

## CHAPTER 189.

## SECURITIES LAW.

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189.01 to 189.24. [*Repealed by 1941 c. 327*]

189.01 Department of securities; director; employees; duties. (1) There is created a department of securities to consist of a director of securities. All of the administrative and executive powers and duties of the department shall be vested in the director. It shall be the duty of the department of securities to administer and enforce the provisions of the securities law contained in chapter 189.

(2) The director of the department of securities shall be appointed by the governor by and with the advice and consent of the senate for a term of 6 years commencing May 1, 1939, and until the appointment and qualification of his successor, and the salary of such director shall be \$6,500 per annum.

(3) The director shall appoint a deputy director and such other officers and assistants as may be necessary for the proper discharge of his duties and functions, and with the exception of the deputy director, who may be removed by the director, they shall be subject to the provisions of chapter 16.

(4) The department of securities shall be provided with the necessary office space, furniture, equipment and supplies.

(5) Annually on or about December 1, the director shall file in the office of the governor a report containing an accurate review of the work of the department and the administration of this chapter for the preceding fiscal year, including a schedule of all securities for which registration was sought, all registrations granted, all applications for registration denied and all registrations revoked, and a statement of the receipts and disbursements of the department and other material information relating to the administration of this chapter.

(6) This chapter may be referred to and cited as the "Wisconsin Securities Law." [*1939 c. 68; 1941 c. 327; 1947 c. 332*]

**Note:** The Blue Sky Law should receive a liberal construction to carry out its purpose to protect investors and restrain the flotation and sale of improvident securities. *Klatt v. Columbia C. Co.*, 213 W 12, 250 NW 825. Corporation formed to construct and operate interstate toll bridge is subject to ch. 189, Stats. 1929. 19 Atty. Gen. 466.

189.02 Definitions. (1) "Security" includes any stock, treasury stock, bond, note, debenture or evidence of indebtedness; any interest, share or participation in any profits, earnings, profit-sharing agreement, property, leasehold, royalty, patent right, copyright, trade-mark, process, formula or oil, gas or other mineral right; any collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, or any membership in a corporation without capital stock; any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing; and without limitation by reason of the foregoing any instrument commonly known as a security. The term "stock" includes shares of beneficial interest in a business trust, as well as all other securities commonly known as stock.

(2) "Person" includes an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a government, a political subdivision or instrumentality of a government, and any other entity.

(3) (a) "Sale" or "sell" includes every disposition, offer, negotiation, agreement, or attempt to dispose of a security or any interest therein, for value; every solicitation of any subscription or order for the purchase of a specific security, for value; and every exchange of a security for another security or for other property; but does not include:

1. The solicitation or execution by a licensed dealer of orders for the purchase of any security, provided such dealer acts as agent for the purchaser, has no direct material interest in the sale or distribution of such security, receives no commission, profit or other compensation from any source other than the purchaser, and delivers to the purchaser written confirmation of the transaction which clearly itemizes his commission, profit or other compensation; or

2. The solicitation or execution of orders executed on a securities exchange registered as a national securities exchange under section 6 of the federal securities exchange act of 1934, by a licensed dealer acting as agent for both the purchaser and seller, provided such dealer has no interest in the transaction other than the regular broker's commissions and delivers to the purchaser and to the seller written confirmation of the transaction which clearly itemizes his commissions and discloses to each that he has acted as agent for both purchaser and seller.

3. The issuance, circulation or publication by a licensed dealer of advertising matter relating to, and the solicitation and acceptance by a licensed dealer of tentative reservations for purchase from such dealer of securities, while such securities may not be legally sold under this chapter, provided no such reservation for such security shall be binding as an order upon the purchaser until ratified by him after such security may legally be sold under this chapter and a written confirmation has been delivered or mailed by such dealer to the purchaser. The advertising matter so used shall be subject to the provisions of section 189.14, and the department may prescribe such rules and regulations relating to the form and use of such advertising matter and to the solicitation, acceptance and confirmation of reservations for purchases of such securities as it deems necessary or appropriate in the public interest or for the protection of investors.

(b) The department may classify securities for the purpose of prescribing maximum commissions for the purchase of each such class of securities which may be charged by dealers acting as agents for purchasers, and may prescribe such rules and regulations regulating or limiting such transactions as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) Securities given or delivered with or as a bonus on account of any sale or purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such sale or purchase and to have been sold for value.

(4) "Issuer" includes every person who proposes to issue, has issued, or shall hereafter issue any security, and every promoter who acts for or on behalf of any issuer to be formed.

(5) "Dealer" includes every person, not an agent, who in this state engages in the business of purchasing or selling securities or executing orders for the purchase or sale of securities issued by others, except a security exempted by section 189.05, but does not include:

(a) An executor, administrator, guardian or other officer of the court making any sale under subsection (7) of section 189.07;

(b) A pledgee making any sale under subsection (8) of section 189.07;

(c) A person whose dealings in securities are limited to sales exempted by subsections (3) or (4) of section 189.07; or

(d) A person having no place of business in this state, whose dealings in securities in this state are limited to sales to or purchases from licensed dealers.

(6) "Licensed dealer" means a dealer licensed under section 189.04.

(7) "Agent" includes every individual, not a dealer, who in this state represents or acts for a dealer or issuer in the sale of any security except a security exempted by section 189.05, but does not include any pledgee making a sale under section 189.07 (8) or any person whose dealings in securities are limited to sales exempted by section 189.07 (3) or (4) or officers, directors or regular employees of issuers who may sell its securities as an incident to their other duties.

(8) "Licensed agent" means an agent licensed under section 189.04.

(9) "Order" means every direction or determination of the department designated an order and made in writing over the signature of the director or deputy director and the seal of the department and filed as part of the records of the department. "General order" means every order designated a general order by the department. General orders shall take effect 30 days after their publication in the official state paper, and such

publication shall constitute notice thereof. All other orders shall take effect when made and filed or at such later time as the department may prescribe, and the department shall upon making and filing such order forthwith send a copy thereof to every person to whom such order relates, by registered mail addressed to such person at his last known address as the same appears upon the records of the department, and such mailing shall constitute notice thereof.

(10) The department is hereby authorized to define any technical, trade or accounting terms used in this chapter in so far as such definitions are not inconsistent with this chapter. [1941 c. 327; 1943 c. 557; 1947 c. 360]

**Note:** A good-will contract issued by an oil company to customers purchasing coupon books, providing that such customers will purchase the company's products when convenient and recommend them, in consideration of which the company agrees to deposit a specified amount per unit measure of products sold, in trust, to be shared at the end of approximately a ten-year period and thereafter by such purchasers, is construed with the coupon book as constituting a "security" within 189.02, Stats. 1931, which cannot be sold without a permit. *Brownie O. Co. v. Railroad Commission*, 207 W 88, 240 NW 827.

Procuring by a broker of subscriptions for securities and sending by the subscriber to the broker other securities to sell in payment of such subscriptions constituted a "sale" within (5), Stats. 1931. *Josslyn v. Dahinden-Schmitz Co.*, 208 W 468, 243 NW 473.

The definition of "sale" in 189.02 (5), Stats. 1931, which includes offers and negotiations to dispose of securities, is to be limited to the penalties provided by that statute, and such definition is not the test in determining whether there was a "purchaser" within 189.08. [*Josslyn v. Dahinden-Schmitz Co.*, 208 W 468, reexamined and restated.] When an investor orally orders securities from a broker and turns over to the latter either money in payment thereof or property for sale and application of the proceeds on the purchase price of the securities ordered, it should be considered as a contract of purchase and sale for the purposes of the Blue Sky Law. *Klatt v. Columbia C. Co.*, 213 W 12, 250 NW 825.

An exchange of securities is a "sale" of securities within the provisions of the securities law (Stats. 1935) governing the granting of permits to sell. *Associated G. & E. Co. v. Public Service Commission*, 221 W 519, 266 NW 205.

Agreement for sale of unit of muskrats and ranching agreement for same should be considered as single transaction; they are security when title to the muskrats does not vest in purchaser prior to signing of ranching agreement. (Stats. 1929). 19 Atty. Gen. 173.

Where vending machines are sold by one corporation and after sale is consummated purchaser leases said machines on profit-sharing basis to subsidiary corporation, transaction is not sale of securities within ch. 189, Stats. 1929. 19 Atty. Gen. 545.

Sale of coupon books for future redemption and providing trust funds from gross profits to be paid to purchasers of coupon books are securities within chapter 189, Stats. 1931. 20 Atty. Gen. 176.

Mineral deeds evidencing right to fractional shares of royalty under lease to petroleum corporation are securities within ch. 189, Stats. 1931. 21 Atty. Gen. 1011.

Contract whereby peanut vending machine is sold and seller agrees to lease machine, operate it and pay purchaser percentage of gross intake as rent, constitutes

security within 189.02 (7), Stats. 1937. 26 Atty. Gen. 370.

Whiskey warehouse receipts sold to general public constitute securities within meaning of 189.02 (7), Stats. 1937. 26 Atty. Gen. 596.

Solicitation and sale of membership in Universal Order of Plenocrats constitutes sale of securities within meaning of chapter 189, Stats. 1937. 26 Atty. Gen. 605.

Salesmen for mutual savings bank organized under chapter 222, do not come within exception of 189.02 (1), Stats. 1937, and should be licensed under securities law, chapter 189. 27 Atty. Gen. 179.

Where builder of boat proposes to finance its construction by selling interests in boat in form of bills of sale, transaction comes within purview of 189.02 (7), Stats. 1937. 27 Atty. Gen. 598.

Interests in gas, oil or mining leases or royalties constitute securities under 189.02 (7), Stats. 1937, regardless of whether interest conveyed is fractional or whole interest. 27 Atty. Gen. 641.

Purchase by issuer from dealer of his own unregistered bonds, which were originally properly registered but which were subsequently suspended and registration was canceled by commission, is not in violation of chapter 189. Such purchase is not sale within meaning of 189.02 (6), Stats. 1937. 27 Atty. Gen. 786.

Contract whereby customer furnishes money to securities company for purpose of speculating in stocks and commodities on security and commodity exchanges and whereby company retains forty per cent of net profits for its trading services constitutes sale of securities under 189.02 (6) and (7), Stats. 1937. 27 Atty. Gen. 816.

For discussion of regulation of investment plan contracting, prior to creation of 189.025 by ch. 442, Laws 1939, see 28 Atty. Gen. 174 and 244.

Under 123.06 (1) every partner is agent of partnership for purposes of its business and partner in securities firm licensed to sell securities comes within definition of agent provided by 189.02 (1) Stats. 1939, so as to require agent's license if he is engaged in sale of securities on behalf of partnership. 28 Atty. Gen. 80.

"Contract deposit certificates" issued by mutual savings bank whereby holders share in net profits of bank are securities as defined in 189.02 (7), Stats. 1939, and salesmen soliciting purchasers of same are agents under 189.02 (1), Stats. 1939, and required to obtain license under securities law. 28 Atty. Gen. 274.

Transactions had between issuer of securities and holders thereof pursuant to recapitalization or reorganization plans whereby rights existing under securities or originally held are exchanged for new rights, held, unless specifically exempted therefrom, subject to securities law, ch. 189, Stats. 1941. 30 Atty. Gen. 463.

