

**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 Ninety Days from Passage**



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

## 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.

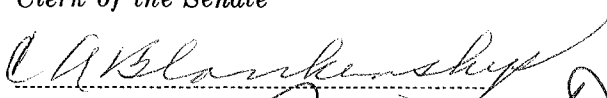
  
Chairman Senate Committee

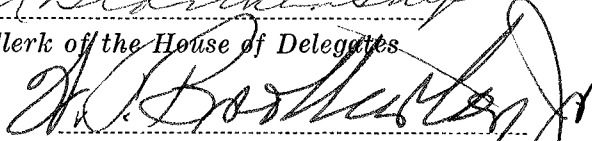
  
Chairman House Committee

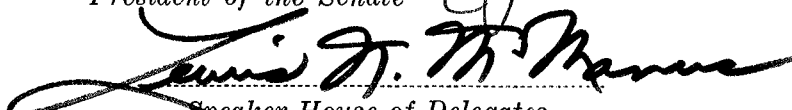
Originated in the Senate.

To take effect ninety days from passage.

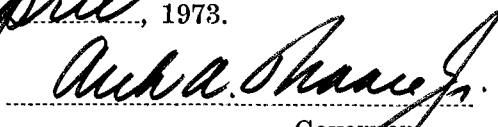
  
Clerk of the Senate

  
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.