

Rec, May 22

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ENROLLED BILL

(EXTRAORDINARY SESSION, 1933)

Senate Bill No. 23

(By Mr. White, of Hampshire)

Passed May 17, 1933

In Effect from Passage

Originating in the..... Takes effect..... Passage.

Senate

Thurmond
Clerk.

From

Prochace
Clerk of the House of Delegates.

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Chairman House Committee.

August 1933
Chairman Senate Committee.

ENROLLED BILL

(S. B. No. 23)

[Passed May 17, 1933; in effect from pasasge.]

AN ACT to amend and reenact chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to speculative securities and fraudulent sales.

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, be amended and reenacted to read as follows:

ARTICLE I.

Section 1. The auditor of this state is hereby made and shall be, the commissioner of securities of this state, and he shall have power and authority to employ such assistants as are necessary for the administration of this chapter.

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Sec. 2. When used in this chapter the following terms shall,
2 unless the text otherwise indicates, have the following respec-
3 tive meanings:

4 (a) "Security" shall include any note, stock, treasury
5 stock, bond, debenture, evidence of indebtedness, certificate of
6 interest or participation, certificate of interest in a profit shar-
7 ing agreement, certificate of interest in a syndicate agreement,
8 certificate or share of or in an investment trust, certificate of in-
9 terest in an oil, gas or mining lease, collateral trust certificate,
10 preorganization certificate, preorganization subscription, any
11 share, investment contract or beneficial interest in or title to
12 property, trustee shares, investment participating bonds and
13 contracts covering or pertaining to the sale and/or purchase of
14 securities on the installment plan, profits of earning of any
15 other instrument commonly known as a security.

16 (b) "Person" shall include a natural person, a corporation,
17 created under the laws of this or any other state, country,
18 sovereignty, or political subdivision thereof, a partnership, an
19 association, a syndicate, a joint stock company, a trust and
20 any unincorporated organization. As used herein the term
21 "trust" shall be deemed to include a common law trust, but

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22 shall not include a trust created or appointed under or by
23 virtue of a last will and testament, or by a court of law or
24 equity or any public charitable trust;

25 (c) "Sale" or "sell" shall include every disposition, or at-
26 tempt to dispose, of a security or interest in a security for value,
27 including contracts and agreements whereby securities are sold,
28 traded or exchanged for money, property and thing of value,
29 or any transfer or agreement to transfer in trust or otherwise.

30 Any security given or delivered with, or as a bonus on account
31 of any purchase of securities or any other thing shall be con-
32 clusively presumed to constitute a part of the subject of such
33 purchase and to have been sold for value. "Sale" or "sell"
34 shall also include an exchange, an attempt to sell, an option of
35 sale, a solicitation of a sale, a subscription or an offer to sell,
36 directly or by an agent, or by a circular, letter, advertisement
37 or otherwise;

38 (d) "Dealer" shall include every person other than a sales-
39 man who in this state engages either for all or part of his
40 time directly or through an agent in the business of selling any
41 securities issued by such person or another person or purchasing
42 or otherwise acquiring such securities from another for the

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43 purpose of reselling them or of offering them for sale to the
44 public, or offering, buying, selling or otherwise dealing or trad-
45 ing in securities as agent or principal for a commission or at
46 a profit, or buying, selling or otherwise dealing or trading in
47 securities listed on any exchange or in consummating any con-
48 tract between buyer or seller of securities, or who deals in
49 futures or differences in market quotations of prices or value
50 of any securities or accepts margins on purchases or sales or
51 pretended purchases or sales of such securities: *Provided,*
52 That the word "dealer" shall not include a person having no
53 place of business in this state who sells or offers to sell securities
54 exclusively to brokers or dealers actually engaged in buying
55 and selling securities as a business, and shall not include a
56 bank or trust company dealing in securities for the benefit of
57 its clients or depositors, and when such bank or trust com-
58 pany is not attempting to profit by such transactions it shall
59 be permitted to charge a reasonable service fee or reasonable
60 commission to cover the cost of providing such service.

61 (e) "Issuer" shall mean and include every person who
62 proposes to issue, has issued, or shall hereafter issue any
63 security. Any natural person who acts as a promoter for and

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64 on behalf of a corporation, trust or unincorporate association
65 or partnership of any kind to be formed shall be deemed to be
66 an issuer;

67 (f) "Salesmen" shall include every natural person, other
68 than a dealer, employed or appointed or authorized by a dealer
69 or issuer to sell securities in any manner in this state. The
70 partners of a partnership and the executive officers of a corpo-
71 ration or other association registered as a dealer shall not be
72 salesmen within the meaning of this definition;

73 (g) "Agent" shall mean salesmen as hereinabove defined;

74 (h) "Commissioner" shall mean the commissioner of
75 securities.

Sec. 3. Except as hereinafter otherwise expressly provided,
2 the provisions of this chapter shall not apply to any of the
3 following classes of securities:

4 (a) Any security issued or guaranteed by the United States
5 or any territory or insular possession thereof, or by the District
6 of Columbia or by any state or political subdivision or agency
7 thereof;

8 (b) Any security issued or guaranteed by any foreign
9 government with which the United States is at the time of the

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10 sale or offer of sale thereof maintaining diplomatic relations,
11 providing such foreign government has not issued or guar-
12 anteed external securities then in default as to interest, prin-
13 cipal or sinking fund, and that such foreign government has
14 not prevented by laws, rulings or otherwise the performances by
15 any state, province, subdivision or person the just and exact
16 provisions of such securities;

17 (c) Any security issued by a national bank or by any
18 federal land bank or by a corporation created or acting as an
19 instrumentality of the government of the United States pur-
20 suant to authority granted by the congress of the United States,
21 or any security issued by provisions of the federal laws:
22 *Provided*, That such corporation is subject to supervision or
23 regulation by the government of the United States;

24 (d) Any security issued or guaranteed either as to prin-
25 cipal, interest or dividend by a corporation owning or oper-
26 ating a railroad engaged in interstate commerce and under
27 supervision of the interstate commerce commission;

28 (e) Any security issued by a corporation organized exclu-
29 sively for educational, benevolent, fraternal, charitable or re-
30 formatory purposes and not for pecuniary profit, and no part

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31 of the net earnings of which inures to the benefit of any private
32 stockholder or individual;

33 (f) Securities listed on the New York stock exchange and
34 the New York curb exchange and securities listed on any other
35 recognized and responsible stock exchange that is approved by
36 the commissioner. Such approval shall expire on June thirtieth
37 of each year, and may be renewed each year by an application
38 from such stock exchange, to be approved by the commissioner.

