agreement or instrument under which the security is
87 issued; and (2) with respect to certificates of interest or
88 participation in oil, gas or mining titles or leases or in
89 payments out of production under such titles or leases,
90 there is not considered to be any "issuer."

91 (h) "Nonissuer" means not directly or indirectly for
92 the benefit of the issuer.

93 (i) "Person" means an individual, a corporation, a
94 partnership, an association, a joint-stock company, a trust
95 where the interests of the beneficiaries are evidenced by
96 a security, an unincorporated organization, a government
97 or a political subdivision of a government.

98 (j) (1) "Sale" or "sell" includes every contract of sale
99 of, contract to sell, or disposition of, a security or interest
100 in a security for value.

101 (2) "Offer" or "offer to sell" includes every attempt
102 or offer to dispose of, or solicitation of an offer to buy,
103 a security or interest in a security for value.

104 (3) Any security given or delivered with, or as a
105 bonus on account of, any purchase of securities or any
106 other thing is considered to constitute part of the subject
107 of the purchase and to have been offered and sold for
108 value.

109 (4) A purported gift of assessable stock is considered
110 to involve an offer and sale.

111 (5) Every sale or offer of a warrant or right to pur-
112 chase or subscribe to another security of the same or
113 another issuer, as well as every sale or offer of a security
114 which gives the holder a present or future right or
115 privilege to convert into another security of the same or
116 another issuer, is considered to include an offer of the
117 other security.

118 (6) The terms defined in this subdivision do not in-
119 clude (A) any bona fide pledge or loan; (B) any stock
120 dividend, whether the corporation distributing the divi-
121 dend is the issuer of the stock or not, if nothing of value
122 is given by stockholders for the dividend other than the
123 surrender of a right to a cash or property dividend when
124 each stockholder may elect to take the dividend in cash
125 or property or in stock; (C) any act incident to a class
126 vote by stockholders, pursuant to the certificate of in-
127 corporation or the applicable corporation statute, on a
128 merger, consolidation, reclassification of securities or sale
129 of corporate assets in consideration of the issuance of
130 securities of another corporation; or (D) any act incident
131 to a judicially approved reorganization in which a se-
132 curity is issued in exchange for one or more outstanding
133 securities, claims or property interests, or partly in such
134 exchange and partly for cash.

135 (k) "Securities Act of 1933," "Securities Exchange
136 Act of 1934," "Public Utility Holding Company Act of
137 1935," and "Investment Company Act of 1940" mean the
138 federal statutes of those names as amended before the
139 effective date of this chapter.

140 (l) "Security" means any note; stock; treasury stock;
141 bond; debenture; evidence of indebtedness; certificate of

142 interest or participation in any profit-sharing agreement;
 143 collateral-trust certificate; preorganization certificate or
 144 subscription; transferable share; investment contract;
 145 voting-trust certificate; certificate of deposit for a se-
 146 curity; certificate of interest or participation in an oil,
 147 gas, or mining title or lease or in payments out of pro-
 148 duction under such a title or lease; or, in general, any
 149 interest or instrument commonly known as a "security,"
 150 or any certificate of interest or participation in, temporary
 151 or interim certificate for, receipt for, guarantee of, or
 152 warrant or right to subscribe to or purchase, any of the
 153 foregoing. "Security" does not include any insurance or
 154 endowment policy or annuity contract under which an
 155 insurance company promises to pay money either in a
 156 lump sum or periodically for life or some other specified
 157 period.

158 (m) "State" means any state, territory or possession
 159 of the United States, the District of Columbia and Puerto
 160 Rico.

§32-4-402. Exemptions.

1 (a) The following securities are exempted from sec-
 2 tions 301 and 403:

3 (1) Any security (including a revenue obligation) is-
 4 sued or guaranteed by the United States, any state, any
 5 political subdivision of a state, or any agency or corporate
 6 or other instrumentality of one or more of the foregoing;
 7 or any certificate of deposit for any of the foregoing;

8 (2) any security issued or guaranteed by Canada, any
 9 Canadian province, any political subdivision of any such
 10 province, any agency or corporate or other instrumentality
 11 of one or more of the foregoing, or any other foreign
 12 government with which the United States currently main-
 13 tains diplomatic relations, if the security is recognized as
 14 a valid obligation by the issuer or guarantor;

15 (3) any security issued by and representing an interest
 16 in or a debt of, or guaranteed by, any bank organized un-
 17 der the laws of the United States, or any bank, savings
 18 institution or trust company organized and supervised
 19 under the laws of any state;

20 (4) any security issued by and representing an interest
21 in or a debt of, or guaranteed by, any federal savings and
22 loan association, or any building and loan or similar
23 association organized under the laws of any state and
24 authorized to do business in this state;

25 (5) any security issued by and representing an interest
26 in or a debt of, or guaranteed by, any insurance company
27 organized under the laws of any state and authorized to do
28 business in this state;

29 (6) any security issued or guaranteed by any federal
30 credit union or any credit union, industrial loan associa-
31 tion or similar association organized and supervised under
32 the laws of this state;

33 (7) any security issued or guaranteed by any railroad,
34 other common carrier, public utility or holding company
35 which is (A) subject to the jurisdiction of the interstate
36 commerce commission; (B) a registered holding company
37 under the Public Utility Holding Company Act of 1935 or
38 a subsidiary of such a company within the meaning of
39 that act; (C) regulated in respect of its rates and charges
40 by a governmental authority of the United States or any
41 state; or (D) regulated in respect of the issuance or guar-
42 antee of the security by a governmental authority of the
43 United States, any state, Canada, or any Canadian prov-
44 ince;

