

SB 294

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# 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

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STATE HOUSE

## ENROLLED

### Senate Bill No. 294

(BY SENATORS GRUBB, ANDERSON, BOWMAN,  
DEEM AND SCHOONOVER)

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[Passed March 7, 1996; in effect ninety days from passage.]

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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,  
2 committee, trustee or other fiduciary whose duty it may  
3 be to loan or invest money entrusted to him as such, may,  
4 without any order of any court, invest the same or any  
5 part thereof in any of the following securities, and  
6 without liability for any loss resulting from investments  
7 therein: *Provided*, That, except as otherwise provided in  
8 article six-b of this chapter, such fiduciary shall exercise  
9 the judgment and care under the circumstances then  
10 prevailing which men of prudence, discretion and  
11 intelligence exercise in the management of their own  
12 affairs, not in regard to speculation, but in regard to the  
13 permanent disposition of their funds, considering the  
14 probable income as well as the probable safety of their  
15 capital:

16 (a) In bonds or interest-bearing notes or obligations of  
17 the United States, or those for which the faith of the  
18 United States is distinctly pledged to provide for the  
19 payment of the principal and interest thereof, including,  
20 but not by way of limitation, bonds or debentures issued  
21 under the "Farm Credit Act Amendments of 1986" (12 U.  
22 S. C. §2001 et. seq.), as amended, debentures issued by  
23 the federal national mortgage association, securities  
24 issued by the federal home loan bank system; and in  
25 bonds, interest-bearing notes and obligations issued,  
26 guaranteed or assumed by the "International Bank for  
27 Reconstruction and Development" or by the "Inter-  
28 American Development Bank" or by the "Asian Develop-  
29 ment Bank" or by the "African Development Bank";

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

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

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

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

67 (f) In savings accounts and time deposits of bank or  
68 trust companies to the extent that such deposits are  
69 insured by the federal deposit insurance corporation, or

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

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

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

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

108 sale of securities received or purchased by a fiduciary  
109 and made eligible by this subdivision may be reinvested  
110 in any securities of the type described in this subdivi-  
111 sion;

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

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

139 Trust funds received by executors, administrators,  
140 guardians, curators, committees, trustees and other  
141 fiduciaries may be kept invested in the securities origi-  
142 nally received by them, or if the trust funds originally  
143 received were stock or securities of a bank, in shares of  
144 stock or other securities (and securities received as  
145 distributions in respect thereof) of a holding company

146 subject to the federal Bank Holding Company Act of  
147 1956, as amended, received upon conversion of, or in  
148 exchange for, shares of stock or other securities of such  
149 bank; unless otherwise ordered by a court having juris-  
150 diction of the matter, as hereinafter provided, or unless  
151 the instrument under which the trust was created shall  
152 direct that a change of investment be made, and any such  
153 fiduciary shall not be liable for any loss that may occur  
154 by depreciation of such securities.

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

**ARTICLE 6B. UNIFORM PRUDENT INVESTOR ACT.**

**§44-6B-1. Prudent investor rule.**

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

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

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

1 (a) A trustee shall invest and manage trust assets as a

2 prudent investor would, by considering the purposes,  
3 terms, distribution requirements and other circum-  
4 stances of the trust. In satisfying this standard, the  
5 trustee shall exercise reasonable care, skill and caution.

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

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

15 (1) General economic conditions;

16 (2) The possible effect of inflation or deflation;

17 (3) The expected tax consequences of investment  
18 decisions or strategies;

19 (4) The role that each investment or course of action  
20 plays within the overall trust portfolio, which may  
21 include financial assets, interests in closely held enter-  
22 prises, tangible and intangible personal property and  
23 real property;

24 (5) The expected total return from income and the  
25 appreciation of capital;

26 (6) Other resources of the beneficiaries;

27 (7) Needs for liquidity, regularity of income and  
28 preservation or appreciation of capital; and

29 (8) An asset's special relationship or special value, if  
30 any, to the purposes of the trust or to one or more of the  
31 beneficiaries.

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

35 (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.**

1 Compliance with the prudent investor rule is deter-  
2 mined in light of the facts and circumstances existing at  
3 the time of a trustee's decision or action and not by  
4 hindsight.

**§44-6B-9. Delegation of investment and management func-  
tions.**

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

6 (1) Selecting an agent;

7 (2) Establishing the scope and terms of the delegation,  
8 consistent with the purposes and terms of the trust; and

9 (3) Periodically reviewing the agent's actions in order  
10 to monitor the agent's performance and compliance with  
11 the terms of the delegation.

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

15 (c) A trustee who complies with the requirements of  
16 subsection (a) of this section is not liable to the benefi-  
17 ciaries or to the trust for the decisions or actions of the  
18 agent to whom the function was delegated.

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

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

1 The following terms or comparable language in the  
2 provisions of a trust, unless otherwise limited or modi-  
3 fied, authorizes any investment or strategy permitted  
4 under this article: "investments permissible by law for  
5 investment of trust funds", "legal investments", "autho-  
6 rized investments", "using the judgment and care under

7 the circumstances then prevailing that persons of  
8 prudence, discretion, and intelligence exercise in the  
9 management of their own affairs, not in regard to  
10 speculation but in regard to the permanent disposition of  
11 their funds, considering the probable income as well as  
12 the probable safety of their capital", "prudent man  
13 rule", "prudent trustee rule", "prudent person rule" and  
14 "prudent investor rule".

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

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

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

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

**§44-6B-13. Short title.**

1 This article may be cited as the "West Virginia Uni-  
2 form Prudent Investor Act".

**§44-6B-14. Severability.**

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

**§44-6B-15. Effective date.**

1 This article takes effect on the first day of July, one  
2 thousand nine hundred ninety-six.

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

*Randy Schoorover*  
.....  
Chairman Senate Committee

*Randy Seavert*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell B. White*  
.....  
Clerk of the Senate

*Raymond D. Long*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Paul E. Clemen*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *25<sup>th</sup>* .....  
day of *March* ....., 1996.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

2/21/46

Time

9:46 am