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2001 APR -9 P 2: 56

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



# ENROLLED

## House Bill No. 2482

(By Mr. Speaker, Mr. Kiss (By Request))



Passed March 28, 2001

In Effect Ninety Days from Passage

FILED

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H. B. 2482

(BY MR. SPEAKER, MR. KISS (BY REQUEST))

[Passed March 28, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section twelve, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the distribution of assets in satisfaction of pecuniary bequests or transfers in trust of a pecuniary amount or formula; authorizing fiduciaries to enter into certain agreements; validating certain agreements; and providing for discretionary division of trusts for tax administrative or other purposes.

*Be it enacted by the Legislature of West Virginia:*

That section twelve, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.**

**§44-5-12. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.**

1 (a) Where a will, trust or other governing instrument  
2 authorizes or directs the fiduciary to satisfy wholly or partly in  
3 kind a pecuniary bequest or a separate trust to be funded by a  
4 pecuniary amount or formula unless the will, trust or other  
5 governing instrument shall otherwise expressly provide, the  
6 assets selected by the fiduciary for that purpose shall be valued  
7 at their respective values on the date or dates of their distribu-  
8 tion, and in the case of any pecuniary bequests or separate trusts  
9 established under the will or trust by a pecuniary amount or  
10 formula if the pecuniary bequest or separate trust is not entirely  
11 funded or an amount necessary to fund the bequest or trust  
12 completely is not irrevocably set aside within fifteen months  
13 after the date of the testator's or grantor's death, the fiduciary  
14 shall allocate to the bequest or trust a prorata share of the  
15 income earned by the estate of the testator or grantor or such  
16 other fund from which the bequest or trust is to be funded  
17 between the date of death of the testator or grantor and the date  
18 or dates of the funding.

19 (b) Whenever a fiduciary under the provisions of a will,  
20 trust or other governing instrument is required to satisfy a  
21 pecuniary bequest or transfer in trust and is authorized to satisfy  
22 the bequest or transfer by selection and distribution of assets in  
23 kind, and the will, trust or other governing instrument further  
24 provides that the assets to be so distributed shall or may be  
25 valued by some standard other than their fair market value on  
26 the date of distribution, the fiduciary, unless the will, trust or  
27 other governing instrument otherwise specifically directs, shall  
28 distribute assets, including cash, fairly representative of  
29 appreciation or depreciation in the value of all property  
30 available for distribution in satisfaction of the pecuniary  
31 bequest or transfer. This section shall not apply to prevent a  
32 fiduciary from carrying into effect the provisions of the will,  
33 trust or other governing instrument that the fiduciary, in order  
34 to implement such a bequest or transfer, must distribute assets,  
35 including cash, having an aggregate fair market value at the  
36 date or dates of distribution amounting to no less than the  
37 amount of the pecuniary bequest or transfer as finally deter-  
38 mined for federal estate tax purposes.

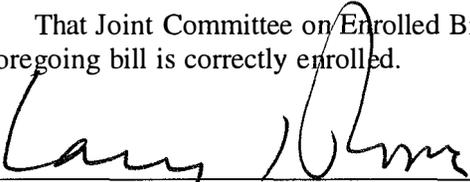
39 (c) (1) Any fiduciary having discretionary powers under a  
40 will or other governing instrument with respect to the selection  
41 of assets to be distributed in satisfaction of a pecuniary bequest  
42 or transfer in trust shall be authorized to enter into agreements  
43 with the commissioner of internal revenue of the United States  
44 of America and other taxing authorities requiring the fiduciary  
45 to exercise the fiduciary's discretion so that cash and other  
46 properties distributed in satisfaction of the bequest or transfer  
47 in trust will be fairly representative of the appreciation or  
48 depreciation in value of all property then available for distribu-  
49 tion in satisfaction of the bequest or transfer in trust and any  
50 such agreement heretofore entered into after April one, one  
51 thousand nine hundred sixty-four, is hereby validated. The  
52 fiduciary shall be authorized to enter into any other agreement  
53 not in conflict with the express terms of the will, trust or other  
54 governing instrument that may be necessary or advisable in  
55 order to secure for federal estate tax purposes the appropriate  
56 marital deduction or other deduction or exemption available  
57 under the internal revenue laws of the United States of Amer-  
58 ica, and to do and perform all acts incident to such purpose.

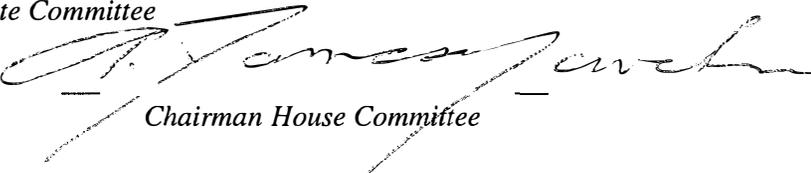
59 (2) Unless ordered by a court of competent jurisdiction, the  
60 bank or trust company operating a common trust fund, as  
61 provided for in section six of this article, shall not be required  
62 to render an accounting with regard to the fund, before any  
63 fiduciary commissioner but it may, by application to the circuit  
64 court of the county in which is located the principal place of  
65 business of said bank or trust company, secure the approval of  
66 an accounting in such condition as the court may fix: *Provided*,  
67 That nothing herein shall be interpreted as relieving any  
68 fiduciary acquiring, holding or disposing of an interest in any  
69 common trust fund from making an accounting as required by  
70 law with respect of the interest.

71 (d) The fiduciary of any trust created by will, trust or other  
72 governing instrument shall have discretionary power from time  
73 to time without need of court approval to divide the trust or  
74 trusts for purposes of the generation skipping transfer tax  
75 ("GST") of section 2601 of the Internal Revenue Code of 1986,

76 as amended, or any similar or successor law of like import, or  
77 for any other tax, administrative or other purposes. In exercis-  
78 ing this authority for inclusion ratio, marital deduction election,  
79 reverse qualified terminal interest property election or other  
80 GST or other tax purposes, the power shall be exercised in a  
81 manner that complies with applicable internal revenue code  
82 treasury regulations or other requirements for accomplishing  
83 the intended purposes. In the event that division is made for  
84 purposes of separating assets with respect to which the federal  
85 estate tax marital deduction election is to be made from those  
86 as to which such election is not to be made, the division shall be  
87 done on a fractional or percentage basis and the assets of the  
88 trust or other fund to be divided shall be valued for purposes of  
89 the division on the date or dates of division.

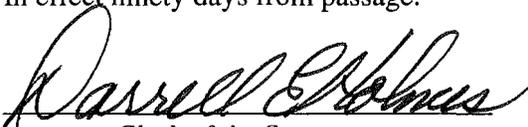
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

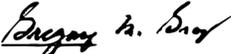
  
Chairman Senate Committee

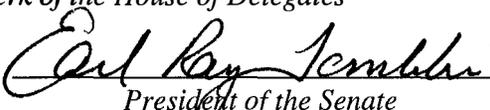
  
Chairman House Committee

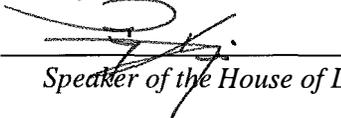
Originating in the House.

In effect ninety days from passage.

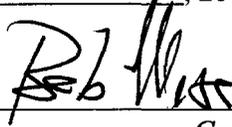
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 9th  
day of April, 2001.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 7/3/01

Time 8:58 am