

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. There is appropriated to the state treasurer as an emergency appropriation six thousand dollars, supplemental to the appropriation made under subsection (4) of section 20.05 for the fiscal year beginning July 1, 1932, to pay the expense of administering the tax on motor vehicle fuels imposed by chapter 78 of the statutes.

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

Approved May 23, 1933.

No. 58, S.]

[Published May 25, 1933.

### CHAPTER 158.

AN ACT to repeal sections 189.01 to 189.31, to amend subsection (4) of section 20.51, and to create sections 189.01 to 189.24 and subsection (8) of section 363.02 of the statutes, relating to securities, providing penalties, and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Sections 189.01 to 189.31 of the statutes are repealed.

SECTION 2. Subsection (4) of section 20.51 of the statutes is amended to read: (20.51) (4) As a revolving appropriation, all moneys collected by the commission under section 196.85 or subsection (2) of section 184.10 or subsections (3) and (4) of section 189.21 to be used for the performance of all duties of the commission for which no special appropriation is made, and for the administration of Chapter 189, in addition to funds otherwise appropriated for the administration of that chapter.

SECTION 3. Twenty-four new sections are added to the statutes and a new subsection is added to section 363.02 of the statutes to be numbered and to read: 189.01 SECURITIES LAW. The provisions of this chapter are commonly known, and this chapter may be referred to and cited as the "Securities Law".

189.02 DEFINITIONS. As used in this chapter, unless the context or subject matter otherwise requires:

(1) "Agent" includes every natural person who in this state for compensation represents or acts for another with authority in the sale of any security except securities exempted by paragraph

(a) of subsection (1) of section 189.03, but does not include any executor, administrator, guardian, or any other officer of the court making any sale under the provisions of subsection (8) of section 189.05, or any pledgee who sells under the provisions of subsection (9) of section 189.05, or any person whose dealings in securities are limited to those sales exempted by subsections (4) and (5) of section 189.05.

(2) "Dealer" includes every person and company, not an agent, who in this state, for compensation, sells or accepts orders for purchase of any security issued by others except securities exempted by paragraph (a) of subsection (1) of section 189.03 or who underwrites and sells or engages either wholly or in part in the business of purchasing and selling any such securities, but does not include any executor, administrator, guardian, or any other officer of the court making any sale under the provisions of subsection (8) of section 189.05, or any pledgee who sells under the provisions of subsection (9) of section 189.05, or any person or company whose dealings in securities are limited to those sales exempted by subsections (4) and (5) of section 189.05.

(3) "Commission" means the public service commission of Wisconsin.

(4) "Company" includes every domestic and foreign private corporation, association, joint stock company, partnership, trust, common law trust or company, syndicate, pool, and every other form of organization or association organized or proposed.

(5) "Issuer" includes every company and person who issues, has issued or proposes to issue any securities which have been or are to be sold in this state, and every promoter who acts for or on behalf of any issuer to be formed.

(6) "Sale" or "sell" includes every disposition, offer, negotiation, agreement, or attempt to dispose of a security or interest in a security for value, and every solicitation of a subscription or order for the purchase of a security and every exchange of a security for property, but shall not include the execution of orders for purchase of securities by a licensed dealer provided such dealer acts as agent of the purchaser, has no direct interest in the sale or distribution of the security ordered, receives no commission, profit or other compensation from any source other than the purchaser, and delivers to the purchaser written confirmation of the order which clearly itemizes his commission, profit or other compensation. Securities given or delivered with or as a bonus on

account of any purchase of securities or of any other thing are conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(7) "Security" or "securities" includes all bonds, stocks, beneficial interests, investment contracts, interests in oil, gas or mining leases or royalties, preorganization subscriptions or certificates, land trust certificates, collateral trust certificates, mortgage certificates, certificates of interest in a profit-sharing agreement, notes, debentures, or other evidences of debt or of interest in or lien upon any or all of the property or profits of an issuer, any interest in the profits of a venture, the memberships of corporations organized without capital stock, and all other instruments or interests commonly known as securities.

(8) "Stock" shall include shares of beneficial interest in a business trust, as well as all other securities commonly known as "stock".

(9) (a) "Net profits", or "net income", of a business, property, or industry, as used in this chapter, shall be the profits after full and adequate provision for consumption of capital, taxes, interest, and all other proper charges.

(b) The ownership by a company of fifty per cent or more of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of the property, business or industry of such corporation and the net profits or losses of such corporation, after eliminating intercompany transactions, applicable to the stock so owned, shall be included in the earnings of such owner.

(10) "Order" shall mean and include every direction or determination of the commission, whether over the signature of the commission or that of the secretary of the commission, made or entered in writing referring to a specific security, issuer, dealer, agent, or other person. "Intermediate order" shall mean and include every other direction or determination directly affecting a specific security, issuer, dealer, agent, or other person, and such intermediate order may be signed on behalf of the commission by any authorized agent thereof. "General order" shall mean and include every order which applies generally throughout the state to all members of a class under the jurisdiction of the commission. General orders shall take effect thirty days after their publication in the official state paper, and such publication shall be deemed to be notice thereof. All other orders shall take effect upon service of a copy thereof upon the issuer, dealer, agent, or other person

to whom such order relates. Such copy may be served by mail, addressed to such issuer, dealer, agent, or other person at his last known address, as it appears in the records of the commission, or by personal service, as provided with respect to service of a summons in civil actions.

189.03 EXEMPT SECURITIES. (1) Except as hereinafter provided the provisions of this chapter prohibiting the sale of securities unless registered by the commission shall not apply to the following, which shall be known as exempt securities:

(a) Securities issued by, or the principal and interest of which are guaranteed by, the United States.

(b) Securities issued by, or the principal and interest of which are guaranteed by, any foreign government, or by any state or territory of the United States or of any foreign government, or by any county, city, town, village, district, or other subdivision of the United States or of any state or territory thereof or of any foreign government, having power of taxation or assessment for the purpose of paying such obligation.

(c) Commercial paper or negotiable promissory notes if the entire issue matures less than one year from the date thereof and from the date of sale.

(d) Securities of corporations operating railroads the issue of whose securities is regulated by the Interstate Commerce Commission, and securities senior thereto.

(e) Equipment securities evidencing rights to receive partial payments agreed to be made under any contract of lease or conditional sale of rolling stock for use of companies operating steam railroads within the United States or the Dominion of Canada.

(f) Securities of public service corporations, the issue of whose securities is regulated by the commission pursuant to chapter 184, and securities senior thereto.

(g) Evidences of debt issued by any Wisconsin municipality, including any power district as defined by section 198.01 (1), for the purpose of financing any public utility owned or to be acquired by such municipality or power district.

(h) Evidences of debt payable solely from revenues derived from the operation of public utilities as defined by section 196.01, issued by any county, town, city, village, district, or other subdivision of any state other than this state, having a population of not less than twenty-five thousand, provided such county, town, city, village, district, or other subdivision in connection with the

same project has had securities of such class outstanding for not less than five years and has had no default in the payment of interest or principal on any such securities for a period of five years prior to the sale thereof.

(i) The securities issued by any domestic corporation organized exclusively for educational, benevolent, charitable, religious, or reformatory purposes, providing, however, that no evidences of debt of any such corporation shall come within this subsection which shall fail to meet the requirement of subsection (2) of section 189.07.

(j) Securities of any bank or trust company, or building and loan association, or land mortgage association, or investment association, or other corporation whose business is subject to the supervision and control of the banking department of this state, or securities of any national bank or trust company whose business is under the supervision and control of the Comptroller of Currency of the United States, or securities of any corporation which is organized under an act of the Congress of the United States, providing such corporation or its securities are instrumentalities of the government of the United States; providing such securities represent an obligation of such issuer or an interest in its assets and profits.

(k) Evidences of debt outstanding prior to the date this act becomes effective which were theretofore exempt under the provisions of the chapter hereby repealed.

(1) Securities of any domestic corporation, outstanding prior to the effective date of this act, which were theretofore exempt under the provisions of the chapter hereby repealed.

