

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

## ENROLLED

HOUSE BILL No. 418

(By Mr. Spencer, Mr. Singleton)

PASSED March 6, 1963

In Effect July 1, 1963. Passage



Filed in Office of the Secretary of State  
of West Virginia 3-16-63

JOE F. BURDETT  
SECRETARY OF STATE

#418

**ENROLLED**

**House Bill No. 418**

(By MR. SPEAKER, MR. SINGLETON)

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AN ACT to amend and reenact sections five, six, eight, twelve and twenty-eight, article one, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto a new section, designated section twenty-nine, all relating to registration of securities.

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

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

**Article 32. Speculative Securities and Fraudulent Sales.**

**Section 5. When Sales Unlawful.**—No securities except  
2 of a class exempt under a provision of section three hereof  
3 or unless sold in any transaction exempt under a pro-  
4 vision of section four hereof shall be sold within this  
5 state unless such securities shall have been registered by  
6 qualification as hereinafter defined or the sale thereof  
7 authorized under section twenty-eight of this article.

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

**Sec. 6. Securities Registered by Qualification.**—All se-  
2 curities required by this article to be registered before  
3 being sold in this state, shall be registered only by quali-  
4 fication in the manner provided by this section, except  
5 those securities authorized for sale under section twenty-  
6 eight of this article.

7     The commissioner shall receive and act upon appli-  
8     cations to have securities registered by qualification,  
9     and may prescribe forms on which he may require  
10    such application to be submitted. Applications shall be  
11    in writing and shall be duly signed by applicant and  
12    sworn to by any person having knowledge of the facts,  
13    and filed in the office of the commissioner and may be  
14    made either by the issuer of the securities for which  
15    registration is applied or by any registered dealer desir-  
16    ing to sell the same within the state.

17    The commissioner may require the applicant to sub-  
18    mit to him the following information respecting the is-  
19    suer or the security or the person or persons obligated by  
20    such security, and such other information as he may  
21    deem necessary to enable him to ascertain whether such  
22    securities shall be registered pursuant to the provisions  
23    of this section:

24    (a)   The name under which the issuer is doing or in-  
25    tends to do business;

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

28     (c) The location of the issuer's principal business of-  
29     fice, and if the issuer is a foreign or territorial person, the  
30     name and address of its agent in the United States auth-  
31     orized to receive notices;

32     (d) The names and addresses of the directors or per-  
33     sons performing similar functions, and the chief execu-  
34     tive, financial and accounting officers chosen or to be  
35     chosen if the issuer be a corporation, association, trust  
36     or other entity, of all partners, if the issuer be a partner-  
37     ship, and of the issuer, if the issuer be an individual, and  
38     of the promoters in the case of a business to be formed,  
39     or formed within two years prior to the filing of the ap-  
40     plication;

41     (e) Names and addresses of the underwriters;

42     (f) The names and addresses of all persons, if any,  
43     owning of record or beneficially, if known, more than  
44     ten per cent of any class of stock of the issuer or  
45     more than ten per cent in the aggregate of the out-  
46     standing stock of the issuer as of a date within twenty  
47     days prior to the filing of the application;

48     (g) The amount of securities of the issuer held by any

49 person specified in subsections (d), (e) and (f) of this  
50 section, as of a date within twenty days prior to the filing  
51 of the application, and, if possible, as of one year prior  
52 thereto, and the amount of the securities, for which the  
53 application is filed, to which such persons have indi-  
54 cated their intention to subscribe;

55 (h) The general character of the business actually  
56 transacted or to be transacted by the issuer;

57 (i) A statement of the capitalization of the issuer, in-  
58 cluding the authorized and outstanding amounts of its  
59 capital stock and the proportion thereof paid up, the num-  
60 ber of classes of shares in which such capital stock is  
61 divided, par value thereof, or, if it has no par value,  
62 the stated or assigned value thereof, a description of the  
63 respective voting rights, preferences, conversion and ex-  
64 change rights, rights to dividends, profits, or capital of  
65 each class, with respect to each other class, including the  
66 retirement and liquidation rights or values thereof;

67 (j) A statement of the securities, if any, covered by  
68 options outstanding or to be created in connection with  
69 the securities to be offered;

70 (k) The amount of capital stock of each class is-  
71 sued or included in the shares of stock to be offered;

72 (1) The amount of funded debt outstanding and to  
73 be created by the securities to be offered and a descrip-  
74 tion of such;

75 (m) The specific purposes, in detail, and the approxi-  
76 mate amounts to be devoted to such purposes so far as  
77 determinable, for which the securities to be offered are  
78 to supply funds, and if the funds are to be raised in part  
79 from other sources the amounts thereof and the sources  
80 thereof shall be stated;