39 No fee shall be charged in connection with such approval but
40 all expenses of investigation shall be paid by such stock ex-
41 change. Approval of any stock exchange may be revoked at
42 any time by the commissioner;

43 (g) Any security issued by a state bank, trust company,
44 building and loan association or savings institution incorpo-
45 rated under the laws of and subject to the examination, super-
46 vision, and control of any state or territory of the United States
47 or of any insular possession thereof;

48 (h) Any security other than common stock outstanding
49 and in the hands of the public for a period of not less than
50 five years upon which no default in payment of principal,
51 interest or dividend exists and upon which no such default

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52 has occurred for a continuous immediately preceding period of
53 five years.

Sec. 4. Except as hereinafter expressly provided the provisions of this chapter shall not apply to the sale of any security in any of the following transactions:

4 (a) At any judicial, executor's, administrator's, guardian's, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy;

7 (b) By or for the account of a pledge, holder or mortgagee selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this chapter, to liquidate a bona fide debt, a security pledge in good faith as security for such debt;

12 (c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative, and such owner or representative not being the underwriter of such security;

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20 (d) The distribution by a corporation actively engaged in
21 the business authorized by its charter, of capital stock, bonds
22 or other securities to its stockholders or other security holders
23 as a stock dividend or other distribution out of earnings or
24 surplus; or the issue of securities to the security holders or
25 creditors of a corporation for cash;

26 (e) The sale, transfer or delivery to any banking institu-
27 tion, insurance company or to any corporation or to any broker
28 or dealer: *Provided*, That such broker or dealer is actually
29 engaged in buying and selling securities as a business;

30 (f) The transfer to or exchange by one corporation with
31 another corporation of their own securities in connection with
32 a consolidation or merger of such corporations;

33 (g) Bonds or notes secured by mortgage upon real estate
34 where the entire mortgage together with all of the bonds or
35 notes secured thereby are sold to a single purchaser at a single
36 sale.

Sec. 5. No securities except of a class exempt under a
2 provision of section three hereof or unless sold in any trans-
3 action exempt under a provision of section four hereof shall
4 be sold within this state unless such securities shall have been

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5 registered by notification or by qualification as hereinafter de-
6 fined.

7 A record of the registration of securities shall be kept in a
8 register of securities to be kept in the office of the commissioner
9 in which register of securities shall also be recorded any order
10 entered by the commissioner with respect to such securities.
11 Such register and all information with respect to the securities
12 registered therein shall be open to public inspection.

Sec. 6. The following classes of securities shall be entitled
2 to registration by notification in the manner provided in this
3 section:

4 (a) Securities issued by a corporation, partnership, asso-
5 ciation, company, syndicate or trust owning a property, busi-
6 ness or industry which has been in continuous operation not
7 less than three years and which has shown, during a period
8 of not less than two years or more than ten years next prior
9 to the close of its last fiscal year preceding the offering of
10 such securities, average annual net earnings after deducting
11 all prior charges not including the charges upon securities
12 to be retired out of the proceeds of sale, as follows: (1) In
13 the case of interest-bearing securities, not less than one and

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14 one-half times the annual interest charge thereon, and upon
15 all other outstanding interest-bearing obligations of equal
16 rank; (2) In the case of preferred stock, not less than one
17 and one-half times the annual dividend requirements on such
18 preferred stock, and on all other outstanding stock of equal
19 rank; (3) In the case of common stock not less than six per
20 cent upon all outstanding common stock of equal rank, to-
21 gether with the amount of common stock then offered for
22 sale reckoned upon the price at which such stock is then offered
23 for sale or sold;

24 (b) Any bond or note secured by a first mortgage upon
25 agricultural lands used and valuable principally for agricul-
26 tural purposes (not including oil, gas or mining property or
27 leases), or upon city, town or village real estate or leaseholds
28 situated in any state or territory of the United States or in
29 the District of Columbia or in the Dominion of Canada, as
30 follows: (1) When the mortgage is a first mortgage upon
31 such agricultural lands, used and valuable principally for
32 agricultural purposes, and when the aggregate face value of
33 such bonds or notes, not including interest notes or coupons,
34 secured thereby does not exceed seventy-five per cent of the

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35 then fair market value of any improvements thereon; or (2)
36 When the mortgage is a first mortgage upon city, town or
37 village real estate or leaseholds, and when the aggregate face
38 value of such bonds or notes, not including interest notes or
39 coupons, secured by such real estate or leaseholds does not
40 exceed seventy-five per cent of the then fair market value of
41 such mortgaged property is used principally to produce
42 through rental a net annual income, after deducting oper-
43 ating expenses and taxes, or has a fair rental value after de-
44 ducting operating expenses and taxes, at least equal to the
45 annual interest plus not less than three per cent of the prin-
46 cipal of such mortgage indebtedness; or (3) When the mort-
47 gage is a first mortgage upon city, town or village real estate
48 or leaseholds upon which real estate or leaseholds a building
49 or buildings is or are about in good faith forthwith to be
50 erected according to the expressed terms of the mortgage, and
51 when reasonably adequate provision has been made for
52 financing the full completion of such building free and clear
53 of any lien superior to such mortgage, and when the aggre-
54 gate face value of the bonds or notes not including interest
55 notes or coupons, secured by such first mortgage does not ex-

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56 ceed seventy-five per cent of the fair market value of such
57 mortgaged property, including the building or buildings to
58 be erected thereon as aforesaid, and when such mortgaged
59 property is to be used principally to produce through rental
60 a net annual income, after deducting operating expenses and
61 taxes, or will have a fair rental value after deducting oper-
62 ating expenses and taxes, at least equal to the annual interest
63 plus not less than three percentum of the principal of such
64 mortgage indebtedness: *Provided*, That all advertisements,
65 circulars and letters advertising the sale of such bonds or
66 notes and all receipts of payments therefor shall bear in bold
67 type upon the face thereof a legend stating that such bonds
68 or notes are construction bonds or notes, and all other written
69 or printed offerings of such bonds or notes shall contain a
70 statement to the same effect. A satisfactory completion bond
71 covering the full amount of costs of a building or buildings
72 to be erected, or other improvements to be made, shall be filed
73 with the commissioner. All funds or things of value received
74 for such securities shall be subject to supervision by the com-
75 missioner until a satisfactory guarantee of completion of build-
76 ings or improvements is provided.

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77 The provisions of this subdivision (b) shall not apply in
78 the case of bonds or notes secured wholly or partly by first
79 mortgage on leaseholds, the value of which leaseholds is re-
80 quired to meet the ratio of property value to face value of
81 obligations as provided in clauses (2) and (3) above, unless
82 all advertisements, circulars and letters advertising the sale
83 of such bonds or notes and all receipts of payments therefor,
84 and such bonds and notes shall bear in bold type not less
85 than eighteen point upon the face thereof a legend stating
86 that such bonds or notes are secured wholly or partly by
87 mortgage on a leasehold, as the case may be, and all other
88 written or printed offerings of such bonds or notes shall con-
89 tain a statement to the same effect.

