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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4494

(By Delegates Stemple, Doyle, Jenkins,
Yeager and Stalnaker)



Passed March 10, 2000

In Effect July 1, 2000

ORIGINAL
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H. B. 4494

(BY DELEGATES STEMPLE, DOYLE, JENKINS,
YEAGER AND STALNAKER)

[Passed March 10, 2000; in effect July 1, 2000.]

AN ACT to repeal article six, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said code by adding thereto a new chapter, designated chapter forty-four-b, relating to revising the uniform principal and income act.

Be it enacted by the Legislature of West Virginia:

That article six, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be further amended by adding thereto a new chapter, designated chapter forty-four-b, to read as follows:

ARTICLE 1. DEFINITIONS AND FIDUCIARY DUTIES.

§44B-1-101. Short title.

1 This chapter may be cited as the “Uniform Principal and
2 Income Act”.

§44B-1-102. Definitions.

1 (a) “Accounting period” means a calendar year unless
2 another twelve-month period is selected by a fiduciary. The
3 term includes a portion of a calendar year or other twelve-
4 month period that begins when an income interest begins or
5 ends when an income interest ends.

6 (b) “Beneficiary” includes, in the case of a decedent’s
7 estate, an heir, legatee and devisee and, in the case of a trust, an
8 income beneficiary and a remainder beneficiary.

9 (c) “Fiduciary” means a personal representative or a trustee.
10 The term includes an executor, administrator, successor
11 personal representative, special administrator and a person
12 performing substantially the same function.

13 (d) “Income” means money or property that a fiduciary
14 receives as current return from a principal asset. The term
15 includes a portion of receipts from a sale, exchange or liquida-
16 tion of a principal asset, to the extent provided in article four of
17 this chapter.

18 (e) “Income beneficiary” means a person to whom net
19 income of a trust is or may be payable.

20 (f) “Income interest” means the right of an income benefi-
21 ciary to receive all or part of net income, whether the terms of
22 the trust require it to be distributed or authorize it to be distrib-
23 uted in the trustee’s discretion.

24 (g) “Mandatory income interest” means the right of an
25 income beneficiary to receive net income that the terms of the
26 trust require the fiduciary to distribute.

27 (h) "Net income" means the total receipts allocated to
28 income during an accounting period minus the disbursements
29 made from income during the period, plus or minus transfers
30 under this chapter to or from income during the period.

31 (i) "Person" means an individual, corporation, business
32 trust, estate, trust, partnership, limited liability company,
33 association, joint venture, government; governmental subdivi-
34 sion, agency or instrumentality; public corporation; or any other
35 legal or commercial entity.

36 (j) "Principal" means property held in trust for distribution
37 to a remainder beneficiary when the trust terminates.

38 (k) "Remainder beneficiary" means a person entitled to
39 receive principal when an income interest ends.

40 (l) "Terms of a trust" means the manifestation of the intent
41 of a settlor or decedent with respect to the trust, expressed in a
42 manner that admits of its proof in a judicial proceeding,
43 whether by written or spoken words or by conduct.

44 (m) "Trustee" includes an original, additional or successor
45 trustee, whether or not appointed or confirmed by a court.

§44B-1-103. Fiduciary duties; general principles.

1 (a) In allocating receipts and disbursements to or between
2 principal and income, and with respect to any matter within the
3 scope of articles two and three of this chapter, a fiduciary:

4 (1) Shall administer a trust or estate in accordance with the
5 terms of the trust or the will, even if there is a different provi-
6 sion in this chapter;

7 (2) May administer a trust or estate by the exercise of a
8 discretionary power of administration given to the fiduciary by

9 the terms of the trust or the will, even if the exercise of the
10 power produces a result different from a result required or
11 permitted by this chapter, and no inference that the fiduciary
12 has improperly exercised the discretion arises from the fact that
13 the fiduciary has made an allocation contrary to a provision of
14 this chapter;

15 (3) Shall administer a trust or estate in accordance with
16 this chapter if the terms of the trust or the will do not contain a
17 different provision or do not give the fiduciary a discretionary
18 power of administration; and

19 (4) Shall add a receipt or charge a disbursement to principal
20 to the extent that the terms of the trust and this chapter do not
21 provide a rule for allocating the receipt or disbursement to or
22 between principal and income.

23 (b) In exercising the power to adjust under subsection (a),
24 section one hundred four of this article, or a discretionary
25 power of administration regarding a matter within the scope of
26 this chapter, whether granted by the terms of a trust, a will or
27 this chapter, including the trustee's power to adjust under
28 subsection (a), section one hundred four of this article, a
29 fiduciary shall administer a trust or estate impartially, based on
30 what is fair and reasonable to all of the beneficiaries, except to
31 the extent that the terms of the trust or the will clearly manifest
32 an intention that the fiduciary shall or may favor one or more of
33 the beneficiaries. The exercise of discretion in accordance with
34 this chapter is presumed to be fair and reasonable to all of the
35 beneficiaries.

§44B-1-104. Trustee's power to adjust.

1 (a) Subject to the provisions of subsection (b) of this
2 section, a trustee may make an adjustment between principal
3 and income to the extent the trustee considers necessary if all of
4 the following conditions are satisfied:

5 (1) The trustee invests and manages trust assets under the
6 prudent investor rule.

7 (2) The trust describes the amount that shall or may be
8 distributed to a beneficiary by referring to the trust's income.

9 (3) The trustee determines, after applying the rules in
10 subsection (a), section one hundred three of this article, and
11 considering any power the trustee may have under the trust to
12 invade principal or accumulate income, that the trustee is
13 unable to comply with subsection(b), section one hundred three
14 of this article.

15 (b) A trustee may not make an adjustment between princi-
16 pal and income in any of the following circumstances:

17 (1) Where it would diminish the income interest in a trust
18 (A) that requires all of the income to be paid at least annually
19 to a spouse and (B) for which, if the trustee did not have the
20 power to make the adjustment, an estate tax or gift tax marital
21 deduction would be allowed, in whole or in part.

22 (2) Where it would reduce the actuarial value of the income
23 interest in a trust to which a person transfers property with the
24 intent to qualify for a gift tax exclusion.