81 (n) The remuneration, paid or estimated to be paid, by  
82 the issuer or its predecessors, directly or indirectly during  
83 the past year, and ensuing year, to all officers and directors  
84 and to any other individuals if required by the commis-  
85 sioner;

86 (o) The price at which it is proposed that the securities  
87 shall be offered to the public or the methods by which such  
88 price is computed and a detailed statement as to all com-  
89 missions paid or to be paid, directly or indirectly, in re-  
90 spect of the sale of the securities to be offered. Commis-

91 sions shall include all cash, securities, contracts or any-  
92 thing else of value, paid, to be set aside, disposed of or un-  
93 derstandings with or for the benefit of any person in con-  
94 nection with the sale of such securities;

95 (p) The amount or estimated amounts, itemized in  
96 reasonable detail, of all expenses other than commissions  
97 specified in subsection (o) of this section;

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

101 (r) Full particulars of the nature and extent of the  
102 interest, if any, of every director, principal executive  
103 officer, and of every stockholder holding more than ten  
104 per cent of any class of stock or more than ten per cent  
105 in the aggregate of the stock of the issuer, in any prop-  
106 erty acquired, not in the ordinary course of business of  
107 the issuer, within two years preceding the filing of the  
108 application or proposed to be acquired at such date;

109 (s) The dates of and parties to, and the general ef-  
110 fect concisely stated of every material contract made, not  
111 in the ordinary course of business, which contract is to



112 be executed in whole or in part at or after the filing of the  
113 application or which contract has been made not more  
114 than two years before such filing;

115 (t) A detailed balance sheet as of a date not more  
116 than ninety days prior to the date of the filing of the  
117 application, and in the case of a new corporation or  
118 organization a pro forma balance sheet shall be submitted  
119 showing what the conditions of the company will be after  
120 the financing is completed and as of a date when the com-  
121 pany begins business as authorized by its charter. Addi-  
122 tional details and information regarding any item or  
123 items in the balance sheet shall be submitted as prescribed  
124 by the commissioner. There shall also be submitted a  
125 profit and loss statement of the issuer showing earnings  
126 and income, the nature and source thereof, and the ex-  
127 penses and fixed charges in such detail and such form  
128 as the commissioner shall prescribe, giving an estimated  
129 profit and loss statement for a new company or organi-  
130 zation;

131 (u) A copy of any agreement or agreements made  
132 or to be made, including contracts or options, effec-  
133 tive at the time of registration or at some future

134 date if such are in connection with, refer to or are  
135 material to the sale of securities, (no public disclos-  
136 ure shall be required of any portion of any such con-  
137 tracts or agreements if the commissioner determines  
138 that the disclosure of such portion would impair the  
139 value of the contract or agreement and would not  
140 be necessary for the protection of the investors), a  
141 copy of the articles of incorporation with all amend-  
142 ments thereof and of the existing by-laws or instru-  
143 ments corresponding thereto, whatever the name, if  
144 the issuer be a corporation, a copy of all instru-  
145 ments by which the trust is created or declared, if  
146 the issuer is a trust, a copy of the articles of part-  
147 nership or association and all other papers pertain-  
148 ing to its organization, if the issuer is a partnership,  
149 unincorporated association, joint stock company, or any  
150 other form of organization;

151 (v) A detailed statement prescribed by the commis-  
152 sioner of all individuals who are officers or who are em-  
153 ployed as promoters by the issuer, underwriter or dealer  
154 in securities;

155 (w) A copy of prospectus;

156     (x) Any other information as required and prescribed  
157 by the commissioner as he may deem necessary and per-  
158 tinent in determining whether the applicant or issuer  
159 shall be registered pursuant to the provisions of this sec-  
160 tion.

161     All of the statements, exhibits and documents of every  
162 kind required by the commissioner under this section, ex-  
163 cept properly certified public documents, shall be veri-  
164 fied by the oath of the applicant or of the issuer in such  
165 manner and form as may be prescribed by the commis-  
166 sioner.

167     The commissioner shall have power and authority to  
168 place such conditions, limitations and restrictions on any  
169 registration as may be necessary to carry out the purposes  
170 of this chapter.

171     The commissioner may require the use of a prospectus  
172 by registered issuer and may require the printing therein  
173 of all or any parts of the information required by this  
174 section to be submitted with the application and may des-  
175 ignate by ruling how such prospectus may be used. Every  
176 prospectus used, distributed or made available in this

177 state must first have the approval of the commis-  
178 sioner.

179 At the time of filing of application the applicant shall  
180 pay to the commissioner one twentieth of one per cent  
181 of the aggregate par value or offering price, whichever  
182 is greater, of the securities to be sold in this state for  
183 which the applicant is seeking registration, but in no  
184 case shall such fees be less than fifty dollars, except  
185 that the minimum fee for each oil and gas well regis-  
186 tration shall be twenty-five dollars. In case of a stock  
187 having no par value, the offering price to the public shall  
188 be deemed to be the par value of such stock. When an  
189 application is denied, the commissioner shall retain the  
190 registration fee deposited.