90 When used in this subdivision (b) the term "mortgage"
91 shall be deemed to include a trust deed to secure a debt.

92 Securities entitled to registration by notification shall be
93 registered by the filing, by the issuer or by any registered
94 dealer interested in the sale thereof, in the office of the com-
95 missioner, of a statement with respect to such securities con-
96 taining such information and data as the commissioner may
97 then and from time to time thereafter request. Such regis-

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98 tration shall be revoked or suspended at any time by the com-
99 missioner pending further investigation by specifying the
100 reasons for such actions and by notifying personally by mail,
101 telephone or telegraph the person filing such information or
102 statement, and every registered dealer who shall have notified
103 the commissioner of an intention to sell such security. The
104 reregistration or lifting of suspension shall be at the discretion
105 of the commissioner. Upon the entry of any such order of
106 suspension no further sale of such security shall be made until
107 the further order of the commissioner.

108 In the event of the entry of such order of suspension the
109 commissioner shall upon request give a prompt hearing to
110 the parties interested. If no hearing is requested within a
111 period of twenty days from the entry of such order or if
112 upon such hearing the commissioner shall determine that any
113 such security does not fall within a class entitled to registra-
114 tion under this section, or that the sale thereof would be
115 fraudulent or would result in fraud, he shall enter a final
116 order prohibiting sales of such security, with his findings with
117 respect thereto: *Provided*, That if the findings with respect
118 to such security is that it is not entitled to registration under

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119 this section, the applicant may apply for registration by
120 qualification by complying with the requirements of section
121 seven of this article. Appeals from such final order may be
122 taken as hereinafter provided. If, however, upon such hear-
123 ing, the commissioner shall find that the security is entitled
124 to registration under this section, and that its sale will neither
125 be fraudulent nor result in fraud, he shall forthwith enter an
126 order revoking such order of suspension and such security
127 shall be restored to its status as a security registered under
127-a this section, as of the date of such order of suspension.

128 At the time of filing the statement, as hereinbefore pre-
129 scribed in this section, the applicant shall pay to the com-
130 missioner a fee of one-twentieth of one per cent of the aggre-
131 gate par value of the securities to be sold in this state for
132 which the applicant is seeking registration, but in no case
133 shall such fee be less than twenty-five dollars or more than
134 one hundred dollars. In the case of stock having no par
135 value, the price of which such stock is to be offered to the
136 public shall be deemed to be the par value of such stock.

137 Every registration under this section shall expire on the
138 thirtieth day of June in each year, but new registrations for

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139 the succeeding year shall be issued upon written application
140 and upon payment of a fee of one-twentieth of one per cent
141 of the total amount of such security to be sold in West Vir-
142 ginia, within the year of registration, the minimum fee to be
143 twenty-five dollars, and by filing of further statements or
144 furnishing any further information specifically required by
145 the commissioner. Applications for renewals must be made
146 not less than thirty days before the first day of the ensuing
147 registration year, otherwise they shall be treated as original
148 applications.

Sec. 7. All securities required by this article to be registered
2 before being sold in this state, and not entitled to registration
3 by notification, shall be registered only by qualification in the
4 manner provided by this section.

5 The commissioner shall receive and act upon applications to
6 have securities registered by qualification, and may prescribe
7 forms on which he may require such applications to be sub-
8 mitted. Applications shall be in writing and shall be duly
9 signed by the applicant and sworn to by any person having
10 knowledge of the facts, and filed in the office of the commis-
11 sioner and may be made either by the issuer of the securities

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12 for which registration is applied or by any registered dealer
13 desiring to sell the same within the state.

14 The commissioner may require the applicant to submit to
15 the commissioner any information respecting the issuer or the
16 security or the person or persons obligated by such security
17 as he may in his judgment deem necessary to enable him to
18 ascertain whether such security shall be registered pursuant
19 to the provisions of this section.

20 All of the statements, exhibits and documents of every kind
21 required by the commissioner under this section, except proper-
22 ly certified public documents, shall be verified by the oath of
23 the applicant or of the issuer in such manner and form as may
24 be required by the commissioner.

25 With respect to securities required to be registered by qualifi-
26 cation under the provisions of this section, the commissioner
27 may by order duly recorded, fix the maximum amount of com-
28 mission or other form of remuneration to be paid in cash or
29 otherwise, directly or indirectly, for or in connection with the
30 sale or offering for sale of such securities.

31 (a) At the time of filing the information, as hereinbefore
32 provided in this section, the applicant shall pay to the com-

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33 missioner one-twentieth of one per cent of the aggregate par
34 value of the securities to be sold in this state for which the
35 applicant is seeking registration, but in no case shall such fee
36 be less than twenty-five dollars. In case of stock having no
37 par value the price at which such stock is to be offered to the
38 public shall be deemed to be the par value of such stock.

39 If, upon examination of any application the commissioner
40 shall find that the sale of security referred to therein would
41 not be fraudulent or would not work or tend to work a fraud
42 upon the purchaser, or that the enterprise or business of the
43 issuer is not based upon unsound business principles, and no
44 other reason shall appear to the commissioner for refusal of
45 the application, then, upon the payment of the fee provided
46 in this section, he shall record the registration of such security
47 in the register of securities, and thereupon such security so
48 registered may be sold by the issuer or by any registered dealer
49 who has notified the commissioner of his intention so to do,
50 in the manner hereinafter provided in section ten, subject,
51 however, to the further order of the commissioner as herein-
52 after provided.

53 Every issuer whose securities have been registered for sale

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54 under this section shall be subject to examination as to its
55 methods of business by the commissioner or by his duly author-
56 ized representative at any time the commissioner may deem it
57 advisable, and any applicant for registration shall be subject
58 to such examination. The expense of such examination shall
59 be paid by such applicant or issuer and the failure or refusal
60 of such applicant or issuer to pay such expense upon the de-
61 mand of the commissioner shall work a forfeiture of its right
62 to registration in this state. The representative of the auditor
62-a making such examination shall be a competent accountant
62-b regularly employed by the auditor at a stated salary, and
62-c the expense of the examination shall include the per diem of
62-d such representative, as fixed by the auditor, while actually
62-e engaged in making such examination and his actual traveling
62-f and hotel expenses, which per diem and expense shall be paid
62-g by the applicant or registered issuer.

63 Every registration under this section shall expire on the
64 thirteenth day of June in each year, but new registrations for
65 the succeeding year shall be issued upon written application,
66 and applicant shall pay to the commissioner a fee of one-

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67 twentieth of one per cent of the aggregate par value of the
68 securities to be sold in this state within the year authorized
69 by registration, but in no case shall the fee be less than twenty-
70 five dollars. Such application to be accompanied by any infor-
71 mation specifically required by the commissioner. Applications
72 for renewals must be made not less than thirty days before the
73 first day of the ensuing registration year, otherwise they shall
74 be treated as original applications.