45 (8) any security listed or approved for listing upon
46 notice of issuance on the New York Stock Exchange, the
47 American Stock Exchange, or the Midwest Stock Ex-
48 change, or listed on any regional stock exchange; any
49 other security of the same issuer which is of senior
50 or substantially equal rank; any security called for by
51 subscription rights or warrants so listed or approved;
52 or any warrant or right to purchase or subscribe to
53 any of the foregoing;

54 (9) any security issued by any person organized
55 and operated not for private profit but exclusively for
56 religious, educational, benevolent, charitable, fraternal,
57 social, athletic or reformatory purposes, or as a chamber
58 of commerce or trade or professional association, and no
59 part of the net earnings of which inures to the benefit of
60 any person, private stockholder or individual;

61 (10) any commercial paper which arises out of a cur-
 62 rent transaction or the proceeds of which have been or
 63 are to be used for current transactions, and which evi-
 64 dences an obligation to pay cash within twelve months of
 65 the date of issuance, exclusive of days of grace, or any
 66 renewal of such paper which is likewise limited, or any
 67 guarantee of such paper or of any such renewal;

68 (11) any investment contract issued in connection with
 69 an employees' stock purchase, savings, pension, profit-
 70 sharing or similar benefit plan if the commissioner is
 71 notified in writing thirty days before the inception of
 72 the plan or, with respect to plans which are in effect on
 73 the effective date of this chapter, within sixty days
 74 thereafter (or within thirty days before they are reopened
 75 if they are closed on the effective date of this chapter);
 76 and

77 (12) any security issued by an agricultural cooperative
 78 association operating in this state and organized under
 79 article four, chapter nineteen of this code, or by a foreign
 80 cooperative association organized under the laws of another
 81 state and duly qualified to transact business in this
 82 state.

83 (b) The following transactions are exempted from
 84 sections 301 and 403:

85 (1) Any isolated nonissuer transaction, whether effec-
 86 ted through a broker-dealer or not;

87 (2) any nonissuer distribution of an outstanding securi-
 88 ty if (A) a recognized securities manual contains the
 89 names of the issuer's officers and directors, a balance sheet
 90 of the issuer as of a date within eighteen months, and
 91 a profit and loss statement for either the fiscal year pre-
 92 ceding that date or the most recent year of operations,
 93 or (B) the security has a fixed maturity or a fixed interest
 94 or dividend provision and there has been no default during
 95 the current fiscal year or within the three preceding fiscal
 96 years, or during the existence of the issuer and any pred-
 97 ecessors if less than three years, in the payment of prin-
 98 cipal, interest or dividends on the security;

99 (3) any nonissuer transaction effected by or through a
 100 registered broker-dealer pursuant to an unsolicited order
 101 or offer to buy; but the commissioner may by rule require

102 that the customer acknowledge upon a specified form that
103 the sale was unsolicited, and that a signed copy of each
104 such form be preserved by the broker-dealer for a speci-
105 fied period;

106 (4) any transaction between the issuer or other person
107 on whose behalf the offering is made and an underwriter,
108 or among underwriters;

109 (5) any transaction in a bond or other evidence of
110 indebtedness secured by a real or chattel mortgage or deed
111 of trust, or by an agreement for the sale of real estate or
112 chattels, if the entire mortgage, deed of trust, or agree-
113 ment, together with all the bonds or other evidences of
114 indebtedness secured thereby, is offered and sold as a unit;

115 (6) any transaction by an executor, administrator,
116 sheriff, marshal, constable, receiver, trustee in bankrupt-
117 cy, guardian or conservator, and any transaction consti-
118 tuting a judicial sale;

119 (7) any transaction executed by a bona fide pledgee
120 without any purpose of evading this chapter;

121 (8) any offer or sale to a bank, savings institution,
122 trust company, insurance company, investment company
123 as defined in the Investment Company Act of 1940, pension
124 or profit-sharing trust, or other financial institution or
125 institutional buyer, or to a broker-dealer, whether the
126 purchaser is acting for itself or in some fiduciary capac-
127 ity;

128 (9) any transaction pursuant to an offer directed by
129 the offeror to not more than ten persons (other than those
130 designated in subdivision (8)) in this state during any
131 period of twelve consecutive months, whether or not the
132 offeror or any of the offerees is then present in this state,
133 if (A) the seller reasonably believes that all the buyers in
134 this state (other than those designated in subdivisions (8))
135 are purchasing for investment, and (B) no commission or
136 other remuneration is paid or given directly or indirectly
137 for soliciting any prospective buyer in this state (other
138 than those designated in subdivision (8)); but the commis-
139 sioner may by rule or order, as to any security or trans-
140 action or any type of security or transaction, withdraw or
141 further condition this exemption, or increase or decrease
142 the number of offerees permitted, or waive the conditions

143 in clauses (A) and (B) with or without the substitution
144 of a limitation on remuneration;

145 (10) any offer or sale of a preorganization certificate
146 or subscription if (A) no commission or other remunera-
147 tion is paid or given directly or indirectly for soliciting
148 any prospective subscriber, (B) the number of subscrib-
149 ers does not exceed ten, and (C) no payment is made by
150 any subscriber;

151 (11) any transaction pursuant to an offer to existing
152 security holders of the issuer, including persons who at
153 the time of the transaction are holders of convertible
154 securities, nontransferable warrants or transferable war-
155 rants exercisable within not more than ninety days of
156 their issuance, if (A) no commission or other remunera-
157 tion (other than a standby commission) is paid or given
158 directly or indirectly for soliciting any security holder in
159 this state, or (B) the issuer first files a notice specifying
160 the terms of the offer and the commissioner does not by
161 order disallow the exemption within the next five full
162 business days;

163 (12) any offer (but not a sale) of a security for which
164 registration statements have been filed under both this
165 chapter and the Securities Act of 1933 if no stop order or
166 refusal order is in effect and no public proceeding or
167 examination looking toward such an order is pending un-
168 der either chapter.

