

11th

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

SENATE BILL No.

165

(By Mr.

Randolph)



PASSED

March 6

1935

In Effect

90 days from

Passage

165

ENROLLED
Senate Bill No. 165

(BY MR. RANDOLPH)

[Passed March 6, 1935 ; 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 by chapter forty-one, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, 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, as amended by chapter forty-one, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, be amended and reenacted to read as follows:

ARTICLE I.

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

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
6 of interest or participation in any profit sharing agreement,
7 interests or shares in a patent right, copyright, trade mark,
8 process or formula, collateral trust certificate, preorganization
9 certificate or subscription, investment contract, certificate or
10 share of or in an investment trust, certificate of deposit for
11 a security, voting trust certificate, share, subscription or cer-
12 tificate of interest in oil, gas or other mineral rights, lease-
13 holds, property or royalties, or any beneficial interest in
14 or title to property, trustee shares, investment participating
15 bonds and contracts covering or pertaining to the sale and/or
16 purchase of securities on the installment plan, or any interest

17 or instrument commonly known as a "security", or any cer-
18 tificate of interest or participation in, temporary or interim
19 certificate for, receipt for, guarantee of, or warrant or right
20 to subscribe to or purchase any of the foregoing;

21 (b) "Person" shall include a natural person, a corpor-
22 ation, created under the laws of this or any other state,
23 country, sovereignty, or political subdivision thereof, a part-
24 nership, an association, a syndicate, a joint stock company,
25 a trust and any unincorporated organization. As used herein
26 the term "trust" shall include only a trust where the interest
27 or interests of the beneficiary or beneficiaries are evidenced
28 by a security;

29 (c) "Sale" or "sell" shall include every contract of sale
30 or disposition of, attempt or offer to dispose of, or the solici-
31 tation of an offer to buy a security or interest in a security,
32 for value, including contracts and agreements whereby
33 securities are sold, traded or exchanged for money, property
34 and thing of value, or any transfer or agreement to transfer
35 in trust or otherwise. Any security given or delivered with,
36 or as a bonus on account of any purchase of securities or
37 any other things shall be conclusively presumed to constitute

38 a part of the subject of such purchase and to have been sold
39 for value. "Sale" or "sell" shall also include an exchange,
40 an attempt to sell, an option of sale, a solicitation of a sale,
41 a subscription or an offer to sell, directly or by an agent,
42 or by a circular, letter, advertisement or otherwise;

43 (d) "Dealer" shall include every person other than a
44 salesman who, in this state engaged either for all or part of
45 his time, directly or through an agent, in the business of
46 selling any securities issued by such person or another person
47 or purchasing, exchanging or otherwise acquiring such secu-
48 rities from another for the purpose of reselling them or offer-
49 ing them for sale to the public, or offering, buying, selling,
50 or otherwise dealing or trading in securities as agent or
51 principal for a commission or at a profit, or buying, selling
52 or otherwise dealing or trading in securities listed on any
53 exchange or in consummating any contract between buyer
54 or seller of securities, or who deals in futures or differences
55 in market quotations of prices or value of any securities or
56 accepts margins on purchases or sales of pretended purchases
57 or sales of such securities, and shall include any person, group
58 or committee acting for or agreeing or proposing to act for

59 or in the interest of any security-holders in connection with
60 or under the terms of or proposed terms of a plan, agree-
61 ment, indenture, contract, deposit or trustee arrangement for
62 a reorganization, capitalization or any other plan or proposal
63 for the readjustment of finances of a person: *Provided*, That
64 the word "dealer" shall not include a person having no place
65 of business in this state who sells or offers to sell securities
66 exclusively to brokers or dealers actually engaged in buying
67 and selling securities as a business, and shall not include a
68 bank or trust company dealing in securities for the benefit
69 of its clients or depositors, and when such bank or trust
70 company is not attempting to profit by such transactions but
71 it shall be permitted to charge a reasonable service fee or
72 reasonable commission only sufficient to cover the cost of pro-
73 viding such service;

74 (e) "Issuer" shall mean and include every person who
75 issues or proposes to issue any security. Any natural person
76 who acts as a promoter for and on behalf of a corporation,
77 trust or unincorporated association or partnership of any
78 kind to be formed shall be deemed to be an issuer;

79 (f) "Salesman" shall include every natural person, other

80 than a dealer, employed or appointed or authorized by a
81 dealer or issuer to sell securities in any manner in this state.
82 The partners of a partnership and the executive officers of
83 a corporation or unincorporated organization or association
84 registered as a dealer shall not be salesman within the meaning
85 of this definition, nor shall such clerical or other employees
86 of an issuer or dealer as are employed for work to which
87 sale of securities is secondary and incidental and for which
88 they receive no commission or salary: *Provided, however,* That
89 the commissioner shall have authority to require registration
90 of any partner, executive officer or employee herein above
91 exempted if he determines that protection of the public necessi-
92 tates such registration;

93 (g) "Agent" shall mean salesman as hereinabove defined;

94 (h) "Broker" shall mean dealer as hereinabove defined;

95 (i) "Commissioner" shall mean the commissioner of
96 securities;

97 (j) The term "prospectus" shall mean and include any
98 prospectus, notice, circular, advertisement, letter or communi-
99 cation written or by radio, which offers any security for sale
100 except that,

101 (1) A communication shall not be deemed a prospectus if
102 it is proved that prior to or at the same time with such com-
103 munication a written prospectus, meeting the requirements of
104 this act, was sent or given to the person to whom the com-
105 munication was made, by the person making such communi-
106 cation or his principal; and,

107 (2) A notice, circular, advertisement, letter or communica-
108 tion in respect of a security shall not be deemed to be a
109 prospectus, if it states from whom a written prospectus meet-
110 ing the requirements of this act may be obtained and in addi-
111 tion does no more than identify the security, state the price
112 thereof and state by whom orders will be executed.

