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OFFICE OF  
THE CLERK OF THE HOUSE OF DELEGATES  
STATE OF WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1975**

— ● —

**ENROLLED**

HOUSE BILL No. 1127

(By Mr. Libert and Mr. Somerville)

— ● —

PASSED March 7, 1975

In Effect ninty days from Passage



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ENROLLED

**H. B. 1127**

(By MR. SEIBERT and MR. SOMMERVILLE)

[Passed March 7, 1975; in effect ninety days from passage.]

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,  
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  
5 any of the following securities, and without liability for

6 any loss resulting from investments therein: *Provided*, That  
7 such fiduciary shall exercise the judgment and care under  
8 the circumstances then prevailing which men of prudence,  
9 discretion and intelligence exercise in the management of  
10 their own affairs, not in regard to speculation, but in regard  
11 to the permanent disposition of their funds, considering the  
12 probable income as well as the probable safety of their capital:

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

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

29 (c) In bonds of any state of the United States which has not  
30 within ten years previous to the making of such investment de-  
31 faulted in the payment of any part of either principal or inter-  
32 est on any of its bonds issued by authority of the legislature of  
33 such state;

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

40 (e) In bonds and negotiable notes secured by first  
41 mortgage or first trust deed upon improved real estate where  
42 the amount secured by such mortgage or trust deed shall not  
43 at the time of making the same exceed eighty percent of the

44 assessed value, or sixty-six and two-thirds percent of the ap-  
45 praised value as determined by wholly disinterested and inde-  
46 pendent appraisers, whichever value shall be the higher, of  
47 the real estate covered by such mortgage or trust deed, and  
48 when such mortgage or trust deed is accompanied by a satis-  
49 factory abstract of title, certificate of title or title insurance  
50 policy, showing good title in the mortgagor when making such  
51 mortgage or trust deed, and by a fire insurance policy in an  
52 old line company with loss, if any, payable to the mortgagee  
53 or trustee as his interest may appear: *Provided*, that the rate  
54 of interest upon the above enumerated securities in this sub-  
55 division (e), in which such investments may be made, shall  
56 not be less than three and one-half percent per annum nor  
57 greater than the maximum rate of interest which such bonds or  
58 negotiable notes may bear under applicable law: *Provided*  
59 *further*, That the provisions herein establishing a minimum rate  
60 of interest shall not apply to investments in force as of the  
61 effective date of this section;

62 (f) In savings accounts and time deposits of bank or trust  
63 companies to the extent that such deposits are insured by the  
64 federal deposit insurance corporation, or by any other similar  
65 federal instrumentality that may be hereafter created, provided  
66 there shall be such an instrumentality in existence and avail-  
67 able for the purpose, or by bonds of solvent surety companies:  
68 *Provided*, That the rate of interest upon such savings accounts  
69 or time deposits shall not be less than the rate paid other de-  
70 positors in such bank or trust company;

71 (g) In shares of state building and loan associations, or  
72 federal savings and loan associations, to the extent that such  
73 shares are insured by the federal savings and loan insurance  
74 corporation, or by any other similar federal instrumentality that  
75 may be hereafter created: *Provided*, That there shall be such  
76 an instrumentality in existence and available for the purpose, or  
77 by bonds of solvent surety companies: *Provided, however*, That  
78 the dividend rate upon such shares shall not be less than the  
79 rate paid to other shareholders in such associations;

80 (h) In other securities of corporations organized and exist-  
81 ing under the laws of the United States, or of the District of  
82 Columbia or any state of the United States, including, but not

83 by way of limitation, bonds, debentures, notes, equipment trust  
84 obligations or other evidences of indebtedness, and shares of  
85 common and preferred stocks of such corporations and securi-  
86 ties of any open end of closed end management type investment  
87 company or investment trust registered under the "Federal In-  
88 vestment Company Act" of one thousand nine hundred forty,  
89 as from time to time amended, which men of prudence, discre-  
90 tion 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 provisions  
93 of this subsection (h) which, at the time such investment shall  
94 be made, will cause the aggregate market value thereof to ex-  
95 ceed fifty percent of the aggregate market value at that time of  
96 all of the property of the fund held by such fiduciary. Notwith-  
97 standing the aforesaid percentage limitation the cash proceeds  
98 of the sale of securities received or purchased by a fiduciary and  
99 made eligible by this subdivision (h) may be reinvested in any  
100 securities of the type described in this subdivision (h).

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

110 (3) No common or preferred stocks, other than bank and  
111 insurance company stocks, shall be purchased under authority  
112 of this subdivision (h) unless currently fully listed and  
113 registered upon an exchange registered with the securities  
114 and exchange commission as a national securities exchange.  
115 No sale or other liquidation of any investment shall be  
116 required solely because of any change in the relative market  
117 value of those investments made eligible by this subdivision  
118 (h) and those made eligible by the preceding subdivisions of  
119 this section. In determining the aggregate market value of  
120 the property of a fund and the percentage of a fund to be  
121 invested under the provisions of this subdivision, a fidu-

122 ciary may rely upon published market quotations as to those  
123 investments for which such quotations are available, and  
124 upon such valuations of other investments as in the fidu-  
125 ciary's best judgment seem fair and reasonable according to  
126 available information.

127 Trust funds received by executors, administrators, guardians,  
128 curators, committees, trustees and other fiduciaries may be  
129 kept invested in the securities originally received by them, or  
130 if the trust funds originally received were stock or securities  
131 of a bank, in shares of stock or other securities (and securities  
132 received as distributions in respect thereof) of a holding  
133 company subject to the Federal Bank Holding Company Act  
134 of 1956, as amended, received upon conversion of, or in  
135 exchange for, shares of stock or other securities of such  
136 bank; unless otherwise ordered by a court having jurisdiction  
137 of the matter, as hereinafter provided, or unless the instrument  
138 under which the trust was created shall direct that a change  
139 of investment be made, and any such fiduciary shall not be  
140 liable for any loss that may occur by depreciation of such  
141 securities.

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

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

James L. Davis  
Chairman Senate Committee

Cherene C. Christiane  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. C. Williams  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

H. B. Matthews  
President of the Senate

Lewis G. W. Thomas  
Speaker House of Delegates

The within approved this the 20th  
day of March, 1975.

Aruba Thomas  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/14/75

Time 4:30 P.M.