169 (c) The commissioner may by order deny or revoke
170 any exemption specified in subdivision (9) or (11) of
171 subsection (a) or in subsection (b) with respect to a
172 specific security or transaction. No such order may be
173 entered without appropriate prior notice to all interested
174 parties, opportunity for hearing, and written findings of
175 fact and conclusions of law, except that the commissioner
176 may by order summarily deny or revoke any of the speci-
177 fied exemptions pending final determination of any pro-
178 ceeding under this subsection. Upon the entry of a sum-
179 mary order, the commissioner shall promptly notify all
180 interested parties that it has been entered and of the rea-
181 sons therefor and that within fifteen days of the receipt
182 of a written request the matter will be set down for hear-
183 ing. If no hearing is requested and none is ordered by the

184 commissioner, the order will remain in effect until it is
185 modified or vacated by the commissioner. If a hearing is
186 requested or ordered, the commissioner, after notice of and
187 opportunity for hearing to all interested persons, may
188 modify or vacate the order or extend it until final deter-
189 mination. No order under this subsection may operate
190 retroactively. No person may be considered to have vio-
191 lated section 301 or 403 by reasons of any offer or sale
192 effected after the entry of an order under this subsection
193 if he sustains the burden of proof that he did not know,
194 and in the exercise of reasonable care could not have
195 known, of the order.

196 (d) In any proceeding under this chapter, the burden
197 of proving an exemption or an exception from a definition
198 is upon the person claiming it.

§32-4-403. Filing of sales and advertising literature.

1 Any prospectus, pamphlet, circular, form letter, adver-
2 tisement or any other sales literature or advertising com-
3 munication addressed or intended for distribution to pros-
4 pective investors, including clients or prospective clients
5 of an investment adviser, shall be filed with the commis-
6 sioner before it is used, disseminated or distributed un-
7 less the security or transaction is exempted by section 402.

§32-4-404. Misleading filings.

1 It is unlawful for any person to make or cause to be
2 made, in any document filed with the commissioner or in
3 any proceeding under this chapter, any statement which
4 is, at the time and in the light of the circumstances under
5 which it is made, false or misleading in any material
6 respect.

§32-4-405. Unlawful representations concerning registration or exemption.

1 (a) Neither (1) the fact that an application for regis-
2 tration under article two of this chapter or a registration
3 statement under article three of this chapter has been
4 filed nor (2) the fact that a person or security is effectively
5 registered constitutes a finding by the commissioner that
6 any document filed under this chapter is true, complete

7 and not misleading. Neither any such fact nor the fact
8 that an exemption or exception is available for a security
9 or a transaction means that the commissioner has passed
10 in any way upon the merits or qualifications of, or recom-
11 mended or given approval to, any person, security or
12 transaction.

13 (b) It is unlawful to make, or cause to be made, to
14 any prospective purchaser, customer or client any repre-
15 sentation inconsistent with subsection (a).

§32-4-406. Administration of chapter.

1 (a) This chapter shall be administered by the auditor
2 of this state, and he is hereby designated, and shall be,
3 the commissioner of securities of this state. He shall
4 have power and authority to appoint or employ such
5 assistants as are necessary for the administration of this
6 chapter.

7 (b) All fees herein provided for shall be collected by
8 the commissioner and shall be deposited in the state
9 treasury and credited to the general revenue fund, and
10 the commissioner shall keep a record of the receipts and
11 expenditures incurred in carrying out the provisions of
12 this chapter.

13 (c) It is unlawful for the commissioner or any of his
14 officers or employees to use for personal benefit any in-
15 formation which is filed with or obtained by the com-
16 missioner and which is not made public. No provision
17 of this chapter authorizes the commissioner or any of
18 his officers or employees to disclose any such information
19 except among themselves or when necessary or appro-
20 priate in a proceeding or investigation under this chap-
21 ter. No provision of the chapter either creates or derogates
22 from any privilege which exists at common law or other-
23 wise when documentary or other evidence is sought
24 under a subpoena directed to the commissioner or any
25 of his officers or employees.

§32-4-407. Investigations and subpoenas.

1 (a) The commissioner in his discretion (1) may make
2 such public or private investigations within or outside
3 of this state as he deems necessary to determine whether

4 any person has violated or is about to violate any pro-
5 vision of this chapter or any rule or order hereunder,
6 or to aid in the enforcement of this chapter or in the
7 prescribing of rules and forms hereunder, (2) may re-
8 quire or permit any person to file a statement in writing,
9 under oath or otherwise as the commissioner determines,
10 as to all the facts and circumstances concerning the mat-
11 ter to be investigated, and (3) may publish information
12 concerning any violation of this chapter or any rule or
13 order hereunder.

14 (b) For the purpose of any investigation or proceeding
15 under this chapter, the commissioner or any officer,
16 agent or employee designated by him may administer
17 oaths and affirmations, subpoena witnesses, compel their
18 attendance, take evidence and require the production of
19 any books, papers, correspondence, memoranda, agree-
20 ments or other documents or records which the com-
21 missioner deems relevant or material to the inquiry.

22 (c) In case of contumacy by, or refusal to obey a
23 subpoena issued to, any person, the circuit court of
24 Kanawha county, upon application by the commissioner,
25 may issue to the person an order requiring him to appear
26 before the commissioner, or the officer designated by
27 him, there to produce documentary evidence if so ordered
28 or to give evidence touching the matter under investiga-
29 tion or in question. Failure to obey the order of the court
30 may be punished by the court as a contempt of court.

