

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 248

(By Mr. Smith [of Cabell] and
Mr. Barrett)

PASSED March 3, 1969

In Effect from Passage

FILED IN THE OFFICE
JOHN D. HODGKINS, W
SECRETARY OF STATE

THIS DATE 3-17-69

248

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Senate Bill No. 248

(By MR. SMITH [of Cabell] and MR. BARNETT)

[Passed March 3, 1969; in effect from passage.]

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.

1 Any executor, administrator, guardian, curator, com-
2 mittee, trustee, or other fiduciary whose duty it may be
3 to loan or invest money entrusted to him as such, may,
4 without any order of any court, invest the same or any
5 part thereof in any of the following securities, and with-
6 out liability for any loss resulting from investments
7 therein: *Provided*, That such fiduciary shall exercise the
8 judgment and care under the circumstances then pre-
9 vailing which men of prudence, discretion and intelli-
10 gence exercise in the management of their own affairs,
11 not in regard to speculation, but in regard to the perma-
12 nent disposition of their funds, considering the probable
13 income as well as the probable safety of their capital:

14 (a) In bonds or interest-bearing notes or obligations of
15 the United States, or those for which the faith of the
16 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 mort-
23 gage association; and in bonds, interest-bearing notes and
24 obligations issued, guaranteed or assumed by the Inter-
25 national Bank for Reconstruction and Development or by
26 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 au-
33 thority 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 divi-
37 sion of this state that have been issued pursuant to the
38 authority 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

42 where the amount secured by such mortgage or trust
43 deed shall not at the time of making the same exceed
44 eighty percent of the assessed value, or sixty-six and two-
45 thirds percent 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*, That the
55 rate of interest upon the above enumerated securities in
56 this subdivision (e), in which such investments may be
57 made, shall not be less than two percent, nor more than
58 eight percent, 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*, That the
66 rate of interest upon such savings accounts or time de-
67 posits shall not be less than the rate paid other depositors
68 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 that
71 such shares are insured by the federal savings and loan
72 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: *Provided*, That the dividend rate upon
77 such shares shall not be less than the rate paid to other
78 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 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).

104 (2) No bonds, debentures, notes, equipment trust
105 obligations or other evidence of indebtedness of such cor-
106 porations shall be purchased under authority of this sub-
107 division (h) unless such obligations, if other than issues
108 of a common carrier subject to the provisions of section
109 twenty-a of the "Interstate Commerce Act," as amended,
110 shall be obligations issued, guaranteed or assumed by
111 corporations which have any securities currently regis-
112 tered with the securities and exchange commission.

113 (3) No common or preferred stocks, other than bank
114 and insurance company stocks, shall be purchased under
115 authority of this subdivision (h) unless currently fully
116 listed and registered upon an exchange registered with
117 the securities and exchange commission as a national
118 securities exchange. No sale or other liquidation of any
119 investment shall be required solely because of any change
120 in the relative market value of those investments made
121 eligible by this subdivision (h) and those made eligible
122 by the preceding subdivisions of this section. In deter-
123 mining the aggregate market value of the property of a
124 fund and the percentage of a fund to be invested under

125 the provisions of this subdivision, a fiduciary may rely
126 upon published market quotations as to those investments
127 for which such quotations are available, and upon such
128 valuations of other investments as in the fiduciary's best
129 judgment seem fair and reasonable according to available
130 information.

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

140 This section shall not apply where the instrument
141 creating the trust, or the last will and testament of any
142 testator, or any court having jurisdiction of the matter,
143 specially directs in what securities the trust funds shall
144 be invested, and every such court is hereby given power
145 specially to direct by order or orders, from time to time,

146 additional securities in which trust funds may be in-
147 vested, and any investment thereof made in accordance
148 with any such special direction shall be legal, and no
149 executor, administrator, guardian, curator, committee,
150 trustee or other fiduciary shall be held for any loss result-
151 ing in any such case.

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

William Tomp
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Lloyd Jones
President of the Senate

W. F. Baisley
Speaker House of Delegates

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

Arch A. Shaare, Jr.
Governor



