

No. 46

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

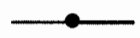
REGULAR SESSION, 1989



ENROLLED

Committee Substitute for
SENATE BILL NO. 46

(By Senator Tucker, Mr. President)



PASSED April 6, 1989

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 46

(SENATOR TUCKER, MR. PRESIDENT, (BY REQUEST),
original sponsor)

[Passed April 6, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article five-a of said chapter, all relating to permitting trustees of permanent endowment funds for cemetery associations to receive negotiable, reasonable compensation for their services; permitting nonresident trust companies and banks to serve as trustees for permanent endowment care funds; providing that secretary of state accepts service of process on behalf of such nonresident trustees; and bond.

Be it enacted by the Legislature of West Virginia:

That section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article five-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 5. CEMETERIES.

§35-5-5. Permanent endowment funds for cemetery associations — Trustee therefor; appointment; bond; compensation; vacancy.

1 The board of directors of any such cemetery associ-
2 ation shall appoint a trustee, who shall be a responsi-
3 ble businessman or some solvent federally insured
4 banking institution, to act as such trustee for a period
5 of two years, or until his, or its, successor is appointed.
6 Such trustee shall be known as the trustee of the
7 permanent endowment fund of such cemetery associ-
8 ation, and shall immediately upon his, or its, appoint-
9 ment and acceptance of the trust, give bond to the said
10 cemetery association, with some solvent and reliable
11 bonding company authorized to do business in this
12 state, in a sum equal to the amount which may come
13 into the hands of such trustee, which bond shall be
14 increased or diminished from time to time so as
15 always to equal at least the amount of the trust funds
16 in the hands of such trustee; and the premium upon
17 such bond shall be paid out of the income of the trust
18 funds in the trustee's hands and as part of the cost of
19 the administration of the trust fund. No trustee
20 appointed under this section shall enter upon the
21 discharge of his, or its, duties until such bond is given
22 and approved by the board of directors of such
23 cemetery association: *Provided*, That if the trustee so
24 appointed by any such cemetery association be a
25 federally insured banking institution authorized and
26 qualified to exercise trust powers under and subject to
27 the provisions of article four, chapter thirty-one-a of
28 the code of West Virginia, one thousand nine hundred
29 thirty-one, as amended, it shall not be required to give
30 the bond hereinbefore provided, excepting and unless
31 required by the provisions of section eighteen, article
32 four, chapter thirty-one-a of said code. The board of
33 directors of such cemetery association shall allow such
34 trustee, for service as such, a negotiable, reasonable
35 fee to be paid from such trust funds. In the event of
36 a vacancy in such trusteeship, or failure of the board
37 of directors of any such cemetery association to

38 appoint such trustee, after being requested so to do by
39 any stockholder of any such cemetery association, or
40 its successor, or any citizen interested, application may
41 be made to the circuit court of the county wherein
42 such cemetery association is located, and it shall be the
43 duty of the circuit court of such county to appoint a
44 trustee, who, when so appointed and qualified, shall
45 have all the powers and perform all the duties of such
46 trustee as provided in this section.

**ARTICLE 5A. PERPETUAL CARE OF AND TRUST FUNDS FOR
CEMETERIES.**

§35-5A-5. Trustee of the permanent endowment care funds.

1 The trustee of the permanent endowment care fund
2 shall be a federally insured trust company or a
3 federally insured banking institution with fiduciary
4 powers authorized and qualified to exercise trust
5 powers under and subject to the provisions of article
6 four, chapter thirty-one-a of this code, or of the
7 corresponding law of another state. A nonresident
8 federally insured trust company or nonresident feder-
9 ally insured banking institution so authorized and
10 qualified may become a trustee of a permanent
11 endowment care fund notwithstanding the provision
12 of section seven, article eight-a, chapter thirty-one-a of
13 this code. When a nonresident trust company or
14 nonresident banking institution becomes a trustee of a
15 permanent endowment care fund for a perpetual care
16 cemetery in this state, said nonresident trust company
17 or nonresident banking institution thereby constitutes
18 the secretary of state as its true and lawful attorney-
19 in-fact upon whom service of notice and process in any
20 action or proceeding against it as trustee, and accep-
21 tance of such trust by said nonresident trust company
22 or nonresident banking institution shall be a manifes-
23 tation of agreement that any notice or process, which
24 is served in the manner hereinafter provided in this
25 section, shall be of the same legal force and validity as
26 though such nonresident trust company or nonresi-
27 dent banking institution was personally served with
28 notice and process within this state. Service of such
29 notice and process and the manner of acceptance of

30 the same by the secretary of state shall be in accor-
31 dance with the provisions of section fifteen, article
32 one, chapter thirty-one of this code.

33 Any nonresident trust company or nonresident
34 banking institution appointed as trustee of a perma-
35 nent endowment care fund shall immediately upon
36 acceptance of the trust give bond in accordance with
37 the provisions of section five, article five, chapter
38 thirty-five of this code.

39 The trustee shall invest such permanent endowment
40 care funds for the purpose of providing an income to
41 be used for the maintenance, improvement and pres-
42 ervation of the grounds, lots, buildings, equipment,
43 records, statuary, and other real and personal property
44 of the cemetery, and shall acquire, invest, reinvest,
45 exchange, retain, sell and manage all property now or
46 hereafter coming into such trustee's care or control.

47 The trustee shall exercise the judgment and care
48 under the circumstances then prevailing, which men
49 of prudence, discretion and intelligence, exercise in
50 the management of their own affairs, not in regard to
51 speculation, but in regard to the permanent disposition
52 of their funds, considering the probable income as well
53 as the probable safety of their capital.

54 Within the limitations of the foregoing standard, any
55 such trustee is authorized to acquire and retain
56 without any order of any court, every kind of prop-
57 erty, real, personal or mixed, and every kind of
58 investment, specifically including, but not by way of
59 limitation, bonds, debentures and other corporate
60 obligations, and stocks, preferred or common, which
61 men of prudence, discretion and intelligence acquire
62 or retain for their own account.

63 The trustee shall prepare an annual report of all of
64 the assets and investments of the permanent endow-
65 ment care fund. One copy shall be maintained at the
66 office of the cemetery and shall be available for
67 inspection at reasonable times by owners of interment
68 rights in the cemetery.

69 The trustee shall pay over to the cemetery all
70 income derived from the permanent endowment care
71 fund semiannually to be expended only for the main-
72 tenance, improvement and preservation of the
73 grounds, lots, buildings, equipment, records, statuary
74 and other real and personal property of the cemetery.

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

Frederick L. Pease
.....
Chairman Senate Committee

F. L. Satter
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

John C. Mills
.....
Clerk of the Senate

Donald L. Hays
.....
Clerk of the House of Delegates

Samuel R. Tucker
.....
President of the Senate

John A. Chalkley
.....
Speaker House of Delegates

The within *is* approved this the *27th*
day of *April* 1989.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/89

Time 10:40