31 (d) No person is excused from attending and testi-
32 fying or from producing any document or record before
33 the commissioner, or in obedience to the subpoena of the
34 commissioner or any officer designated by him, or in any
35 proceeding instituted by the commissioner, on the ground
36 that the testimony or evidence (documentary or other-
37 wise) required of him may tend to incriminate him or
38 subject him to a penalty of forfeiture; but no individual
39 may be prosecuted or subjected to any penalty or for-
40 feiture for or on account of any transaction, matter or
41 thing concerning which he is compelled, after claiming
42 his privilege against self-incrimination to testify or pro-
43 duce evidence (documentary or otherwise), except that

44 the individual testifying is not exempt from prosecution
45 and punishment for perjury or contempt committed in
46 testifying.

§32-4-408. Injunctions.

1 Whenever it appears to the commissioner that any per-
2 son has engaged or is about to engage in any act or prac-
3 tice constituting a violation of any provision of this chap-
4 ter or any rule or order hereunder, he may in his discre-
5 tion bring an action in the circuit court of Kanawha
6 county or a court of competent jurisdiction in the county
7 where one or more of the defendants reside or have a
8 place of business to enjoin the acts or practices and to en-
9 force compliance with this chapter or any rule or order
10 hereunder. Upon a proper showing, a permanent or
11 temporary injunction, restraining order or writ of manda-
12 mus shall be granted and a receiver or conservator may
13 be appointed for the defendant or the defendant's assets.
14 The court may not require the commissioner to post a
15 bond.

§32-4-409. Criminal penalties.

1 (a) Any person who willfully violates any provision
2 of this chapter, except section 404, or who willfully vio-
3 lates any rule or order under this chapter, or who will-
4 fully violates section 404 knowing the statement made to
5 be false or misleading in any material respect, shall be
6 guilty of a felony, and, upon conviction thereof, shall be
7 fined not more than five thousand dollars, or imprisoned in
8 the penitentiary not less than one nor more than three
9 years, or both fined and imprisoned; but no person may be
10 imprisoned for the violation of any rule or order if he
11 proves that he had no knowledge of the rule or order. No
12 indictment may be returned under this chapter more than
13 five years after the alleged violation.

14 (b) The commissioner may refer such evidence as is
15 available concerning violations of this chapter or of any
16 rule or order hereunder to the proper prosecuting at-
17 torney, who may, with or without such a reference, insti-
18 tute the appropriate criminal proceedings under this
19 chapter.

20 (c) Nothing in this chapter limits the power of the
21 state to punish any person for any conduct which consti-
22 tutes a crime by statute or at common law.

§32-4-410. Civil liabilities.

1 (a) Any person who
2 (1) offers or sells a security in violation of section
3 201 (a), 301, 403 or 405 (b), or of any condition imposed
4 under section 304 (d), 305 (g) or 305 (h), or
5 (2) offers or sells a security by means of any untrue
6 statement of a material fact or any omission to state a
7 material fact necessary in order to make the statements
8 made, in the light of the circumstances under which they
9 are made, not misleading (the buyer not knowing of the
10 untruth or omission), and who does not sustain the burden
11 of proof that he did not know, and in the exercise of rea-
12 sonable care could not have known, of the untruth or
13 omission, is liable to the person buying the security from
14 him, who may assert a claim in a civil action to recover
15 the consideration paid for the security, together with in-
16 terest at nine percent per year from the date of payment,
17 costs and reasonable attorneys' fees, less the amount of
18 any income received on the security, upon the tender of
19 the security, or for damages if he no longer owns the se-
20 curity. Damages are the amount that would be recover-
21 able upon a tender less the value of the security when the
22 buyer disposed of it and interest at nine percent per year
23 from the date of disposition.
24 (b) Every person who directly or indirectly controls a
25 seller liable under subsection (a), every partner, officer
26 or director of such a seller, every person occupying a
27 similar status or performing similar functions, every em-
28 ployee of such a seller who materially aids in the sale, and
29 every broker-dealer or agent who materially aids in the
30 sale are also liable jointly and severally with and to the
31 same extent as the seller, unless the nonseller who is so
32 liable sustains the burden of proof that he did not know,
33 and in exercise of reasonable care could not have known,
34 of the existence of the facts by reason of which the liabil-
35 ity is alleged to exist. There is contribution as in cases
36 of contract among the several persons so liable.

37 (c) Any tender specified in this section may be made
38 at any time before entry of judgment.

39 (d) Every cause of action under this statute survives
40 the death of any person who might have been a plaintiff
41 or defendant.

42 (e) No person may sue under this section more than
43 three years after the sale.

44 (f) No person who has made or engaged in the per-
45 formance of any contract in violation of any provision of
46 this chapter or any rule or order hereunder, or who has
47 acquired any purported right under any such contract
48 with knowledge of the facts by reason of which its making
49 or performance was in violation, may base any suit on
50 the contract.

51 (g) Any condition, stipulation or provision binding
52 any person acquiring any security to waive compliance
53 with any provision of this chapter or any rule or order
54 hereunder is void.

55 (h) The rights and remedies provided by this chapter
56 are in addition to any other rights or remedies that may
57 exist at law or in equity, but this chapter does not create
58 any cause of action not specified in this section or section
59 202(e).

§32-4-411. Judicial review of orders.

