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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 443

(By Mr. BROTHERTON)

PASSED MARCH 11 1971

In Effect NINETY DAYS FROM Passage



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FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 4-2-71

ENROLLED

Senate Bill No. 443

(By MR. BROTHERTON)

[Passed March ¹¹~~12~~, 1971; in effect ninety days from passage.]

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:

CHAPTER 33. INSURANCE.

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

19 from ad valorem taxes levied on all the taxable prop-
20 erty located therein and the total indebtedness after de-
21 ducting sinking funds and all debts incurred for self-
22 sustaining public works does not exceed ten per centum
23 of the actual value of all taxable property therein on
24 the basis of which the last assessment was made before
25 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.

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 per-
12 manent disposition of their funds, considering the prob-
13 able income as well as the probable safety of their capi-
14 tal:

15 (a) In bonds or interest-bearing notes or obligations
16 of the United States, or those for which the faith of the
17 United States is distinctly pledged to provide for the
18 payment of the principal and interest thereof, including,
19 but not by way of limitation, bonds or debentures is-
20 sued under the "Federal Farm Loan Act," debentures
21 issued by "Banks for Cooperatives" under the "Farm
22 Credit Act of One Thousand Nine Hundred Thirty-Three,"
23 as amended, debentures issued by the federal national
24 mortgage association, securities issued by the federal
25 home loan bank system; and in bonds, interest-bear-
26 ing notes and obligations issued, guaranteed or assumed
27 by the International Bank for Reconstruction and Devel-
28 opment or by the Inter-american Development Bank;

29 (b) In bonds or interest-bearing notes or obligations
30 of this state;

31 (c) In bonds of any state of the United States which

32 has not within ten years previous to the making of such
33 investment defaulted in the payment of any part of either
34 principal or interest on any of its bonds issued by au-
35 thority of the Legislature of such state;

36 (d) In the bonds or interest-bearing notes or obliga-
37 tions of any county, district, school district or independent
38 school district, municipality or any other political division
39 of this state that have been issued pursuant to the au-
40 thority of any law of this state, since the ninth day of
41 May of the year one thousand nine hundred seven-
42 teen;

43 (e) In bonds and negotiable notes secured by first
44 mortgage of first trust deed upon improved real estate
45 where the amount secured by such mortgage or trust
46 deed shall not at the time of making the same exceed
47 eighty percent of the assessed value, or sixty-six and
48 two-thirds percent of the appraised value as determined
49 by wholly disinterested and independent appraisers,
50 whichever value shall be the higher, of the real estate
51 covered by such mortgage or trust deed, and when such
52 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

74 that such shares are insured by the federal savings and
75 loan insurance corporation, or by any other similar fed-
76 eral instrumentality that may be hereafter created:

77 *Provided*, That there shall be such an instrumentality
78 in existence and available for the purpose, or by bonds
79 of solvent surety companies: *Provided, however*, That
80 the dividend rate upon such shares shall not be less than
81 the rate paid to other shareholders in such associations;

82 (h) In other securities of corporations organized and
83 existing under the laws of the United States, or of the Dis-
84 trict of Columbia or any state of the United States includ-
85 ing, but not by way of limitation, bonds, debentures, notes,
86 equipment trust obligations or other evidences of indebt-
87 edness, and shares of common and preferred stocks of such
88 corporations and securities of any open end or closed
89 end management type investment company or investment
90 trust registered under the "Federal Investment Company
91 Act" of one thousand nine hundred forty, as from time
92 to time amended, which men of prudence, discretion and
93 intelligence acquire or retain for their own account,
94 provided, and upon conditions, however, that:

95 (1) No investment shall be made pursuant to the pro-
96 visions of this subdivision (h) which, at the time such
97 investment shall be made, will cause the aggregate mar-
98 ket value thereof to exceed fifty percent of the aggregate
99 market value at that time of all of the property of the
100 fund held by such fiduciary. Notwithstanding the afore-
101 said percentage limitation the cash proceeds of the sale
102 of securities received or purchased by a fiduciary and
103 made eligible by this subdivision (h) may be reinvested
104 in any securities of the type described in this sub-
105 division (h).

106 (2) No bonds, debentures, notes, equipment trust ob-
107 ligations or other evidence of indebtedness of such cor-
108 porations shall be purchased under authority of this
109 subdivision (h) unless such obligations, if other than
110 issues of a common carrier subject to the provisions of
111 section twenty-a of the "Interstate Commerce Act," as
112 amended, shall be obligations issued, guaranteed or as-
113 sumed by corporations which have any securities cur-
114 rently registered with the securities and exchange com-
115 mission.

116 (3) No common or preferred stocks, other than bank
117 and insurance company stocks, shall be purchased un-
118 der authority of this subdivision (h) unless currently
119 fully listed and registered upon an exchange registered
120 with the securities and exchange commission as a na-
121 tional securities exchange. No sale or other liquidation
122 of any investment shall be required solely because of
123 any change in the relative market value of those invest-
124 ments made eligible by this subdivision (h) and those
125 made eligible by the preceding subdivisions of this sec-
126 tion. In determining the aggregate market value of the
127 property of a fund and the percentage of a fund to be
128 invested under the provisions of this subdivision, a fi-
129 duciary may rely upon published market quotations as
130 to those investments for which such quotations are avail-
131 able, and upon such valuations of other investments as
132 in the fiduciary's best judgment seem fair and reason-
133 able according to available information.

134 Trust funds received by executors, administrators,
135 guardians, curators, committees, trustees and other fi-
136 duciaries may be kept invested in the securities originally

137 received by them, unless otherwise ordered by a court
138 having jurisdiction of the matter, as hereinafter provided,
139 or unless the instrument under which the trust was cre-
140 ated shall direct that a change of investment be made,
141 and any such fiduciary shall not be liable for any loss that
142 may occur by depreciation of such securities.

143 This section shall not apply where the instrument
144 creating the trust, or the last will and testament of any
145 testator, or any court having jurisdiction of the matter,
146 specially directs in what securities the trust funds shall
147 be invested, and every such court is hereby given power
148 specially to direct by order or orders, from time to time,
149 additional securities in which trust funds may be in-
150 vested, and any investment thereof made in accordance
151 with any such special direction shall be legal, and no
152 executor, administrator, guardian, curator, committee,
153 trustee or other fiduciary shall be held for any loss re-
154 sulting in any such case.

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

Russell G. Beale
Chairman Senate Committee

Phyllis Rutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Thomas H. Reese
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Edw. Cant
President of the Senate

Lewis N. McManus
Speaker House of Delegates

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

Arch A. Starnes Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/71

Time 11:50 A.m.

RECEIVED

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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA