

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



## ENROLLED

SENATE BILL No. 220

(By Mr. Lane)



PASSED March, 8, 1947

In Effect from Passage



220

**ENROLLED**  
**Senate Bill No. 220**  
(By MR. LOVE)

[Passed March 8, 1947; in effect from passage.]

AN ACT to amend and reenact sections three, four and nine, article one, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of securities exclusive of securities and transactions therefrom and service of process on nonresident applicants.

*Be it enacted by the Legislature of West Virginia:*

That sections three, four and nine, article one, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Securities Not Included.*—Except as herein-  
2 after expressly provided, the provisions of this chapter  
3 shall not apply to any of the following classes of securities:  
4 (a) Any security issued or guaranteed by the United

5 States or any territory or insular possession thereof, or  
6 by the District of Columbia, or by any state or political  
7 subdivision or 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  
10 as an instrumentality of the government of the United  
11 States pursuant to authority granted by the congress of  
12 the United States, or any security issued by provisions of  
13 the federal laws: *Provided*, That such corporation is sub-  
14 ject to supervision or regulation by the government of  
15 the United States;

16 (c) Any security issued or guaranteed either as to  
17 principal, interest or dividend by a corporation owning  
18 or operating a railroad engaged in interstate commerce  
19 and under supervision of the Interstate Commerce Com-  
20 mission; any security issued or guaranteed either as to  
21 principal, interest or dividend by a corporation owning  
22 or operating any public service utility other than a rail-  
23 road, provided the issuance of such security is supervised  
24 or regulated by a public commission, board or officer of  
25 the Government of the United States or of any state,

26 territory or insular possession of the United States or of  
27 the District of Columbia or of the Dominion of Canada  
28 or any province thereof; and any equipment security  
29 based on chattel mortgages, leases or agreements for con-  
30 ditional sale of cars, motive power or other rolling stock  
31 or equipment mortgaged, leased or sold to or furnished  
32 for the use of or upon a railroad or other public service  
33 utility corporation, or equipment securities where the  
34 ownership or title of such equipment is pledged or re-  
35 tained in accordance with the provisions of the laws of  
36 the United States or of any state, or of the Dominion of  
37 Canada, to secure the payment of such equipment secu-  
38 rities;

39 (d) Any security issued by a person organized and  
40 operated exclusively for educational, benevolent, frater-  
41 nal, charitable or reformatory purposes and not for  
42 pecuniary profit, and no part of the net earnings of which  
43 inures to the benefit of any person, private stockholder or  
44 individual;

45 (e) Any security which, at the time of the sale, is listed  
46 on the New York Stock Exchange, the New York Curb

47 Exchange or the Chicago Stock Exchange, pursuant to  
48 authorization by any such exchange, and additional  
49 amounts of any such securities when regularly approved  
50 for listing upon the issuance thereof, and securities senior  
51 to the securities so listed: *Provided*, That the commis-  
52 sioner shall have power and authority at any time to  
53 withdraw such exemption for any security or group of  
54 securities so listed, pending an investigation and hearing  
55 on securities included in such order. A date for hearing  
56 shall be set by the commissioner not more than twenty  
57 days after such withdrawal order. The commissioner, by  
58 ruling, may grant this same exemption to securities listed  
59 on any other exchange following an application from such  
60 exchange and after an investigation and examination has  
61 been made by him. The expense of all hearings, investiga-  
62 tions and examinations shall be paid by the exchange  
63 making application or receiving a hearing;

64 (f) Any security issued by a state bank, trust com-  
65 pany, building and loan association or savings institution,  
66 incorporated under the laws of and subject to the exami-  
67 nation, supervision and control of any state or territory

68 of the United States or any insular possession thereof;

69 (g) Any insurance or endowment policy or annuity  
70 contract or optional annuity contract, issued by a person  
71 licensed and supervised by the insurance commissioner  
72 of this state;

73 (h) Any security other than common stock outstand-  
74 ing and in the hands of the public for a period of not less  
75 than three years upon which no default in payment of  
76 principal, interest or dividend exists and upon which no  
77 such default has occurred for a continuous immediately  
78 preceding period of three years: *Provided*, That the issuer  
79 of such securities has continued such payments of prin-  
80 cipal, interest or dividends as provided at the time of  
81 original issue: *Provided further*, That no plan or pro-  
82 posal of recapitalization, reorganization, rearrangement of  
83 capitalization, or other form of readjustment of issuer's  
84 finances, has been made or a petition of voluntary or  
85 involuntary bankruptcy has been filed in any court by  
86 or for such issuer within the preceding period of three  
87 years;

88 (i) Any securities bought or sold upon customers'

89 orders: *Provided*, That such securities are bought or sold  
90 on an exchange which, at the time of such transaction, is  
91 registered as a national exchange by the securities and  
92 exchange commission: *Provided further*, That no solici-  
93 tation is made of the orders so executed.

94 (j) Any note, draft, bill of exchange or bankers ac-  
95 ceptance which arises out of a current transaction or the  
96 proceeds of which have been or are to be used for a  
97 current transaction, is not the subject of a public offering,  
98 has at the time of issuance a definite maturity (after all  
99 days of grace, if any) of not exceeding one year, is pay-  
100 able in cash only, and is not convertible into and does  
101 not carry an option or right to receive payment or any  
102 bonus in any other security.