Sec. 3. Except as hereinafter expressly provided, the pro-
2 visions of this chapter shall not apply to any of the following
3 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 Dis-
6 trict of Columbia, or by any state or political subdivision or
7 agency thereof;

8 (b) Any security issued by a national bank or by any
9 federal land bank or by a corporation created or acting as

10 an instrumentality of the government of the United States
11 pursuant to authority granted by the congress of the United
12 States, or any security issued by provisions of the federal
13 laws: *Provided*, That such corporation is subject to super-
14 vision or regulation by the government of the United States;

15 (c) Any security issued or guaranteed either as to principal,
16 interest or dividend by a corporation owning or operating a
17 railroad engaged in interstate commerce and under supervision
18 of the interstate commerce commission;

19 (d) Any security issued by a person organized and oper-
20 ated exclusively for educational, benevolent, fraternal, charit-
21 able or reformatory purposes and not for pecuniary profit, and
22 no part of the net earnings of which inures to the benefit of
23 any person, private stockholder or individual;

24 (e) Any security which has been regularly and continuously
25 listed on the New York stock exchange, the New York curb
26 exchange or the Chicago stock exchange for a period of not
27 less than two years: *Provided*, That the commissioner shall
28 have power and authority at any time to withdraw such exemp-
29 tion for any security or group of securities so listed, pending an
30 investigation and hearing on securities included in such order.

31 A date for hearing shall be set by the commissioner not more
32 than twenty days after such withdrawal order. The commis-
33 sioner, by ruling, may grant this same exemption to securities
34 listed on any other exchange following an application from
35 such exchange and after an investigation and examination has
36 been made by him. The expense of all hearings, investigations
37 and examinations shall be paid by the exchange making appli-
38 cation or receiving a hearing;

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

44 (g) Any insurance or endowment policy or annuity con-
45 tract or optional annuity contract, issued by a person licensed
46 and supervised by the insurance commissioner of this state;

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

52 *Provided*, That the issuer of such securities has continued
53 such payments of principal, interest or dividends as provided
54 at the time of original issue: *Provided further*, That no plan
55 or proposal of recapitalization, reorganization, rearrangement
56 of capitalization, or other form of readjustment of issuer's
57 finances, has been made or a petition of voluntary or involun-
58 tary bankruptcy has been filed in any court by or for such
59 issuer within the preceding period of three years;

60 (i) Any securities bought or sold upon customers' orders:
61 *Provided*, That such securities are bought or sold on an
62 exchange which, at the time of such transaction, is registered
63 as a national exchange by the securities and exchange commis-
64 sion: *Provided further*, That no solicitation is made of the
65 orders so executed.

Sec. 4. The provisions of this chapter shall not apply to any
2 of the following transactions:

3 (a) Any judicial, executor's, administrator's, guardian's or
4 conservator's sale or any sale by a receiver or trustee in in-
5 solvency or bankruptcy;

6 (b) An isolated transaction in which any security is sold
7 offered for sale, subscription or delivery by the owner thereof,

8 such sale or offer for sale, subscription or delivery not being
9 made in the course of repeated and successive transactions of
10 a like character by such owner;

11 (c) A sale upon a customer's order of any security, if
12 sale is made to a person outside this state: *Provided*, That
13 such sale in another state is not a violation of the securities
14 laws of that state;

15 (d) The distribution by a corporation actively engaged in
16 the business authorized by its charter, of capital stock, bonds
17 or other securities to its stockholders or its other security-
18 holders as a stock dividend or other distribution out of earn-
19 ings or surplus;

20 (e) The sale, transfer or delivery to any broker or dealer:
21 *Provided*, That such broker or dealer is actually engaged in
22 buying and selling securities as a business;

23 (f) Bonds or notes secured by mortgage upon real estate
24 where the entire mortgage together with all of the bonds or
25 notes secured thereby are sold to a single purchaser at a
26 single sale;

27 (g) The issue and delivery of any security in exchange
28 for any other security of the same issuer pursuant to a right

29 or conversion entitling the holder of the security surrendered
30 in exchange to make such conversion: *Provided*, That the
31 security so surrendered has been registered under the provisions
32 of this act or was, when sold, exempt through the provisions
33 of said act;

34 (h) Subscriptions to capital stock made by incorporators
35 in a West Virginia corporation, such incorporators not exceed-
36 ing five in number: *Provided*, No public offering is made or
37 commissions received for such subscriptions.

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
5 registered by qualification as hereinafter defined.

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

Sec. 6. All securities required by this article to be
2 registered before being sold in this state, shall be registered
3 only by qualification in the manner provided by this section.

4 The commissioner shall receive and act upon applications
5 to have securities registered by qualification, and may pre-
6 scribe forms on which he may require such application to be
7 submitted. Applications shall be in writing and shall be
8 duly signed by applicant and sworn to by any person having
9 knowledge of the facts, and filed in the office of the com-
10 missioner and may be made either by the issuer of the
11 securities for which registration is applied or by any registered
12 dealer desiring to sell the same within the state.

13 The commissioner may require the applicant to submit to
14 him the following information respecting the issuer or the
15 security or the person or persons obligated by such security,
16 and such other information as he may deem necessary to
17 enable him to ascertain whether such securities shall be
18 registered pursuant to the provisions of this section:

19 (a) The name under which the issuer is doing or intends
20 to do business;

21 (b) The name of the state or other sovereign power under
22 which the issuer is organized;

23 (c) The location of the issuer's principal business office,
24 and if the issuer is a foreign or territorial person, the name
25 and address of its agents in the United States authorized to
26 receive notices;

27 (d) The names and addresses of the directors or persons
28 performing similar functions, and the chief executive, financial
29 and accounting officers chosen or to be chosen if the issuer
30 be a corporation, association, trust or other entity, of all
31 partners, if the issuer be a partnership, and of the issuer,
32 if the issuer be an individual, and of the promoters in the
33 case of a business to be formed, or formed within two years
34 prior to the filing of the application;

35 (e) Names and addresses of the underwriters;

36 (f) The names and address of all persons, if any, owning
37 of record or beneficially, if known, more than ten per centum
38 of any class of stock of the issuer or more than ten per centum
39 in the aggregate of the outstanding stock of the issuer as of
40 a date within twenty days prior to the filing of the applica-
41 tion;

42 (g) The amount of securities of the issuer held by any
43 person specified in subsections (d), (e) and (f) of this
44 section, as of a date within twenty days prior to the filing
45 of the application, and, if possible, as of one year prior there-
46 to, and the amount of the securities, for which the applica-
47 tion is filed, to which such persons have indicated their in-
48 tention to subscribe;

49 (h) The general character of the business actually trans-
50 acted or to be transacted by the issuer;

51 (i) A statement of the capitalization of the issuer, includ-
52 ing the authorized and outstanding amounts of its capital
53 stock and the proportion thereof paid up, the number of
54 classes of shares in which such capital stock is divided, par
55 value thereof, or, if it has no par value, the stated or assigned
56 value thereof, a description of the respective voting rights,
57 preferences, conversion and exchange rights, rights to
58 dividends, profits, or capital of each class, with respect to
59 each other class, including the retirement and liquidation
60 rights or values thereof;

61 (j) A statement of the securities, if any, covered by

62 options outstanding or to be created in connection with the
63 securities to be offered;

64 (k) The amount of capital stock of each class issued or
65 included in the shares of stock to be offered;

66 (l) The amount of funded debt outstanding and to be
67 created by the securities to be offered and a description of
68 such;

69 (m) The specific purposes, in detail, and the approximate
70 amounts to be devoted to such purposes so far as determin-
71 able, for which the securities to be offered are to supply
72 funds, and if the funds are to be raised in part from other
73 sources the amounts thereof and the sources thereof shall be
74 stated;

75 (n) The remuneration, paid or estimated to be paid, by
76 the issuer or its predecessors, directly or indirectly during
77 the past year, and ensuing year, to all officers and directors
78 and to any other individuals if required by the commis-
79 sioner;

80 (o) The price at which it is proposed that the securities
81 shall be offered to the public or the methods by which such
82 price is computed and a detailed statement as to all com-

83 missions paid or to be paid, directly or indirectly, in respect
84 of the sale of the securities to be offered. Commissions shall
85 include all cash, securities, contracts or anything else of
86 value, paid, to be set aside, disposed of, or understandings
87 with or for the benefit of any person in connection with
88 the sale of such securities;

89 (p) The amount or estimated amounts, itemized in reason-
90 able detail, of all expenses other than commissions specified
91 in subsection (o) of this section;

92 (q) The amount paid within two years preceding the
93 filing of the application or intended to be paid to any pro-
94 moter and the consideration for any such payment;

95 (r) Full particulars of the nature and extent of the
96 interest, if any, of every director, principal executive officer,
97 and of every stockholder holding more than ten per centum
98 of any class of stock or more than ten per centum in the
99 aggregate of the stock of the issuer, in any property acquired,
100 not in the ordinary course of business of the issuer, within
101 two years preceding the filing of the application or proposed
102 to be acquired at such date;

103 (s) The dates of and parties to, and the general effect

104 concisely stated of every material contract made, not in the
105 ordinary course of business, which contract is to be executed
106 in whole or in part at or after the filing of the application
107 or which contract has been made not more than two years
108 before such filing;

109 (t) A detailed balance sheet as of a date not more than
110 ninety days prior to the date of the filing of the application,
111 and in the case of a new corporation or organization a pro
112 forma balance sheet shall be submitted showing what the
113 conditions of the company will be after the financing is com-
114 pleted and as of a date when the company begins business
115 as authorized by its charter. Additional details and infor-
116 mation regarding any item or items in the balance sheet shall
117 be submitted as prescribed by the commissioner. There shall
118 also be submitted a profit and loss statement of the issuer
119 showing earnings and income, the nature and source thereof,
120 and the expenses and fixed charges in such detail and such
121 form as the commissioner shall prescribe, giving an estimated
122 profit and loss statement for a new company or organiza-
123 tion;

124 (u) A copy of any agreement or agreements made or to

125 be made, including contracts or options effective at the time
126 of registration or at some future date if such are in con-
127 nection with, refer to or material to the sale of securities,
128 (no public disclosure shall be required of any portion of
129 any such contracts or agreements if the commissioner deter-
130 mines that the disclosure of such portion would impair the
131 value of the contract or agreement and would not be neces-
132 sary for the protection of the investors), a copy of the articles
133 of incorporation with all amendments thereof and of the
134 existing by-laws or instruments corresponding thereto, what-
135 ever the name, if the issuer be a corporation, a copy of all
136 instruments by which the trust is created or declared, if the
137 issuer is a trust, a copy of the articles of partnership or
138 association and all other papers pertaining to its organiza-
139 tion, if the issuer is a partnership, unincorporated associa-
140 tion, joint stock company, or any other form of organiza-
141 tion;

142 (v) A detailed statement prescribed by the commissioner
143 of all individuals who are officers, or who are employed as
144 promoters by the issuer, underwriter or dealer in securities;

145 (w) A copy of prospectus;

146 (x) Any other information as required and prescribed by
147 the commissioner as he may deem necessary and pertinent
148 in determining whether the applicant or issuer shall be
149 registered pursuant to the provisions of this section.

150 All of the statements, exhibits and documents of every
151 kind required by the commissioner under this section except
152 properly certified public documents, shall be verified by the
153 oath of the applicant or of the issuer in such manner and
154 form as may be prescribed by the commissioner.

155 The commissioner shall have power and authority to place
156 such conditions, limitations and restrictions on any registra-
157 tion as may be necessary to carry out the purposes of this
158 chapter.

159 The commissioner may require the use of a prospectus by
160 registered issuer and may require the printing therein of all
161 or any parts of the information required by this section to
162 be submitted with the application and may designate by
163 ruling how such prospectus may be used. Every prospectus
164 used, distributed or made available in this state must first
165 have the approval of the commissioner.

166 At the time of filing of application the applicant shall

167 pay to the commissioner one twentieth of one per cent of
168 the aggregate par value or offering price, whichever is
169 greater, of the securities to be sold in this state for which
170 the applicant is seeking registration, but in no case shall
171 such fees be less than twenty-five dollars, nor more than three
172 hundred dollars. In case of a stock having no par value,
173 the offering price to the public shall be deemed to be the
174 par value of such stock.

175 If, upon examination of any application, the commissioner
176 shall find that the sale of the security referred to therein
177 will not be fraudulent or will not work or tend to work a
178 fraud upon the purchaser, or that the enterprise or business
179 of the issuer is not based upon unsound business principles
180 and that it is in every respect equitable, just and fair to
181 the investor and after all provisions of this article have
182 been complied with, the commissioner shall record the regis-
183 tration of such security in the register of securities and
184 thereupon such security so registered may be sold by the
185 issuer or by any registered dealer who has notified the com-
186 missioner of his intention to do so, in the manner hereinafter

187 provided, subject, however, to the further order of the com-
188 missioner as hereinafter provided.

189 Every registration under this section shall expire on the
190 thirtieth day of June in each year, but new registrations
191 for the succeeding year shall be issued upon written appli-
192 cation, the applicant furnishing the commissioner, upon re-
193 quest, information as hereinbefore provided in this section,
194 and by paying to the commissioner a fee of one twentieth
195 of one per cent of the aggregate par value or offering price,
196 whichever is greater, of the securities to be sold in this state
197 within the year authorized by registration, but in no case
198 shall the fee be less than twenty-five dollars or more than
199 three hundred dollars. Applications for renewals must be
200 made not less than thirty days before the first day of the
201 ensuing registration year, otherwise they shall be treated as
202 original applications.

203 Each different type, class, series or kind of securities not
204 exempt by sections three and four of this article shall require
205 separate registration and the same requirements and regula-
206 tions shall apply to each, and the registration fee paid by
207 each. This does not apply to a serial issue of securities

208 where the entire amount is issued at one time and where
209 the only difference is in the maturity or interest date.

210 Investment trust securities shall be registered separately
211 as herein provided where there is any change or difference
212 from the registered security other than the maturity date of
213 the trust.

Sec. 7. Every issuer whose securities have been registered
2 for sale under section six of this article shall be subject to
3 examination as to its methods of business and examination of
4 its books and records by the commissioner or by his duly
5 authorized representative at any time the commissioner may
6 deem it advisable as a safeguard to investors, and any appli-
7 cant for registration shall also be subject to such examination.
8 The expense of such examination shall be paid by such appli-
9 cant or issuer and the failure or refusal of such applicant or
10 issuer to pay such expense upon the demand of the commis-
11 sioner shall work a forfeiture of its right to registration in
12 this state.

Sec. 8. The commissioner may limit the price at which
2 securities, to be registered under section six hereof, either of
3 par or no par value, may be sold, and may prescribe the amount

4 of commission to be allowed on such sales, but this in no
5 instance to exceed twenty per cent of the sale price, such per-
6 centage to include all expenses incidental to such sale including
7 advertising or any other expense chargeable in any way to the
8 sale of such securities.

Sec. 9. Upon any application for registration by qualifica-
2 tion, under section six hercof, made by an issuer or registered
3 dealer, where the issuer is not domiciled in this state, there
4 shall be filed with such application the irrevocable written
5 consent of the issuer that suits and actions growing out of
6 the violation of any provision or provisions of this chapter,
7 may be commenced against it in the proper court of any
8 county in this state in which a cause of action may arise or
9 in which the plaintiff may reside, by the service of any process
10 or pleading authorized by the laws of this state, on the com-
11 missioner of securities, and by the acceptance of such service
12 of process by the commissioner for and on behalf of such issuer,
13 such consent stipulating and agreeing that such service of
14 such process or pleading on such commissioner, or such accept-
15 ance by the commissioner, shall be taken and held in all courts
16 to be as valid and binding as if due service had been made

17 upon the issuer himself and said written consent shall be authen-
18 ticated by the seal of said issuer, if it has a seal, and by the
19 acknowledged signature of a member of the copartnership or
20 company, or by the acknowledged signature of any officer of
21 the incorporated or unincorporated association, duly authorized
22 by the resolution of the board of directors, trustees or managers
23 of the corporations or association, and shall in such case be
24 accompanied by a duly certified copy of the resolution of the
25 board of directors, trustees or managers of the corporation or
26 association, authorizing the officers to execute the same, but no
27 such process shall be served on the commissioner or accepted
28 by him less than ten days before the return thereof. In case
29 any process or pleadings mentioned in this chapter are served
30 upon the commissioner, or accepted by him, it shall be by dupli-
31 cate copies, one of which shall be filed in the office of the com-
32 missioner and another immediately forwarded by registered
33 mail to the principal office of the issuer against which such
34 process or pleadings are directed.

Sec. 10. 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 it shall appear that the issuer:
5 (1) Is insolvent; or (2) has violated any of the provisions of
6 this chapter or any order of the commissioner of which such
7 issuer has notice; or (3) has been or is engaged or is about
8 to engage in fraudulent transactions; or (4) is in any other
9 way dishonest or has made any fraudulent representations in
10 any prospectus, or in any circular or other literature that has
11 been distributed concerning the issuer or its securities; or
12 (5) is of bad business repute; or (6) does not conduct its
13 business in accordance with law; or (7) that its affairs are in
14 an unsound condition; or (8) that it would be detrimental to
15 the interests of investors or prospective investors of the issuer
16 to permit the continued sale of such securities already regis-
17 tered.

18 In making such examination the commissioner shall have
19 access to and may compel the production of all the books and
20 papers of such issuer, and he or his deputy commissioner may
21 administer oaths to and examine the officers of such issuer or
22 any other person connected therewith as to its business and
23 affairs, and may also require of such issuer any information or
24 exhibits provided for in section six of this article.

