WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 443

(By Mr. BROTHERTON)

PASSED MARCH 11, 1971

In Effect NINETY DAYS FROM Passage

FILED IN THE OFFICE
JOHN D. ROYCFELLEL, IV
SECRETARY OF STATE
THIS DATE 4-2-71
AN ACT to amend and reenact section seven, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six, chapter forty-four of said code, relating to investments that may be made by insurers and fiduciaries.

Be it enacted by the Legislature of West Virginia:

That section seven, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article six, chapter forty-four of said code be amended and reenacted, all to read as follows:
ARTICLE 8. INVESTMENTS.

§33-8-7. Government obligations.

1 An insurer may invest any of its funds in:
2 (a) Bonds or securities which are the direct obligation
3 of or which are secured or guaranteed in whole or in
4 part as to principal and interest by the United States, any
5 state or territory of the United States or the District
6 of Columbia, where there exists the power to levy taxes
7 for the prompt payment of the principal and interest
8 of such bonds or evidences of indebtedness, and, in bonds
9 issued by the federal land banks or securities issued by
10 the federal home loan bank system.
11 (b) Bonds or evidences of indebtedness which are
12 direct general obligations of any county, district, city,
13 town, village, school district, park district or other politi-
14 cal subdivision of this state or any other state or ter-
15 ritory of the United States or the District of Columbia,
16 which shall not be in default in the payment of any of
17 its general obligation bonds, either principal or interest,
18 at the date of such investment; where they are payable
from ad valorem taxes levied on all the taxable property located therein and the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed ten per centum of the actual value of all taxable property therein on the basis of which the last assessment was made before the date of such investment.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

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, debentures issued by the federal national mortgage association, securities issued by the federal home loan bank system; 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 au-
thority 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-
thority of any law of this state, since the ninth day of
May of the year one thousand nine hundred seven-
ten;
(e) In bonds and negotiable notes secured by first
mortgage of 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
53 abstract of title, certificate of title or title insurance
54 policy, showing good title in the mortgagor when mak-
55 ing such mortgage or trust deed, and by a fire insurance
56 policy in an old line company with loss, if any, payable
57 to the mortgagee or trustee as his interest may appear:
58 Provided, That the rate of interest upon the above
59 enumerated securities in this subdivision (e), in which
60 such investments may be made, shall not be less than
61 two percent, nor more than eight percent, per annum;
62 (f) In savings accounts and time deposits of bank or
63 trust companies to the extent that such deposits are in-
64 sured by the federal deposit insurance corporation, or
65 by any other similar federal instrumentality that may
66 be hereafter created, provided there shall be such an in-
67 strumentality in existence and available for the purpose,
68 or by bonds of solvent surety companies: Provided, That
69 the rate of interest upon such savings accounts or time
70 deposits shall not be less than the rate paid other de-
71 positors in such bank or trust company;
72 (g) In shares of state building and loan associations,
73 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 fed-
eral 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, however, 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 Dis-
trict of Columbia or any state of the United States includ-
ing, but not by way of limitation, bonds, debentures, notes,
equipment trust obligations or other evidences of indebt-
edness, 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,
(1) No investment shall be made pursuant to the provisions of this subdivision (h) which, at the time such investment shall be made, will cause the aggregate market value thereof to exceed fifty percent of the aggregate market value at that time of all of the property of the fund held by such fiduciary. Notwithstanding the aforementioned percentage limitation the cash proceeds of the sale of securities received or purchased by a fiduciary and made eligible by this subdivision (h) may be reinvested in any securities of the type described in this subdivision (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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 1st day of April, 1971.

Governor