ENROLLED

House Bill No. 234

(By Mr. [Name]

Cons. on Insurance)

PASSED March 12, 1949

In Effect [Blank] from [Blank] Passage
ENROLLED
COMMITTEE SUBSTITUTE FOR
House Bill No. 234

[Originating in the Committee on Insurance.]

[Passed March 12, 1949; in effect from passage.]

AN ACT to repeal section twenty, twenty-one, twenty-two, twenty-three, twenty-five and twenty-six, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said article by adding thereto twelve new sections to be numbered, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven and forty-eight, all relating to the investment of the capital, surplus, assets and other funds of life insurance companies organized under the laws of this state.

Be it enacted by the Legislature of West Virginia:

That sections twenty, twenty-one, twenty-two, twenty-three, twenty-five and twenty-six, article three, chapter thirty-three
of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that said article be amended by adding thereto twelve new sections to be numbered thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five, forty-six, forty-seven and forty-eight, to read as follows:

Section 37. Authorized Investments.—The capital, surplus, assets, and other funds of life insurers organized under the laws of this state shall be invested as provided in this article, and not otherwise.

Sec. 38. General Qualifications.—No security or other investment shall be eligible for purchase or acquisition unless it is interest bearing or interest accruing or dividend or income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon; except real estate, as provided by section forty-one of this article. No security shall be eligible for purchase at a price above its market value.

Sec. 39. General Limitation Any One Person.—An insurer shall not have at any time, except with the consent
of the commissioner, any combination of investments in or loans upon the security of the obligations, property, and securities of any one person, institution, or municipal corporation aggregating an amount exceeding five per cent of the insurer's assets. This section shall not apply to investments in or loans upon the security of general obligations of or obligations fully guaranteed by the government of the United States or of any state or territory of the United States, or the District of Columbia, or to political subdivisions of the State of West Virginia, nor to investments in foreign securities pursuant to paragraph (a) of section forty-two nor to policy loans made pursuant to section forty-five of this article.

Sec. 40. Investments in Securities.—(a) Any domestic insurer may invest in the following securities:

1. Bonds or securities which are the direct obligation of or which are secured or guaranteed in whole or in part as to principal and interest by the United States, any state or territory of the United States, or the District of Columbia, where there exists the power to levy taxes for the prompt payment of the principal and interest of
such bonds or evidences of indebtedness, and, in bonds
issued by the federal land banks.

(2) Bonds or evidences of indebtedness which are di-
rect general obligations of any county, district, city, town,
village, school district, park district, or other political
subdivision of this state or any other state or territory
of the United States, or the District of Columbia, or of
the Dominion of Canada, which shall not be in default
in the payment of any of its general obligation bonds,
either principal or interest, at the date of such invest-
ment; where they are payable from ad valorem taxes
levied on all the taxable property located therein and
the total indebtedness after deducting sinking funds
and all debts incurred for self-sustaining public works
does not exceed ten percentum of the actual value of all
taxable property therein on the basis of which the last
assessment was made before the date of such invest-
ment.

(3) Obligations issued or guaranteed by the interna-
tional bank for reconstruction and development.

(4) Entire first mortgages on improved unencumbered
real estate or the entire issue of bonds secured thereby located within any of the states of the United States or the District of Columbia worth at least fifty percentum more than the amount loaned thereon, based on sound appraisal by a competent appraiser and duly certified by him, provided that the investment in any one mortgage or any one issue of bonds or any one contract for deed does not exceed twenty thousand dollars or two percentum of the company's assets, whichever is the greater.

"Improved real estate", as used in this section, means all farm land which has been reclaimed and is used for the purpose of husbandry, whether for tillage or pasture, and all real property on which permanent buildings suitable for residence or commercial use are situated. Real property shall not be deemed to be encumbered within the meaning of this section by reason of the existence of instruments reserving or excepting mineral rights and interests, rights-of-way, sewer rights and rights in walls or easements, nor by reason of building restrictions or other restrictive covenants, nor by reason of the fact
that it is subject to lease under which rents or profits are reserved to the owners; provided that the security for such investment is a full and unrestricted first lien upon such real property and that there is no condition nor right of re-entry or forfeiture under which such investments can be cut off, subordinated or otherwise disturbed.

Notwithstanding the restrictions herein set forth any domestic insurer may invest (1) in bonds or notes secured by mortgage or trust deed insured by the federal housing administration or in debentures issued by it under the terms of an act of Congress of the United States entitled the "National Housing Act", as heretofore or hereafter amended and (2) in securities issued by national mortgage associations established by or under the authority of the National Housing Act, and (3) in bonds or notes secured by mortgage or trust deed guaranteed as to principal by the administrator of veterans' affairs pursuant to the provisions of Title III of Act of Congress of the United States as of June twenty-two, one thousand nine hundred forty-four, entitled the "Servicemen's Re-
Adjustment Act of one thousand nine hundred forty-four”, as heretofore or hereafter amended.

Notwithstanding the restrictions herein set forth the amount of any first mortgage investment as limited by the first paragraph of this subsection (4) may be exceeded if and to the extent that such excess shall be guaranteed by the administrator of veterans’ affairs pursuant to the provisions of Title III of an Act of Congress of the United States of June twenty-two, one thousand nine hundred forty-four, entitled “Servicemen’s Readjustment Act of one thousand nine hundred forty-four”, as heretofore or hereafter amended.

No such domestic insurer shall in any manner, either directly or indirectly, by means of corporations, holding companies, trustees or otherwise, invest in real estate securities junior to first mortgages unless the first mortgage in its entirety is owned by the insurer.

(5) Subject to the limit set forth in subsection (b), bonds, or evidence of indebtedness issued or guaranteed by any railroad corporation or corporations (other than those organized and chartered for the sole purpose of...
holding stock of other corporations) created under the laws of the United States or any of the states of the United States or the District of Columbia or any certificates of any equipment trust created on behalf of any such railroad corporation.

(6) Subject to the limit set forth in subsection (b), bonds or evidence of indebtedness of any solvent public utility corporation or corporations (other than those organized and chartered for the sole purpose of holding the stock of other corporations) created under the laws of the United States or of any of the states of the United States or the District of Columbia.

(7) Subject to the limit set forth in subsection (b), bonds or evidences of indebtedness issued by any solvent corporation or corporations (other than those mentioned in paragraphs (5) and (6) and other than corporations organized and chartered for the sole purpose of holding the stock of other corporations) created under the laws of the United States or of any of the states of the United States or the District of Columbia.

(8) Preferred or guaranteed stock issued or guar-
anteed by any solvent corporation or corporations created under laws of the United States or any of the states of the United States or the District of Columbia: Provided, That such stock are not in default as to payment of any current dividends.

Such domestic insurer shall not invest in or loan any of its funds on its own stocks.

(9) Loans upon the pledge of bonds, mortgages, securities, stock or evidence of indebtedness acceptable as investment for the lending insurer under the terms of this article and subject to the same limits as to each security as is provided herein for investment, if the face or current market value whichever is less of such mortgages is more than the amount loaned thereon, and the current market value of such bonds, securities, preferred or guaranteed stock or evidences of indebtedness is at least twenty percentum more than the amount loaned thereon. This limitation shall not apply to loans on the pledge of bonds or securities of or guaranteed by the United States.

(10) Shares of insured state chartered building and
loan associations and federal savings and loan associations, if such shares are insured by the federal savings and loan insurance corporation as specifically set forth under the terms of Title IV of an Act of the Congress of the United States entitled the "National Housing Act".

(11) In bank certificates of deposit and bankers' acceptances, and other bills of exchange of the kind and maturities made eligible by law for purchase in the open market by federal reserve banks.

(b) Any domestic life insurer, in addition to the investments permitted by subsection (a), may invest in the shares of capital stock and securities of any solvent corporation created under the laws of the United States, or of any of the states of the United States, or the District of Columbia, provided that such corporation has earned during any three of the five fiscal years next preceding the date of the investment, a sum applicable to dividends equal in the aggregate to not less than twelve percentum of the par value (or, in the case of shares having no par value, the issue value) of its outstanding
shares. Such insurer shall not invest in more than five per centum of the total number of shares of any one such corporation, or more than two per centum of its assets in the shares (or securities) of any one such corporation, nor shall it invest in shares and securities permitted by this subsection, more than the amount of its capital and surplus in the case of a stock company, or surplus in the case of a company other than stock.

Sec. 41. Restriction on Acquisition and Holding of Real Property.—(a) No domestic life insurer may acquire or hold real property except as follows:

(1) Such as shall be requisite for the convenient accommodation of the transaction of its own business; the amount invested in such real property shall not exceed five percentum of the investing insurer's assets but the commissioner may grant permission to the insurer to invest in real property for such purpose, in such increased amount as he may deem proper on the showing made if, upon a hearing held before him, he shall find that the amount represented by such percentage of its assets is insufficient to provide convenient accommodations for the
(2) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for monies due;

(3) Such as shall have been conveyed to it in satisfaction of debts previously contracted in course of its dealings;

(4) Such as shall have been purchased at sales on judgments, decrees or mortgages obtained or made for such debts; and

(5) Such unencumbered real property as shall have been acquired in whole or in part, in exchange for real property of approximately the same value theretofore legally acquired and held by it;

(6) Such as shall be held as security for contracts for deeds;

(7) (A) Such as may be acquired for the purpose of leasing the same to any person, firm, or corporation, or real estate already leased under the following conditions;

a. (1) Where there has already been erected on said property a building or other improvements satisfactory
to the purchaser, or (2) where the lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor, or (3) where the lessor under the terms and conditions of a lease executed and entered into simultaneously with the purchaser of the property agrees to erect a building or other improvements on said property.

b. That the said improvements shall remain on the said property during the period of the lease, and in cases where the said improvements are put upon said property at the cost of the lessee the said improvements at the termination of the lease shall vest, free of liens, in the owner of the real estate.

c. That during the term of the lease the lessee shall keep and maintain the said improvements in good repair.

Real estate acquired pursuant to the provisions of this part (A) shall not be valued in an amount exceeding the amount actually invested reduced each year by equal decrements sufficient to write off at least seventy-five percent of the investment at the normal termination of the lease or at the end of thirty years should the term of the
lease be for a longer period. The total investments of any company under this part (A) shall not exceed five per cent of its assets, nor more than the sum of its capital and surplus, whichever is less.

(B) Subject to approval of the commissioner, real estate for recreation, hospitalization, convalescence and retirement purposes of its employees. Such investment shall not exceed five per cent of the company's surplus.

(C) No investment shall be made by any company pursuant to this paragraph (7) which will cause such company's investment in all real property owned or held by it directly or indirectly to exceed ten per cent of its assets.

(b) All real property acquired for purposes, or in the manner, specified in paragraphs other than paragraphs (1), (6) and (7) of subsection (a) of this section may be held for a period of five years after the insurer shall have acquired title to the same and thereafter until the date specified in an order issued by the commissioner directing the insurer to dispose of the same. The date specified in such order shall be not less than six months
from the date of the service of the said order upon the
insurer. No such order shall be issued without a hearing
and a determination by the commissioner that the inter-
ests of the insurer will not suffer materially by the sale of
the same within the period to be specified.

Sec. 42. Foreign Securities.—(a) An insurer authorized
to transact insurance in a foreign country may invest any
of its funds, in aggregate amount not exceeding by more
than five per cent, its deposit and reserve obligations in-
curred in such country, in securities of or in such country
possessing characteristics and of a quality similar to those
required pursuant to this chapter for investments in the
United States.

