

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973

ENROLLED

SENATE BILL NO. 1324

(By Mr. Brotherton, Mr. Hubbard
and Mr. Hubbard)

PASSED March 31 1973

In Effect thirty days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 4-13-73

324

ENROLLED

Senate Bill No. 324

(By Mr. Brotherton, Mr. President, and Mr. Hubbard)

[Passed March 31, 1973; in effect ninety days from passage.]

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
- 2 provided by law as to the securities in which funds may be
- 3 invested, funds made available for investment for periods in

4 excess of one year may be invested by the board, without
5 the approval of any other state agency or official other than
6 as required in section six of this article, in the following
7 classes of securities, and not otherwise:

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

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

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

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

35 (e) Any fixed interest bond, note or debenture of any
36 corporation organized and operating within the United
37 States: *Provided*, That such corporation shall have a mini-
38 mum net worth of fifteen million dollars and its securities or
39 its parent corporation's securities are listed on one or more
40 of the national stock exchanges: *Provided, however*, That
41 (1) such corporation has earned a profit in eight of the
42 preceding ten fiscal years as reflected in its statements, and
43 (2) such corporation has not defaulted in the payment of
44 principal or interest on any of its outstanding funded

45 indebtedness during its preceding ten fiscal years, and (3)
46 the bonds, notes or debentures of such corporation to be
47 purchased are rated "AA" or the equivalent thereof or
48 better than "AA" or the equivalent thereof by at least two or
49 more nationally recognized rating services, such as "Stan-
50 dard and Poor's," "Dun & Bradstreet," or "Moody's."

51 (f) Any security that is secured by a first lien deed of
52 trust or mortgage on real property situate within this state,
53 and that is either (1) insured by the federal housing
54 administration pursuant to provisions of the "National
55 Housing Act," as amended or supplemented from time to
56 time, or (2) guaranteed by the veterans administration
57 pursuant to provisions of Title 38, United States Code,
58 relating to veteran's benefits, as amended or supplemented
59 from time to time: *Provided*, That the board shall not
60 purchase any such security from anyone other than a
61 federal housing administration approved mortgagee. To
62 facilitate and encourage the offering of such securities to
63 the board for its investment therein, the board shall have
64 the power and authority to make to any federal housing
65 administration approved mortgagee, at any time, an
66 advance written commitment and obligation, binding upon
67 the board and its funds, for the future purchase of such
68 securities in such amount or amounts, at such price or
69 prices, and at such future time or times as the board may in
70 its discretion deem to be for the best interests of the fund,
71 and all purchases of such securities shall be made pursuant
72 to such a commitment and obligation: *Provided, however*,
73 That the board shall make no commitment and obligation
74 to purchase any such securities except in specified amounts
75 of two hundred fifty thousand dollars or more as the aggre-
76 gate of the unpaid principal balances owing on such
77 securities at the time of purchase thereof. No such commit-
78 ment and obligation shall be valid or binding for more
79 than eighteen months after the date thereof. To facilitate
80 preservation of the value of such securities and of the real
81 property securing the same, the board shall have the further
82 power and authority to make with any federal housing
83 administration approved mortgagee from whom such a
84 security is purchased a contract under which the mortgagee
85 shall be authorized, empowered and obligated to service
86 a loan represented by the security, and to pay such
87 mortgagee for its services a monthly fee not in excess of

88 the rate of one twelfth of one half of one per centum
89 per annum of the unpaid principal balance of the loan
90 represented by the security.

91 (g) Promissory notes secured by federal loan insurance on
92 loans made to students pursuing programs of higher educa-
93 tion or programs of vocational education pursuant to Title
94 IV, Part "B" of the "Higher Education Act of 1965," as
95 heretofore and hereafter amended: *Provided*, That there
96 shall be no investment in any such promissory notes
97 executed by nonresidents of the state of West Virginia
98 unless such nonresidents are enrolled in good standing in a
99 West Virginia institution of higher education or qualified
100 vocational school or have made application to and have
101 been accepted by such institution or vocational school:
102 *Provided, however*, That there shall be no investment in
103 any such promissory notes executed pursuant to loans made
104 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.

1 Subject to the limits set forth in sections five and six
2 of this article, an insurer may invest in shares of insured
3 state chartered building and loan associations and federal
4 savings and loan associations, if such shares are insured by
5 the federal savings and loan insurance corporation and may
6 invest in obligations issued or guaranteed by the "Inter-
7 national Bank for Reconstruction and Development" or by
8 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.

