

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

ENROLLED

*Committee Substitute for*

SENATE BILL NO. 23

(By Mr. *James E. Pufferberger*)

PASSED March 9 1974

In Effect ninety days from Passage



FILED IN THE OFFICE  
EDGAR F. HEISKELL III  
SECRETARY OF STATE  
THIS DATE 3-22-74

23

# ENROLLED

## COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 23

(By MR. GAINER and MR. POFFENBARGER, *original sponsors*)

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[Passed March 9, 1974; in effect ninety days from passage.]

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AN ACT to amend and reenact chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter, designated chapter thirty-two-a, relating to securities generally; enacting the uniform securities act; prohibiting fraudulent and other practices with respect to securities; relating to and requiring the registration of broker-dealers, agents and investment advisers and securities; relating to various exempted securities and exempted transactions; relating to administrative procedures and investigatory powers; authorizing the issuance of subpoenas; relating to certain land sales and false advertising; relating to the business of issuing and selling checks, drafts, money orders, personal money orders or other instruments for the transmission or payment of money; requiring proof of financial responsibility to engage in such business and the deposit of adequate security; providing for an annual fee to engage in such business; providing certain exemptions; relating to judicial review; relating to judicial enforcement and injunctive relief; relating to civil penalties; providing criminal offenses and penalties; relating to indictments; and providing severability clauses.

*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, be amended and reenacted; and that said code be further amended by adding thereto a new chapter, designated chapter thirty-two-a, all to read as follows:

CHAPTER 32. UNIFORM SECURITIES ACT.

ARTICLE 1. FRAUDULENT AND OTHER PROHIBITED PRACTICES.

§32-1-101. Sales and purchases.

1 It is unlawful for any person, in connection with the  
2 offer, sale or purchase of any security, directly or in-  
3 directly

4 (1) to employ any device, scheme or artifice to de-  
5 fraud;

6 (2) to make any untrue statement of a material fact  
7 or to omit to state a material fact necessary in order to  
8 make the statements made, in the light of the circum-  
9 stances under which they are made, not misleading; or

10 (3) to engage in any act, practice or course of business  
11 which operates or would operate as a fraud or deceit upon  
12 any person.

§32-1-102. Advisory activities.

1 (a) It is unlawful for any person who receives any  
2 consideration from another person primarily for advising  
3 the other person as to the value of securities or their  
4 purchase or sale, whether through the issuance of an-  
5 alyses or reports or otherwise,

6 (1) To employ any device, scheme or artifice to de-  
7 fraud the other person; or

8 (2) To engage in any act, practice or course of business  
9 which operates or would operate as a fraud or deceit  
10 upon the other person.

11 (b) It is unlawful for any investment adviser to enter  
12 into, extend or renew any investment advisory contract  
13 unless it provides in writing

14 (1) that the investment adviser shall not be compen-  
15 sated on the basis of a share of capital gains upon or  
16 capital appreciation of the funds or any portion of the  
17 funds of the client;

18 (2) that no assignment of the contract may be made  
19 by the investment adviser without the consent of the  
20 other party to the contract; and

21 (3) that the investment adviser, if a partnership, shall  
22 notify the other party to the contract of any change in

23 the membership of the partnership within a reasonable  
24 time after the change.

25 Subdivision (1) does not prohibit an investment ad-  
26 visory contract which provides for compensation based  
27 upon the total value of a fund averaged over a definite  
28 period, or as of definite dates or taken as of a definite  
29 date. "Assignment," as used in subdivision (2) includes  
30 any direct or indirect transfer or hypothecation of an in-  
31 vestment advisory contract by the assignor or of a con-  
32 trolling block of the assignor's outstanding voting securi-  
33 ties by a security holder of the assignor; but, if the in-  
34 vestment adviser is a partnership, no assignment of an  
35 investment advisory contract is considered to result from  
36 the death or withdrawal of a minority of the members  
37 of the investment adviser having only a minority interest  
38 in the business of the investment adviser, or from the ad-  
39 mission to the investment adviser of one or more mem-  
40 bers who, after admission, will be only a minority of the  
41 members and will have only a minority interest in the  
42 business.

43 (c) It is unlawful for any investment adviser to take  
44 or have custody of any securities or funds of any client if  
45 (1) the commissioner by rule prohibits custody; or  
46 (2) in the absence of rule, the investment adviser fails  
47 to notify the commissioner that he has or may have cus-  
48 tody.

**ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS  
AND INVESTMENT ADVISERS.**

**§32-2-201. Registration requirement.**

1 (a) It is unlawful for any person to transact business  
2 in this state as a broker-dealer or agent unless he is  
3 registered under this chapter.

4 (b) It is unlawful for any broker-dealer or issuer to  
5 employ an agent unless the agent is registered. The reg-  
6 istration of an agent is not effective during any period  
7 when he is not associated with a particular broker-dealer  
8 registered under this chapter or a particular issuer. When  
9 an agent begins or terminates a connection with a broker-  
10 dealer or issuer, or begins or terminates those activities  
11 which make him an agent, the agent as well as the

12 broker-dealer or issuer shall promptly notify the com-  
13 missioner.

14 (c) It is unlawful for any person to transact business  
15 in this state as an investment adviser unless (1) he is so  
16 registered under this chapter, (2) he is registered as a  
17 broker-dealer without the imposition of a condition under  
18 section 204(b) (5), or (3) his only clients in this state  
19 are investment companies as defined in the Investment  
20 Company Act of 1940 or insurance companies.

21 (d) Every registration expires one year from its effec-  
22 tive date unless renewed. The commissioner by rule or  
23 order may prepare an initial schedule for registration re-  
24 newals so that subsequent renewals of registrations effec-  
25 tive on the effective date of this chapter may be staggered  
26 by calendar months. For this purpose the commissioner  
27 by rule may reduce the registration fee proportionately.

**§32-2-202. Registration procedure.**

1 (a) A broker-dealer, agent or investment adviser may  
2 obtain an initial or renewal registration by filing with the  
3 commissioner an application together with a consent to  
4 service of process pursuant to section 414(g). The appli-  
5 cation shall contain whatever information the commis-  
6 sioner by rule requires concerning such matters as (1)  
7 the applicant's form and place of organization; (2) the  
8 applicant's proposed method of doing business; (3) the  
9 qualifications and business history of the applicant; in the  
10 case of a broker-dealer or investment adviser, the quali-  
11 fications and business history of any partner, officer or  
12 director, any person occupying a similar status or per-  
13 forming similar functions, or any person directly or in-  
14 directly controlling the broker-dealer or investment  
15 adviser; and, in the case of an investment adviser, the  
16 qualifications and business history of any employee; (4)  
17 any injunction or administrative order or conviction of a  
18 misdemeanor involving a security or any aspect of the  
19 securities business and any conviction of a felony; and (5)  
20 the applicant's financial condition and history. The com-  
21 missioner may by rule or order require an applicant for  
22 initial registration to publish an announcement of the  
23 application as a Class I legal advertisement in compliance

24 with the provisions of article three, chapter fifty-nine of  
25 this code, and the publication area or areas for such pub-  
26 lication shall be specified by the commissioner. If no de-  
27 nial order is in effect and no proceeding is pending under  
28 section 204, registration becomes effective at noon of the  
29 thirtieth day after an application is filed. The commis-  
30 sioner may by rule or order specify an earlier effective  
31 date, and he may by order defer the effective date until  
32 noon of the thirtieth day after the filing of any amend-  
33 ment. Registration of a broker-dealer automatically con-  
34 stitutes registration of any agent who is a partner, offi-  
35 cer or director, or a person occupying a similar status or  
36 performing similar functions, as designated by the broker-  
37 dealer in writing to the commissioner and approved in  
38 writing by the commissioner.

39 (b) Every applicant for initial or renewal registration  
40 shall pay a filing fee of one hundred dollars in the case of  
41 a broker-dealer, fifteen dollars in the case of an agent,  
42 and fifteen dollars in the case of an investment adviser.  
43 When application is denied or withdrawn, the commis-  
44 sioner shall retain all of the fee.

45 (c) A registered broker-dealer or investment adviser  
46 may file an application for registration of a successor,  
47 whether or not the successor is then in existence, for the  
48 unexpired portion of the year. A filing fee of five dollars  
49 shall be paid.

50 (d) The commissioner may by rule require a minimum  
51 capital for registered broker-dealers and investment ad-  
52 visers.

53 (e) The commissioner may by rule require registered  
54 broker-dealers, agents and investment advisers to post  
55 surety bonds in amounts up to ten thousand dollars, and  
56 may determine their conditions. Any appropriate deposit  
57 of cash or securities shall be accepted in lieu of any bond  
58 so required. No bond may be required of any registrant  
59 whose net capital, which may be defined by rule, exceeds  
60 twenty-five thousand dollars. Every bond shall provide for  
61 suit thereon by any person who has a cause of action un-  
62 der section 410 and, if the commissioner by rule or order  
63 requires, by any person who has a cause of action not  
64 arising under this chapter. Every bond shall provide that

65 no suit may be maintained to enforce any liability on the  
66 bond unless brought within two years after the sale or  
67 other act upon which it is based.

**§32-2-203. Post-registration provisions.**

1 (a) Every registered broker-dealer and investment  
2 adviser shall make and keep such accounts, correspon-  
3 dence, memoranda, papers, books and other records as the  
4 commissioner by rule prescribes. All records so required  
5 shall be preserved for three years unless the commissioner  
6 by rule prescribes otherwise for particular types of  
7 records.

8 (b) Every registered broker-dealer and investment  
9 adviser shall file such financial reports as the commis-  
10 sioner by rule prescribes.

11 (c) If the information contained in any document filed  
12 with the commissioner is or becomes inaccurate or in-  
13 complete in any material respect, the registrant shall  
14 promptly file a correcting amendment unless notification  
15 of the correction has been given under section 201 (b).

16 (d) All the records referred to in subsection (a) are  
17 subject at any time or from time to time to such reason-  
18 able periodic, special or other examinations by representa-  
19 tives of the commissioner, within or without this state, as  
20 the commissioner deems necessary or appropriate in the  
21 public interest or for the protection of investors. For the  
22 purpose of avoiding unnecessary duplication of examina-  
23 tions, the commissioner, insofar as he deems it practicable  
24 in administering this subsection, may cooperate with the  
25 securities administrators of other states, the securities and  
26 exchange commission, and any national securities ex-  
27 change or national securities association registered under  
28 the Securities Exchange Act of 1934.

**§32-2-204. Denial, revocation, suspension, cancellation and withdrawal of registration.**

1 (a) The commissioner may by order deny, suspend or  
2 revoke any registration if he finds (1) that the order is in  
3 the public interest and (2) that the applicant or registrant  
4 or, in the case of a broker-dealer or investment adviser,  
5 any partner, officer or director, any person occupying a

6 similar status or performing similar functions, or any per-  
7 son directly or indirectly controlling the broker-dealer or  
8 investment adviser.

