

842 Act Nos. 410-411-412 LAWS OF PENNSYLVANIA,

Time credit for
custody upon
imposition of
sentence.

Section 1. Any person who has been convicted of an offense in any court in this Commonwealth and sentenced to a term of imprisonment shall be given credit toward the service of his sentence for any days spent in custody on this offense prior to the imposition of his sentence, including any days spent in custody on this offense prior to the entry of bail.

Act effective
immediately.

Section 2. This act shall take effect immediately.

APPROVED—The 14th day of August, A. D. 1963.

WILLIAM W. SCRANTON

No. 411

AN ACT

Validating certain conveyances of real estate by executors of the estates of decedents.

Validation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Conveyances
made by execu-
tors under pro-
visions of section
541, act of April
18, 1949, P. L.
512, validated.

Section 1. Every conveyance of real estate heretofore made by the executor of the estate of any decedent under the provisions of section 541 of the act of April 18, 1949 (P. L. 512), known as the "Fiduciaries Act of 1949," where the real estate conveyed was not specifically devised in the will of the decedent, is hereby declared to be valid and effective, and shall vest in the purchaser, his heirs and assigns all right, title and interest of such decedent in all cases where the decedent died prior to the year 1950 notwithstanding the limitations in clause (1) of section 105 of the act of April 18, 1949 (P. L. 512), known as the "Fiduciaries Act of 1949."

Intervening
rights.

Section 2. The provisions of this act shall not affect intervening vested rights nor shall the act apply to any adjudicated case nor to any case in litigation.

Act effective
immediately.

Section 3. This act shall take effect immediately.

APPROVED—The 14th day of August, A. D. 1963.

WILLIAM W. SCRANTON

No. 412

AN ACT

Amending the act of May 15, 1933 (P. L. 624), entitled, as amended, "An act relating to the business of banking, and to the exercise of fiduciary powers by corporations; providing for the organization of corporations with fiduciary powers, and of

banking corporations, with or without fiduciary powers, including the conversion of National banks into State banks, and for the licensing of private bankers and employes' mutual banking associations; defining the rights, powers, duties, liabilities, and immunities of such corporations; of existent corporations authorized to engage in a banking business, with or without fiduciary powers, of private bankers and employes' mutual banking associations, and of the officers, directors, trustees, shareholders, attorneys, and other employees of all such corporations, employes' mutual banking associations or private bankers, or of affiliated corporations, associations, or persons; restricting the exercise of banking powers by any other corporation, association, or person, and of fiduciary powers by any other corporation; conferring powers and imposing duties upon the courts, prothonotaries, recorders of deeds, and certain State departments, commissions, and officers; imposing penalties; and repealing certain acts and parts of acts," providing for the collective investment funds or other property received or held by a trust company or a bank and trust company as fiduciary as herein defined.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Banking Code.

Section 1. The heading and subsections A and B of section 1109, act of May 15, 1933 (P. L. 624), known as the "Banking Code," amended December 1, 1959 (P. L. 1634), are amended to read:

Heading and subsections A and B, section 1109, act of May 15, 1933, P. L. 624, amended December 1, 1959, P. L. 1634, further amended.

Section 1109. Common Trust or *Collective Investment Funds*.—A. A trust company, or a bank and trust company in its trust department, may establish and maintain one or more common trust or *collective investment funds as provided in subsection B.1 hereof*. The term "common trust fund," as used in this section, shall mean a fund maintained by a trust company or a bank and trust company for the collective investment and reinvestment of [moneys of estates contributed thereto by the trust company or bank and trust company as fiduciary. The term "estate" or "estates," as used in this section, shall include any trust or other fund administered by the trust company or bank and trust company as trustee, committee, or guardian, and shall also include a fund administered by the trust company, or bank and trust company, as executor, if under the will such fund might later become distributable to the trust company, or bank and trust company, as trustee or guardian, and any employes' welfare, pension, profit sharing, share, purchase, or other employe benefit plans administered by the trust company, or bank and trust company, as trustee, agent or custodian] funds or other property received or held by a trust company or a bank and trust company as fiduciary. The term "fiduciary," as used in this section, shall mean a trust company or a bank and trust company undertaking to act alone, or jointly with

others, primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, managing agent and any other similar capacity. The term "managing agent" shall mean the fiduciary relationship assumed by a trust company or a bank and trust company upon the creation of an account, which confers investment discretion on the trust company or bank and trust company, and which imposes upon it the fiduciary responsibilities imposed upon executors, administrators, guardians or trustees under will or deed, but as to which the technical legal relationship is that of agent and principal.

