WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED
Committee Substitute for
SENATE BILL NO. 23

(By Mr. [Signature] of Mr. [Signature])

PASSED March 9, 1974

In Effect seventy days from Passage

FILED IN THE OFFICE
EDGAR F. HEISKELL, III
SECRETARY OF STATE
THIS DATE 3-22-74
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 23
(By Mr. Gainer and Mr. Poffenbarger; original sponsors)

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

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.

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
the membership of the partnership within a reasonable
time after the change.
Subdivision (1) does not prohibit an investment ad-
visory contract which provides for compensation based
upon the total value of a fund averaged over a definite
period, or as of definite dates or taken as of a definite
date. "Assignment," as used in subdivision (2) includes
any direct or indirect transfer or hypothecation of an in-
vestment advisory contract by the assignor or of a con-
trolling block of the assignor’s outstanding voting securi-
ties by a security holder of the assignor; but, if the in-
vestment adviser is a partnership, no assignment of an
investment advisory contract is considered to result from
the death or withdrawal of a minority of the members
of the investment adviser having only a minority interest
in the business of the investment adviser, or from the ad-
mission to the investment adviser of one or more mem-
bers who, after admission, will be only a minority of the
members and will have only a minority interest in the
business.
(c) It is unlawful for any investment adviser to take
or have custody of any securities or funds of any client if
(1) the commissioner by rule prohibits custody; or
(2) in the absence of rule, the investment adviser fails
to notify the commissioner that he has or may have cus-
tody.
ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS
AND INVESTMENT ADVISERS.
§32-2-201. Registration requirement.
(a) It is unlawful for any person to transact business
in this state as a broker-dealer or agent unless he is
registered under this chapter.
(b) It is unlawful for any broker-dealer or issuer to
employ an agent unless the agent is registered. The reg-
istration of an agent is not effective during any period
when he is not associated with a particular broker-dealer
registered under this chapter or a particular issuer. When
an agent begins or terminates a connection with a broker-
dealer or issuer, or begins or terminates those activities
which make him an agent, the agent as well as the
broker-dealer or issuer shall promptly notify the commis-

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

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


(a) A broker-dealer, agent or investment adviser may
obtain an initial or renewal registration by filing with the
commissioner an application together with a consent to
service of process pursuant to section 414(g). The appli-
cation shall contain whatever information the commis-
sioner by rule requires concerning such matters as (1)
the applicant’s form and place of organization; (2) the
applicant’s proposed method of doing business; (3) the
qualifications and business history of the applicant; in the
case of a broker-dealer or investment adviser, the quali-
fications and business history of any partner, officer or
director, any person occupying a similar status or per-
forming similar functions, or any person directly or indi-
directly controlling the broker-dealer or investment
adviser; and, in the case of an investment adviser, the
qualifications and business history of any employee; (4)
any injunction or administrative order or conviction of a
misdemeanor involving a security or any aspect of the
securities business and any conviction of a felony; and (5)
the applicant’s financial condition and history. The com-
misioner may by rule or order require an applicant for
initial registration to publish an announcement of the
application as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of 
this code, and the publication area or areas for such pub-
lication shall be specified by the commissioner. If no de-
nial order is in effect and no proceeding is pending under 
section 204, registration becomes effective at noon of the 
thirty day after an application is filed. The commis-
sioner may by rule or order specify an earlier effective 
date, and he may by order defer the effective date until 
noon of the thirtieth day after the filing of any amend-
ment. Registration of a broker-dealer automatically con-
stitutes registration of any agent who is a partner, offi-
cer or director, or a person occupying a similar status or 
performing similar functions, as designated by the broker-
dealer in writing to the commissioner and approved in 
writing by the commissioner.