25 (3) Where it would change the amount payable to a
26 beneficiary as a fixed annuity or a fixed fraction of the value of
27 the trust assets.

28 (4) Where it would be made from any amount that is
29 permanently set aside for charitable purposes under a will or
30 trust, unless both income and principal are so set aside.

31 (5) Where possessing or exercising the power to make an
32 adjustment would cause an individual to be treated as the owner
33 of all or part of the trust for income tax purposes, and the

34 individual would not be treated as the owner if the trustee did
35 not possess the power to make an adjustment.

36 (6) Where possessing or exercising the power to make an
37 adjustment would cause all or part of the trust assets to be
38 included for estate tax purposes in the estate of an individual
39 who has the power to remove a trustee or appoint a trustee, or
40 both, and the assets would not be included in the estate of the
41 individual if the trustee did not possess the power to make an
42 adjustment.

43 (7) Where the trustee is a beneficiary of the trust.

44 (c) Notwithstanding any provision to the contrary, if
45 subdivision (5), (6), or (7) of subsection (b) of this section
46 applies to a trustee and there is more than one trustee, a
47 cotrustee to whom the provision does not apply may make the
48 adjustment unless the exercise of the power by the remaining
49 trustee or trustees is not permitted by the trust.

50 (d) A trustee may release the entire power conferred by
51 subsection (a) of this section or may release only the power to
52 adjust from income to principal or the power to adjust from
53 principal to income in either of the following circumstances:

54 (1) If the trustee is uncertain about whether possessing or
55 exercising the power will cause a result described in subdivi-
56 sions (1) to (6), inclusive, of subsection (b) of this section.

57 (2) If the trustee determines that possessing or exercising
58 the power will or may deprive the trust of a tax benefit or
59 impose a tax burden not described in subsection (b) of this
60 section.

61 (e) A release under subsection (d) of this section may be
62 permanent or for a specified period, including a period mea-
63 sured by the life of an individual.

64 (f) A trust that limits the power of a trustee to make an
65 adjustment between principal and income does not affect the
66 application of this section unless it is clear from the trust that it
67 is intended to deny the trustee the power of adjustment provided
68 by subsection (a) of this section.

69 (g) Nothing in this section or in this chapter is intended to
70 create or imply a duty to make an adjustment , and a trustee is
71 not liable for not considering whether to make an adjustment or
72 for choosing not to make an adjustment.

§44-1-105. Trustee's Right to Give Notice.

1 (a) A trustee may but is not required to give a notice of
2 proposed action regarding a matter governed by this chapter as
3 provided in this section. For the purpose of this section, a
4 proposed action includes a course of action and a decision not
5 to take action.

6 (b) The trustee shall mail notice of the proposed action to
7 all adult beneficiaries who are receiving, or are entitled to
8 receive, income under the trust or to receive a distribution of
9 principal if the trust were terminated at the time the notice is
10 given.

11 (c) Notice of proposed action need not be given to any
12 person who consents in writing to the proposed action. The
13 consent may be executed at any time before or after the
14 proposed action is taken.

15 (d) The notice of proposed action shall state that it is given
16 pursuant to this section and shall state all of the following:

17 (1) The name and mailing address of the trustee.

18 (2) The name and telephone number of a person who may
19 be contacted for additional information.

20 (3) A description of the action proposed to be taken and an
21 explanation of the reasons for the action.

22 (4) The time within which objections to the proposed action
23 can be made, which shall be at least thirty days from the
24 mailing of the notice of proposed action.

25 (5) The date on or after which the proposed action may be
26 taken or is effective.

27 (e) A beneficiary may object to the proposed action by
28 mailing a written objection to the trustee at the address stated
29 in the notice of proposed action within the time period specified
30 in the notice of proposed action.

31 (f) A trustee is not liable to a beneficiary for an action
32 regarding a matter governed by this chapter if the trustee does
33 not receive a written objection to the proposed action from the
34 beneficiary within the applicable period and the other require-
35 ments of this section are satisfied. If no beneficiary entitled to
36 notice objects under this section, the trustee is not liable to any
37 current or future beneficiary with respect to the proposed
38 action.

39 (g) If the trustee receives a written objection within the
40 applicable period, either the trustee or a beneficiary may
41 petition the court to have the proposed action taken as pro-
42 posed, taken with modifications, or denied. In the proceeding,
43 a beneficiary objecting to the proposed action has the burden of
44 proving that the trustee's proposed action should not be taken.
45 A beneficiary who has not objected is not estopped from
46 opposing the proposed action in the proceeding. If the trustee
47 decides not to implement the proposed action, the trustee shall
48 notify the beneficiaries of the decision not to take the action and
49 the reasons for the decision, and the trustee's decision not to
50 implement the proposed action does not itself give rise to
51 liability to any current or future beneficiary. A beneficiary may

52 petition the court to have the action taken, and has the burden
53 of proving that it should be taken.

54 (h) In a proceeding with respect to a trustee's exercise or
55 nonexercise of the power to make an adjustment under section
56 one hundred four, the sole remedy is to direct, deny, or devise
57 an adjustment between principal and income.

58 (i) Nothing in this section is intended to create or imply a
59 duty to give notice and a trustee is not liable for choosing not to
60 give notice or for not considering whether to give notice.

61 (j) This chapter applies to any will and trust established
62 under an instrument executed on or after the effective date of
63 this chapter except as otherwise expressly provided in the will
64 or terms of the trust or in this chapter, or if the trustee or
65 personal representative elects in either's sole discretion to
66 administer the trust or will under this chapter. With respect to
67 any will or trust established under an instrument executed prior
68 to the effective date of this chapter, this chapter applies if the
69 trustee or personal representative elects, in either's sole
70 discretion, to administer the trust or will under this chapter.

ARTICLE 2. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST.

§44B-2-201. Determination and distribution of net income.

1 After a decedent dies, in the case of an estate, or after an
2 income interest in a trust ends, the following rules apply:

3 (1) A fiduciary of an estate or of a terminating income
4 interest shall determine the amount of net income and net
5 principal receipts received from property specifically given to
6 a beneficiary under the rules in articles three through five which
7 apply to trustees and the rules in subdivision (5) of this section.
8 The fiduciary shall distribute the net income and net principal

9 receipts to the beneficiary who is to receive the specific
10 property.