1 (a) Any person aggrieved by a final order of the
2 commissioner may obtain a review of the order in the
3 circuit court of Kanawha county by filing in court, within
4 sixty days after the entry of the order, a written petition
5 praying that the order be modified or set aside in whole or
6 in part. A copy of the petition shall be forthwith served
7 upon the commissioner and thereupon the commissioner
8 shall certify and file in court a copy of the filing and evi-
9 dence upon which the order was entered. When these have
10 been filed, the court has exclusive jurisdiction to affirm,
11 modify, enforce or set aside the order, in whole or in part.
12 The findings of the commissioner as to the facts, if sup-
13 ported by competent, material and substantial evidence,
14 are conclusive. If either party applies to the court for
15 leave to adduce additional material evidence, and shows to
16 the satisfaction of the court that there were reasonable

17 grounds for failure to adduce the evidence in the hearing
18 before the commissioner, the court may order the addi-
19 tional evidence to be taken before the commissioner and to
20 be adduced upon the hearing in such manner and upon
21 such conditions as the court considers proper. The commis-
22 sioner may modify his findings and order by reason of the
23 additional evidence and shall file in court the additional
24 evidence together with any modified or new findings or
25 order. The judgment of the court shall be final, subject to
26 review by the supreme court of appeals.

27 (b) The commencement of proceedings under subsec-
28 tion (a) does not, unless specifically ordered by the court,
29 operate as a stay of the commissioner's order.

§32-4-412. Rules, forms, orders and hearings.

1 (a) The commissioner may from time to time make,
2 amend and rescind such rules, forms and orders as are
3 necessary to carry out the provisions of this chapter, in-
4 cluding rules and forms governing registration statements,
5 applications and reports, and defining any terms, whether
6 or not used in this chapter, insofar as the definitions are
7 not inconsistent with the provisions of this chapter. For
8 the purpose of rules and forms, the commissioner may
9 classify securities, persons and matters within his juris-
10 diction, and prescribe different requirements for different
11 classes.

12 (b) No rule, form, or order may be made, amended or
13 rescinded unless the commissioner finds that the action is
14 necessary or appropriate in the public interest or for the
15 protection of investors and consistent with the purposes
16 fairly intended by the policy and provisions of this chap-
17 ter. In prescribing rules and forms the commissioner may
18 cooperate with the securities administrators of the other
19 states and the securities and exchange commission with
20 a view to effectuating the policy of this statute to achieve
21 maximum uniformity in the form and content of registra-
22 tion statements, applications and reports wherever practi-
23 cable.

24 (c) The commissioner may by rule or order prescribe
25 (1) the form and content of financial statements required
26 under this chapter, (2) the circumstances under which
27 consolidated financial statements shall be filed, and (3)

28 whether any required financial statements shall be certi-
29 fied by independent or certified public accountants. All
30 financial statements shall be prepared in accordance with
31 generally accepted accounting practices.

32 (d) All rules and forms of the commissioner shall be
33 published.

34 (e) No provision of this chapter imposing any liability
35 applies to any act done or omitted in good faith in con-
36 formity with any rule, form or order of the commissioner,
37 notwithstanding that the rule, form or order may later be
38 amended or rescinded or be determined by judicial or
39 other authority to be invalid for any reason.

40 (f) Every hearing in an administrative proceeding shall
41 be public.

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

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

3 (b) The commissioner shall keep a register of all appli-
4 cations for registration and registration statements which
5 are or have ever been effective under this chapter and
6 all denial, suspension or revocation orders which have
7 been entered under this chapter. The register shall be
8 open for public inspection.

9 (c) The information contained in or filed with any
10 registration statement, application or report may be made
11 available to the public under such rules as the commis-
12 sioner prescribes.

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

21 (e) The commissioner in his discretion may honor
22 requests from interested persons for interpretative opin-
23 ions; copies of which opinions shall be filed in a special
24 file maintained for that purpose and shall be public rec-
25 ords available for public inspection and at such reasonable
26 charges as he prescribes.

§32-4-414. Scope of the chapter and service of process.

1 (a) Sections 101, 201(a), 301, 405 and 410 apply to
2 persons who sell or offer to sell when (1) an offer to sell
3 is made in this state, or (2) an offer to buy is made and
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons who
6 buy or offer to buy when (1) an offer to buy is made in
7 this state, or (2) an offer to sell is made and accepted in
8 this state.

9 (c) For the purpose of this section, an offer to sell
10 or to buy is made in this state, whether or not either
11 party is then present in this state, when the offer (1)
12 originates from this state or (2) is directed by the offeror
13 to this state and received at the place to which it is di-
14 rected (or at any post office in this state in the case of a
15 mailed offer).

16 (d) For the purpose of this section, an offer to buy
17 or to sell is accepted in this state when acceptance (1) is
18 communicated to the offeror in this state and (2) has not
19 previously been communicated to the offeror, orally or in
20 writing, outside this state; and acceptance is communi-
21 cated to the offeror in this state, whether or not either
22 party is then present in this state, when the offeree
23 directs it to the offeror in this state reasonably believing
24 the offeror to be in this state and it is received at the
25 place to which it is directed (or at any post office in this
26 state in the case of a mailed acceptance).

27 (e) An offer to sell or to buy is not made in this
28 state when (1) the publisher circulates or there is cir-
29 culated on his behalf in this state any bona fide news-
30 paper or other publication of general, regular and paid
31 circulation which is not published in this state, or which
32 is published in this state but has had more than two
33 thirds of its circulation outside this state during the past
34 twelve months, or (2) a radio or television program
35 originating outside this state is received in this state.

36 (f) Sections 102 and 210(c), as well as section 405 so
37 far as investment advisors are concerned, apply when
38 any act instrumental in effecting prohibited conduct is
39 done in this state, whether or not either party is then
40 present in this state.