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

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

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

(e) The commissioner may by rule require registered 
broker-dealers, agents and investment advisers to post 
surety bonds in amounts up to ten thousand dollars, and 
may determine their conditions. Any appropriate deposit 
of cash or securities shall be accepted in lieu of any bond 
so required. No bond may be required of any registrant 
whose net capital, which may be defined by rule, exceeds 
twenty-five thousand dollars. Every bond shall provide for 
suit thereon by any person who has a cause of action un-
der section 410 and, if the commissioner by rule or order 
requires, by any person who has a cause of action not 
arising under this chapter. Every bond shall provide that
no suit may be maintained to enforce any liability on the
bond unless brought within two years after the sale or
other act upon which it is based.

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

(a) Every registered broker-dealer and investment
adviser shall make and keep such accounts, correspon-
dence, memoranda, papers, books and other records as the
commissioner by rule prescribes. All records so required
shall be preserved for three years unless the commissioner
by rule prescribes otherwise for particular types of
records.
(b) Every registered broker-dealer and investment
adviser shall file such financial reports as the commis-
ioner by rule prescribes.
(c) If the information contained in any document filed
with the commissioner is or becomes inaccurate or in-
complete in any material respect, the registrant shall
promptly file a correcting amendment unless notification
of the correction has been given under section 201 (b).
(d) All the records referred to in subsection (a) are
subject at any time or from time to time to such reason-
able periodic, special or other examinations by representa-
tives of the commissioner, within or without this state, as
the commissioner deems necessary or appropriate in the
public interest or for the protection of investors. For the
purpose of avoiding unnecessary duplication of examina-
tions, the commissioner, insofar as he deems it practicable
in administering this subsection, may cooperate with the
securities administrators of other states, the securities and
exchange commission, and any national securities ex-
change or national securities association registered under

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

(a) The commissioner may by order deny, suspend or
revoke any registration if he finds (1) that the order is in
the public interest and (2) that the applicant or registrant
or, in the case of a broker-dealer or investment adviser,
any partner, officer or director, any person occupying a
similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser.

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

(B) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

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

(D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

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

(F) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer, agent or investment adviser, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (i) the commissioner may not institute a revocation or suspension proceeding under subdivision (F) more than one year from the date of the order relied on, and (ii) he may not enter an order under subdivision (F) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;
(G) has engaged in dishonest or unethical practices in
the securities business;

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

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

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

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

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

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

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

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

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

(3) The commissioner may not enter an order solely
on the basis of lack of experience if the applicant or regis-
trant is qualified by training or knowledge or both.
(4) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

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

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

(c) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.
Withdrawal from registration as a broker-dealer, agent or investment adviser becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under section 204(a) (2) (B) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent), (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-301. Registration requirement.

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

§32-3-302. Registration by notification.

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

(1) Any security, other than a security with a fixed maturity or a fixed interest or dividend provision, whose issuer and any predecessors have been in continuous operation for at least five years if (A) there has been
no default during the current fiscal year or within the
three preceding fiscal years in the payment of principal,
interest or dividends on any security of the issuer (or
any predecessor) with a fixed maturity or a fixed interest
or dividend provision, and (B) the issuer and any prede-
cessors during the past three fiscal years have had
average net earnings, determined in accordance with
generally accepted accounting practices, (i) which are
applicable to all securities without a fixed maturity or
a fixed interest or dividend provision outstanding at the
date the registration statement is filed and equal at least
five percent of the amount of such outstanding securities
(as measured by the maximum offering price or the
market price on a day, selected by the registrant, within
thirty days before the date of filing the registration
statement, whichever is higher, or book value on a day,
selected by the registrant, within ninety days of the
date of filing the registration statement to the extent
that there is neither a readily determinable market price
nor a cash offering price), or (ii) which, if the issuer and
any predecessors have not had any security of the type
specified in clause (i) outstanding for three full fiscal
years, equal at least five percent of the amount (as mea-
sured in clause (i)) of all securities which will be out-
standing if all the securities being offered or proposed
to be offered (whether or not they are proposed to be
registered or offered in this state) are issued;
(2) any security (other than a certificate of interest
or participation in an oil, gas or mining title or lease or
in payments out of production under such a title or lease)
registered for nonissuer distribution if (A) any security
of the same class has ever been registered under this
chapter or a predecessor act, or (B) the security being
registered was originally issued pursuant to an exemp-
tion under this chapter or a predecessor act.
(b) A registration statement under this section shall
contain the following information and be accompanied
by the following documents in addition to the informa-
tion specified in section 305 (c) and the consent to service
of process required by section 414(g):
(1) A statement demonstrating eligibility for registration by notification;
(2) with respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;
(3) with respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: His name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;
(4) a description of the security being registered;
(5) the information and documents specified in subdivisions (8), (10) and (12) of section 304(b); and
(6) in the case of any registration under section 302(a) (2) which does not also satisfy the conditions of section 302(a) (1), a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.
(c) If no stop order is in effect and no proceeding is pending under section 306, a registration statement under this section automatically becomes effective at three o'clock in the afternoon of the full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.
§32-3-303. Registration by coordination.
(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.
(b) A registration statement under this section shall contain the following information and be accompanied
by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):