11 (2) A fiduciary shall determine the remaining net income of
12 a decedent's estate or a terminating income interest under the
13 rules in articles three through five which apply to trustees and
14 by:

15 (A) Including in net income all income from property used
16 to discharge liabilities;

17 (B) Paying from income or principal, in the fiduciary's
18 discretion, fees of attorneys, accountants and fiduciaries; court
19 costs and other expenses of administration; and interest on
20 death taxes, but the fiduciary may pay those expenses from
21 income of property passing to a trust for which the fiduciary
22 claims an estate tax marital or charitable deduction only to the
23 extent that the payment of those expenses from income will not
24 cause the reduction or loss of the deduction; and

25 (C) Paying from principal all other disbursements made or
26 incurred in connection with the settlement of a decedent's estate
27 or the winding up of a terminating income interest, including
28 debts, funeral expenses, disposition of remains, family allow-
29 ances and death taxes and related penalties that are apportioned
30 to the estate or terminating income interest by the will, the
31 terms of the trust, or applicable law.

32 (3) A fiduciary shall distribute to a beneficiary who
33 receives a pecuniary amount outright the interest or any other
34 amount provided by the will, the terms of the trust or applicable
35 law from net income determined under subdivision (2) of this
36 section or from principal to the extent that net income is
37 insufficient. If a beneficiary is to receive a pecuniary amount
38 outright from a trust after an income interest ends and no
39 interest or other amount is provided for by the terms of the trust
40 or applicable law, the fiduciary shall distribute the interest or

41 other amount to which the beneficiary would be entitled under
42 applicable law if the pecuniary amount were required to be paid
43 under a will.

44 (4) A fiduciary shall distribute the net income remaining
45 after distributions required by subdivision (3) of this section in
46 the manner described in section two hundred two of this article
47 to all other beneficiaries, including a beneficiary who receives
48 a pecuniary amount in trust, even if the beneficiary holds an
49 unqualified power to withdraw assets from the trust or other
50 presently exercisable general power of appointment over the
51 trust.

52 (5) A fiduciary may not reduce principal or income receipts
53 from property described in subdivision (1) of this section
54 because of a payment described in section five hundred one or
55 five hundred two, article five of this chapter to the extent that
56 the will, the terms of the trust or applicable law requires the
57 fiduciary to make the payment from assets other than the
58 property or to the extent that the fiduciary recovers or expects
59 to recover the payment from a third party. The net income and
60 principal receipts from the property are determined by includ-
61 ing all of the amounts the fiduciary receives or pays with
62 respect to the property, whether those amounts accrued or
63 became due before, on or after the date of a decedent's death or
64 an income interest's terminating event, and by making a
65 reasonable provision for amounts that the fiduciary believes the
66 estate or terminating income interest may become obligated to
67 pay after the property is distributed.

**§44B-2-202. Distribution to residuary and remainder beneficia-
ries.**

1 (a) Each beneficiary described in subdivision (4), section
2 two hundred one of this article is entitled to receive a portion of
3 the net income equal to the beneficiary's fractional interest in

4 undistributed principal assets, using values as of the distribution
5 date. If a fiduciary makes more than one distribution of assets
6 to beneficiaries to whom this section applies, each beneficiary,
7 including one who does not receive part of the distribution, is
8 entitled, as of each distribution date, to the net income the
9 fiduciary has received after the date of death or terminating
10 event or earlier distribution date but has not distributed as of the
11 current distribution date.

12 (b) In determining a beneficiary's share of net income, the
13 following rules apply:

14 (1) The beneficiary is entitled to receive a portion of the net
15 income equal to the beneficiary's fractional interest in the
16 undistributed principal assets immediately before the distribu-
17 tion date, including assets that later may be sold to meet
18 principal obligations.

19 (2) The beneficiary's fractional interest in the undistributed
20 principal assets must be calculated without regard to property
21 specifically given to a beneficiary and property required to pay
22 pecuniary amounts not in trust.

23 (3) The beneficiary's fractional interest in the undistributed
24 principal assets must be calculated on the basis of the aggregate
25 value of those assets as of the distribution date without reducing
26 the value by any unpaid principal obligation.

27 (4) The distribution date for purposes of this section may be
28 the date as of which the fiduciary calculates the value of the
29 assets if that date is reasonably near the date on which assets are
30 actually distributed.

31 (c) If a fiduciary does not distribute all of the collected but
32 undistributed net income to each person as of a distribution
33 date, the fiduciary shall maintain appropriate records showing
34 the interest of each beneficiary in that net income.

35 (d) A trustee may apply the rules in this section, to the
36 extent that the trustee considers it appropriate, to net gain or
37 loss realized after the date of death or terminating event or
38 earlier distribution date from the disposition of a principal asset
39 if this section applies to the income from the asset.

**ARTICLE 3. APPORTIONMENT AT BEGINNING AND END OF INCOME
INTEREST.**

§44B-3-301. When right to income begins and ends.

1 (a) An income beneficiary is entitled to net income from the
2 date on which the income interest begins. An income interest
3 begins on the date specified in the terms of the trust or, if no
4 date is specified, on the date an asset becomes subject to a trust
5 or successive income interest.

6 (b) An asset becomes subject to a trust:

7 (1) On the date it is transferred to the trust in the case of an
8 asset that is transferred to a trust during the transferor's life;

9 (2) On the date of a testator's death in the case of an asset
10 that becomes subject to a trust by reason of a will, even if there
11 is an intervening period of administration of the testator's
12 estate; or

13 (3) On the date of an individual's death in the case of an
14 asset that is transferred to a fiduciary by a third party because
15 of the individual's death.

16 (c) An asset becomes subject to a successive income
17 interest on the day after the preceding income interest ends, as
18 determined under subsection (d) of this section, even if there is
19 an intervening period of administration to wind up the preced-
20 ing income interest.

21 (d) An income interest ends on the day before an income
22 beneficiary dies or another terminating event occurs, or on the

23 last day of a period during which there is no beneficiary to
24 whom a trustee may distribute income.