75 Each different type, class, series or kind of securities not
76 exempt by sections three and four of this article shall require
77 separate registration and the same requirements and regulation
78 shall apply to each, and the registration fee paid by each. This
79 does not apply to a serial issue of securities where the entire
80 amount is issued at one time and where the only difference is
81 in the maturity or interest date.

82 Investment trust securities shall be registered separately as
83 herein provided, where there is any change or difference from
84 the registered security except the maturity date of the trust.

Sec. 8. Upon any application for registration by notification
2 under section six made by an issuer, and upon any application
3 for registration by qualification under section seven, whether

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4 made by an issuer or registered dealer, where the issuer is not
5 domiciled in this state, there shall be filed with such application
6 the irrevocable written consent of the issuer that suits and
7 actions growing out of the violation of any provision or pro-
8 visions of this chapter, may be commenced against it in the
9 proper court of any county in this state in which a cause of
10 action may arise or in which the plaintiff may reside, by the
11 service of any process or pleading authorized by the laws of
12 this state, on the commissioner of securities, and by the accept-
13 ance of such service of process by the commissioner for and
14 on behalf of such issuer, such consent stipulating and agree-
15 ing that such service of such process or pleading on such com-
16 missioner, or such acceptance by the commissioner, shall be
17 taken and held in all courts to be as valid and binding as if
18 due service had been made upon the issuer himself, and said
19 written consent shall be authenticated by the seal of said issuer,
20 if it has a seal, and by the acknowledged signature of a member
21 of the copartnership or company, or by the acknowledged
22 signature of any officer of the incorporated or unincorporated
23 association, if it be an incorporated or unincorporated associa-
24 tion, duly authorized by resolution of the board of directors,

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25 trustees or managers of the corporation or association, and
26 shall in such case be accompanied by a duly certified copy of
27 the resolution of the board of directors, trustees or managers
28 of the corporation or association, authorizing the officers to
29 execute the same, but no such process shall be served on the
30 commissioner or accepted by him less than ten days before the
31 return thereof. In case any process or pleadings mentioned
32 in this chapter are served upon the commissioner, or accepted
33 by him, it shall be by duplicate copies, one of which shall be
34 filed in the office of the commissioner and another immediately
35 forwarded by registered mail to the principal office of the issuer
36 against which such process or pleadings are directed.

Sec. 9. The commissioner may revoke the registration of
2 any security by entering an order to that effect, with his find-
3 ings in respect thereto, if upon examination into the affairs
4 of the issuer of such security and after reasonable notice and
5 hearing it shall appear that the issuer: (1) Is insolvent; or
6 (2) Has violated any of the provisions of this chapter or any
7 order of the commissioner of which such issuer has notice; or
8 (3) Has been or is engaged or is about to engage in fraudulent
9 transactions; or (4) Is in any other way dishonest or has made

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10 any fraudulent representations in any prospectus, or in any
11 circular or other literature that has been distributed concern-
12 ing the issuer or its securities; or (5) Is of bad business re-
13 pute; or (6) Does not conduct its business in accordance with
14 law; or (7) That its affairs are in an unsound condition; or
15 (8) That the enterprise or business of the issuer is not based
16 upon sound business principles. Pending the hearing the com-
17 missioner may order the suspension of the sale of the security:
18 *Provided*, That such order shall state the cause of such sus-
19 pension.

20 In making such examination the commissioner shall have
21 access to and may compel the production of all the books and
22 papers of such issuer, and may administer oaths to and examine
23 the officers of such issuer or any other person connected there-
24 with as to its business and affairs and may also require a
25 balance sheet exhibiting the assets and liabilities of any such
26 issuer or his income statement, or both, to be certified to by a
27 public accountant either of this state or of any other state
28 where the issuer's business is located, approved by the com-
29 missioner.

30 Whenever the commissioner may deem it necessary, he may

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35 If any issuee shall refuse to permit an examination to be
36 made by the commissioner, it shall be proper ground for can-
37 cellation of registration, and the commissioner may continue
38 such examination and investigation of issuee or issuer without
39 interference in order to determine as to whether such securities
40 have been sold in violation of the provisions of chapter thirty-
41 two of this code.

46 Notice of the entry of such order shall be given personally
47 or by telephone, telegraph, or mail to the issuer and every
48 registered dealer who shall have notified the commissioner of
49 an intention to sell such security.

50 It shall be the duty of the commissioner to require complete
51 information, or such as he deems necessary, from all issuers

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52 or dealers in regard to any security which is registered or
53 upon which there is application for registration either by notifi-
54 cation or by qualification, and such information or subsequent
55 information shall be filed in the offices of the commissioner and
56 shall be available for public inspection.

57 A copy of circular, pamphlet, form letter, advertisement, or
58 such form as is used or to be used in presenting to the public
59 securities registered or to be registered, or making sale, or
60 soliciting sales or purchases shall be filed with the commissioner
61 when application is made, or when such circular, pamphlet,
62 form letter, or such, is ready for distribution. The commissioner
63 shall have authority to require issuers and dealers using or to
64 use such circular, pamphlet, form letter, advertisement to make
65 any changes, any additions, or any eliminations he may deem
66 necessary for the protection of the public before any further
67 distribution or use of such, and may require such issuers or
68 dealers to distribute any additional or other circular, pamphlet,
69 form letter, advertisement, or such as the commissioner may
70 deem necessary to the same persons and in as careful and
71 particular manner as the original circular, pamphlet, form
72 letter, advertisement or such were distributed. Any person,

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73 issuer, dealer or salesman violating any of the provisions of
74 this section shall be guilty of a felony and may be punished
75 by a fine of not more than ten thousand dollars, or by imprison-
76 ment in the penitentiary for not more than five years, or
77 both.

Sec. 10. No dealer or salesman shall engage in business in
2 this state as such dealer or salesman or sell any securities, in-
3 cluding securities exempted in section three of this article, or
4 transact a brokerage or trading business or doing a business
5 of buying or selling securities listed or traded in on any stock
6 exchange, except in transactions exempt under section four of
7 this article, unless he has been registered as a dealer or sales-
8 man in the office of the commissioner pursuant to the provisions
9 of this section.

10 Every dealer before engaging in business in this state shall
11 file in the office of the commissioner an application for registra-
12 tion in writing in such form as the commission may prescribe,
13 duly verified by oath, which shall state the principal office of
14 the applicant, wherever situated, and the location of the
15 principal office and all branch offices in this state, if any, the
16 name or style of doing business, the names, residence and busi-

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17 ness addresses of all persons interested in the business as
18 principals, copartners, officers and directors, specifying as to
19 each his capacity and title, the general plan and character of
20 business and the length of time the dealer has been engaged in
21 business, and any other information required by the commis-
22 sioner in such detail as he may require. The commissioner
23 may also require such additional information as to applicant's
24 previous history, record and association, as he may deem
25 necessary to establish the good reputé in business of the
26 applicant.