1. Three copies of the latest form of prospectus filed under the Securities Act of 1933;

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

3. If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

4. An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) No stop order is in effect and no proceeding is pending under section 306; (2) the registration statement has been on file with the commissioner for at least ten days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and the commissions has been on file for two full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. “Price amendment” means the final federal amendment
which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant’s expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under section 306; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

§32-3-304. Registration by qualification.

(a) Any security may be registered by qualification.

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

(1) With respect to the issuer and any significant subsidiary: Its name, address and form of organization; the state or foreign jurisdiction and date of its organiza-
tion; the general character and location of its business; a
description of its physical properties and equipment; and
a statement of the general competitive conditions in the
industry or business in which it is or will be engaged;
(2) with respect to every director and officer of the
issuer, or person occupying a similar status or performing
similar functions: His name, address and principal occu-
ipation for the past five years; the amount of securities
of the issuer held by him as of a specified date within
thirty days of the filing of the registration statement; the
amount of the securities covered by the registration
statement to which he has indicated his intention to
subscribe; and a description of any material interest in any
material transaction with the issuer or any significant
subsidiary effected within the past three years or pro-
posed to be effected;
(3) with respect to persons covered by subdivision (2):
The remuneration paid during the past twelve months and
estimated to be paid during the next twelve months, di-
rectly or indirectly, by the issuer (together with all
predecessors, parents, subsidiaries and affiliates) to all
those persons in the aggregate;
(4) with respect to any person owning of record, or
beneficially if known, ten percent or more of the out-
standing shares of any class of equity security of the
issuer: The information specified in subdivision (2) other
than his occupation;
(5) with respect to every promoter if the issuer was
organized within the past three years: The information
specified in subdivision (2), any amount paid to him with-
in that period or intended to be paid to him, and the
consideration for any such payment;
(6) with respect to any person on whose behalf any
part of the offering is to be made in a nonissuer distri-
bution: His name and address; the amount of securities of
the issuer held by him as of the date of the filing of the
registration statement; a description of any material in-
terest in any material transaction with the issuer or any
significant subsidiary effected within the past three years
or proposed to be effected; and a statement of his reasons
for making the offering;
(7) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purpose stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any prop-
tery (including goodwill) otherwise than in the ordinary
course of business, the names and addresses of the vend-
ors, the purchase price, the names of any persons who
have received commissions in connection with the acqui-
sition and the amounts of any such commissions and any
other expense in connection with the acquisition (includ-
ing the cost of borrowing money to finance the acqui-
sition);

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

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

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

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

(14) a signed or conformed copy of an opinion of coun-
sel as to the legality of the security being registered (with
an English translation if it is in a foreign language),
which shall state whether the security when sold will be
legally issued, fully paid and nonassessable, and, if a debt
security, a binding obligation of the issuer;
(15) the written consent of any accountant, engineer, appraiser or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer’s and any predecessors’ existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

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

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

(d) The commissioner may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs.

