

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 404

(By Mr. PALUMBO)

PASSED MARCH 6 1971

In Effect NINETY DAYS FROM Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-17-71

404

ENROLLED
Senate Bill No. 404
(By MR. PALUMBO)

[Passed March 6, 1971; in effect ninety days from passage.]

AN ACT to amend article two, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to the distribution of income by a trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; and providing a definition of terms.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine, all to read as follows:

**ARTICLE 2. EDUCATIONAL, FRATERNAL AND CHARITABLE
ORGANIZATIONS.**

§35-2-9. Distribution of income by trust which is deemed a private foundation; prohibitions as to trusts which are private foundations or split-interest trusts; and definition of terms.

1 (a) *Distribution of income by trust which is deemed*
2 *a private foundation; prohibitions as to such private*
3 *foundation.*—Every trust, receiving a gift, grant, devise
4 or bequest, which is deemed to be a private foundation
5 as defined in section 509 of the Internal Revenue Code
6 of 1954, unless its governing instrument expressly in-
7 cludes specific provisions to the contrary, shall distribute
8 its income for each taxable year at such time and in
9 such manner as not to subject such trust to tax under
10 section 4942 of the Internal Revenue Code, and such trust
11 shall not engage in any act of self-dealing as defined
12 in section 4941 (d) of the Internal Revenue Code, retain
13 any excess business holdings as defined in section 4943 (c)
14 of the Internal Revenue Code, make any investments in
15 such manner as to subject the trust to tax under section

16 4944 of the Internal Revenue Code, or make any tax-
17 able expenditures as defined in section 4945(d) of the
18 Internal Revenue Code. This subsection shall apply to
19 any charitable trust established after December thirty-
20 one, one thousand nine hundred sixty-nine, and to any
21 charitable trust established before January one, one thou-
22 sand nine hundred seventy, only for its taxable years
23 beginning on and after January one, one thousand nine
24 hundred seventy-two.

25 (b) *Prohibitions as to trust which is deemed a split-*
26 *interest trust.*—Every trust, receiving a gift, grant, de-
27 vise or bequest, to the extent that such trust is deemed
28 to be a split-interest trust subject to the provisions of
29 section 4947(a)(2) of the Internal Revenue Code of 1954,
30 unless its governing instrument expressly includes spe-
31 cific provisions to the contrary, shall not:

32 (1) Engage in any act of self-dealing, as defined in
33 section 4941(d) of the Internal Revenue Code;

34 (2) Retain any excess business holdings, as defined in
35 section 4943(c) of the Internal Revenue Code;

36 (3) Make any investments in such manner as to sub-

37 ject the foundation to tax under section 4944 of the
38 Internal Revenue Code; or

39 (4) Make any taxable expenditures as defined in sec-
40 tion 4945(d) of the Internal Revenue Code.

41 Subparagraphs (2) and (3) of this subsection shall not
42 apply to a split-interest trust if:

43 (1) All the income interest (and none of the re-
44 mainder interest) of such trust is devoted solely to one
45 or more of the purposes described in section 170(c)(2)(B)
46 of the Internal Revenue Code, and all amounts in such
47 trust for which a deduction was allowed under section
48 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or
49 section 2522 of the Internal Revenue Code have an ag-
50 gregate fair market value not more than sixty percent
51 of the aggregate fair market value of all amounts in
52 such trust, or

53 (2) A deduction was allowed under section 170, 545
54 (b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or section
55 2522 of the Internal Revenue Code for amounts payable
56 under the terms of such trust to every remainder bene-
57 ficiary but not to any income beneficiary.

58 (c) *Definitions; meaning of terms.*—Any term used
59 in this section nine shall have the same meaning as
60 when used in a comparable context in the laws of the
61 United States relating to federal income taxes and any
62 reference in this section to the Internal Revenue Code
63 or to the Internal Revenue Code of 1954 or to any section
64 or provision thereof shall mean the provisions of the laws
65 of the United States as relate to the determination of
66 income for federal income tax purposes, including all
67 amendments made to the laws of the United States prior
68 to the first day of January, one thousand nine hundred
69 seventy-one, but no amendment to the laws of the United
70 States made on or after the first day of January, one
71 thousand nine hundred seventy-one, shall be given effect.

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

Russell G. Bane
Chairman Senate Committee

Thyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Meyer
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Edw. G. ...
President of the Senate

Ivor F. Boarsky
Speaker House of Delegates

The within *approved* this the *15th*
day of *March*, 1971.

Archie Shaw, Jr.
Governor



PRESENTED TO THE
GOVERNOR

RECEIVED

Date 3/10/71

Time 2:25 p.m.

MAR 17 9 23 AM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA