

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959

ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 230

(By Mr. *Comm on the Judiciary*)

PASSED March 14 1959

In Effect 7 days from Passage



Filed in Office of the Secretary of State  
of West Virginia MAR 20 1959  
JOE F. BURDETT  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 230**

(Originating in the Committee on the Judiciary.)

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[Passed March 14, 1959; in effect ninety days from passage.]

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AN ACT to amend and reenact section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to securities in which fiduciaries may invest trust funds.

*Be it enacted by the Legislature of West Virginia:*

That section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *In What Securities Fiduciaries May Invest*  
2 *Trust Funds.*—Any executor, administrator, guardian,

3 curator, committee, trustee, or other fiduciary whose duty  
4 it may be to loan or invest money entrusted to him as  
5 such, may without any order of any court, invest the  
6 same or any part thereof in any of the following securities,  
7 and without liability for any loss resulting from invest-  
8 ments therein: *Provided*, That such fiduciary shall exer-  
9 cise the judgment and care under the circumstances then  
10 prevailing which men of prudence, discretion and intelli-  
11 gence exercise in the management of their own affairs,  
12 not in regard to speculation, but in regard to the perma-  
13 nent disposition of their funds, considering the probable  
14 income as well as the probable safety of their capital: (a)  
15 In bonds or interest-bearing notes or obligations of the  
16 United States, or those for which the faith of the United  
17 States is distinctly pledged to provide for the payment  
18 of the principal and interest thereof, including bonds or  
19 debentures issued under the "Federal Farm Loan Act",  
20 and in debentures issued by "Banks for Cooperatives"  
21 under the "Farm Credit Act of one thousand nine hundred  
22 thirty-three", as amended; and in debentures issued by the  
23 federal national mortgage association;

24 (b) In bonds or interest-bearing notes or obligations  
25 of this state;

26 (c) In bonds of any state of the United States which  
27 has not within ten years previous to the making of such  
28 investment defaulted in the payment of any part of either  
29 principal or interest on any of its bonds issued by author-  
30 ity of the Legislature of such state;

31 (d) In the bonds or interest-bearing notes or obliga-  
32 tions of any county, district, school district or independent  
33 school district, municipality, or any other political divi-  
34 sion of this state that have been issued pursuant to the  
35 authority of any law of this state, since the ninth day of  
36 May of the year one thousand nine hundred seventeen;

37 (e) In bonds and negotiable notes secured by first  
38 mortgage or first trust deed upon improved real estate  
39 in this state where the amount secured by such mortgage  
40 or trust deed shall not at the time of making the same  
41 exceed eighty per cent of the assessed value, or fifty per  
42 cent of the appraised value as determined by wholly dis-  
43 interested and independent appraisers, whichever value  
44 shall be the higher, of the real estate covered by such

45 mortgage or trust deed, and when such mortgage or trust  
46 deed is accompanied by a satisfactory abstract of title,  
47 certificate of title, or title insurance policy, showing good  
48 title in the mortgagor when making such mortgage or  
49 trust deed, and by a fire insurance policy in an old line  
50 company with loss, if any, payable to the mortgagee or  
51 trustee as his interest may appear: *Provided*, That the  
52 rate of interest upon the above enumerated securities in  
53 this subsection (e), in which such investments may be  
54 made, shall not be less than two per cent, nor more than  
55 seven per cent, per annum;

56 (f) In saving accounts and time deposits of bank or  
57 trust companies to the extent that such deposits are in-  
58 sured by the federal deposit insurance corporation, or by  
59 any other similar federal instrumentality that may be  
60 hereafter created, provided there shall be such an in-  
61 strumentality in existence and available for the purpose,  
62 or, by bonds of solvent surety companies: *Provided*, That  
63 the rate of interest upon such savings accounts or time  
64 deposits shall not be less than the rate paid other deposi-  
65 tors in such bank or trust company;