(2) If it shall appear that any securities described in paragraphs (b) to (1), inclusive, of this section may be fraudulent or that the methods of their sale may be unfair, inequitable, or fraudulent, the commission shall require the person issuing or selling the same to file a verified statement with it giving such information concerning the securities and the issuer and the methods of sale of such securities as may be necessary to enable the commission to make a finding. If within the time limited by the commission such information is not submitted or if, from the information submitted and such other information as it may have, the commission is unable to determine that the securities are not fraudulent and that the methods of their sale are not unfair, inequitable, or fraudulent, it may suspend the right to sell such securities under the pro-

visions of this section and shall give notice thereof, together with reasons therefor to the parties affected by such order. Within sixty days after such suspension, any interested party may apply in writing to the commission for an order revoking such suspension. After application for such order has been filed, the commission shall make an investigation to determine whether the securities are fraudulent and whether the methods of their sale are unfair, inequitable, or fraudulent and may require the applicant to submit such further information relative to the securities and the issuer thereof and the methods of their sale as may be necessary to enable it to make a finding. The expense reasonably attributable to such investigation shall be paid by the applicant. If the commission shall find that the securities are fraudulent or are not such as are entitled to be sold under this section, it shall by order prohibit the further sale thereof. If the commission shall find that the methods of their sale are unfair, inequitable, or fraudulent, it shall require their discontinuance. Unless the commission shall find that such securities are fraudulent or are not entitled to be sold under this section or that the methods of their sale are unfair, inequitable, or fraudulent or that information requested was not furnished or that the information submitted fails to establish the contrary, it shall by order revoke the suspension herein referred to and thereafter such securities may be sold under the provisions of this section. If within the time limited herein no application is made for an order revoking such suspension, or if the commission shall by order refuse to revoke such suspension, or shall prohibit the sale of such securities, no further sales of such securities may be made under the provisions of this section.

(3) No purchaser shall have any right or remedy under this chapter on account of the sale by any licensed dealer of securities described in paragraphs (b) to (1), inclusive, of this section unless such sale was made in violation of an order of the commission made under the provisions of this section.

189.04 SECURITIES CONDITIONALLY EXEMPT. (1) Except as in this section provided the provisions of this chapter prohibiting the sale of securities unless registered by the commission shall not apply to the following, which shall be known as conditionally exempt securities, and such securities may, upon payment of the fee required by subsection (4) of section 189.21, be sold without registration, subject to the conditions herein stated, unless because of the unsound financial condition of the issuer,

decrease in earnings, or other conditions affecting the securities, the commission shall find otherwise :

(a) Evidences of debt of corporations operating railroads or public utilities, the issue of whose securities is regulated by a public service commission or similar body of any state or territory of the United States, other than this state, or of the Dominion of Canada or any province thereof, or of the District of Columbia, if more than fifty per cent of the total revenue of the business of the issuer for the last year was derived from the operation of railroad or public utility property to which it has title, and securities senior thereto ;

(b) Evidences of debt of any corporation owning a business, property, or industry which business, property, or industry has been in continuous operation not less than ten years providing that during the last ten years there has been no default in payment of principal or interest on any interest-bearing securities of such corporation, or on any interest-bearing securities guaranteed by it, or on any interest-bearing securities of any company substantially all of whose property or business has been or is presently being acquired by such corporation, and providing the earnings of the business, property, or industry for each of the last two years or the average earnings for a period of not less than four nor more than ten years, after full and adequate provision for consumption of capital, taxes, and all other charges, available for interest, amount to not less than three times the annual charges on such debt and all debt of equal and prior rank.

(2) Any dealer desiring to sell any securities described in paragraph (a) or (b) of this section shall, not later than the date of offering thereof for sale by such dealer, notify the commission in writing or by telegraph of his intention to do so and shall within five days from the date of such notice furnish to the commission a copy of each circular to be used by him describing such offering. Such notice shall include the name of the issuer, a general description of the securities to be offered and a statement giving the basis for his belief that the securities are entitled to be sold under the provisions of this section. After notice shall have been given as aforesaid, the dealer may sell such securities under the provisions of this section subject to any lawful order of the commission suspending or revoking such right. If the commission is unable to determine from the information submitted and from such other information as it may have, that the securities

are such as may be sold under the provisions of this section, it shall within fifteen days of the receipt of the first notice of offering suspend the right to sell such securities under the provisions hereof, and shall give notice thereof, together with reasons therefor, to each dealer who shall have filed such notice. Within sixty days after such suspension any interested party may apply in writing to the commission for an order revoking such suspension. After application for such order has been filed, the commission shall make an investigation to determine whether the securities are such as are entitled to be sold under the provisions of this section, and may require the applicant to submit such information relative to the securities and the issuer thereof as may be necessary to enable it to make a finding. The expense reasonably attributable to such investigation shall be paid by the applicant. If the commission shall find that the securities are not such as may be sold under this section, it shall by order prohibit the sale thereof under authority of this section. Unless the commission shall find that such securities are not such as may be sold under this section, or that information requested was not furnished, or that the information submitted fails to establish the contrary, it shall by order revoke the suspension herein referred to and thereafter such securities may be sold under the provisions of this section. The commission may, notwithstanding compliance with the standards of this section, because of the unsound financial condition of the issuer, decrease in earnings, or other conditions affecting the soundness of the securities, find and determine that the securities are not such as may be sold under the provisions of this section.

(3) Whenever the commission has reason to believe that securities described in this section, which could theretofore be sold under its provisions, fail to meet the standards herein described, it may make an investigation and hold hearings relative thereto. Any interested party shall have the right to be heard and to present proofs in connection with such investigation. If the commission finds that the securities are not such as may be sold under the provisions of this section, or that information requested was not furnished, or that the information presented fails to establish the contrary, it shall by order prohibit the further sale of such securities under authority of this section.

(4) If within the time limited herein no application is made for an order revoking such suspension, or if the commission shall by order refuse to revoke such suspension or shall prohibit the sale



of such securities under the provisions of subsection (2) hereof, all sales of securities made under the provisions of said subsection shall be voidable at the election of the purchaser. Every dealer who shall have sold such securities shall, within thirty days from the date of expiration of the time limited for application to revoke such suspension, in case no such application is made, or within a like period from the date of said determination of the commission, make an offer in writing sent by registered mail to each purchaser at his last known address to repurchase said securities at the price paid, together with interest from the date of purchase at the rate stipulated in such securities less interest received by such purchaser on such securities. Such offer shall advise the purchaser of the period of time limited by this section for acceptance thereof. Within thirty days from the date of such offer the dealer shall furnish to the commission a copy of such offer and evidence satisfactory to it that such offer has been made as herein provided. No purchaser shall recover under this section who shall have refused or failed to accept such offer within thirty days from the date on which such offer was mailed. The failure of such dealer to make such offer or to submit such evidence as herein provided shall be sufficient cause for suspending his license, and, unless within thirty days after such suspension he shall have submitted proof of having made such offer, the commission shall revoke his license and thereupon such dealer shall be subject to the liabilities provided in section 189.15. The remedy herein given to the purchasers of such securities shall be the exclusive remedy of such purchasers under this chapter as to the sale by any licensed dealer of securities described in this section.

189.05 EXEMPT SALES. Except as hereinafter provided the provisions of this chapter prohibiting the sale of securities unless registered by the commission shall not apply to the following transactions:

(1) The sale by any domestic corporation of stock of its issue if the total number of holders of its stock, after that to be issued is sold, does not exceed twenty-five, or the sale by such corporation of any of its securities other than stock if the sale of such securities is made only to stockholders and the total number of holders of its securities, after that to be offered is sold, does not exceed twenty-five, and, in either event, no commissions or other compensation is paid for the sale of such securities, and the total organization and promotion expenses in connection with such is-

sue, exclusive of statutory fees will not exceed three per cent of the selling price thereof.

(2) The sale of an interest in any partnership, pool, or other company, not a corporation, the total membership of which does not and will not after such sale exceed twenty-five, and the organization and promotion expenses of which do not or will not exceed three per cent of the total invested capital of such issuer, and provided that no commissions or other compensation is paid for the sale of such interests.

(3) The sale of its memberships by a domestic corporation organized without capital stock, or the sale to the members of any such corporation of any of its securities, or 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 such organization of which such purchasers are members, when no profit or remuneration accrues to the promoters or persons interested in promoting such corporation.

(4) The sale of notes secured by mortgages where the entire mortgage is sold and transferred with the note.