**189.03 Dealers and agents to be licensed.** No dealer shall act as such unless such dealer shall be a licensed dealer; and no agent shall act as such unless such agent shall be a licensed agent. All licenses issued pursuant to this chapter shall terminate on December 31 following the date thereof. [1941 c. 327]

**Note:** Under the securities law as it existed in chapter 189, Stats. 1929, an agent as defined in such law was not required to have the authorization of the commission in order to sell securities listed on the Boston Stock Exchange as to which the commission had never exercised its visitatorial powers, and

hence a sale of such stock, although made by an alleged unlicensed agent, was not for such reason voidable by the purchaser as having been made in violation of the securities law. *Dorner v. Doherty*, 222 W 101, 267 NW 46.

**189.04 Applications for licenses; proceedings; issuance; revocation.** (1) (a) Each applicant for a dealer's or an agent's license shall file with the department a verified application in such form and setting forth such information as the department may require to determine the competency and trustworthiness of the applicant and, in the case of a dealer, of its officers, directors, partners, members or trustees and of such owners or holders of its securities as the department shall require. The department may make a detailed investigation into the business and affairs of the applicant and such related persons and shall issue such license, upon payment of the prescribed fee and of the expense attributable to any investigation by the department, if it shall find, from the information submitted and from any investigation made by the department, that it is appropriate in the public interest that such license be issued; otherwise it shall by order deny such application. No licensed agent shall at any time represent or act for more than one licensed dealer or one issuer, who shall join in the application for such agent's license and be specified in such license.

(b) If the applicant is a foreign corporation it shall be licensed to do business under chapter 226 or shall file, in such form as the department may prescribe, its written instrument irrevocably appointing the director and deputy director, and each of them, its true and lawful attorneys upon whom may be served any summons, complaint, pleading, process, order or notice in any action or proceeding against such applicant in connection with any matters arising out of this chapter or out of transactions by such applicant as a dealer, and if the applicant is a nonresident and not a corporation it shall file, in such form as the department may prescribe, its written instrument irrevocably appointing the director and deputy director, and each of them, its true and lawful attorneys upon whom may be served any summons, complaint, pleading, process, order or notice in any action or proceedings against such applicant in connection with any matters arising out of this chapter or out of transactions by such applicant as a dealer or agent.

(c) Each dealer shall promptly file with the department a full statement of any change in the officers, directors, partners, members or trustees of such dealer, or in such owners or holders of its securities as to whom the department shall require such information, and such other information and reports as the department may from time to time require.

(2) The department may, after a hearing on not less than 5 days' notice, revoke the license of a dealer or agent if it finds that such dealer or agent or any officer, director, partner, member, trustee or agent of such dealer, or any owner or holder of a material interest through voting securities or otherwise in such dealer, whether prior to or subsequent to becoming such

(a) Has been convicted of a felony, or of any misdemeanor of which fraud is an essential element;

(b) Has engaged or is about to engage in any unfair, inequitable or fraudulent business practice;

(c) Has, in the sale of any security, made any material misrepresentation or given any misleading information or concealed or withheld information as to any material fact relative to the affairs of the issuer, or is or has been using any other practices in the sale of securities that are unfair or work or tend to work a fraud, or has taken unfair advantage of a customer in a security transaction;

(d) Has failed to account to any person entitled thereto for any money or property, or has failed to deliver any security to any person entitled thereto when due to be delivered or within a reasonable time thereafter;

(e) Is untrustworthy or incompetent or not of good business repute;

(f) Is insolvent, or in such financial condition that he cannot continue in business with safety to his customers, or has not sufficient financial responsibility to carry out the obligations incident to his operations;

(g) Is, in the case of a dealer, selling or has sold, or is offering or has offered for sale in this state, securities through any agent not a licensed agent; or is, in the case of an agent, selling or has sold, or is offering or has offered for sale in this state, securities for any dealer or issuer with knowledge that such dealer or issuer had not or has not complied with the provisions of the laws of this state regulating the sale of securities;

(h) Has violated any of the provisions of this chapter or any order of the department, or has engaged or is about to engage in any course of business in evasion or violation of this chapter;

(i) Has made any material misrepresentation to or withheld or concealed any material act from the department or any representative thereof, or has refused to furnish information requested by the department;

(j) Has been refused or deprived of a license under any law regulating the sale of securities;

(k) Fails to maintain within this state or have available at all times to the department accurate records of all transactions covered by this chapter including such records as the department may prescribe from time to time, or refuses to permit the examination of any books, papers, records and memoranda relative to the business covered by this chapter; or

(1) Has, in the case of an agent, directly or indirectly, divided or otherwise split commissions, profits or other compensation paid for the sale of securities in this state with any person not a licensed dealer or a licensed agent.

(3) The enumeration of the foregoing grounds for revocation of a license shall not be exclusive, and the department shall have power to revoke the license of any dealer or agent for any cause, whether similar to or different from the foregoing, rendering such revocation necessary or appropriate in the public interest or for the protection of investors.

(4) Pending final determination as to whether the license of any dealer or agent shall be revoked, the department may, at the time of issuance of the notice of hearing referred to in subsection (2) of this section, or at any time thereafter, suspend such license if it shall have reason to believe that such suspension may be necessary or appropriate in the public interest or for the protection of investors.

(5) The department may require dealers to submit reports of sales of securities at such times and in such form as it may prescribe, may fix fair and reasonable maximum charges, profits, commissions, or other compensation in or for the sale of securities and may establish such other rules and regulations for the conduct of the business of dealers and agents as may be reasonable and necessary to assure compliance with this chapter.

(6) (a) Every dealer shall maintain an accurate record of all transactions in securities, and the department may prescribe the records to be kept by dealers. All such records shall be kept within this state or shall at the request of the department, be made available at any time for examination in this state by the department.

(b) An investigation of the business of each dealer of a scope to be determined by the department shall be made at least once in each calendar year at such time as the department shall determine, and may be made without previous notice to the dealer. The expense attributable to any such investigation shall be paid by the dealer whose business is investigated, but the liability of such dealer for such expense in any one calendar year shall not exceed the sum of \$50, plus (in case such dealer maintains more than one office in this state) the sum of \$50 for each such additional office, and plus the sum of \$15 for each licensed agent representing or acting for such dealer in this state. [1941 c. 327; 1943 c. 557]

**Note:** The refusal of the commission acting under 189.07 (1) (b), Stats. 1935, to register the new bonds, issued by the corporation to be exchanged for old bonds of the company owning the corporation, on the ground that the plan of financing was unfair and inequitable, was proper, where the plan was such that all bondholders were not treated alike, and the holders of the new bonds would not know what they had. Associated G. & E. Co. v. Public Service Commission, 221 W 519, 266 NW 205.

**189.05 United States government securities.** The provisions of this chapter shall not apply to any security issued by, or the principal and interest of which are guaranteed by, the United States, but nothing herein contained shall deprive the department of jurisdiction over persons selling or offering for sale any such security. [1941 c. 327]

**189.06 Securities exempt from registration.** Subject to section 189.11, the following securities may be sold without registration under section 189.13:

(1) Any security issued by, or the principal and interest of which are guaranteed by, any state, territory or insular possession of the United States or by any political subdivision of any thereof, or by any foreign government or any state, territory or political subdivision thereof, in each case having power of taxation or assessment for the purpose of paying such security.

(2) Any note, draft, bill of exchange or banker's acceptance, which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, has at the time of issuance a definite maturity (after all days of grace, if any) of not exceeding one year, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

(3) Any security issued by a corporation operating a railroad the issuance of whose securities is regulated by the interstate commerce commission, and any security senior thereto.

(4) Any equipment security evidencing a right to receive payments agreed to be made under any contract of lease or conditional sale of rolling stock for use of a corporation operating a railroad within the United States or the Dominion of Canada.

(5) Any security issued by a public service corporation the issuance of whose securities is regulated by the public service commission of Wisconsin pursuant to chapter 184, and any security senior thereto.

(6) Any security issued by any county, city, village, town, district or other subdivision of this state, or by any agency of one or more of the foregoing, including any power district as defined in subsection (1) of section 198.01, pursuant to authority granted by the statutes of this state.

(7) Any security issued by a domestic corporation organized and operated exclusively for educational, benevolent, charitable, religious or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual; provided, however, that no evidences of debt of any such corporation shall come within this subsection which fail to meet the requirements of subsection (4) of section 189.13.

(8) Any security issued by any state bank, mutual savings bank, trust company bank, savings and loan association, land mortgage association, investment association or other corporation, organized under the laws of this state and whose business is subject to the supervision and control of the banking department of this state; any security issued by a national bank; any evidence of debt issued by the federal housing administrator or secured by mortgage or trust deed insured by the federal housing administrator; any evidence of debt or other obligation issued by a housing authority pursuant to sections 66.40 to 66.404; any evidence of debt or other obligation issued by any public housing authority or agency in the United States which is secured by a pledge of annual contributions to be paid by the United States or any agency thereof; or any security issued by a person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States; provided as to each of the foregoing that such security is an evidence of debt of the issuer or represents an interest in its assets and profits.

(9) Any security issued by a domestic corporation and any evidence of debt, in each case which was outstanding prior to July 24, 1933, and was then and would be at the time of sale exempt under the provisions of section 189.03, statutes of 1931. [1941 c. 327; 1947 c. 362, 411, 612]

**Note:** Negotiable notes of a foreign corporation maturing within one year from date of sale were "negotiable promissory notes" within 189.03, Stats. 1937, exempting securities from registration before sale notwithstanding the conversion clause in the note giving an option to the holder to exchange the notes for common stock. *Kenyon v. State*, 230 W 425, 283 NW 808.

Exemption provided by (15), Stats. 1931, does not apply to case where upon sale of entire issue of securities number of stockholders exceeds twenty-five; sale of portion of securities to number of subscribers less than twenty-five does not result in exemption of such sales, where later sales are made bringing number in excess of twenty-five. 19 Atty. Gen. 326.

Securities of foreign corporation admitted

to do business in this state on building and loan association plan are exempt from operation of ch. 189, Stats. 1929. 19 Atty. Gen. 339.

Under (3), Stats. 1931 corporation may sell stock of its issue if total number of stockholders at no one time exceeds twenty-five, without authority from commission. Commission may, however, regulate salaries as authorized by (18). 20 Atty. Gen. 398.

Federal savings and loan associations organized under home owners' loan act of 1933 are exempt under ch. 189, Stats. 1935. 24 Atty. Gen. 376.

Evidence of indebtedness exempt when issued under 189.03 (3), Stats. 1927, continues to be exempt under 189.03 (1) (k), Stats. 1937, from requirements of securities law. 27 Atty. Gen. 505.

**189.07 Exempt transactions.** Subject to section 189.11, the following transactions may be consummated without registration of the security under section 189.13:

(1) (a) The sale by a domestic corporation of its securities if the aggregate number of holders of all its securities, after the securities to be issued are sold, does not exceed 15, and no commission, profit or other compensation is or has been paid for the sale of any securities of such corporation, and the total organization and promotion expense in connection with the issue of all securities of such corporation, exclusive of statutory fees, does not exceed 3 per cent of the aggregate sale price of all such securities or \$250, whichever is greater.

(b) The sale by any partnership, pool or association, having its principal place of business in this state, of interests therein, if the aggregate number of holders of all interests in such partnership, pool or association, after such sale, does not exceed 15, and no commission, profit or other compensation is or has been paid in connection with the sale of any interests in such partnership, pool or association, and the total organization and promotion expense in connection with the issue of all interests in such partnership, pool or association, exclusive of statutory fees, does not exceed 3 per cent of the total invested capital thereof or \$250 whichever is greater.