9 (A) has filed an application for registration which as  
10 of its effective date, or as of any date after filing in the case  
11 of an order denying effectiveness, was incomplete in any  
12 material respect or contained any statement which was,  
13 in light of the circumstances under which it was made,  
14 false or misleading with respect to any material fact;

15 (B) has willfully violated or willfully failed to com-  
16 ply with any provision of this chapter or a predecessor  
17 act or any rule or order under this chapter or a predeces-  
18 sor act;

19 (C) has been convicted, within the past ten years, of  
20 any misdemeanor involving a security or any aspect of the  
21 securities business, or any felony;

22 (D) is permanently or temporarily enjoined by any  
23 court of competent jurisdiction from engaging in or con-  
24 tinuing any conduct or practice involving any aspect of  
25 the securities business;

26 (E) is the subject of an order of the commissioner  
27 denying, suspending or revoking registration as a broker-  
28 dealer, agent or investment adviser;

29 (F) is the subject of an order entered within the past  
30 five years by the securities administrator of any other  
31 state or by the securities and exchange commission deny-  
32 ing or revoking registration as a broker-dealer, agent or  
33 investment adviser, or the substantial equivalent of those  
34 terms as defined in this chapter, or is the subject of an  
35 order of the securities and exchange commission suspend-  
36 ing or expelling him from a national securities exchange  
37 or national securities association registered under the Se-  
38 curities Exchange Act of 1934, or is the subject of a United  
39 States post office fraud order; but (i) the commissioner  
40 may not institute a revocation or suspension proceeding  
41 under subdivision (F) more than one year from the date  
42 of the order relied on, and (ii) he may not enter an order  
43 under subdivision (F) on the basis of an order under an-  
44 other state act unless that order was based on facts which  
45 would currently constitute a ground for an order under  
46 this section;

47 (G) has engaged in dishonest or unethical practices in  
48 the securities business;

49 (H) is insolvent, either in the sense that his liabilities  
50 exceed his assets or in the sense that he cannot meet his  
51 obligations as they mature; but the commissioner may not  
52 enter an order against a broker-dealer or investment ad-  
53 viser under this subdivision without a finding of in-  
54 solvency as to the broker-dealer or investment adviser;  
55 or

56 (I) is not qualified on the basis of such factors as train-  
57 ing, experience and knowledge of the securities business,  
58 except as otherwise provided in subsection (b).

59 The commissioner may by order deny, suspend or re-  
60 voke any registration if he finds (1) that the order is in  
61 the public interest and (2) that the applicant or registrant

62 (J) has failed reasonably to supervise his agents if he  
63 is a broker-dealer or his employees if he is an investment  
64 adviser; or

65 (K) has failed to pay the proper filing fee; but the  
66 commissioner may enter only a denial order under this  
67 subdivision, and he shall vacate any such order when the  
68 deficiency has been corrected.

69 The commissioner may not institute a suspension or  
70 revocation proceeding on the basis of a fact or transaction  
71 known to him when registration became effective unless  
72 the proceeding is instituted within the next thirty days.

73 (b) The following provisions govern the application of  
74 section 204(a) (2) (I):

75 (1) The commissioner may not enter an order against  
76 a broker-dealer on the basis of the lack of qualification of  
77 any person other than (A) the broker-dealer himself if  
78 he is an individual or (B) an agent of the broker-dealer.

79 (2) The commissioner may not enter an order against  
80 an investment adviser on the basis of the lack of qualifica-  
81 tion of any person other than (A) the investment adviser  
82 himself if he is an individual or (B) any other person who  
83 represents the investment adviser in doing any of the acts  
84 which may make him an investment adviser.

85 (3) The commissioner may not enter an order solely  
86 on the basis of lack of experience if the applicant or regis-  
87 trant is qualified by training or knowledge or both.

88 (4) The commissioner shall consider that an agent who  
89 will work under the supervision of a registered broker-  
90 dealer need not have the same qualifications as a broker-  
91 dealer.

92 (5) The commissioner shall consider that an invest-  
93 ment adviser is not necessarily qualified solely on the basis  
94 of experience as a broker-dealer or agent. When he finds  
95 that an applicant for initial or renewal registration as a  
96 broker-dealer is not qualified as an investment adviser,  
97 he may by order condition the applicant's registration as  
98 a broker-dealer upon his not transacting business in this  
99 state as an investment adviser.

100 (6) The commissioner may by rule provide for an  
101 examination, which may be written or oral or both, to be  
102 taken by any class of or all applicants, as well as persons  
103 who represent or will represent an investment adviser in  
104 doing any of the acts which make him an investment ad-  
105 viser.

106 (c) The commissioner may by order summarily post-  
107 pone or suspend registration pending final determination  
108 of any proceeding under this section. Upon the entry of  
109 the order, the commissioner shall promptly notify the ap-  
110 plicant or registrant, as well as the employer or prospec-  
111 tive employer if the applicant or registrant is an agent,  
112 that it has been entered and of the reasons therefor and  
113 that within fifteen days after the receipt of a written re-  
114 quest the matter will be set down for hearing. If no  
115 hearing is requested and none is ordered by the com-  
116 missioner, the order will remain in effect until it is modi-  
117 fied or vacated by the commissioner. If a hearing is re-  
118 quested or ordered, the commissioner, after notice of and  
119 opportunity for hearing, may modify or vacate the order  
120 or extend it until final determination.

121 (d) If the commissioner finds that any registrant or  
122 applicant for registration is no longer in existence or has  
123 ceased to do business as a broker-dealer, agent or invest-  
124 ment adviser, or is subject to an adjudication of mental  
125 incompetence or to the control of a committee, conservator  
126 or guardian, or cannot be located after reasonable search,  
127 the commissioner may by order cancel the registration or  
128 application.

129 (e) Withdrawal from registration as a broker-dealer,  
130 agent or investment adviser becomes effective thirty days  
131 after receipt of an application to withdraw or within such  
132 shorter period of time as the commissioner may determine,  
133 unless a revocation or suspension proceeding is pending  
134 when the application is filed or a proceeding to revoke or  
135 suspend or to impose conditions upon the withdrawal is  
136 instituted within thirty days after the application is filed.  
137 If a proceeding is pending or instituted, withdrawal be-  
138 comes effective at such time and upon such conditions as  
139 the commissioner by order determines. If no proceeding  
140 is pending or instituted and withdrawal automatically be-  
141 comes effective, the commissioner may nevertheless in-  
142 stitute a revocation or suspension proceeding under sec-  
143 tion 204(a) (2) (B) within one year after withdrawal  
144 became effective and enter a revocation or suspension  
145 order as of the last date on which registration was effec-  
146 tive.

147 (f) No order may be entered under any part of this  
148 section except the first sentence of subsection (c) without  
149 (1) appropriate prior notice to the applicant or regis-  
150 trant (as well as the employer or prospective employer  
151 if the applicant or registrant is an agent), (2) opportunity  
152 for hearing, and (3) written findings of fact and conclu-  
153 sions of law.

### **ARTICLE 3. REGISTRATION OF SECURITIES.**

#### **§32-3-301. Registration requirement.**

1 It is unlawful for any person to offer or sell any se-  
2 curity in this state unless (1) it is registered under this  
3 chapter or (2) the security or transaction is exempted  
4 under section 402.

#### **§32-3-302. Registration by notification.**

1 (a) The following securities may be registered by  
2 notification, whether or not they are also eligible for  
3 registration by coordination under section 303:

4 (1) Any security, other than a security with a fixed  
5 maturity or a fixed interest or dividend provision, whose  
6 issuer and any predecessors have been in continuous  
7 operation for at least five years if (A) there has been

8 no default during the current fiscal year or within the  
9 three preceding fiscal years in the payment of principal,  
10 interest or dividends on any security of the issuer (or  
11 any predecessor) with a fixed maturity or a fixed interest  
12 or dividend provision, and (B) the issuer and any prede-  
13 cessors during the past three fiscal years have had  
14 average net earnings, determined in accordance with  
15 generally accepted accounting practices, (i) which are  
16 applicable to all securities without a fixed maturity or  
17 a fixed interest or dividend provision outstanding at the  
18 date the registration statement is filed and equal at least  
19 five percent of the amount of such outstanding securities  
20 (as measured by the maximum offering price or the  
21 market price on a day, selected by the registrant, within  
22 thirty days before the date of filing the registration  
23 statement, whichever is higher, or book value on a day,  
24 selected by the registrant, within ninety days of the  
25 date of filing the registration statement to the extent  
26 that there is neither a readily determinable market price  
27 nor a cash offering price), or (ii) which, if the issuer and  
28 any predecessors have not had any security of the type  
29 specified in clause (i) outstanding for three full fiscal  
30 years, equal at least five percent of the amount (as mea-  
31 sured in clause (i)) of all securities which will be out-  
32 standing if all the securities being offered or proposed  
33 to be offered (whether or not they are proposed to be  
34 registered or offered in this state) are issued;

35 (2) any security (other than a certificate of interest  
36 or participation in an oil, gas or mining title or lease or  
37 in payments out of production under such a title or lease)  
38 registered for nonissuer distribution if (A) any security  
39 of the same class has ever been registered under this  
40 chapter or a predecessor act, or (B) the security being  
41 registered was originally issued pursuant to an exemp-  
42 tion under this chapter or a predecessor act.

43 (b) A registration statement under this section shall  
44 contain the following information and be accompanied  
45 by the following documents in addition to the informa-  
46 tion specified in section 305 (c) and the consent to service  
47 of process required by section 414(g):

48 (1) A statement demonstrating eligibility for regis-  
49 tration by notification;

50 (2) with respect to the issuer and any significant  
51 subsidiary: Its name, address and form of organization;  
52 the state (or foreign jurisdiction) and the date of its  
53 organization; and the general character and location of  
54 its business;

55 (3) with respect to any person on whose behalf any  
56 part of the offering is to be made in a nonissuer distri-  
57 bution: His name and address; the amount of securities  
58 of the issuer held by him as of the date of the filing of  
59 the registration statement; and a statement of his reasons  
60 for making the offering;

61 (4) a description of the security being registered;

62 (5) the information and documents specified in sub-  
63 divisions (8), (10) and (12) of section 304(b); and

64 (6) in the case of any registration under section  
65 302(a) (2) which does not also satisfy the conditions of  
66 section 302(a) (1), a balance sheet of the issuer as of a  
67 date within four months prior to the filing of the regis-  
68 tration statement, and a summary of earnings for each  
69 of the two fiscal years preceding the date of the balance  
70 sheet and for any period between the close of the last  
71 fiscal year and the date of the balance sheet, or for the  
72 period of the issuer's and any predecessors' existence if  
73 less than two years.

74 (c) If no stop order is in effect and no proceeding is  
75 pending under section 306, a registration statement under  
76 this section automatically becomes effective at three  
77 o'clock in the afternoon of the full business day after the  
78 filing of the registration statement or the last amend-  
79 ment, or at such earlier time as the commissioner deter-  
80 mines.

**§32-3-303. Registration by coordination.**

1 (a) Any security for which a registration statement  
2 has been filed under the Securities Act of 1933 in connec-  
3 tion with the same offering may be registered by coordi-  
4 nation.

5 (b) A registration statement under this section shall  
6 contain the following information and be accompanied

7 by the following documents in addition to the information  
8 specified in section 305(c) and the consent to service of  
9 process required by section 414(g) :

10 (1) Three copies of the latest form of prospectus filed  
11 under the Securities Act of 1933;

12 (2) If the commissioner by rule or otherwise requires,  
13 a copy of the articles of incorporation and bylaws (or their  
14 substantial equivalents) currently in effect, a copy of any  
15 agreements with or among underwriters, a copy of any  
16 indenture or other instrument governing the issuance of  
17 the security to be registered, and a specimen or copy of  
18 the security;

19 (3) If the commissioner requests, any other infor-  
20 mation, or copies of any other documents, filed under the  
21 Securities Act of 1933; and

22 (4) An undertaking to forward all future amendments  
23 to the federal prospectus, other than an amendment which  
24 merely delays the effective date of the registration state-  
25 ment, promptly and in any event not later than the first  
26 business day after the day they are forwarded to or filed  
27 with the securities and exchange commission, whichever  
28 first occurs.