25 If any issuer shall refuse to permit an examination to be
26 made by the commissioner, it shall be proper ground for revo-
27 cation of registration.

28 The commissioner may enter an order suspending the right
29 to sell securities pending an investigation: *Provided*, That the
30 order shall state the commissioner's grounds for taking such
31 action.

32 Notice of the entry of such order shall be given personally
33 or by telephone, telegraph, or mail to the issuer and every
34 registered dealer who shall have notified the commissioner of
35 an intention to sell such security.

Sec. 11. Securities issued or to be issued to the security-
2 holders or creditors of any person in the process of a bona fide
3 reorganization, recapitalization, merger, rearrangement of
4 capitalization or any other plan or proposal for the readjust-
5 ment of finances of such person including such plans resulting
6 from receivership or bankruptcy of such person shall be
7 registered as provided by section six of this article.

8 Registration must be made prior to the time of solicitation
9 and prior to the offer or proposal of any plan, agreement, con-

10 tract, indenture, deposit or trustee arrangement to the security
11 holders or creditors of such person.

12 The commissioner may require for such registration, informa-
13 tion and exhibits as provided in section six hereof for the
14 person issuing or to issue the new securities and also the person
15 having securities to be included in or affected by any such new
16 issue or proposed issue. The commissioner may also require
17 information about or related to any plan, indenture, agreement,
18 contract, deposit or trustee arrangement offered or proposed
19 and the commissioner may require any changes to be made in
20 such plan, indenture, agreement, contract, deposit or trustee
21 arrangement as he deems necessary for the protection of the
22 interests of investors.

Sec. 12. No dealer or salesman shall engage in business
2 in this state as such dealer or salesman or sell any securities,
3 including securities exempted in section three of this article,
4 or transact a brokerage or trading business or doing a
5 business of buying or selling securities listed or traded in
6 on any stock exchange, except in transactions exempt under
7 section four of this article, unless he has been registered as

8 a dealer or salesman in the office of the commissioner pursuant
9 to the provisions of this section.

10 An application for registration as a dealer shall be filed
11 in writing with the commissioner, in such form as he may
12 prescribe, duly verified by oath, which shall state the prin-
13 cipal office of the applicant, wherever situated, and the loca-
14 tion of the principal office and all branch offices in this state,
15 if any, the name or style of doing business, the names,
16 residence and business addresses of all persons interested in
17 the business as principals, copartners, officers and directors,
18 specifying as to each his capacity and title, the general plan
19 and character of business and the length of time the dealer
20 has been engaged in business, a financial statement in detail
21 showing the actual conditions of the dealer, classification and
22 condition of all margin or installment accounts, partner,
23 officer and director accounts, a list of securities sold in
24 West Virginia during the preceding year and so far as
25 possible a list of those to be sold or offered for sale when
26 the registration is completed, and such information to be
27 given in such detail as the commissioner may require. The
28 commissioner may also require such additional information

29 as to the applicant's previous history, record and associa-
30 tion, as he may deem necessary to establish the good reput-
31 in business of the applicant.

32 Every dealer shall file with his application an irrevocable
33 written consent to the service of process upon the commissioner
34 of securities in action against such dealer in manner and
35 form as hereinabove provided in section nine of this article.

36 If the commissioner shall find that the applicant is of
37 good repute, is solvent and has complied with the provisions
38 of this section including the payment of the fee hereinafter
39 provided he shall register such applicant as a dealer.

40 Upon the written application of a registered dealer and
41 general satisfactory showing as to good character and the
42 payment of the proper fee the commissioner shall register
43 as salesman of such dealer such natural persons as the dealer
44 may request.

45 The partners of a partnership and the executive officers
46 of a corporation or other association registered as a dealer
47 may act as salesman during such time as such partnership,
48 corporation or association is so registered without further
49 registration as salesmen. The salesmen registered by a dealer

50 may sell any securities for which the dealer registering such
51 salesmen is registered.

52 The names and addresses of all persons approved for
53 registration as dealers or salesmen and all orders with respect
54 thereto shall be recorded in a register of dealers and sales-
55 men kept in the office of the commissioner, together with all
56 information and data secured by the commissioner relative
57 to such dealers or salesmen, which shall be open to public
58 inspection. Every registration under this section shall expire
59 on the thirtieth day of June in each year, but new registrations
60 for the succeeding years shall be issued upon written appli-
61 cation and upon payment of the fee as hereinafter provided,
62 and by filing of further statements or furnishing any further
63 information specifically required by the commissioner. Ap-
64 plications for renewals must be made not less than thirty
65 days before the first day of the ensuing year, otherwise they
66 shall be treated as original applications. The fee for such
67 registration and for each annual renewal shall be twenty-
68 five dollars for each dealer and five dollars for each salesman.
69 Changes in registration occasioned by changes in personnel
70 of a partnership or in the principals, copartners, officers

71 or directors of any dealer may be made from time to time
72 by written application setting forth the facts with respect to
73 such change.

74 Every dealer registered under this section shall be sub-
75 ject to examination as to his financial condition or methods
76 of business by the commissioner or by his duly authorized
77 representative at the time the commissioner may deem it
78 advisable, but not more than one such examination shall be
79 made within each fiscal year. The expense of the examination
80 shall be paid by the applicant and the failure or refusal of
81 such applicant to pay such expense upon the demand of the
82 commissioner shall work a forfeiture of his right to registra-
83 tion under this section.

84 Every dealer or salesman shall send a copy of all bills,
85 confirmations or orders on transactions with any employee or
86 active official of any bank, trust company or savings insti-
87 tution, to the president of the institution by which the per-
88 son is employed or in which the person is an official, and a
89 copy shall also be sent to the commissioner of banking of
90 the state of West Virginia. These copies of bills, confirma-
91 tions or orders shall be in the same form and detail as the

92 original and shall be sent at the same time as the original.