(b) An insurer may invest any of its funds, in an aggre-
gate amount not exceeding five per cent of its assets, in
addition to any amount permitted pursuant to paragraph
(a) of this section, in obligations of the governments of
Canadian provinces or municipalities, and in obligations
of Canadian corporations which are otherwise of equal
quality to like United States public or corporate securities
as prescribed in this act.
Sec. 43. *When Restrictions not Applicable.*—(a) The restrictions of sections forty and forty-one shall not apply to securities or other assets acquired through merger or consolidation with any other insurer or through a reinsurance agreement, if such assets when originally acquired constituted legal investments for the merger, consolidated, or ceding insurer which acquired them, nor shall provisions apply to securities, obligations or other assets accepted incident to the adjustment or realization of any debt or investment when deemed by the board of directors or investment committee to be in the best interests of the insurer, but subject to the provisions of subsection (b) all such securities, obligations or other assets so acquired or accepted after the effective date of this act which are not in accordance with the provisions of this chapter shall be disposed of not later than five years after the date of such acquisition or acceptance, or if acquired prior to the effective date of this act, not later than five years after such effective date.

(b) The commissioner upon application by the insurer may extend the time for the disposition of such securities,
obligations or other assets for such period or periods as
he may deem proper on the showing made, if he is satis-
ified that such insurer will suffer materially by the forced
sale thereof; and the commissioner shall grant a hearing
to the insurer upon request.

Sec. 44. Excessive Commissions Prohibited; Interest of
Officers and Directors.—No domestic insurer shall pay
any commission or brokerage for the purchase or sale of
property in excess of that usual and customary at the
time and in the locality where such purchases or sales
are made. No officer or director of a life insurance com-
pany shall receive any money or valuable thing for ne-
gotiating or recommending any loan or investment from
such company, or for selling or aiding in the sale of stocks,
securities or property to or by such company.

Sec. 45. Authorization of Investments.—No investment,
loan, sale or exchange thereof shall, except as to the policy
loans of a life insurer, be made by any domestic insurer
unless authorized or approved by its board of directors
or by a committee thereof charged by the board of direc-
tors or by the by-laws with the duty of making such in-
vestments, loan, sale or exchange. The minutes of any
such committee shall be recorded and reports thereof shall
be submitted to the board of directors for approval or
disapproval.

Sec. 46. Record of Investments.—As to each investment
or loan of the funds of a domestic life insurer a written
authorization thereof in permanent form shall be made,
and signed by the officer or chairman of the committee
authorizing the investment or loan.

Sec. 47. When Investments Must Comply.—The invest-
mements in securities and real estate of all domestic insurers
shall be made to conform to the requirements of this act
by not later than five years after the effective date of
this act, but the commissioner may, on application by
the insurer, extend the time for such conformance for
such period or periods as he may deem proper on the
showing made, if he is satisfied that such insurer will
suffer materially by the forced sale of any securities or
property not conforming; and the commissioner shall
grant a hearing to the insurer upon request. Provided,
That any investments in common stocks lawfully made
prior to the effective date of this act may be retained by such insurers, any provisions of this act to the contrary notwithstanding.

Sec. 48. Personal Liability and Penalty for Improper Loan or Investment; Inconsistent Acts Repealed.—Every officer or director of a life insurance company knowingly consenting to a loan or investment, in willful violation of any of the provisions of sections thirty-seven, thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, forty-four, forty-five or forty-six of this article shall be personally liable to the company for any loss which may be sustained by such loan or investment, to be recovered in an action to be brought by the insurance commissioner on the complaint of any policyholder or stockholder in the company suffering thereby, and in addition thereto shall be guilty of a misdemeanor, and, upon conviction, punished by a fine of not more than one thousand dollars and imprisoned not more than one year. All acts and parts of acts inconsistent with the provision of this act are hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within APPROVED this the 18th day of March, 1949.

Governor

Filed in the Office of the Secretary of State of West Virginia

D. Pitt O'Brien,
SECRETARY OF STATE