WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 248

(By Mr. Smith [y. Carrell] and
Mr. Barnett)

PASSED [March 3] 1969

In Effect [from Passage]

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, III
SECRETARY OF STATE
THIS DATE 3-12-69
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 fiduciary investments generally; specifying the securities in which fiduciaries may invest fiduciary funds; and relating to the retention of fiduciary investments and court direction as to fiduciary investments.

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:

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.
§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 payment 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 amended, and debentures issued by the federal national mortgage association; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the International 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 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
where the amount secured by such mortgage or trust deed shall not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent 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 subdivision (e), in which such investments may be made, shall not be less than two percent, nor more than eight percent, 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, 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: 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 evi-
84 dences of indebtedness, and shares of common and pre-
85 ferred stocks of such corporations and securities of any
86 open end or closed end management type investment
87 company or investment trust registered under the “Fed-
88 eral Investment Company Act” of one thousand nine
89 hundred forty, as from time to time amended, which men
90 of prudence, discretion and intelligence acquire or retain
91 for their own account, provided, and upon conditions,
92 however, that:
93 (1) No investment shall be made pursuant to the pro-
94 visions of this subdivision (h) which, at the time such
95 investment shall be made, will cause the aggregate market
96 value thereof to exceed fifty percent of the aggregate
97 market value at that time of all of the property of the
98 fund held by such fiduciary. Notwithstanding the afore-
99 said percentage limitation the cash proceeds of the sale
100 of securities received or purchased by a fiduciary and
101 made eligible by this subdivision (h) may be reinvested
102 in any securities of the type described in this subdivi-
103 sion (h).
(2) No bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of such corporations shall be purchased under authority of this subdivision (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 subdivision (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 subdivision (h) and those made eligible by the preceding subdivisions 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 subdivision, 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.

William Tompkins  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Mussey  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

LeRoy Pope  
President of the Senate

Frank B. Cranley  
Speaker House of Delegates

The within approved this the 12th day of March, 1969.

Arch A. Shaaf  
Governor