(c) For the purposes of paragraphs (a) and (b) of this subsection a person directly or indirectly owning a fractional part or a fractional interest in any security or interest as well as a person owning an entire security or interest shall constitute one holder of such security or interest.

(2) The sale of its memberships by a domestic nonprofit corporation organized without capital stock; or the sale by such corporation to its members of any of its securities; or the sale to such members or to the members of any domestic corporation organized exclusively for educational, fraternal, benevolent, charitable, religious or reformatory purposes, of the securities of a domestic corporation organized for the purpose of owning a clubhouse, church, school or other home building or grounds, located within this state, for the use of the organization of which the purchasers are members, provided no commission, profit or other compensation accrues directly or indirectly by reason of or out of such sale to any person interested in promoting the corporation issuing such securities.

(3) The sale of a note or notes secured by a mortgage where the entire mortgage is sold and transferred with the note or notes in a single transaction.

(4) The sale of bonds or notes secured by a first lien on Wisconsin real estate provided the total debt secured by such lien does not exceed \$15,000 and does not exceed 65 per cent of the then fair market value of such real estate and improvements thereon, less the amount of all unpaid special assessment taxes.

(5) The sale of securities when made by or on behalf of a seller not the issuer thereof who, being a bona fide owner of such securities, disposes of his own property for his own account, provided such seller was not at the time of acquisition of such securities and is not at the time of such sale a dealer, and such sale is not made, directly or indirectly, for the benefit of the issuer or a dealer or directly or indirectly for the purpose of evading any provision of this chapter. As used in this subsection, the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, and any person under direct or indirect common control with the issuer.

(6) The distribution of a security by a corporation as a dividend or in liquidation of such corporation.

(7) Any judicial sale, or any sale by an executor, administrator or guardian, or any sale by a receiver or trustee in insolvency or bankruptcy, or any sale pursuant to an order or judgment of a court of this state or of the United States in any reorganization proceeding.

(8) The sale by a pledgee, in good faith and in the ordinary course of business and not for the purpose of evading any provision of this chapter, of a security pledged for a bona fide debt.

(9) The sale by a corporation of its own stock for a delinquent assessment according to law, made in good faith and not for the purpose of evading any provision of this chapter.

(10) The sale of securities to the issuer thereof, or to any officer or director of the issuer thereof, or to any dealer, bank, trust company or insurance company, or any corporation or association engaged in the business of purchasing or holding securities.

(11) The sale of its securities by a corporation organized under chapter 185.

(12) The sale of its securities by a domestic corporation organized for the purpose of conducting a county fair which, by statute of this state, is entitled to county aid.

(13) The issuance of securities by a person to his security holders or creditors, provided, such security holders or creditors do not give any consideration for the securities so issued other than the securities of or the claims against such issuer and provided further that no such exchange shall be solicited unless:

(a) Such issuer or a licensed dealer, prior to solicitation of any such exchange, shall file with the department detailed information concerning such issuance, exchange or solicitation and such further information, statements, copies of papers and instruments as the department may require in order to be in position to determine whether or not the proposed exchange of securities may be unfair, inequitable or fraudulent, or whether or not registration of such security under section 189.13 is necessary or appropriate in the public interest or for the protection of investors, and

(b) The department shall have advised such issuer or licensed dealer in writing that the proposed issuance, exchange and solicitation constitute exempt transactions under subsection (13).

(14) The issuance of securities by a person taking over substantially all the assets and continuing the business of another person to the security holders or creditors of such other person, provided such security holders or creditors do not give any consideration for the securities so issued other than the securities of or the claims against such other person, and provided further that no such exchange shall be solicited unless:

(a) Such issuer or a licensed dealer prior to solicitation of any such exchange shall file with the department detailed information concerning such issuance, exchange or solicitation and such further information, statements, and copies of papers and instruments as

the department may require in order to be in position to determine whether or not the proposed exchange of securities may be unfair, inequitable or fraudulent, or whether or not registration of such security under section 189.13 is necessary or appropriate in the public interest or for the protection of investors, and unless;

(b) The department shall have advised such issuer or licensed dealer in writing that the proposed issuance, exchange and solicitation constitute exempt transactions under subsection (14).

(15) The sale of its securities by one corporation to another corporation (a) in connection with a reorganization, recapitalization, consolidation or merger of either or both such corporations, or (b) where no public offering is involved and distribution of the entire issue is to not more than 5 corporations.

(16) The sale of warrants or rights to subscribe to or purchase any security provided the sale of the securities which may be acquired by the exercise of such purchase warrants or rights would be in compliance with this chapter.

(17) The issue of temporary or interim certificates, except by a dealer, provided the sale of the security represented by such temporary or interim certificates would be in compliance with this chapter.

(18) The solicitation and sale by any corporation of its securities to its security holders where a pro rata offering is made only to its security holders pursuant to a specific plan adopted by the corporation, or where such offer is required pursuant to preemptive rights of such security holders either by operation of law in the state in which such corporation is organized or pursuant to the charter or articles of such corporation, provided that no commission is paid for the sale of such securities, and provided further that no such solicitation shall be made unless:

(a) Such issuer, prior to any such solicitation, shall file with the department detailed information concerning such solicitation and sale and such further information, statements, copies of papers and instruments as the department may require in order to determine whether or not the proposed sale of securities may be unfair, inequitable or fraudulent, or whether or not registration of such security under section 189.13 is necessary or appropriate in the public interest or for the protection of investors, and

(b) The department shall have advised such issuer in writing that the proposed solicitation and sale constitute exempt transactions under this subsection.

(19) The issuance and distribution of its securities by a corporation to its stockholders as a stock dividend or on account of a change in the par or stated value of its shares if such stockholders do not give any consideration for the securities so issued other than the securities of the issuer. [1941 c. 327; 1943 c. 299, 557; 1945 c. 327; 1947 c. 216]

**Note:** The word "vendor" in 189.05 (6), Stats. 1935, permitting the sale of unregistered securities by a vendor not the issuer under certain conditions, means a person effecting a "sale," as defined in 189.02 (6), Stats. 1935, and therefore covers a party negotiating or attempting to negotiate the transfer of securities in exchange for property. A company to which a wholly-owned corporation had allegedly delivered its new bonds in payment of a dividend declared to the company was not a "bona fide owner" of the new bonds within 189.05 (6), where the company could dispose of the bonds only by exchanging them for its own bonds of like denomination, and the exchange was manifestly for the benefit of the corporation. The provisions of 189.05 (15) were inapplicable to permit an exchange of new bonds of a corporation for old bonds of a company owning the corporation, without registration of the new bonds by the commission, where the new bonds were not being issued by the corporation to its security holders but to the security holders of the company, the company was not taking over the assets and continuing the business of the corporation, and the corporation was not in process

of reorganization. *Associated G. & E. Co. v. Public Service Commission*, 221 W 519, 266 NW 205.

Trust certificates secured by trustee notes and real estate mortgages are Class A securities under (1), Stats. 1931; but stock of corporation organized solely to liquidate notes secured by real estate mortgages is not. 20 Atty. Gen. 406.

Stock in A corporation exchanged for stock in B corporation pursuant to reorganization plan, both corporations continuing to do business and neither taking over substantially all of assets of other, is not exempt from registration under 189.05 (6) and (15), Stats. 1937. 27 Atty. Gen. 541.

Under 189.05 (9), Stats. 1937, pledgee may sell in good faith through agent or subagent nonregistered securities pledged for bona fide debt. 27 Atty. Gen. 610.

Section 189.05 (14), Stats. 1937, requiring security dealers to furnish information to banking commission relative to amount of certain securities to be offered for sale, is not satisfied by stating amount to be "various" or "indefinite". Quantity or amount must be specified. 27 Atty. Gen. 741.

**189.08 Sale of securities upon notification.** (1) Subject to section 189.11, upon compliance with this section the following securities may be sold by licensed dealers without registration under section 189.13:

(a) Evidences of debt (not exempt under section 189.06 (3) or (5) issued by any corporation operating a railroad or public utility, and securities senior thereto, if the issuance of its securities is regulated by a commission or other similar body of the United States, of any state, territory or insular possession of the United States, of the District of Columbia or of the Dominion of Canada or any province thereof, and if:

1. More than 50 per cent of the total revenue from the business of the issuer for the fiscal year next preceding the sale of such securities hereunder was derived from

the operation by such issuer of railroad or public utility properties to which the issuer has title;

2. There has been no default for 3 years next preceding such sale in the payment of principal or interest on any of the interest-bearing securities (a) issued or guaranteed by such corporation and (b) issued or guaranteed by any other person substantially all of whose business has been acquired by such corporation within the 3 years next preceding such sale or is being acquired by such corporation at the time of such sale, unless such business is not or will not be of material significance in respect of the total enterprise represented by such acquiring corporation and such business; and

3. The net profits of such corporation available for payment of interest for each of the 2 fiscal years next preceding such sale, or the average annual net profits available for payment of interest for a period of not less than 4 nor more than 8 fiscal years next preceding such sale, have been in the aggregate not less than  $1\frac{1}{4}$  times the annual interest requirements on said evidences of debt and on all securities of such corporation of equal or prior rank to be outstanding immediately after such sale.

(b) Evidences of debt of any person operating a business if

1. Such person (including any predecessor or predecessors) has continuously operated such business for not less than 10 years next preceding the sale of such securities hereunder;

2. There has been no default for 10 years next preceding such sale in the payment of principal or interest on any of the interest-bearing securities (a) issued or guaranteed by such person and (b) issued or guaranteed by any other person substantially all of whose business has been acquired by such person within the 10 years next preceding such sale or is being acquired by such person at the time of such sale, unless such business is not or will not be of material significance in respect of the total enterprise represented by such acquiring person and such business; and either

3. The net profits of such person available for payment of interest for each of the 2 fiscal years next preceding such sale, or the average annual net profits available for payment of interest for a period of not less than 4 nor more than 8 fiscal years next preceding such sale, have been in the aggregate not less than 3 times the annual interest requirements on said evidences of debt and all securities of equal or prior rank to be outstanding immediately after such sale; or

4. The aggregate outstanding principal amount of such evidences of debt is at least \$5,000,000, and such evidences of debt are not sold by, for or on behalf of an issuer as defined in subsection (5) of section 189.07 and are not part of an initial distribution of a new issue, and not less than 6 months have intervened since the most recent initial public offering of any securities of the same class by, for or on behalf of an issuer as defined in subsection (5) of section 189.07; provided, however, that any permission granted by this paragraph to sell any evidences of debt without registration under section 189.13 shall terminate upon a public offering of a new issue of securities of the same class.

(c) Preferred stock of any corporation substantially all of whose business is that of operating a public utility in the United States or the Dominion of Canada if

1. Such corporation including any predecessor or predecessors has continuously operated such public utility for not less than 10 years next preceding the sale of such securities hereunder;

2. There has been no default in the 10 years next preceding such sale in the payment of dividends or principal or interest on any of the preferred stock or interest-bearing securities (a) issued or guaranteed by such corporation and (b) issued or guaranteed by any person whose business has been acquired by such corporation within the 10 years next preceding such sale or is being acquired by such corporation at the time of such sale, unless such business is not or will not be of material significance in respect of the total enterprise represented by such acquiring corporation and such business; and

3. The net profits of such corporation for each of the 2 fiscal years next preceding such sale, or the average annual net profits for a period of not less than 4 nor more than 8 fiscal years next preceding such sale, plus interest requirements during such years on all interest-bearing securities of such corporation, have been in the aggregate not less than  $1\frac{3}{4}$  times the annual dividend and interest requirements on such preferred stock and all securities of equal or prior rank to be outstanding immediately after such sale.