(5) The sale of bonds or notes secured by first lien on Wisconsin real estate, providing the total debt secured by such lien does not exceed fifteen thousand dollars, and does not exceed fifty per cent of the then fair and reasonable cash market value of such real estate, less the amount of all special assessment taxes unpaid.

(6) The sale of securities when made by or on behalf of a vendor not the issuer thereof who, being a bona fide owner of such securities, disposes of his own property for his own account, provided such vendor at the time of such sale is not engaged either wholly or in part in the business of selling securities and such sale is not made, directly or indirectly, for the benefit of any other person or company, or for the purpose of violating or evading any provision of this chapter.

(7) The distribution by a corporation of a stock dividend.

(8) Any judicial, executor's, administrator's, or guardian's sale or any sale by a receiver or trustee in insolvency or bankruptcy.

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

(10) The sale by a company of its stock for a delinquent assessment, according to law.

(11) The sale of securities to any dealer, or to any bank, trust company, or insurance company engaged in business in this state, or to any other corporation or association engaged in the business of purchasing or holding securities.

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

(13) 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.

(14) The sale by any licensed dealer of securities which were issued prior to and have been outstanding in the hands of the public since August 1, 1919, or any stock of the same rank lawfully issued by way of a stock split-up or a stock dividend thereon, subject to the following provisions and conditions: Before offering any such securities for sale the dealer shall notify the commission in writing of his intention to sell specified securities, and shall submit with such notice a verified statement to the effect that he is informed and believes that such securities were issued and have been so outstanding for the required time or is stock of the same rank issued as a stock split-up or stock dividend on stock which has been outstanding for such period, giving the name or description of the securities, the date when issued, and any other facts which are the basis for his belief, the amount to be offered for sale, the maximum price to be asked therefor, and such information as the dealer has as to the issuer tending to establish the fairness of such price. The commission may require additional information to be furnished with reference to any such securities and if it appears that the securities are not such as may be sold under the provisions hereof, or that the financial condition of the issuer is unsound, or that such securities or the price at which they are to be sold, or the methods of their sale, would be unfair or inequitable or fraudulent as to the purchaser, the commission may suspend the sale thereof, subject to the procedure and remedies set forth in subsections (2) and (3) of section 189.03.

(15) The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reor-

ganization of the company made in good faith, or the issue in good faith of securities by a company, taking over substantially all the assets and continuing the business of another company, to the security holders or creditors of such other company; provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case such security holders or creditors do not give or promise and are not obligated to give any consideration for the securities so issued other than the securities of or claims against said company or such other company then held or owned by them, subject, however, to the following conditions:

(a) Every issuer described in this subsection, and every licensed dealer having any financial interest, direct or indirect, in any such reorganization, or receiving compensation, directly or indirectly, by reason thereof, who shall solicit the exchange of such securities or the deposit of any securities under any protective agreement in connection with such exchange shall, not later than the date of such solicitation, furnish to the commission, or have furnished in its behalf, in writing, detailed information concerning such solicitation, exchange, deposit, or reorganization.

(b) If it shall appear that such securities or the methods of their issue, exchange or sale, or that the deposit of any securities in connection with the issue, exchange or sale of such securities, may be unfair, inequitable or fraudulent, the commission may suspend the right to issue, exchange, or sell such securities under the provisions of this subsection and may by order prohibit the solicitation of such deposit. Within sixty days any interested party may apply in writing to the commission for an order revoking such suspension or order. Thereupon the commission shall make such investigation as may be necessary to determine whether such securities or the methods of their issue, exchange or sale, or the deposit of any securities in connection therewith, is unfair, inequitable or fraudulent. In connection with such investigation the commission may require the applicant to furnish such information concerning the business or financial affairs of the issuer or other companies included in the reorganization, and the proposed plan of reorganization, as may be necessary. If in any such case it shall appear necessary, the commission may prescribe a form of notice and direct that a meeting be called of the security holders affected by such reorganization, including holders of certificates issued by any protective committee, for the purpose of considering such re-

organization or other action, and such meeting shall be held at such time and place as the commission may approve. The commission may in such case require such dealer to mail a copy of such notice to the last known address of each person to whom such dealer has sold in this state the securities for which such deposit or exchange is proposed, and to furnish to the commission satisfactory evidence of compliance with such requirement. If the commission shall find that the securities to be issued or the methods of their issue and sale, or that the deposit of any securities in connection therewith, is unfair, inequitable, or fraudulent, it shall by order prohibit the sale of such securities under the authority of this subsection. Unless the commission shall find that such securities or the methods of their issue and sale, or that the deposit of any securities in connection therewith, is unfair or inequitable or fraudulent, it shall by order revoke the suspension or order herein referred to and such securities may thereafter be sold under the provisions of this subsection.

(c) No purchaser or other person depositing or accepting securities in exchange under this subsection shall have any right or remedy under this chapter against any issuer, dealer, agent, or other person on account of any such deposit or exchange solicited by any licensed dealer unless the solicitation therefor was made in violation of an order of the commission prohibiting or suspending such solicitation or exchange.

#### 189.06 LIMITATION OF SALES; APPLICATION FOR REGISTRATION.

(1) Except as provided in sections 189.03, 189.04, 189.05, and 189.08, no issuer, dealer or other person, directly or through an agent, shall in this state sell or take subscriptions for any security which has not theretofore been registered by the commission.

(2) The application for registration shall be verified and filed in the office of the commission and shall state such facts as the commission may require. The commission may, among other things, require the name and address of the issuer, the names and addresses of its officers, directors, trustees, or members, financial statements in detail covering the business of the issuer, a detailed statement of the plan upon which the issuer proposes to issue its securities, copies of any contracts it proposes to make concerning their issuance, copies of any prospectus, pamphlet or other advertising matter proposed to be used in connection with their sale, an inventory and appraisal of the assets by a qualified appraiser,

the amount and nature of securities issued for and the purchase price of any patent right, copyright, trademark, process or good will, other intangible assets, and copies of all instruments, pertaining to the organization of the issuer, or to the securities which it is proposed to issue and sell.

(3) If the issuer is a foreign corporation, or association, there shall be filed with the application a certificate of recent date executed by the proper officer of its home state, showing that such issuer is authorized to transact business therein; and if the issuer is also the applicant, there shall be filed with the commission, before the security is registered, a certificate of the secretary of state of Wisconsin that such foreign corporation has complied with the provisions of section 226.02. If not a corporation, but a non-resident, the issuer, if it is the applicant, shall file its written instrument in such form as the commission may require, irrevocably appointing the secretary and the assistant secretary of the commission, or either of them, its true and lawful attorney upon whom all processes in any action or proceeding against it affecting any rights arising out of the sale or purchase of securities may be served.

189.07 PROCEEDINGS; REGISTRATION. (1) Upon the filing of an application for registration of securities, the commission shall examine the same and the other papers and documents filed therewith, and it may make or have made a detailed inspection, appraisal, audit, or investigation of the property and affairs of the issuer. If

(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 unfair, inequitable, dishonest, or fraudulent;

(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 unfair, unjust, inequitable, or oppressive;

(d) the issue of securities for which registration is requested bears a reasonable proportion to other classes of securities and to the 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 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 amount of commissions, or other compensation, to be paid on such issue or sale, or the gross 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 or misleading and gives reasonably adequate information with reference to the securities, the assets, liabilities, profits, losses, and other material facts concerning the issuer and its business or plan of business ;

(g) it does not appear that any relationship exists between the issuer and the trustee by virtue of which the interests of the trustee might be in conflict with the interests of the purchaser ; and

(h) the methods to be used in the sale of the securities are not such as to be misleading or fraudulent as to the purchaser, the commission upon payment of the expense reasonably attributable to its examination, inspection, appraisal, audit, or investigation, shall register such securities ; otherwise it shall issue its findings and order denying the application. The commission shall maintain a record of all applications for registration of securities which shall include the name of the applicant, the name of the issuer, a description of the security for which registration is sought, and all orders of the commission relative to registration and the terms and conditions thereof, or to denial of the application.

