WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED

HOUSE BILL No. 418

(By Mr. Speaker, Mr. Singleton)

PASSED March 6, 1963

In Effect July 1, 1963

Filed in Office of the Secretary of State
of West Virginia 3-16-63
JOE F. BURDETT
SECRETARY OF STATE
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
of a class exempt under a provision of section three hereof
or unless sold in any transaction exempt under a pro-
vision of section four hereof shall be sold within this
state unless such securities shall have been registered by
qualification as hereinafter defined or the sale thereof
authorized under section twenty-eight of this article.

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

Sec. 6. Securities Registered by Qualification.—All se-
curities required by this article to be registered before
being sold in this state, shall be registered only by quali-
fication in the manner provided by this section, except
those securities authorized for sale under section twenty-
eight of this article.
The commissioner shall receive and act upon applications to have securities registered by qualification, and may prescribe forms on which he may require such application to be submitted. Applications shall be in writing and shall be duly signed by applicant and sworn to by any person having knowledge of the facts, and filed in the office of the commissioner and may be made either by the issuer of the securities for which registration is applied or by any registered dealer desiring to sell the same within the state.

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

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

(b) The name of the state or other sovereign power under which the issuer is organized;
(c) The location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notices;

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

(e) Names and addresses of the underwriters;

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

(g) The amount of securities of the issuer held by any
person specified in subsections (d), (e) and (f) of this section, as of a date within twenty days prior to the filing of the application, and, if possible, as of one year prior thereto, and the amount of the securities, for which the application is filed, to which such persons have indicated their intention to subscribe;

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

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

(j) A statement of the securities, if any, covered by options outstanding or to be created in connection with the securities to be offered;
(k) The amount of capital stock of each class issued or included in the shares of stock to be offered;

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

(m) The specific purposes, in detail, and the approximate amounts to be devoted to such purposes so far as determinable, for which the securities to be offered are to supply funds, and if the funds are to be raised in part from other sources the amounts thereof and the sources thereof shall be stated;

(n) The remuneration, paid or estimated to be paid, by the issuer or its predecessors, directly or indirectly during the past year, and ensuing year, to all officers and directors and to any other individuals if required by the commissioner;

(o) The price at which it is proposed that the securities shall be offered to the public or the methods by which such price is computed and a detailed statement as to all commissions paid or to be paid, directly or indirectly, in respect of the sale of the securities to be offered. Commis-
sions shall include all cash, securities, contracts or any-
thing else of value, paid, to be set aside, disposed of or un-
derstandings with or for the benefit of any person in con-
nection with the sale of such securities;

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

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

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

(s) The dates of and parties to, and the general ef-
fect concisely stated of every material contract made, not
in the ordinary course of business, which contract is to
be executed in whole or in part at or after the filing of the 
application or which contract has been made not more 
than two years before such filing;

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

(u) A copy of any agreement or agreements made 
or to be made, including contracts or options, effec-
tive at the time of registration or at some future
date if such are in connection with, refer to or are material to the sale of securities, (no public disclosure shall be required of any portion of any such contracts or agreements if the commissioner determines that the disclosure of such portion would impair the value of the contract or agreement and would not be necessary for the protection of the investors), a copy of the articles of incorporation with all amendments thereof and of the existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation, a copy of all instruments by which the trust is created or declared, if the issuer is a trust, a copy of the articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint stock company, or any other form of organization;

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

(w) A copy of prospectus;
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Any other information as required and prescribed by the commissioner as he may deem necessary and pertinent in determining whether the applicant or issuer shall be registered pursuant to the provisions of this section.

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

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

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

At the time of filing of application the applicant shall pay to the commissioner 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 for which the applicant is seeking registration, but in no case shall such fees be less than fifty dollars, except that the minimum fee for each oil and gas well registration shall be twenty-five dollars. In case of a stock having no par value, the offering price to the public shall be deemed to be the par value of such stock. When an application is denied, the commissioner shall retain the registration fee deposited.

If upon examination of any application, the commissioner shall find that the sale of the security referred to therein will not be fraudulent or will not work or tend to work a fraud upon the purchaser, or that the enterprise or business of the issuer is not based upon unsound business principles and that it is in every respect equitable, just and fair to the investor and after all pro-
visions of this article have been complied with, the com-
mmissioner shall record the registration of such secur-
ity in the register of securities and thereupon such se-
curity so registered may be sold by the issuer or by
any registered dealer who has notified the commis-
sioner 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 regis-
trations for the succeeding year shall be issued upon
written application, the applicant furnishing the com-
mmissioner, upon request, information as hereinbefore pro-
vided 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 auth-
orized 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
less than thirty days before the first day of the ensuing registration year, otherwise they shall be treated as original applications.

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

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

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

The commissioner may limit the price at which securities, to be registered under section six hereof, either of par or no par value, may be sold, and may prescribe the amount of commission to be allowed on such sales, but said commission shall in no instance exceed twenty per cent of the
sale price, such percentage to include all expenses incidental to such sale including advertising or any other expense chargeable in any way to the sale of such securities. In no instance shall commissions be paid on the aggregate subscription or sales price, except to the extent of payments actually made thereon: Provided, however, That this provision shall not apply to any security registered with the securities and exchange commission under the investment company act of 1940.