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

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.
(b) Every person filing a registration statement shall pay a filing fee of one twentieth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than fifty dollars or more than fifteen hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 306, the commissioner shall retain all of the fee.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

(d) Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a nonissuer distribution, information may not be required under section 304 or 305(j) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The commissioner may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The
commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

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

(i) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person or whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under section 306. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 306 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

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

(k) A registration statement relating to a security
issued by a face amount certificate company or a re-
dependable security issued by an open end management
company or unit investment trust, as those terms are
defined in the Investment Company Act of 1940, may be
amended after its effective date so as to increase the
securities specified as proposed to be offered. Such an
amendment becomes effective when the commissioner
so orders. Every person filing such an amendment shall
pay a filing fee, calculated in the manner specified in
subsection (b), with respect to the additional securities
proposed to be offered.

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

(a) The commissioner may issue a stop order denying
effectiveness to, or suspending or revoking the effective-
ness of, any registration statement if he finds (1) that
the order is in the public interest and (2) that
(A) the registration statement as of its effective date
or as of any earlier date in the case of an order denying
effectiveness, or any amendment under section 305(k)
as of its effective date, or any report under section 305(j)
is incomplete in any material respect or contains any
statement which was, in the light of the circumstances
under which it was made, false or misleading with respect
to any material fact;
(B) any provision of this chapter or any rule, order
or condition lawfully imposed under this chapter has
been willfully violated, in connection with the offering,
by (i) the person filing the registration statement, (ii)
the issuer, any partner, officer or director of the issuer,
any person occupying a similar status or performing
similar functions, or any person directly or indirectly
controlling or controlled by the issuer, but only if the
person filing the registration statement is directly or in-
directly controlled by or acting for the issuer, or (iii)
any underwriter;
(C) the security registered or sought to be registered
is the subject of an administrative stop order or similar
order or a permanent or temporary injunction of any
court of competent jurisdiction entered under any other
federal or state act applicable to the offering; but (i) the
commissioner may not institute a proceeding against an effective registration statement under subdivision (C) more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under subdivision (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

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

(F) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

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

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

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

The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty days.

(b) The commissioner may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the commissioner shall promptly notify each person specified in subsection (c) that it has been entered and of the reasons therefor and that within fifteen days after the receipt
of a written request the matter will be set down for
hearing. If no hearing is requested and none is ordered
by the commissioner, the order will remain in effect
until it is modified or vacated by the commissioner. If
a hearing is requested or ordered, the commissioner,
after notice of and opportunity for hearing to each per-
son specified in subsection (c), may modify or vacate
the order or extend it until final determination.

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

(d) The commissioner may vacate or modify a stop
order if he finds that the conditions which prompted
entry have changed or that it is otherwise in the public
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-
8curities. "Agent" does not include an individual who rep-
9resents 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.
(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution or trust company; or (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in this state.

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

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

(f) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (1) a bank, savings institution or trust company; (2) a lawyer, accountant, engineer or teacher whose performance of those services is solely incidental to the practice of his profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (4) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation; (5) a person whose advice, analyses or reports relate only to securities exempted by section
402(a) (1); (6) a person who has no place of business in
this state if (A) his only clients in this state are other
investment advisers, broker-dealers, banks, savings in-
stitutions, trust companies, insurance companies, invest-
ment companies as defined in the Investment Company
Act of 1940, pension or profit-sharing trusts, or other finan-
cial institutions or institutional buyers, whether acting for
themselves or as trustees, or (B) during any period of
twelve consecutive months he does not direct business
communications into this state in any manner to more
than five clients other than those specified in clause (A),
whether or not he or any of the persons to whom the com-
munications are directed is then present in this state; or
(7) such other persons not within the intent of this para-
graph as the commissioner may by rule or order design-
ate.

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

(h) “Nonissuer” means not directly or indirectly for
the benefit of the issuer.

