

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1957



ENROLLED

HOUSE BILL No. 286

(By Mr. Whaley)



PASSED Feb 27, 1957

In Effect 90 days from Passage



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House Bill No. 286

(By MR. WHALEY)

[Passed February 27, 1957; in effect ninety days from passage.]

AN ACT to amend and reenact sections one and three, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the course of descent and method of partition of real estate when the owner thereof dies intestate.

Be it enacted by the Legislature of West Virginia:

That sections one and three, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 1. *Course of Descent Generally.*—When any
- 2 person having title to any real estate of inheritance shall
- 3 die intestate as to such estate, it shall descend and pass
- 4 in parcenary to his kindred, male and female, in the
- 5 following course:
- 6 (a) To his children and their descendants;

7 (b) If there be no child, nor descendant of any child,
8 then the whole shall go to the wife or husband, as the
9 case may be;

10 (c) If there be no child, nor descendant of any child,
11 nor wife, nor husband, then one moiety each to the mother
12 and father; or if there be no child, nor descendant of any
13 child, nor wife, nor husband, nor mother, then the whole
14 shall go to the father; or if there be no child, nor any
15 descendant of any child, nor wife, nor husband, nor
16 father, then the whole shall go to the mother;

17 (d) If there be no child, nor descendant of any child,
18 nor wife, nor husband, nor mother, nor father, the whole
19 shall go to the intestate's brothers and sisters and the
20 descendants of brothers and sisters;

21 (e) And if there be no child, nor descendant of any
22 child, nor father, nor mother, nor wife or husband, nor
23 brother, nor sister, nor descendant of any brother or
24 sister, then one moiety shall go to the paternal and the
25 other to the maternal kindred in the following course:

26 (f) First to the grandfather and grandmother one-half
27 of the moiety each;

28 (g) If no grandmother one-half of the moiety to the
29 grandfather, or if no grandfather one-half of the moiety
30 to the grandmother; and in either case the other one-half
31 of the moiety, or if there be neither grandfather nor
32 grandmother the whole of the moiety, shall go to the
33 uncles and aunts on the same side, and their descendants;

34 (h) If there be no grandmother, nor such uncle, nor
35 such aunt, nor descendant of any such uncle or aunt, then
36 the whole of the moiety to the grandfather; or if there
37 be no grandfather, nor such uncle, nor such aunt, nor
38 descendant of any such uncle or aunt, then the whole of
39 the moiety to the grandmother;

40 (i) If there be no grandfather, nor grandmother, nor
41 such uncle, nor such aunt, nor descendant of any such
42 uncle or aunt, then to the great-grandfathers and great-
43 grandmothers one-fourth of the moiety each;

44 (j) If any great-grandfather or great-grandmother be
45 dead then his or her share, or the whole of the moiety
46 in case all the great-grandfathers and great-grandmothers
47 be dead, shall go to the brothers and sisters of the grand-
48 fathers and grandmothers, and the descendants of such

49 brothers and sisters of the grandfathers and grandmoth-
50 ers; and if there be no brother nor sister of any grand-
51 father or grandmother, nor the descendant of any such
52 brother or sister, then the whole of the moiety shall go
53 to such of the great-grandfathers and great-grandmothers
54 as may then be living, in equal shares, or to the survivor
55 of them;

56 (k) And so on, in like manner, in other cases without
57 end, passing to the nearest lineal ancestors, male and
58 female, and if any of them be dead his or her share, or
59 if all of them be dead the whole, to the brothers and
60 sisters of the lineal ancestors, male and female, of the
61 degree next nearer the intestate, and the descendants of
62 such brothers and sisters; and if there be no brother nor
63 sister of any lineal ancestor, male or female, of the degree
64 next nearer the intestate nor descendant of any such
65 brother or sister, then to such of the lineal ancestors in
66 this subdivision ^{to} (A) first mentioned as may then be living,
67 in equal shares or to the survivor of them;

68 (l) If there be no paternal kindred the whole shall
69 go to the maternal kindred, and if there be no maternal

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70 kindred the whole shall go to the paternal kindred. If
71 there be neither paternal nor maternal kindred, the whole
72 shall go to the kindred of the wife or husband of the
73 intestate in the like course as if such wife or husband
74 had survived the intestate and died entitled to the whole
75 of the estate.

Sec. 3. *When Parties Take Per Capita and When Per*
2 *Stirpes.*—Whenever the children of the intestate, or the
3 brothers and sisters of the intestate, or the uncles and
4 aunts of the intestate, or the brothers and sisters of any
5 of the intestate's lineal ancestors of the same degree, come
6 into partition, they shall take per capita, or by persons;
7 and where, a part of them being dead and a part living,
8 the descendants of those dead have right to partition,
9 such descendants shall take per stirpes, or by stocks, that
10 is to say, the shares of their deceased ancestors; but
11 whenever the persons entitled to partition, other than
12 those whose shares are definitely fixed by the statute of
13 descents, are all in the same degree of kindred to the
14 intestate, they shall take per capita or by persons.

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

E. S. Bennett
Chairman Senate Committee

Thomas E. Welch
Chairman House Committee

Originated in the House of Delegates

Takes effect 90 days from passage.

Thomas H. Keyser
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

Robert J. Bevan
President of the Senate

W. E. Fisher
Speaker, House of Delegates

The within approved this the 7th day of March 1957.

Jefferson D. Henderson
Governor



Filed in the Office of the Secretary of State
of West Virginia
MAR 8-1957
D. PITT O'BRIEN
SECRETARY OF STATE