

No: 1838

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



ENROLLED

Committee Substitute for
HOUSE BILL No. 1838

(By ~~THE~~ *Delegate Moore + Delegate McNeely*)



Passed *March 8,* 1986

In Effect *Ninety days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1838
(By DELEGATE MOORE and DELEGATE McNEELY)

[Passed March 8, 1986; in effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six, chapter forty-four of said code, all relating to authorizing investments in the African Development Bank by insurers and fiduciaries.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 33. INSURANCE.

ARTICLE 8. INVESTMENTS.

§33-8-12. Insured building and savings and loan shares; obligations of International Bank, Asian Development Bank or African Development 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
4 federal savings and loan associations, if such shares are
5 insured by the federal savings and loan insurance
6 corporation and may invest in obligations issued or
7 guaranteed by the "International Bank for Reconstruc-
8 tion and Development" or by the "Asian Development
9 Bank" or the "African 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,
2 committee, trustee or other fiduciary whose duty it may
3 be to loan or invest money entrusted to him as such,
4 may, without any order of any court, invest the same or
5 any part thereof in any of the following securities, and
6 without liability for any loss resulting from investments
7 therein: *Provided*, That such fiduciary shall exercise the
8 judgment and care under the circumstances then
9 prevailing which men of prudence, discretion and
10 intelligence exercise in the management of their own
11 affairs, not in regard to speculation, but in regard to the
12 permanent disposition of their funds, considering the
13 probable income as well as the probable safety of their
14 capital:

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

28 opment” or by the “Inter-American Development Bank”
29 or by the “Asian Development Bank” or by the “African
30 Development Bank”;

31 (b) In bonds or interest-bearing notes or obligations of
32 this state;

33 (c) In bonds of any state of the United States which
34 has not within ten years previous to the making of such
35 investment defaulted in the payment of any part of
36 either principal or interest on any of its bonds issued by
37 authority of the legislature of such state;

38 (d) In the bonds or interest-bearing notes or obliga-
39 tions of any county, district, school district or independ-
40 ent school district, municipality or any other political
41 division of this state that have been issued pursuant to
42 the authority of any law of this state, since the ninth day
43 of May of the year one thousand nine hundred seventeen;

44 (e) In bonds and negotiable notes secured by first
45 mortgage or first trust deed upon improved real estate
46 where the amount secured by such mortgage or trust
47 deed shall not at the time of making the same exceed
48 eighty percent of the assessed value, or sixty-six and
49 two-thirds percent of the appraised value as determined
50 by wholly disinterested and independent appraisers,
51 whichever value shall be the higher, of the real estate
52 covered by such mortgage or trust deed, and when such
53 mortgage or trust deed is accompanied by a satisfactory
54 abstract of title, certificate of title or title insurance
55 policy, showing good title in the mortgager when
56 making such mortgage or trust deed, and by a fire
57 insurance policy in an old line company with loss, if any,
58 payable to the mortgagee or trustee as his interest may
59 appear: *Provided*, That the rate of interest upon the
60 above enumerated securities in this subdivision (e), in
61 which such investments may be made, shall not be less
62 than three and one-half percent per annum nor greater
63 than the maximum rate of interest “which such bonds or
64 negotiable notes may bear under applicable law:
65 *Provided further*, That the provisions herein establishing
66 a minimum rate of interest shall not apply to invest-
67 ments in force as of the effective date of this section;

68 (f) In savings accounts and time deposits of bank or
69 trust companies to the extent that such deposits are
70 insured by the federal deposit insurance corporation, or
71 by any other similar federal instrumentality that may
72 be hereafter created, provided there shall be such an
73 instrumentality in existence and available for the
74 purpose, or by bonds of solvent surety companies:
75 *Provided*, That the rate of interest upon such savings
76 accounts or time deposits shall not be less than the rate
77 paid other depositors in such bank or trust company;

78 (g) In shares of state building and loan associations,
79 or federal savings and loan associations, to the extent
80 that such shares are insured by the federal savings and
81 loan insurance corporation, or by any other similar
82 federal instrumentality that may be hereafter created:
83 *Provided*, That there shall be such an instrumentality
84 in existence and available for the purpose, or by bonds
85 of solvent surety companies: *Provided, however*, That the
86 dividend rate upon such shares shall not be less than the
87 rate paid to other shareholders in such association;