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

(j) (1) “Sale” or “sell” includes every contract of sale
of, contract to sell, or disposition of, a security or interest
in a security for value.
(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

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

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

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subdivision do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.


(l) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of
interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

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

§32-4-402. Exemptions.

(a) The following securities are exempted from sections 301 and 403:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

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

(3) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;
(4) any security issued by and representing an interest
in or a debt of, or guaranteed by, any federal savings and
loan association, or any building and loan or similar
association organized under the laws of any state and
authorized to do business in this state;

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

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

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

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

(9) any security issued by any person organized
and operated not for private profit but exclusively for
religious, educational, benevolent, charitable, fraternal,
social, athletic or reformatory purposes, or as a chamber
of commerce or trade or professional association, and no
part of the net earnings of which inures to the benefit of
any person, private stockholder or individual;
(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within twelve months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

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

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

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

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) any nonissuer distribution of an outstanding security if (A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security;

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require
that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

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

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

(6) any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian or conservator, and any transaction constituting a judicial sale;

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

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

(9) any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subdivision (8)) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if (A) the seller reasonably believes that all the buyers in this state (other than those designated in subdivisions (8)) are purchasing for investment, and (B) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subdivision (8)); but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions
in clauses (A) and (B) with or without the substitution
of a limitation on remuneration;
(10) any offer or sale of a preorganization certificate
or subscription if (A) no commission or other remunera-
tion is paid or given directly or indirectly for soliciting
any prospective subscriber, (B) the number of subscrib-
ers does not exceed ten, and (C) no payment is made by
any subscriber;
(11) any transaction pursuant to an offer to existing
security holders of the issuer, including persons who at
the time of the transaction are holders of convertible
securities, nontransferable warrants or transferable war-
rants exercisable within not more than ninety days of
their issuance, if (A) no commission or other remunera-
tion (other than a standby commission) is paid or given
directly or indirectly for soliciting any security holder in
this state, or (B) the issuer first files a notice specifying
the terms of the offer and the commissioner does not by
order disallow the exemption within the next five full
business days;
(12) any offer (but not a sale) of a security for which
registration statements have been filed under both this
chapter and the Securities Act of 1933 if no stop order or
refusal order is in effect and no public proceeding or
examination looking toward such an order is pending un-
der either chapter.
(c) The commissioner may by order deny or revoke
any exemption specified in subdivision (9) or (11) of
subsection (a) or in subsection (b) with respect to a
specific security or transaction. No such order may be
entered without appropriate prior notice to all interested
parties, opportunity for hearing, and written findings of
fact and conclusions of law, except that the commissioner
may by order summarily deny or revoke any of the speci-
fied exemptions pending final determination of any pro-
ceeding under this subsection. Upon the entry of a sum-
mary order, the commissioner shall promptly notify all
interested parties that it has been entered and of the rea-
sons therefor and that within fifteen days of the receipt
of a written request the matter will be set down for hear-
ing. If no hearing is requested and none is ordered by the
commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 301 or 403 by reasons of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

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

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

Any prospectus, pamphlet, circular, form letter, advertisement or any other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, shall be filed with the commissioner before it is used, disseminated or distributed unless the security or transaction is exempted by section 402.

§32-4-404. Misleading filings.

