WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

ENROLLED

HOUSE BILL No. 1486

(By-Mr. ________________)

Passed ____________ 1985

In Effect ____________ 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 thirteen, relating to restrictions on the exercise of power for fiduciary’s benefit.

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 thirteen, to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUICIARIES.


(a) A power conferred upon a person in his capacity as fiduciary to make discretionary distributions of principal or income to himself or to make discretionary allocations in his favor of receipts or expenses between income and principal cannot be exercised by him. If the power is conferred on two or more fiduciaries, it may be exercised by the fiduciaries who are not so disqualified. If there is no fiduciary qualified to exercise the power, it may be exercised by a special fiduciary appointed by the circuit court authorized under article fourteen of this chapter, and in accordance with the procedure described therein, to appoint a successor or substitute trustee. Except as provided in subsection (c), this section applies to all trusts now in existence and to all trusts which shall
hereafter come into existence.

(b) Unless either (i) mandatory, (ii) limited by an ascertainable standard relating to the health, education, support or maintenance of the fiduciary or (iii) exercisable by the fiduciary only in conjunction with another person having a substantial interest in the trust which is adverse to the interest of the fiduciary, a power to make distributions of principal or income is a discretionary power for purposes of this section.

(c) This section does not apply to trusts that come into existence or are amended after the effective date of this section which show a clear intent that this section not apply.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within ................. this the ..........
day of ........................., 1985.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 4/10/85
Time 7:30p.m.