191 If upon examination of any application, the commis-  
192 sioner shall find that the sale of the security referred to  
193 therein will not be fraudulent or will not work or tend  
194 to work a fraud upon the purchaser, or that the enter-  
195 prise or business of the issuer is not based upon un-  
196 sound business principles and that it is in every respect  
197 equitable, just and fair to the investor and after all pro-

visions of this article have been complied with, the commissioner shall record the registration of such security in the register of securities and thereupon such security so registered may be sold by the issuer or by any registered dealer who has notified the commissioner of his intention to do so, in the manner herein after provided, subject, however, to the further order of the commissioner as hereinafter provided.

Every registration under this section shall expire on the thirtieth day of June in each year, but new registrations for the succeeding year shall be issued upon written application, the applicant furnishing the commissioner, upon request, information as hereinbefore provided in this section, and by paying to the commissioner a fee of one twentieth of one per cent of the aggregate par value or offering price, whichever is greater, of the securities to be sold in this state within the year authorized by registration, but in no case shall the fee be less than fifty dollars, except that the minimum fee for each oil and gas well registration shall be twenty-five dollars. Applications for renewals must be made not

219 less than thirty days before the first day of the ensu-  
220 ing registration year, otherwise they shall be treated as  
221 original applications.

222 Each different type, class, series or kind of securities  
223 not exempt by sections three and four of this article shall  
224 require separate registration and the same requirements  
225 and regulations shall apply to each, and the registra-  
226 tion fee paid by each. This does not apply to a serial  
227 issue of securities where the entire amount is issued  
228 at one time and where the only difference is in the ma-  
229 turity or interest date.

230 Investment trust securities shall be registered separ-  
231 ately as herein provided where there is any change or  
232 difference from the registered security other than the  
233 maturity date of the trust.

**Sec. 8. Regulation of Selling Price and Commission.—**

2 The commissioner may limit the price at which securities,  
3 to be registered under section six hereof, either of par or  
4 no par value, may be sold, and may prescribe the amount  
5 of commission to be allowed on such sales, but said com-  
6 mission shall in no instance exceed twenty per cent of the

7 sale price, such percentage to include all expenses inciden-  
8 tal to such sale including advertising or any other expense  
9 chargeable in any way to the sale of such securities. In no  
10 instance shall commissions be paid on the aggregate sub-  
11 scription or sales price, except to the extent of payments  
12 actually made thereon: *Provided, however,* That this pro-  
13 vision shall not apply to any security registered with the  
14 securities and exchange commission under the invest-  
15 ment company act of 1940.

**Sec. 12. Dealer and Salesman Registered; Process;**

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

12 An application for registration as a dealer shall be  
13 filed in writing with the commissioner, in such form as

14 he may prescribe, duly verified by oath, which shall  
15 state the principal office of the applicant, wherever situ-  
16 ated, and the location of the principal office and all branch  
17 offices in this state, if any, the name or style of doing  
18 business, the names, residences and business addresses of  
19 all persons interested in the business as principals, co-  
20 partners, officers and directors, specifying as to each his  
21 capacity and title, the general plan and character of busi-  
22 ness and the length of time the dealer has been engaged  
23 in business, a financial statement in detail showing the ac-  
24 tual conditions of the dealer, classification and condition  
25 of all margin or installment accounts, partner, officer and  
26 director accounts, a list of securities sold in West Virginia  
27 during the preceding year and so far as possible, a list  
28 of those to be sold or offered for sale when the registra-  
29 tion is completed, and such information to be given in  
30 such detail as the commissioner may require. The com-  
31 missioner may also require such additional information  
32 as to applicant's previous history, record and association,  
33 as he may deem necessary to establish the good reputation  
34 in business of the applicant. The commissioner may re-



35 quire every applicant for registration as a salesman to  
36 pass a written examination as a requirement for issuance  
37 of said license. Every applicant for registration as a sales-  
38 man shall have reached the age of twenty-one years, and  
39 shall not, at the time of examination, be employed by any  
40 securities dealer other than the one by whom he was  
41 employed at the time of making application.

42 Every dealer, at the time of filing his application,  
43 shall file with the commissioner of securities his irrevocable  
44 written consent to service of process as prescribed  
45 by section nine of this article.

46 If the commissioner shall find that the applicant is of  
47 good repute, has furnished sufficient proof of financial  
48 responsibility, and has complied with the provisions of  
49 this section including the payment of the fee hereinafter  
50 provided, he may register such applicant as a dealer.

