WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
SENATE BILL NO. 35

(By Mr. [Signature], President, and Mr. [Signature])

PASSED January 25, 1967
In Effect [Signature] Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 1-31-67
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 directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or transfer in trust of a pecuniary amount, unless the instrument shall otherwise expressly provide, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution.

(b) Whenever a fiduciary under the provisions of a will or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse and is authorized to satisfy such bequest or transfer by selection and distribution of assets in kind, and the will or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary,
unless the will or other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of such pecuniary bequest or transfer. This section shall not apply to prevent a fiduciary from carrying into effect the provisions of the will or other governing instrument that the fiduciary, in order to implement such a bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust in favor of the testator's or donor's spouse shall be authorized to enter into agreements with the commissioner of internal revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fidu-
ciary's discretion so that cash and other properties distributed in satisfaction of such bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of such bequest or transfer in trust and any such agreement heretofore entered into after April one, one thousand nine hundred sixty-four, is hereby validated. Any such fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction available under the internal revenue laws of the United States of America, and to do and perform all acts incident to such purpose.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Temos  
Chairman Senate Committee

Clayton E. Dargithen  
Chairman House Committee

Originated in the Senate.

Takes effect from Passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

H. Julian White  
Speaker House of Delegates

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

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 1/30/67
Time 2:10 P.M.