

46908

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 597

(By Senator PLYMALE)



PASSED MARCH 11, 1999
In Effect NINETY DAYS FROM Passage

RECEIVED

SS MAR 20 PM 4: 20

OFFICE OF POLITICAL AFFAIRS
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 597

(SENATOR PLYMALE, *original sponsor*)

[Passed March 11, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and twenty-six, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, four-a and thirty-two, article three-a of said chapter, all relating to decedents' estates; revising the time in which creditors may file a claim against an estate; removing a reference to inheritance tax; and requiring that a release of an estate tax lien be recorded before an estate can be closed under a short-term settlement.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-six, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that

sections four, four-a and thirty-two, article three-a of said chapter be amended and reenacted to read as follows:

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

1 (a) Each month the fiduciary commissioner shall publish
2 a notice designating the date by which claims against the
3 estate or estates referred to him during the previous
4 calendar month may be presented. No claims against the
5 estate shall be accepted by the fiduciary commissioner
6 after the date set forth herein. The date so designated by
7 the fiduciary commissioner shall be ninety days from the
8 date of the first publication of the notice hereinafter set
9 forth. The notice shall be to the following effect:

10 To the Creditors and Beneficiaries of the Estate(s) of
11
12

13 (Naming the decedent or decedents, as the case may be)

14 All persons having claims against the estate(s) of the said
15,

16 (Naming the decedent or decedents, as the case may be)
17 deceased, whether due or not, are notified to exhibit their
18 claims, with the voucher thereof, legally verified, to the
19 undersigned, at (designating the place) on or before the
20 day of, otherwise they may by law be
21 excluded from all benefit of said estate(s). All beneficia-
22 ries of said estate(s) may appear on or before said day to
23 examine said claims and otherwise protect their interests.

24 Given under my hand this day of
25

26
27
28

Fiduciary Commissioner,

County of

29 (b) Such notice shall be published as a Class II legal
30 advertisement in compliance with the provisions of article
31 three, chapter fifty-nine of this code, and the publication
32 area for such publication shall be the county. The publica-
33 tion of such notice shall be equivalent to personal service
34 on the creditors, distributees and legatees, or any of them.

**§44-2-26. When claims not presented and proved barred of
recovery from personal representative.**

1 Every person including the state tax commissioner,
2 having a claim against a deceased person, whether due or
3 not, who has not, after notice to creditors has been pub-
4 lished as prescribed in this article, presented his claim on
5 or before the time fixed in such notice, or before that time
6 has not instituted a civil action or suit thereon, shall,
7 notwithstanding the same be not barred by some other
8 statute of limitations that is applicable thereto, be barred
9 from recovering such claim of or from the personal
10 representative, or from thereafter setting off the same
11 against the personal representative in any action or suit
12 whatever; except that if a surplus remain after providing
13 for all claims presented in due time, or on which action or
14 suit shall have been commenced in due time, and such
15 surplus shall not have been distributed by the personal
16 representative to the beneficiaries of the estate, and the
17 claimant prove that he had no actual notice of the publica-
18 tion to creditors nor knowledge of any proceedings before
19 the fiduciary commissioner, such creditor may prove his
20 claim by action or suit and have the same allowed out of
21 such surplus; and, in order that such late claims if proved
22 may be provided for, the fiduciary commissioner shall
23 reopen his report if the same has not been returned to the
24 county commission, or if returned, shall make and return
25 a supplemental report: *Provided*, That, as to real estate,
26 the provisions of subsection (b), section one of this article
27 shall apply.

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF
CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY
OPTION.**

§44-3A-4. Notice of claim; settlement in certain cases.

1 (a) The fiduciary supervisor shall at least once a month
2 as a Class II legal advertisement in compliance with the
3 provisions of article three, chapter fifty-nine of this code,
4 cause to be published in a newspaper of general circula-
5 tion within the county wherein letters of administration
6 have been granted, a notice substantially as follows:

7 NOTICE OF FILING OF ESTATE ACCOUNTS

8 To the Creditors and Beneficiaries of the within named
9 deceased persons:

10 I have before me the estates of the following deceased
11 persons and the accounts of the fiduciaries of their respec-
12 tive estates:

13 Name of Decedent:.....

14 Name of Fiduciary:.....

15 Address:.....

16 Name of Decedent:.....

17 Name of Fiduciary:.....

18 Address:

19 Name of Decedent:.....

20 Name of Fiduciary:.....

21 Address:

22 All persons having claims against the estate(s) of any of
23 the above-named deceased persons whether due or not, are
24 notified to exhibit their claims with vouchers thereof,
25 legally verified, to the fiduciary of such deceased person as
26 shown herein within seventy-five days of the first publica-
27 tion hereof; or, if not so exhibited to such fiduciary by that
28 date, to exhibit the same at the office of the undersigned
29 fiduciary supervisor at the address shown below within
30 ninety days of the first publication of this notice; other-
31 wise any or all such claims may by law be excluded from
32 all benefits of said estate(s). No claims against the estate
33 shall be accepted by the fiduciary supervisor after the last
34 date shown above. All beneficiaries of said estate(s) may

35 appear either before the above-named fiduciary by the
36 date first shown above, or thereafter before the under-
37 signed fiduciary supervisor by the date last shown above
38 to examine said claims and otherwise protect their respec-
39 tive interests.