**§44B-3-302. Apportionment of receipts and disbursements when
decedent dies or income interest begins.**

1 (a) A trustee shall allocate an income receipt or disburse-
2 ment other than one to which subdivision (1), section two
3 hundred one, article two of this chapter applies to principal if its
4 due date occurs before a decedent dies in the case of an estate
5 or before an income interest begins in the case of a trust or
6 successive income interest.

7 (b) A trustee shall allocate an income receipt or disburse-
8 ment to income if its due date occurs on or after the date on
9 which a decedent dies or an income interest begins and it is a
10 periodic due date. An income receipt or disbursement must be
11 treated as accruing from day to day if its due date is not
12 periodic or it has no due date. The portion of the receipt or
13 disbursement accruing before the date on which a decedent dies
14 or an income interest begins must be allocated to principal and
15 the balance must be allocated to income.

16 (c) An item of income or an obligation is due on the date
17 the payer is required to make a payment. If a payment date is
18 not stated, there is no due date for the purposes of this chapter.
19 Distributions to shareholders or other owners from an entity to
20 which section four hundred one, article four of this chapter
21 applies are deemed to be due on the date fixed by the entity for
22 determining who is entitled to receive the distribution or, if no
23 date is fixed, on the declaration date for the distribution. A due
24 date is periodic for receipts or disbursements that must be paid
25 at regular intervals under a lease or an obligation to pay interest
26 or if an entity customarily makes distributions at regular
27 intervals.

§44B-3-303. Apportionment when income interest ends.

1 (a) In this section, “undistributed income” means net
2 income received before the date on which an income interest
3 ends. The term does not include an item of income or expense
4 that is due or accrued or net income that has been added or is
5 required to be added to principal under the terms of the trust.

6 (b) When a mandatory income interest ends, the trustee
7 shall pay to a mandatory income beneficiary who survives that
8 date, or the estate of a deceased mandatory income beneficiary
9 whose death causes the interest to end, the beneficiary’s share
10 of the undistributed income that is not disposed of under the
11 terms of the trust unless the beneficiary has an unqualified
12 power to revoke more than five percent of the trust immediately
13 before the income interest ends. In the latter case, the undistrib-
14 uted income from the portion of the trust that may be revoked
15 must be added to principal.

16 (c) When a trustee’s obligation to pay a fixed annuity or a
17 fixed fraction of the value of the trust’s assets ends, the trustee
18 shall prorate the final payment if and to the extent required by
19 applicable law to accomplish a purpose of the trust or its settlor
20 relating to income, gift, estate or other tax requirements.

**ARTICLE 4. ALLOCATION OF RECEIPTS DURING ADMINISTRATION
OF TRUST.**

PART 1. RECEIPTS FROM ENTITIES.

§44B-4-401. Character or receipts.

1 (a) In this section, “entity” means a corporation, partner-
2 ship, limited liability company, regulated investment company,
3 real estate investment trust, common trust fund or any other
4 organization in which a trustee has an interest other than a trust
5 or estate to which section four hundred two of this article

6 applies, a business or activity to which section four hundred
7 three of this article applies, or an asset-backed security to which
8 section four hundred fifteen of this article applies.

9 (b) Except as otherwise provided in this section, a trustee
10 shall allocate to income money received from an entity.

11 (c) A trustee shall allocate the following receipts from an
12 entity to principal:

13 (1) Property other than money;

14 (2) Money received in one distribution or a series of related
15 distributions in exchange for part or all of a trust's interest in
16 the entity;

17 (3) Money received in total or partial liquidation of the
18 entity; and

19 (4) Money received from an entity that is a regulated
20 investment company or a real estate investment trust if the
21 money distributed is a capital gain dividend for federal income
22 tax purposes.

23 (d) Money is received in partial liquidation:

24 (1) To the extent that the entity, at or near the time of a
25 distribution, indicates that it is a distribution in partial liquida-
26 tion; or

27 (2) If the total amount of money and property received in
28 a distribution or series of related distributions is greater than
29 twenty percent of the entity's gross assets, as shown by the
30 entity's year-end financial statements immediately preceding
31 the initial receipt.

32 (e) Money is not received in partial liquidation, nor may it
33 be taken into account under subdivision (2), subsection (d) of

34 this section, to the extent that it does not exceed the amount of
35 income tax that a trustee or beneficiary must pay on taxable
36 income of the entity that distributes the money.

37 (f) A trustee may rely upon a statement made by an entity
38 about the source or character of a distribution if the statement
39 is made at or near the time of distribution by the entity's board
40 of directors or other person or group of persons authorized to
41 exercise powers to pay money or transfer property comparable
42 to those of a corporation's board of directors.

§44B-4-402. Distribution from trust or estate.

1 A trustee shall allocate to income an amount received as a
2 distribution of income from a trust or an estate in which the
3 trust has an interest other than a purchased interest, and shall
4 allocate to principal an amount received as a distribution of
5 principal from such a trust or estate. If a trustee purchases an
6 interest in a trust that is an investment entity, or a decedent or
7 donor transfers an interest in such a trust to a trustee, section
8 four hundred one or four hundred fifteen of this article applies
9 to a receipt from the trust.

§44B-4-403. Business and other activities conducted by trustee.

1 (a) If a trustee who conducts a business or other activity
2 determines that it is in the best interest of all the beneficiaries
3 to account separately for the business or activity instead of
4 accounting for it as part of the trust's general accounting
5 records, the trustee may maintain separate accounting records
6 for its transactions, whether or not its assets are segregated from
7 other trust assets.

8 (b) A trustee who accounts separately for a business or
9 other activity may determine the extent to which its net cash
10 receipts must be retained for working capital, the acquisition or
11 replacement of fixed assets, and other reasonably foreseeable

12 needs of the business or activity, and the extent to which the
13 remaining net cash receipts are accounted for as principal or
14 income in the trust's general accounting records. If a trustee
15 sells assets of the business or other activity, other than in the
16 ordinary course of the business or activity, the trustee shall
17 account for the net amount received as principal in the trust's
18 general accounting records to the extent the trustee determines
19 that the amount received is no longer required in the conduct of
20 the business.

21 (c) Activities for which a trustee may maintain separate
22 accounting records include:

23 (1) Retail, manufacturing, service and other traditional
24 business activities;

25 (2) Farming;

26 (3) Raising and selling livestock and other animals;

27 (4) Management of rental properties;

28 (5) Extraction of minerals and other natural resources;

29 (6) Timber operations; and

30 (7) Activities to which section 414 applies.