27 Every dealer shall file with his application an irrevocable
28 written consent to the service of process upon the commis-
29 sioner of securities in action against such dealer in manner and
30 form as hereinabove provided in section eight of this article.

31 If the commissioner shall find that the applicant is of good
32 reputé and has complied with the provisions of this section in-
33 cluding the payment of the fee hereinafter provided he shall
34 register such applicant as a dealer.

35 Upon the written application of a registered dealer and
36 general satisfactory showing as to good character and the pay-
37 ment of the proper fee the commissioner shall register as sales-

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38 men of such dealer such natural persons as the dealer may
39 request.

40 The partners of a partnership and the executive officers of a
41 corporation or other association registered as a dealer may act
42 as salesmen during such time as such partnership, corporation
43 or association is so registered without further registration as
44 salesmen. The salesmen registered by a dealer may sell any
45 securities for which the dealer registering such salesman is
46 registered.

47 The names and addresses of all persons approved for regis-
48 tration as dealers or salesmen and all orders with respect
49 thereto shall be recorded in a register of dealers and salesmen
50 kept in the office of the commissioner, together with all infor-
51 mation and data secured by the commissioner relative to such
52 dealers or salesmen, which shall be open to public inspection.
53 Every registration under this section shall expire on the
54 thirtieth day of June in each year, but new registrations for
55 the succeeding year shall be issued upon written application
56 and upon payment of the fee as hereinafter provided, and by
57 filing of further statements or furnishing any further informa-
58 tion specifically required by the commissioner. Applications

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59 for renewals must be made not less than thirty days before the
60 first day of the ensuing year, otherwise they shall be treated as
61 original applications. The fee for such registration and for
62 each annual renewal shall be twenty-five dollars in the case of
63 dealers and five dollars in the case of salesmen.

64 Changes in registration occasioned by changes in personnel
65 of a partnership or in the principals, copartners, officers or
66 directors of any dealer may be made from time to time by
67 written application setting forth the facts with respect to such
68 change.

69 Every registered dealer may offer or sell any security of any
70 issue which is registered or to be registered or which is exempt
71 under the provisions of this act, but the responsibility shall
72 rest upon the dealer as to whether such security is exempt or
73 has been properly registered, or is to be registered, and such
74 dealer shall be guilty as provided by the provisions of this
75 article for the sale of any security which is not exempt under
76 the provisions of this act, or registration of which has been
77 revoked.

78 Every dealer registered under this section shall be subject to
79 examination as to his methods of business by the commissioner

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80 or by his duly authorized representative at any time the com-
81 missioner may deem it advisable, and such registered dealer
82 shall submit to such examination so that the commissioner may
83 determine whether there have been any transactions in viola-
84 tion of chapter thirty-two. The expense of the examination
85 shall be paid by the applicant and the failure or refusal of
86 such applicant to pay such expense upon the demand of the
87 commissioner shall work a forfeiture of his right to registra-
88 tion under this article. The representative of the auditor
88-a making such examination shall be a competent accountant
88-b regularly employed by the auditor at a stated salary, and the
88-c expense of the examination shall include the per diem of such
88-d representative, as fixed by the auditor, while actually engaged
88-e in making such examination and his actual traveling and
88-f hotel expenses, which per diem and expense shall be paid by
88-g the applicant or registered dealer.

89 No dealer or salesman shall make any sale or have any
90 dealings in securities with any employee or active official in
91 any bank, trust company or building and loan association
92 unless such dealer or salesman shall first secure the written

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93 approval for such sale or dealings with each individual or
94 active official, from the board of directors of the institution,
95 person or corporation by which the individual is employed.
96 Such written approval shall be required once each year be-
97 ginning July first. The board of directors of such institution
98 giving approval to an employee or official may require a de-
99 tailed statement as to dealings of such individual or official at
100 any time. This provision shall only include dealings by such
101 employee or official for his own account, or that of any member
102 of his family, and shall not apply to transactions for or in be-
103 half of the person or institution by which he is employed or to
104 transactions for any client, depositor or customer of such in-
105 stitution.

106 Any dealer or salesman violating the provisions of this sec-
107 tion, shall have his registration revoked by the commissioner,
108 and shall be liable to such bank, trust company or building and
109 loan association for any losses or damages incurred in any case
110 where such dealer or salesman failed to comply with this pro-
111 vision.

Sec. 11. Registration under section ten of this article may be
2 refused or any registration granted may be cancelled by the

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3 commissioner if after a reasonable notice and a hearing the
4 commissioner determines that such applicant or registrant so
5 registered: (1) Has violated any provisions of this chapter or
6 any regulation made hereunder; or (2) Has made a material
7 false statement in the application for registration; or (3) Has
8 been guilty of a fraudulent act in connection with any sale of
9 securities, or has been or is engaged or is about to engage in
10 making fictitious or pretended sales or purchases of any of such
11 securities or has been or is engaged or is about to engage in any
12 practice or sale of securities which is fraudulent or in violation
13 of the law; or (4) Has demonstrated his unworthiness to
14 transact the business of dealer or salesman.

15 Pending the hearing, the commissioner shall have the power
16 to order the suspension of such dealer's or salesman's license;
17 but such order shall state the cause of such suspension.

18 In the event the commissioner determines to refuse or cancel
19 a registration as hereinabove provided he shall enter a final
20 order herein with his findings on the register of dealers and
21 salesmen which shall be subject to public inspection.

22 It shall be sufficient cause for refusal or cancellation of regis-
23 tration in case of a partnership or corporation or any unin-

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24 corporated association if any member of a partnership or any
25 officer or director of the corporation or association has been
26 guilty of any act or omission which would be cause for refusing
27 or cancelling the registration of an individual dealer or sales-
28 man.

29 Any attempt by registered issuer or dealer to prevent the
30 commissioner from making a complete examination and investi-
31 gation of affairs of such registered issuer or dealer, or attempt
32 by such issuer or dealer to conceal or misrepresent details re-
33 garding such affairs as provided in section nine and section ten
34 of this article shall constitute a felony and upon conviction
35 thereof the issuer or dealer guilty of such felony shall be
36 punished by fine of not more than five thousand dollars or by
37 imprisonment in the penitentiary for not more than five years
38 or both such fine and imprisonment at the discretion of the
39 court.

40 Proper legal procedure upon any violations of any of the pro-
41 visions of this act shall be instigated by the commissioner by de-
42 mands for prosecution upon the prosecuting attorney in the
43 county in which such violation was committed, and if the com-
44 missioner shall not receive what in his judgment is necessary

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45 or sufficient cooperation from such official or officials, then he
46 may require such action to be brought and prosecution con-
47 tinued by the attorney general of West Virginia. In any case
48 the commissioner may request the assistance of both the prose-
49 cuting attorney and attorney general in prosecuting such viola-
50 tions.