(2) No evidences of debt secured by or issued pursuant to any deed of trust, trust mortgage, or other form of trust agreement shall be registered unless it is established that the trustee has authority so to act under the laws of the jurisdiction of its domicile ; that the trustee, if a natural person, is not an officer, director, trustee, shareholder, member, partner, agent, or employee of the issuer, and is not related to the issuer, if such issuer is a natural person, or to any of its partners if such issuer is a partnership, and has no business relationship with the issuer or with any of its officers, directors, or trustees if the issuer is a company other than a partnership, or with any of its partners if the issuer is a partnership, which may tend to interfere with his independence of action as trustee ; that, if the trustee is not a natural person and is not a trust company or a bank with trust powers, neither it nor its officers, or directors, directly or indirectly, own ten per cent or more of the voting stock of the issuer, and neither the issuer nor

its officers, directors, trustees, or members, directly or indirectly, own ten per cent or more of the voting stock of the trustee; that if the trustee is not a trust company or a bank with trust powers, the trust agreement by a specific covenant provides that the trustee shall segregate from its own funds all funds coming into its possession under the provisions of the trust agreement and to deposit all said funds immediately upon receipt thereof in a bank or trust company in an account, in its name as trustee thereof, not containing any of its own funds, and to keep on its books sufficient record to identify such funds as held by it in trust and that the agreement by its terms is binding upon any like successors in trust; that adequate provision has been made for the payment to the issuer or for disbursement in its behalf of amounts due to the issuer on account of the issuance and delivery of such securities and that, pending such payment or disbursement, the party responsible therefor, if not a bank or trust company, will deposit such amounts in a bank or trust company in an account, in its name as trustee thereof, not containing any of its own funds, and will keep on its books sufficient record to identify such funds as held by it in trust and that the agreement by its terms is binding upon any like successors in trust. The commission may refuse to register any evidence of debt if it finds that any relation exists which may interfere with the independence of action of the board of directors of the trustee. Whenever any trust agreement shall designate any depository or paying agent other than the trustee to receive or disburse any funds in connection with the performance of the trust, no relationship with the issuer shall exist which may tend to interfere with the independence of action of such depository or paying agent.

(3) No evidences of debt secured by mortgage on land or leasehold and buildings to be erected thereon shall be registered unless it is established that there will be no liens or encumbrances 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 erection of the building, that ample provision has been made for financing the completion of the building, and for the actual investment in the building of funds represented to be available for that purpose, and that the proceeds from the sale of such evidence 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; provided, however, that these requirements may be waived if such debt meets the standards for sale in advance of registration under subsection (1) (b) of section 189.08 of this chapter.

(4) No certificates representing proportionate shares in a fund of securities shall be registered unless it shall be established that such shares will not be sold unless the securities have been deposited with a trustee, that neither the certificates nor any coupons in any way refer to or promise payment of a fixed amount per fiscal period, that no reserve fund nor any fund otherwise designated shall be created which may have the effect of stabilizing distributions, that all trustee's fees (other than fees for transfer, exchange, registration, conversion, liquidation, or similar extraordinary fees) and management charges for the entire life of the trust will be paid immediately upon the sale of such shares, that in any case where any of the deposited securities are not listed on a stock exchange the applicant shall furnish proof that a ready market for such securities actually exists, that bid and asked prices are actually maintained, and that the method for determining the price of such securities on the basis of the bid and asked prices as *herein* provided is reasonable with reference to the securities to be deposited in trust, and unless the trust indenture or trust agreement authorizing the issuance of such certificates, or other irrevocable written instrument, shall in substance provide that:

(a) Such deposited securities shall have been fully paid for prior to the deposit thereof with said trustee.

(b) Such securities are to remain on deposit unless there is deposited with said trustee in lieu thereof the market value of such securities in money or other securities at their market value on the date of substitution.

(c) Income from securities and from money on deposit with the trustee, together with all other income from the trust fund, shall belong to the holders of said certificates; provided, however, that the rate of interest payable on all money on deposit shall be no less than the current rate on daily balances established by the clearing house association of which the trustee is a member, or if the trustee is not a member of a clearing house association, then at a rate not less than the current rate on daily balances established by the New York Clearing House Association.

(d) No capital distribution shall be made during the life of the trust payable out of the proceeds from the sale of any securities received by the trustee as split-ups of stock theretofore deposited or as stock dividends; provided, however, that provisions authorizing the trustee to distribute the proceeds from (1) the sale of stock subscription rights accruing to the trustee or its nominee as the record holder of title to the deposited securities, (2) the sale of fractional shares per unit received as the result of a stock dividend or stock split-up, (3) the sale of shares received as stock dividends but not in excess of ten per cent per annum of the stock with respect to which such dividend or dividends shall be paid, (4) the sale of securities received as a distribution upon a deposited security in the trust and which, if a security of the same company, has rights and preferences different (other than different voting rights) than the security upon which it is distributed, or to distribute the entire trust fund or any unit thereof at any time, shall not be deemed inconsistent with the provisions of this section. The term unit as used herein shall mean a number of full shares of each of the deposited stocks equal to the result obtained by dividing the number of shares of each stock deposited in a stock unit, as defined in the trust indenture, by the greatest common divisor applicable thereto.

(e) The trustee named in said trust agreement or trust indenture shall be a bank or trust company with a capital and surplus of at least one million dollars, and no resignation by, or discharge of, said trustee shall become effective until some other bank or trust company with a capital and surplus of at least one million dollars shall have accepted the trust, or until a trustee shall have been appointed by a court of competent jurisdiction and the trustee so named shall have accepted the trust, unless the agreement or indenture provides that the trust shall terminate unless a successor trustee shall have been appointed and shall have accepted the trust within a reasonable time.

(f) Neither the trustee nor the depositor shall have any lien upon the trust fund, nor any claim against holders of certificates for management charges or trustee's fees (other than fees for transfer, exchange, registration, conversion, liquidation or similar extraordinary fees).

(4m) However, such shares shall not be sold in this state at a price to exceed the sum of:

(a) The latest market price of the deposited securities available at the time of such sale, which, in the case of listed securities shall be round lot prices exclusive of commissions, and shall be based on actual stock exchange transactions, and which, in cases where the securities are not so listed, shall be the average of the bid and asked prices of the next preceding day for which bid and asked prices are available. To such market price may be added a sum not exceeding six and one-half per cent thereof, plus one-fourth of one per cent for each full year of the remaining life of the trust, but in no case shall such increase above the market price exceed ten per cent thereof.

(b) A sum in cash equal to the aggregate of the proportionate part applicable to the number of shares issued against stock units of any currently distributable funds held by the trustee.

(c) A sum in cash equal to all cash dividends payable on or after the date of the deposit to holders of such stock of record on a date prior to the date of such deposit, and the latest available market price figured at round lot prices of all stock dividends, shares of stock, subscription rights, or other property distributable on and after the date of such deposit with respect to shares of stock so deposited where such stock dividends, shares of stock, subscription rights and other property belong to previous holders of such stock of record of a date prior to the date of such deposit; provided, however, that such amount shall be added to the selling price only to the extent that such dividends, shares of stock, subscription rights and other property are payable or distributable with respect to similar shares of stock held by the trustee at the time of such deposit.

(4n) The commission shall, in registering such securities, fix the maximum price at which such securities may be sold and in fixing such price it shall consider the earnings of the issuers of the deposited securities and other relevant matters. Notwithstanding compliance with other provisions of this section, the commission may deny the application if it is not established by the applicant that the available supply of each of the securities to be deposited is sufficient so that the market price of such securities will not be materially influenced by purchase for any trust. Every registration issued under this subsection shall terminate one year from the date of issuance thereof, but upon written request and submission of evidence equivalent to the evidence required in the original application the commission may, from time to time, ex-

tend such registration, but no such extension shall exceed one year, and upon each request for an extension the commission shall charge and the applicant shall pay the expense reasonably attributable to the examination of such application.

(5) No securities of an insurance company, or of a company whose business consists chiefly in owning or controlling the securities of insurance companies, shall be registered without the approval of the insurance commissioner.

(6) The commission shall not register evidences of debt which are guaranteed by an insurance, guaranty or suretyship company as to the payment of principal or interest, unless such insurance, guaranty or suretyship company shall have been authorized by the commissioner of insurance of this state to conduct a guaranty or suretyship business.