PART 2. RECEIPTS NOT NORMALLY APPORTIONED.

§44B-4-404. Principal receipts.

1 A trustee shall allocate to principal:

2 (1) To the extent not allocated to income under this chapter,
3 assets received from a transferor during the transferor's
4 lifetime, a decedent's estate, a trust with a terminating income
5 interest or a payer under a contract naming the trust or its
6 trustee as beneficiary;

7 (2) Money or other property received from the sale,
8 exchange, liquidation or change in form of a principal asset,
9 including realized profit, subject to this article;

10 (3) Amounts recovered from third parties to reimburse the
11 trust because of disbursements described in subdivision (7),
12 subsection (a), section five hundred two, article five of this
13 chapter or for other reasons to the extent not based on the loss
14 of income;

15 (4) Proceeds of property taken by eminent domain, but a
16 separate award made for the loss of income with respect to an
17 accounting period during which a current income beneficiary
18 had a mandatory income interest is income;

19 (5) Net income received in an accounting period during
20 which there is no beneficiary to whom a trustee may or must
21 distribute income; and

22 (6) Other receipts as provided in part 3 of this article.

§44B-4-405. Rental property.

1 To the extent that a trustee accounts for receipts from rental
2 property pursuant to this section, the trustee shall allocate to
3 income an amount received as rent of real or personal property,
4 including an amount received for cancellation or renewal of a
5 lease. An amount received as a refundable deposit, including a
6 security deposit or a deposit that is to be applied as rent for
7 future periods, must be added to principal and held subject to
8 the terms of the lease and is not available for distribution to a
9 beneficiary until the trustee's contractual obligations have been
10 satisfied with respect to that amount.

§44B-4-406. Obligation to pay money.

1 (a) An amount received as interest, whether determined at
2 a fixed, variable or floating rate, on an obligation to pay money

3 to the trustee, including an amount received as consideration for
4 prepaying principal, must be allocated to income without any
5 provision for amortization of premium.

6 (b) A trustee shall allocate to principal an amount received
7 from the sale, redemption or other disposition of an obligation
8 to pay money to the trustee more than one year after it is
9 purchased or acquired by the trustee, including an obligation
10 whose purchase price or value when it is acquired is less than
11 its value at maturity. If the obligation matures within one year
12 after it is purchased or acquired by the trustee, an amount
13 received in excess of its purchase price or its value when
14 acquired by the trust must be allocated to income.

15 (c) This section does not apply to an obligation to which
16 section four hundred nine, four hundred ten, four hundred
17 eleven, four hundred twelve, four hundred fourteen or four
18 hundred fifteen of this article applies.

§44B-4-407. Insurance policies and similar contracts.

1 (a) Except as otherwise provided in subsection (b), a trustee
2 shall allocate to principal the proceeds of a life insurance policy
3 or other contract in which the trust or its trustee is named as
4 beneficiary, including a contract that insures the trust or its
5 trustee against loss for damage to, destruction of or loss of title
6 to a trust asset. The trustee shall allocate dividends on an
7 insurance policy to income if the premiums on the policy are
8 paid from income, and to principal if the premiums are paid
9 from principal.

10 (b) A trustee shall allocate to income proceeds of a contract
11 that insures the trustee against loss of occupancy or other use by
12 an income beneficiary, loss of income or, subject to section four
13 hundred three of this article, loss of profits from a business.

14 (c) This section does not apply to a contract to which
15 section four hundred nine of this article applies.

PART 3. RECEIPTS NORMALLY APPORTIONED.

§44B-4-408. Insubstantial allocations not required.

1 (a) If a trustee determines that an allocation between
2 principal and income required by section four hundred nine,
3 four hundred ten, four hundred eleven, four hundred twelve or
4 four hundred fifteen, of this article is insubstantial, the trustee
5 may allocate the entire amount to principal unless one of the
6 circumstances described in subsection (c), section one hundred
7 four of this article applies to the allocation. This power may be
8 exercised by a cotrustee in the circumstances described in
9 subsection (d) of said section and may be released for the
10 reasons and in the manner described in subdivision (e) of said
11 section. An allocation is presumed to be insubstantial if:

12 (1) The amount of the allocation would increase or decrease
13 net income in an accounting period, as determined before the
14 allocation, by less than ten percent; or

15 (2) The value of the asset producing the receipt for which
16 the allocation would be made is less than ten percent of the total
17 value of the trust's assets at the beginning of the accounting
18 period.

19 (b) Nothing in this section imposes a duty on the trustee to
20 make an allocation under this section, and the trustee is not
21 liable for failure to make an allocation under this section.

**§44B-4-409. Deferred compensation, annuities and similar pay-
ments.**

1 (a) In this section, "payment" means a payment that a
2 trustee may receive over a fixed number of years or during the
3 life of one or more individuals because of services rendered or
4 property transferred to the payer in exchange for future pay-
5 ments. The term includes a payment made in money or property

6 from the payer's general assets or from a separate fund created
7 by the payer, including a private or commercial annuity, an
8 individual retirement account, and a pension, profit-sharing,
9 stock-bonus or stock-ownership plan.

10 (b) To the extent that a payment is characterized as interest
11 or a dividend or a payment made in lieu of interest or a divi-
12 dend, a trustee shall allocate it to income. The trustee shall
13 allocate to principal the balance of the payment and any other
14 payment received in the same accounting period that is not
15 characterized as interest, a dividend or an equivalent payment.

16 (c) If no part of a payment is characterized as interest, a
17 dividend, or an equivalent payment, and all or part of the
18 payment is required to be made, a trustee shall allocate to
19 income ten percent of the part that is required to be made during
20 the accounting period and the balance to principal. If no part of
21 a payment is required to be made or the payment received is the
22 entire amount to which the trustee is entitled, the trustee shall
23 allocate the entire payment to principal. For purposes of this
24 subsection, a payment is not "required to be made" to the extent
25 that it is made because the trustee exercises a right of with-
26 drawal.

27 (d) If, to obtain an estate tax marital deduction for a trust,
28 a trustee must allocate more of a payment to income than
29 provided for by this section, the trustee shall allocate to income
30 the additional amount necessary to obtain the marital deduction.