Sec. 12. It will not be necessary to negative any of the
2 exemptions or classifications in this article provided in any
3 complaint, information, indictment or any other writ or pro-
4 ceedings laid or brought under this article and the burden of
5 proof of any such exemption shall be upon the party claiming
6 the benefit of such exemption or classification.

Sec. 13. If the statement containing information as to
2 securities, as provided for in section seven of this article, shall
3 disclose that any such securities shall have been or shall be in-
4 tended to be issued for any patent right, copyright, trade mark,
5 process, lease formulae or good will, or for promotion fees or
6 expenses or for other intangible assets, the amount and nature
7 thereof shall be fully set forth and the commissioner may re-
8 quire that such securities so issued in payment of such patent
9 right, copyright, trade mark, process, lease formulae or good

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10 will, or for promotion fees or expenses, or for other intangible
11 assets, shall be delivered in escrow to the commissioner under
12 an escrow agreement that the owners of such securities shall not
13 be entitled to withdraw such securities from escrow until all
14 other stockholders who have paid for their stock in cash shall
15 have been paid a dividend or dividends aggregating not less
16 than six per cent, shown to the satisfaction of said commissioner
17 to have been actually earned on the investment in any common
18 stock so held, and in case of dissolution or insolvency during the
19 time such securities are held in escrow, that the owners of such
20 securities shall not participate in the assets until after the
21 owners of all other securities shall have been paid in full. The
22 commissioner may require the owner of any securities placed in
23 escrow to enter into an agreement that he will not sell or other-
24 wise dispose of such securities during the time they are held in
25 escrow.

Sec. 14. Whenever it shall appear to the commissioner,
2 either upon complaint or otherwise, that in the issuance, sale,
3 promotion, negotiation, advertisement or distribution of any
4 securities within this state, including any security exempted
5 under the provisions of section three, or in any transaction ex-

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6 emptied under the provisions of section four, any person, as
7 defined in this article, shall have employed or employs, or is
8 about to employ any device, scheme or artifice to defraud or for
9 obtaining money or property by means of any false pretense,
10 representation or promise, or that any such person shall have
11 made, makes or attempts to make in this state fictitious or pre-
12 tended purchase or sales of securities or shall have engaged in
13 or engages in or is about to engage in any practice or trans-
14 action or course of business relating to the purchase or sale of
15 securities which is fraudulent or in violation of law and which
16 has operated or which would operate as a fraud upon the pur-
17 chaser, any one or all of which devices, schemes, artifices,
18 fictitious or pretended purchases or sales of securities, practices,
19 transactions and courses of business which are hereby declared
20 to be and are hereinafter referred to as fraudulent practices the
21 commissioner may investigate, and whenever he shall believe
22 from evidence satisfactory to him that any such person has en-
23 gaged in, is engaged or about to engage in any of the practices
24 or transactions heretofore referred to as and declared to be
25 fraudulent practices, he may in addition to any other remedies,
26 bring an action in the circuit court of Kanawha county in the

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27 name and on behalf of the state of West Virginia against such
28 person and any other person or persons heretofore concerned in
29 or in any way participating in or about to participate in such
30 fraudulent practices to enjoin such person, and such other per-
31 son or persons from continuing such fraudulent practices or
32 engaging therein or doing any act or acts in furtherance there-
33 of. In such action a judgment may be entered awarding such
34 injunction as may be proper. In no case shall the commissioner
35 incur any official or personal liability by instituting injunction
36 or other proceedings or by suspension, revocation or cancella-
37 tion of any registration under this article.

Sec. 15. Every sale or contract for sale made in violation
2 of any of the provisions of this article shall be voidable at
3 the election of the purchaser and the person making such sale
4 or contract for sale and every director, officer or agent of or for
5 such seller who shall have participated or aided in any way in
6 making such sale shall be jointly and severally liable to such
7 purchaser in an action at law in any court of competent juris-
8 diction upon tender to the seller of the securities sold or of the
9 contract made for the full amount paid by such purchaser, to-
10 gether with all taxable court costs and reasonable attorney's

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11 fees in any action or tender under this section: *Provided*, That
12 no action shall be brought for the recovery of the purchase
13 price after two years from the date of such sale or contract for
14 sale; and: *Provided further*, That no purchaser otherwise en-
15 titled shall claim or have the benefit of this section who shall
16 have refused or failed within a reasonable time to accept the
17 voluntary offer of the seller to take back the security in ques-
18 tion and to refund the full amount paid by such purchaser,
19 together with interest on such amount for the period from the
20 date of payment by such purchaser down to the date of repay-
21 ment such interest to be computed.

22 (a) In case such securities consist of interest bearing obli-
23 gations at the same rate as provided in such obligations;

24 (b) In case such securities consist of other than interest
25 bearing obligations at the rate of six percentum per annum;
26 less, in every case, the amount of any income from such securi-
27 ties that may have been received by such purchaser.

Sec. 16. An appeal may be taken by any person interested
2 from any final order of the commissioner to the circuit court
3 of Kanawha county by serving upon the commissioner within
4 twenty days after the date of the entry of such order a written

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5 notice of such appeal stating the grounds upon which a reversal
6 of such final order is sought, together with a demand in writing,
7 for a certified transcript of the record and of all papers on
8 file in his office affecting or relating to such order and by
9 executing a bond in the penal sum of five thousand dollars,
10 payable to the state of West Virginia with sufficient surety, to
11 be approved by the commissioner conditioned upon the faithful
12 prosecution of such appeal to final judgment, and the payment
13 of all costs which shall be adjudged against the appellant. There-
14 upon the commissioner shall within ten days make, certify and
15 deliver to the appellant such a transcript; and the appellant
16 shall within five days thereafter file the same and a copy of the
17 notice of appeal with the clerk of said court, which notice of
18 appeal shall stand as appellant's complaint and thereupon such
19 cause shall be entered on the trial calendar of said court for
20 trial de novo. The court shall receive and consider any perti-
21 nent evidence, whether oral or documentary, concerning the
22 order of the commissioner from which the appeal is taken. If
23 the order of the commissioner shall be reversed said court shall
24 by its mandate specifically direct said commissioner as to his
25 further action in the matter, including the making and entering

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26 of any order or orders in connection therewith, and the condi-
27 tions, limitations or restrictions to be therein contained:

28 *Provided*, That the commissioner shall not thereby be barred
29 from thereafter revoking or altering such order for any proper
30 cause which may thereafter arise or be discovered. If such

31 order shall be affirmed, said appellant shall not be barred after
32 thirty days from filing a new application provided such appli-

33 cation is not otherwise barred or limited. Such appeal shall
34 not in anywise suspend the operation of the order appealed from

35 during the pendency of such appeal unless upon proper order
36 of the court. An appeal may be taken from the judgment of

37 the said circuit court on any such appeal on the same terms and
38 conditions as an appeal is taken in civil actions.