29 (c) A registration statement under this section auto-  
30 matically becomes effective at the moment the federal  
31 registration statement becomes effective if all the follow-  
32 ing conditions are satisfied: (1) No stop order is in effect  
33 and no proceeding is pending under section 306; (2) the  
34 registration statement has been on file with the com-  
35 missioner for at least ten days; and (3) a statement of  
36 the maximum and minimum proposed offering prices  
37 and the maximum underwriting discounts and the com-  
38 missions has been on file for two full business days or  
39 such shorter period as the commissioner permits by rule  
40 or otherwise and the offering is made within those limi-  
41 tations. The registrant shall promptly notify the commis-  
42 sioner by telephone or telegram of the date and time when  
43 the federal registration statement became effective and  
44 the content of the price amendment, if any, and shall  
45 promptly file a posteffective amendment containing the  
46 information and documents in the price amendment.  
47 "Price amendment" means the final federal amendment

48 which includes a statement of the offering price, under-  
49 writing and selling discounts or commissions, amount of  
50 proceeds, conversion rates, call prices and other matters  
51 dependent upon the offering price. Upon failure to receive  
52 the required notification and posteffective amendment  
53 with respect to the price amendment, the commissioner  
54 may enter a stop order, without notice or hearing, retro-  
55 actively denying effectiveness to the registration state-  
56 ment or suspending its effectiveness until compliance with  
57 this subsection, if he promptly notifies the registrant by  
58 telephone or telegram (and promptly confirms by letter or  
59 telegram when he notifies by telephone) of the issuance  
60 of the order. If the registrant proves compliance with the  
61 requirements of this subsection as to notice and posteffec-  
62 tive amendment, the stop order is void as of the time  
63 of its entry. The commissioner may by rule or otherwise  
64 waive either or both of the conditions specified in sub-  
65 divisions (2) and (3). If the federal registration statement  
66 becomes effective before all the conditions in this sub-  
67 section are satisfied and they are not waived, the regis-  
68 tration statement automatically becomes effective as soon  
69 as all the conditions are satisfied. If the registrant ad-  
70 vises the commissioner of the date when the federal  
71 registration statement is expected to become effective,  
72 the commissioner shall promptly advise the registrant by  
73 telephone or telegram, at the registrant's expense,  
74 whether all the conditions are satisfied and whether he  
75 then contemplates the institution of a proceeding under  
76 section 306; but this advice by the commissioner does not  
77 preclude the institution of such a proceeding at any time.

**§32-3-304. Registration by qualification.**

- 1 (a) Any security may be registered by qualification.
- 2 (b) A registration statement under this section shall
- 3 contain the following information and be accompanied by
- 4 the following documents in addition to the information
- 5 specified in section 305(c) and the consent to service of
- 6 process required by section 414(g):
- 7 (1) With respect to the issuer and any significant
- 8 subsidiary: Its name, address and form of organization;
- 9 the state or foreign jurisdiction and date of its organiza-

10 tion; the general character and location of its business; a  
11 description of its physical properties and equipment; and  
12 a statement of the general competitive conditions in the  
13 industry or business in which it is or will be engaged;

14 (2) with respect to every director and officer of the  
15 issuer, or person occupying a similar status or performing  
16 similar functions: His name, address and principal occu-  
17 pation for the past five years; the amount of securities  
18 of the issuer held by him as of a specified date within  
19 thirty days of the filing of the registration statement; the  
20 amount of the securities covered by the registration  
21 statement to which he has indicated his intention to  
22 subscribe; and a description of any material interest in any  
23 material transaction with the issuer or any significant  
24 subsidiary effected within the past three years or pro-  
25 posed to be effected;

26 (3) with respect to persons covered by subdivision (2):  
27 The remuneration paid during the past twelve months and  
28 estimated to be paid during the next twelve months, di-  
29 rectly or indirectly, by the issuer (together with all  
30 predecessors, parents, subsidiaries and affiliates) to all  
31 those persons in the aggregate;

32 (4) with respect to any person owning of record, or  
33 beneficially if known, ten percent or more of the out-  
34 standing shares of any class of equity security of the  
35 issuer: The information specified in subdivision (2) other  
36 than his occupation;

37 (5) with respect to every promoter if the issuer was  
38 organized within the past three years: The information  
39 specified in subdivision (2), any amount paid to him with-  
40 in that period or intended to be paid to him, and the  
41 consideration for any such payment;

42 (6) with respect to any person on whose behalf any  
43 part of the offering is to be made in a nonissuer distribu-  
44 tion: His name and address; the amount of securities of  
45 the issuer held by him as of the date of the filing of the  
46 registration statement; a description of any material in-  
47 terest in any material transaction with the issuer or any  
48 significant subsidiary effected within the past three years  
49 or proposed to be effected; and a statement of his reasons  
50 for making the offering;

51 (7) the capitalization and long-term debt (on both a  
52 current and a pro forma basis) of the issuer and any  
53 significant subsidiary, including a description of each  
54 security outstanding or being registered or otherwise  
55 offered, and a statement of the amount and kind of  
56 consideration (whether in the form of cash, physical as-  
57 sets, services, patents, goodwill or anything else) for which  
58 the issuer or any subsidiary has issued any of its securities  
59 within the past two years or is obligated to issue any of  
60 its securities;

61 (8) the kind and amount of securities to be offered;  
62 the proposed offering price or the method by which it is to  
63 be computed; any variation therefrom at which any pro-  
64 portion of the offering is to be made to any person or class  
65 of persons other than the underwriters, with a specifica-  
66 tion of any such person or class; the basis upon which the  
67 offering is to be made if otherwise than for cash; the esti-  
68 mated aggregate underwriting and selling discounts or  
69 commissions and finders' fees (including separately cash,  
70 securities, contracts or anything else of value to accrue to  
71 the underwriters or finders in connection with the offer-  
72 ing) or, if the selling discounts or commissions are  
73 variable, the basis of determining them and their maxi-  
74 mum and minimum amounts; the estimated amounts of  
75 other selling expenses, including legal, engineering and  
76 accounting charges; the name and address of every un-  
77 derwriter and every recipient of a finder's fee; a copy of  
78 any underwriting or selling-group agreement pursuant  
79 to which the distribution is to be made, or the proposed  
80 form of any such agreement whose terms have not yet  
81 been determined; and a description of the plan of distri-  
82 bution of any securities which are to be offered otherwise  
83 than through an underwriter;

84 (9) the estimated cash proceeds to be received by the  
85 issuer from the offering; the purposes for which the  
86 proceeds are to be used by the issuer; the amount to be  
87 used for each purpose; the order or priority in which the  
88 proceeds will be used for the purpose stated; the amounts  
89 of any funds to be raised from other sources to achieve  
90 the purposes stated; the sources of any such funds; and, if  
91 any part of the proceeds is to be used to acquire any prop-

92 erty (including goodwill) otherwise than in the ordinary  
93 course of business, the names and addresses of the vend-  
94 ors, the purchase price, the names of any persons who  
95 have received commissions in connection with the acqui-  
96 sition and the amounts of any such commissions and any  
97 other expense in connection with the acquisition (includ-  
98 ing the cost of borrowing money to finance the acqui-  
99 sition);

100 (10) a description of any stock options or other security  
101 options outstanding, or to be created in connection with  
102 the offering, together with the amount of any such options  
103 held or to be held by every person required to be named  
104 in subdivision (2), (4), (5), (6) or (8) and by any per-  
105 son who holds or will hold ten percent or more in the  
106 aggregate of any such options;

107 (11) the dates of, parties to, and general effect concisely  
108 stated of, every management or other material contract  
109 made or to be made otherwise than in the ordinary  
110 course of business if it is to be performed in whole or in  
111 part at or after the filing of the registration statement or  
112 was made within the past two years, together with a copy  
113 of every such contract; and a description of any pending  
114 litigation or proceeding to which the issuer is a party and  
115 which materially affects its business or assets (including  
116 any such litigation or proceeding known to be contem-  
117 plated by governmental authorities);

118 (12) a copy of any prospectus, pamphlet, circular, form  
119 letter, advertisement or other sales literature intended  
120 as of the effective date to be used in connection with the  
121 offering;

122 (13) a specimen or copy of the security being regis-  
123 tered; a copy of the issuer's articles of incorporation and  
124 bylaws, or their substantial equivalents, as currently in  
125 effect; and a copy of any indenture or other instrument  
126 covering the security to be registered;

127 (14) a signed or conformed copy of an opinion of coun-  
128 sel as to the legality of the security being registered (with  
129 an English translation if it is in a foreign language),  
130 which shall state whether the security when sold will be  
131 legally issued, fully paid and nonassessable, and, if a debt  
132 security, a binding obligation of the issuer;

133 (15) the written consent of any accountant, engineer,  
134 appraiser or other person whose profession gives authority  
135 to a statement made by him, if any such person is named  
136 as having prepared or certified a report or valuation  
137 (other than a public and official document or statement)  
138 which is used in connection with the registration state-  
139 ment;

140 (16) a balance sheet of the issuer as of a date within  
141 four months prior to the filing of the registration state-  
142 ment; a profit and loss statement and analysis of surplus  
143 for each of the three fiscal years preceding the date of the  
144 balance sheet and for any period between the close of the  
145 last fiscal year and the date of the balance sheet, or for  
146 the period of the issuer's and any predecessors' existence  
147 if less than three years; and, if any part of the proceeds  
148 of the offering is to be applied to the purchase of any  
149 business, the same financial statements which would be  
150 required if that business were the registrant; and

151 (17) such additional information as the commissioner  
152 requires by rule or order.

153 (c) A registration statement under this section becomes  
154 effective when the commissioner so orders.

155 (d) The commissioner may by rule or order require as  
156 a condition of registration under this section that a pros-  
157 pectus containing any designated part of the information  
158 specified in subsection (b) be sent or given to each person  
159 to whom an offer is made before or concurrently with (1)  
160 the first written offer made to him (otherwise than by  
161 means of a public advertisement) by or for the account of  
162 the issuer or any other person on whose behalf the offer-  
163 ing is being made, or by any underwriter or broker-dealer  
164 who is offering part of an unsold allotment or subscrip-  
165 tion taken by him as a participant in the distribution, (2)  
166 the confirmation of any sale made by or for the account of  
167 any such person, (3) payment pursuant to any such sale,  
168 or (4) delivery of the security pursuant to any such sale,  
169 whichever first occurs.

**§32-3-305. Provisions applicable to registration generally.**

1 (a) A registration statement may be filed by the  
2 issuer, any other person on whose behalf the offering  
3 is to be made, or a registered broker-dealer.

4 (b) Every person filing a registration statement shall  
5 pay a filing fee of one twentieth of one percent of the  
6 maximum aggregate offering price at which the registered  
7 securities are to be offered in this state, but the fee  
8 shall in no case be less than fifty dollars or more than  
9 fifteen hundred dollars. When a registration statement  
10 is withdrawn before the effective date or a preeffective  
11 stop order is entered under section 306, the commissioner  
12 shall retain all of the fee.

13 (c) Every registration statement shall specify (1) the  
14 amount of securities to be offered in this state; (2) the  
15 states in which a registration statement or similar docu-  
16 ment in connection with the offering has been or is to  
17 be filed; and (3) any adverse order, judgement or decree  
18 entered in connection with the offering by the regulatory  
19 authorities in each state or by any court or the securities  
20 and exchange commission.

21 (d) Any document filed under this chapter or a prede-  
22 cessor act within five years preceding the filing of a  
23 registration statement may be incorporated by reference  
24 in the registration statement to the extent that the docu-  
25 ment is currently accurate.

26 (e) The commissioner may by rule or otherwise per-  
27 mit the omission of any item of information or document  
28 from any registration statement.

29 (f) In the case of a nonissuer distribution, informa-  
30 tion may not be required under section 304 or 305(j)  
31 unless it is known to the person filing the registration  
32 statement or to the persons on whose behalf the distri-  
33 bution is to be made, or can be furnished by them without  
34 unreasonable effort or expense.