B. If the instrument under which a trust company or a bank and trust company acts as fiduciary, whether such fiduciary capacity arose before or is created after this act takes effect, shall limit or restrict the investment of [moneys of the estate] funds or other property received or held by such trust company or bank and trust company in assets of the class authorized by law as legal investments, the trust company or bank and trust company may, in its capacity as sole fiduciary or with the consent of any person acting with it in a fiduciary capacity, invest and reinvest [moneys of the estate] such funds or other property in any such common trust fund maintained by the trust company or bank and trust company, provided, the assets composing such fund consists solely of assets of the class authorized as legal investments for funds held by fiduciaries.

If the instrument under which a trust company or a bank and trust company acts as fiduciary, whether such fiduciary capacity arose before or is created after this act takes effect, shall authorize the investment of [moneys of the estate] such funds or other property in a common trust fund or in investments other than those designated by law as legal investments, or shall authorize the trust company or bank and trust company, either alone or in conjunction with any person acting with it in a fiduciary capacity, to exercise its or their discretion with respect to the investment of [moneys of the estate] such funds or other property, the trust company or bank and trust company may, in its capacity as sole fiduciary or with the consent of any person acting with it in a fiduciary capacity, invest and reinvest [moneys of the estate] such funds or other property in any such common trust fund maintained by the trust company or bank and trust company. Any such common trust fund, consisting solely of [moneys of estates] such funds or other property contributed thereto by the trust company or bank and trust company pursuant to authority con-

tained in any such instruments creating the fiduciary capacity to invest [moneys of the estates] *such funds or other property* in a common trust fund, or in investments other than such legal investments, or pursuant to such discretionary power with respect to the investment of [moneys of the estates] *such funds or other property* as contained in any such instruments creating the fiduciary capacity, may be composed of investments other than those of the class designated by law as legal investments for funds held by fiduciaries [including common and preferred stocks].

Bonds secured by mortgages and securities of the class authorized by law as legal investments for fiduciaries, shall be deemed proper investments for any such common trust funds: Provided, however, That no investment for a common trust fund shall be made or maintained in bonds, secured by mortgages, which would cause the total amount of the investment for such fund in bonds, secured by mortgages, to exceed forty per centum of the value of all the assets comprising such fund.

No moneys of any one estate in excess of one hundred thousand dollars other than a pension, welfare, profit sharing, share, purchase, or other employe benefit plan, shall be invested in any one or more of such common trust funds as may be maintained by a trust company or bank and trust company. In applying this limitation, if two or more trusts are created by the same settler or settlers, and as much as one-half of the income or principal, or both, of each trust is presently payable or applicable to the use of the same person or persons, such trusts shall be considered as one].

Section 2. Subsections C and D of section 1109 of the act are repealed.

Subsections C and D, section 1109 of act, repealed.

Section 3. Section 1109 of the act is amended by adding, after subsection B, the following new subsections to read:

Section 1109 of act, amended by adding the following new subsections B.1, B.2, and B.3.

Section 1109. * * *

B.1. Funds held by a trust company or a bank and trust company as fiduciary may be invested collectively:

(1) *In a common trust fund, maintained by the trust company or bank and trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the trust company or bank and trust company in its capacity as executor, administrator, guardian or trustee under a will or deed.*

(2) *In a fund, maintained by the trust company or bank and trust company consisting solely of assets of retirement, pension, profit sharing, stock bonus or other*

trusts, which are exempt from Federal income taxation under the Internal Revenue Code.

(3) In a common trust fund, maintained by the trust company or bank and trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as managing agent.