(7) If the 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 existence of such rights shall not affect the registration of such securities nor shall the securities to be delivered on the exercise of the purchase warrants, subscription right, or conversion privilege, be required to be presently registered; except that the commission shall not register the securities carrying the warrants, rights, or conversion privilege, even though the said securities otherwise comply with the requirements for registration under this chapter, unless it shall be made to appear that neither such purchase warrants or subscription rights or conversion privilege, nor the securities to be delivered in fulfillment thereof, shall fail to comply with the provisions of subsection (1) of this section. If such 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 privilege, or at any time thereafter, for the delivery of the securities in accordance with the terms of such purchase warrants, subscription rights or conversion privilege, but if the commission shall have reason to believe that the holders of such purchase warrants, subscription rights, or conversion privilege are being solicited to exercise the same in such manner or under such circumstances that a fraud or imposition may be worked upon the holders thereof the commission may suspend the right to solicit or negotiate for an exercise of such purchase warrants, subscription rights or con-

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

(8) As to securities requiring registration nothing herein prohibits the persons interested in organizing and promoting a domestic corporation from making subscriptions for shares of a corporation prior to the incorporation thereof, but no subscriptions for such shares 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 therefor, and no such subscriptions shall be binding, and no payments thereon shall be accepted until such securities have been registered under this chapter, 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 may, in the name of and on behalf of the corporation, present an application for such registration.

189.08 SALE OF SECURITIES PRIOR TO REGISTRATION. (1) The following securities may be sold in this state by any licensed dealer prior to the registration thereof subject to the conditions herein stated, unless because of the unsound financial condition of the issuer, decrease in earnings, or other conditions affecting the soundness of the securities the commission shall find otherwise:

(a) Evidences of debt secured by mortgage or deed of trust upon land and buildings thereon if such mortgage or deed of trust is a first lien, and the total amount of such securities does not exceed fifty 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 special assessment taxes unpaid.

(b) Evidences of debt issued by the owner of a property, business, or industry which has been in continuous operation for not

less than two years, and whose net profits for each of the last two years, or whose average annual net profits for a period of not less than the last four, nor more than the last eight, years, plus interest during such years on funded debt and on such portion of the current debt which it shall be proved was incurred for net expenditures for fixed assets, and will not be outstanding after the present financing, aggregate not less than one and one-half times the annual interest charges on such debt and all other debt of equal and prior rank therewith to be presently outstanding.

(c) Preferred stock issued by the owner of a property, business, or industry which has been in continuous operation for not less than two years, and whose net profits for each of the last two years, or whose average annual net profits for a period of not less than the last four, nor more than the last eight, years, plus interest during such years on funded debt and on such portion of the current debt which it shall be proved was incurred for net expenditures for fixed assets, and will not be outstanding after the present financing, aggregate not less than one and one-half times the annual dividend or interest charges on such preferred stock and on all securities of equal and prior rank therewith to be presently outstanding.

(d) Common stock issued by the owner of a property, business, or industry which has been in continuous operation for not less than two years, and whose net profits applicable to such common stock for each of the last two years, or whose average annual net profits applicable to such common stock for a period of not less than the last four, nor more than the last eight, years, amount to not less than eight per cent on all common stock to be outstanding, computed at its sale price.

(2) Any dealer desiring to offer any such securities for sale in this state prior to the registration thereof shall, not later than the date of such offering, notify the commission in writing or by telegraph of his intention to sell such securities subject to the provisions of this section. Such notice shall include the name and address of the issuer, a description of such security and an agreement by said dealer that within thirty days, or within such further time as the commission may allow, an application for registration of such securities will be submitted by it or by the issuer or another licensed dealer on its behalf.

(3) If an application for registration of such securities is not submitted within the time above provided, or if the commission

shall find that such securities are not such as may be sold under the provisions of this section, it shall notify said dealer of that fact in writing, and all sales made hereunder shall be voidable at the election of the purchaser.

(4) Every dealer who shall have sold such securities shall, within thirty days after the date of said notice by the commission, make an offer in writing sent by registered mail to each purchaser at his last known address to repurchase said securities at the price paid, together with interest from the date of such purchase at the rate stipulated in such securities less any income received by such purchaser on account of such securities. Such offer shall fairly advise such purchaser of his rights and the period of time limited for the acceptance of such offer and shall be in such form as the commission may accept or prescribe. Within thirty days from the date of such offer the dealer shall furnish to the commission evidence satisfactory to it that such offer has been made as herein provided. The failure of such dealer to submit such evidence within the time herein provided shall be sufficient cause for suspending his license and, unless within thirty days after such suspension he shall have submitted proof of having made such offer, the commission shall revoke his license and thereupon such dealer shall be subject to the liabilities provided in section 189.15. No purchaser shall recover under this section who shall have refused or failed to accept such offer within thirty days from the date on which such offer was mailed. The remedy herein given to purchasers of such securities shall be the exclusive remedy of such purchasers under this chapter as to the sale by any licensed dealer of securities described in this section. The commission shall have authority, for cause, to terminate any dealer's right to proceed under the provisions of this section and may, notwithstanding compliance with the standards of this section, because of the unsound financial condition of the issuer, decrease in earnings, or other conditions affecting the soundness of the securities, find and determine that the securities are not such as may be sold under the provisions of this section.

189.09 ADVERTISING. (1) No issuer, dealer, agent, or other person shall, in this state, relative to any security, make any false or misleading representations, or issue, circulate or publish any advertising matter which shall contain any false or misleading statements or which shall contain unreasonably inadequate information concerning relevant matters therein mentioned or which

is not in compliance with the rules established by the commission, or issue, circulate or publish any advertising matter or make any written representation, unless the name of the issuer, dealer, agent, or other person issuing, circulating, or publishing the same shall be subscribed thereto, or make any 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 endorsed by the commission or the 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 issuer, dealer, agent, or other person shall in this state issue, circulate, or publish any advertising matter in connection with the sale of any security, registration of which is required pursuant to section 189.06 of this chapter, unless a copy thereof shall have been filed with the commission, except that lists and quotations of registered securities may be published without comment.

(3) No issuer, dealer, agent, or other person shall in this state circulate or publish any advertising matter or make any representation relating to any security, registration of which is required prior to the sale thereof, until such security shall have been registered, and unless the use of such advertising matter shall have been allowed by the commission, but this shall not apply to lists or quotations published without comment.

189.10 SUBSCRIPTION CONTRACTS. No issuer, dealer, agent, or other person shall in this state sell any security, registration of which is required prior to the sale, unless the contract of sale be written and a copy thereof delivered to the purchaser. The forms of all such contracts shall be submitted to the commission, and its approval for use obtained prior to the use thereof, and shall contain such provisions as the commission may require to give reasonably adequate notice to the purchaser of the nature of the business, its history, the character and purposes of the financing and such other information disclosed by the investigation of the commission as it may require. The commission shall have authority to determine the form, arrangement, type and the provisions thereof.

189.11 DEALERS AND AGENTS TO BE LICENSED. No person or company acting in the capacity of dealer or agent shall deal in or sell securities in this state without first procuring license therefor as provided in this chapter. Licenses issued to



dealers and agents shall terminate on the thirty-first day of December following the date thereof.

189.12 APPLICATION FOR DEALER'S LICENSE ; PROCEEDINGS. (1) Any person or company desiring to act as dealer shall file in the office of the commission a verified application setting forth the name and address of the applicant, the name and address of each of its officers, directors, partners, members or trustees, the previous business history of the applicant and of its officers, directors, partners, members, or trustees, in such detail as the commission may require, the general plan and character of the business of the applicant, and such other information as the commission may reasonably require to determine the trustworthiness of the applicant, and of its officers, directors, partners, members or trustees, and their competency to engage in the business of dealing in and selling securities in order to assure compliance with the purposes of this chapter.

(2) If the applicant is a foreign corporation, it shall file with its application a certificate executed by the proper officer of this state, showing that such applicant is authorized to transact business in this state, and, if a nonresident but not a corporation, the applicant shall file, in such form as the commission may prescribe, its written instrument irrevocably appointing the secretary and the assistant secretary of the commission, or either of them, its true and lawful attorney upon whom all summonses, complaints, pleadings, processes, orders, and notices in any civil action or proceeding against it in connection with any matter arising out of this chapter may be served.