93 Any dealer or salesman violating the provisions of this para-

94 graph shall have his registration revoked by the commissioner

95 and shall be liable to such bank, trust company or savings

96 institution for any losses or damages incurred in any case

97 where such dealer or salesman failed to comply with this

98 provision.

99 This section shall not apply to a person or its agents selling

100 exclusively its own contracts, if such contracts are exempt

101 from this act by section three, paragraph (g) of this chapter.

102 This section shall not apply to an unincorporated person

103 selling exclusively undivided interests in oil, gas or other

104 mineral rights if such unincorporated person is the bona fide

105 owner of the lease, interest, royalty or property in which he

106 is selling interests.

Sec. 13. Registration under section twelve of this article

2 may be refused or any registration granted may be revoked by

3 the 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; (2) has made a material false

7 statement in the application for registration; (3) has been
8 guilty of a fraudulent act in connection with any sale of secu-
9 rities, or has been or is engaged or is about to engage in making
10 fictitious or pretended sales or purchases of any of such secu-
11 rities or has been or is engaged or is about to engage in any
12 practice or sales of securities which is fraudulent or in violation
13 of the law; (4) has demonstrated his unworthiness to transact
14 the business of dealer or salesman; (5) has been convicted of a
15 felony or any misdemeanor in which an essential element is
16 fraud; (6) has made any misrepresentations or false state-
17 ment to, or concealed any essential or material facts from any
18 person in the sale of a security to such person; (7) has failed
19 to account, to persons interested, for all money and property
20 received; (8) has not delivered, after a reasonable time, to
21 persons entitled thereto, securities held or agreed to be delivered
22 by the dealer or broker, as and when paid and due to be de-
23 livered; (9) has made or is making misrepresentation of any
24 essential or material fact to the commissioner or has violated
25 the provisions of the laws of foreign state regulating the sale
26 of securities therein; (10) is insolvent; (11) is selling, or
27 offering for sale securities through any solicitor and agent not

28 registered in compliance with the provisions of this act; (12)
29 has been refused a license in any state or that any license in
30 any state theretofore granted the applicant or registrant or
31 any officer, director, member, partner, manager or trustee
32 thereof has been cancelled, suspended, revoked or withdrawn
33 for fraudulent conduct or violation of the law of such state
34 regulating the sale of securities therein; (13) is or has been
35 using practices in the sale of securities that work or tend to
36 work a fraud; or (14) has refused to furnish or give pertinent
37 data concerning the business of such dealer or salesman to the
38 commissioner.

39 In cases of charges against the salesman notice thereof shall
40 also be given the dealer employing such salesman.

41 The commissioner shall immediately notify the dealer or
42 salesman his registration has been revoked, giving the reasons
43 therefor and set a date, not later than ten days following the
44 date of the revocation order, for a hearing and pending the
45 hearing the commissioner shall have the power to order the
46 suspension of such dealer's or salesman's registration, such re-
47 vocation is to become permanent twenty days following the
48 date of the original revocation order unless otherwise specified

49 or ordered by the commissioner. At the time that such revocation
50 order becomes permanent, the commissioner shall issue a final
51 order thereon and record with his findings in the register of
52 dealers and salesmen.

53 During the period of suspension and pending a hearing the
54 commissioner shall have access to and may make a thorough
55 examination of all books and papers of such dealer or salesman
56 and he or his deputy may administer oaths to and examine the
57 officer of such dealer or any other person connected therewith,
58 as to its business and affairs. If any dealer or salesman shall
59 refuse to permit such examination to be made by the commis-
60 sioner it shall be sufficient grounds for revocation of registra-
61 tion.

Sec. 14. The commissioner may make an examination, investi-
2 gation and audit of any dealer or salesman including dealer
3 and salesman whose registration has been suspended or revoked
4 and at the expense of such dealer or salesman. If, upon exami-
5 nation, it is found that the dealer is insolvent or if the records
6 are in such condition that the commissioner is unable to deter-
7 mine the financial condition of the dealer the commissioner
8 may ask the appointment of a receiver to safeguard the interests

9 of the public; the circuit court of Kanawha county or the
10 county in which such dealer has its principal place of business
11 shall have authority to appoint such receiver.

Sec. 15. It will not be necessary to negative any of the
2 exemptions in this article provided in any complaint, informa-
3 tion, indictment or any other writ or proceedings laid or
4 brought under this article and the burden of proof of any such
5 exemptions shall be upon the party claiming the benefit of such
6 exemption and any person claiming the right to register under
7 section six or section twelve, hereof, shall also have the burden
8 of proving the right to register.

Sec. 16. If the statement containing information as to
2 securities, as provided for in section six of this article, shall
3 disclose that any such securities shall have been or shall be
4 intended to be issued for any patent right, copyright, trade-
5 mark, process, lease, formula or good will, or for promotion
6 fees or expenses or for other intangible assets, the amount and
7 nature thereof shall be fully set forth and the commissioner
8 may require that such securities so issued in payment of such
9 patent right, copyright, trademark, process, lease, formula or
10 good will, or for promotion fees or expenses, or for other intan-

11 gible assets, shall be delivered in escrow to the commissioner un-
12 der an escrow agreement that the owners of such securities shall
13 not 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 than
16 six per cent, shown to the satisfaction of said commissioner to
17 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
23 in escrow to enter into an agreement that he will not sell or
24 otherwise dispose of such securities during the time they are
25 held in escrow.

Sec. 17. 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
6 exempted under the provisions of section four hereof, any

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

28 ginia against such person and any other person or persons
29 heretofore concerned in or in any way participating in or
30 about to participate in such fraudulent practices, to enjoin
31 such person, and such other person or persons from continuing
32 such fraudulent practices or engaging therein or doing any
33 act or acts in furtherance thereof. In such action a judgment
34 may be entered awarding such injunction as may be proper.
35 In no case shall the commissioner incur any official or personal
36 liability by instituting injunction or other proceedings or
37 issuing rules, orders or regulations or by suspension, revoca-
38 tion or cancellation of any registration under this chapter.