35 (g) The commissioner may by rule or order require  
36 as a condition of registration by qualification or coordi-  
37 nation (1) that any security issued within the past three  
38 years or to be issued to a promoter for a consideration  
39 substantially different from the public offering price, or  
40 to any person for a consideration other than cash, be  
41 deposited in escrow; and (2) that the proceeds from the  
42 sale of the registered security in this state be impounded  
43 until the issuer receives a specified amount from the sale  
44 of the security either in this state or elsewhere. The

45 commissioner may by rule or order determine the condi-  
46 tions of any escrow or impounding required hereunder, but  
47 he may not reject a depository solely because of location  
48 in another state.

49 (h) The commissioner may by rule or order require  
50 as a condition of registration that any security registered  
51 by qualification or coordination be sold only on a specified  
52 form of subscription or sale contract, and that a signed  
53 or conformed copy of each contract be filed with the  
54 commissioner or preserved for any period up to three  
55 years specified in the rule or order.

56 (i) Every registration statement is effective for one  
57 year from its effective date, or any longer period during  
58 which the security is being offered or distributed in a  
59 nonexempted transaction by or for the account of the  
60 issuer or other person on whose behalf the offering is  
61 being made or by any underwriter or broker-dealer who  
62 is still offering part of an unsold allotment or subscrip-  
63 tion taken by him as a participant in the distribution,  
64 except during the time a stop order is in effect under  
65 section 306. All outstanding securities of the same class  
66 as a registered security are considered to be registered  
67 for the purpose of any nonissuer transaction (1) so long  
68 as the registration statement is effective and (2) between  
69 the thirtieth day after the entry of any stop order sus-  
70 pending or revoking the effectiveness of the registration  
71 statement under section 306 (if the registration state-  
72 ment did not relate in whole or in part to a nonissuer  
73 distribution) and one year from the effective date of the  
74 registration statement. A registration statement may not  
75 be withdrawn for one year from its effective date if any  
76 securities of the same class are outstanding. A registra-  
77 tion statement may be withdrawn otherwise only in the  
78 discretion of the commissioner.

79 (j) So long as a registration statement is effective, the  
80 commissioner may by rule or order require the person  
81 who filed the registration statement to file reports, not  
82 more often than quarterly, to keep reasonably current  
83 the information contained in the registration statement  
84 and to disclose the progress of the offering.

85 (k) A registration statement relating to a security

86 issued by a face amount certificate company or a re-  
87 deemable security issued by an open end management  
88 company or unit investment trust, as those terms are  
89 defined in the Investment Company Act of 1940, may be  
90 amended after its effective date so as to increase the  
91 securities specified as proposed to be offered. Such an  
92 amendment becomes effective when the commissioner  
93 so orders. Every person filing such an amendment shall  
94 pay a filing fee, calculated in the manner specified in  
95 subsection (b), with respect to the additional securities  
96 proposed to be offered.

**§32-3-306. Denial, suspension and revocation of registration.**

1 (a) The commissioner may issue a stop order denying  
2 effectiveness to, or suspending or revoking the effective-  
3 ness of, any registration statement if he finds (1) that  
4 the order is in the public interest and (2) that  
5 (A) the registration statement as of its effective date  
6 or as of any earlier date in the case of an order denying  
7 effectiveness, or any amendment under section 305(k)  
8 as of its effective date, or any report under section 305(j)  
9 is incomplete in any material respect or contains any  
10 statement which was, in the light of the circumstances  
11 under which it was made, false or misleading with respect  
12 to any material fact;  
13 (B) any provision of this chapter or any rule, order  
14 or condition lawfully imposed under this chapter has  
15 been willfully violated, in connection with the offering,  
16 by (i) the person filing the registration statement, (ii)  
17 the issuer, any partner, officer or director of the issuer,  
18 any person occupying a similar status or performing  
19 similar functions, or any person directly or indirectly  
20 controlling or controlled by the issuer, but only if the  
21 person filing the registration statement is directly or in-  
22 directly controlled by or acting for the issuer, or (iii)  
23 any underwriter;  
24 (C) the security registered or sought to be registered  
25 is the subject of an administrative stop order or similar  
26 order or a permanent or temporary injunction of any  
27 court of competent jurisdiction entered under any other  
28 federal or state act applicable to the offering; but (i) the

29 commissioner may not institute a proceeding against an  
30 effective registration statement under subdivision (C)  
31 more than one year from the date of the order or in-  
32 junction relied on, and (ii) he may not enter an order  
33 under subdivision (C) on the basis of an order or in-  
34 junction entered under any other state act unless that  
35 order or injunction was based on facts which would  
36 currently constitute a ground for a stop order under this  
37 section;

38 (D) the issuer's enterprise or method of business in-  
39 cludes or would include activities which are illegal where  
40 performed;

41 (E) the offering has worked or tended to work a  
42 fraud upon purchasers or would so operate;

43 (F) the offering has been or would be made with  
44 unreasonable amounts of underwriters' and sellers' dis-  
45 counts, commissions or other compensation, or promoters'  
46 profits or participation, or unreasonable amounts or kinds  
47 of options;

48 (G) when a security is sought to be registered by  
49 notification, it is not eligible for such registration;

50 (H) when a security is sought to be registered by  
51 coordination, there has been a failure to comply with the  
52 undertaking required by section 303(b) (4); or

53 (I) the applicant or registrant has failed to pay the  
54 proper filing fee; but the commissioner may enter only  
55 a denial order under this subdivision and he shall vacate  
56 any such order when the deficiency has been corrected.

57 The commissioner may not institute a stop order pro-  
58 ceeding against an effective registration statement on  
59 the basis of a fact or transaction known to him when the  
60 registration statement became effective unless the pro-  
61 ceeding is instituted within the next thirty days.

62 (b) The commissioner may by order summarily post-  
63 pone or suspend the effectiveness of the registration state-  
64 ment pending final determination of any proceeding under  
65 this section. Upon the entry of the order, the commis-  
66 sioner shall promptly notify each person specified in  
67 subsection (c) that it has been entered and of the reasons  
68 therefor and that within fifteen days after the receipt

69 of a written request the matter will be set down for  
 70 hearing. If no hearing is requested and none is ordered  
 71 by the commissioner, the order will remain in effect  
 72 until it is modified or vacated by the commissioner. If  
 73 a hearing is requested or ordered, the commissioner,  
 74 after notice of and opportunity for hearing to each per-  
 75 son specified in subsection (c), may modify or vacate  
 76 the order or extend it until final determination.

77 (c) No stop order may be entered under any part  
 78 of this section except the first sentence of subsection (b)  
 79 without (1) appropriate prior notice to the applicant or  
 80 registrant, the issuer and the person on whose behalf  
 81 the securities are to be or have been offered, (2) oppor-  
 82 tunity for hearing, and (3) written findings of fact and  
 83 conclusions of law.

84 (d) The commissioner may vacate or modify a stop  
 85 order if he finds that the conditions which prompted  
 86 entry have changed or that it is otherwise in the public  
 87 interest to do so.

#### ARTICLE 4. GENERAL PROVISIONS.

##### §32-4-401. Definitions.

1 When used in this chapter, unless the context otherwise  
 2 requires:

3 (a) "Commissioner" means the auditor of the state of  
 4 West Virginia.

5 (b) "Agent" means any individual other than a  
 6 broker-dealer who represents a broker-dealer or issuer in  
 7 effecting or attempting to effect purchases or sales of se-  
 8 curities. "Agent" does not include an individual who rep-  
 9 resents an issuer in (1) effecting transactions in a security  
 10 exempted by subdivisions (1), (2), (3), (10) or (11) of  
 11 section 402 (a), (2) effecting transactions exempted by  
 12 section 402(b), or (3) effecting transactions with existing  
 13 employees, partners or directors of the issuer if no com-  
 14 mission or other remuneration is paid or given directly  
 15 or indirectly for soliciting any person in this state. A  
 16 partner, officer or director of a broker-dealer or issuer, or  
 17 a person occupying a similar status or performing similar  
 18 functions, is an agent only if he otherwise comes within  
 19 this definition.

20 (c) "Broker-dealer" means any person engaged in the  
21 business of effecting transactions in securities for the ac-  
22 count of others or for his own account. "Broker-dealer"  
23 does not include (1) an agent, (2) an issuer, (3) a bank,  
24 savings institution or trust company; or (4) a person who  
25 has no place of business in this state if (A) he effects trans-  
26 actions in this state exclusively with or through (i) the is-  
27 suers of the securities involved in the transactions, (ii)  
28 other broker-dealers, or (iii) banks, savings institutions,  
29 trust companies, insurance companies, investment com-  
30 panies as defined in the Investment Company Act of 1940,  
31 pension or profit-sharing trusts, or other financial institu-  
32 tions or institutional buyers, whether acting for themselves  
33 or as trustees, or (B) during any period of twelve consecu-  
34 tive months he does not direct more than fifteen offers to  
35 sell or buy into this state in any manner to persons other  
36 than those specified in clause (A), whether or not the of-  
37 feror or any of the offerees is then present in this state.

38 (d) "Fraud," "deceit" and "defraud" are not limited to  
39 common-law deceit.

40 (e) "Guaranteed" means guaranteed as to payment of  
41 principal, interest or dividends.

42 (f) "Investment adviser" means any person who, for  
43 compensation, engages in the business of advising others,  
44 either directly or through publications or writings, as to  
45 the value of securities or as to the advisability of investing  
46 in, purchasing or selling securities, or who, for compensa-  
47 tion and as a part of a regular business, issues or promul-  
48 gates analyses or reports concerning securities. "Invest-  
49 ment adviser" does not include (1) a bank, savings insti-  
50 tution or trust company; (2) a lawyer, accountant, engi-  
51 neer or teacher whose performance of those services is  
52 solely incidental to the practice of his profession; (3) a  
53 broker-dealer whose performance of these services is sole-  
54 ly incidental to the conduct of his business as a broker-  
55 dealer and who receives no special compensation for them;  
56 (4) a publisher of any bona fide newspaper, news maga-  
57 zine or business or financial publication of general, regular  
58 and paid circulation; (5) a person whose advice, analyses  
59 or reports relate only to securities exempted by section

60 402(a) (1); (6) a person who has no place of business in  
61 this state if (A) his only clients in this state are other  
62 investment advisers, broker-dealers, banks, savings in-  
63 stitutions, trust companies, insurance companies, invest-  
64 ment companies as defined in the Investment Company  
65 Act of 1940, pension or profit-sharing trusts, or other finan-  
66 cial institutions or institutional buyers, whether acting for  
67 themselves or as trustees, or (B) during any period of  
68 twelve consecutive months he does not direct business  
69 communications into this state in any manner to more  
70 than five clients other than those specified in clause (A),  
71 whether or not he or any of the persons to whom the com-  
72 munications are directed is then present in this state; or  
73 (7) such other persons not within the intent of this para-  
74 graph as the commissioner may by rule or order desig-  
75 nate.

76 (g) "Issuer" means any person who issues or proposes  
77 to issue any security, except that (1) with respect to cer-  
78 tificates of deposit, voting-trust certificates or collateral-  
79 trust certificates, or with respect to certificates of interest  
80 or shares in an unincorporated investment trust not hav-  
81 ing a board of directors or persons performing similar  
82 functions or of the fixed, restricted management, or unit  
83 type, the term "issuer" means the person or persons per-  
84 forming the acts and assuming the duties of depositor or  
85 manager pursuant to the provisions of the trust or other  
86 agreement or instrument under which the security is  
87 issued; and (2) with respect to certificates of interest or  
88 participation in oil, gas or mining titles or leases or in  
89 payments out of production under such titles or leases,  
90 there is not considered to be any "issuer."

91 (h) "Nonissuer" means not directly or indirectly for  
92 the benefit of the issuer.

