

No. 703, A.]

[Published July 14, 1927.]

CHAPTER 350.

AN ACT to appropriate from the general fund to the superintendent of public property two thousand dollars as an emergency appropriation for operation for the fiscal year ending June 30, 1927.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is appropriated from the general fund to the superintendent of public property two thousand dollars as an emergency appropriation for operation for the fiscal year ending June 30, 1927, in addition to all other sums heretofore appropriated for that purpose.

SECTION 2. This act shall take effect upon passage and publication.

Approved July 13, 1927.

No. 449, S.]

[Published July 14, 1927.]

CHAPTER 351.

AN ACT to repeal subsection (3) of section 189.02 and subsections (1) and (2) of section 189.23, to amend subsections (1), (2) and (7) of section 189.02, subsections (4), (5), (6), (15) and (17) of section 189.03, subsections (1), (2), (5) and (6) of section 189.05, section 189.09, subsection (1) of section 189.10, section 189.11, subsection (4) of section 189.15, subsection (3) of section 189.17, subsections (2) and (3) of section 189.22, and subsections (1) and (2) of section 189.26 and to create subsection (8) of section 189.02, paragraph (c) of subsection (5) and subsections (6) and (7) of section 189.05, subsection (3) of section 189.08, subsections (4) and (5) of section 189.10 and subsections (1) and (2) of section 189.23 of the statutes, relating to the regulation of securities and providing penalties.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsection (3) of section 189.02, subsections (1) and (2) of section 189.23 of the statutes are repealed.

SECTION 2. Subsections (1), (2) and (7) of section 189.02, subsections (4), (5), (6), (15) and (17) of section 189.03, subsections (1), (2), (5) and (6) of section 189.05, section 189.09, subsection (1) of section 189.10, section 189.11, subsection (4) of section 189.15, subsection (3) of section 189.17, subsections (2) and (3) of section 189.22 and subsections (1) and (2) of section 189.26 of the statutes are amended to read: (189.02) (1) "Agent" includes every natural person who in this state for compensation represents or acts for another with authority in the sale of any security except securities exempted by subsection (1) of section 189.03, *but does not include any executor, administrator, guardian, or any other officer of the court making any sale under the provisions of subsection (11) of section 189.03, or any pledgee who sells under the provisions of subsection (12) of section 189.03.*

(2) "Broker" includes every person and company, not an agent, who in this state, for compensation, sells or accepts orders for purchase of any security issued by others except securities exempted by subsection (1) of section 189.03 or who underwrites and sells or engages either wholly or in part in the business of purchasing and selling any such securities, *but does not include any executor, administrator, guardian, or any other officer of the court making any sale under the provisions of subsection (11) of section 189.03, or any pledgee who sells under the provisions of subsection (12) of section 189.03.*

(7) "Security" or "securities" include all bonds, stocks, *land trust certificates, collateral trust certificates, mortgage certificates, certificates of interest in a profit-sharing agreement, notes or other evidences of debt, or of interest in or lien upon any or all of the property or profits of a company; and all interest in the profits of a venture and the notes or other evidences of debts of an individual; and any other instrument commonly known as a security.*

(189.03) (4) Securities officially listed upon the New York, Boston or Chicago stock exchange, and securities senior to any securities so listed *or represented by subscription rights which have been so listed;*

(5) Securities issued by any bank or trust company or building and loan association or land mortgage association or other corporation, whose business is subject to the control and supervision of the banking commissioner *of this state;* or securities

issued by any corporation organized and existing by virtue of any act of congress of the United States, except laws enacted for the District of Columbia; the sale of securities to any such corporation or association or to any broker duly authorized by the commission;

(6) The securities of any domestic corporation organized without capital stock or exclusively for educational, fraternal, benevolent, charitable, *religious*, or reformatory purposes; *and the sale to the members of such corporation, organized for such purposes, of the securities of a domestic corporation organized for the purpose of owning a club house, church, school, or other home building or grounds for the use of such organization of which such purchasers are members, which said club house, church, school, or other home building is or is to be located within this state, and when no profit or remuneration shall accrue to the promoters or persons interested in promoting such corporation;* or of companies organized for conducting county fairs which by statute of this state are entitled to state or county aid;

