

Act 658 of the 1989 Regular Session.

Act 658

HB1640

By: Representative Wilson

"AN ACT TO AMEND ARKANSAS CODE 28-65-311 AND ARKANSAS CODE 28-71-106 GOVERNING AUTHORIZED INVESTMENTS FOR FIDUCIARIES AND GUARDIANS, TO PROVIDE THAT INVESTMENTS AUTHORIZED OR REQUIRED TO BE MADE IN SPECIFIED SECURITIES MAY BE MADE IN REGISTERED MUTUAL FUNDS WHOSE PORTFOLIOS ARE LIMITED TO INVESTMENTS IN SUCH SPECIFIED SECURITIES AND REPURCHASE AGREEMENTS FULLY COLLATERIZED BY SUCH SPECIFIED SECURITIES; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 28-65-311(b) is hereby amended to read as follows:

"(b) The guardian shall invest the funds of the ward not reasonably needed for the ward's care, maintenance, or education in securities selected by the guardian from among the following categories:

(1) Bonds, notes, or certificates of indebtedness which are the direct obligations of, or the principal and income of which are unconditionally guaranteed by, the United States of America;

(2) Bonds or notes issued by the State of Arkansas;

(3) Arkansas State Board of Education bonds issued under Acts 1937, No. 162 [repealed];

(4) Bonds issued by a county, city, incorporated town, or improvement district of the State of Arkansas, whether the bonds are the general obligation of the issuer or are payable out of a special fund, as long as the bonds are negotiable instruments under the law;

(5) Bonds issued by a school district of the State of Arkansas;

(6) Shares, share accounts, or accounts of any building and loan association organized under the laws of the State of Arkansas or of any federal savings and loan association domiciled in the State of Arkansas which are insured by the Federal Savings and Loan Insurance Corporation. However, no such investment shall exceed the amounts so insured;

(7) Notes, bonds, debentures, or other similar obligations issued by Federal Land Banks, Federal Intermediate Credit banks, or Banks for Cooperatives, or any other obligations issued pursuant to the provisions of an Act of Congress of the United States known as the Farm Credit Act of 1971 and acts amendatory thereto;

(8) Bonds issued by a national mortgage association;

(9) Notes or bonds secured by mortgage or deed of trust which the Federal Housing Administration has insured or has made a commitment to insure;

(10) Notes or bonds secured fully as to principal and interest by a first mortgage or deed of trust upon improved or timbered real property located in the State of Arkansas in which provision is made for regular periodic payments on the principal, at least annually, sufficient in amount to amortize the indebtedness during a period not exceeding fifteen (15) years. These notes or bonds are to be in an amount not exceeding sixty-five percent (65%) of the value of the real property security as determined by an appraisal thereof approved by the court;

(11) Bonds, notes, debentures, or other direct obligations of a state,

county, or city located without the State of Arkansas but within the United States of America, or of a corporation incorporated under the laws of the United States of America or of any state of the United States of America or of the District of Columbia which, at the time of the purchase, shall be rated in either the highest or next highest classification established by at least two (2) nationally recognized standard financial rating services;

(12) Shares of any open-end or closed-end management-type investment company or investment trust registered under the Federal Investment Company Act of 1940, as amended, the portfolio of which is limited to the securities described in subparagraphs (1) through (11) herein and to repurchase agreements fully collateralized by such securities, provided that the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian; or

(13) Contracts for annuities or for life, health, or accident insurance on the person of the ward, or of another in whom the ward has an insurable interest, or a combination of any such contracts, if the contract is payable to the ward or to his estate, is in the usual form, and is issued by an insurance company authorized to do business in the State of Arkansas. Any such contract shall reserve the right in the ward to change the beneficiary thereof after the termination of his incompetency."

SECTION 2. Arkansas Code 28-65-311(c) (1) is hereby amended to read as follows:

"(c) (1) Without prior order of the court, no investment, shall be made, other than an investment in (i) direct obligations of, or obligations unconditionally guaranteed as to principal and income by, the United States of America, (ii) bonds issued by the State of Arkansas, or (iii) shares of any investment company or investment trust described in subparagraph (b) (12) of this section, the portfolio of which is limited to the securities described in subparts (i) and (ii) of this subparagraph (c) (1) and to repurchase agreements fully collateralized by such securities, provided that the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian."

SECTION 3. Arkansas Code 28-71-106(b) and (c) are hereby amended to read as follows:

"(b) Whenever a fiduciary is authorized or required by the instrument, judgment, decree, or order establishing the fiduciary relationship to invest funds in specifically described securities, the fiduciary may, unless expressly prohibited by such instrument, judgment, decree, or order, invest such funds in any investment company or investment trust described in subsection (a) of this section, the portfolio of which is limited to such specifically described securities and to repurchase agreements fully collateralized by such specifically described securities, provided that the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

(c) Unless expressly prohibited by the instrument, judgment, decree, or order establishing the fiduciary relationship, a fiduciary may invest funds in certificates of deposit and savings accounts of any state bank or national bank whose deposits are insured by the Federal Deposit Insurance Corporation and whose main office is in this state, including itself, if the fiduciary is a bank.

(d) Whenever the express terms or limitations set forth in any instrument use the terms 'legal investment' or 'authorized investment' or words of similar import, the words shall be taken to mean any investment authorized or permitted by this section."

SECTION 4. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: March 15, 1989

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