1 Any executor, administrator, guardian, curator, committee,
2 trustee or other fiduciary whose duty it may be to loan or
3 invest money entrusted to him as such, may, without any
4 order of any court, invest the same or any part thereof in any of
5 the following securities, and without liability for any loss
6 resulting from investments therein: *Provided*, That such fi-

7 duciary shall exercise the judgment and care under the
8 circumstances then prevailing which men of prudence, dis-
9 cretion and intelligence exercise in the management of their
10 own affairs, not in regard to speculation, but in regard to
11 the permanent disposition of their funds, considering the
12 probable income as well as the probable safety of their
13 capital:

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

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

30 (c) In bonds of any state of the United States which has
31 not within ten years previous to the making of such invest-
32 ment defaulted in the payment of any part of either
33 principal or interest on any of its bonds issued by authority
34 of the legislature of such state;

35 (d) In the bonds or interest-bearing notes or obligations
36 of any county, district, school district or independent school
37 district, municipality or any other political division of this
38 state that have been issued pursuant to the authority of
39 any law of this state, since the ninth day of May of the year
40 one thousand nine hundred seventeen;

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

48 higher, of the real estate covered by such mortgage or
49 trust deed, and when such mortgage or trust deed is
50 accompanied by a satisfactory abstract of title, certificate
51 of title or title insurance policy, showing good title in
52 the mortgagor when making such mortgage or trust deed,
53 and by a fire insurance policy in an old line company
54 with loss, if any, payable to the mortgagee or trustee as his
55 interest may appear: *Provided*, That the rate of interest
56 upon the above enumerated securities in this subdivision (e),
57 in which such investments may be made, shall not be less
58 than two percent, nor more than 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 insured
61 by the federal deposit insurance corporation, or by any
62 other similar federal instrumentality that may be hereafter
63 created, provided there shall be such an instrumentality in
64 existence and available for the purpose, or by bonds of
65 solvent surety companies: *Provided*, That the rate of inter-
66 est upon such savings accounts or time deposits shall not
67 be less than the rate paid other depositors in such bank
68 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 and
75 available for the purpose, or by bonds of solvent surety
76 companies: *Provided, however*, 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 evidences of
84 indebtedness, and shares of common and preferred stocks
85 of such corporations and securities of any open end or
86 closed end management type investment company or invest-
87 ment trust registered under the "Federal Investment Com-
88 pany Act" of one thousand nine hundred forty, as from
89 time to time amended, which men of prudence, discretion

90 and intelligence acquire or retain for their own account,
91 provided, and upon conditions, however, that:

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

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

111 (3) No common or preferred stocks, other than bank and
112 insurance company stocks, shall be purchased under authori-
113 ty of this subdivision (h) unless currently fully listed and
114 registered upon an exchange registered with the securities
115 and exchange commission as a national securities exchange.
116 No sale or other liquidation of any investment shall be
117 required solely because of any change in the relative market
118 value of those investments made eligible by this subdivision
119 (h) and those made eligible by the preceding subdivisions
120 of this section. In determining the aggregate market
121 value of the property of a fund and the percentage of a fund
122 to be invested under the provisions of this subdivision, a
123 fiduciary may rely upon published market quotations as to
124 those investments for which such quotations are avail-
125 able, and upon such valuations of other investments as in
126 the fiduciary's best judgment seem fair and reasonable
127 according to available information.

128 Trust funds received by executors, administrators, guard-
129 ians, curators, committees, trustees and other fiduciaries
130 may be kept invested in the securities originally received
131 by them, unless otherwise ordered by a court having

132 jurisdiction of the matter, as hereinafter provided, or unless
133 the instrument under which the trust was created shall
134 direct that a change of investment be made, and any such
135 fiduciary shall not be liable for any loss that may occur
136 by depreciation of such securities.

137 This section shall not apply where the instrument creat-
138 ing the trust, or the last will and testament of any
139 testator, or any court having jurisdiction of the matter,
140 specially directs in what securities the trust funds shall be
141 invested, and every such court is hereby given power
142 specially to direct by order or orders, from time to time,
143 additional securities in which trust funds may be invested,
144 and any investment thereof made in accordance with any
145 such special direction shall be legal, and no executor,
146 administrator, guardian, curator, committee, trustee or
147 other fiduciary shall be held for any loss resulting in any
148 such case.

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

H. Derral Darby

Chairman Senate Committee

Lawrence C. Christian Jr.

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Howard B. Cannon

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

W. B. Bostwick Jr.

President of the Senate

Lewis J. McManus

Speaker House of Delegates

The within *approved* this the *13th*
day of *April*, 1973.

Arch A. Shaver Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 4/10/73

Time 10:35 a.m.