31 (e) This section does not apply to payments to which
32 section four hundred ten of this article applies.

§44B-4-410. Liquidating asset.

1 (a) In this section, "liquidating asset" means an asset whose
2 value will diminish or terminate because the asset is expected
3 to produce receipts for a period of limited duration. The term

4 includes a leasehold, patent, copyright, royalty right and right
5 to receive payments during a period of more than one year
6 under an arrangement that does not provide for the payment of
7 interest on the unpaid balance. The term does not include a
8 payment subject to section four hundred nine of this article,
9 resources subject to section four hundred eleven of this article,
10 timber subject to section four hundred twelve of this article, an
11 activity subject to section four hundred fourteen of this article,
12 an asset subject to section four hundred fifteen of this article or
13 any asset for which the trustee establishes a reserve for depreci-
14 ation under section five hundred three, article five of this
15 chapter.

16 (b) A trustee shall allocate to income ten percent of the
17 receipts from a liquidating asset and the balance to principal.

§44B-4-411. Minerals, water and other natural resources.

1 (a) To the extent that a trustee accounts for receipts from an
2 interest in minerals or other natural resources pursuant to this
3 section, the trustee shall allocate them as follows:

4 (1) If received as nominal delay rental or nominal annual
5 rent on a lease, a receipt must be allocated to income.

6 (2) If received from a production payment, a receipt must
7 be allocated to income if and to the extent that the agreement
8 creating the production payment provides a factor for interest
9 or its equivalent. The balance must be allocated to principal.

10 (3) If an amount received as a royalty, shut-in-well pay-
11 ment, take-or-pay payment, bonus or delay rental is more than
12 nominal, ninety percent must be allocated to principal and the
13 balance to income.

14 (4) If an amount is received from a working interest or any
15 other interest not provided for in subdivision (1), (2) or (3) of

16 this subsection, ninety percent of the net amount received must
17 be allocated to principal and the balance to income.

18 (b) An amount received on account of an interest in water
19 that is renewable must be allocated to income. If the water is
20 not renewable, ninety percent of the amount must be allocated
21 to principal and the balance to income.

22 (c) This chapter applies whether or not a decedent or donor
23 was extracting minerals, water or other natural resources before
24 the interest became subject to the trust.

25 (d) If a trust owns an interest in minerals, water or other
26 natural resources on the effective date of this chapter, the
27 trustee may allocate receipts from the interest as provided in
28 this chapter or in the manner used by the trustee before the
29 effective date of this chapter. If the trust acquires an interest in
30 minerals, water or other natural resources after the effective
31 date of this chapter, the trustee shall allocate receipts from the
32 interest as provided in this chapter.

§44B-4-412. Timber.

1 (a) To the extent that a trustee accounts for receipts from
2 the sale of timber and related products pursuant to this section,
3 the trustee shall allocate the net receipts:

4 (1) To income to the extent that the amount of timber
5 removed from the land does not exceed the rate of growth of the
6 timber during the accounting periods in which a beneficiary has
7 a mandatory income interest;

8 (2) To principal to the extent that the amount of timber
9 removed from the land exceeds the rate of growth of the timber
10 or the net receipts are from the sale of standing timber;

11 (3) To or between income and principal if the net receipts
12 are from the lease of timberland or from a contract to cut timber

13 from land owned by a trust, by determining the amount of
14 timber removed from the land under the lease or contract and
15 applying the rules in subdivisions (1) and (2) of this subsection;
16 or

17 (4) To principal to the extent that advance payments,
18 bonuses and other payments are not allocated pursuant to
19 subdivision (1), (2) or (3) of this subsection.

20 (b) In determining net receipts to be allocated pursuant to
21 subsection (a) of this section, a trustee shall deduct and transfer
22 to principal a reasonable amount for depletion.

23 (c) This chapter applies whether or not a decedent or
24 transferor was harvesting timber from the property before it
25 became subject to the trust.

26 (d) If a trust owns an interest in timberland on the effective
27 date of this chapter, the trustee may allocate net receipts from
28 the sale of timber and related products as provided in this
29 chapter or in the manner used by the trustee before the effective
30 date of this chapter. If the trust acquires an interest in timber-
31 land after the effective date of this chapter, the trustee shall
32 allocate net receipts from the sale of timber and related prod-
33 ucts as provided in this chapter.

§44B-4-413. Property not productive of income.

1 (a) If a marital deduction is allowed for all or part of a trust
2 whose assets consist substantially of property that does not
3 provide the surviving spouse with sufficient income from or use
4 of the trust assets, and if the amounts that the trustee transfers
5 from principal to income under section one hundred four of this
6 article and distributes to the spouse from principal pursuant to
7 the terms of the trust are insufficient to provide the spouse with
8 the beneficial enjoyment required to obtain the marital deduc-
9 tion, the spouse may require the trustee to make property

10 productive of income, convert property within a reasonable
11 time, or exercise the power conferred by subsection (a) of said
12 section. The trustee may decide which action or combination of
13 actions to take.

14 (b) In cases not governed by subsection (a) of this section,
15 proceeds from the sale or other disposition of an asset are
16 principal without regard to the amount of income the asset
17 produces during any accounting period.

§44B-4-414. Derivatives and options.

1 (a) In this section, “derivative” means a contract or finan-
2 cial instrument or a combination of contracts and financial
3 instruments which gives a trust the right or obligation to
4 participate in some or all changes in the price of a tangible or
5 intangible asset or group of assets, or changes in a rate, an index
6 of prices or rates or other market indicator for an asset or a
7 group of assets.

8 (b) To the extent that a trustee accounts for transactions in
9 derivatives pursuant to this section, the trustee shall allocate to
10 principal receipts from and disbursements made in connection
11 with those transactions.

12 (c) If a trustee grants an option to buy property from the
13 trust, whether or not the trust owns the property when the
14 option is granted, grants an option that permits another person
15 to sell property to the trust or acquires an option to buy property
16 for the trust or an option to sell an asset owned by the trust, and
17 the trustee or other owner of the asset is required to deliver the
18 asset if the option is exercised, an amount received for granting
19 the option must be allocated to principal. An amount paid to
20 acquire the option must be paid from principal. A gain or loss
21 realized upon the exercise of an option, including an option
22 granted to a settlor of the trust for services rendered, must be
23 allocated to principal.