66 (g) In shares of state building and loan associations,  
67 or federal savings and loan associations, to the extent that  
68 such shares are insured by the Federal Savings and Loan  
69 Insurance Corporation, or by any other similar federal  
70 instrumentality that may be hereafter created, provided  
71 that there shall be such an instrumentality in existence  
72 and available for the purpose, or by bonds of solvent  
73 surety companies: *Provided*, That the dividend rate upon  
74 such shares shall not be less than the rate paid to other  
75 shareholders in such associations;

76 (h) In other securities of corporations organized and  
77 existing under the laws of the United States or of the  
78 District of Columbia or any state of the United States  
79 including, but not by way of limitation, bonds, debentures,  
80 notes, equipment trust obligations or other evidences of  
81 indebtedness, and shares of common and preferred stocks  
82 of such corporations and securities of any open end or  
83 closed end management type investment company or in-  
84 vestment trust registered under the Federal Investment  
85 Company Act of one thousand nine hundred forty, as from  
86 time to time amended, which men of prudence, discretion

87 and intelligence acquire or retain for their own account:

88 Provided and upon conditions however, that:

89 (1) No investment shall be made pursuant to the pro-  
90 visions of this subsection (h) which, at the time such in-  
91 vestment shall be made, will cause the aggregate market  
92 value thereof to exceed thirty-five per cent of the ag-  
93 gregate market value at that time of all of the property  
94 of the fund held by such fiduciary;

95 (2) No bonds, debentures, notes, equipment trust ob-  
96 ligations or other evidence of indebtedness of such cor-  
97 porations shall be purchased under authority of this sub-  
98 section (h) unless such obligation, if other than issues of  
99 a common carrier subject to the provisions of section  
100 twenty-a of the interstate commerce act as amended, shall  
101 be obligations issued, guaranteed or assumed by corpora-  
102 tions which have any securities currently registered with  
103 the securities and exchange commission; and

104 (3) No common or preferred stocks, other than bank  
105 and insurance company stocks, shall be purchased under  
106 authority of this subsection (h) unless currently fully  
107 listed and registered upon an exchange registered with

108 the securities and exchange commission as a national  
109 securities exchange. No sale or other liquidation of any  
110 investment shall be required solely because of any change  
111 in the relative market value of those investments made  
112 eligible by this subsection (h) and those made eligible by  
113 the preceding paragraphs of this section. In determining  
114 the aggregate market value of the property of a fund and  
115 the percentage of a fund to be invested under the pro-  
116 visions of this subsection, a fiduciary may rely upon pub-  
117 lished market quotations as to those investments for which  
118 such quotations are available, and upon such valuations  
119 of other investments as in the fiduciary's best judgment  
120 seem fair and reasonable according to available informa-  
121 tion.

122 Trust funds received by executors, administrators,  
123 guardians, curators, committees, trustees and other fi-  
124 duciaries may be kept invested in the securities originally  
125 received by them, unless otherwise ordered by a court  
126 having jurisdiction of the matter, as hereinafter pro-  
127 vided, or unless the instrument under which the trust  
128 was created shall direct that a change of investment be

129 made, and any such fiduciary shall not be liable for any  
130 loss that may occur by depreciation of such securities.

131 This section shall not apply where the instrument cre-  
132 ating the trust, or the last will and testament of any  
133 testator, or any court having jurisdiction of the matter,  
134 specially directs in what securities the trust funds shall  
135 be invested, and every such court is hereby given power  
136 specially to direct by order or orders, from time to time,  
137 additional securities in which trust funds may be invested,  
138 and any investment thereof made in accordance with any  
139 such special direction shall be legal, and no executor, ad-  
140 ministrator, guardian, curator, committee, trustee or other  
141 fiduciary shall be held for any loss resulting in any such  
142 case.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

W. W. Jasper Jr  
Chairman Senate Committee

Eudora Andrews  
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

J. Thomas Meyer  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

Ralph Bean  
President of the Senate

H. R. Pauley  
Speaker House of Delegates

The within approved this the 20th  
day of March 1959.

[Signature]  
Governor