93 (i) "Person" means an individual, a corporation, a  
94 partnership, an association, a joint-stock company, a trust  
95 where the interests of the beneficiaries are evidenced by  
96 a security, an unincorporated organization, a government  
97 or a political subdivision of a government.

98 (j) (1) "Sale" or "sell" includes every contract of sale  
99 of, contract to sell, or disposition of, a security or interest  
100 in a security for value.

101 (2) "Offer" or "offer to sell" includes every attempt  
102 or offer to dispose of, or solicitation of an offer to buy,  
103 a security or interest in a security for value.

104 (3) Any security given or delivered with, or as a  
105 bonus on account of, any purchase of securities or any  
106 other thing is considered to constitute part of the subject  
107 of the purchase and to have been offered and sold for  
108 value.

109 (4) A purported gift of assessable stock is considered  
110 to involve an offer and sale.

111 (5) Every sale or offer of a warrant or right to pur-  
112 chase or subscribe to another security of the same or  
113 another issuer, as well as every sale or offer of a security  
114 which gives the holder a present or future right or  
115 privilege to convert into another security of the same or  
116 another issuer, is considered to include an offer of the  
117 other security.

118 (6) The terms defined in this subdivision do not in-  
119 clude (A) any bona fide pledge or loan; (B) any stock  
120 dividend, whether the corporation distributing the divi-  
121 dend is the issuer of the stock or not, if nothing of value  
122 is given by stockholders for the dividend other than the  
123 surrender of a right to a cash or property dividend when  
124 each stockholder may elect to take the dividend in cash  
125 or property or in stock; (C) any act incident to a class  
126 vote by stockholders, pursuant to the certificate of in-  
127 corporation or the applicable corporation statute, on a  
128 merger, consolidation, reclassification of securities or sale  
129 of corporate assets in consideration of the issuance of  
130 securities of another corporation; or (D) any act incident  
131 to a judicially approved reorganization in which a se-  
132 curity is issued in exchange for one or more outstanding  
133 securities, claims or property interests, or partly in such  
134 exchange and partly for cash.

135 (k) "Securities Act of 1933," "Securities Exchange  
136 Act of 1934," "Public Utility Holding Company Act of  
137 1935," and "Investment Company Act of 1940" mean the  
138 federal statutes of those names as amended before the  
139 effective date of this chapter.

140 (l) "Security" means any note; stock; treasury stock;  
141 bond; debenture; evidence of indebtedness; certificate of

142 interest or participation in any profit-sharing agreement;  
 143 collateral-trust certificate; preorganization certificate or  
 144 subscription; transferable share; investment contract;  
 145 voting-trust certificate; certificate of deposit for a se-  
 146 curity; certificate of interest or participation in an oil,  
 147 gas, or mining title or lease or in payments out of pro-  
 148 duction under such a title or lease; or, in general, any  
 149 interest or instrument commonly known as a "security,"  
 150 or any certificate of interest or participation in, temporary  
 151 or interim certificate for, receipt for, guarantee of, or  
 152 warrant or right to subscribe to or purchase, any of the  
 153 foregoing. "Security" does not include any insurance or  
 154 endowment policy or annuity contract under which an  
 155 insurance company promises to pay money either in a  
 156 lump sum or periodically for life or some other specified  
 157 period.

158 (m) "State" means any state, territory or possession  
 159 of the United States, the District of Columbia and Puerto  
 160 Rico.

#### §32-4-402. Exemptions.

1 (a) The following securities are exempted from sec-  
 2 tions 301 and 403:

3 (1) Any security (including a revenue obligation) is-  
 4 sued or guaranteed by the United States, any state, any  
 5 political subdivision of a state, or any agency or corporate  
 6 or other instrumentality of one or more of the foregoing;  
 7 or any certificate of deposit for any of the foregoing;

8 (2) any security issued or guaranteed by Canada, any  
 9 Canadian province, any political subdivision of any such  
 10 province, any agency or corporate or other instrumentality  
 11 of one or more of the foregoing, or any other foreign  
 12 government with which the United States currently main-  
 13 tains diplomatic relations, if the security is recognized as  
 14 a valid obligation by the issuer or guarantor;

15 (3) any security issued by and representing an interest  
 16 in or a debt of, or guaranteed by, any bank organized un-  
 17 der the laws of the United States, or any bank, savings  
 18 institution or trust company organized and supervised  
 19 under the laws of any state;

20 (4) any security issued by and representing an interest  
21 in or a debt of, or guaranteed by, any federal savings and  
22 loan association, or any building and loan or similar  
23 association organized under the laws of any state and  
24 authorized to do business in this state;

25 (5) any security issued by and representing an interest  
26 in or a debt of, or guaranteed by, any insurance company  
27 organized under the laws of any state and authorized to do  
28 business in this state;

29 (6) any security issued or guaranteed by any federal  
30 credit union or any credit union, industrial loan associa-  
31 tion or similar association organized and supervised under  
32 the laws of this state;

33 (7) any security issued or guaranteed by any railroad,  
34 other common carrier, public utility or holding company  
35 which is (A) subject to the jurisdiction of the interstate  
36 commerce commission; (B) a registered holding company  
37 under the Public Utility Holding Company Act of 1935 or  
38 a subsidiary of such a company within the meaning of  
39 that act; (C) regulated in respect of its rates and charges  
40 by a governmental authority of the United States or any  
41 state; or (D) regulated in respect of the issuance or guar-  
42 antee of the security by a governmental authority of the  
43 United States, any state, Canada, or any Canadian prov-  
44 ince;

45 (8) any security listed or approved for listing upon  
46 notice of issuance on the New York Stock Exchange, the  
47 American Stock Exchange, or the Midwest Stock Ex-  
48 change, or listed on any regional stock exchange; any  
49 other security of the same issuer which is of senior  
50 or substantially equal rank; any security called for by  
51 subscription rights or warrants so listed or approved;  
52 or any warrant or right to purchase or subscribe to  
53 any of the foregoing;

54 (9) any security issued by any person organized  
55 and operated not for private profit but exclusively for  
56 religious, educational, benevolent, charitable, fraternal,  
57 social, athletic or reformatory purposes, or as a chamber  
58 of commerce or trade or professional association, and no  
59 part of the net earnings of which inures to the benefit of  
60 any person, private stockholder or individual;

61 (10) any commercial paper which arises out of a cur-  
62 rent transaction or the proceeds of which have been or  
63 are to be used for current transactions, and which evi-  
64 dences an obligation to pay cash within twelve months of  
65 the date of issuance, exclusive of days of grace, or any  
66 renewal of such paper which is likewise limited, or any  
67 guarantee of such paper or of any such renewal;

68 (11) any investment contract issued in connection with  
69 an employees' stock purchase, savings, pension, profit-  
70 sharing or similar benefit plan if the commissioner is  
71 notified in writing thirty days before the inception of  
72 the plan or, with respect to plans which are in effect on  
73 the effective date of this chapter, within sixty days  
74 thereafter (or within thirty days before they are reopened  
75 if they are closed on the effective date of this chapter);  
76 and

77 (12) any security issued by an agricultural cooperative  
78 association operating in this state and organized under  
79 article four, chapter nineteen of this code, or by a foreign  
80 cooperative association organized under the laws of another  
81 state and duly qualified to transact business in this  
82 state.

83 (b) The following transactions are exempted from  
84 sections 301 and 403:

85 (1) Any isolated nonissuer transaction, whether effec-  
86 ted through a broker-dealer or not;

87 (2) any nonissuer distribution of an outstanding securi-  
88 ty if (A) a recognized securities manual contains the  
89 names of the issuer's officers and directors, a balance sheet  
90 of the issuer as of a date within eighteen months, and  
91 a profit and loss statement for either the fiscal year pre-  
92 ceding that date or the most recent year of operations,  
93 or (B) the security has a fixed maturity or a fixed interest  
94 or dividend provision and there has been no default during  
95 the current fiscal year or within the three preceding fiscal  
96 years, or during the existence of the issuer and any pred-  
97 ecessors if less than three years, in the payment of prin-  
98 cipal, interest or dividends on the security;

99 (3) any nonissuer transaction effected by or through a  
100 registered broker-dealer pursuant to an unsolicited order  
101 or offer to buy; but the commissioner may by rule require

102 that the customer acknowledge upon a specified form that  
103 the sale was unsolicited, and that a signed copy of each  
104 such form be preserved by the broker-dealer for a speci-  
105 fied period;

106 (4) any transaction between the issuer or other person  
107 on whose behalf the offering is made and an underwriter,  
108 or among underwriters;

109 (5) any transaction in a bond or other evidence of  
110 indebtedness secured by a real or chattel mortgage or deed  
111 of trust, or by an agreement for the sale of real estate or  
112 chattels, if the entire mortgage, deed of trust, or agree-  
113 ment, together with all the bonds or other evidences of  
114 indebtedness secured thereby, is offered and sold as a unit;

115 (6) any transaction by an executor, administrator,  
116 sheriff, marshal, constable, receiver, trustee in bankrupt-  
117 cy, guardian or conservator, and any transaction consti-  
118 tuting a judicial sale;

119 (7) any transaction executed by a bona fide pledgee  
120 without any purpose of evading this chapter;

121 (8) any offer or sale to a bank, savings institution,  
122 trust company, insurance company, investment company  
123 as defined in the Investment Company Act of 1940, pension  
124 or profit-sharing trust, or other financial institution or  
125 institutional buyer, or to a broker-dealer, whether the  
126 purchaser is acting for itself or in some fiduciary capac-  
127 ity;

128 (9) any transaction pursuant to an offer directed by  
129 the offeror to not more than ten persons (other than those  
130 designated in subdivision (8)) in this state during any  
131 period of twelve consecutive months, whether or not the  
132 offeror or any of the offerees is then present in this state,  
133 if (A) the seller reasonably believes that all the buyers in  
134 this state (other than those designated in subdivisions (8))  
135 are purchasing for investment, and (B) no commission or  
136 other remuneration is paid or given directly or indirectly  
137 for soliciting any prospective buyer in this state (other  
138 than those designated in subdivision (8)); but the commis-  
139 sioner may by rule or order, as to any security or trans-  
140 action or any type of security or transaction, withdraw or  
141 further condition this exemption, or increase or decrease  
142 the number of offerees permitted, or waive the conditions

143 in clauses (A) and (B) with or without the substitution  
144 of a limitation on remuneration;

145 (10) any offer or sale of a preorganization certificate  
146 or subscription if (A) no commission or other remunera-  
147 tion is paid or given directly or indirectly for soliciting  
148 any prospective subscriber, (B) the number of subscrib-  
149 ers does not exceed ten, and (C) no payment is made by  
150 any subscriber;

151 (11) any transaction pursuant to an offer to existing  
152 security holders of the issuer, including persons who at  
153 the time of the transaction are holders of convertible  
154 securities, nontransferable warrants or transferable war-  
155 rants exercisable within not more than ninety days of  
156 their issuance, if (A) no commission or other remunera-  
157 tion (other than a standby commission) is paid or given  
158 directly or indirectly for soliciting any security holder in  
159 this state, or (B) the issuer first files a notice specifying  
160 the terms of the offer and the commissioner does not by  
161 order disallow the exemption within the next five full  
162 business days;

163 (12) any offer (but not a sale) of a security for which  
164 registration statements have been filed under both this  
165 chapter and the Securities Act of 1933 if no stop order or  
166 refusal order is in effect and no public proceeding or  
167 examination looking toward such an order is pending un-  
168 der either chapter.

