

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 35

(By Mr. Cason, Mr. President, and
Mr. Carigan)

PASSED January 25 1967
In Effect from Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 1-31-67

35

ENROLLED

Senate Bill No. 35

(By MR. CARSON, MR. PRESIDENT, and MR. CARRIGAN)

[Passed January 25, 1967; in effect from passage.]

AN ACT to amend article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to the distribution of assets by fiduciaries in satisfaction of pecuniary bequests or transfers in trust of a pecuniary amount; authorizing fiduciaries to enter into certain agreements generally relating thereto, and validating such agreements entered into heretofore.

Be it enacted by the Legislature of West Virginia:

That article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve, to read as follows:

**ARTICLE 5. GENERAL PROVISIONS AS TO
FIDUCIARIES.**

**§44-5-12. Distribution of assets in satisfaction of pecuniary
bequests; authority of fiduciaries to enter into certain
agreements; validating certain agreements.**

(a) Where a will or trust agreement authorizes or
2 directs the fiduciary to satisfy wholly or partly in kind
3 a pecuniary bequest or transfer in trust of a pecuniary
4 amount, unless the instrument shall otherwise expressly
5 provide, the assets selected by the fiduciary for that pur-
6 pose shall be valued at their respective values on the
7 date or dates of their distribution.

(b) Whenever a fiduciary under the provisions of a
8 will or other governing instrument is required to satisfy
9 a pecuniary bequest or transfer in trust in favor of the
10 testator's or donor's spouse and is authorized to satisfy
11 such bequest or transfer by selection and distribution of
12 assets in kind, and the will or other governing instrument
13 further provides that the assets to be so distributed shall
14 or may be valued by some standard other than their fair
15 market value on the date of distribution, the fiduciary,
16

17 unless the will or other governing instrument otherwise
18 specifically directs, shall distribute assets, including cash,
19 fairly representative of appreciation or depreciation in
20 the value of all property available for distribution in
21 satisfaction of such pecuniary bequest or transfer. This
22 section shall not apply to prevent a fiduciary from carry-
23 ing into effect the provisions of the will or other govern-
24 ing instrument that the fiduciary, in order to implement
25 such a bequest or transfer, must distribute assets, in-
26 cluding cash, having an aggregate fair market value at
27 the date or dates of distribution amounting to no less
28 than the amount of the pecuniary bequest or transfer as
29 finally determined for federal estate tax purposes.

30 (c) Any fiduciary having discretionary powers under
31 a will or other governing instrument with respect to the
32 selection of assets to be distributed in satisfaction of a
33 pecuniary bequest or transfer in trust in favor of the
34 testator's or donor's spouse shall be authorized to enter
35 into agreements with the commissioner of internal rev-
36 enue of the United States of America and other taxing
37 authorities requiring the fiduciary to exercise the fidu-

38 ciary's discretion so that cash and other properties dis-
39 tributed in satisfaction of such bequest or transfer in
40 trust will be fairly representative of the appreciation or
41 depreciation in value of all property then available for
42 distribution in satisfaction of such bequest or transfer
43 in trust and any such agreement heretofore entered into
44 after April one, one thousand nine hundred sixty-four, is
45 hereby validated. Any such fiduciary shall be authorized
46 to enter into any other agreement not in conflict with the
47 express terms of the will or other governing instrument
48 that may be necessary or advisable in order to secure for
49 federal estate tax purposes the appropriate marital de-
50 duction available under the internal revenue laws of the
51 United States of America, and to do and perform all acts
52 incident to such purpose.

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

William Tompos
Chairman Senate Committee

Clayton E Davidson
Chairman House Committee

Originated in the Senate.

Takes effect *from* _____ Passage.

W. H. H. H. H.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard Hanson
President of the Senate

H. Leban White
Speaker House of Delegates

The within *approved* this the *31st*
day of *January*, 1967.

Huey C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 1/30/67

Time 2:10 P.M.