WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

ENROLLED

House Bill No. 3271

(By Delegates Webster and Amores)

Passed March 10, 2007

In Effect Ninety Days from Passage
AN ACT to amend and reenact §36-1-18 of the Code of West Virginia, 1931, as amended, relating to clarifying spendthrift trusts.

Be it enacted by the Legislature of West Virginia:

That §36-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts; nonmerger of trusts.

(a) Estates held in trust are subject to the debts of the beneficiary of the trust, except where the creator has expressly provided in the trust instrument words substantially to the effect that:

(1) The income or principal, or both, may only be applied to the health, education, support or maintenance of a beneficiary, other than the creator of the trust, for the life of
the beneficiary, or the income or principal, or both, may only
be applied at the discretion of the trustee to or for the benefit
of a beneficiary, other than the creator of the trust, for the life
of the beneficiary, for a fixed term of years or other fixed
duration of time, or a fixed annuity amount or a unitrust
amount computed under a formula as a percentage of fair
market value of assets in the trust, regardless of whether the
same is income, principal, or both, may only be applied to or
for the benefit of a beneficiary, other than the creator of the
trust, for the life of the beneficiary or for a fixed term of
years or other fixed duration of time; and

(2) The trust is not subject to the liability of or alienation
by the beneficiary or beneficiaries.

(b) A trust, whenever created, may not be set aside or
terminated solely on the assertion of a creditor that the trustee
or trustees are the same person or persons as the beneficiary
or beneficiaries of the trust.

(c) This section applies to any trust established by an
instrument executed on or after the first day of July, two
thousand one, except as otherwise expressly provided in the
terms of the trust.

(d) This section applies to any trust established under an
instrument executed prior to the first day of July, two
thousand one, when the trustee elects, in his or her sole
discretion, to administer the trust pursuant to the provisions
of this section.

(e) Except as provided in subsection (c) of this section,
this section may not be construed to create or imply a duty on
a trustee to administer the trust pursuant to the provisions of
this section, and a trustee may not be held liable for refusing
to administer a trust pursuant to the provisions of this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd day of April, 2007.

Governor