169 (c) The commissioner may by order deny or revoke  
170 any exemption specified in subdivision (9) or (11) of  
171 subsection (a) or in subsection (b) with respect to a  
172 specific security or transaction. No such order may be  
173 entered without appropriate prior notice to all interested  
174 parties, opportunity for hearing, and written findings of  
175 fact and conclusions of law, except that the commissioner  
176 may by order summarily deny or revoke any of the speci-  
177 fied exemptions pending final determination of any pro-  
178 ceeding under this subsection. Upon the entry of a sum-  
179 mary order, the commissioner shall promptly notify all  
180 interested parties that it has been entered and of the rea-  
181 sons therefor and that within fifteen days of the receipt  
182 of a written request the matter will be set down for hear-  
183 ing. If no hearing is requested and none is ordered by the

184 commissioner, the order will remain in effect until it is  
185 modified or vacated by the commissioner. If a hearing is  
186 requested or ordered, the commissioner, after notice of and  
187 opportunity for hearing to all interested persons, may  
188 modify or vacate the order or extend it until final deter-  
189 mination. No order under this subsection may operate  
190 retroactively. No person may be considered to have vio-  
191 lated section 301 or 403 by reasons of any offer or sale  
192 effected after the entry of an order under this subsection  
193 if he sustains the burden of proof that he did not know,  
194 and in the exercise of reasonable care could not have  
195 known, of the order.

196 (d) In any proceeding under this chapter, the burden  
197 of proving an exemption or an exception from a definition  
198 is upon the person claiming it.

**§32-4-403. Filing of sales and advertising literature.**

1 Any prospectus, pamphlet, circular, form letter, adver-  
2 tisement or any other sales literature or advertising com-  
3 munication addressed or intended for distribution to pros-  
4 pective investors, including clients or prospective clients  
5 of an investment adviser, shall be filed with the commis-  
6 sioner before it is used, disseminated or distributed un-  
7 less the security or transaction is exempted by section 402.

**§32-4-404. Misleading filings.**

1 It is unlawful for any person to make or cause to be  
2 made, in any document filed with the commissioner or in  
3 any proceeding under this chapter, any statement which  
4 is, at the time and in the light of the circumstances under  
5 which it is made, false or misleading in any material  
6 respect.

**§32-4-405. Unlawful representations concerning registration or exemption.**

1 (a) Neither (1) the fact that an application for regis-  
2 tration under article two of this chapter or a registration  
3 statement under article three of this chapter has been  
4 filed nor (2) the fact that a person or security is effectively  
5 registered constitutes a finding by the commissioner that  
6 any document filed under this chapter is true, complete

7 and not misleading. Neither any such fact nor the fact  
8 that an exemption or exception is available for a security  
9 or a transaction means that the commissioner has passed  
10 in any way upon the merits or qualifications of, or recom-  
11 mended or given approval to, any person, security or  
12 transaction.

13 (b) It is unlawful to make, or cause to be made, to  
14 any prospective purchaser, customer or client any repre-  
15 sentation inconsistent with subsection (a).

**§32-4-406. Administration of chapter.**

1 (a) This chapter shall be administered by the auditor  
2 of this state, and he is hereby designated, and shall be,  
3 the commissioner of securities of this state. He shall  
4 have power and authority to appoint or employ such  
5 assistants as are necessary for the administration of this  
6 chapter.

7 (b) All fees herein provided for shall be collected by  
8 the commissioner and shall be deposited in the state  
9 treasury and credited to the general revenue fund, and  
10 the commissioner shall keep a record of the receipts and  
11 expenditures incurred in carrying out the provisions of  
12 this chapter.

13 (c) It is unlawful for the commissioner or any of his  
14 officers or employees to use for personal benefit any in-  
15 formation which is filed with or obtained by the com-  
16 missioner and which is not made public. No provision  
17 of this chapter authorizes the commissioner or any of  
18 his officers or employees to disclose any such information  
19 except among themselves or when necessary or appro-  
20 priate in a proceeding or investigation under this chap-  
21 ter. No provision of the chapter either creates or derogates  
22 from any privilege which exists at common law or other-  
23 wise when documentary or other evidence is sought  
24 under a subpoena directed to the commissioner or any  
25 of his officers or employees.

**§32-4-407. Investigations and subpoenas.**

1 (a) The commissioner in his discretion (1) may make  
2 such public or private investigations within or outside  
3 of this state as he deems necessary to determine whether

4 any person has violated or is about to violate any pro-  
5 vision of this chapter or any rule or order hereunder,  
6 or to aid in the enforcement of this chapter or in the  
7 prescribing of rules and forms hereunder, (2) may re-  
8 quire or permit any person to file a statement in writing,  
9 under oath or otherwise as the commissioner determines,  
10 as to all the facts and circumstances concerning the mat-  
11 ter to be investigated, and (3) may publish information  
12 concerning any violation of this chapter or any rule or  
13 order hereunder.

14 (b) For the purpose of any investigation or proceeding  
15 under this chapter, the commissioner or any officer,  
16 agent or employee designated by him may administer  
17 oaths and affirmations, subpoena witnesses, compel their  
18 attendance, take evidence and require the production of  
19 any books, papers, correspondence, memoranda, agree-  
20 ments or other documents or records which the com-  
21 missioner deems relevant or material to the inquiry.

22 (c) In case of contumacy by, or refusal to obey a  
23 subpoena issued to, any person, the circuit court of  
24 Kanawha county, upon application by the commissioner,  
25 may issue to the person an order requiring him to appear  
26 before the commissioner, or the officer designated by  
27 him, there to produce documentary evidence if so ordered  
28 or to give evidence touching the matter under investiga-  
29 tion or in question. Failure to obey the order of the court  
30 may be punished by the court as a contempt of court.

31 (d) No person is excused from attending and testi-  
32 fying or from producing any document or record before  
33 the commissioner, or in obedience to the subpoena of the  
34 commissioner or any officer designated by him, or in any  
35 proceeding instituted by the commissioner, on the ground  
36 that the testimony or evidence (documentary or other-  
37 wise) required of him may tend to incriminate him or  
38 subject him to a penalty of forfeiture; but no individual  
39 may be prosecuted or subjected to any penalty or for-  
40 feiture for or on account of any transaction, matter or  
41 thing concerning which he is compelled, after claiming  
42 his privilege against self-incrimination to testify or pro-  
43 duce evidence (documentary or otherwise), except that

44 the individual testifying is not exempt from prosecution  
45 and punishment for perjury or contempt committed in  
46 testifying.

**§32-4-408. Injunctions.**

1 Whenever it appears to the commissioner that any per-  
2 son has engaged or is about to engage in any act or prac-  
3 tice constituting a violation of any provision of this chap-  
4 ter or any rule or order hereunder, he may in his discre-  
5 tion bring an action in the circuit court of Kanawha  
6 county or a court of competent jurisdiction in the county  
7 where one or more of the defendants reside or have a  
8 place of business to enjoin the acts or practices and to en-  
9 force compliance with this chapter or any rule or order  
10 hereunder. Upon a proper showing, a permanent or  
11 temporary injunction, restraining order or writ of manda-  
12 mus shall be granted and a receiver or conservator may  
13 be appointed for the defendant or the defendant's assets.  
14 The court may not require the commissioner to post a  
15 bond.

**§32-4-409. Criminal penalties.**

1 (a) Any person who willfully violates any provision  
2 of this chapter, except section 404, or who willfully vio-  
3 lates any rule or order under this chapter, or who will-  
4 fully violates section 404 knowing the statement made to  
5 be false or misleading in any material respect, shall be  
6 guilty of a felony, and, upon conviction thereof, shall be  
7 fined not more than five thousand dollars, or imprisoned in  
8 the penitentiary not less than one nor more than three  
9 years, or both fined and imprisoned; but no person may be  
10 imprisoned for the violation of any rule or order if he  
11 proves that he had no knowledge of the rule or order. No  
12 indictment may be returned under this chapter more than  
13 five years after the alleged violation.

14 (b) The commissioner may refer such evidence as is  
15 available concerning violations of this chapter or of any  
16 rule or order hereunder to the proper prosecuting at-  
17 torney, who may, with or without such a reference, insti-  
18 tute the appropriate criminal proceedings under this  
19 chapter.

20 (c) Nothing in this chapter limits the power of the  
21 state to punish any person for any conduct which consti-  
22 tutes a crime by statute or at common law.

**§32-4-410. Civil liabilities.**

1 (a) Any person who  
2 (1) offers or sells a security in violation of section  
3 201 (a), 301, 403 or 405 (b), or of any condition imposed  
4 under section 304 (d), 305 (g) or 305 (h), or  
5 (2) offers or sells a security by means of any untrue  
6 statement of a material fact or any omission to state a  
7 material fact necessary in order to make the statements  
8 made, in the light of the circumstances under which they  
9 are made, not misleading (the buyer not knowing of the  
10 untruth or omission), and who does not sustain the burden  
11 of proof that he did not know, and in the exercise of rea-  
12 sonable care could not have known, of the untruth or  
13 omission, is liable to the person buying the security from  
14 him, who may assert a claim in a civil action to recover  
15 the consideration paid for the security, together with in-  
16 terest at nine percent per year from the date of payment,  
17 costs and reasonable attorneys' fees, less the amount of  
18 any income received on the security, upon the tender of  
19 the security, or for damages if he no longer owns the se-  
20 curity. Damages are the amount that would be recover-  
21 able upon a tender less the value of the security when the  
22 buyer disposed of it and interest at nine percent per year  
23 from the date of disposition.  
24 (b) Every person who directly or indirectly controls a  
25 seller liable under subsection (a), every partner, officer  
26 or director of such a seller, every person occupying a  
27 similar status or performing similar functions, every em-  
28 ployee of such a seller who materially aids in the sale, and  
29 every broker-dealer or agent who materially aids in the  
30 sale are also liable jointly and severally with and to the  
31 same extent as the seller, unless the nonseller who is so  
32 liable sustains the burden of proof that he did not know,  
33 and in exercise of reasonable care could not have known,  
34 of the existence of the facts by reason of which the liabil-  
35 ity is alleged to exist. There is contribution as in cases  
36 of contract among the several persons so liable.

37 (c) Any tender specified in this section may be made  
38 at any time before entry of judgment.

39 (d) Every cause of action under this statute survives  
40 the death of any person who might have been a plaintiff  
41 or defendant.

42 (e) No person may sue under this section more than  
43 three years after the sale.

44 (f) No person who has made or engaged in the per-  
45 formance of any contract in violation of any provision of  
46 this chapter or any rule or order hereunder, or who has  
47 acquired any purported right under any such contract  
48 with knowledge of the facts by reason of which its making  
49 or performance was in violation, may base any suit on  
50 the contract.

51 (g) Any condition, stipulation or provision binding  
52 any person acquiring any security to waive compliance  
53 with any provision of this chapter or any rule or order  
54 hereunder is void.

55 (h) The rights and remedies provided by this chapter  
56 are in addition to any other rights or remedies that may  
57 exist at law or in equity, but this chapter does not create  
58 any cause of action not specified in this section or section  
59 202 (e).

**§32-4-411. Judicial review of orders.**

1 (a) Any person aggrieved by a final order of the  
2 commissioner may obtain a review of the order in the  
3 circuit court of Kanawha county by filing in court, within  
4 sixty days after the entry of the order, a written petition  
5 praying that the order be modified or set aside in whole or  
6 in part. A copy of the petition shall be forthwith served  
7 upon the commissioner and thereupon the commissioner  
8 shall certify and file in court a copy of the filing and evi-  
9 dence upon which the order was entered. When these have  
10 been filed, the court has exclusive jurisdiction to affirm,  
11 modify, enforce or set aside the order, in whole or in part.  
12 The findings of the commissioner as to the facts, if sup-  
13 ported by competent, material and substantial evidence,  
14 are conclusive. If either party applies to the court for  
15 leave to adduce additional material evidence, and shows to  
16 the satisfaction of the court that there were reasonable

17 grounds for failure to adduce the evidence in the hearing  
18 before the commissioner, the court may order the addi-  
19 tional evidence to be taken before the commissioner and to  
20 be adduced upon the hearing in such manner and upon  
21 such conditions as the court considers proper. The commis-  
22 sioner may modify his findings and order by reason of the  
23 additional evidence and shall file in court the additional  
24 evidence together with any modified or new findings or  
25 order. The judgment of the court shall be final, subject to  
26 review by the supreme court of appeals.

