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2007 APR -3 PM 4:25

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

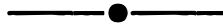
FIRST REGULAR SESSION, 2007



# ENROLLED

## House Bill No. 3271

(By Delegates Webster and Amores)



Passed March 10, 2007

In Effect Ninety Days from Passage

FILED

ENROLLED

2007 APR -3 PM 4: 25

**H. B. 3271**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

(BY DELEGATES WEBSTER AND AMORES)

[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §36-1-18 of the Code of West Virginia, 1931, as amended, relating to clarifying spendthrift trusts.

*Be it enacted by the Legislature of West Virginia:*

That §36-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. CREATION OF ESTATES GENERALLY.**

**§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts; nonmerger of trusts.**

1

2 (a) Estates held in trust are subject to the debts of the  
3 beneficiary of the trust, except where the creator has  
4 expressly provided in the trust instrument words substantially  
5 to the effect that:

6

7 (1) The income or principal, or both, may only be applied  
8 to the health, education, support or maintenance of a  
9 beneficiary, other than the creator of the trust, for the life of

10 the beneficiary, or the income or principal, or both, may only  
11 be applied at the discretion of the trustee to or for the benefit  
12 of a beneficiary, other than the creator of the trust, for the life  
13 of the beneficiary, for a fixed term of years or other fixed  
14 duration of time, or a fixed annuity amount or a unitrust  
15 amount computed under a formula as a percentage of fair  
16 market value of assets in the trust, regardless of whether the  
17 same is income, principal, or both, may only be applied to or  
18 for the benefit of a beneficiary, other than the creator of the  
19 trust, for the life of the beneficiary or for a fixed term of  
20 years or other fixed duration of time; and

21

22 (2) The trust is not subject to the liability of or alienation  
23 by the beneficiary or beneficiaries.

24

25 (b) A trust, whenever created, may not be set aside or  
26 terminated solely on the assertion of a creditor that the trustee  
27 or trustees are the same person or persons as the beneficiary  
28 or beneficiaries of the trust.

29

30 (c) This section applies to any trust established by an  
31 instrument executed on or after the first day of July, two  
32 thousand one, except as otherwise expressly provided in the  
33 terms of the trust.


34

35 (d) This section applies to any trust established under an  
36 instrument executed prior to the first day of July, two  
37 thousand one, when the trustee elects, in his or her sole  
38 discretion, to administer the trust pursuant to the provisions  
39 of this section.

40

41 (e) Except as provided in subsection (c) of this section,  
42 this section may not be construed to create or imply a duty on  
43 a trustee to administer the trust pursuant to the provisions of  
44 this section, and a trustee may not be held liable for refusing  
45 to administer a trust pursuant to the provisions of this section.


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

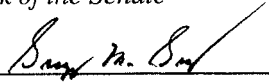
  
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Chairman Senate Committee

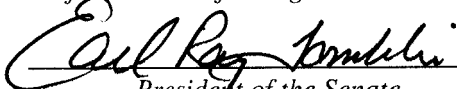
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

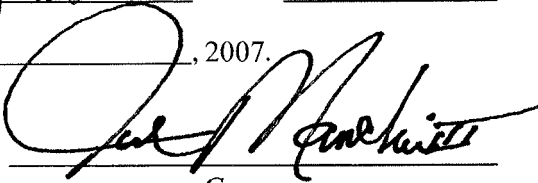
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 3rd  
day of April, 2007.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 26 2007

Time 4:10 pm