Sec. 4. *Transactions Not Included*.—The provisions of  
2 this chapter shall not apply to any of the following trans-  
3 actions:

4 (a) Any judicial, sheriff's, constable's, executor's, ad-  
5 ministrator's, guardian's or conservator's sale or any sale  
6 by a receiver or trustee in insolvency or bankruptcy, or  
7 the sale by a pledgee, in good faith and in ordinary course

8 of business and not for the purpose of evading any pro-  
9 vision of this chapter, of a security pledged for a bona  
10 fide debt;

11 (b) An isolated transaction in which any security is  
12 sold, offered for sale, subscription or delivery by the  
13 owner thereof, such sale or offer for sale, subscription or  
14 delivery not being made in the course of repeated and  
15 successive transactions of a like character by such owner;

16 (c) A sale upon a customer's order of any security, if  
17 sale is made to a person outside this state: *Provided*, That  
18 such sale in another state is not a violation of the secu-  
19 rities laws of that state;

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

25 (e) The sale, transfer or delivery to any bank, savings  
26 institution, trust company, insurance company or to any  
27 broker or dealer: *Provided*, That such broker or dealer



28 is actually engaged in buying and selling securities as a  
29 business;

30 (f) Bonds or notes or other obligations secured by  
31 mortgage, deed of trust, or other lien upon property,  
32 where the entire lien together with all of the bonds or  
33 notes secured thereby is sold to a single purchaser at a  
34 single sale or where the lien is given or incurred to secure  
35 the payment of unpaid purchase money;

36 (g) The issue and delivery of any security in exchange  
37 for any other security of the same issuer pursuant to a  
38 right of conversion entitling the holder of the security  
39 surrendered in exchange to make such conversion: *Pro-*  
40 *vided*, That the security so surrendered has been regis-  
41 tered under the provisions of this chapter or was, when  
42 sold, exempt through the provisions of said chapter;

43 (h) The sale by a domestic corporation of its securi-  
44 ties if the aggregate number of holders of all its securities,  
45 after the securities to be issued are sold, does not exceed  
46 fifteen, and no commission, profit or other compensation  
47 is or has been paid for the sale of any securities of such  
48 corporation, and the total organization and promotion

49 expense in connection with the issue of all securities of  
50 such corporation, exclusive of statutory fees, does not  
51 exceed three per cent of the aggregate sale price of all  
52 such securities or two hundred fifty dollars, which ever  
53 is greater;

54 (i) The transfer or exchange by one corporation to  
55 another corporation of its own securities in connection  
56 with a consolidation or merger of such corporations;

57 (j) The solicitation or execution by a registered dealer  
58 of orders for the purchase of any security, provided such  
59 dealer acts as agent for the purchaser, has no direct  
60 material interest in the sale or distribution of such secu-  
61 rity, receives no commission, profit or other compensa-  
62 tion from any source other than the purchaser, and  
63 delivers to the purchaser written confirmation of the  
64 transaction which clearly itemizes his commission, profit  
65 or other compensation.

Sec. 9. *Consent to Service of Process.*—Upon any ap-  
2 plication for registration by qualification, under section  
3 six hereof, where the applicant is not domiciled in this  
4 state, there shall be filed with such application the irrevoc-

5 cable written consent of the applicant that suits and ac-  
6 tion growing out of the violation of any provision or provi-  
7 sions of this chapter, may be commenced against such  
8 applicant in the proper court of any county in this state  
9 in which a cause of action may arise or in which the  
10 plaintiff may reside, by the service of any process or  
11 pleading authorized by the laws of this state, on the com-  
12 missioner of securities, and by the acceptance of such  
13 service of process by the commissioner for and on behalf  
14 of such applicant, such consent stipulating and agreeing  
15 that such service of such process or pleading on such com-  
16 missioner, or such acceptance by the commissioner, shall  
17 be taken and held in all courts to be as valid and binding  
18 as if due service had been made upon the applicant itself  
19 and said written consent shall be authenticated by the  
20 seal of said applicant, if it has a seal, and by the acknowl-  
21 edged signature of a member of the copartnership or com-  
22 pany, or by the acknowledged signature of any officer  
23 of the incorporated or unincorporated association, duly  
24 authorized by the resolution of the board of directors,  
25 trustees or managers of the corporation or association,

26 and shall in such case be accompanied by a duly certified  
27 copy of the resolution of the board of directors, trustees  
28 or managers of the corporation or association, authorizing  
29 the officers to execute the same, but no such process shall  
30 be served on the commissioner or accepted by him less  
31 than ten days before the return day thereof. In case any  
32 process or pleadings mentioned in this chapter are served  
33 upon the commissioner, or accepted by him, it shall be  
34 by duplicate copies, one of which shall be filed in the  
35 office of the commissioner and another immediately for-  
36 warded by registered mail to the principal office of the  
37 applicant against which such process or pleadings are  
38 directed: *Provided, however,* that the commissioner, in  
39 cases where, in his opinion, the facts warrant it, may  
40 require the issuer thereof to file the written consent of  
41 such issuer to service of process as aforesaid upon it in  
42 like manner as hereinbefore provided in respect of an  
43 applicant for registration.

44 All acts or parts of acts in conflict or inconsistent here-  
45 with are hereby repealed.

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

Forest L. McNear  
Chairman Senate Committee

R. L. Matthews  
Chairman House Committee

Originated in the Senate

Takes effect from passage.

Howard Myers  
Clerk of the Senate

J. R. Clapp  
Clerk of the House of Delegates

Arnold M. Vickers  
President of the Senate

John E. Amos  
Speaker House of Delegates

The within Approved this the 13  
day of March, 1947.

Clarence M. Moore  
Governor.



Filed in the Office of the Secretary of State  
of West Virginia  
MAR 13 1947  
WM. S. C'BRICK,  
SECRETARY OF STATE