Sec. 17. All fees herein provided for shall be collected by
2 the commissioner and shall be turned into the state treasury.

Sec. 18. Any person, issuer, dealer, salesman or agent, as
2 defined in section two of this article, or any or all of the
3 officers or agents thereof, alone or in conjunction with others,
4 having devised or intending to devise any scheme or artifice
5 to defraud any person or persons by or through the sale of any
6 securities, as defined in said section two, including securities

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7 exempted from registration under section three of this article
8 and including transactions exempt under section four of this
9 article, or through the sale of real estate situate outside of this
10 state, who shall, for the purpose of executing or attempting
11 to execute such scheme or artifice, commit any overt act within
12 this state shall be guilty of a felony, and upon conviction there-
13 of, shall be punished by a fine of not more than five thousand
14 dollars, or by imprisonment in the penitentiary for not more
15 than five years, or by both such fine and imprisonment, at the
16 discretion of the court.

17 An indictment under this section shall be sufficient if sub-
18 stantially as follows:

19 STATE OF WEST VIRGINIA,

20 COUNTY OF....., to-wit:

21 In the.....court of said county.

22 The grand jurors of the state of West Virginia in and for
23 the body of the county of....., and
24 now attending said court, upon their oaths present that
25as..... (issuer, dealer,
26 salesman, agent or officer, as the case may be), having devised
27 or intending to devise a scheme or artifice to defraud, by or

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28 through the sale of certain securities, to-wit, (set out the se-
29 curity or securities here as defined in section two of this act),
30 and who for the purpose of executing or intending to execute
31 such scheme or artifice to defraud, on the.....day of
32, 19...., and in the county of.....,
33 did unlawfully and feloniously induce.....
34 to subscribe and pay for.....shares of the capital
35 stock of....., at.....
36 dollars per share, making in all.....dollars
37 worth of stock for which the said.....
38 subscribed and paid, (or state briefly any other overt act com-
39 mitted in pursuance of such scheme or artifice to defraud).
40 Against the peace and dignity of the state.

Sec. 19. Any person, issuer, dealer, salesman or agent, as
2 defined in section two of this article, who shall, with intent
3 to induce the purchase of any securities, as defined in said sec-
4 tion two, including securities exempted from registration under
5 section three of this article and including transactions exempt
6 under section four of this article, or of any real estate situate
7 outside of this state, knowingly or recklessly make any false
8 statement, either oral or written, or knowingly or recklessly

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9 conceal any fact materially affecting the value of such securities,
10 or of such real estate, shall be guilty of a felony, and upon con-
11 viction thereof, shall be punished by a fine of not more than five
12 thousand dollars, or by imprisonment in the penitentiary for
13 not more than five years, or by both such fine and imprisonment,
14 at the discretion of the court.

Sec. 20. Any person signing any statement, list, inven-
2 tory, balance sheet or other paper or document required to be
3 verified or sworn to, knowing any representation therein con-
4 tained to be false or untrue (and the depositing of any such
5 statement or document in the office of the commissioner in con-
6 nection with any registration under this article, shall be deemed
7 prima facie evidence of knowledge of the falsity thereof or of
8 any representation therein contained, and of the wilfull sign-
9 ing of such statement or document), shall be guilty of false
10 swearing and shall be subject to the penalties prescribed by the
11 laws of this state therefor.

Sec. 21. Any person, issuer, dealer, salesman or agent who
2 shall sell or offer any securities without compliance with the
3 provisions of this article, shall be guilty of a felony and, upon
4 conviction thereof, shall be punished by a fine of not more than

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5 five thousand dollars, or by imprisonment in the county jail of
6 not more than five years, or by both such fine and imprison-
7 ment, at the discretion of the court.

Sec. 22. Any person or persons, violating any of the pro-
2 visions of this article, for which no specific penalty is pro-
3 vided, shall be guilty of a misdemeanor, and upon conviction
4 thereof shall be punished by a fine of not more than two thou-
5 sand dollars, or by imprisonment in the county jail for not more
6 than one year, or by both such fine and imprisonment, at the
7 discretion of the court.

ARTICLE 2.

Section 1. It is unlawful for any corporation which has is-
2 sued, or proposes to issue, any of its corporate securities of
3 any description whatsoever in payment for property, tangible
4 or intangible, of any nature and description whatsoever, or
5 for promotion purposes, or in payment for any services ren-
7 dered, or to be rendered, to such corporation, by any officer,
8 agent or employee, or for such officer, agent, broker or other
9 person for such corporation, or any person who has received
10 any securities for any such property, to sell, or to enter into
11 any contract, agreement or arrangement to sell, any of its shares

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12 of stock, or any of his shares of stock so acquired, in this state,
13 whether or not such securities are registered under the pro-
14 visions of article one of this chapter, unless it or he shall first
15 furnish and deliver to the person to whom it is proposed to make
16 any sale, a statement in writing showing specifically all such
17 property, tangible or intangible, which it has received, or pro-
18 poses to acquire, by issuing in payment therefor any of its
19 corporate securities, and the quantity and class of any securi-
20 ties which it has issued, or proposes to issue, in payment for
21 each item of such properties and the value of each item of such
22 properties; and for promotion purposes, and for services ren-
23 dered or to be rendered and the kind of services. Such state-
24 ment shall be sworn to by the president and treasurer of the
25 corporation: *Provided*, That printed copies of the original state-
26 ment may be used if the original statement be delivered to and
27 filed in the office of the commissioner of securities. If any such
28 statement be false in whole or in part, each person making affi-
29 davit to the same shall be guilty of false swearing and shall be
30 punished as in other cases of false swearing.

31 In addition to the penalties imposed by this chapter, or by
32 any other provision of law, each corporation, all of the directors

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33 thereof, and the officers, agents, employees and brokers making
34 or aiding in any sale for a corporation, in violation of the pro-
35 visions of this section, shall be liable jointly and severally to
36 the purchaser, and any person selling his securities in vio-
37 lation hereof shall be liable for the price for which such securi-
38 ties are sold, with interest thereon from the date of sale; and
39 any such purchaser may, within two years from the date of
40 purchase, recover from any or all of the persons so liable, the
41 amount with interest thereon, paid for such securities.

42 This section shall not apply to a corporation, or to the sale
43 of the securities thereof, which at the time has an established
44 business and which, during each of the two preceding years,
45 earned over and above all fixed charges a sum available for the
46 payment of dividends equal to at least five per cent of par of
47 all of its outstanding shares having a par value, and five per
48 cent of the amount at which its shares having no par value,
49 if any, are carried on its books.

