WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 230

(By Mr. Common the Judiciary)

PASSED March 14, 1959

In Effect 30 days from Passage

Filed in Office of the Secretary of State of West Virginia MAR 20 1959
JOE F. BURDETT SECRETARY OF STATE
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 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 perm-
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;
(b) In bonds or interest-bearing notes or obligations of this state;

c) In bonds of any state of the United States which has not within ten years previous to the making of such investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the Legislature of such state;

d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality, or any other political division of this state that have been issued pursuant to the authority of any law of this state, since the ninth day of May of the year one thousand nine hundred seventeen;

e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate in this state where the amount secured by such mortgage or trust deed shall not at the time of making the same exceed eighty per cent of the assessed value, or fifty per cent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value shall be the higher, of the real estate covered by such
mortgage or trust deed, and when such mortgage or trust
deed is accompanied by a satisfactory abstract of title,
certificate of title, or title insurance policy, showing good
title in the mortgagor when making such mortgage or
trust deed, and by a fire insurance policy in an old line
company with loss, if any, payable to the mortgagee or
trustee as his interest may appear: Provided, That the
rate of interest upon the above enumerated securities in
this subsection (e), in which such investments may be
made, shall not be less than two per cent, nor more than
seven per cent, per annum;
(f) In saving accounts and time deposits of bank or
trust companies to the extent that such deposits are in-
sured by the federal deposit insurance corporation, or by
any other similar federal instrumentality that may be
hereafter created, provided there shall be such an in-
strumentality in existence and available for the purpose,
or, by bonds of solvent surety companies: Provided, That
the rate of interest upon such savings accounts or time
deposits shall not be less than the rate paid other deposi-
tors in such bank or trust company;
(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that such shares are insured by the Federal Savings and Loan Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created, provided that there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the dividend rate upon such shares shall not be less than the rate paid to other shareholders in such associations;

(h) In other securities of corporations organized and existing under the laws of the United States or of the District of Columbia or any state of the United States including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness, and shares of common and preferred stocks of such corporations and securities of any open end or closed end management type investment company or investment trust registered under the Federal Investment Company Act of one thousand nine hundred forty, as from time to time amended, which men of prudence, discretion
and intelligence acquire or retain for their own account:

Provided and upon conditions however, that:

(1) No investment shall be made pursuant to the provisions of this subsection (h) which, at the time such investment shall be made, will cause the aggregate market value thereof to exceed thirty-five per cent of the aggregate market value at that time of all of the property of the fund held by such fiduciary;

(2) No bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of such corporations shall be purchased under authority of this subsection (h) unless such obligation, if other than issues of a common carrier subject to the provisions of section twenty-a of the interstate commerce act as amended, shall be obligations issued, guaranteed or assumed by corporations which have any securities currently registered with the securities and exchange commission; and

(3) No common or preferred stocks, other than bank and insurance company stocks, shall be purchased under authority of this subsection (h) unless currently fully listed and registered upon an exchange registered with
the securities and exchange commission as a national securities exchange. No sale or other liquidation of any investment shall be required solely because of any change in the relative market value of those investments made eligible by this subsection (h) and those made eligible by the preceding paragraphs of this section. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under the provisions of this subsection, a fiduciary may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuations of other investments as in the fiduciary's best judgment seem fair and reasonable according to available information.

Trust funds received by executors, administrators, guardians, curators, committees, trustees and other fiduciaries may be kept invested in the securities originally received by them, unless otherwise ordered by a court having jurisdiction of the matter, as hereinafter provided, or unless the instrument under which the trust was created shall direct that a change of investment be
made, and any such fiduciary shall not be liable for any loss that may occur by depreciation of such securities. This section shall not apply where the instrument creating the trust, or the last will and testament of any testator, or any court having jurisdiction of the matter, specially directs in what securities the trust funds shall be invested, and every such court is hereby given power specially to direct by order or orders, from time to time, additional securities in which trust funds may be invested, and any investment thereof made in accordance with any such special direction shall be legal, and no executor, administrator, guardian, curator, committee, trustee or other fiduciary shall be held for any loss resulting in any such case.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

Takes effect 90 days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

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

[Signature]
Governor