(d) Common or preferred stock of any corporation, provided

1. Such corporation including any predecessor or predecessors operating substantially the same business has been in continuous existence for not less than 10 years next preceding the sale of such stock hereunder;

2. The number of holders of such stock immediately prior to such sale is not less than 1,500;

3. A bona fide market exists for such stock; and

4. Such stock is not sold by, for or on behalf of an issuer as defined in section 189.07 (5) and is not part of an initial distribution of a new issue, and not less than 6 months have intervened since the most recent initial public offering of any stock of the same class by, for or on behalf of an issuer as defined in section 189.07 (5). But any permission granted by this paragraph to sell any stock without registration under section 189.13 shall terminate upon a public offering of a new issue of stock of the same class other than by way of a stock dividend or a change in the par or stated value thereof. For the purposes of this paragraph the term "stock" shall not include shares of beneficial interest in a business trust or the securities of any person primarily engaged in the business of investing and reinvesting in securities. The term "public offering" as used in this subsection shall not include the sale by, for or on behalf of an issuer of securities of the same class in an amount during any prior 12 months' period not exceeding 5 per cent of the maximum amount of such securities outstanding during such 12 months' period.

(e) Securities of a class all the securities of which outstanding at the time of such sale have been continuously outstanding in the hands of the public either since August 1, 1919, or since the date of their issuance by way of a stock split-up or a stock dividend on securities meeting the requirements of this subsection after August 1, 1919.

(f) Obligations (not exempt under section 189.06 (6)), issued by any state or by any county, city, village, town, district or other subdivision thereof, or by any agency of one or more of the foregoing, which are payable from revenues derived from the operation by the issuer or any agency thereof of any toll bridge, turnpike, public market, or any plant or equipment for the furnishing of transportation or sewerage facilities, the transmission of telephone messages or the production, transmission, delivery or furnishing of heat, light, water or power, or combination thereof, directly or indirectly, to or for the public, provided such state, county, city, village, town, district or other subdivision thereof has a population of not less than 10,000 or such project serves an aggregate of not less than 2,500 customers, and provided further no default of interest or principal exists in respect of said obligations, and that the operation of such project, whether by the issuer or any agency thereof or by others, has, in each of the 3 fiscal years next preceding the sale of said obligations hereunder, yielded net profits available for payment of interest amounting to not less than the greater of either:

1. One hundred twenty-five per cent of the amount derived by dividing the total amount to be paid or set aside from the date of such sale to and including the last maturity date of said obligations for interest and principal requirements thereon and on all other obligations of equal or prior rank to be outstanding immediately after such sale, by the number of years including fractional years as such from the date of such sale to and including the last maturity date of said obligations; or

2. The greatest amount to be paid or set aside in any calendar year, from the date of such sale to and including the last maturity date of said obligations, for interest and principal requirements thereon and on all other obligations of equal or prior rank to be outstanding immediately after such sale.

(2) Any licensed dealer desiring to sell securities under this section shall inform the department by notice in writing or by telegraph, not later than the date of offering, of the name of the issuer, the description of the securities to be offered for sale, and the basis of eligibility for their sale under this section. Unless an identical copy thereof shall have been furnished to the department within the preceding 12 months, such licensed dealer, within 5 days after the giving of such notice or such longer time as the department may allow, shall furnish to the department a copy of each circular, prospectus, pamphlet or other advertising matter to be used by such dealer in describing such securities or in connection with their sale, and shall thereafter file with or send by registered mail to the department, not later than the date of use by such dealer, any additional advertising matter to be used by such dealer in describing such securities or in connection with their sale.

(3) If, within 10 days after any notice by a licensed dealer pursuant to subsection (2), or within such further time as may be consented to by such dealer, the department shall by order prohibit sales by such dealer under such notice until registration of the securities under section 189.13, such dealer, in the manner and with the effect provided in section 189.18, shall offer to repurchase all securities sold by such dealer under such notice.

(4) The permission granted by this section to sell securities under a notice pursuant to subsection (2) shall expire 5 years from the date thereof unless prior to such expiration

such permission shall have been extended or sales under such notice shall have been prohibited by the department.

(5) If the securities desired to be sold under this section 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 department shall, by order, prohibit such sale even though such securities are otherwise eligible for sale under this section, unless it shall appear to the department that such warrants, rights or conversion privilege and the securities to be delivered in fulfillment thereof, comply with the provisions of section 189.13. A notice pursuant to subsection (2) in respect of securities carrying warrants, rights or conversion privilege, shall be deemed to include the securities to be delivered in accordance with the terms of such warrants, rights or conversion privilege, and such notice shall contain a description of the securities so to be delivered and, if they are eligible for sale under this section, a statement of the basis of such eligibility and, if they are not eligible for sale under this section, such notice shall be accompanied by information with reference to such securities similar to that required in the case of registration under section 189.13. [1941 c. 327; 1943 c. 557; 1945 c. 327; 1947 c. 216]

**189.09 Sale of securities prior to registration.** (1) Subject to section 189.11, upon compliance with this section the following securities may be sold by licensed dealers prior to registration thereof under section 189.13:

(a) Evidences of debt secured by a mortgage or deed of trust upon land and buildings thereon if such mortgage or deed of trust is or will become a first lien at or prior to the issuance of such evidences of debt, or provision satisfactory to the department is made for impounding the proceeds from the sale of such evidences of debt until such first lien is established, and the total amount of such evidences of debt does not exceed 50 per cent of the then fair market value of the land and buildings included in such mortgage or deed of trust, less the amount of any unpaid special assessment taxes.

(b) Evidences of debt of any person operating a business if

1. Such person (including any predecessor or predecessors) has continuously operated such business for not less than 2 years next preceding the sale of such securities hereunder; and

2. The net profits of such person or predecessor available for payment of interest for each of the 2 fiscal years next preceding such sale, or the average annual net profits available for payment of interest for a period of not less than 4 nor more than 8 fiscal years next preceding such sale, have been in the aggregate not less than  $1\frac{1}{2}$  times the annual interest requirements on said evidences of debt and all securities of equal or prior rank to be outstanding immediately after such sale.

(c) Preferred stock of any corporation operating a business if

1. Such corporation (including any predecessor or predecessors) has continuously operated such business for not less than 2 years next preceding the sale of such stock hereunder; and

2. The net profits of such corporation or predecessor for each of the 2 fiscal years next preceding such sale, or the average annual net profits for a period of not less than 4 nor more than 8 fiscal years next preceding such sale, plus interest requirements during such years on all interest-bearing securities of such corporation or predecessor, have been in the aggregate not less than  $1\frac{1}{2}$  times the annual dividend and interest requirements on such preferred stock and all securities of equal or prior rank to be outstanding immediately after such sale.

(d) Common stock of any corporation operating a business if

1. Such corporation (including any predecessor or predecessors) has continuously operated such business for not less than 2 years next preceding the sale of such stock hereunder; and

2. The net profits of such corporation or predecessor for each of the 2 fiscal years next preceding such sale, or the average annual net profits for a period of not less than 4 nor more than 8 fiscal years next preceding such sale, plus interest charges during such years for all interest-bearing securities of such corporation or predecessor, other than for current debt, less the annual interest requirements on all funded debt and the annual dividends on all preferred stock to be outstanding after such sale, amount to not less than 8 per cent of the amount of all common stock to be outstanding immediately after such sale, computed at the price for which such sale is to be made.

(2) Any licensed dealer desiring to sell any such securities prior to registration thereof shall, not later than the date of offering thereof, inform the department by notice in writing or by telegraph of his intention to sell such securities subject to the provisions of this section. Such notice shall state the name of the issuer and shall

contain a description of such securities and a statement of the basis of eligibility for sale under this section.

(3) If the department shall by order prohibit sales of the securities covered by any notice referred to in subsection (2) until registration thereof under section 189.13, or if within 30 days after such notice an application for registration of such securities is not filed with the department, or if for any cause registration of such securities is denied by the department, whether or not proceedings have been taken under section 189.22, the dealer giving such notice shall, within 15 days from the happening of any one of the events specified above, whichever is earliest, in the manner and with the effect provided in section 189.18, offer to repurchase all securities sold by such dealer pursuant to such notice. [1941 c. 327; 1943 c. 557]

**Note:** The power of the commission, under 189.08, Stats. 1931, to terminate the right of a broker to sell securities includes the power to suspend such right. *Klatt v. Columbia C. Co.*, 213 W 12, 250 NW 825.

Bondholder is not entitled to recover purchase price of bonds sold as Class A securities where, upon default in payment of bonds, bondholder did not demand payment, but elected to deposit bonds with committee under protective agreement, and prior to commencement of trial tendered certificate of deposit covering bonds deposited together with assignment of certificate (Stats. 1925). *Wisconsin M. P. G. Ins. Co. v. Guaranteed Bond Co.*, 213 W 197, 260 NW 434.

Broker's sale of securities as Class A prior to their rating by public service com-

mission, which subsequently denied them that classification, was legal sale where made under permission of 189.08, Stats. 1925, and rights and liabilities of parties were governed by provisions of statute cited. *Chas. A. Krause M. Co. v. Chris Schroeder & Son Co.*, 219 W 639, 263 NW 193.

Excess income over expenditures of corporation without capital stock organized under general law for religious societies, derived largely from pledges and contributions, is not net profit as defined in 189.02 (9) (a), Stats. 1935, which may be used as basis for determination of whether evidence of debt of such corporation meets net profit requirement of 189.08 (1) (b), Stats. 1935. 25 Atty. Gen. 738.

**189.10 Net profits; defaults; meetings; additional requirements.** (1) For the purposes of sections 189.08 and 189.09:

(a) The net profits of any person shall be determined upon the basis of their conversion into currency of the United States available in the United States.

(b) Default in the payment of any dividend, principal or interest shall include failure to make any such payment available in the United States in United States currency to any person entitled thereto.

(2) The net profits of any person shall be determined for the purposes of paragraphs (a), (b) and (f) of subsection (1) of section 189.08 and paragraph (b) of subsection (1) of section 189.09 without deducting therefrom, making provision for or otherwise taking into account any tax imposed upon or measured by income, profits or revenues; and for the purposes of paragraph (c) of subsection (1) of section 189.08 and paragraphs (c) and (d) of subsection (1) of section 189.09, after deducting therefrom all such taxes or any provision made therefor.

(3) The department may call, or by order direct the calling of, a meeting of the security holders or the creditors or both affected by any exchange referred to in section 189.07 (13) and (14), to be held at such time and place and upon such notice and for the consideration of such matters as the department may approve.