(15) The sale by any domestic corporation of stock of its issue if the total number of holders of its stock, after that to be issued is sold does not exceed twenty-five, or the sale by such corporation of any of its securities *other than stock if the sale of such securities is made only to stockholders* and the total number of holders of its securities, after that to be offered is sold, does not exceed twenty-five, and, in either event, the total organization and promotion expenses in connection with such issue, exclusive of statutory fees and inclusive of commissions on the sale of such securities, will not exceed two per cent of the selling price thereof;

(17) The issue *in good faith* of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith *or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, * * * and in either such case such security holders or creditors do not give or promise and are not obligated to give any consideration for the securities so issued other than the securities of or claims*

against said company *or its predecessor* then held or owned by them ;

(189.05) (1) Evidences of debt secured by mortgage or deed of trust upon *land or leaseholds and buildings thereon* * * * where the total amount of such securities and prior incumbrances, *excepting special assessment taxes*, does not exceed sixty per cent of the then fair market value of the lands or leaseholds and buildings included in such mortgage or deed *after deducting from such value the amount of any special assessment taxes unpaid.*

(2) Evidence of debt secured by first mortgage upon land or leaseholds and buildings to be erected thereon, where it is established * * * that the total amount of such securities will not exceed sixty per cent of the fair market value of such land or leasehold (*deducting from such value the amount of any unpaid special assessment taxes*) and of the building to be erected thereon, *which will become part thereof, and that after the present financing there will be no liens or incumbrances on the property prior to such mortgage except unpaid special assessment taxes,* * * * and that a bond has been given in sufficient amount and with sufficient surety to assure the erection of the building ; that ample provision is made for financing the completion of the building and for the actual investment in the building of the funds represented to be available for that purpose ; and that the net income therefrom will be sufficient to pay * * * interest as * * * it * * * becomes due, and to pay all amounts due on principal, *except the final maturity, as they become due.*

(5) Securities issued by the owner of a property, business or industry, which has been in continuous operation for and has earned net profits, during each of the last two years, or earned average annual net profits during a period of not less than four years nor more than eight years next preceding the application for a permit, (a) amounting to one and one-half times the annual interest charge upon all interest-bearing obligations of equal rank to be outstanding, in the case of interest-bearing securities, and (b) to one and one-half times the annual dividends on all preferred stock of equal rank therewith to be outstanding, in the case of preferred stock ; and (c) to five per cent upon all common stock to be outstanding computed at its proposed sale price per share, but not less than par, in the case of common stock ; provided, that no * * * security shall be

given a Class A * * * *permit* when there is or will be outstanding a senior * * * *security* which cannot qualify as a Class A * * * *security*. In calculating net profits for the purpose of this section there shall be added to the net profits of each year, as determined after provision for depreciation, taxes, and other proper * * * *charges*, the amounts deducted for interest on obligations other than current indebtedness and for interest on such portion of the current debt which it shall be proved was incurred for net expenditures for fixed assets and will not be outstanding after the present financing. From said sum there shall be deducted:

(a) If the securities to be qualified are interest-bearing securities, the annual interest on securities senior thereto to be outstanding after the financing.

(b) If the security to be qualified is stock, the annual interest on interest-bearing securities and annual dividends on stock senior thereto, to be outstanding after the financing.

* * * (8) The commission may, notwithstanding compliance with the standards of this section, refuse to classify securities as Class A * * * because of the unsound financial condition of the company, decrease in earnings, or other conditions affecting the soundness of the securities.

189.09 Any broker licensed by the commission may sell securities which were issued prior to and have been outstanding in the hands of the public since August 1, 1919, or any stock of the same rank lawfully issued by way of a stock dividend thereon, without a permit from the commission, but subject to the following provisions and conditions: Before offering any such securities for sale the broker shall notify the commission in writing of his intention to sell specified securities, and shall submit with such notice a verified statement to the effect that he is informed and believes that such securities were issued and have been so outstanding for the required time or is stock of the same rank issued as a stock dividend on stock which has been outstanding for such period, giving the name or description of the securities, the date when issued, and any other facts which are the basis for his belief, the amount to be offered for sale, the maximum price to be asked therefor, and such information as the broker has as to the person or company issuing the securities and tending to establish the worth or value of such securities. The commission may require additional information to be furnished with reference to

any such securities, and, except as provided herein, shall have the same authority and control over the sale of such securities as over other securities, subject to the provisions of this chapter. If it appears to the commission that such securities have not been outstanding for the required time, *or are not shares of the same rank issued as a stock dividend on securities which have been so issued and outstanding*, or that the financial condition or plan of the person or company issuing them is inequitable or unfair, or that the price at which they are to be sold is excessive, or for any other reason the sale of such securities may work a fraud on the purchaser, or may constitute a violation of this chapter, it may, by notice to the broker, suspend the sale of such securities until further notice.

(189.10) (1) Upon the filing of an application for a permit the commission shall examine the same and the other papers and documents filed therewith, and it may make or have made a detailed examination, inspection, audit, or investigation of the affairs of the issuer of the security for the sale of which a permit is sought, the expense thereof to be borne by the applicant. If * * * the proposed plan of business of the issuer is not unlawful, unfair, unjust or inequitable, and * * * *the issuer intends to fairly and honestly transact its business, and * * * the securities which it is proposed to issue or sell, and the methods to be used in the issue or sale of such securities, are not such as will work a fraud upon the purchaser thereof, and the amount of commissions to be paid on such issue or sale * * * is not unreasonable*, the commission, upon payment of the required fee and of any examination or inspection expense incurred, shall issue a written permit to sell the securities therein specified in such amounts and for such considerations and upon such terms and conditions as the permit provides; otherwise, the commission shall deny the application and notify the applicant in writing of its decision.

189.11 The commission may impose such conditions as may be deemed necessary to the issuance and sale of securities, *to assure that the plan of business of the issuer shall not be unlawful, unfair, unjust or inequitable, and to assure that the issuer shall fairly and honestly transact its business, and that the securities and the methods of sale of such securities shall not be such as to work a fraud upon the purchasers thereof, and that not more than a reasonable amount of commissions shall be paid*

upon such sale; and may establish such rules and regulations as may be reasonable or necessary to administer effectively the provisions of this chapter. It may make investigations and hold hearings to ascertain whether misrepresentation has been made to the commission in seeking a permit, or whether the issuer has failed to act in conformity with representations made to the commission, or whether the terms and conditions fixed by the commission *and the requirements of* * * * this chapter have been complied with, or whether any fraud has been committed against the purchasers of securities, or whether any fact exists or any act has been done which would be ground for refusing a permit, or for prohibiting the sale of the securities, and may from time to time, for cause, change the classification of any security for which a permit has been issued, amend, alter, revoke or temporarily suspend any such permit. The commission may hold such public hearings at such time and place upon such reasonable notice as the commission may fix *for the administration of this chapter*. The commission may appoint agents to make investigations and hold such hearings with like powers as agents appointed pursuant to section 196.24. *The commissioners and the agents so appointed shall have the power to subpoena witnesses and administer oaths in connection with the administration of this chapter*. Each witness who shall appear before the commission, or its agent, and who was subpoenaed in its behalf shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record which shall be paid from the securities regulation fund. The commission or any party may in any investigation cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions in circuit courts. Any expense incurred by the commission in taking such depositions shall be paid as above provided.

(189.15) (4) If the securities to be sold are secured by a real estate mortgage the face value of which exceeds seventy-five per cent of the *fair* market value of the lands or leaseholds and buildings included in * * * *the mortgaged real estate*, the commission may require that there likewise be added in like type the words: "This is a speculative venture."

(189.17) (3) If the securities to be sold are evidences of debt secured by mortgage on real estate, the face value of which exceeds seventy-five per cent of the *fair* market value of the lands

or leaseholds and buildings included in * * * *the real estate so mortgaged*, there shall be included in prominent type the words: "This is a speculative venture."

(189.22) (2) No purchaser shall have the benefit of this section or recover on the bond given in accordance with subsection (2) of section 189.08 who shall refuse or fail within * * * *thirty days from the date thereof* to accept an offer in writing to take back the securities in question and to cancel said contract, accompanied by * * * *an offer in writing to pay the full * * * purchase price*, together with interest as above specified *simultaneously with the return of such securities*.