(3) The commission shall examine the application and other papers and documents filed therewith and may make a detailed investigation into the business affairs of the applicant and the competency of its officers, directors, partners, trustees, or members. If it appears that the applicant and its officers, directors, partners, trustees, or members are trustworthy and competent, that their general business methods are fair and equitable, the commission shall, upon payment of the expense reasonably attributable to its investigation, issue a license authorizing the applicant to act as dealer; otherwise it shall deny the application and furnish to the applicant a copy of its order of denial.

(4) Any dealer who in this state shall sell any security on partial payments, or who shall issue his interim receipt or interim certificate for any money or other thing of value paid on the pur-

chase price of securities which shall be outstanding more than thirty days from the date of such payment, shall file with the commission detailed information disclosing the plan of business of said dealer with respect to the sale of securities on partial payments or the issuance of his interim receipts or interim certificates and shall establish that the plan under which such partial payments are received offers reasonable assurance of delivery to the purchaser, on completion of the contract, of the security on account of which such payments have been made by such purchaser, and that the plan under which such interim receipts or interim certificates are issued offers reasonable assurance of delivery to the purchaser, within a reasonable time, of the security purchased for which such receipt or certificate was issued. Whenever any dealer shall make any material change in such plan he shall forthwith notify the commission thereof in writing. The commission may make a detailed investigation of such plan and may require the dealer to furnish from time to time detailed information relative to the nature of securities sold under either of such plans, the amount of partial payments in the hands of such dealer, the amount of such dealer's interim receipts or interim certificates, issued and outstanding, and such other information concerning the plan and its operation as may be necessary to assure compliance with the purposes and provisions of this subsection. The commission may suspend the sale by any dealer of securities on partial payments, or the issuance by any dealer of such interim receipts or interim certificates, if it has reason to believe, or revoke the same if it shall find, that the plan employed by such dealer does not comply with the provisions and purposes herein set forth.

(5) Whenever there shall be any change in the personnel of the officers, directors, trustees, partners, or members of any licensed dealer, the dealer shall file in the office of the commission forthwith a full statement of such change giving the names of the persons retiring and the names, addresses, and business connections of persons newly elected or chosen, and such other information as the commission shall require.

(6) This section does not require that names and addresses of stockholders of a corporation, who are not its officers or directors, or changes in such membership be submitted, except that the commission may require, in individual cases, such information regarding such stockholders, or changes of stockholders, as it may consider necessary to make the determinations required by this section.

189.13 APPLICATION FOR AGENT'S LICENSE; PROCEEDINGS. (1) Any dealer, issuer, or other person who shall employ any agent to sell securities in this state on its behalf shall first obtain a license for such agent. The application for such license shall be filed in the office of the commission and shall contain a detailed statement as to the agent's previous business history, information relative to his character and business reputation and such other information as the commission may require to determine his trustworthiness and competence.

(2) The commission shall examine the application and other papers or documents filed therewith and may make a detailed investigation into the business affairs and competency of the agent named. If it shall appear that the agent named is trustworthy and that his general business methods are fair and equitable the commission shall upon payment of the expense reasonably attributable to the investigation issue a license to such agent. Otherwise the commission shall deny such license and furnish a copy of its order of denial to the applicant and to the agent named.

189.14 COMMISSION'S POWERS. (1) The commission may, in the registration of any securities, impose such terms and conditions and establish such rules and regulations as may be reasonable or necessary to assure compliance with the provisions and purposes of this chapter and may, among other things, fix the price at which the securities may be sold, fix maximum commissions or other compensation to be paid for their sale, require that the proceeds from their sale be impounded under such terms and conditions as it may prescribe, require that securities issued for intangible assets, or for other assets in excess of their sale value, be placed in escrow under such terms and conditions as it may prescribe, require that reports of sales of such securities be filed with the commission at such times and in such form as it may prescribe, and require that information available to the applicant concerning the issuer or its business, property, or affairs be filed with the commission at such times and in such form as it may prescribe.

(2) The commission may make such rules and regulations relative to trust agreements, trustees and depositories in connection with securities subject to registration as may be necessary to assure compliance with the purposes and provisions of this chapter.

(3) The commission may make investigations and, upon reasonable notice and at such time and place as it may fix, hold hearings to ascertain whether misrepresentation has been made in the

application for registration, whether the issuer or applicant has conformed to the representations made to the commission, whether the terms, conditions, and other requirements fixed by the commission in the registration of the security and the requirements of this chapter have been complied with, whether any false or misleading representation has been made, or any material information withheld or any fraud committed in the sale of securities, or whether any fact exists or any act has been done which would be ground for refusing, suspending or revoking registration or for prohibiting the sale of securities not subject to registration.

(4) The commission may require from time to time, as may be reasonable, that any party responsible for the deposit of funds, referred to in subsection (2) of section 189.07, which is required by said subsection to keep on its books sufficient records to identify such funds as held by it in trust, file with the commission a verified statement as to its handling of funds in connection with any issue which has been registered, and if such funds are mingled with funds held in trust in connection with any other issue, or issues, a verified statement as to the handling of funds in connection with all such issues.

(5) The commission may for cause suspend or revoke the registration of any security. If registration of a security is suspended the commission shall forthwith give notice to the applicant who shall have filed the application for such registration. The applicant or any aggrieved party may within thirty days from the date of such suspension serve on the commission written demand for a public hearing which shall be held within a reasonable time thereafter, and, if such written demand is served, no order revoking the registration shall be issued until after such hearing. If the commission shall revoke the registration of any security, it shall issue its findings and order and furnish the applicant with a copy thereof.

(6) The commission 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 as to the conduct of the business of dealers and agents as may be reasonable and necessary to assure compliance with the provisions and purposes of this chapter.

(7) The commission may examine the books, records, and all papers relating to the business of any dealer to determine whether such dealer has pursued any course of business or engaged in any transaction which would be ground for refusal, suspension, or revocation of his license, and the refusal of any dealer to permit the examination of his books, records, or other papers relating to his business shall be ground for refusal, suspension, or revocation of such license.

(8) The commission may make investigations and may, upon reasonable notice, at such time and place as it may fix, hold hearings to ascertain whether the business methods and practices of any dealer or agent have been unfair or inequitable or whether any dealer, agent or other person or company has violated any of the provisions of this chapter or any order, rule or regulation of the commission hereunder, or has made any material misrepresentation to, or withheld or concealed any material fact from, the commission.

(9) The commission may, after hearing on not less than five days' notice, suspend any dealer's or agent's license if it shall find that the dealer or agent 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 has violated any of the provisions of this chapter or any lawful order of the commission, or has, in the sale of any security, made any promise of dividends, unless such dividends have already been declared, or has, directly or indirectly, divided compensation paid for the sale of securities with any person not licensed either as dealer or agent, or has made any material misrepresentation to the commission or has engaged in a course of business in evasion of the purposes of this chapter, or has engaged or is about to engage in any other unfair, inequitable, or fraudulent business practice. Such suspension shall be final unless, within the third limited in section 189.19, the dealer or agent suspended shall apply for a hearing under the provisions of that section. If a hearing is requested under the provisions of section 189.19, the provisions of said section shall apply with respect to further proceedings with reference to such suspension.

(10) The commission may appoint agents to make investigations and hold hearings in any and all matters arising under this chapter. The commissioners and the agents so appointed shall have the power to subpoena witnesses and administer oaths in

connection with the administration of this chapter. Each witness who shall appear before the commission, or its agent, and who was subpoenaed in its behalf shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record which shall be paid from the securities regulation appropriation. The commission or any party may in any investigation cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions in circuit courts. Any expense incurred by the commission in taking such depositions shall be paid as above provided.

(11) Whenever it shall appear, either upon complaint or otherwise, that in the issuance, sale, promotion, negotiation, advertisement, or distribution of any securities within this state, or in any reorganization, any issuer, dealer, agent, or other 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 pretense, representation, or promise, or that any such issuer, dealer, agent or other person shall have made, makes, or attempts to make in this state 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 fraudulent or which has operated or which would operate as a fraud upon the purchaser, or that any person or company 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 commission or the attorney-general or any district attorney may investigate and may, in addition to any other remedies, bring action in the name and on behalf of the state of Wisconsin against such issuer, dealer, agent, or other person concerned in or in any way participating in or about to participate in such practices, to enjoin such issuer, dealer, agent or other person from continuing such practices or transactions or engaging therein or doing any act in furtherance thereof or in violation of this act. In any such court proceeding the commission or the attorney-general or the district attorney may apply for the court's subpoena requiring forthwith the appearance of any defendant and his employees, salesmen, or agents and the production of documents, books, and records, as may appear necessary for the hearing of such petition, to testify and give evidence concerning the acts or conduct of things complained of in such application for injunction.