(4) The department may from time to time, as an alternative to registration under section 189.13, impose upon the sale of any security otherwise permitted by section 189.06, 189.07, 189.08 or 189.09 all such further and additional requirements, conditions, restrictions or limitations as may be necessary or appropriate in the public interest or for the protection of investors. [1941 c. 327; 1943 c. 557]

**189.11 Regulation of sales under sections 189.06, 189.07, 189.08 and 189.09.** (1) If the department shall have reason to believe that the sale of a security under sections 189.06, 189.07, 189.08 or 189.09 may be unfair, inequitable or fraudulent, or that registration of such security under section 189.13 is necessary or appropriate in the public interest or for the protection of investors, the department, whether or not such security, or the sale thereof, is in compliance with sections 189.06, 189.07, 189.08 or 189.09 may by order prohibit further sales of such security until such security is registered under section 189.13.

(2) No purchaser of a security sold under subsection (13) of section 189.07 or section 189.08 shall have any right or remedy under this chapter on account of such sale for failure of such security to comply with either of said sections, unless such sale was made in violation of an order under this section; except that where an offer of repurchase is made as required under subsection (3) of section 189.08 or subsection (3) of section 189.09, the purchaser shall have the remedy thereby provided and such remedy shall be exclusive under this chapter. [1941 c. 327]

**189.12 Limitation of sales.** No person shall sell or offer for sale in this state any security unless registered under section 189.13; provided, however, that for the convenience of investors securities may be sold prior to registration as provided in

section 189.09, and may be sold under sections 189.06, 189.07 and 189.08 without registration until the department shall prohibit further sales thereof by order under section 189.11. Such order shall be an intermediate order and shall not be appealable or subject to proceedings under section 189.22 or judicial or other review or legal process. The sole remedy in case of such an order shall be by application to register the security covered thereby under section 189.13, and if registration be denied under section 189.13, the applicant then may proceed under section 189.22. No person shall have a vested right to sell or offer securities for sale under sections 189.06, 189.07, 189.08 or 189.09, and upon order of the department under section 189.11 prohibiting further sales, the sale or offering for sale of such securities shall be discontinued until registration thereof under section 189.13. [1941 c. 327]

**189.13 Registration of securities.** (1) Securities shall be registered under this chapter upon separate application for each class of securities and in the manner provided in this section.

(2) The application for registration shall be signed by the issuer or a licensed dealer, shall be verified and shall be filed with the department. It shall contain such information and representations as the department may require as necessary or appropriate in the public interest or for the protection of investors.

(3) The department shall examine such application and the other papers and documents filed therewith, and may make or have made a detailed inspection, appraisal, audit, or other investigation of the property and affairs of the issuer. The department, upon payment of the expense reasonably attributable to its investigation, shall by order register the securities covered by such application if the following shall be made to appear to the department:

(a) The proposed plan of business of the issuer is not unlawful, dishonest, fraudulent, or otherwise contrary to public policy.

(b) The plan of financing is not or does not tend to be unfair, inequitable or fraudulent, or against public interest or the interest of investors.

(c) The articles of incorporation or association, declaration of trust, charter, constitution, by-laws, lease, contract, or any instrument or indenture under which the securities are issued is not contrary to law or unfair, inequitable or fraudulent.

(d) The class of securities for which registration is sought bears a reasonable proportion to other classes of securities and to the fair value of the property and business, due consideration being given to the nature of the business, its earnings, its credit and prospects, the possibility that the fair value of the property and business may change from time to time, the effect which the issue of such securities may have on the management and operation of the business by reason of the relative amount of financial interest which the various classes of security holders will have in the business, and to other relevant matters.

(e) The commissions, fees and expenses to be incurred in connection with such issue or the sale thereof or the gross or net profit of any party or parties in connection therewith, is not unreasonable.

(f) The advertising matter to be used in the sale of the securities is not false, unfair, inequitable, fraudulent or misleading and gives fair and reasonably adequate information with reference to the securities and the issuer.

(g) It does not appear that any relationship exists between the issuer and the trustee in any instrument under which the securities have been or are to be issued, by virtue of which the interests of the trustee might be in conflict with the interests of purchasers.

(h) The methods to be used in the sale of the securities are not such as to be misleading, unfair, inequitable or fraudulent as to the purchasers, or against public interest or the interest of investors. Unless the foregoing shall be made to appear to the department, the department shall issue its findings and order denying registration.

(4) If the department shall determine it is necessary or appropriate in the public interest or for the protection of investors that the securities for which registration is sought be issued under an indenture, it shall so direct and thereupon such securities shall be issued only under an indenture, and such indenture and all other indentures under which securities sought to be registered hereunder are issued shall be in such form and of such content as may be necessary or appropriate in the public interest or for the protection of investors; shall comply with the requirements of section 315 of the federal trust indenture act of 1939; and shall provide, among other things, that

(a) There shall at all times be one or more trustees thereunder, at least one of whom shall at all times be a corporation organized and doing business under the laws of the United States or of any state or territory thereof or of the District of Columbia (herein called the institutional trustee) which (1) is authorized under such laws to

exercise corporate trust powers and (2) is subject to supervision or examination by federal, state, territorial or District of Columbia authority; provided, that in any case where it shall appear to the department that the requirement of an institutional trustee may work a hardship, the department may, upon such terms and conditions as it deems necessary in the public interest or for the protection of investors, dispense with such requirement and permit the trustee under the indenture to be an individual or other person;

(b) If the indenture requires or permits the appointment of one or more co-trustees in addition to the institutional trustee, then the rights, powers, duties and obligations conferred or imposed upon the trustees or any of them shall be conferred or imposed upon and exercised or performed by such institutional trustee or such institutional trustee and such co-trustee jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, such institutional trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee;

(c) In the case of certificates of interest or participation the trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of a security or securities in which such certificates evidence an interest or participation; and

(d) If any trustee has or shall acquire any conflicting interest such trustee shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture. A trustee shall be deemed to have a conflicting interest if such interest is a conflicting interest within the meaning of section 310 (b) (1) to (9), inclusive, of the federal trust indenture act of 1939.

(5) Unless waived by the department as unnecessary in the public interest or for the protection of investors, no evidences of debt secured by mortgage on land or leasehold shall be registered, where it appears that the proceeds from the sale of such evidences of debt are to be used for the construction of a new building or buildings on such land or leasehold or for the reconstruction or improvement of existing building or buildings on such land or leasehold, unless it is established that there will be no liens or incumbrances on the property prior to such mortgage except other mortgage indebtedness and unpaid special assessment taxes and unmatured general taxes, that a completion bond has been given in sufficient amount and with sufficient surety to assure the construction, reconstruction or improvement of the building or buildings, that ample provision has been made for financing the completion of such construction, reconstruction or improvement and for the actual investment therein of funds represented to be available for that purpose, and that proceeds from the sale of such evidences of debt will be disbursed by the trustee of such funds only after the actual investment in the property of all junior funds represented to be available for that purpose.

(6) Certificates representing proportionate shares in a fund of securities shall be registered and sold in this state only upon compliance with such terms and conditions as the department may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(7) Securities of an insurance or other company, supervised by the commissioner of insurance of this state, or of a person whose business consists principally of owning or controlling the securities of any such company, shall not be registered without the approval of the commissioner of insurance of this state.

(8) Evidences of debt, the payment of principal or interest of which are guaranteed by an insurance or suretyship company, as defined by the statutes of this state, shall not be registered, unless such company shall have been authorized by the commissioner of insurance of this state to conduct a suretyship business.

(9) If securities for which registration 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 department shall not register such securities even though they otherwise comply with the requirements for registration, unless it shall appear to the department that such warrants, rights or conversion privilege and the securities to be delivered in fulfillment thereof, comply with the provisions of this section. If the securities carrying the warrants, rights or conversion privilege are registered, no further registration shall be required either at the time of the sale of such securities carrying the warrants, rights or conversion privileges, 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. If the department shall have reason to believe

that the holders of such warrants, 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 them, or that such solicitation may be or tend to be unfair, inequitable or fraudulent, the department may by order prohibit further solicitation or negotiation for an exercise of such warrants, rights or conversion privilege.

(10) Nothing contained in this chapter shall prohibit the persons interested in organizing and promoting a domestic corporation from subscribing for securities of such corporation prior to its incorporation, but no subscriptions for such securities shall be solicited by or on behalf of any person who shall at any time, directly or indirectly, receive, or be entitled to receive, or have promise of any manner of compensation thereof, and except in the case of exempt transactions under subsections (1) and (2) of section 189.07, no such subscriptions shall be binding and no payments thereon shall be accepted until such securities shall have been registered and until such subscriptions shall have been ratified in accordance with the terms and conditions of registration. The person or persons interested in organizing or promoting a domestic corporation to be formed may, in the name of and on behalf of the corporation, present an application for such registration.

(11) If the issuer is the applicant and a foreign corporation or other nonresident, the issuer shall file a written instrument, in such form as the department may require, irrevocably appointing the director and deputy director, and each of them, its true and lawful attorneys upon whom may be served any summons, complaint, pleading, process, order, or notice in any action or proceeding against such applicant in connection with any matter arising out of the sale or purchase of the securities covered by its application or out of this chapter.

(12) If registration is sought of purchase warrants or rights to subscribe to or purchase securities, the department shall not register such securities even though they otherwise comply with the requirements for registration, unless it shall appear to the department that the securities deliverable in fulfillment of such purchase warrants or rights to subscribe or to purchase securities comply with the provisions of this section. [1941 c. 327; 1943 c. 557; 1945 c. 327; 1947 c. 216]

**Note:** See note to 180.07, citing 31 Atty. Gen. 354.

A Wisconsin corporation organized under the provisions of ch. 180 cannot act as trustee under 189.13 (4). 34 Atty. Gen. 306.  
189.13 (3) (c), Stats. 1945, requires that the department of securities examine the articles of incorporation, etc. to determine as an original proposition whether they contain provisions contrary to applicable statutes and court decisions and also whether they are unfair, inequitable or fraudulent. Provision in articles that affirmative vote or consent of at least two-thirds of preferred stock shall be necessary to make any change relating to said stock is contrary to 182.13 (3), Stats. 1945, specifying a three-fourths

vote. Provision therein that upon liquidation the 5 per cent cumulative preferred stock of a \$25 par value shall receive \$25 per share plus all unpaid dividends accumulated and accrued to date of payment before any distribution on common stock is contrary to 182.13 (1), allowing a preferred stock preference not exceeding the par value thereof. Provision in by-law giving authority to board of directors to "sell both real and personal property, in its discretion," to the extent it authorizes a sale of the entire corporate property, is contrary to 180.11 (2) interpreted as at least requiring a prior majority vote of stockholders for such a sale. 34 Atty. Gen. 387.

**189.14 Advertising.** (1) No person selling or offering for sale any security shall, in this state, directly or indirectly, make any false or misleading statement or representation relative to any security; or issue, circulate or publish any circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other literature in this chapter sometimes referred to collectively as "advertising matter" which shall contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or which shall contain inadequate or incomplete information concerning relevant matters therein mentioned or which is not in compliance with any rules or regulations of the department; or issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating, or publishing the same shall be subscribed thereto; or make any statement or representation or issue, circulate, or publish any advertising matter containing any statement to the effect that the security has been in any way approved or indorsed by the department or this state, provided, however, that if the issuance of any securities has been authorized by any governmental body, such fact may be set forth in such advertising matter.

(2) No advertising matter shall be issued, circulated or published in connection with the sale of securities described in subsection (1) of section 189.09 unless a copy thereof shall have been filed with the department.

(3) Except in the case of securities described in subsection (1) of section 189.09, or securities sold under sections 189.06, 189.07 or 189.08, no advertising matter shall be issued, circulated or published unless such advertising matter shall have been sub-

mitted in duplicate to the department and the use thereof shall have been allowed by the department.