(3) Notice of such election shall be given to the party from whom recovery will be sought within * * * *three months* after the purchaser shall have * * * *knowledge* that such security was sold without a permit or in violation of or non-compliance with the terms and conditions of the permit. Such notice shall be given by letter addressed to the person or company to be notified at his or its last known address, with proper postage affixed, and deposited in a United States post office or mail box, or by personal service as in civil actions.

(189.26) (1) The commission shall collect from each person filing an application for a broker's certificate of authority twenty-five dollars as a filing fee * * *.

(2) The commission shall collect for each application for a permit to sell securities *hereafter filed* a * * * fee of ten dollars * * * *plus fifty cents per thousand* for each thousand dollars par value of each entire authorized issue of certificates, *a permit for the sale of * * * part or all of which shall be applied for*, * * * but in no case shall the fees be more than one hundred *forty* dollars for each such issue; *such fee shall be paid on the filing of the application*.

SECTION 3. A new subsection is added to section 189.02, a new paragraph is added to subsection (5) of section 189.05, two new subsections are added to 189.05, and a new subsection is added to section 189.08, two new subsections are added to section 189.10, and two new subsections are added to section 189.23 of the statutes to be numbered and to read: (189.02) (8) "Stock" shall include shares of beneficial interest in a business trust, as well as all other securities commonly known as "stock."

(189.05) (5) (c) The ownership by a company of more than fifty per cent of the outstanding voting stock of a corporation

shall be construed as the proportionate ownership of the property, business or industry of such corporation and shall permit the inclusion of the earnings of such company, after eliminating intercompany transactions, applicable to the payment of dividends upon the stock so owned, in the earnings of the company issuing the securities sought to be qualified, or the deduction of the proportion of the losses of said company applicable to the stock so owned.

(189.05) (6) Evidences of debt secured by first mortgage upon the fee to real estate, except for special assessment taxes, where the entire issue of such securities does not exceed the present fair market value of such real estate, deducting from such value the amount of any unpaid special assessments, but including the buildings thereon, and where such real estate is leased to a corporation for a term of years ending not prior to the final maturity of such securities, at a net annual rental sufficient to pay the interest and retire the principal of such indebtedness during the term of the lease, and where such lease is irrevocable, and the trust indenture securing the said issue requires said issue to be retired serially in such amounts as the said rental permits, and where the said lease is pledged under the mortgage securing such debt, provided the lessee has had sufficient earnings to qualify such evidences of debt as a security junior to its own debt under subsection (5) of this section, as a Class A security. In computing said earnings the rentals under said lease shall not be deducted as an expense.

(7) Land trust certificates evidencing an interest in real estate leased for not less than forty-five years from the date of the application for a permit at a net annual rental sufficient to pay at least five per cent upon such land trust certificates, provided the lessee has earned net profits in each of the last two years, or has earned average annual net profits during a period of not less than four years nor more than eight years next preceding the application, in either case sufficient to pay interest on all its outstanding debt other than current indebtedness and one and one-half times the annual rental charge under said lease, such net profits to be determined as provided in subsection (5) of this section; and provided further that the entire issue of such land trust certificates does not exceed the fair market value of the land conveyed thereby, not including the buildings thereon, and that said lease does not give the lessee an option

to purchase said land for less than one hundred five per cent of the amount of such land trust certificates.

(189.08) (3) In case the securities so offered are to be qualified under subsection (2) of section 189.05 it shall be made to appear that the bond for the completion of the building required by section 189.05, subsection (2), was executed within a reasonable time after the date of the notice provided for in subsection (1) of this section.

(189.10) (4) No permit shall be issued for the sale of evidences of debt which are guaranteed by an insurance, guaranty or suretyship company as to the payment of principal or interest unless such insurance, guaranty or suretyship company shall have been authorized by the commissioner of insurance of this state to conduct a guaranty or suretyship business.