B.2. Collective investments of funds or other property by trust companies or bank and trust companies under subsection B.1 of this section, referred to in this subsection as "collective investment funds," shall be administered as follows:

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the Plan) which shall be approved by a resolution of the trust company's or bank and trust company's board of directors and filed with the Department of Banking. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Department of Banking as to the manner in which the fund is to be operated, including provisions relating to the investment powers of the trust company or bank and trust company with respect to the fund, the allocation of income, profits and losses, the terms and conditions governing the admission or withdrawal of participations in the fund, the auditing of accounts of the trust company or bank and trust company with respect to the fund, the basis and method of valuing assets in the fund, the minimum frequency for valuation of assets of the fund, the period following each such valuation date during which the valuation may be made, the basis upon which the fund may be terminated, and such other matters as may be necessary to define clearly the rights of participants in the fund: Provided, That Plans which have been established in conformance with prior regulations of the Board of Governors of the Federal Reserve System, or in conformance with this section prior to the amendments made thereto by this amendatory act, may continue to conform to such regulations or act rather than the requirements of this subsection, for a reasonable period. A copy of the Plan shall be available at the principal office of the trust company or bank and trust company for inspection during all banking hours, and upon request a copy of the Plan shall be furnished to any person.

(2) Moneys held by the trust company or bank and trust company in its capacity as managing agent shall not be invested in collective investment funds established under the provisions of subsection B.1 (1) or (2) of this section. Properly held by the trust company or bank and trust company in its capacity as trustee of retire-

ment, pension, profit sharing, stock bonus or other trusts, which are exempt from Federal income taxation under the Internal Revenue Code, may be invested in collective investment funds established under the provisions of subsection B.1 (1) or (2) of this section, subject to the provisions herein contained pertaining to such funds. Assets of retirement, pension, profit sharing, stock bonus or other trusts, which are exempt from Federal income taxation under the Internal Revenue Code, and held by the trust company or bank and trust company in whatever capacity, may be invested in collective investment funds established under the provisions of subsection B.1 (2) of this section.

(3) All participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or *held by the trust company or bank and trust company as fiduciary in a participation in a collective investment fund is proper, the trust company or bank and trust company may consider the collective investment fund as a whole and shall not, for example, be prohibited from making such investment because any particular asset is non-income producing.

(4) Not less frequently than once during each period of three months, a trust company or a bank and trust company administering a collective investment fund shall determine the value of the assets in the fund as of the dates set for the valuation of assets. No participation shall be admitted to or withdrawn from the fund except (i) on the basis of such valuation and (ii) as of such valuation date. No participation shall be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the trust company or bank and trust company and approved in such manner as the board of directors shall prescribe. No such request or notice may be cancelled or countermanded after the valuation date.

(5) (i) A trust company or a bank and trust company administering a collective investment fund shall, at least once during each period of twelve months, cause an adequate audit to be made of the collective investment fund by auditors responsible only to its board of directors. In the event such audit is performed by independent public accountants, the reasonable expenses of such audit may be charged to the collective investment fund.

* "hold" in original.

(ii) A trust company or a bank and trust company administering a collective investment fund shall, at least once during each period of twelve months, prepare a financial report of the fund which shall be filed with the Department of Banking. This report shall, based upon the above audit, contain a list of the investments in the fund showing the current market value of each investment, a statement for the period since the last report showing purchases, sales and any other investment changes, income and disbursements, and an appropriate notation as to any investment in default.

(iii) The financial report may include a description of the fund's value on previous dates as well as its income and disbursements during previous accounting periods. The report shall make no reference to the performance of funds other than those administered by the trust company or bank and trust company, and no predictions or representations as to future results.

(iv) A copy of the financial report shall be furnished, or notice shall be given that a copy of such report is available and will be furnished, without charge, upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. The report, in summarized form as prescribed by the Department of Banking, shall be published in a newspaper of general circulation in the place where *the principal office of the trust company or bank and trust company is located. In addition, a full report shall be furnished upon request to any person, and the fact of the availability of such material may be given publicity solely in connection with the promotion of the fiduciary services of the trust company or bank and trust company. Except as herein provided, the trust company or bank and trust company shall not advertise or publicize its operation of collective investment funds. The cost of printing, publication and distribution of the report shall be borne by the trust company or bank and trust company.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind, provided that all distributions as of any one valuation date shall be made on the same basis.

(7) If for any reason an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants

* "the" not in original.

in the collective investment fund at the time of withdrawal.

