WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

---

ENROLLED

HOUSE BILL No. 1127

(By Mr. Gilbert and Mr. Summerside)

---

PASSED March 1, 1975

In Effect ninety days from Passage

C 641
AN ACT to amend and reenact section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to investments by fiduciaries; providing in what securities fiduciaries may invest trust funds; permitting fiduciaries to invest in bonds or negotiable notes secured by a first mortgage or first deed of trust if the interest rate on such bonds or negotiable notes does not exceed the maximum rate of interest which such bonds or notes may bear under applicable law; authorizing fiduciaries to retain certain investments; and permitting fiduciaries who are authorized to retain bank stock to retain stock of a bank holding company received in exchange therefor.

Be it enacted by the Legislature of West Virginia:

That section two, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-2. In what securities fiduciaries may invest trust funds.

1 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” 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 investment 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 mortgage 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 three and one-half percent per annum nor greater than the maximum rate of interest which such bonds or negotiable notes may bear under applicable law: Provided further, That the provisions herein establishing a minimum rate of interest shall not apply to investments in force as of the effective date of this section;

(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 interest 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 securi-
ties of any open end of closed end management type investment 
company or investment trust registered under the "Federal In-
vestment Company Act" of one thousand nine hundred forty, 
as from time to time amended, which men of prudence, discre-
tion 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 subsection (h) which, at the time such investment shall 
be made, will cause the aggregate market value thereof to ex-
ceed fifty percent of the aggregate market value at that time of 
all of the property of the fund held by such fiduciary. Notwith-
standing 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 obliga-
tions 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 fidu-
ciary 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, or if the trust funds originally received were stock or securities of a bank, in shares of stock or other securities (and securities received as distributions in respect thereof) of a holding company subject to the Federal Bank Holding Company Act of 1956, as amended, received upon conversion of, or in exchange for, shares of stock or other securities of such bank; 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 House.

Takes 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 20th day of March, 1975.

Governor
PRESENTED TO THE
GOVERNOR

Date  3/14/15
Time  4:30 p.m.