§44B-4-415. Asset-backed securities.

1 (a) In this section, “asset-backed security” means an asset
2 whose value is based upon the right it gives the owner to
3 receive distributions from the proceeds of financial assets that
4 provide collateral for the security. The term includes an asset
5 that gives the owner the right to receive from the collateral
6 financial assets only the interest or other current return or only
7 the proceeds other than interest or current return. The term does
8 not include an asset to which section four hundred one or four
9 hundred nine of this article applies.

10 (b) If a trust receives a payment from interest or other
11 current return and from other proceeds of the collateral finan-
12 cial assets, the trustee shall allocate to income the portion of the
13 payment which the payer identifies as being from interest or
14 other current return and shall allocate the balance of the
15 payment to principal.

16 (c) If a trust receives one or more payments in exchange for
17 the trust’s entire interest in an asset-backed security in one
18 accounting period, the trustee shall allocate the payments to
19 principal. If a payment is one of a series of payments that will
20 result in the liquidation of the trust’s interest in the security
21 over more than one accounting period, the trustee shall allocate
22 ten percent of the payment to income and the balance to
23 principal.

**ARTICLE 5. ALLOCATION OF DISBURSEMENTS DURING ADMINIS-
TRATION OF TRUST.**

§44B-5-501. Disbursements from income.

1 A trustee shall make the following disbursements from
2 income to the extent that they are not disbursements to which
3 paragraph (B) or (C), subdivision (2), section two hundred one,
4 article two of this chapter applies:

5 (1) Except as otherwise ordered by the court one half of the
6 regular compensation of the trustee and of any person providing
7 investment advisory or custodial services to the trustee;

8 (2) Except as otherwise ordered by the court one half of all
9 expenses for accountings, judicial proceedings or other matters
10 that involve both the income and remainder interests;

11 (3) All of the other ordinary expenses incurred in connec-
12 tion with the administration, management or preservation of
13 trust property and the distribution of income, including interest,
14 ordinary repairs, regularly recurring taxes assessed against
15 principal and expenses of a proceeding or other matter that
16 concerns primarily the income interest; and

17 (4) Recurring premiums on insurance covering the loss of
18 a principal asset or the loss of income from or use of the asset.

§44B-5-502. Disbursements from principal.

1 (a) A trustee shall make the following disbursements from
2 principal:

3 (1) Except as otherwise ordered by the court the remaining
4 one-half of the disbursements described in subdivisions (1) and
5 (2), section five hundred one of this article;

6 (2) Except as otherwise ordered by the court all of the
7 trustee's compensation calculated on principal as a fee for
8 acceptance, distribution or termination, and disbursements
9 made to prepare property for sale;

10 (3) Payments on the principal of a trust debt;

11 (4) Expenses of a proceeding that concerns primarily
12 principal, including a proceeding to construe the trust or to
13 protect the trust or its property;

14 (5) Premiums paid on a policy of insurance not described
15 in subdivision (4), section five hundred one of this article of
16 which the trust is the owner and beneficiary;

17 (6) Estate, inheritance and other transfer taxes, including
18 penalties, apportioned to the trust; and

19 (7) Disbursements related to environmental matters,
20 including reclamation, assessing environmental conditions,
21 remedying and removing environmental contamination,
22 monitoring remedial activities and the release of substances,
23 preventing future releases of substances, collecting amounts
24 from persons liable or potentially liable for the costs of those
25 activities, penalties imposed under environmental laws or
26 regulations and other payments made to comply with those laws
27 or regulations, statutory or common law claims by third parties
28 and defending claims based on environmental matters.

29 (b) If a principal asset is encumbered with an obligation
30 that requires income from that asset to be paid directly to the
31 creditor, the trustee shall transfer from principal to income an
32 amount equal to the income paid to the creditor in reduction of
33 the principal balance of the obligation.

§44B-5-503. Transfers from income to principal for depreciation.

1 (a) In this section, “depreciation” means a reduction in
2 value due to wear, tear, decay, corrosion or gradual obsoles-
3 cence of a fixed asset having a useful life of more than one
4 year.

5 (b) A trustee may transfer to principal a reasonable amount
6 of the net cash receipts from a principal asset that is subject to
7 depreciation, under generally accepted accounting principles,
8 but may not transfer any amount for depreciation:

9 (1) Of that portion of real property used or available for use
10 by a beneficiary as a residence or of tangible personal property

11 held or made available for the personal use or enjoyment of a
12 beneficiary;

13 (2) During the administration of a decedent's estate; or

14 (3) Under this section if the trustee is accounting under
15 section four hundred three, article four of this chapter for the
16 business or activity in which the asset is used.

17 (c) An amount transferred to principal need not be held as
18 a separate fund.

§44B-5-504. Transfers from income to reimburse principal.

1 (a) If a trustee makes or expects to make a principal
2 disbursement described in this section, the trustee may transfer
3 an appropriate amount from income to principal in one or more
4 accounting periods to reimburse principal or to provide a
5 reserve for future principal disbursements.

6 (b) Principal disbursements to which subsection (a) of this
7 section applies include the following, but only to the extent that
8 the trustee has not been and does not expect to be reimbursed
9 by a third party:

10 (1) An amount chargeable to income but paid from princi-
11 pal because it is unusually large, including extraordinary
12 repairs;

13 (2) A capital improvement to a principal asset, whether in
14 the form of changes to an existing asset or the construction of
15 a new asset, including special assessments;

16 (3) Disbursements made to prepare property for rental,
17 including tenant allowances, leasehold improvements and
18 broker's commissions;

19 (4) Periodic payments on an obligation secured by a
20 principal asset to the extent that the amount transferred from

21 income to principal for depreciation is less than the periodic
22 payments; and

23 (5) Disbursements described in subdivision (7), subsection
24 (a), section five hundred two of this article.

25 (c) If the asset whose ownership gives rise to the disburse-
26 ments becomes subject to a successive income interest after an
27 income interest ends, a trustee may continue to transfer
28 amounts from income to principal as provided in subsection (a)
29 of this section.