(4) Subsections (2) and (3) and 189.08 (2) shall not apply to lists or quotations published without comment or to advertisements which do no more than state from whom advertising matter may be obtained, identify the security offered for sale and state the price thereof and the names of dealers having an interest in the sale thereof, or to reprints of factual information from financial publications on the approved list issued from time to time by the department. [1941 c. 327; 1943 c. 557]

**189.15 Expiration of registration.** (1) All registrations of securities under section 189.32 shall expire on July 1, 1946, and all other registrations of securities shall expire 5 years from the date of registration, unless in each case sooner revoked or terminated or extended by the department. The department, at least 60 days in advance of any such expiration, shall mail notice thereof addressed to the applicant at his last known address as the same appears upon the records of the department. Any interested party may at least 30 days before the date of such expiration, apply for a renewal of the registration. The applicant for such renewal need pay no additional fees but shall pay the expenses reasonably attributable to any investigation made by the department and shall furnish such additional information as the department may deem necessary to enable it to determine whether the securities are entitled to registration under section 189.13. If it shall appear that such securities are entitled to registration under section 189.13, the department shall renew registration for a further term of 5 years upon such terms and conditions as it may prescribe and subject to the provisions of this chapter. Successive renewals of registration of any security may be granted in like manner.

(2) All Class A and Class B permits issued pursuant to chapter 674, laws of 1919, as amended, shall expire on January 1, 1942. Any interested person, may, before such expiration, apply to the department for registration under section 189.13 of any security for which a permit is in effect under the provisions of said chapter 674, laws of 1919, as amended. In any such registration no fees need be paid, but the applicant shall pay the expense reasonably attributable to any investigation which the department may deem necessary to enable it to determine whether such security is entitled to registration under section 189.13.

(3) The right to sell securities as conditionally exempt pursuant to notices filed under section 189.04, statutes of 1939, shall expire on January 1, 1942. [1941 c. 327]

**189.16 Stop order.** The department may by order revoke any registration of securities under section 189.13 if it shall have reason to believe that

(a) The securities are not such as may be sold hereunder because of the unsound financial condition or decrease in earnings of the issuer or other conditions affecting the soundness of the securities;

(b) Any stop order has been issued suspending the effectiveness of any registration of the securities under the federal securities act of 1933, as amended;

(c) The issuer or the applicant has violated any of the provisions of this chapter, or any rules or regulations hereunder, or any order of which it had notice, or has been or is engaged or is about to engage in any transaction or practice which is or tends to be unfair, inequitable or fraudulent;

(d) The issuer or the applicant has made any false, misleading or fraudulent statements or representations in any advertising matter that has been issued, circulated or published, concerning the issuer or its securities;

(e) The issuer is of bad business repute or does not conduct its business in accordance with law or sound business principles or is insolvent or in an unsound condition;

(f) There is any violation of or failure to comply with any of the provisions of section 189.13 or any of the terms or conditions of registration; or

(g) Such revocation for any reason other than or in addition to any of the foregoing is necessary or appropriate in the public interest or for the protection of investors. [1941 c. 327]

**189.17 Department's powers; conditions in orders and licenses; rules, investigations and hearings; injunctions.** (1) The department may, in any order or license issued under this chapter, impose such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors or to assure compliance with this chapter, and in any order of registration may, among other things, fix the price at which the securities may be sold and the maximum commissions or other compensation to be paid for their sale, and require that the proceeds from their sale be impounded under such terms and conditions as it may prescribe, that securities issued for intangible assets or for other assets at a price in excess of their market value be placed in escrow

under such terms and conditions as the department may prescribe, that reports of sales of securities be filed with the department at such times and in such form as it may prescribe, and that information available to the applicant concerning the issuer and its business, property and affairs be filed with the department at such times and in such form as it may prescribe. Any person acting under an order or license containing any terms or conditions shall be deemed to have accepted and waived all objections to such terms and conditions.

(2) The department for the purpose of carrying out the provisions of this chapter may make such rules and regulations as may be necessary or appropriate in the public interest or for the protection of investors or to assure compliance with this chapter.

(3) The department may make such investigations, including such examination or audit of any books, papers, records or memoranda of any person subject to investigation hereunder, as it shall deem necessary or advisable in respect of any matters connected with the administration of this chapter, and, upon reasonable notice and at such time and place as it may fix, hold hearings in respect of any matter arising out of the administration of this chapter.

(4) The department may appoint agents to make investigations and hold hearings in any and all matters arising under this chapter. The director, deputy director 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 department, 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, and such fees and mileage shall be paid from the securities regulation appropriation. The department 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 department in taking such depositions shall be paid from the securities regulation appropriation.

(5) Whenever it shall appear, either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement or distribution of any securities any person shall have employed, employs or is about to employ any device, scheme or artifice to defraud or to obtain money or property by any false or misleading statement or representation, or that any person shall have made, makes, or is about to make fictitious or pretended purchases or sales of securities, or shall have engaged in, engages in, or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities which is contrary to law or is unfair, inequitable or fraudulent, or that any person is acting as dealer or agent within this state without being duly licensed, all of which acts, practices and transactions are declared to be fraudulent, the department or the attorney-general or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring action in the name and on behalf of the state of Wisconsin against any person concerned in or in any way participating in or about to participate in such acts, practices or transactions, to enjoin such person from continuing the same or engaging therein or doing any act in furtherance thereof or in violation of this chapter. In any such action the department or the attorney-general or the district attorney may apply for the court's subpoena requiring forthwith the appearance of any defendant and his employes, salesmen or agents to testify and give evidence concerning the acts, practices or transactions complained of in such action and requiring the production of such documents, books and records as may be necessary for any hearing in such action.

(6) The department may from time to time issue, in pamphlet form or by newspaper advertising or otherwise, information regarding securities, or practices in the sale thereof, which appear or tend to be unfair, inequitable or fraudulent.

(7) If at any time it shall appear that the solicitation or execution of any order or orders for the purchase or sale of any security, whether as agency transactions or otherwise, may be or tend to be unfair, inequitable or fraudulent, or against public interest or the interest of investors, the department may by order prohibit dealers and agents from soliciting or executing any order or orders therefor.

(8) Every domestic corporation and every foreign corporation licensed in this state shall, within 20 days after receipt of written request from the department, furnish to the department a complete list of its stockholders, showing the amount of stock held by each, duly verified by the president or secretary of such corporation. Any corporation failing or refusing to furnish such a list shall forfeit not less than \$100 nor more than \$1,000, and such forfeiture shall be collectible as provided in chapter 288.

(9) The department shall keep all papers, records or documents coming into its possession for a period of 10 years. Any such paper, record, or document may be destroyed after the passage of such period, except that no file containing an application and the

supporting information and papers upon which registration has been granted shall be destroyed while such registration is in effect or until the expiration of the period for applying for renewal of such registration. [1941 c. 327; 1943 c. 557; 1947 c. 143]

**Note:** Public service commission may exact any information it desires relevant to business activities and practices of applicant for security broker's license and insist on more detailed showing, called for by license renewal application blank, before issuing new license after suspension of license, though suspension order is in abeyance because of injunction. (189.13, Stats. 1931). Public service commission, receiving authentic or uncontroverted information that security broker has been indicted for fraudulent business practices, may suspend such broker's license without acting arbitrarily or abusing discretion. *Halsey, Stuart & Co. v. Public Service Commission*, 212 W 184, 248 NW 458.

The secretary of the public service commission committed no offense by failing to enter complaints against security dealers for which complaints came to his knowledge in letters addressed to the commission. *State ex rel. Dinneen v. Larson*, 231 W 207, 284 NW 21, 286 NW 41.

**189.18 Illegal sales; remedies.** (1) Every sale of a security by means of or involving any material misrepresentation or fraud including misrepresentation of a material fact or matter or failure to state a material fact or matter necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such misrepresentation, fraud or failure), and every sale of a security made in violation of or noncompliance with any provision of this chapter or any rule, regulation or order of the department hereunder or in violation of or noncompliance with the terms and conditions of registration therefor, shall be voidable at the election of the purchaser; and upon tender to such person or into court of the securities sold or, where the securities were not received, of any written contract made, any person by or on behalf of whom said sale was made or who shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser for the full amount paid together with interest from the date of payment at the rate of the interest or dividends stipulated in the securities sold, or if no rate is stipulated then at the legal rate of interest, less any income received by such purchaser on such securities.

(2) Notice of any such election provided for in subsection (1) shall be given to the party from whom recovery will be sought within 3 months after the purchaser shall have knowledge that the sale of the securities to him is voidable, by registered letter addressed to the person to be notified at his last known address, with proper postage affixed, or by personal service as in civil actions.

(3) No action shall be brought for relief under this section or upon or because of any of the matters for which relief is granted by this section and any cause of action therefor shall be forever barred after 3 years from the date of such sale, but the time for commencing such action shall be extended by reason of any fact and for the time specified in sections 330.30 to 330.38. No person who shall have filed with the secretary of state or the department, or any other department or commission of this state which at any time had jurisdiction over the sale of securities in this state, an appointment of a resident of this state as attorney upon whom process may be served shall be deemed for the purpose of this section to be or from the date of such appointment to have been a person out of this state under section 330.30.

(4) No purchaser shall have any right or remedy under this chapter who shall fail, within 15 days from the date of receipt thereof, to accept an offer to repurchase the securities purchased by him for a price equal to the full amount paid therefor plus interest thereon and less any income thereon as set forth in subsection (1).

(5) Every offer of repurchase provided for in this chapter shall be in writing, shall be delivered to the purchaser or sent by registered mail addressed to the purchaser at his last known address, and shall offer to repurchase the securities sold for a price equal to the full amount paid therefor plus interest thereon and less any income thereon as set forth in subsection (1). Such offer shall continue in force for 15 days from the date on which it was received by the purchaser, shall fairly advise the purchaser of his rights and the period of time limited for acceptance thereof, and shall be in such form and contain such further information as the department may prescribe. Any agreement not to accept or refusing or waiving any such offer made during or prior to said 15 days shall be void. Any offer of repurchase required to be made under this chapter may be made and sent by the department in the name and on behalf of the person required to make such offer.

(6) Within 30 days from the date of an offer of repurchase under subsection (3) of section 189.08 or subsection (3) of section 189.09, the dealer making such offer shall furnish to the department evidence satisfactory to the department that such offer has been made as required. Failure of any dealer to make such an offer as required or to submit such evidence shall be sufficient cause for revoking his license, and any dealer failing so to make such an offer shall thereupon become subject to the liabilities provided for in this section.

(7) Except as otherwise provided in this section or in sections 189.11 or 189.33, the provisions of this chapter shall not be construed to create any new civil liabilities or to impair or limit any rights or remedies existing at common law or under any other chapter of the statutes of this state for misrepresentation, fraud or other actionable conduct in the sale of securities in this state. [1941 c. 327]

**Note:** That corporate stock was sold without a permit authorizing the sale and by an unauthorized broker in violation of 183.27 and 183.29, Stats. 1923, gave the purchaser no right to avoid the purchase and recover the purchase money at common law in an action for money had and received. Said statutes prohibiting such sales, and making such selling a criminal offense, must be construed with reference to each other. *Waisbren v. Blink*, 207 W 619, 242 NW 169.