41 (g) Every applicant for registration under this chap-
42 ter and every issuer which proposes to offer a security
43 in this state through any person acting on an agency
44 basis in the common-law sense shall file with the com-
45 missioner, in such form as he by rule prescribes, an
46 irrevocable consent appointing the commissioner or his
47 successor in office to be his attorney to receive service of
48 any lawful process in any noncriminal suit, action or
49 proceeding against him or his successor executor or ad-
50 ministrator which arises under this chapter or any rule
51 or order hereunder after the consent has been filed, with
52 the same force and validity as if served personally on
53 the person filing the consent. A person who has filed such
54 a consent in connection with a previous registration need
55 not file another. Service may be made by leaving a copy
56 of the process in the office of the commissioner, but it
57 is not effective unless (1) the plaintiff, who may be the
58 commissioner in a suit, action or proceeding instituted
59 by him, forthwith sends notice of the service and a copy
60 of the process by registered mail to the defendant or
61 respondent at his last address on file with the commis-
62 sioner, and (2) the plaintiff's affidavit of compliance with
63 this subsection is filed in the case on or before the return
64 day of the process, if any, or within such further time
65 as the court allows.

66 (h) When any person, including any nonresident of
67 this state, engages in conduct prohibited or made action-
68 able by this chapter or any rule or order hereunder, and
69 he has not filed a consent to service of process under sub-
70 section (g) and personal jurisdiction over him cannot
71 otherwise be obtained in this state, that conduct shall be
72 considered equivalent to his appointment of the commis-
73 sioner or his successor in office to be his attorney to
74 receive service of any lawful process in any noncriminal
75 suit, action or proceeding against him or his successor
76 executor or administrator which grows out of that con-
77 duct and which is brought under this chapter or any rule
78 or order hereunder, with the same force and validity
79 as if served on him personally. Service may be made by
80 leaving a copy of the process in the office of the commis-
81 sioner, and it is not effective unless (1) the plaintiff,

82 who may be the commissioner in a suit, action or pro-
83 ceeding instituted by him, forthwith sends notice of the
84 service and a copy of the process by registered mail to
85 the defendant or respondent at his last known address
86 or takes other steps which are reasonably calculated to
87 give actual notice, and (2) the plaintiff's affidavit of com-
88 pliance with this subsection is filed in the case on or
89 before the return day of the process, if any, or within
90 such further time as the court allows.

91 (i) When process is served under this section, the
92 court, or the commissioner in a proceeding before him,
93 shall order such continuance as may be necessary to
94 afford the defendant or respondent reasonable oppor-
95 tunity to defend.

§32-4-415. Statutory policy.

1 This chapter shall be so construed as to effectuate the
2 general purpose to make uniform the law of those states
3 which enact the uniform securities act and to coordinate
4 the interpretation and administration of this chapter with
5 the related federal regulation.

§32-4-416. Short title.

1 This chapter may be cited as the "Uniform Securities
2 Act."

§32-4-417. Severability of provisions.

1 If any provision of this chapter or the application
2 thereof to any person or circumstance is held invalid,
3 the invalidity shall not affect other provisions or appli-
4 cations of the chapter which can be given effect without
5 the invalid provision or application, and to this end the
6 provisions of this chapter are severable.

§32-4-418. Saving provisions.

1 (a) Prior law exclusively governs all suits, actions,
2 prosecutions or proceedings which are pending or may be
3 initiated on the basis of facts or circumstances occurring
4 before the effective date of this chapter, except that no
5 civil suit or action may be maintained to enforce any
6 liability under prior law unless brought within any period

7 of limitation which applied when the cause of action
 8 accrued and in any event within three years after the
 9 effective date of this chapter.

10 (b) All effective registrations under prior law, all ad-
 11 ministrative orders relating to such registrations, and all
 12 conditions imposed upon such registrations remain in
 13 effect so long as they would have remained in effect if this
 14 chapter had not been enacted. They are considered to
 15 have been filed, entered or imposed under this chapter, but
 16 are governed by prior law.

17 (c) Prior law applies in respect of any offer or sale
 18 made within one year after the effective date of this chap-
 19 ter pursuant to an offering begun in good faith before its
 20 effective date on the basis of an exemption available under
 21 prior law.

22 (d) Judicial review of all administrative orders as to
 23 which review proceedings have not been instituted by the
 24 effective date of this chapter are governed by section 411,
 25 except that no review proceeding may be instituted unless
 26 the petition is filed within any period of limitation which
 27 applied to a review proceeding when the order was en-
 28 tered and in any event within sixty days after the effec-
 29 tive date of this chapter.

CHAPTER 32A. LAND SALES; FALSE ADVERTISING; ISSUANCE AND SALE OF CHECKS, DRAFTS, MONEY ORDERS, ETC.

ARTICLE 1. LAND SALES; FALSE ADVERTISING.

§32A-1-1. Filing and registration with respect to lands prere- quisite to sale, etc., within state.

1 No person, partnership or corporation shall sell or offer
 2 for sale, in this state, any lands, situate outside this state,
 3 which are to be planted in trees or vines or divided into
 4 town or suburban lots, or any unimproved or undeveloped
 5 lands, or any lands, including cemetery lots, cemetery
 6 privileges, burial rights or privileges, the value of which
 7 materially depends on the future performance of any
 8 stipulation or promise to furnish irrigation, transporta-
 9 tion facilities, streets, sidewalks, sewers, gas, electricity or

10 other value enhancing utility or improvement of any un-
11 divided part or share, whether an aliquot part or a part
12 designated on any other basis, or any mine, mineral claim,
13 or other estate in any mine, or in the lands containing the
14 same, regardless of where located or situated, the value of
15 which materially depends on the future discovery or de-
16 velopment and production of the minerals, without first
17 having filed with the commissioner of securities (which
18 office is established in chapter thirty-two of this code) a
19 detailed description of the property which, or any interest
20 or part or share of which, is proposed to be sold, and such
21 information with respect to the value thereof, and the title
22 to such property or properties as the commissioner of se-
23 curities shall require, and without causing such property
24 to be registered by the commissioner of securities in the
25 manner provided for the registration of securities by
26 qualification under section three hundred four, article
27 three, chapter thirty-two of this code; and no person shall
28 sell or offer any such property for sale until he has been
29 registered as a salesman by the commissioner of securities
30 under the provisions for registering agents contained in
31 article two, chapter thirty-two of this code. All of the pro-
32 visions contained in chapter thirty-two of this code gov-
33 erning the registration of securities by qualification and
34 the registration of agents and the penalties provided
35 therein shall apply to the registration of properties and
36 salesmen under this article: *Provided*, That nothing con-
37 tained in this article shall prevent any bona fide owner of
38 any such land, mine, mining lease, mineral claim or other
39 property, or interest therein, from selling the same on his
40 own account and not as a part, or in furtherance, of any
41 promotion or development to the public.

