WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
SENATE BILL NO. 36

(By Mr. , Mr. President, and Mr. )

PASSED January 27, 1967
In Effect Passage
AN ACT to amend and reenact sections two and six, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fiduciary investments generally; specifying the securities in which fiduciaries may invest fiduciary funds; relating to the retention of fiduciary investments and court direction as to fiduciary investments; and relating to the establishment by certain banks and trust companies of common trust funds, the investment of such common trust funds and certain limitations and qualifications on fiduciary investments in such common trust funds.
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Be it enacted by the Legislature of West Virginia:

That sections two and six, 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:

§44-6-2. In what securities fiduciaries may invest trust funds.

Any executor, administrator, guardian, curator, committee, trustee, or other fiduciary whose duty it may be to loan or invest money entrusted to him as such, may, without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein: Provided, That such fiduciary shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the pay-
ment of the principal and interest thereof, including, but
not by way of limitation, bonds or debentures issued
under the “Federal Farm Loan Act”, debentures issued
by “Banks for Cooperatives” under the “Farm Credit Act
of One Thousand Nine Hundred Thirty-Three”, as amend-
ed, and debentures issued by the federal national
mortgage association; and in bonds, interest-bearing notes
and obligations issued, guaranteed or assumed by the in-
ternational bank for reconstruction and development or
by the inter-American development bank;
(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 author-
ity of the Legislature of such state;
(d) In the bonds or interest-bearing notes or obliga-
tions 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 au-
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(18) thority 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 sixty-six and two-
thirds per cent of the appraised value as determined by
wholly disinterested and independent appraisers, which-
ever 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, however,
That the rate of interest upon the above enumerated
securities in this subsection (e), in which such invest-
ments may be made, shall not be less than two per cent,
nor more than seven per cent, per annum;
(f) In savings accounts and time deposits of bank or trust companies to the extent that such deposits are insured by the federal deposit insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided there shall be such an instrumentality in existence and available for the purpose, or, by bonds of solvent surety companies: Provided further, That the rate of interest upon such savings accounts or time deposits shall not be less than the rate paid other depositors 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: And provided further, 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 fifty per cent of the aggregate market value at that time of all of the property of the fund held by such fiduciary. Notwithstanding the aforesaid percentage limitation the cash proceeds of the sale of securities received or purchased by a fiduciary and made
eligible by this subsection (h) may be reinvested in any securities of the type described in this subsection (h).

(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 obligations, 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.

(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 sub-
section, a fiduciary may rely upon published market
quotations as to those investments for which such quota-
tions are available, and upon such valuations of other in-
vestments 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 fiduci-
aries 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 creat-
ing the trust, or the last will and testament of any testa-
tor, 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.

§44-6-6. Establishment of common trust funds; investments.

Any bank or trust company qualified to act as fiduciary
in this state may establish common trust funds for the
purpose of furnishing, or making available, investments to
itself as fiduciary, or to itself and others, as cofiduciaries,
and may, as such fiduciary or cofiduciary, invest funds
which it lawfully holds for investment in interests in such
common trust funds, if such investment is not prohibited
by the instrument, judgment, decree or order creating its
fiduciary status or relationship, and if, in the case of
cofiduciaries, the bank or trust company procures the
consent of its cofiduciaries to such investment: Provided,
That unless each fiduciary acquiring or holding any inter-
est in any common trust fund is specifically permitted by
the instrument, judgment, decree or order creating the
fiduciary status or relationship to invest in securities other
than those described in section two of this article, or any
amendments or reenactments thereof, such common trust
funds shall be invested only in those securities described
in said section two and subject to the limitations and con-
ditions of said section, and any amendments or reenact-
ments thereof, except that a common trust fund or funds
may be established for the purchase of securities of the
type described in said section two without regard to the
percentage limitation specified in subparagraph (1) of
subsection (h) of said section two, in which event the
funds invested by a fiduciary in interests in such last
mentioned common trust fund or funds shall not exceed
the percentage limitation specified in said subparagraph
(1) of subsection (h) unless a larger investment is per-
mitt ed by the instrument, judgment, decree or order
creating the fiduciary status or relationship.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tempos
Chairman Senate Committee

Clayton C. Davis
Chairman House Committee

Originated in the Senate.

Takes effect upon Passage.

J. Sterling Major
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Howard Carson
President of the Senate

H. Lathan White
Speaker House of Delegates

The within approved this the 1st day of February, 1967.

Hulbert C. Smith
Governor