

No: 1486 ✓

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



# ENROLLED

HOUSE BILL No. 1486

(By Mr. Wm. Feinberg)



Passed April 13, 1985

In Effect - from - Passage



**ENROLLED**  
**H. B. 1486**

(By DELEGATE FEINBERG)

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[Passed April 13, 1985; 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 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 FIDUCIARIES.**

**§44-5-13. Restrictions on exercise of power for fiduciary's benefit.**

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

14 hereafter come into existence.

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

22 (c) This section does not apply to trusts that come into  
23 existence or are amended after the effective date of this section  
24 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.

*Harold E. Ashen*  
Chairman Senate Committee

*Floyd Fuller*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Todd C. Miller*  
Clerk of the Senate

*Donald L. Doff*  
Clerk of the House of Delegates

*Sam Tombarino*  
President of the Senate

*Joseph P. Allright*  
Speaker of the House of Delegates

The within *approved* this the *2nd*  
*day* of \_\_\_\_\_, 1985.

*Hubert H. Parson*  
Governor



PRESENTED TO THE

GOVERNOR

Date 4/19/85

Time 7:30 p.m.