Sec. 2. If any corporation issue and dispose of any of its
2 securities with or without par value, at or for a specified con-
3 sideration or price, it shall be unlawful for such corporation or
4 for any officer, agent, broker, or other person, on behalf of



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5 such corporation, thereafter, to sell any of its securities of the
6 same class or classes in this state, at or for a higher price,
7 unless it shall first furnish and deliver to the person to whom it
8 is proposed to make such sale a statement in writing showing
9 the quantity, class, date of issue and price or prices at which
10 its securities then outstanding were issued and disposed of,
11 which statement shall be sworn to by the president and treasurer
12 of the corporation: *Provided*, That printed copies of the
13 original statement may be used if the original statement be de-
14 livered to and filed in the office of the commissioner of securities.
15 In addition to the penalties imposed by this chapter or by
16 any other provision of law, each corporation, all of the directors
17 thereof, and the officers, agents and brokers making or aiding
18 in making any sale of securities in violation of this section, shall
19 be jointly and severally liable to the purchaser for the price for
20 which such securities are sold, with interest thereon from the
21 date of sale; and any such purchaser, may, within five years
22 from the date of purchase, recover from any or all of the per-
23 sons so liable, the amount, with interest thereon, paid for such
24 securities.

Sec. 3. It is unlawful for any person, partnership or cor-

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2 poration to sell or offer for sale, in this state, any lands situate
3 out of this state, which are to be planted in trees or vines or
4 divided into town or suburban lots, or any unimproved or un-
5 developed lands, the value of which materially depends on the
6 future performance of any stipulation or promise to furnish
7 irrigation, transportation facilities, streets, sidewalks, sewers.
8 gas, light or other value enhancing utility or improvement of
9 any undivided part or share, whether an aliquot part or a part
10 designated on any other basis, of any mine, mineral claim,
11 leasehold or other estate in any mine, mineral, oil or gas, or in
12 the lands containing the same, regardless of where located or
13 situated, the value of which materially depends on the future
14 discovery or development and production of the minerals, in-
15 cluding oil and gas, without first having filed with the commis-
16 sioner of securities a detailed description of the property which,
17 or an interest in or part of share of which, is proposed to be
18 sold, and such information with respect to the value thereof,
19 and the title to such property or properties as the commissioner
20 of securities shall require, and without causing such property to
21 be registered by the commissioner of securities in the manner
22 provided for registration of securities by qualification under

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23 article one of this chapter; and no person shall sell or offer any
24 such property for sale until he has been registered as a sales-
25 man by the commissioner of securities under the provisions for
26 registering dealers and salesmen of securities, contained in
27 article one of this chapter. All of the provisions contained in
28 article one of this chapter governing the registration of securi-
29 ties by qualification, and the registration of dealers and sales-
30 men, shall apply to the registration of properties and salesmen
31 under this section: *Provided*, That nothing herein shall pre-
32 vent any bona fide owner of any such land, mine, mining lease,
33 mineral claim, oil or gas rights, leasehold or other property, or
34 interest therein, from selling the same on his own account and
35 not as a part, or in furtherance, of any promotion.

Sec. 4. Any person or corporation who, with intent to sell or
2 in anywise dispose of merchandise, securities, service or any-
3 thing offered by such person or corporation, directly or in-
4 directly, to the public for sale or distribution, or with intent to
5 increase the consumption thereof, or to induce the public in any
6 manner to enter into any obligation relating thereto, or to
7 acquire title thereto, or any interest therein, makes, publishes,
8 disseminates, circulates, or places before the public, or causes,

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9 directly or indirectly, to be made, published, disseminated,
10 circulated, or placed before the public in this state, in a news-
11 paper or other publication, or in the form of a book, notice,
12 handbill, poster, blue print, map, bill, tag, label, circular,
13 pamphlet, or letter, or in any other way, an advertisement of
14 any sort regarding merchandise, securities, service, land, lot, or
15 anything so offered to the public, which advertisement contains
16 any promise, assertion, representation or statement of fact
17 which is untrue, deceptive or misleading, shall be guilty of a
18 misdemeanor, and, upon conviction thereof, be punished by a
19 fine of not more than two thousand dollars, or confined in jail
20 for a period of not more than six months, or by both such fine
21 and imprisonment.

Sec. 5. Any person or corporation who violates any provision
2 of this article, and any person aiding or abetting in such viola-
3 tion, for which a specific penalty is not otherwise provided, shall
4 be guilty of a misdemeanor, and, on conviction therefor, shall
5 be punished by a fine of not more than five thousand dollars, or
6 by confinement in jail for not more than one year.

Sec. 6. It is the duty of all sheriffs, deputy sheriffs, prose-
2 cuting attorneys, assistant prosecuting attorneys, justices,

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3 constables, officers, and employees of all state banking institu-
4 tions, and all persons in the employment of the state in any
5 capacity, to promptly report to the commissioner of securities
6 all information obtained by them, showing or tending to show
7 that any person or corporation is doing any act or engaging in
8 any business in violation of any of the provisions of this chap-
9 ter; and the commissioner of securities may pay the costs of
10 having any such information transmitted by telegraph or tele-
11 phone as a part of the expenses properly incurred in the ad-
12 ministration of this chapter.

Sec. 7. The fact that any security or property is registered
2 and/or any dealer or salesman is registered or licensed under
3 any provision of this chapter shall be no bar or defense to the
4 conviction and punishment of any person whether or not
5 registered for making any statement or doing any act or thing
6 which is in violation of, and punishable under, any other law of
7 the state.

8 No penalty or punishment prescribed in this chapter for any
9 violation of any provisions hereof is intended to be or shall be
10 in substitution for, or in lieu of, any other penalty or punish-
11 ment for such act prescribed by any other statute.

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Sec. 8. In any indictment for violation of any provision of
2 this chapter, it shall not be necessary to negative any exception
3 contained in any proviso or elsewhere, in this chapter. Any
4 person accused shall be deemed to have had knowledge of any
5 matter of fact when, by the exercise of reasonable diligence be-
6 fore the commissioner of the offense with which he is charged,
7 he could have secured such knowledge.

Sec. 9. If any word, sentence, clause, paragraph, section,
2 part or provision of this act shall be declared unconstitutional
3 or invalid or ineffective by any court or other authority of
4 competent jurisdiction and power, such declaration shall not
5 affect any other section, part or provision thereof.

Anna D. Ayres
Chairman Senate Committee.

Wm. H. Hines
Speaker of the House of Delegates

Geo. S. Hall
Clerk of the House of Delegates.

A. B. M. ...
President of the Senate.

David ...
Clerk of the Senate.

The within is.....

this.....day of....., 1933.

Filed in the office of the Secretary of State
of West Virginia. **MAY 29 1933**
Wm. S. O'BRIEN,
Secretary of State

Governor.

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James L. Smith
Chairman House Committee.