WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 220

(By Mr. ]

PASSED March 8, 1947

In Effect from Passage
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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
States or any territory or insular possession thereof, or by the District of Columbia, or by any state or political subdivision or agency thereof;

(b) Any security issued by a national bank or by any federal land bank or by a corporation created or acting as an instrumentality of the government of the United States pursuant to authority granted by the congress of the United States, or any security issued by provisions of the federal laws: Provided, That such corporation is subject to supervision or regulation by the government of the United States;

c) Any security issued or guaranteed either as to principal, interest or dividend by a corporation owning or operating a railroad engaged in interstate commerce and under supervision of the Interstate Commerce Commission; any security issued or guaranteed either as to principal, interest or dividend by a corporation owning or operating any public service utility other than a railroad, provided the issuance of such security is supervised or regulated by a public commission, board or officer of the Government of the United States or of any state,
territory or insular possession of the United States or of the District of Columbia or of the Dominion of Canada or any province thereof; and any equipment security based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock or equipment mortgaged, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, or equipment securities where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state, or of the Dominion of Canada, to secure the payment of such equipment securities;

(d) Any security issued by a person organized and operated exclusively for educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(e) Any security which, at the time of the sale, is listed on the New York Stock Exchange, the New York Curb
Exchange or the Chicago Stock Exchange, pursuant to authorization by any such exchange, and additional amounts of any such securities when regularly approved for listing upon the issuance thereof, and securities senior to the securities so listed: Provided, That the commissioner shall have power and authority at any time to withdraw such exemption for any security or group of securities so listed, pending an investigation and hearing on securities included in such order. A date for hearing shall be set by the commissioner not more than twenty days after such withdrawal order. The commissioner, by ruling, may grant this same exemption to securities listed on any other exchange following an application from such exchange and after an investigation and examination has been made by him. The expense of all hearings, investigations and examinations shall be paid by the exchange making application or receiving a hearing;

(f) Any security issued by a state bank, trust company, building and loan association or savings institution, incorporated under the laws of and subject to the examination, supervision and control of any state or territory
of the United States or any insular possession thereof;

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

(h) Any security other than common stock outstanding and in the hands of the public for a period of not less than three years upon which no default in payment of principal, interest or dividend exists and upon which no such default has occurred for a continuous immediately preceding period of three years: Provided, That the issuer of such securities has continued such payments of principal, interest or dividends as provided at the time of original issue: Provided further, That no plan or proposal of recapitalization, reorganization, rearrangement of capitalization, or other form of readjustment of issuer's finances, has been made or a petition of voluntary or involuntary bankruptcy has been filed in any court by or for such issuer within the preceding period of three years;

(i) Any securities bought or sold upon customers'
orders: Provided, That such securities are bought or sold on an exchange which, at the time of such transaction, is registered as a national exchange by the securities and exchange commission: Provided further, That no solicitation is made of the orders so executed.

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

Sec. 4. Transactions Not Included.—The provisions of this chapter shall not apply to any of the following transactions:

(a) Any judicial, sheriff's, constable's, executor's, administrator's, guardian's or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy, or the sale by a pledgee, in good faith and in ordinary course
of business and not for the purpose of evading any provision of this chapter, of a security pledged for a bona fide debt;

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

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

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

e) The sale, transfer or delivery to any bank, savings institution, trust company, insurance company or to any broker or dealer: Provided, That such broker or dealer
is actually engaged in buying and selling securities as a business;

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

(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion: Provided, That the security so surrendered has been registered under the provisions of this chapter or was, when sold, exempt through the provisions of said chapter;

(h) The sale by a domestic corporation of its securities if the aggregate number of holders of all its securities, after the securities to be issued are sold, does not exceed fifteen, and no commission, profit or other compensation is or has been paid for the sale of any securities of such corporation, and the total organization and promotion
expense in connection with the issue of all securities of such corporation, exclusive of statutory fees, does not exceed three per cent of the aggregate sale price of all such securities or two hundred fifty dollars, which ever is greater;

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

(j) The solicitation or execution by a registered dealer of orders for the purchase of any security, provided such dealer acts as agent for the purchaser, has no direct material interest in the sale or distribution of such security, receives no commission, profit or other compensation from any source other than the purchaser, and delivers to the purchaser written confirmation of the transaction which clearly itemizes his commission, profit or other compensation.

Sec. 9. Consent to Service of Process.—Upon any application for registration by qualification, under section six hereof, where the applicant is not domiciled in this state, there shall be filed with such application the irrevo-
cable written consent of the applicant that suits and action growing out of the violation of any provision or provisions of this chapter, may be commenced against such applicant in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on the commissioner of securities, and by the acceptance of such service of process by the commissioner for and on behalf of such applicant, such consent stipulating and agreeing that such service of such process or pleading on such commissioner, or such acceptance by the commissioner, shall be taken and held in all courts to be as valid and binding as if due service had been made upon the applicant itself and said written consent shall be authenticated by the seal of said applicant, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, duly authorized by the resolution of the board of directors, trustees or managers of the corporation or association,
and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association, authorizing the officers to execute the same, but no such process shall be served on the commissioner or accepted by him less than ten days before the return day thereof. In case any process or pleadings mentioned in this chapter are served upon the commissioner, or accepted by him, it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by registered mail to the principal office of the applicant against which such process or pleadings are directed: Provided, however, that the commissioner, in cases where, in his opinion, the facts warrant it, may require the issuer thereof to file the written consent of such issuer to service of process as aforesaid upon it in like manner as hereinbefore provided in respect of an applicant for registration.

All acts or parts of acts in conflict or inconsistent herewith are hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McSerley
Chairman Senate Committee

R. J. Matthews
Chairman House Committee

Originated in the Senate

Takes effect from passage.

Howard Higer
Clerk of the Senate

J. B. Phillips
Clerk of the House of Delegates

Arnold M. Vickery
President of the Senate

John C. Amos
Speaker House of Delegates

The within approved this the 13th day of March, 1947.

Governor

Filed in the Office of the Secretary of State
of West Virginia

WM. S. O'Brien
SECRETARY OF STATE