(12) The commission 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 to be unfair, inequitable, or fraudulent.

(13) The commission may establish rules to regulate the use of advertising matter in the sale of securities in this state to prevent the use of any advertising matter which may be false, misleading, inaccurate, or fraudulent, which may fail to fairly present material information or which may contain inadequate information as to any relevant matter referred to in such advertising. The use of any advertising not complying with such rules is hereby prohibited.

189.15 ILLEGAL SALES VOIDABLE. (1) Except as provided in sections 189.03, 189.04, 189.05 and 189.08 every sale of a security in violation of any provision of this chapter, or in violation of or noncompliance with the terms and conditions of registration therefor, or in violation of or noncompliance with any lawful order of the commission, shall be voidable at the election of the purchaser; and any issuer, dealer, or other 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, upon tender to such person, or into court, of the securities sold or of the contract made, for the full amount paid, together with interest from the date of payment, at the rate stipulated in the securities sold, or, if the securities do not bear interest, then at the legal rate, less any income received by such purchaser on such securities.

(2) No purchaser shall recover under this section who shall refuse or fail within thirty days from the date thereof to accept an offer in writing to take back the securities in question and to cancel said contract, accompanied by an offer in writing to pay the full purchase price, together with interest as above specified simultaneously with the return of such securities, less any income received by such purchaser on such securities.

(3) Notice of such election shall be given to the party from whom recovery will be sought within three months after the purchaser shall have knowledge that such security was sold in violation of this chapter or noncompliance with the terms and conditions of registration or any lawful order of the commission. Such notice shall be given by letter addressed to the person or company to be notified at his or its last known address, with proper postage

affixed, and deposited in a United States post office or mail box, or by personal service as in civil actions.

(4) No action shall be brought for relief under this section after three years from the date of such sale or contract for sale, but the time for commencing such action shall be extended by reason of any fact specified in sections 330.30 to 330.38, and for the time specified therein. No person or company that shall have filed with the commission or the secretary of state an appointment of a resident of this state as attorney to accept service of process shall be deemed a person out of this state within the meaning of this section.

(5) The provisions of this chapter shall not be construed to impair or limit the rights and remedies existing at common law or under any other chapter of the statutes of this state which any purchaser may have with respect to any cause of action existing exclusive of the provisions hereof.

189.16 CRIMINAL LIABILITY. (1) Any company shall be punished by a fine not exceeding ten thousand dollars who shall directly or indirectly sell or offer for sale any security contrary to the provisions of this chapter; or directly or indirectly sell or offer for sale any security in nonconformity with its representations to the commission in securing registration, or contrary to any order of the commission or condition in the registration of such securities; or apply any of the proceeds from the sale of any securities sold under registration, to any purpose other than the purpose or purposes specified in procuring registration, or apply any greater or different amount to any purpose than that allowed in the registration of such securities.

(2) Every officer, agent, or employee of any issuer and every dealer, agent, and every other person shall be punished by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or by both, who authorizes, directs, aids in or consents to, the issue or sale of, or issues or executes or sells, or causes or assists in causing to be issued, executed or sold, any security in nonconformity with any conditions of registration, or contrary to the provisions of this chapter, or to any lawful order of the commission; or authorizes, directs, or aids in or consents to, the issue or sale of, or issues or executes or sells, or causes or assists in causing to be issued, executed or sold any security, knowing said issue, execution or sale to be in nonconformity with



the representations made to the commission in securing registration; or in, or in connection with, any application to the commission, or in, or in connection with, any proceedings before it, or in, or in connection with, any examination, audit, or investigation made by the commission, or on its authority, knowingly, or negligently makes any false statement or representation of a material fact; or with knowledge or by reason of his office, position or occupation should know of its falsity, files or causes to be filed in the office of the commission any material false statement or representation concerning any dealer, or issuer of securities, or the property which it then holds, or proposes to acquire, or its financial condition, or other affairs, or concerning its proposed plan of business, or concerning the officers of any issuer, or dealer, or the securities which any issuer proposes to issue; or with knowledge of the falsity of any such material statement or representation, issues, executes, or sells, or causes to be issued, executed, or sold, any security of the issuer concerning which the false statement was made to the commission; or directly or indirectly, applies or causes or assists in causing to be applied the proceeds or any part thereof from the sale of any security to any purpose which he knows, or should know by reason of his office, position or occupation, to be contrary to the representations made in the application to the commission, or contrary to the terms and conditions of registration, or to any purpose specified in an amount which he knows to be in excess of the amount limited in the application or as a condition to registration to be used for such purpose, or knowingly makes any false or misleading representations, or issues, circulates or publishes, or causes to be issued, circulated, or published, or consents to the issue, circulation, or publication of any advertising matter, relating to any security, contrary to the provisions of this act or to any lawful order of the commission; or commits any fraud or in any other respect wilfully violates or fails to comply with any of the provisions of this chapter or the terms and conditions of any registration or any lawful order of the commission under the provisions of said chapter.

(3) No corporation subject to the provisions hereof shall be excused from complying with any of the provisions of this chapter in respect to the production of or submission to examination of its books, papers, contracts, agreements, records, files, or documents in its possession or under its control in obedience to the order of the commission, in connection with any investigation or

hearing undertaken by or on behalf of or conducted by the commission under this chapter, because the testimony, evidence, or information documentary or otherwise, so produced or submitted to examination by said commission, may subject it to a penalty or forfeiture, or be excused from making true answer under oath by and through its properly authorized officer or agent when required by law to make such answer in any proceeding pending before the commission upon any such ground or reason.

(4) No dealer or agent or employee of a dealer, and no issuer or agent or employee of an issuer subject to the provisions of this chapter 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 the order or subpoena of the commission for use in any proceeding before the commission or for examination by or on behalf of the commission by its authorized agent because the testimony, evidence, or information, documentary or otherwise, so produced or submitted to examination by or on behalf of said commission may tend to criminate him or subject him to a penalty or forfeiture, but no such dealer, or agent, or employee of a dealer, and no such issuer, or agent or employee of an issuer 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 proceeding or investigation before the commission, except in a prosecution for perjury or false swearing in connection therewith.

(5) An indictment or information for any offense which may be punished under the provisions of this section must be found or filed within six years after the commission thereof.

189.17 ATTORNEY. (1) For the purpose of facilitating enforcement of this act, one or more of the attorneys employed by the commission in the administration of this act, when this act shall become effective, shall, at the commission'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 commission in administering and in enforcing this act. Their successors shall be appointed by the commission with the consent of the attorney-general, subject to the provisions of chapter 16.

(2) The attorney-general, or the district attorney of any county, shall institute and prosecute actions and proceedings for the

enforcement of this chapter. Whenever, after an examination, investigation, or hearing under this act, the commission is of the opinion that any act has been done for which criminal liability may be enforced, the commission shall certify the record to the district attorney of the county in which such acts occurred. The district attorney of such county shall, within ninety days after receipt of such record, file a written statement with the commission 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.

(3) On request of any district attorney the commission shall assist in the prosecution of any case brought under the provisions of this act. The commission may assign any member of its staff including an assistant attorney-general appointed under the provisions of subsection (1) of this section to render such assistance.

189.18 ORDERS, PRIMA FACIE LAWFUL. All findings, decisions, orders, and regulations of the commission shall be in force and shall be prima facie lawful, and all rules and regulations prescribed by the commission shall be in force and shall be prima facie reasonable, until finally found otherwise in an action brought for that purpose pursuant to the provisions of section 189.19.

189.19 APPEAL FROM COMMISSION. (1) Within thirty days after any order or determination has been made and filed by the commission under the provisions of this chapter, any interested party may apply to the commission for a hearing in respect to any matters determined in said proceeding, and such hearing shall be held within ten days after said application is received by the commission. The application for a hearing shall set forth specifically the ground or grounds on which the applicant considers said order or determination to be unlawful or unreasonable. No action to set aside or vacate any order or determination shall lie in any court unless the plaintiff shall have made, within the time limited herein, application to the commission for a hearing. If, after such hearing, it shall appear that the original order or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify, or suspend the same accordingly, and any order or determination after such hearing, reversing, changing, modifying, or suspending the original order or determination shall have the same force and effect as an original order or determination. If within fifteen days after the conclusion of said hearing the commission shall fail to issue an order affirming, reversing,

modifying or suspending its original order or determination, it shall be deemed to have affirmed said original order or determination.

