WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

ENROLLED

SENATE BILL NO. 324

(By Mr. Bratcher, Mr. Hubbard; and Mr. Hubbard)

PASSED March 31, 1973

In Effect Ninety days from Passage

324

FILED IN THE OFFICE
EDGAR F. NESSKELL, III
SECRETARY OF STATE
THIS DATE 4-13-73
AN ACT to amend and reenact section nine, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article eight, chapter thirty-three of said code; and to amend and reenact section two, article six, chapter forty-four of said code, all relating to the investment of public funds and the classes of securities in which public funds may be invested by the West Virginia state board of investments; relating to investments which may be made by insurers and fiduciaries; and specifically authorizing the state board of investments, insurers and fiduciaries to invest in securities and obligations of the Asian Development Bank."

Be it enacted by the Legislature of West Virginia:

That section nine, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article eight, chapter thirty-three of said code 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 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9. Investments for periods in excess of one year.

1 Notwithstanding the restrictions which may otherwise be provided by law as to the securities in which funds may be invested, funds made available for investment for periods in
excess of one year may be invested by the board, without
the approval of any other state agency or official other than
as required in section six of this article, in the following
classes of securities, and not otherwise:

(a) Securities of the United States or agency thereof, or
those guaranteed by, or for which the credit of the United
States or agency thereof is pledged for the payment of the
principal and interest thereof.

(b) Direct general obligation securities of this state, or
any other state or territory of the United States, or the
District of Columbia, unconditionally guaranteed as to the
principal and interest by such other state or territory of the
United States, or the District of Columbia: Provided, That
(1) such other state, territory or the District of Columbia
has the power to levy taxes for the payment of the principal
and interest of such securities, and (2) at the time of
investment such other state, territory or the District of
Columbia is not in default in the payment of any part of the
principal or interest owing by it upon any part of its
funded indebtedness.

(c) Securities issued by a federal land bank, or by a
federal intermediate credit bank, under the act of Congress
of July seventeen, one thousand nine hundred sixteen,
known as the "Federal Farm Loan Act," as amended or
supplemented from time to time, or by the federal home
loan bank system, federal national mortgage association or
banks for cooperatives.

(d) Securities issued, assumed or unconditionally guaran-
teed by the "International Bank for Reconstruction and
Development," the "Asian Development Bank" or "Tennes-
see Valley Authority."

(e) Any fixed interest bond, note or debenture of any
corporation organized and operating within the United
States: Provided, That such corporation shall have a mini-
mum net worth of fifteen million dollars and its securities or
its parent corporation's securities are listed on one or more
of the national stock exchanges: Provided, however, That
(1) such corporation has earned a profit in eight of the
preceding ten fiscal years as reflected in its statements, and
(2) such corporation has not defaulted in the payment of
principal or interest on any of its outstanding funded
indebtedness during its preceding ten fiscal years, and (3)
the bonds, notes or debentures of such corporation to be
purchased are rated "AA" or the equivalent thereof or
better than "AA" or the equivalent thereof by at least two or
more nationally recognized rating services, such as "Stan-
dard and Poor's," "Dun & Bradstreet," or "Moody's."

(f) Any security that is secured by a first lien deed of
trust or mortgage on real property situate within this state,
and that is either (1) insured by the federal housing
administration pursuant to provisions of the "National
Housing Act," as amended or supplemented from time to
time, or (2) guaranteed by the veterans administration
pursuant to provisions of Title 38, United States Code,
relating to veteran's benefits, as amended or supplemented
from time to time: Provided, That the board shall not
purchase any such security from anyone other than a
federal housing administration approved mortgagee. To
facilitate and encourage the offering of such securities to
the board for its investment therein, the board shall have
the power and authority to make to any federal housing
administration approved mortgagee, at any time, an
advance written commitment and obligation, binding upon
the board and its funds, for the future purchase of such
securities in such amount or amounts, at such price or
prices, and at such future time or times as the board may in
its discretion deem to be for the best interests of the fund,
and all purchases of such securities shall be made pursuant
to such a commitment and obligation: Provided, however,
That the board shall make no commitment and obligation
to purchase any such securities except in specified amounts
of two hundred fifty thousand dollars or more as the aggre-
gate of the unpaid principal balances owing on such
securities at the time of purchase thereof. No such commit-
ment and obligation shall be valid or binding for more
than eighteen months after the date thereof. To facilitate
preservation of the value of such securities and of the real
property securing the same, the board shall have the further
power and authority to make with any federal housing
administration approved mortgagee from whom such a
security is purchased a contract under which the mortgagee
shall be authorized, empowered and obligated to service
a loan represented by the security, and to pay such
mortgagee for its services a monthly fee not in excess of
the rate of one twelfth of one half of one per centum
per annum of the unpaid principal balance of the loan
represented by the security.

(g) Promissory notes secured by federal loan insurance on
loans made to students pursuing programs of higher educa-
tion or programs of vocational education pursuant to Title
IV, Part “B” of the “Higher Education Act of 1965,” as
heretofore and hereafter amended: Provided, That there
shall be no investment in any such promissory notes
executed by nonresidents of the state of West Virginia
unless such nonresidents are enrolled in good standing in a
West Virginia institution of higher education or qualified
vocational school or have made application to and have
been accepted by such institution or vocational school:
Provided, however, That there shall be no investment in
any such promissory notes executed pursuant to loans made
prior to the effective date of this section.

CHAPTER 33. INSURANCE.

ARTICLE 8. INVESTMENTS.

§33-8-12. Insured building and savings and loan shares;
obligations of International Bank or Asian Develop-
ment Bank.

Subject to the limits set forth in sections five and six
of this article, an insurer may invest in shares of insured
state chartered building and loan associations and federal
savings and loan associations, if such shares are insured by
the federal savings and loan insurance corporation and may
invest in obligations issued or guaranteed by the “Inter-
national Bank for Reconstruction and Development” or by
the “Asian Development Bank.”

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, curatrix, 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 fi-
duciary shall exercise the judgment and care under the
circumstances then prevailing which men of prudence, dis-
cretion 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 Coopera-
tives” 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” or by the “Asian 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 invest-
ment 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 mort-
gage 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 inter-
est 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, 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
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 evidences of
indebtedness, and shares of common and preferred stocks
of such corporations and securities of any open end or
closed end management type investment company or invest-
ment trust registered under the “Federal Investment Com-
pany 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, provided, and upon conditions, however, that:

(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 aforesaid 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 ninety 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 13th day of April, 1973.

Governor
PRESENTED TO THE GOVERNOR

Date 4/10/73
Time 10:35 a.m.