

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959

ENROLLED

SENATE BILL NO. 292

(By Mr. Martin)

PASSED March 6, 1959

In Effect From Passage



Filed in Office of the Secretary of State
of West Virginia **MAR 12 1959**

JOE F. BURDETT
SECRETARY OF STATE

ENROLLED

Senate Bill No. 292

(By MR. MARTIN)

[Passed March 6, 1959; in effect from passage.]

AN ACT to amend article two, 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 sixteen-a, relating to payment and apportionment of federal estate taxes.

Be it enacted by the Legislature of West Virginia:

That article two, 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 sixteen-a, to read as follows:

Section 16-a. *Apportionment of Federal Estate Taxes;*

2 *Fiduciary to Deduct Taxes From Shares of Beneficiaries.*

3 —(1) For the purposes of this section the term “persons
4 interested in the estate” shall include all persons, firms
5 and corporations who may be entitled to receive or who
6 have received any property or interest which is required
7 to be included in the gross estate of a decedent, or any
8 benefit whatsoever with respect to any such property or
9 interest, whether under a will or intestacy, or by reason
10 of any transfer, trust, estate, interest, right, power or
11 relinquishment of power, taxable under any estate tax law
12 of the United States heretofore or hereafter enacted.

13 (2) Whenever it appears upon any settlement of ac-
14 counts or in any other appropriate action or proceeding,
15 that an executor, administrator, curator, trustee or other
16 person acting in a fiduciary capacity, has paid an estate
17 tax levied or assessed under the provisions of any estate
18 tax law of the United States heretofore or hereafter
19 enacted, upon or with respect to any property required to
20 be included in the gross estate of a decedent under the pro-
21 visions of any such law, the amount of the tax so paid
22 shall be prorated among the persons interested in the
23 estate to whom such property is or may be transferred or

24 to whom any benefit accrues. Such apportionment shall
25 be made in the proportion that the value of the property,
26 interest or benefit of each such person bears to the total
27 value of the property, interests and benefits received by
28 all such persons interested in the estate, except that in
29 making such proration each such person shall have the
30 benefit of any exemptions, deductions and exclusions al-
31 lowed by such law in respect of such person or the prop-
32 erty passing to him; and except that notwithstanding the
33 preceding provisions of this sentence in cases where a
34 trust is created, or other provision made whereby any
35 person is given an interest in income, or an estate for
36 years, or for life, or other temporary interest in any prop-
37 erty or fund, the tax on both such temporary interest and
38 on the remainder thereafter shall be charged against and
39 paid out of the corpus of such property or fund without
40 apportionment between remainders and temporary
41 estates.

42 (3) In all cases in which any property required to be
43 included in the gross estate does not come into the posses-
44 sion of the executor, administrator or other fiduciary as

45 such, he shall be entitled, and it shall be his duty, to re-
46 cover from whomever is in possession, or from the per-
47 sons interested in the estate, the proportionate amount of
48 such tax payable by the persons interested in the estate
49 with which such persons interested in the estate are
50 chargeable under the provisions of this section.

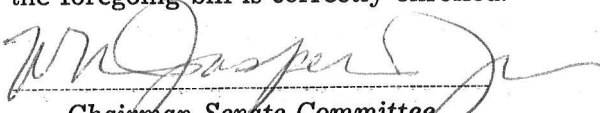
51 (4) No executor, administrator or other person acting
52 in a fiduciary capacity shall be required to transfer, pay
53 over or distribute any fund or property with respect to
54 which a federal estate tax is imposed until the amount of
55 such tax or taxes due from the devisee, legatee, distri-
56 butee, or other person to whom such property is trans-
57 ferred is paid to such fiduciary, or, if the apportionment
58 of tax has not been determined, adequate security is
59 furnished by the transferee for such payment.

60 (5) But it is expressly provided that the foregoing
61 provisions of this section are subject to the following
62 qualification, that none of such provisions shall in any
63 way impair the right or power of any person by will or
64 by written instrument executed inter vivos to make direc-
65 tion for the payment of such estate taxes, and to designate

66 the fund or funds or property out of which such payment
67 shall be made, and in every such case the provisions of the
68 will or of such written instrument executed inter vivos
69 shall be given effect to the same extent as if this section
70 had not been enacted.

71 (6) The provisions of this section shall be applicable to
72 estates of decedents dying after the enactment of this sec-
73 tion.

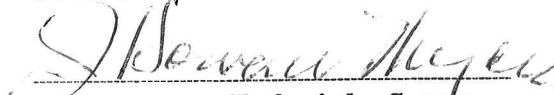
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

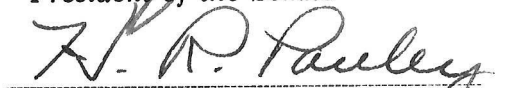
Originated in the Senate.

Takes effect From passage.

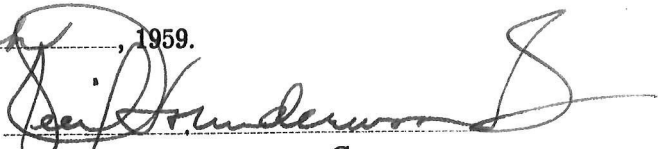

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within approved this the 12th
day of March, 1959.


Governor