Sec. 18. 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
4 sale or contract for sale shall be liable to such purchaser in
5 an action at law in any court of competent jurisdiction upon
6 tender to the seller of the securities sold or of the contract
7 made for the full amount paid by such purchaser, together
8 with all taxable court costs and reasonable attorney's fees in
9 any action or tender under this section: *Provided*, That no
10 action shall be brought for the recovery of the purchase price

11 after one year from the date of such sale or contract for sale:
12 *Provided further*, That no purchaser otherwise entitled shall
13 claim or have the benefit of this section who shall have refused
14 or failed within thirty days from the date thereof to accept
15 a written offer of the seller to take back the security in ques-
16 tion and to refund the full amount paid by such purchaser,
17 together with interest on such amount for the period from the
18 date of payment by such purchaser down to the date of repay-
19 ment, such interest to be computed as follows:

- 20 (a) In case such securities consist of interest bearing
21 obligations, at the same rate as provided in such obligations;
22 (b) In case such securities consist of other than interest
23 bearing obligations, at the rate of six per centum per annum,
24 less, in every case, the amount of any income from such
25 securities that may have been received by such purchaser.

Sec. 19. Any person aggrieved by an order of the com-
2 missioner in a proceeding under this act to which such person
3 is a party may obtain a review of such order in the circuit
4 court of Kanawha county, West Virginia, by filing in such
5 court within thirty days after entry of such order a written
6 petition praying that the order of the commissioner be modified

7 or be set aside in whole or in part. A copy of such petition
8 shall be forthwith served upon the commissioner and there-
9 upon the commissioner shall certify and file in the court a
10 transcript of the record upon which the order complained of
11 was entered. No objection to the order of the commissioner
12 shall be considered by the court unless such objection shall
13 have been urged before the commissioner. The finding of the
14 commissioner as to the facts, if supported by evidence, shall
15 be conclusive. If either party shall apply to the court for
16 leave to adduce additional evidence and shall show to the
17 satisfaction of the court that such additional evidence is
18 material and that there were reasonable grounds for failure
19 to adduce such evidence in the hearing before the commis-
20 sioner, the court may order such additional evidence to be
21 taken before the commissioner and to be adduced upon the
22 hearing in such manner and upon such terms and conditions
23 as to the court may seem proper. The commissioner may
24 modify his findings, as to the facts, by reason of the additional
25 evidence so taken and he shall file such modified or new find-
26 ings, which, if supported by evidence, shall be conclusive and
27 his recommendations, if any, for the modification or setting

28 aside of the original order. The jurisdiction of the court
29 shall be exclusive and its judgment and decree, affirming,
30 modifying or setting aside, in whole or in part, any order of
31 the commissioner, shall be final, subject to an appeal from
32 the judgment of the said circuit court on the same terms and
33 conditions as an appeal is taken in civil actions. The com-
34 missioner shall not, by any court order be barred from there-
35 after revoking or altering such order for any proper cause
36 which may thereafter accrue or be discovered. If an order
37 of the commissioner shall be affirmed by the said circuit court
38 the person contesting such order shall not be barred after
39 thirty days from filing a new application provided such
40 application is not otherwise barred or limited.

41 The commencement of proceedings under this section shall
42 not, unless specifically ordered by the court, operate as a stay
43 of the commissioner's order.

Sec. 20. All fees herein provided for shall be collected by
2 the commissioner and shall be turned into the state treasury,
3 and the commissioner shall keep a record of the receipts and
4 expenditures incurred in carrying out the provisions of this
5 article.

Sec. 21. The commissioner shall have authority to make,
2 amend and rescind such rules and regulations as may be
3 necessary to carry out the provisions of this chapter and to
4 prescribe the form or forms in which required information
5 shall be set forth.

6 The securities commissioner shall have the power to make
7 any reasonable rules and regulations he may deem necessary
8 to cooperate effectively with the securities and exchange commis-
9 sion or any other agency of the United States government
10 which may have supervision or control over the sale of securities
11 in interstate commerce under any law of the United States,
12 now or hereafter enforced, and which are not or would not be
13 in conflict with the laws of this state.

Sec. 22. Neither the fact that the application for registra-
2 tion of a security or of a dealer has been filed or is in effect
3 nor the fact that a stop order or other order is not in effect
4 with respect thereto, shall be deemed a finding by the com-
5 missioner that the application and all exhibits and documents
6 filed therewith are true and accurate on their face or that
7 they do not contain an untrue statement of fact or omit to
8 state a material fact or be held to mean that the commissioner

9 has in any way passed upon the merits of or given approval
10 to such issuer or dealer. It shall be unlawful to make, or
11 cause to be made, to any prospective purchaser, any representa-
12 tion contrary to the foregoing provisions of this section.

Sec. 23. Any condition, stipulation or provisions binding
2 any person acquiring any security to waive compliance with
3 any provisions of this chapter or of the rules and regulations
4 of the commissioner shall be void.

Sec. 24. 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
6 any securities, as defined in said section two, including securities
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
10 this state, who shall, for the purpose of executing or attempt-
11 ing to execute such scheme or artifice, commit any overt act
12 within this state shall be guilty of a felony, and upon con-
13 viction thereof, shall be punished by a fine of not more than

14 five thousand dollars, or by imprisonment in the penitentiary
15 for not more than five years, or by both such fine and im-
16 prisonment, in the 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 now attending
24 said court, upon their oaths present that.....

25 as.....(Issuer, dealer, salesman, agent

26 or officer, as the case may be), having devised or intending

27 to devise a scheme or artifice to defraud, by or through the

28 sale of certain securities, to-wit, (set out the security or

29 securities here as defined in section two of this act), and

30 who for the purpose of executing or intending to execute such

31 scheme or artifice to defraud, on the.....day of.....