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

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

(a) Neither (1) the fact than an application for registration under article two of this chapter or a registration statement under article three of this chapter has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete
and not misleading. Neither any such fact nor the fact
that an exemption or exception is available for a security
or a transaction means that the commissioner has passed
in any way upon the merits or qualifications of, or recom-
mended or given approval to, any person, security or
transaction.
(b) It is unlawful to make, or cause to be made, to
any prospective purchaser, customer or client any repre-
sentation inconsistent with subsection (a).
§32-4-406. Administration of chapter.
(a) This chapter shall be administered by the auditor
of this state, and he is hereby designated, and shall be,
the commissioner of securities of this state. He shall
have power and authority to appoint or employ such
assistants as are necessary for the administration of this
chapter.
(b) All fees herein provided for shall be collected by
the commissioner and shall be deposited in the state
treasury and credited to the general revenue fund, and
the commissioner shall keep a record of the receipts and
expenditures incurred in carrying out the provisions of
this chapter.
(c) It is unlawful for the commissioner or any of his
officers or employees to use for personal benefit any in-
formation which is filed with or obtained by the com-
missioner and which is not made public. No provision
of this chapter authorizes the commissioner or any of
his officers or employees to disclose any such information
except among themselves or when necessary or appro-
priate in a proceeding or investigation under this chap-
ter. No provision of the chapter either creates or derogates
from any privilege which exists at common law or other-
wise when documentary or other evidence is sought
under a subpoena directed to the commissioner or any
of his officers or employees.
§32-4-407. Investigations and subpoenas.
(a) The commissioner in his discretion (1) may make
such public or private investigations within or outside
of this state as he deems necessary to determine whether
any person has violated or is about to violate any pro-
vision of this chapter or any rule or order hereunder,
or to aid in the enforcement of this chapter or in the
prescribing of rules and forms hereunder, (2) may re-
quire or permit any person to file a statement in writing,
under oath or otherwise as the commissioner determines,
as to all the facts and circumstances concerning the mat-
ter to be investigated, and (3) may publish information
concerning any violation of this chapter or any rule or
order hereunder.

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

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

(d) No person is excused from attending and testi-
fying or from producing any document or record before
the commissioner, or in obedience to the subpoena of the
commissioner or any officer designated by him, or in any
proceeding instituted by the commissioner, on the ground
that the testimony or evidence (documentary or other-
wise) required of him may tend to incriminate him or
subject him to a penalty of forfeiture; but no individual
may be prosecuted or subjected to any penalty or for-
feiture for or on account of any transaction, matter or
thing concerning which he is compelled, after claiming
his privilege against self-incrimination to testify or pro-
duce evidence (documentary or otherwise), except that
§32-4-408. Injunctions.

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion bring an action in the circuit court of Kanawha county or a court of competent jurisdiction in the county where one or more of the defendants reside or have a place of business to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

§32-4-409. Criminal penalties.

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

(b) The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule or order hereunder to the proper prosecuting attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this chapter.
Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

§32-4-410. Civil liabilities.

(a) Any person who

(1) offers or sells a security in violation of section 201 (a), 301, 403 or 405 (b), or of any condition imposed under section 304 (d), 305 (g) or 305 (h), or

(2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him, who may assert a claim in a civil action to recover the consideration paid for the security, together with interest at nine percent per year from the date of payment, costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at nine percent per year from the date of disposition.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.
(c) Any tender specified in this section may be made at any time before entry of judgment.

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

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

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

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

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

§32-4-411. Judicial review of orders.

(a) Any person aggrieved by a final order of the commissioner may obtain a review of the order in the circuit court of Kanawha county by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner and thereupon the commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order; in whole or in part. The findings of the commissioner as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable
grounds for failure to adduce the evidence in the hearing
before the commissioner, the court may order the addi-
tional evidence to be taken before the commissioner and to
be adduced upon the hearing in such manner and upon
such conditions as the court considers proper. The commis-
sioner may modify his findings and order by reason of the
additional evidence and shall file in court the additional
evidence together with any modified or new findings or
order. The judgment of the court shall be final, subject to
review by the supreme court of appeals.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

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

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

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

(c) The commissioner may by rule or order prescribe
(1) the form and content of financial statements required
under this chapter, (2) the circumstances under which
consolidated financial statements shall be filed, and (3)
whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

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

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

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

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

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

(b) The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application or report may be made available to the public under such rules as the commissioner prescribes.