40 Given under my hand this day of,
41 19.....

42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68

Fiduciary Supervisor
County, W.Va.

(b) All such claims are to be filed with the appropriate fiduciary at the address shown in such notice within seventy-five days of the date of the first publication of such notice or with the fiduciary supervisor within ninety days of such date. No claims against the estate shall be accepted by the fiduciary supervisor after the last date shown above.

(c) Subject to the provisions of this section, at the end of the ninety-day period set forth in such notice, the fiduciary supervisor may proceed with supervision of all estates referred to him for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees and any and all other matter or matters necessary and proper for the settlement of the estate, including, but not limited to, his recommendations concerning the approval of the fees of any fiduciary commissioner to whom the estate may have been referred, determination that inheritance taxes, if any, occasioned by the death of the decedent or returnable by reason thereof have been returned upon such estate and such taxes have been paid or such payment provided for and whether a release therefor has been issued by the proper authority, all matters required by section nineteen of this article and all other matters deemed proper by him.

§44-3A-4a. Short form settlement.

1 (a) In all estates of decedents administered under the
2 provisions of this article where more than ninety days has
3 elapsed since the filing of any notice required by section

4 four, an estate may be closed by a short form settlement
5 filed in compliance with this section: *Provided*, That any
6 lien for payment of estate taxes under article eleven,
7 chapter eleven of this code is released and that the release
8 is filed with the clerk.

9 (b) The fiduciary may file with the fiduciary supervisor
10 a proposed short form settlement which shall contain an
11 affidavit made by the fiduciary that the time for filing
12 claims has expired, that no known and unpaid claims exist
13 against the estate and showing the allocation to which
14 each distributee and beneficiary is entitled in the distribu-
15 tion of the estate and contain a representation that the
16 property to which each distributee or beneficiary is
17 entitled has been or upon approval of the settlement will
18 be delivered thereto, or that each distributee and benefi-
19 ciary has agreed to a different allocation. The application
20 shall contain a waiver signed by each distributee and
21 beneficiary.

22 (c) Such waiver may be signed in the case of a distributee
23 or beneficiary under a disability by the duly qualified
24 personal representative of such distributee or beneficiary.
25 A personal representative signing such waiver shall be
26 responsible to his or her cestui que trust for any loss
27 resulting from such waiver.

28 (d) The fiduciary supervisor shall examine the affidavit
29 and waiver and determine that the allocation to the
30 distributees and beneficiaries set forth in the affidavit is
31 correct and all proper parties signed the waiver, both shall
32 be recorded as in the case of an in lieu of settlement. If the
33 fiduciary supervisor identifies any error the fiduciary
34 supervisor shall within five days of the filing of such
35 settlement give the fiduciary notice as in the case of any
36 other incorrect settlement.

37 (e) If the short form settlement is proper the fiduciary
38 supervisor shall proceed as in the case of any other settle-
39 ment.

**§44-3A-32. When claims not presented and proved barred of
recovery from personal representative.**

1 Every person having a claim against a deceased person,
2 whether due or not, who shall not, when notice to creditors
3 has been published as prescribed in this article, have
4 presented his claim on or before the ninety-day time
5 period fixed in such notice, or before that time have
6 instituted an action thereon, shall, notwithstanding the
7 same be not barred by some other statute of limitations
8 that is applicable thereto, be barred from recovering such
9 claim of or from the personal representative, or from
10 thereafter setting off the same by way of counterclaim or
11 otherwise against the personal representative in any action
12 whatever; except that if a surplus remain after providing
13 for all claims presented in due time, or on which action
14 shall have been commenced in due time, and such surplus
15 shall not have been distributed by the personal representa-
16 tive to the beneficiaries of the estate, and the claimant
17 prove that he had no actual notice of the publication to
18 creditors nor knowledge of the proceedings before the
19 fiduciary supervisor or fiduciary commissioner, such
20 creditor may prove his claim by action or suit and have the
21 same allowed out of such surplus; and, in order that such
22 late claims if proved may be provided for, the fiduciary
23 supervisor or fiduciary commissioner shall reopen his
24 report if the same has not been returned to the county
25 commission, or if returned shall make and return a supple-
26 mental report.

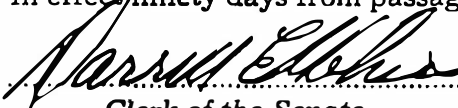
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

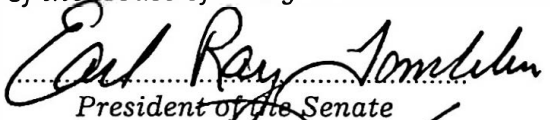

.....
Chairman House Committee

Originating in the Senate.


In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within..... *approved* this the *27th*
Day of..... *March*, 1999

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/99

Time 10:46am