88 (h) In other securities of corporations organized and
89 existing under the laws of the United States, or of the
90 District of Columbia or any state of the United States,
91 including, but not by way of limitation, bonds, debentures,
92 notes, equipment trust obligations or other evidences of
93 indebtedness, and shares of common and preferred stocks of
94 such corporations and securities of any open end or closed end
95 management type investment company or investment trust registered
96 under the "Federal Investment Company Act" of one thousand
97 nine hundred forty, as from time to time amended,
98 which men of prudence, discretion and intelligence
99 acquire or retain for their own account, provided, and
100 upon conditions, however, that:
101

102 (1) No investment shall be made pursuant to the
103 provisions of this subdivision (h) which, at the time such
104 investment shall be made, will cause the aggregate
105 market value thereof to exceed fifty percent of the
106 aggregate market value at that time of all of the
107 property of the fund held by such fiduciary. Notwithstanding
108 the aforesaid percentage limitation the cash

109 proceeds of the sale of securities received or purchased
110 by a fiduciary and made eligible by this subdivision (h)
111 may be reinvested in any securities of the type described
112 in this subdivision (h).

113 (2) No bonds, debentures, notes, equipment trust
114 obligations or other evidence of indebtedness of such
115 corporations shall be purchased under authority of this
116 subdivision (h) unless such obligations, if other than
117 issues of a common carrier subject to the provisions of
118 section twenty-a of the "Interstate Commerce Act," as
119 amended, shall be obligations issued, guaranteed or
120 assumed by corporations which have any securities
121 currently registered with the securities and exchange
122 commission.

123 (3) No common or preferred stocks, other than bank
124 and insurance company stocks, shall be purchased under
125 authority of this subdivision (h) unless currently fully
126 listed and registered upon an exchange registered with
127 the securities and exchange commission as a national
128 securities exchange. No sale or other liquidation of any
129 investment shall be required solely because of any
130 change in the relative market value of those investments
131 made eligible by this subdivision (h) and those made
132 eligible by the preceding subdivisions of this section. In
133 determining the aggregate market value of the property
134 of a fund and the percentage of a fund to be invested
135 under the provisions of this subdivision, a fiduciary may
136 rely upon published market quotations as to those
137 investments for which such quotations are available, and
138 upon such valuations of other investments as in the
139 fiduciary's best judgment seem fair and reasonable
140 according to available information.

141 Trust funds received by executors, administrators,
142 guardians, curators, committees, trustees and other
143 fiduciaries may be kept invested in the securities
144 originally received by them, or if the trust funds
145 originally received were stock or securities of a bank,
146 in shares of stock or other securities (and securities
147 received as distributions in respect thereof) of a holding
148 company subject to the Federal Bank Holding Company
149 Act of 1956, as amended, received upon conversion of,

150 or in exchange for, shares of stock or other securities
151 of such bank; unless otherwise ordered by a court having
152 jurisdiction of the matter, as hereinafter provided, or
153 unless the instrument under which the trust was created
154 shall direct that a change of investment be made, and
155 any such fiduciary shall not be liable for any loss that
156 may occur by depreciation of such securities.

157 This section shall not apply where the instrument
158 creating the trust, or the last will and testament of any
159 testator, or any court having jurisdiction of the matter,
160 specially directs in what securities the trust funds shall
161 be invested, and every such court is hereby given power
162 specially to direct by order or orders, from time to time,
163 additional securities in which trust funds may be
164 invested, and any investment thereof made in accor-
165 dance with any such special direction shall be legal, and
166 no executor, administrator, guardian, curator, commit-
167 tee, trustee or other fiduciary shall be held for any loss
168 resulting in any such case.

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

Bruce O. Allison

Chairman Senate Committee

Floyce Fuller

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Wells

Clerk of the Senate

Donald A. Kopp

Clerk of the House of Delegates

Sam Tomlinson

President of the Senate

Joseph P. Allright

Speaker of the House of Delegates

The within *approved* this the *26th*
March
day of _____, 1986.

Archie P. Moore, Jr.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/06

Time 4:42 pm

PROCTIVE
1986 MAR 26 PM 6 57
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86