An action to recover the purchase price of corporate stock so sold was barred by failure to give notice of election to avoid the sale within thirty days after knowledge that it was made in violation of statute, and to commence action within three years after the sale, as required by 183.34, Stats. 1923. *Waisbren v. Blink*, 207 W 619, 242 NW 169.

A buyer's cause of action against a broker and its surety to recover the purchase price of bonds sold on October 5, 1927, became barred October 6, 1930, by the three-year limitation. *Josslyn v. Dahinden-Schmitz Co.*, 208 W 468, 243 NW 473.

A claim against purchaser's estate for price of corporate stock was not barred for failure of claimant to submit contract form under which purchase was made to commission, or to state names of agents or brokers and amounts of commissions in contract, or to secure written permit from commission, where no action for relief had been brought

or defense interposed by purchaser or executrix within statutory limitation, since such violations made contract merely voidable at option of purchaser or executrix and not void (189.10 (1), 189.17 (6), 189.20, Stats. 1929). *Estate of Leedom*, 225 W 148, 641, 273 NW 471.

Where warehouse receipts for "bonded whiskey" were sold, and as part of each transaction the issuers and sellers delivered a guaranty to deliver to the holder of the receipt at his option at the end of 6 months another warehouse receipt for an equal amount of "green whiskey" plus a specified amount in cash, but no delivery of whiskey was ever made or contemplated although the guaranty recited a purchase of the whiskey covered by it, and a sales pamphlet was used which showed a "schedule of profits," represented the warehouse receipt as a "real investment," and otherwise characterized the transaction as an "investment"—such a warehouse receipt and accompanying guaranty, as thus dealt in, constituted a "beneficial interest," an "investment contract," an "interest in the profits of a venture," hence a "security," within the meaning of the securities law, 189.02 (7), Stats. 1939, so as to require registration with the public service commission before a sale thereof could lawfully be made. *State v. Unger*, 237 W 318, 296 NW 629.

**189.19 Criminal liability.** (1) Every corporation shall, upon conviction, be punished by a fine not exceeding \$10,000 which shall directly or indirectly

(a) Sell or offer for sale any security contrary to the provisions of this chapter or any rule or regulation or order of the department hereunder;

(b) Sell or offer for sale any security in nonconformity with any representations made in behalf of such corporation by an officer or agent to the department in obtaining registration, or in violation of the terms and conditions of registration thereof; or

(c) Apply any of the proceeds from the sale of any registered securities to any purpose other than the purpose or purposes specified in obtaining registration, or apply any greater or different amount to any purpose than that allowed in the order of registration of such securities.

(2) Every director, officer, agent or employe of any issuer and every dealer, agent or other person shall be punished by imprisonment in the state prison not exceeding 5 years, or in a county jail not exceeding one year, or by a fine not exceeding \$5,000, or by both, who shall directly or indirectly

(a) Authorize, direct, aid in or consent to the issue or sale of, or issue, execute, sell or offer for sale, or cause or assist in causing to be issued, executed, sold or offered for sale any security contrary to the provisions of this chapter or any rules or regulations hereunder, or in violation of any order of the department;

(b) Authorize, direct, or aid in or consent to the issue or sale of, or issue, execute, sell or offer for sale, or cause or assist in causing to be issued, executed, sold or offered for sale any security, knowing said issuance, execution, sale or offer for sale not to be in conformity with the representations made to the department in obtaining registration thereof;

(c) In or in connection with any application to the department, or any proceedings before it, or any investigation made by or for the department, knowingly or negligently make any false or misleading statement or representation of a material fact;

(d) File or cause to be filed with the department any statement or representation of a material fact, which statement or representation he knows or in the exercise of reasonable care should know to be false or misleading;

(e) Issue, execute, sell or offer for sale, or cause or assist in causing to be issued, executed, sold or offered for sale any security of the issuer concerning which any statement or representation of a material fact was made to the department, which he knows or in the exercise of reasonable care should know is false or misleading;

(f) Apply or cause or assist in causing to be applied, all or any part of the proceeds from the sale of any security in any way or amount which he knows or in the exercise of reasonable care should know is contrary to the representations made to the department in obtaining registration of such security, or in violation of any order of the department;

(g) In connection with the sale or offering for sale of any security, make any statement or representation of a material fact which he knows or in the exercise of reasonable care should know to be false or misleading, or issue, circulate or publish, or cause to be issued, circulated or published, or consent to the issue, circulation or publication of any advertising matter, relating to any security, which he knows or in the exercise of reasonable care should know to be contrary to the provisions of this chapter or any rules or regulations hereunder, or in violation of any order of the department; or

(h) Commit any fraud or in any other respect wilfully violate or fail to comply with any of the provisions of this chapter or any rules or regulations hereunder, or any order of the department.

(3) No corporation which is subject to this chapter shall be excused from complying with any order or subpoena of the department requiring production or submission to examination of books, papers, contracts, agreements, records, files, or documents in its possession or under its control; or be excused from making true answer under oath by or through its authorized officer or agent when required by law to make such answer in any investigation or hearing by or for the department, in either case on the ground that the evidence or information, documentary or otherwise, so produced or submitted to examination, may subject it to a penalty or forfeiture.

(4) No dealer, agent, issuer or other person, or any officer, agent or employe thereof shall be excused from attending or testifying, or from producing books, papers, contracts, agreements, records, files or documents in his possession or under his control in obedience to an order or subpoena of the department for use in any investigation or hearing by or for the department, on the ground that the testimony, evidence or information, documentary or otherwise, so given, produced or submitted to examination, may tend to incriminate him or subject him to a penalty or forfeiture, but no dealer, agent, issuer or other person, or officer, agent or employe thereof, shall be prosecuted or subjected to penalty or forfeiture for or on account of any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, in such investigation or hearing, except for perjury or false swearing in connection therewith.

(5) Each of the acts specified in subsections (1) and (2) of this section shall constitute a separate offense, and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. An indictment or information for any offense which may be punished under this section must be found or filed within 6 years after the commission thereof. [1941 c. 327]

**Note:** To constitute an offense in violation of 189.23 (2) (b), Stats. 1931, there must be some showing which admits of finding that the accused authorized, directed, aided in or consented to the issue and sale of bonds in nonconformity with the representations made to the public service commission in securing the permit for the sale thereof. State ex. rel. Kropf v. Gilbert, 213 W 196, 251 NW 478. The meaning and effect of 189.16 (2), Stats. 1937, is deemed restricted to persons and acts within the classes enumerated therein. State ex rel. Dinneen v. Larson, 231 W 207, 284 NW 21, 286 NW 41.

**189.20 Attorney.** (1) For the purpose of facilitating enforcement of this chapter, one or more of the attorneys employed by the department on July 2, 1941, shall, at the department's request, be added to the attorney-general's department as special assistant attorneys-general, but such attorney or attorneys shall devote their entire time to the work of the department in administering this chapter. Their successors shall be appointed by the department with the consent of the attorney-general subject to chapter 16.

(2) Upon request of the department, the attorney-general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under this chapter, and shall institute and prosecute actions and proceedings for the enforcement of this chapter and for punishment of violations thereof.

(3) Whenever, after any investigation or hearing under this chapter, the department is of the opinion that any act has been done which may constitute an offense under section 189.19, the department shall certify the record to the district attorney of the county in which such act was committed. The district attorney of such county shall, within 90 days after receipt of such record, file a written statement with the department which shall set forth the action taken upon such record, or, if no action has been taken thereon, a statement of that fact and the reasons therefor. Upon request of such district attorney, the department shall assist in the prosecution of any offense under section 189.19, and may assign any member of its staff, including an assistant attorney-general appointed under subsection (1), to render such assistance. [1941 c. 327; 1943 c. 169]

**189.21 Orders; findings; form; evidence.** (1) The department may execute any order, finding, license, or evidence of registration issued by it in as many counterparts as it deems necessary, and each shall be deemed to be an original. An original of every such order, finding, license or evidence of registration shall be retained and preserved by it in its office. Copies of all orders, findings, licenses and evidences of registration

issued by the department, and of all papers filed in its office, when certified by the director or the deputy director under its official seal, shall be received in evidence in all cases in like manner and with the same effect as the originals.

(2) Every official report made by the department, and every report made to it by any agent, assistant or employe of the department of any investigation made by him or under his direction, and copies of such reports, certified by the director or the deputy director of the department, shall be prima facie evidence of the facts therein stated for all purposes in any action or proceeding.

(3) The certificate of the director or the deputy director of the department to the effect that a specified person is not or was not on a specified date licensed as a dealer or agent or under section 189.28, or to the effect that a specified security had not been registered, or that registration of such security was not in effect on a date specified, or as to the issuance or revocation of any such license or registration, or as to the existence or non-existence of the same, or as to the issuance and terms of any order of the department, or as to the giving or submission or failure to give or submit to the department any notice or information, shall be prima facie evidence of the facts stated therein for all purposes in any action or proceeding.

(4) In any prosecution or action or proceeding under this chapter, the fact that a security or transaction is exempt from the provisions of this chapter or that the sale of a security or other transaction is permitted by sections 189.06, 189.07, 189.08 or 189.09 shall be a matter of defense, and the burden of proof of any such exemption or permission shall be upon the party claiming the benefit thereof; and in all actions or proceedings under this chapter, the burden of proof shall be upon the party adverse to the department or seeking to rescind, reverse, set aside or vacate any order, rule, regulation or finding of the department to show, by clear and satisfactory evidence that such order, rule, regulation or finding is unlawful or unreasonable.

(5) In any prosecution for violation of section 189.03 proof of the fact that a person acted as a dealer or agent shall be prima facie proof that compensation therefor was received or promised.

(6) In any complaint, warrant, information or indictment in any criminal proceeding arising out of alleged violations of this chapter, alleged illegal sales to or transactions with the complaining witness, and alleged illegal sales to and transactions with other parties who have been similarly dealt with by the accused, may be joined in separate counts; and if it appears that fraud has been committed by the accused in connection with such sales or transactions, counts based on such fraud may be included.

(7) All findings and orders, rules or regulations of the department shall be of force and prima facie lawful and reasonable until finally found otherwise in an action brought for that purpose pursuant to section 189.22. [1941 c. 327]

**189.22 Hearings; rehearings; court actions; limitation.** (1) Within 30 days after any order has become effective without hearing, any interested party may apply to the department for a hearing in respect of any matters determined by such order, and such hearing shall be held within 10 days after said application is filed with the department.

(2) Within 20 days after any order has become effective after the hearing provided for in subsection (1), or after any hearing otherwise held by the department, any interested party may apply to the department for a rehearing in respect of any matters determined by such order. The department may grant and hold such rehearing on said matters if in its judgment sufficient reasons therefor be made to appear. The application for rehearing shall set forth specifically the ground or grounds on which the applicant considers said order to be unlawful or unreasonable. In case a rehearing is granted, the proceedings thereon shall conform as nearly as may be to the proceedings in an original hearing except as the department may otherwise direct. If after such rehearing it shall appear that the original order is in any respect unlawful or unreasonable, the department may reverse, change, or modify the same accordingly, and any order, after such rehearing, reversing, changing or modifying the original order, shall have the same force and effect as an original order. Failure to grant an application for rehearing within 20 days from the date of the filing thereof shall constitute a denial thereof; and failure, within 15 days after the conclusion of a rehearing, to issue an order affirming, reversing or modifying the original order of the department shall constitute an affirmation of the original order.