§32A-1-2. False advertising prohibited; penalty.

1 Any person or corporation who, with intent to sell or in
2 any wise dispose of merchandise, securities, service or
3 anything offered by such person or corporation, directly
4 or indirectly, to the public for sale or distribution, or with
5 intent to increase the consumption thereof, or to induce
6 the public in any manner to enter into any obligation re-
7 lating thereto, or to acquire title thereto, or any interest

8 therein, makes, publishes, disseminates, circulates or places
 9 before the public, or causes, directly or indirectly, to be
 10 made, published, disseminated, circulated or placed before
 11 the public in this state, in a newspaper or other publica-
 12 tion, or in the form of a book, notice, handbill, poster,
 13 blueprint, map, bill, tag, label, circular, pamphlet, or let-
 14 ter, or by way of radio or television, or in any other way,
 15 an advertisement of any sort regarding merchandise, se-
 16 curities, service, land, lot or anything so offered to the
 17 public, which advertisement contains any promise, as-
 18 sertion, representation or statement of fact which is un-
 19 true, deceptive or misleading, with knowledge that the
 20 same was untrue, deceptive or misleading, shall be guilty
 21 of a misdemeanor, and, upon conviction thereof, shall be
 22 fined not more than two thousand dollars, or imprisoned
 23 in the county jail not more than six months, or both fined
 24 and imprisoned.

§32A-1-3. Indictment need not negative exceptions.

1 In any indictment for violation of any provision of this
 2 article, it shall not be necessary to negative any exception
 3 contained in any proviso or elsewhere in this article.

ARTICLE 2. ISSUANCE AND SALE OF CHECKS, DRAFTS, MONEY ORDERS, ETC.

§32A-2-1. Definitions.

1 As used in this article:
 2 (1) "Person" means any individual, partnership, associa-
 3 tion, joint stock association, trust or corporation, but does
 4 not include the United States of America, any department,
 5 agency, commission or officer thereof, the state of West
 6 Virginia, any department, agency, commission or officer
 7 thereof, or any political subdivision of or any municipali-
 8 ty in this state;
 9 (2) "Commissioner" means the commissioner of bank-
 10 ing of this state;
 11 (3) "Check" means any check, draft, money order,
 12 personal money order or other instrument for the trans-
 13 mission or payment of money;
 14 (4) "Personal money order" means any instrument for
 15 the transmission or payment of money in relation to

16 which the purchaser or remitter appoints or purports to
17 appoint the seller thereof as his agent for the receipt,
18 transmission or handling of money, whether such instru-
19 ment be signed by the seller or by the purchaser or re-
20 mitter or some other person;

21 (5) "Securities" means all bonds, debentures or other
22 evidences of indebtedness (a) issued by the United States
23 of America or any agency thereof, or guaranteed by the
24 United States of America, or for which the credit of the
25 United States of America or any agency thereof is pledged
26 for the payment of the principal and interest thereof; and/
27 or (b) which are direct general obligations of this state,
28 or any other state if unconditionally guaranteed as to the
29 principal and interest by such other state and if such other
30 state has the power to levy taxes for the payment of the
31 principal and interest thereof and is not in default in the
32 payment of any part of the principal or interest owing by
33 it upon any part of its funded indebtedness; and/or (c)
34 which are general obligations of any county, school dis-
35 trict or municipality in this state issued pursuant to law
36 and payable from ad valorem taxes levied on all of the
37 taxable property located therein, if such county, school
38 district or municipality is not in default in the payment of
39 any part of the principal or interest on any debt evidenced
40 by its bonds, debentures or other evidences of indebted-
41 ness.

§32A-2-2. Legislative findings and declaration of public policy.

1 The Legislature hereby determines and finds that many
2 innocent persons in various states have suffered severe
3 financial losses as a result of financially irresponsible per-
4 sons engaging in the business of issuing and selling
5 checks; that many of these states have, following the dis-
6 covery of such losses, promptly enacted legislation to as-
7 sure that persons engaged in the business of issuing and
8 selling checks are financially responsible; and that it is
9 imperative that legislation be enacted to assure that
10 persons engaged in the business of issuing and selling
11 checks in this state are financially responsible. It is, there-
12 fore, declared to be the public policy of this state that the
13 business of issuing and selling checks affects the general

14 welfare of this state and its individual citizens; and that
15 financial losses as aforesaid may best be prevented in this
16 state and the interests of the citizens of this state best
17 served by requiring persons now engaged or to be en-
18 gaged in the business of issuing and selling checks to
19 meet the requirements set forth in this article.