Sec. 12. Dealer and Salesman Registered; Process; Fees.—No dealer or salesman shall engage in business in this state as such dealer or salesman or sell any securities, including securities exempted in section three of this article, or transact a brokerage or trading business or do a business of buying or selling securities listed or traded in on any stock exchange, except in transactions exempt under section four of this article, unless he has been registered as a dealer or salesman in the office of the commissioner pursuant to the provisions of this section.

An application for registration as a dealer shall be filed in writing with the commissioner, in such form as
he may prescribe, duly verified by oath, which shall
state the principal office of the applicant, wherever situ-
ated, and the location of the principal office and all branch
offices in this state, if any, the name or style of doing
business, the names, residences and business addresses of
all persons interested in the business as principals, co-
partners, officers and directors, specifying as to each his
capacity and title, the general plan and character of busi-
ness and the length of time the dealer has been engaged
in business, a financial statement in detail showing the ac-
tual conditions of the dealer, classification and condition
of all margin or installment accounts, partner, officer and
director accounts, a list of securities sold in West Virginia
during the preceding year and so far as possible, a list
of those to be sold or offered for sale when the registra-
tion is completed, and such information to be given in
such detail as the commissioner may require. The com-
missioner may also require such additional information
as to applicant’s previous history, record and association,
as he may deem necessary to establish the good repute
in business of the applicant. The commissioner may re-
quire every applicant for registration as a salesman to pass a written examination as a requirement for issuance of said license. Every applicant for registration as a salesman shall have reached the age of twenty-one years, and shall not, at the time of examination, be employed by any securities dealer other than the one by whom he was employed at the time of making application.

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

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

Upon written application of a registered dealer and payment of the proper fees, the commissioner may register as salesmen of such dealer such natural persons as shall appear to the commissioner to be qualified and of good character.
The partners of a partnership and the executive officers of a corporation or other association registered as a dealer may act as salesmen during such time as such partnership, corporation or association is so registered without further registration as salesmen. The salesmen registered by a dealer may sell any securities for which the dealer registering such salesmen is registered.

The names and addresses of all persons approved for registration as dealers or salesmen and all orders with respect thereto shall be recorded in a register of dealers and salesmen, which shall be open to public inspection. 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 and upon payment of the fee as hereinafter provided, and by filing of further statements or furnishing any further information specifically required by the commissioner. Applications for renewals must be made not less than thirty days before the first day of the ensuing year, otherwise they shall be treated as original applications. 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
dollars, and the fee for each salesman's annual renewal
shall be ten dollars. When an application is denied, the
commissioner shall retain the registration or renewal fee
deposited.
83 Changes in registration occasioned by changes in
personnel of a partnership or in the principals, co-part-
ners, officers or directors of any dealer may be made
from time to time by written application setting forth the
facts with respect to such change.
88 Every dealer registered under this section shall be sub-
ject to examination as to his financial condition or meth-
ods of business by the commissioner or by his duly auth-
orized representative at the time the commissioner may
deem it advisable. The expense of the examination shall
be paid by the applicant and the failure or refusal of such
applicant to pay such expense upon the demand of the
commissioner shall work a forfeiture of his right to regis-
tration under this section.
Every dealer or salesman shall send a copy of all bills, confirmations or orders on transactions with any employee or active official of any bank, trust company or savings institution, to the president of the institution by which the person is employed or in which the person is an official, and a copy shall also be sent to the commissioner of banking of the state of West Virginia. These copies of bills, confirmations or orders shall be sent at the same time as the original. Any dealer or salesman willfully violating the provisions of this paragraph shall have his registration revoked by the commissioner and may be liable to such bank, trust company or savings institution for any losses or damages incurred in any case where such dealer or salesman failed to comply with this provision.

This section shall not apply to a person or its agent selling exclusively its own contracts, if such contracts are exempt from this act by section three, paragraph (g) of this chapter.

This section shall not apply to an unincorporated person selling exclusively undivided interest in oil, gas or other mineral rights if such unincorporated person is the
Sec. 28. **Sales in Over-the-Counter Transactions.**—Any security, as defined in this article, which has been previously but is not now registered by qualification pursuant to this article, may, in the discretion of the commissioner, be offered and sold by registered dealers in an over-the-counter transaction. The commissioner shall regulate the offering and sale of all such securities and shall register dealers to buy, sell, trade or otherwise deal in such securities. The commissioner shall promulgate rules and regulations to provide for the registration of dealers and for the regulation of over-the-counter transactions in securities.

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

Sec. 29. **How Chapter Cited.**—This chapter may be cited as "The Act Regulating and Supervising the Sale of Securities".
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Ray Parker
Chairman Senate Committee

Phil D. Carville
Chairman House Committee

Originated in the House.

Takes effect July 1, 1963.

J. Howard Beggs
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carman
President of the Senate

Julius W. Singleton Jr.
Speaker House of Delegates

The within approved this the 16th
day of March, 1963.

Governor