(3) The legislative powers of the state, in so far as they are involved in the making of orders by the department, shall not have been completely exercised until the department has acted or failed to act upon an application for rehearing as provided for in this section.

(4) No proceeding for judicial review of any order of the department shall be brought in any court unless the plaintiff within the time limited herein shall have made application to the department for rehearing and the department shall have acted or failed to act upon said application as provided for in this section.

(5) Orders of the department, except those made under section 189.11, shall be subject to review in the manner provided in chapter 227. [1941 c. 327; 1943 c. 375 s. 65 to 67; 1945 c. 511]

189.23 and 189.24 [Repealed by 1943 c. 375 s. 68]

189.25 to 189.31 [Repealed by 1933 c. 158 s. 1]

189.25 [Renumbered section 189.01 by 1941 c. 327]

**189.25 Injunction procedure.** (1) No injunction shall issue in any proceeding instituted pursuant to section 189.22 (5) suspending or staying any order of the department, except upon application to the court or the presiding judge thereof, notice of which shall be given to the department and any other party to the proceeding, and hearing; and no injunction shall issue in any other proceeding or action, in any court, which shall have the effect of delaying or preventing any order of the department from becoming effective, unless the parties to the proceeding before the department in which such order was made, are also parties to such proceeding or action.

(2) No injunction shall issue in any proceeding instituted pursuant to section 189.22 (5) or in any other proceeding or action, in any court suspending or staying any order of the department or having the effect of delaying or preventing any order of the department from becoming effective, unless an undertaking shall be entered into on the part of the petitioner or plaintiff, with such surety or sureties and in such sum as the court or the presiding judge thereof shall direct or approve to the effect that the petitioner or plaintiff will pay all damages which any party may sustain by the suspension or stay of the order of the department or the delay or prevention of such order from becoming effective, and to such other effect as such court or judge may direct, and no order or judgment in any such proceeding or action shall be stayed on appeal therefrom unless a like undertaking be entered into by the petitioner or plaintiff in addition to the undertaking provided in section 274.11 (3). [1941 c. 327; 1943 c. 375 s. 69; 1945 c. 511]

189.26 [Repealed by 1943 c. 375 s. 70]

**189.27 Service on nonresidents.** In any action or proceeding in this state, arising out of or founded upon any misrepresentation or fraud or any violation of this chapter or of any order, rule or regulation of the department in which any issuer, dealer, or other person, who shall have appointed the director and the deputy director, and each of them, its attorneys, shall be a party, service of any summons, complaint, pleading, process, order or notice may be made by service upon either such attorneys or by filing a copy of same with the department. The department shall forthwith forward by mail, postage prepaid, to the person designated in the appointment at the address stated therein, or, if no such designation has been made, to the issuer, dealer or other person at his last known post-office address, a copy of such papers. Thereupon, service of such papers upon such issuer, dealer or other person shall be deemed complete personal service. The certification of the department under its official seal, of such service, shall be sufficient proof thereof. [1941 c. 327]

**189.28 License for banks; agents.** (1) Any state bank, mutual savings bank, trust company bank or national bank, which is not a licensed dealer, may upon applying for and obtaining a license under this section, execute orders for the purchase or sale of securities as agent of the purchaser or seller, provided it has no direct interest in the sale or distribution of the securities purchased or sold, receives no commission, profit or other compensation from any source other than the purchaser or seller, delivers to the purchaser or seller written confirmation of the order which clearly itemizes its commission, profit or other compensation, and purchases from or sells such securities to a licensed dealer.

(2) Said application shall be verified and filed with the department and shall be in such form and set forth such information as the department may require to determine the nature and scope of the applicant's securities business. The department may make a detailed investigation into the business and affairs of the applicant and shall issue a license authorizing the applicant to engage in the transactions specified in subsection (1) upon payment of the prescribed fee and of the expense attributable to the examination of the application and any investigation made by the department, if it shall find that it is appropriate in the public interest that such license be issued; otherwise the department shall by order deny such application. All licenses issued pursuant to this section shall terminate on December 31 following the date thereof.

(3) No bank, mutual savings bank, trust company bank or national bank licensed pursuant to this section, shall be required to report to the department the purchases and sales of securities by it pursuant to the authority granted by such license, but it shall keep a permanent record of all such purchases and sales available for examination by the department.

(4) No officer or employe of a state bank, mutual savings bank, trust company bank or national bank licensed under this section shall be required to obtain an agent's license under this chapter in order to act for such state bank, mutual savings bank, trust company bank or national bank in the execution of the transactions authorized by its license. [1941 c. 327]

**Note:** The provisions of ch. 153, Laws 1939, requiring banks and trust companies to secure a "bank license" in order to engage in certain specified securities transactions do not apply to national banks. 28 Atty. Gen. 600.

**189.29 Fees and expenses.** (1) The department shall collect, as a filing fee, \$25 for each application for a dealer's license, \$3 for each application for an agent's license, and \$10 for each application for a license under section 189.28.

(2) The department shall collect, as a filing fee, for each application for registration under section 189.13, a fee of \$10 plus 50 cents per thousand for each \$1,000 par value of the entire authorized issue of securities for which registration of all or part is sought, but in no case shall the filing fee be more than \$140 for each such issue except that:

(a) If any such securities shall have no par value, or if the sale price of par value stock shall be in excess of the par value thereof, the initial offering price at which it is proposed to issue or sell the same shall be deemed the par value for the purpose of computing the filing fee to be paid, except that if there is no fixed price at which it is proposed to issue or sell such securities the market value at the date of application shall be deemed the par value for the purpose of this section.

(b) If any such securities shall consist of purchase warrants or rights to subscribe for securities, the number of shares or units to be offered through warrants or rights to subscribe for securities, multiplied by the price per share or unit of the shares or units issuable in fulfillment of such warrants or rights, shall be deemed the entire par value for the purpose of computing the filing fee to be paid.

(3) The department shall collect, as a filing fee, for each notice under section 189.08, a fee of \$2.50 from each dealer giving such notice.

(4) The expense reasonably attributable to any investigation, including any examination, inspection, appraisal or audit, in connection with any application for a dealer's or agent's license, any application for registration under section 189.13, any notice under section 189.08, or any other matter under this chapter which may require investigation, shall be borne by the applicant or, in the case of notice under section 189.08, proportionately by the dealer giving the first notice and all dealers giving notices in respect of the same security within 30 days thereafter, unless the department shall otherwise direct. A sum deemed sufficient to cover such expense, in an amount from time to time prescribed by the department, shall be deposited with the department prior to the commencement of any such investigation, unless the department shall otherwise direct. If the department shall find during its investigation that the expense of same will exceed the amount deposited, it shall advise the applicant or dealer giving notice under section 189.08 of the estimated additional amount, who shall thereupon deposit such amount with the department. Upon the completion of any such investigation, the department shall ascertain the expense reasonably attributable thereto and render a bill therefor by registered mail to the applicant or dealer giving notice under section 189.08, and complete payment shall thereupon be made. If the amount of deposits exceeds the expense reasonably attributable to such investigation, the department shall refund the difference. No security shall be registered and no license concerning which any investigation is made shall be issued until the entire expense reasonably attributable thereto shall have been paid to the department. If complete payment is not made within 30 days after the submission of the final bill, the application for a license or for registration may be denied and sales pursuant to a notice filed under section 189.08 may be prohibited.

(5) No application for registration or for a license shall be deemed to be filed with the department and no notice under section 189.08 shall be deemed to be given to the department until the requisite fee, provided in this section, has been paid to the department.

(6) The department shall pay all fees and expenses collected under this section into the state treasury. [1941 c. 327; 1945 c. 327; 1947 c. 332]

**Note:** Under 189.21 (3), Stats. 1937, only expenses which may be collected are those arising out of examination made to determine whether application for registration of securities is to be accepted or where it is made to determine whether dealer or agent is to be licensed or where it is made in connection with revocation of suspension order. 27 Atty. Gen. 173.

**189.30 Interstate commerce.** This chapter shall apply to or be construed as a regulation of commerce with foreign nations or among the several states only so far as the same may be permitted under the provisions of the constitution and the acts of the congress of the United States. [1941 c. 327]

**189.31 Separability of provisions.** It is the legislative intent that the provisions contained in the several sections of this chapter shall be independent of each other and that the invalidity for any reason of any section, subsection or clause shall not affect the validity of any other section, subsection or clause of this chapter. [1941 c. 327]

**Note:** Unconstitutionality of 189.03, Stats. 1929, exempting from provisions of law sales by owner who was not an underwriter which were not made in course of continued or repeated transactions of similar nature would not affect constitutionality of statute as a whole or of other unrelated provisions in view of subsequently enacted section expressly so providing, which expressed previously existing legislative understanding. Boyd v State, 217 W 149, 258 NW 330.

**189.32 Prior registrations and licenses.** Every registration of securities in effect under the law existing prior to July 2, 1941 shall continue in force and shall be deemed to be a registration of such securities under section 189.13 without further application, subject, however, to such terms and conditions as the department may prescribe with respect thereto and to expiration and renewal as provided in section 189.15, and all the provisions of this chapter with respect to revocation of registration or of the right to sell securities in this state and with respect to any of the powers of the department in regard thereto shall apply to such registration and the securities covered thereby, in the same manner as though such securities had been registered after July 2, 1941. Licenses of dealers, agents, banks and trust companies exercising banking powers, in effect under the law existing prior to said date shall continue in force and shall expire on December 31, 1941, subject, however, to all the provisions of this chapter relative to such licenses and to revocation as herein provided in the same manner as though such licenses had been granted after July 2, 1941. [1941 c. 327; 1943 c. 557]

**189.33 Saving clause.** Any proceedings, civil or criminal, which are now pending, or which may be pending July 2, 1941, under the law or laws or parts of laws repealed by this chapter, shall not be affected by such repeal, nor shall such repeal invalidate any contracts entered into by any issuer of any securities for the benefit or security of any person; and the department shall proceed in all respects, touching said contracts as if such law or laws, or parts of laws, had not been repealed; and rights of action conferred, or duties, restrictions, liabilities or penalties imposed or required by or under such laws, or parts of laws, upon or of any person subject to such repealed laws, or parts of laws, before said date, shall not be impaired or abrogated by such repeal, but every such person shall, as to all actions hereafter performed, be subject to the provisions of this chapter; provided, however, that the right of any person to institute any action, suit or proceeding for any recovery based upon or arising out of the sale of a security by means of or involving any misrepresentation or fraud including misrepresentation of a material fact or matter or failure to state a material fact or matter necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or the sale of a security made in violation of, or noncompliance with, any provision of said repealed laws or any rule, regulation or order thereunder or the terms and conditions of registration therefor, shall be forever barred upon the expiration of a period of 3 years following such sale, except that if such sale shall have occurred more than 32 months prior to July 2, 1941, then any such action, suit or proceeding, unless barred by other limitations, must be instituted within a period of 4 months following the said date, and provided further that the time for instituting any action, suit or proceeding within the purview of the foregoing provision shall be extended by reason of any fact and for the time specified in sections 330.30 to 330.38, except that no person who has filed with the secretary of state or the department or any other department or commission of this state which at any time had jurisdiction over the sale of securities in this state, an appointment of a resident of this state as attorney upon whom process may be served shall be deemed, for any purpose, to be or from the date of such appointment to have been a person out of this state under section 330.30. [1941 c. 327; 1943 c. 169]