(5) If the securities for the sale of which a permit is sought shall have attached thereto or delivered therewith purchase warrants, or rights to subscribe to stock, or shall be convertible into other securities at the option of the holder, the existence of such rights shall not affect the qualification of such securities nor shall the securities to be delivered on the exercise of the purchase warrants, subscription right, or conversion privilege, be required to be presently qualified; except that the commission shall not permit the sale of the securities carrying the warrants, rights, or conversion privilege, even though the said securities otherwise comply with the requirements for qualification under this chapter, unless it shall be made to appear that neither such purchase warrants or subscription rights or conversion privilege, nor the securities to be delivered in fulfillment thereof, shall be unfair, unlawful, unjust, inequitable or fraudulent. If a permit shall be issued for such securities carrying the warrants, rights, or conversion privilege no further permit shall be required, either at the time of the sale of such securities carrying the warrants, rights or conversion privilege or at any time thereafter, for the delivery of the securities in accordance with the terms of such purchase warrants, subscription rights or conversion privilege, but if the commission shall have reason to believe that the holders of such purchase warrants, subscription rights, or conversion privilege are being solicited to exercise the same in such manner or under such circumstances that a fraud or imposition may be worked upon the holders thereof the commission may suspend the right to solicit or negotiate for an exer-

cise of such purchase warrants, subscription rights or conversion privilege, and may make or have made such investigation as it may deem necessary and require the persons or companies desiring to make such solicitation to pay the expense thereof. The person or company desiring to make such solicitation shall be entitled to a public hearing before the commission or an agent thereof, upon written request. If the commission shall determine that the said solicitation or the circumstances surrounding the same are such that a fraud or imposition may be worked on the holders of said option privileges or purchase warrants, the commission may prohibit the further solicitation or negotiation for the exercise of said option privilege or purchase warrants.

(189.23) (1) Any company shall be punished by a fine not exceeding ten thousand dollars which shall:

(a) Directly or indirectly sell or offer for sale any security contrary to the provisions of this chapter; or

(b) Directly or indirectly sell or offer for sale any security in nonconformity with its representations to the commission in securing its permit, or contrary to any order of the commission or condition in the permit for the sale of such securities; or

(c) Which applies any of the proceeds from the sale of any securities sold under a permit, to any purpose other than the purpose or purposes specified in procuring its permit from the commission, or applies any greater or different amount to any purpose than that specified in the permit for the sale of such securities.

(2) Every officer, agent or employe of any company and every broker and every other person shall be punished by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or by both:

(a) Who authorizes, directs, aids in or consents to, the issue or sale of, or issues or executes or sells, or causes or assists in causing to be issued, executed or sold, any security in nonconformity with a permit of the commission, or contrary to the provisions of this chapter, or to any lawful order of the commission; or

(b) Who authorizes, directs, or aids in or consents to, the issue or sale of, or issues or executes or sells, or causes or assists in causing to be issued, executed or sold, any security, knowing said issue, execution or sale to be in nonconformity with the representations made to the commission in securing the permit; or

(c) Who in, or in connection with, any application to the commission or in, or in connection with, any proceedings before it, or in, or in connection with, any examination, audit, or investigation made by the commission or on its authority, knowingly or negligently makes any false statement or representation; or

(d) Who, with knowledge or by reason of his office, position, or occupation should know of its falsity, files or causes to be filed in the office of the commission any false statement or representation concerning any broker or issuer of securities, or the property which it then holds or proposes to acquire, or its financial condition or other affairs, or concerning its proposed plan of business, or concerning the officers of any company or broker or the securities which any issuer proposes to issue; or

(e) Who, with knowledge, or who by reason of his office, position, or occupation should know, of the falsity of any such statement or representation, issues, executes or sells, or causes to be issued, executed or sold, any security of the company concerning which the false statement was made to the commission; or

(f) Who, directly or indirectly, applies or causes or assists in causing to be applied the proceeds or any part thereof from the sale of any security to any purpose which he knows, or should know by reason of his office, position or occupation, to be contrary to the representations made in the application to the commission, or contrary to the terms and conditions of the permit, or to any purpose specified in an amount which he knows to be in excess of the amount limited in the application or in the permit to be used for such purpose; or

(g) Who, with knowledge or by reason of his office, position or occupation should know that any advertisement, pamphlet, prospectus or circular concerning any security contains any statement that is false or misleading or otherwise likely to deceive a reader, issues, circulates, or publishes the same, or shall cause the same to be issued, circulated or published, or consents to the same; or

(h) Who, in any other respect, wilfully violates or fails to comply with any of the provisions of this chapter, or any permit or lawful order of the commission under the provisions of said chapter.

SECTION 4. This act shall take effect July 1, 1927.

Approved July 13, 1927.