27 (b) The commencement of proceedings under subsec-  
28 tion (a) does not, unless specifically ordered by the court,  
29 operate as a stay of the commissioner's order.

**§32-4-412. Rules, forms, orders and hearings.**

1 (a) The commissioner may from time to time make,  
2 amend and rescind such rules, forms and orders as are  
3 necessary to carry out the provisions of this chapter, in-  
4 cluding rules and forms governing registration statements,  
5 applications and reports, and defining any terms, whether  
6 or not used in this chapter, insofar as the definitions are  
7 not inconsistent with the provisions of this chapter. For  
8 the purpose of rules and forms, the commissioner may  
9 classify securities, persons and matters within his juris-  
10 diction, and prescribe different requirements for different  
11 classes.

12 (b) No rule, form, or order may be made, amended or  
13 rescinded unless the commissioner finds that the action is  
14 necessary or appropriate in the public interest or for the  
15 protection of investors and consistent with the purposes  
16 fairly intended by the policy and provisions of this chap-  
17 ter. In prescribing rules and forms the commissioner may  
18 cooperate with the securities administrators of the other  
19 states and the securities and exchange commission with  
20 a view to effectuating the policy of this statute to achieve  
21 maximum uniformity in the form and content of registra-  
22 tion statements, applications and reports wherever practi-  
23 cable.

24 (c) The commissioner may by rule or order prescribe  
25 (1) the form and content of financial statements required  
26 under this chapter, (2) the circumstances under which  
27 consolidated financial statements shall be filed, and (3)

28 whether any required financial statements shall be certi-  
29 fied by independent or certified public accountants. All  
30 financial statements shall be prepared in accordance with  
31 generally accepted accounting practices.

32 (d) All rules and forms of the commissioner shall be  
33 published.

34 (e) No provision of this chapter imposing any liability  
35 applies to any act done or omitted in good faith in con-  
36 formity with any rule, form or order of the commissioner,  
37 notwithstanding that the rule, form or order may later be  
38 amended or rescinded or be determined by judicial or  
39 other authority to be invalid for any reason.

40 (f) Every hearing in an administrative proceeding shall  
41 be public.

**§32-4-413. Administrative files and opinions.**

1 (a) A document is filed when it is received by the  
2 commissioner.

3 (b) The commissioner shall keep a register of all appli-  
4 cations for registration and registration statements which  
5 are or have ever been effective under this chapter and  
6 all denial, suspension or revocation orders which have  
7 been entered under this chapter. The register shall be  
8 open for public inspection.

9 (c) The information contained in or filed with any  
10 registration statement, application or report may be made  
11 available to the public under such rules as the commis-  
12 sioner prescribes.

13 (d) Upon request and at such reasonable charges as he  
14 prescribes, the commissioner shall furnish to any person  
15 photostatic or other copies (certified under his seal of  
16 office if requested) of any entry in the register or any  
17 document which is a matter of public record. In any  
18 proceeding or prosecution under this chapter, any copy so  
19 certified is prima facie evidence of the contents of the  
20 entry or document certified.

21 (e) The commissioner in his discretion may honor  
22 requests from interested persons for interpretative opin-  
23 ions; copies of which opinions shall be filed in a special  
24 file maintained for that purpose and shall be public rec-  
25 ords available for public inspection and at such reasonable  
26 charges as he prescribes.

**§32-4-414. Scope of the chapter and service of process.**

1 (a) Sections 101, 201(a), 301, 405 and 410 apply to  
2 persons who sell or offer to sell when (1) an offer to sell  
3 is made in this state, or (2) an offer to buy is made and  
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons who  
6 buy or offer to buy when (1) an offer to buy is made in  
7 this state, or (2) an offer to sell is made and accepted in  
8 this state.

9 (c) For the purpose of this section, an offer to sell  
10 or to buy is made in this state, whether or not either  
11 party is then present in this state, when the offer (1)  
12 originates from this state or (2) is directed by the offeror  
13 to this state and received at the place to which it is di-  
14 rected (or at any post office in this state in the case of a  
15 mailed offer).

16 (d) For the purpose of this section, an offer to buy  
17 or to sell is accepted in this state when acceptance (1) is  
18 communicated to the offeror in this state and (2) has not  
19 previously been communicated to the offeror, orally or in  
20 writing, outside this state; and acceptance is communi-  
21 cated to the offeror in this state, whether or not either  
22 party is then present in this state, when the offeree  
23 directs it to the offeror in this state reasonably believing  
24 the offeror to be in this state and it is received at the  
25 place to which it is directed (or at any post office in this  
26 state in the case of a mailed acceptance).

27 (e) An offer to sell or to buy is not made in this  
28 state when (1) the publisher circulates or there is cir-  
29 culated on his behalf in this state any bona fide news-  
30 paper or other publication of general, regular and paid  
31 circulation which is not published in this state, or which  
32 is published in this state but has had more than two  
33 thirds of its circulation outside this state during the past  
34 twelve months, or (2) a radio or television program  
35 originating outside this state is received in this state.

36 (f) Sections 102 and 210(c), as well as section 405 so  
37 far as investment advisors are concerned, apply when  
38 any act instrumental in effecting prohibited conduct is  
39 done in this state, whether or not either party is then  
40 present in this state.

41 (g) Every applicant for registration under this chap-  
42 ter and every issuer which proposes to offer a security  
43 in this state through any person acting on an agency  
44 basis in the common-law sense shall file with the com-  
45 missioner, in such form as he by rule prescribes, an  
46 irrevocable consent appointing the commissioner or his  
47 successor in office to be his attorney to receive service of  
48 any lawful process in any noncriminal suit, action or  
49 proceeding against him or his successor executor or ad-  
50 ministrator which arises under this chapter or any rule  
51 or order hereunder after the consent has been filed, with  
52 the same force and validity as if served personally on  
53 the person filing the consent. A person who has filed such  
54 a consent in connection with a previous registration need  
55 not file another. Service may be made by leaving a copy  
56 of the process in the office of the commissioner, but it  
57 is not effective unless (1) the plaintiff, who may be the  
58 commissioner in a suit, action or proceeding instituted  
59 by him, forthwith sends notice of the service and a copy  
60 of the process by registered mail to the defendant or  
61 respondent at his last address on file with the commis-  
62 sioner, and (2) the plaintiff's affidavit of compliance with  
63 this subsection is filed in the case on or before the return  
64 day of the process, if any, or within such further time  
65 as the court allows.

66 (h) When any person, including any nonresident of  
67 this state, engages in conduct prohibited or made action-  
68 able by this chapter or any rule or order hereunder, and  
69 he has not filed a consent to service of process under sub-  
70 section (g) and personal jurisdiction over him cannot  
71 otherwise be obtained in this state, that conduct shall be  
72 considered equivalent to his appointment of the commis-  
73 sioner or his successor in office to be his attorney to  
74 receive service of any lawful process in any noncriminal  
75 suit, action or proceeding against him or his successor  
76 executor or administrator which grows out of that con-  
77 duct and which is brought under this chapter or any rule  
78 or order hereunder, with the same force and validity  
79 as if served on him personally. Service may be made by  
80 leaving a copy of the process in the office of the commis-  
81 sioner, and it is not effective unless (1) the plaintiff,

82 who may be the commissioner in a suit, action or pro-  
83 ceeding instituted by him, forthwith sends notice of the  
84 service and a copy of the process by registered mail to  
85 the defendant or respondent at his last known address  
86 or takes other steps which are reasonably calculated to  
87 give actual notice, and (2) the plaintiff's affidavit of com-  
88 pliance with this subsection is filed in the case on or  
89 before the return day of the process, if any, or within  
90 such further time as the court allows.

91 (i) When process is served under this section, the  
92 court, or the commissioner in a proceeding before him,  
93 shall order such continuance as may be necessary to  
94 afford the defendant or respondent reasonable oppor-  
95 tunity to defend.

**§32-4-415. Statutory policy.**

1 This chapter shall be so construed as to effectuate the  
2 general purpose to make uniform the law of those states  
3 which enact the uniform securities act and to coordinate  
4 the interpretation and administration of this chapter with  
5 the related federal regulation.

**§32-4-416. Short title.**

1 This chapter may be cited as the "Uniform Securities  
2 Act."

**§32-4-417. Severability of provisions.**

1 If any provision of this chapter or the application  
2 thereof to any person or circumstance is held invalid,  
3 the invalidity shall not affect other provisions or appli-  
4 cations of the chapter which can be given effect without  
5 the invalid provision or application, and to this end the  
6 provisions of this chapter are severable.

**§32-4-418. Saving provisions.**

1 (a) Prior law exclusively governs all suits, actions,  
2 prosecutions or proceedings which are pending or may be  
3 initiated on the basis of facts or circumstances occurring  
4 before the effective date of this chapter, except that no  
5 civil suit or action may be maintained to enforce any  
6 liability under prior law unless brought within any period

7 of limitation which applied when the cause of action  
8 accrued and in any event within three years after the  
9 effective date of this chapter.

10 (b) All effective registrations under prior law, all ad-  
11 ministrative orders relating to such registrations, and all  
12 conditions imposed upon such registrations remain in  
13 effect so long as they would have remained in effect if this  
14 chapter had not been enacted. They are considered to  
15 have been filed, entered or imposed under this chapter, but  
16 are governed by prior law.

17 (c) Prior law applies in respect of any offer or sale  
18 made within one year after the effective date of this chap-  
19 ter pursuant to an offering begun in good faith before its  
20 effective date on the basis of an exemption available under  
21 prior law.

22 (d) Judicial review of all administrative orders as to  
23 which review proceedings have not been instituted by the  
24 effective date of this chapter are governed by section 411,  
25 except that no review proceeding may be instituted unless  
26 the petition is filed within any period of limitation which  
27 applied to a review proceeding when the order was en-  
28 tered and in any event within sixty days after the effec-  
29 tive date of this chapter.

**CHAPTER 32A. LAND SALES; FALSE ADVERTISING;  
ISSUANCE AND SALE OF CHECKS, DRAFTS,  
MONEY ORDERS, ETC.**

**ARTICLE 1. LAND SALES; FALSE ADVERTISING.**

**§32A-1-1. Filing and registration with respect to lands prere-  
quisite to sale, etc., within state.**

1 No person, partnership or corporation shall sell or offer  
2 for sale, in this state, any lands, situate outside this state,  
3 which are to be planted in trees or vines or divided into  
4 town or suburban lots, or any unimproved or undeveloped  
5 lands, or any lands, including cemetery lots, cemetery  
6 privileges, burial rights or privileges, the value of which  
7 materially depends on the future performance of any  
8 stipulation or promise to furnish irrigation, transporta-  
9 tion facilities, streets, sidewalks, sewers, gas, electricity or

10 other value enhancing utility or improvement of any un-  
11 divided part or share, whether an aliquot part or a part  
12 designated on any other basis, or any mine, mineral claim,  
13 or other estate in any mine, or in the lands containing the  
14 same, regardless of where located or situated, the value of  
15 which materially depends on the future discovery or de-  
16 velopment and production of the minerals, without first  
17 having filed with the commissioner of securities (which  
18 office is established in chapter thirty-two of this code) a  
19 detailed description of the property which, or any interest  
20 or part or share of which, is proposed to be sold, and such  
21 information with respect to the value thereof, and the title  
22 to such property or properties as the commissioner of se-  
23 curities shall require, and without causing such property  
24 to be registered by the commissioner of securities in the  
25 manner provided for the registration of securities by  
26 qualification under section three hundred four, article  
27 three, chapter thirty-two of this code; and no person shall  
28 sell or offer any such property for sale until he has been  
29 registered as a salesman by the commissioner of securities  
30 under the provisions for registering agents contained in  
31 article two, chapter thirty-two of this code. All of the pro-  
32 visions contained in chapter thirty-two of this code gov-  
33 erning the registration of securities by qualification and  
34 the registration of agents and the penalties provided  
35 therein shall apply to the registration of properties and  
36 salesmen under this article: *Provided*, That nothing con-  
37 tained in this article shall prevent any bona fide owner of  
38 any such land, mine, mining lease, mineral claim or other  
39 property, or interest therein, from selling the same on his  
40 own account and not as a part, or in furtherance, of any  
41 promotion or development to the public.