51 Upon written application of a registered dealer and  
52 payment of the proper fees, the commissioner may register  
53 as salesmen of such dealer such natural persons as  
54 shall appear to the commissioner to be qualified and of  
55 good character.

56 The partners of a partnership and the executive officers  
57 of a corporation or other association registered as a dealer  
58 may act as salesmen during such time as such partnership,  
59 corporation or association is so registered without further  
60 registration as salesmen. The salesmen registered by a  
61 dealer may sell any securities for which the dealer regis-  
62 tering such salesmen is registered.

63 The names and addresses of all persons approved for  
64 registration as dealers or salesmen and all orders with  
65 respect thereto shall be recorded in a register of dealers  
66 and salesmen, which shall be open to public inspection.  
67 Every registration under this section shall expire on the  
68 thirtieth day of June in each year, but new registrations  
69 for the succeeding year shall be issued upon written ap-  
70 plication and upon payment of the fee as hereinafter pro-  
71 vided, and by filing of further statements or furnishing  
72 any further information specifically required by the com-  
73 missioner. Applications for renewals must be made not  
74 less than thirty days before the first day of the ensuing  
75 year, otherwise they shall be treated as original applica-  
76 tions. The fee for each dealer's registration and for each

77 dealer's annual renewal shall be one hundred dollars.  
78 The fee for each salesman's registration shall be twenty  
79 dollars, and the fee for each salesman's annual renewal  
80 shall be ten dollars. When an application is denied, the  
81 commissioner shall retain the registration or renewal fee  
82 deposited.

83 Changes in registration occasioned by changes in  
84 personnel of a partnership or in the principals, co-part-  
85 ners, officers or directors of any dealer may be made  
86 from time to time by written application setting forth the  
87 facts with respect to such change.

88 Every dealer registered under this section shall be sub-  
89 ject to examination as to his financial condition or meth-  
90 ods of business by the commissioner or by his duly auth-  
91 orized representative at the time the commissioner may  
92 deem it advisable. The expense of the examination shall  
93 be paid by the applicant and the failure or refusal of such  
94 applicant to pay such expense upon the demand of the  
95 commissioner shall work a forfeiture of his right to regis-  
96 tration under this section.

97 Every dealer or salesman shall send a copy of all bills,  
98 confirmations or orders on transactions with any em-  
99 ployee or active official of any bank, trust company or sav-  
100 ings institution, to the president of the institution by  
101 which the person is employed or in which the person is an  
102 official, and a copy shall also be sent to the commissioner  
103 of banking of the state of West Virginia. These copies of  
104 bills, confirmations or orders shall be sent at the same  
105 time as the original. Any dealer or salesman wilfully vio-  
106 lating the provisions of this paragraph shall have his reg-  
107 istration revoked by the commissioner and may be liable  
108 to such bank, trust company or savings institution for any  
109 losses or damages incurred in any case where such dealer  
110 or salesman failed to comply with this provision.

111 This section shall not apply to a person or its agent sell-  
112 ing exclusively its own contracts, if such contracts are  
113 exempt from this act by section three, paragraph (g) of  
114 this chapter.

115 This section shall not apply to an unincorporated per-  
116 son selling exclusively undivided interest in oil, gas or  
117 other mineral rights if such unincorporated person is the

118 bona fide owner of the lease, interest, royalty or property  
119 in which he is selling interests.

**Sec. 28. Sales in Over-the-Counter Transactions.—**Any

2 security, as defined in this article, which has been pre-  
3 viously but is not now registered by qualification pursu-  
4 ant to this article, may, in the discretion of the commis-  
5 sioner, be offered and sold by registered dealers in an  
6 over-the-counter transaction. The commissioner shall  
7 regulate the offering and sale of all such securities and  
8 shall register dealers to buy, sell, trade or otherwise deal  
9 in such securities. The commissioner shall promulgate  
10 rules and regulations to provide for the registration of  
11 dealers and for the regulation of over-the-counter trans-  
12 actions in securities.

13 All dealers, registered pursuant to this section, shall be  
14 registered pursuant to section twelve of this article and  
15 shall pay the fees set forth for dealers in said section.

**Sec. 29. How Chapter Cited.—**This chapter may be

2 cited as “The Act Regulating and Supervising the Sale of  
3 Securities”.

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

*Oliver Parker*

Chairman Senate Committee

*Ethel L. Randall*

Chairman House Committee

Originated in the House.

Takes effect July 1, 1963.

*Howard Brown*

Clerk of the Senate

*C. A. Blankenship*

Clerk of the House of Delegates

*Harvard W. Carey*

President of the Senate

*Julius W. Singleton Jr.*

Speaker House of Delegates

The within approved this the 16<sup>th</sup>  
day of March, 1963.

*Wm. B. Bann*

Governor