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

(e) The commissioner in his discretion may honor requests from interested persons for interpretative opinions; copies of which opinions shall be filed in a special file maintained for that purpose and shall be public records available for public inspection and at such reasonable 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 persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.
2 (b) Sections 101, 201(a) and 405 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.
3 (c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
4 (d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).
5 (e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two thirds of its circulation outside this state during the past twelve months, or (2) a radio or television program originating outside this state is received in this state.
6 (f) Sections 102 and 210(c), as well as section 405 so far as investment advisors are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.
(g) Every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commissioner, and (2) the plaintiff’s affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff,
who may be the commissioner in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

§32-4-415. Statutory policy.

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

§32-4-416. Short title.

This chapter may be cited as the “Uniform Securities Act.”

§32-4-417. Severability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§32-4-418. Saving provisions.

(a) Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period
of limitation which applied when the cause of action accrued and in any event within three years after the effective date of this chapter.

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

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

(d) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this chapter are governed by section 411, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the effective 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 prerequisite to sale, etc., within state.

No person, partnership or corporation shall sell or offer for sale, in this state, any lands, situate outside this state, which are to be planted in trees or vines or divided into town or suburban lots, or any unimproved or undeveloped lands, or any lands, including cemetery lots, cemetery privileges, burial rights or privileges, the value of which materially depends on the future performance of any stipulation or promise to furnish irrigation, transportation facilities, streets, sidewalks, sewers, gas, electricity or
other value enhancing utility or improvement of any un-
divided part or share, whether an aliquot part or a part
designated on any other basis, or any mine, mineral claim,
or other estate in any mine, or in the lands containing the
same, regardless of where located or situated, the value of
which materially depends on the future discovery or de-
velopment and production of the minerals, without first
having filed with the commissioner of securities (which
office is established in chapter thirty-two of this code) a
detailed description of the property which, or any interest
or part or share of which, is proposed to be sold, and such
information with respect to the value thereof, and the title
to such property or properties as the commissioner of se-
curities shall require, and without causing such property
to be registered by the commissioner of securities in the
manner provided for the registration of securities by
qualification under section three hundred four, article
three, chapter thirty-two of this code; and no person shall
sell or offer any such property for sale until he has been
registered as a salesman by the commissioner of securities
under the provisions for registering agents contained in
article two, chapter thirty-two of this code. All of the pro-
visions contained in chapter thirty-two of this code gov-
erning the registration of securities by qualification and
the registration of agents and the penalties provided
therein shall apply to the registration of properties and
salesmen under this article: Provided, That nothing con-
tained in this article shall prevent any bona fide owner of
any such land, mine, mining lease, mineral claim or other
property, or interest therein, from selling the same on his
own account and not as a part, or in furtherance, of any
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
therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter, or by way of radio or television, or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact which is untrue, deceptive or misleading, with knowledge that the same was untrue, deceptive or misleading, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

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

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

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

§32A-2-1. Definitions.

As used in this article:

(1) “Person” means any individual, partnership, association, joint stock association, trust or corporation, but does not include the United States of America, any department, agency, commission or officer thereof, the state of West Virginia, any department, agency, commission or officer thereof, or any political subdivision of or any municipality in this state;

(2) “Commissioner” means the commissioner of banking of this state;

(3) “Check” means any check, draft, money order, personal money order or other instrument for the transmission or payment of money;

(4) “Personal money order” means any instrument for the transmission or payment of money in relation to
which the purchaser or remitter appoints or purports to
appoint the seller thereof as his agent for the receipt,
transmission or handling of money, whether such instru-
ment be signed by the seller or by the purchaser or re-
mitter or some other person;

(5) “Securities” means all bonds, debentures or other
evidences of indebtedness (a) issued by the United States
of America or any agency thereof, or guaranteed by the
United States of America, or for which the credit of the
United States of America or any agency thereof is pledged
for the payment of the principal and interest thereof; and/
or (b) which are direct general obligations of this state,
or any other state if unconditionally guaranteed as to the
principal and interest by such other state and if such other
state has the power to levy taxes for the payment of the
principal and interest thereof and is not in default in the
payment of any part of the principal or interest owing by
it upon any part of its funded indebtedness; and/or (c)
which are general obligations of any county, school dis-
trict or municipality in this state issued pursuant to law
and payable from ad valorem taxes levied on all of the
taxable property located therein, if such county, school
district or municipality is not in default in the payment of
any part of the principal or interest on any debt evidenced
by its bonds, debentures or other evidences of indebted-
ness.

