

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 36

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

PASSED January 27, 1967

In Effect from Passage

RECEIVED

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 2/1/67

#36

ENROLLED

Senate Bill No. 36

(By MR. CARSON, MR. PRESIDENT, AND MR. CARRIGAN)

[Passed January 27, 1967; in effect from 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.

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-

17 ment of the principal and interest thereof, including, but
18 not by way of limitation, bonds or debentures issued
19 under the "Federal Farm Loan Act", debentures issued
20 by "Banks for Cooperatives" under the "Farm Credit Act
21 of One Thousand Nine Hundred Thirty-Three", as amend-
22 ed, and debentures issued by the federal national
23 mortgage association; and in bonds, interest-bearing notes
24 and obligations issued, guaranteed or assumed by the in-
25 ternational bank for reconstruction and development or
26 by the inter-American development bank;

27 (b) In bonds or interest-bearing notes or obligations
28 of this state;

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

34 (d) In the bonds or interest-bearing notes or obliga-
35 tions of any county, district, school district or independent
36 school district, municipality, or any other political division
37 of this state that have been issued pursuant to the au-

38 thority of any law of this state, since the ninth day of
39 May of the year one thousand nine hundred seventeen;

40 (e) In bonds and negotiable notes secured by first
41 mortgage or first trust deed upon improved real estate in
42 this state where the amount secured by such mortgage or
43 trust deed shall not at the time of making the same exceed
44 eighty per cent of the assessed value, or sixty-six and two-
45 thirds per cent of the appraised value as determined by
46 wholly disinterested and independent appraisers, which-
47 ever value shall be the higher, of the real estate covered
48 by such mortgage or trust deed, and when such mortgage
49 or trust deed is accompanied by a satisfactory abstract of
50 title, certificate of title, or title insurance policy, showing
51 good title in the mortgagor when making such mortgage
52 or trust deed, and by a fire insurance policy in an old line
53 company with loss, if any, payable to the mortgagee or
54 trustee as his interest may appear: *Provided, however,*
55 That the rate of interest upon the above enumerated
56 securities in this subsection (e), in which such invest-
57 ments may be made, shall not be less than two per cent,
58 nor more than seven per cent, per annum;

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

69 (g) In shares of state building and loan associations,
70 or federal savings and loan associations, to the extent
71 that such shares are insured by the federal savings and
72 loan insurance corporation, or by any other similar federal
73 instrumentality that may be hereafter created, provided
74 that there shall be such an instrumentality in existence
75 and available for the purpose, or by bonds of solvent
76 surety companies: *And provided further,* That the divi-
77 dend rate upon such shares shall not be less than the rate
78 paid to other shareholders in such associations;

79 (h) In other securities of corporations organized and

80 existing under the laws of the United States or of the
81 District of Columbia or any state of the United States
82 including, but not by way of limitation, bonds, debentures,
83 notes, equipment trust obligations or other evidences of
84 indebtedness, and shares of common and preferred stocks
85 of such corporations and securities of any open end or
86 closed end management type investment company or in-
87 vestment trust registered under the "Federal Investment
88 Company Act" of one thousand nine hundred forty, as
89 from time to time amended, which men of prudence, dis-
90 cretion and intelligence acquire or retain for their own
91 account, provided, and upon conditions, however, that:

92 (1) No investment shall be made pursuant to the pro-
93 visions of this subsection (h) which, at the time such in-
94 vestment shall be made, will cause the aggregate market
95 value thereof to exceed fifty per cent of the aggregate
96 market value at that time of all of the property of the fund
97 held by such fiduciary. Notwithstanding the aforesaid
98 percentage limitation the cash proceeds of the sale of
99 securities received or purchased by a fiduciary and made

100 eligible by this subsection (h) may be reinvested in any
101 securities of the type described in this subsection (h).

