

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)

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

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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. Thayer*  
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.