§32A-2-2. Legislative findings and declaration of public policy.
The Legislature hereby determines and finds that many
innocent persons in various states have suffered severe
financial losses as a result of financially irresponsible per-
sons engaging in the business of issuing and selling
checks; that many of these states have, following the dis-
covery of such losses, promptly enacted legislation to as-
sure that persons engaged in the business of issuing and
selling checks are financially responsible; and that it is
imperative that legislation be enacted to assure that
persons engaged in the business of issuing and selling
checks in this state are financially responsible. It is, there-
fore, declared to be the public policy of this state that the
business of issuing and selling checks affects the general
welfare of this state and its individual citizens; and that financial losses as aforesaid may best be prevented in this state and the interests of the citizens of this state best served by requiring persons now engaged or to be engaged in the business of issuing and selling checks to meet the requirements set forth in this article.

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

On and after the effective date of this article, no person shall engage in the business of issuing and selling checks as a service or for a fee or other compensation, unless (a) the net worth of such person is at all times at least fifty thousand dollars, computed according to generally accepted accounting principles and shown by financial statements filed with and satisfactory to the commissioner, and (b) such person either (1) keeps on deposit at all times with the commissioner, or a bank in this state designated by such person and approved for such purpose by the commissioner, one hundred thousand dollars in cash or securities satisfactory to the commissioner, or (2) posts and maintains with the commissioner at all times a surety bond in the penal sum of one hundred thousand dollars, in form and with conditions satisfactory to the commissioner and with corporate surety thereon authorized to do business in this state and acceptable to the commissioner. When securities are deposited as aforesaid, the value of such securities must at all times be one hundred thousand dollars, computed on the basis of the principal amount or the market value thereof, whichever is lower.

The deposit or bond, as the case may be, shall be for the benefit and protection of the purchasers or holders of checks sold in this state by the person making the deposit or posting the bond as principal, and the commissioner or any aggrieved person may by appropriate civil actions enforce claims on any such check or checks against such deposit or bond. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days' notice to the
 commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. So long as the person making a deposit is not in violation of any of the provisions of this article, such person shall be permitted to receive all interest and dividends on said deposit, and shall have the right, with the approval of the commissioner, to substitute other securities. If the deposit is made at a bank, any custodial fees therefor shall be paid by the person making such deposit. At the time any such deposit is made or any such bond is posted, and annually thereafter, the person making such deposit or posting such bond shall pay to the commissioner a fee of one hundred dollars. All such fees shall be deposited in the state 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 section three of this article may engage in the business of issuing and selling checks at one or more locations in this state and through or by means of such agent or agents as such person may designate and appoint from time to time, and no such agent shall be required to comply with the provisions of said section three.

§32A-2-5. Exemptions.

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


1 Any person aggrieved by any action of the commissioner under the provisions of this article may appeal such action by filing a petition, at the election of such person, in either the circuit court of Kanawha county, West Vir-
ginia, or with the judge thereof in vacation, or in the
circuit court of the county in which such person resides
or does business, or with the judge thereof in vacation,
within ninety days after such action.
The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme
court of appeals. Any such appeal shall be sought in the
manner and within the time provided by law for appeals
from circuit courts in other civil cases.


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

Upon application by the commissioner, the circuit courts
of this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article.
The court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.
The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final
unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be sought
in the manner and within the time provided by law for
appeals from circuit courts in other civil cases.


Any person who directly or through another violates or
tries to violate any provision of this article shall be
guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. Each transaction in violation of this article and each day that a violation continues shall be a separate offense.


If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the remainder of the article or the application of such provision to other persons or circumstances, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR

Date 3/14/74
Time 2:15 p.m.