§44B-5-505. Income taxes.

1 (a) A tax required to be paid by a trustee based on receipts
2 allocated to income must be paid from income.

3 (b) A tax required to be paid by a trustee based on receipts
4 allocated to principal must be paid from principal, even if the
5 tax is called an income tax by the taxing authority.

6 (c) A tax required to be paid by a trustee on the trust's share
7 of an entity's taxable income must be paid proportionately:

8 (1) From income to the extent that receipts from the entity
9 are allocated to income; and

10 (2) From principal to the extent that:

11 (A) Receipts from the entity are allocated to principal; and

12 (B) The trust's share of the entity's taxable income exceeds
13 the total receipts described in subdivision (1) and paragraph
14 (A), subdivision (2) of this subsection.

15 (d) For purposes of this section, receipts allocated to
16 principal or income must be reduced by the amount distributed
17 to a beneficiary from principal or income for which the trust
18 receives a deduction in calculating the tax.

§44B-5-506. Adjustments between principal and income because of taxes.

1 (a) A fiduciary may make adjustments between principal
2 and income to offset the shifting of economic interests or tax
3 benefits between income beneficiaries and remainder beneficia-
4 ries which arise from:

5 (1) Elections and decisions, other than those described in
6 subsection (b) of this section, that the fiduciary makes from
7 time to time regarding tax matters;

8 (2) An income tax or any other tax that is imposed upon the
9 fiduciary or a beneficiary as a result of a transaction involving
10 or a distribution from the estate or trust; or

11 (3) The ownership by an estate or trust of an interest in an
12 entity whose taxable income, whether or not distributed, is
13 includable in the taxable income of the estate, trust or a
14 beneficiary.

15 (b) If the amount of an estate tax marital deduction or
16 charitable contribution deduction is reduced because a fiduciary
17 deducts an amount paid from principal for income tax purposes
18 instead of deducting it for estate tax purposes, and as a result
19 estate taxes paid from principal are increased and income taxes
20 paid by an estate, trust or beneficiary are decreased, each estate,
21 trust or beneficiary that benefits from the decrease in income
22 tax shall reimburse the principal from which the increase in
23 estate tax is paid. The total reimbursement must equal the
24 increase in the estate tax to the extent that the principal used to
25 pay the increase would have qualified for a marital deduction
26 or charitable contribution deduction but for the payment. The
27 proportionate share of the reimbursement for each estate, trust
28 or beneficiary whose income taxes are reduced must be the
29 same as its proportionate share of the total decrease in income
30 tax. An estate or trust shall reimburse principal from income.

§44B-5-507. Effect on marital deduction.

1 If a marital deduction gift is made in trust, in addition to the
2 other provisions of this chapter, each of the following provi-
3 sions also applies to the marital deduction trust:

4 (a) The transferor's spouse is the only beneficiary of
5 income or principal of the marital deduction property as long as
6 the spouse is alive. Nothing in this subdivision precludes
7 exercise by the transferor's spouse of a power of appointment
8 included in a trust that qualifies as a general power of appoint-
9 ment marital deduction trust.

10 (b) Subject to the provisions of subdivision (d) of this
11 section, the transferor's spouse is entitled to all of the income
12 of the marital deduction property as long as the spouse is alive.
13 Nothing in this subdivision precludes exercise by the trans-
14 feror's spouse of a power of appointment included in a trust that
15 qualifies as a general power of appointment marital deduction
16 trust.

17 (c) The transferor's spouse has the right to require that the
18 trustee of the trust make unproductive marital deduction
19 property productive or to convert it into productive property
20 within a reasonable time.

21 (d) Notwithstanding the provisions of section three hundred
22 three, article three of this chapter, in the case of a qualified
23 terminable interest property under 26 U.S.C. §2056 (b) (7) or 26
24 U.S.C. §2523 (f), as the same are in effect on the effective date
25 on this chapter, on termination of the interest of the transferor's
26 spouse in the trust all of the remaining accrued or undistributed
27 income shall pass to the estate of the transferor's spouse, unless
28 the instrument provides a different disposition that qualifies for
29 the marital deduction.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§44B-6-601. Uniformity of application and construction.

1 In applying and construing this chapter, consideration must
2 be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§44B-6-602. Severability clause.

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

§44B-6-603. Effective date.

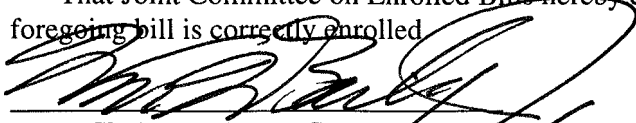
1 This chapter takes effect on the first day of July, two
2 thousand.

§44B-6-604. Application of chapter to existing trusts and estates.

1 This chapter applies , to any will and trust established under
2 an instrument executed on or after the effective date of this
3 chapter except as otherwise expressly provided in the will or
4 terms of the trust or in this chapter, or if the trustee or personal
5 representative elects in either's sole discretion to administer the
6 trust or will under this chapter.

7 With respect to any will or trust established under an
8 instrument executed prior to the effective date of this chapter,
9 this chapter applies if the trustee or personal representative
10 elects, in either's sole discretion, to administer the trust or will
11 under this chapter.

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

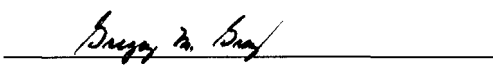

Chairman Senate Committee

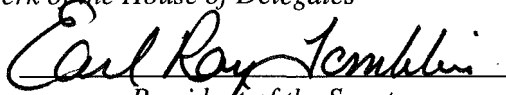

Chairman House Committee

Originating in the House.

In effect July 1, 2000.

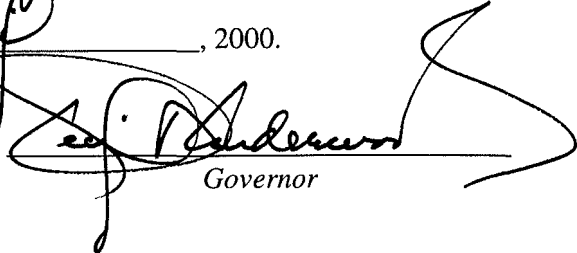

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 4th
day of April, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/00

Time 3:15 pm