**§32A-1-2. False advertising prohibited; penalty.**

1 Any person or corporation who, with intent to sell or in  
2 any wise dispose of merchandise, securities, service or  
3 anything offered by such person or corporation, directly  
4 or indirectly, to the public for sale or distribution, or with  
5 intent to increase the consumption thereof, or to induce  
6 the public in any manner to enter into any obligation re-  
7 lating thereto, or to acquire title thereto, or any interest

8 therein, makes, publishes, disseminates, circulates or places  
 9 before the public, or causes, directly or indirectly, to be  
 10 made, published, disseminated, circulated or placed before  
 11 the public in this state, in a newspaper or other publica-  
 12 tion, or in the form of a book, notice, handbill, poster,  
 13 blueprint, map, bill, tag, label, circular, pamphlet, or let-  
 14 ter, or by way of radio or television, or in any other way,  
 15 an advertisement of any sort regarding merchandise, se-  
 16 curities, service, land, lot or anything so offered to the  
 17 public, which advertisement contains any promise, as-  
 18 sertion, representation or statement of fact which is un-  
 19 true, deceptive or misleading, with knowledge that the  
 20 same was untrue, deceptive or misleading, shall be guilty  
 21 of a misdemeanor, and, upon conviction thereof, shall be  
 22 fined not more than two thousand dollars, or imprisoned  
 23 in the county jail not more than six months, or both fined  
 24 and imprisoned.

**§32A-1-3. Indictment need not negative exceptions.**

1 In any indictment for violation of any provision of this  
 2 article, it shall not be necessary to negative any exception  
 3 contained in any proviso or elsewhere in this article.

**ARTICLE 2. ISSUANCE AND SALE OF CHECKS, DRAFTS, MONEY ORDERS, ETC.**

**§32A-2-1. Definitions.**

1 As used in this article:  
 2 (1) "Person" means any individual, partnership, associa-  
 3 tion, joint stock association, trust or corporation, but does  
 4 not include the United States of America, any department,  
 5 agency, commission or officer thereof, the state of West  
 6 Virginia, any department, agency, commission or officer  
 7 thereof, or any political subdivision of or any municipali-  
 8 ty in this state;  
 9 (2) "Commissioner" means the commissioner of bank-  
 10 ing of this state;  
 11 (3) "Check" means any check, draft, money order,  
 12 personal money order or other instrument for the trans-  
 13 mission or payment of money;  
 14 (4) "Personal money order" means any instrument for  
 15 the transmission or payment of money in relation to

16 which the purchaser or remitter appoints or purports to  
17 appoint the seller thereof as his agent for the receipt,  
18 transmission or handling of money, whether such instru-  
19 ment be signed by the seller or by the purchaser or re-  
20 mitter or some other person;

21 (5) "Securities" means all bonds, debentures or other  
22 evidences of indebtedness (a) issued by the United States  
23 of America or any agency thereof, or guaranteed by the  
24 United States of America, or for which the credit of the  
25 United States of America or any agency thereof is pledged  
26 for the payment of the principal and interest thereof; and/  
27 or (b) which are direct general obligations of this state,  
28 or any other state if unconditionally guaranteed as to the  
29 principal and interest by such other state and if such other  
30 state has the power to levy taxes for the payment of the  
31 principal and interest thereof and is not in default in the  
32 payment of any part of the principal or interest owing by  
33 it upon any part of its funded indebtedness; and/or (c)  
34 which are general obligations of any county, school dis-  
35 trict or municipality in this state issued pursuant to law  
36 and payable from ad valorem taxes levied on all of the  
37 taxable property located therein, if such county, school  
38 district or municipality is not in default in the payment of  
39 any part of the principal or interest on any debt evidenced  
40 by its bonds, debentures or other evidences of indebted-  
41 ness.

**§32A-2-2. Legislative findings and declaration of public policy.**

1 The Legislature hereby determines and finds that many  
2 innocent persons in various states have suffered severe  
3 financial losses as a result of financially irresponsible per-  
4 sons engaging in the business of issuing and selling  
5 checks; that many of these states have, following the dis-  
6 covery of such losses, promptly enacted legislation to as-  
7 sure that persons engaged in the business of issuing and  
8 selling checks are financially responsible; and that it is  
9 imperative that legislation be enacted to assure that  
10 persons engaged in the business of issuing and selling  
11 checks in this state are financially responsible. It is, there-  
12 fore, declared to be the public policy of this state that the  
13 business of issuing and selling checks affects the general

14 welfare of this state and its individual citizens; and that  
15 financial losses as aforesaid may best be prevented in this  
16 state and the interests of the citizens of this state best  
17 served by requiring persons now engaged or to be en-  
18 gaged in the business of issuing and selling checks to  
19 meet the requirements set forth in this article.

**§32A-2-3. Financial responsibility must be established and  
security given; fee required.**

1 On and after the effective date of this article, no per-  
2 son shall engage in the business of issuing and selling  
3 checks as a service or for a fee or other compensation,  
4 unless (a) the net worth of such person is at all times at  
5 least fifty thousand dollars, computed according to gen-  
6 erally accepted accounting principles and shown by fi-  
7 nancial statements filed with and satisfactory to the  
8 commissioner, and (b) such person either (1) keeps on  
9 deposit at all times with the commissioner, or a bank in  
10 this state designated by such person and approved for  
11 such purpose by the commissioner, one hundred thousand  
12 dollars in cash or securities satisfactory to the commis-  
13 sioner, or (2) posts and maintains with the commissioner  
14 at all times a surety bond in the penal sum of one hun-  
15 dred thousand dollars, in form and with conditions satis-  
16 factory to the commissioner and with corporate surety  
17 thereon authorized to do business in this state and ac-  
18 ceptable to the commissioner. When securities are de-  
19 posited as aforesaid, the value of such securities must at  
20 all times be one hundred thousand dollars, computed on  
21 the basis of the principal amount or the market value  
22 thereof, whichever is lower.

23 The deposit or bond, as the case may be, shall be for  
24 the benefit and protection of the purchasers or holders  
25 of checks sold in this state by the person making the  
26 deposit or posting the bond as principal, and the commis-  
27 sioner or any aggrieved person may by appropriate civil  
28 actions enforce claims on any such check or checks against  
29 such deposit or bond. The aggregate liability of the  
30 surety in no event shall exceed the principal sum of the  
31 bond. The surety on such bond shall have a right to  
32 cancel such bond upon giving thirty days' notice to the

33 commissioner and thereafter shall be relieved of liability  
34 for any breach of condition occurring after the effective  
35 date of said cancellation. So long as the person making  
36 a deposit is not in violation of any of the provisions of  
37 this article, such person shall be permitted to receive all  
38 interest and dividends on said deposit, and shall have  
39 the right, with the approval of the commissioner, to  
40 substitute other securities. If the deposit is made at a  
41 bank, any custodial fees therefor shall be paid by the  
42 person making such deposit. At the time any such deposit  
43 is made or any such bond is posted, and annually there-  
44 after, the person making such deposit or posting such  
45 bond shall pay to the commissioner a fee of one hundred  
46 dollars. All such fees shall be deposited in the state  
47 treasury to the credit of the general revenue fund.

**§32A-2-4. Persons who establish financial responsibility and  
give security may engage in business; agents  
need not comply with section three.**

1 Any person who complies with the provisions of sec-  
2 tion three of this article may engage in the business of  
3 issuing and selling checks at one or more locations in this  
4 state and through or by means of such agent or agents  
5 as such person may designate and appoint from time to  
6 time, and no such agent shall be required to comply  
7 with the provisions of said section three.

**§32A-2-5. Exemptions.**

1 The provisions of section three of this article shall not  
2 apply to banks, trust companies, building and loan associ-  
3 ations, savings and loan associations, industrial loan com-  
4 panies and small loan companies organized under the  
5 laws of this state or authorized to do business in this  
6 state, or to the receipt of money by an incorporated  
7 telegraph company at any office or agency thereof for  
8 transmission by telegraph.

**§32A-2-6. Judicial review.**

1 Any person aggrieved by any action of the commissioner  
2 under the provisions of this article may appeal such  
3 action by filing a petition, at the election of such person,  
4 in either the circuit court of Kanawha county, West Vir-

5 ginia, or with the judge thereof in vacation, or in the  
6 circuit court of the county in which such person resides  
7 or does business, or with the judge thereof in vacation,  
8 within ninety days after such action.

9 The judgment of the circuit court shall be final unless  
10 reversed, vacated or modified on appeal to the supreme  
11 court of appeals. Any such appeal shall be sought in the  
12 manner and within the time provided by law for appeals  
13 from circuit courts in other civil cases.

**§32A-2-7. Injunctive relief.**

1 Whenever it appears to the commissioner that any  
2 person has been or is violating or is about to violate any  
3 provision of this article, the commissioner may apply  
4 in the name of the state, to the circuit court of the  
5 county in which the violation or violations or any part  
6 thereof has occurred, is occurring or is about to occur,  
7 or the judge thereof in vacation, for an injunction against  
8 such person and any other persons who have been, are  
9 or are about to be involved in any practices, acts or  
10 omissions, so in violation, enjoining such person or per-  
11 sons from any such violation or violations. Such applica-  
12 tion may be made and prosecuted to conclusion whether  
13 or not any such violation or violations have resulted or  
14 shall result in prosecution or conviction under the pro-  
15 visions of section eight of this article.

16 Upon application by the commissioner, the circuit courts  
17 of this state may by mandatory or prohibitory injunction  
18 compel compliance with the provisions of this article.  
19 The court may issue a temporary injunction in any case  
20 pending a decision on the merits of any application filed.

21 The judgment of the circuit court upon any application  
22 permitted by the provisions of this section shall be final  
23 unless reversed, vacated or modified on appeal to the  
24 supreme court of appeals. Any such appeal shall be sought  
25 in the manner and within the time provided by law for  
26 appeals from circuit courts in other civil cases.

**§32A-2-8. Penalties.**

1 Any person who directly or through another violates or  
2 attempts to violate any provision of this article shall be

3 guilty of a misdemeanor and upon conviction thereof shall  
4 be punished by a fine of not less than one hundred dol-  
5 lars nor more than one thousand dollars. Each transaction  
6 in violation of this article and each day that a violation  
7 continues shall be a separate offense.

**§32A-2-9. Severability.**

1 If any provision of this article or the application there-  
2 of to any person or circumstance is held invalid, such in-  
3 validity shall not affect the remainder of the article or the  
4 application of such provision to other persons or circum-  
5 stances, and to this end the provisions of this article are  
6 declared to be severable.

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

H. David Darby  
Chairman Senate Committee

Clarence C. Chestnut, Jr.  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Howard Weason  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

\_\_\_\_\_  
President of the Senate

Lewis J. M. Thomas  
Speaker House of Delegates

The within approved this the 20th  
day of March, 1974.

Arva. Pharis, Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/14/74

Time 2:15 p.m.