**§32A-2-3. Financial responsibility must be established and
security given; fee required.**

1 On and after the effective date of this article, no per-
2 son shall engage in the business of issuing and selling
3 checks as a service or for a fee or other compensation,
4 unless (a) the net worth of such person is at all times at
5 least fifty thousand dollars, computed according to gen-
6 erally accepted accounting principles and shown by fi-
7 nancial statements filed with and satisfactory to the
8 commissioner, and (b) such person either (1) keeps on
9 deposit at all times with the commissioner, or a bank in
10 this state designated by such person and approved for
11 such purpose by the commissioner, one hundred thousand
12 dollars in cash or securities satisfactory to the commis-
13 sioner, or (2) posts and maintains with the commissioner
14 at all times a surety bond in the penal sum of one hun-
15 dred thousand dollars, in form and with conditions satis-
16 factory to the commissioner and with corporate surety
17 thereon authorized to do business in this state and ac-
18 ceptable to the commissioner. When securities are de-
19 posited as aforesaid, the value of such securities must at
20 all times be one hundred thousand dollars, computed on
21 the basis of the principal amount or the market value
22 thereof, whichever is lower.

23 The deposit or bond, as the case may be, shall be for
24 the benefit and protection of the purchasers or holders
25 of checks sold in this state by the person making the
26 deposit or posting the bond as principal, and the commis-
27 sioner or any aggrieved person may by appropriate civil
28 actions enforce claims on any such check or checks against
29 such deposit or bond. The aggregate liability of the
30 surety in no event shall exceed the principal sum of the
31 bond. The surety on such bond shall have a right to
32 cancel such bond upon giving thirty days' notice to the

33 commissioner and thereafter shall be relieved of liability
34 for any breach of condition occurring after the effective
35 date of said cancellation. So long as the person making
36 a deposit is not in violation of any of the provisions of
37 this article, such person shall be permitted to receive all
38 interest and dividends on said deposit, and shall have
39 the right, with the approval of the commissioner, to
40 substitute other securities. If the deposit is made at a
41 bank, any custodial fees therefor shall be paid by the
42 person making such deposit. At the time any such deposit
43 is made or any such bond is posted, and annually there-
44 after, the person making such deposit or posting such
45 bond shall pay to the commissioner a fee of one hundred
46 dollars. All such fees shall be deposited in the state
47 treasury to the credit of the general revenue fund.

**§32A-2-4. Persons who establish financial responsibility and
give security may engage in business; agents
need not comply with section three.**

1 Any person who complies with the provisions of sec-
2 tion three of this article may engage in the business of
3 issuing and selling checks at one or more locations in this
4 state and through or by means of such agent or agents
5 as such person may designate and appoint from time to
6 time, and no such agent shall be required to comply
7 with the provisions of said section three.

§32A-2-5. Exemptions.

1 The provisions of section three of this article shall not
2 apply to banks, trust companies, building and loan associ-
3 ations, savings and loan associations, industrial loan com-
4 panies and small loan companies organized under the
5 laws of this state or authorized to do business in this
6 state, or to the receipt of money by an incorporated
7 telegraph company at any office or agency thereof for
8 transmission by telegraph.

§32A-2-6. Judicial review.

1 Any person aggrieved by any action of the commissioner
2 under the provisions of this article may appeal such
3 action by filing a petition, at the election of such person,
4 in either the circuit court of Kanawha county, West Vir-

5 ginia, or with the judge thereof in vacation, or in the
 6 circuit court of the county in which such person resides
 7 or does business, or with the judge thereof in vacation,
 8 within ninety days after such action.

9 The judgment of the circuit court shall be final unless
 10 reversed, vacated or modified on appeal to the supreme
 11 court of appeals. Any such appeal shall be sought in the
 12 manner and within the time provided by law for appeals
 13 from circuit courts in other civil cases.

§32A-2-7. Injunctive relief.

1 Whenever it appears to the commissioner that any
 2 person has been or is violating or is about to violate any
 3 provision of this article, the commissioner may apply
 4 in the name of the state, to the circuit court of the
 5 county in which the violation or violations or any part
 6 thereof has occurred, is occurring or is about to occur,
 7 or the judge thereof in vacation, for an injunction against
 8 such person and any other persons who have been, are
 9 or are about to be involved in any practices, acts or
 10 omissions, so in violation, enjoining such person or per-
 11 sons from any such violation or violations. Such applica-
 12 tion may be made and prosecuted to conclusion whether
 13 or not any such violation or violations have resulted or
 14 shall result in prosecution or conviction under the pro-
 15 visions of section eight of this article.

16 Upon application by the commissioner, the circuit courts
 17 of this state may by mandatory or prohibitory injunction
 18 compel compliance with the provisions of this article.
 19 The court may issue a temporary injunction in any case
 20 pending a decision on the merits of any application filed.

21 The judgment of the circuit court upon any application
 22 permitted by the provisions of this section shall be final
 23 unless reversed, vacated or modified on appeal to the
 24 supreme court of appeals. Any such appeal shall be sought
 25 in the manner and within the time provided by law for
 26 appeals from circuit courts in other civil cases.

§32A-2-8. Penalties.

1 Any person who directly or through another violates or
 2 attempts to violate any provision of this article shall be

3 guilty of a misdemeanor and upon conviction thereof shall
4 be punished by a fine of not less than one hundred dol-
5 lars nor more than one thousand dollars. Each transaction
6 in violation of this article and each day that a violation
7 continues shall be a separate offense.

§32A-2-9. Severability.

1 If any provision of this article or the application there-
2 of to any person or circumstance is held invalid, such in-
3 validity shall not affect the remainder of the article or the
4 application of such provision to other persons or circum-
5 stances, and to this end the provisions of this article are
6 declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Daniel Darby
Chairman Senate Committee

Clarence C. Christensen Jr.
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Howard Weason
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

President of the Senate

Lewis J. M. Hanna
Speaker House of Delegates

The within approved this the 20th
day of March, 1974.

Archie A. Phares Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/14/74

Time 2:15 p.m.