102 (2) No bonds, debentures, notes, equipment trust obli-
103 gations or other evidence of indebtedness of such corpora-
104 tions shall be purchased under authority of this subsection
105 (h) unless such obligations, if other than issues of a com-
106 mon carrier subject to the provisions of section twenty-a
107 of the "Interstate Commerce Act", as amended, shall be
108 obligations issued, guaranteed or assumed by corporations
109 which have any securities currently registered with the
110 securities and exchange commission.

111 (3) No common or preferred stocks, other than bank
112 and insurance company stocks, shall be purchased under
113 authority of this subsection (h) unless currently fully
114 listed and registered upon an exchange registered with
115 the securities and exchange commission as a national se-
116 curities exchange.

117 No sale or other liquidation of any investment shall be
118 required solely because of any change in the relative
119 market value of those investments made eligible by this
120 subsection (h) and those made eligible by the preceding

121 paragraphs of this section. In determining the aggregate
122 market value of the property of a fund and the percentage
123 of a fund to be invested under the provisions of this sub-
124 section, a fiduciary may rely upon published market
125 quotations as to those investments for which such quota-
126 tions are available, and upon such valuations of other in-
127 vestments as in the fiduciary's best judgment seem fair
128 and reasonable according to available information.

129 Trust funds received by executors, administrators,
130 guardians, curators, committees, trustees and other fiduci-
131 aries may be kept invested in the securities originally
132 received by them, unless otherwise ordered by a court
133 having jurisdiction of the matter, as hereinafter provided,
134 or unless the instrument under which the trust was
135 created shall direct that a change of investment be made,
136 and any such fiduciary shall not be liable for any loss
137 that may occur by depreciation of such securities.

138 This section shall not apply where the instrument creat-
139 ing the trust, or the last will and testament of any testa-
140 tor, or any court having jurisdiction of the matter,
141 specially directs in what securities the trust funds shall

142 be invested, and every such court is hereby given power
143 specially to direct by order or orders, from time to time,
144 additional securities in which trust funds may be invested,
145 and any investment thereof made in accordance with any
146 such special direction shall be legal, and no executor,
147 administrator, guardian, curator, committee, trustee or
148 other fiduciary shall be held for any loss resulting in any
149 such case.

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

Any bank or trust company qualified to act as fiduciary
2 in this state may establish common trust funds for the
3 purpose of furnishing, or making available, investments to
4 itself as fiduciary, or to itself and others, as cofiduciaries,
5 and may, as such fiduciary or cofiduciary, invest funds
6 which it lawfully holds for investment in interests in such
7 common trust funds, if such investment is not prohibited
8 by the instrument, judgment, decree or order creating its
9 fiduciary status or relationship, and if, in the case of
10 cofiduciaries, the bank or trust company procures the
11 consent of its cofiduciaries to such investment: *Provided,*
12 That unless each fiduciary acquiring or holding any inter-

13 est in any common trust fund is specifically permitted by
14 the instrument, judgment, decree or order creating the
15 fiduciary status or relationship to invest in securities other
16 than those described in section two of this article, or any
17 amendments or reenactments thereof, such common trust
18 funds shall be invested only in those securities described
19 in said section two and subject to the limitations and con-
20 ditions of said section, and any amendments or reenact-
21 ments thereof, except that a common trust fund or funds
22 may be established for the purchase of securities of the
23 type described in said section two without regard to the
24 percentage limitation specified in subparagraph (1) of
25 subsection (h) of said section two, in which event the
26 funds invested by a fiduciary in interests in such last
27 mentioned common trust fund or funds shall not exceed
28 the percentage limitation specified in said subparagraph
29 (1) of subsection (h) unless a larger investment is per-
30 mitted by the instrument, judgment, decree or order
31 creating the fiduciary status or relationship.

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

William Tompos

Chairman Senate Committee

Clayton C. Davidson

Chairman House Committee

Originated in the Senate.

Takes effect from ----- Passage.

Howard Meyer

Clerk of the Senate

W. Blankenship

Clerk of the House of Delegates

Howard Cannon

President of the Senate

H. Laban White

Speaker House of Delegates

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

Hullett C. Smith

Governor



**PRESENTED TO THE
GOVERNOR**

Date 1-31-67

Time 2:12 PM