WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 294

(By Senator Grubb, et al.)

PASSED March 7, 1996
In Effect NINETY DAYS FROM PASSAGE
ENROLLED

Senate Bill No. 294

(By Senators Grubb, Anderson, Bowman, Deem and Schoonover)

[Passed March 7, 1996; 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; and to further amend said chapter by adding thereto a new article, designated article six-b, all relating to enacting the uniform prudent investor act; establishing standards of care for investment and management decisions of trustees who invest and manage trust assets; duties of trustee; standard of review; duties of trustee upon delegation of functions; language authorizing investments or strategy permitted by act; application of act to existing trusts; application and construction; short title, severability; and effective date.

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; and that said chapter be further amended by adding thereto a new article, designated article six-b, all 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, except as otherwise provided in article six-b of this chapter, 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 “Farm Credit Act Amendments of 1986” (12 U. S. C. §2001 et. seq.), 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 “International American Development Bank” or by the “Asian Development Bank” or by the “African 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, 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, 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, however, 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; and

(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, deben-
tures, notes, equipment trust obligations or other evi-
dences of indebtedness and shares of common and
preferred stocks of such corporations and securities of
any open end or closed end management type investment
company or investment trust registered under the
“Federal Investment Company Act” of one thousand nine
hundred forty, as from time to time amended, which men
of prudence, discretion 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 subdivision which, at the time such
investment shall be made, will cause the aggregate
market value thereof to exceed fifty percent of the
aggregate market value at that time of all of the property
of the fund held by such fiduciary. Notwithstanding the
aforesaid percentage limitation the cash proceeds of the
sale of securities received or purchased by a fiduciary
and made eligible by this subdivision may be reinvested
in any securities of the type described in this subdivi-
sion;

(2) No bonds, debentures, notes, equipment trust
obligations or other evidence of indebtedness of such
corporations shall be purchased under authority of this
subdivision 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 regis-
tered with the securities and exchange commission; and

(3) No common or preferred stocks, other than bank
and insurance company stocks, shall be purchased under
authority of this subdivision 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 and those made eligible
by the preceding subdivisions of this section. In deter-
mining 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 fiduciary may rely
upon published market quotations as to those invest-
ments 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 origi-
nally 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.

ARTICLE 6B. UNIFORM PRUDENT INVESTOR ACT.
§44-6B-1. Prudent investor rule.

(a) Notwithstanding the provisions of section two, article six of this chapter, and except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§44-6B-2. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a
prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

1. General economic conditions;
2. The possible effect of inflation or deflation;
3. The expected tax consequences of investment decisions or strategies;
4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;
5. The expected total return from income and the appreciation of capital;
6. Other resources of the beneficiaries;
7. Needs for liquidity, regularity of income and preservation or appreciation of capital; and
8. An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

e) A trustee may invest in any kind of property or type
36 of investment consistent with the standards of this
37 article.
38 (f) A trustee who has special skills or expertise, or is
39 named trustee in reliance upon the trustee’s representa-
40 tion that the trustee has special skills or expertise, has a
41 duty to use those special skills or expertise.

§44-6B-3. Diversification.
1 A trustee shall diversify the investments of the trust
2 unless the trustee reasonably determines that, because of
3 special circumstances, the purposes of the trust are
4 better served without diversifying.

§44-6B-4. Duties at inception of trusteeship.
1 Within a reasonable time after accepting a trusteeship
2 or receiving trust assets, a trustee shall review the trust
3 assets and make and implement decisions concerning the
4 retention and disposition of assets, in order to bring the
5 trust portfolio into compliance with the purposes, terms,
6 distribution requirements and other circumstances of the
7 trust, and with the requirements of this article.

§44-6B-5. Loyalty.
1 A trustee shall invest and manage the trust assets
2 solely in the interest of the beneficiaries.

§44-6B-6. Impartiality.
1 If a trust has two or more beneficiaries, the trustee
2 shall act impartially in investing and managing the trust
3 assets, taking into account any differing interests of the
4 beneficiaries.

§44-6B-7. Investment costs.
1 In investing and managing trust assets, a trustee may
2 only incur costs that are appropriate and reasonable in
3 relation to the assets, the purposes of the trust and the
4 skills of the trustee.

§44-6B-8. Reviewing compliance.
Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee’s decision or action and not by hindsight.


(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

1. Selecting an agent;
2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
3. Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

§44-6B-10. Language invoking standard of article.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article: “investments permissible by law for investment of trust funds”, “legal investments”, “authorized investments”, “using the judgment and care under
the circumstances then prevailing that persons 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, "prudent man rule", "prudent trustee rule", "prudent person rule" and "prudent investor rule".

§44-6B-11. Application to existing trusts.

This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

§44-6B-12. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.


This article may be cited as the "West Virginia Uniform Prudent Investor Act".

§44-6B-14. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§44-6B-15. Effective date.

This article takes effect on the first day of July, one thousand nine hundred ninety-six.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within bill is approved this the ______ day of March, 1996.

[Signature]
Governor