32 19....., and in the county of.....did unlaw-

33 fully and feloniously induce.....to subscribe

34 and pay for.....shares of the capital stock of

35at.....dollars per
36 share, making in all.....dollars worth of stock
37 for which the said.....subscribed and
38 paid, (or state briefly any other overt act committed in
39 pursuance of such scheme or artifice to defraud) against the
40 peace and dignity of the state.

Sec. 25. Any person, issuer, dealer, salesman or agent, as
2 defined in section two of this article, who shall, with intent to
3 induce the purchase of any securities, as defined in said section
4 two, including securities exempted from registration under sec-
5 tion 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
9 conceal any fact materially affecting the value of such secu-
10 rities, or of such real estate, shall be guilty of a felony, and
11 upon conviction thereof, shall be punished by a fine of not
12 more than five thousand dollars, or by imprisonment in the
13 penitentiary for not more than five years, or by both such fine
14 and imprisonment, in the discretion of the court.

Sec. 26. Any person signing any application form, state-

2 ment, exhibit or document required to be verified and sworn to,
3 knowing any representation therein contained to be false or
4 untrue (and the depositing of any such statement or document
5 in the office of the commissioner in connection with any regis-
6 tration under this chapter, shall be deemed *prima facie* evi-
7 dence of knowledge of the falsity thereof or of any representa-
8 tion therein contained, and of the willful signing of such state-
9 ment or document), shall be guilty of a felony and upon con-
10 viction thereof shall be punished by a fine of not more than
11 five thousand dollars or by imprisonment in the penitentiary
12 for not more than five years, or by both such fine and imprison-
13 ment in the discretion of the court.

Sec. 27. Any person subject to the provisions of this chapter,
2 who shall knowingly and with intent to evade the provisions of
3 this chapter, sell any securities within this state without com-
4 plying with the provisions of this chapter or who knowingly
5 and with intent to evade the provisions of this chapter continues
6 to sell, offer for sale or knowingly and with intent to evade
7 the provisions of this chapter after his registration has been
8 revoked or suspended, by the commissioner, or who shall other-
9 wise neglect or refuse to comply with any of the provisions of

10 this chapter, shall be guilty of a felony, and upon conviction
11 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 imprison-
14 ment, in the discretion of the court.

Sec. 28. This act may be cited as "The Act Regulating and
2 Supervising the Sale of Securities".

ARTICLE II.

Section 1. Any person, partnership or corporation shall not
2 sell or offer for sale, in this state, any lands, situate out of this
3 state, which are to be planted in trees or vines or divided into
4 town or suburban lots, or any unimproved or undeveloped lands,
5 or any lands, including cemetery lots, cemetery privileges, burial
6 rights or privileges, the value of which materially depends on
7 the future performance of any stipulation or promise to fur-
8 nish irrigation, transportation facilities, streets, sidewalks,
9 sewers, gas, light or other value enhancing utility or improve-
10 ment of any undivided part or share, whether an aliquot part
11 or a part designated on any other basis, of any mine, mineral
12 claim, or other estate in any mine, or in the lands containing
13 the same, regardless of where located or situated, the value of

14 which materially depends on the future discovery or develop-
15 ment and production of the minerals, without first having filed
16 with the commissioner of securities a detailed description of
17 the property which, or any interest or part of share of which,
18 is proposed to be sold, and such information with respect to
19 the value thereof, and the title to such property or properties
20 as the commissioner of securities shall require, and without
21 causing such property to be registered by the commissioner of
22 securities in the manner provided for registration of securities
23 by qualification under article one of this chapter; and no per-
24 son shall sell or offer any such property for sale until he has
25 been registered as a salesman by the commissioner of securities
26 under the provisions for registering dealers and salesmen of
27 securities, contained in article one of this chapter. All of the
28 provisions contained in article one of this chapter governing
29 the registration of securities by qualification, and the registra-
30 tion of dealers and salesmen, and penalties provided therein,
31 shall apply to the registration of properties and salesmen under
32 this section: *Provided*, That nothing herein shall prevent any
33 bona fide owner of any such land, mine, mining lease, mineral
34 claim, or other property, or interest therein, from selling the

35 same on his own account and not as a part, or in furtherance,
36 of any promotion or development to the public.

Sec. 2. Any person or corporation who, with intent to sell
2 or in any wise dispose of merchandise, securities, service or
3 anything offered by such person or corporation, directly or
4 indirectly, to the public for sale or distribution, or with intent
5 to increase the consumption thereof, or to induce the public in
6 any manner to enter into any obligation relating thereto, or
7 to acquire title thereto, or any interest therein, makes, publishes,
8 disseminates, circulates, or places before the public, or causes,
9 directly or indirectly, to be made, published, disseminated, cir-
10 culated, 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,
15 or anything so offered to the public, which advertisement con-
16 tains any promise, assertion, representation or statement of
17 fact which is untrue, deceptive or misleading, shall be guilty of
18 a 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. 3. 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
6 before the commissioner of the offense with which he is charged,
7 he could have secured such knowledge.

Sec. 4. If any word, sentence, clause, paragraph, section,
2 part or provisions 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 hereof.

I certify that the foregoing act,
having been presented to the Governor for
his approval, and not having been returned
by him to the House of the Legislature in
which it originated within the time pre-
scribed by the constitution of the state, has
become a law without his approval.

This the 15th day of March,
1935.


SECRETARY OF STATE

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

Clinton F. Woodward
 Chairman Senate Committee

Paul M. Vickers
 Chairman House Committee

Originated in the *Senate*

Takes effect *from* passage.

Shirley M. ...
 Clerk of the Senate

W. S. Hall
 Clerk of the House of Delegates

Charles E. Hoyle
 President of the Senate

John J. ...
 Speaker House of Delegates

The within.....this the.....

day of....., 1935.

 Governor

Filed in the office of the Secretary of State
 of West Virginia. **MAR 15 1935**
 Wm. S. O'BRIEN,
 Secretary of State