(8) (i) *A trust company or a bank and trust company administering a collective investment fund shall not (a) have any interest in such fund other than in its fiduciary capacity but funds held by a trust company or a bank and trust company as fiduciary as described under paragraph (1) or (2) of subsection B.1 of this section for its own employes may be invested in such a fund, or (b) make any loans on the security of a participation in such fund. If because of a creditor relationship or otherwise, the trust company or bank and trust company acquires an interest in a participation in such fund, the participation shall be withdrawn on the first date on which such withdrawal can be effected. However, in no case shall an unsecured advance to an account holding a participation, until the time of the next withdrawal, be deemed to constitute the acquisition of an interest by the trust company or bank and trust company.*

(ii) *The trust company or bank and trust company may purchase for its own account from a collective investment fund any defaulted mortgage held by such fund, if in the judgment of the board of directors the cost of segregation of such mortgage would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the trust company or bank and trust company elects to so purchase the mortgage, it must do so at its market value or at the sum of principal, interest and penalty charges, whichever is greater.*

(9) *Except in the case of collective investment funds described in paragraph (2) of subsection B.1 of this section:*

(i) *No funds or other property shall be invested in a participation in a collective investment fund if, as a result of such investment *, the participant would have an interest aggregating in excess of ten per cent of the then market value of the fund: Provided, That in applying this limitation if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is payable or applicable to the use of the same person or persons, such accounts shall be considered as one.*

(ii) *No investment for a collective investment fund shall be made in stocks or bonds or other obligations of any one person, firm or corporation if, as a result of such investment, the total amount invested in stocks or bonds, or other obligations issued or guaranteed by such person, firm or corporation would aggregate in excess ten per*

* "in" in original.

cent of the then market value of the fund: Provided, That this limitation shall not apply to investments in direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest.

(iii) Any trust company or bank and trust company administering a collective investment fund shall have the responsibility of maintaining in cash and readily marketable investments such part of the assets of the fund as shall be deemed to be necessary to provide adequately for the needs of participants and to prevent inequities between such participants, and if, prior to any admissions to or withdrawals from a fund, the trust company or bank and trust company shall determine that, after effecting the admissions and withdrawals which are to be made, less than forty per cent of the value of the remaining assets of the collective investment fund would be composed of cash and readily marketable investments, no admissions to or withdrawals from the fund shall be permitted as of the valuation date upon which such determination is made: Provided, That ratable distribution upon all participations shall not be so prohibited in any case.

(10) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the trust company or bank and trust company administering the fund.

(11) (i) A trust company or a bank and trust company may, but shall not be required to, transfer up to five per cent of the net income derived by a collective investment fund from mortgages held by such fund during any regular accounting period to a reserve account: Provided, That no such transfers shall be made which would cause the amount in such account to exceed one per cent of the outstanding principal amount of all mortgages held in the fund. The amount of such reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(ii) At the end of each accounting period, all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against such reserve account to the extent available and credited to income distributed to participants. In the event of subsequent recovery of such interest payments by the fund the reserve account shall be credited with that amount so recovered.

(12) A trust company or a bank and trust company administering a collective investment fund shall have the exclusive management thereof. The trust company or bank and trust company may charge a fee for the management of the collective investment fund: Provided, That the fractional part of such fee proportionate to the interest of each participant shall not, when added to any other compensations charged by the trust company or bank and trust company to the participant, exceed the total amount of compensations which would have been charged to said participant if no assets of said participant had been invested in participations in the fund. The trust company or bank and trust company shall absorb the costs of establishing or reorganizing a collective investment fund.

(13) No trust company or bank and trust company administering a collective investment fund shall issue any certificate or other document evidencing a direct or indirect interest in such fund in any form.

(14) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed to be a violation of this subsection if, promptly after the discovery of the mistake, the trust company or bank and trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

B.3. In addition to the investments permitted under subsection B.1 of this section, funds or other property received or held by a trust company or a bank and trust company as fiduciary may be invested collectively in a common trust fund maintained by the trust company or bank and trust company for the collective investment of cash balances received or held by a trust company or bank and trust company in its capacity as trustee, executor, administrator or guardian, which the trust company or bank and trust company considers to be individually too small to be invested separately to advantage and the total investment in which on the part of any one account does not exceed ten thousand dollars (\$10,000): Provided, That in applying this limitation if two or more accounts are created by the same person or persons and as much as one-half of the income or principal of each account is payable or applicable to the use of the same person or persons, such account shall be considered as one.

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Section 4. This act shall take effect immediately.

Act effective
immediately.

APPROVED—The 14th day of August, A. D. 1963.

WILLIAM W. SCRANTON