(2) It is hereby declared that the legislative powers of the state, in so far as they are involved in the making and filing of orders and determinations by the commission, have not been completely exercised until the commission has held a hearing and made and filed its order or determination after such hearing, as provided for in this section.

(3) Every person aggrieved by any order or determination of the commission may commence an action in the circuit court for Dane county against the commission as defendant to vacate and set aside such order or determination on the ground that it is unlawful or unreasonable, in which action the complaint shall be served with the summons. The answer of the commission to the complaint shall be served and filed within twenty days after service of the complaint, whereupon such action shall be at issue and stand ready for trial upon ten days' notice. The action shall be heard and determined upon the record of the proceedings before the commission as certified to by it and transmitted by it to the clerk of the circuit court as provided in section 196.35, supplemented by such different or additional evidence as the parties may introduce. Any person, not a party to the action, but having an interest in the subject thereof, may be made a party.

(4) Every action in any court to vacate or amend any determination or order of the commission or to enjoin the enforcement thereof or to prevent such order or determination from becoming effective shall be commenced, and every appeal to any court or right of recourse to any court shall be taken or exercised within sixty days after the commission shall have made and filed its order after hearing as provided in subsection (2) of this section. The right to commence any such action or to take or exercise any such appeal or right of recourse in any court, shall terminate absolutely at the end of such sixty days.

(5) Sections 196.43 to 196.48, inclusive, shall be applicable to actions brought under the provisions of this section.

189.20 SERVICE ON NONRESIDENTS. In any civil action or proceeding in this state, arising out of or founded upon any fraud, any violation of this chapter, or of any lawful order of the commission in which any issuer or dealer, who shall have appointed the secretary and the assistant secretary of the commission,

or either of them, his attorney, shall be a party, service of summonses, complaints, pleadings, processes, orders or notices may be made upon such attorney who shall forthwith forward by mail, postage prepaid, to the person designated in the appointment at the address stated in such instrument, or, if no such designation has been made, to the company or dealer at its last known post-office address, a copy of such papers; thereupon, service of such papers upon such issuer or dealer shall be deemed complete personal service. The certification of the commission under its official seal, of such service, shall be sufficient proof thereof.

189.21 FEES. (1) The commission shall collect, as a filing fee, from each applicant for a dealer's license, twenty-five dollars and for each application for agent's license, three dollars.

(2) The commission shall collect, as a filing fee, for each application for registration of securities, a fee of ten dollars plus fifty cents per thousand for each thousand dollars par value of each entire authorized issue of securities, registration for part or all of which shall be applied for, but in no case shall the filing fee be more than one hundred forty dollars for each such issue. If any such securities shall have no par value, the price at which such applicant proposes to issue or sell the same shall be deemed the par value for the purpose of computing the filing fee to be paid by such applicant.

(3) The expense reasonably attributable to any examination or investigation, including any inspection, appraisal, or audit of any application for registration of securities or for any dealer's or agent's license or for revocation of any order of suspension issued under sections 189.03, 189.04 and 189.05 shall be borne by the applicant. Upon the filing of any application for dealer's or agent's license requiring investigation and upon the filing of any application for registration of securities, and upon the filing of any application for revocation of any order of suspension issued under sections 189.03, 189.04, or 189.05, the commission shall advise the applicant of the estimated expense reasonably attributable to such examination or investigation and, after the deposit of such sum with the commission, the examination or investigation shall be commenced. If the commission shall find during its examination or investigation that such expense will be greater than had been estimated, it shall advise the applicant of the estimated additional amount, and the applicant shall thereupon deposit such amount with the commission. Upon the completion of any such examina-

tion or investigation the commission shall ascertain the expense reasonably attributable thereto and render a bill therefor by registered mail to the applicant and complete payment shall thereupon be made. If the amount of deposits exceed the expense reasonably attributable to such examination or investigation, the commission shall refund to the applicant the difference. No security shall be registered and no dealer's or agent's license concerning which any investigation shall be required shall be issued until the entire expense reasonably attributable thereto shall have been paid to the commission. If complete payment is not made within thirty days after the submission of the final bill, the application may be denied.

(4) The commission shall collect, for each issue of securities offered under the provisions of section 189.04, a fee of ten dollars, but only one such fee shall be collected for each such issue irrespective of the number of notices of intention to sell filed under said section.

(5) The commission shall pay all fees collected under this section into the state treasury. All fees collected under subsections (1) and (2) of this section shall be credited to the general fund, and all other fees and charges collected in connection with the administration of this chapter shall be credited to the appropriation of the commission under subsection (4) of section 20.51.

189.22 ORDERS; FINDINGS; FORM; EVIDENCE. (1) The commission may execute in duplicate any order, finding, license, or evidence of registration issued by it, 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 made, executed, or issued by the commission, and of all papers filed in its office, when certified by the secretary or the assistant secretary of the commission 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 commission and every report made to it by any deputy, clerk, or other person employed by it, of any examination, audit, or investigation made by him or under his direction, and copies of such reports, certified by the secretary or the assistant secretary of the commission, shall be prima facie evidence of the facts therein stated for all purposes in any action or proceeding wherein any issuer, dealer, agent or the commission is a party.

(3) The certificate of the secretary or the assistant secretary of the commission to the effect that a specified company or person is not or was not on a specified date licensed as a dealer or agent, 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, suspension, cancellation, or revocation of any such license or registration, or as to the existence or non-existence of the same, shall be prima facie evidence of the facts stated therein for all purposes in any action or proceeding in the courts in this state.

(4) In any prosecution or proceeding hereunder, the fact that a security or transaction is exempt from the provisions of this act shall be matter of defense, and the burden of proof of any such exemption shall be upon the party claiming the benefit thereof.

(5) In any prosecution for violation of section 189.11 hereof proof of facts otherwise establishing that a person or company 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.

189.23 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.

189.24 SEPARABILITY OF PROVISIONS. The legislature intends 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.

363.02 (8) To search for and seize any books, records or papers used or kept or to be used in the sale of securities contrary to the provisions of chapter 189.

SECTION 4. (1) All records relating to matters which have come before the commission in the administration of the act hereby repealed shall be kept by the commission for a period of ten years from and after the date this act becomes effective.

(2) Nothing herein shall be construed to cancel any permit, or any broker's or agent's certificate in effect on the date when this act becomes effective, but such permits and certificates shall be subject to suspension or revocation for any cause for which any registration or any dealer's or agent's license issued under the provisions of this act could be suspended or revoked.

(3) All applications for permit, all notices of the offering of Class A securities in advance of the permit, and all applications for brokers' and agents' certificates pending before the commission on the date this act becomes effective shall be subject to the act hereby repealed, and action by the commission shall be determined by its provisions. Any interested party may apply to the commission for registration of any security under this act for which permit is in effect under the provisions of the act hereby repealed without payment of any filing fees, but subject to the payment of the expense reasonably attributable to any examination or investigation which may be required to determine whether such securities comply with the standards of this act.

(4) The repeal of chapter 189, herein provided, shall not affect any rights or proceedings, civil or criminal, which have arisen or which may hereafter arise thereunder, or under the administration thereof, or invalidate any deposits in escrow, or contracts entered into by the issuer of securities for the benefit or security of any person or any power of attorney for service of process. The public service commission shall in all such cases proceed in all respects touching such contracts and other agreements as if such chapter had not been repealed.

SECTION 5. This act shall take effect sixty days after passage and publication.

Approved May 23, 1933.

No. 52, S.]

[Published May 26, 1933.

### CHAPTER 159.

AN ACT to amend 6.23 (14), 6.66 (2), 15.33 (1), (3), 15.82, 16.01 (2), 16.20 (3), 16.26, 23.09 (14), 25.17 (1), 29.345 (1) (j), 35.27, 35.92 (1), 61.30, 67.04 (2) (b), 71.04 (3), 71.26