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APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE OF THE GOVERNOR

Date 3-27-83

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983



ENROLLED

SENATE BILL NO. 91

(By Mr. Auffman)



PASSED March 12, 1983

In Effect ninety days from Passage



ENROLLED
Senate Bill No. 91
(BY MR. HUFFMAN)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-nine; and to amend and reenact section forty-two, article three-a of said chapter, all relating to the administration of estates generally; providing that a final settlement of an estate may be waived if any inheritance tax release has been filed with the clerk of the county commission through a waiver signed by all heirs and distributees, or their personal representatives, containing an affidavit that there are no known claims against the estate; and increasing certain fees to be charged by fiduciary supervisor at the time of qualification of the fiduciary.

Be it enacted by the Legislature of West Virginia:

That article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-nine; and that section forty-two, article three-a of said chapter be amended and reenacted all to read as follows:

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

§44-2-29. Waiver of final settlement if inheritance tax release filed; signed waiver and affidavit stating no claims.

1 Notwithstanding any other provision of this code to
2 the contrary, in all estates where an inheritance tax re-
3 lease has been filed with the clerk of the county com-
4 mission and more than ninety days has elapsed since

5 the filing of any notice required by section one of this
6 article, a final settlement may be waived by a waiver
7 which is signed by the personal representative and all
8 heirs and distributees, or their personal representatives, if
9 any such heir be under disability, and which contains an
10 affidavit stating that the time for the filing of claims has
11 expired and averring that there are no known claims
12 against the estate.

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

**§44-3A-42. Fees to be charged by fiduciary supervisor or
fiduciary commissioner; disposition of fees.**

1 (a) When necessary solely for the purpose of financing
2 the cost of settling estates the county commission may
3 authorize the fiduciary supervisor to charge and collect
4 at the time of qualification of the fiduciary of a decedent's
5 estate, a fee not to exceed seventy-five dollars for all
6 estates where probate assets do not exceed ten thousand
7 dollars in value and a fee not to exceed one hundred dol-
8 lars where probate assets exceed ten thousand dollars in
9 value, of which sums, five dollars shall be forwarded to the
10 state tax commissioner. The moneys so forwarded to the
11 state tax commissioner shall be deposited in the office
12 of the treasurer of the state in a special fund, designated
13 "The Inheritance Tax Administration Fund," to be used
14 to defray, in whole or in part, the costs of administration
15 of taxes imposed by article eleven, chapter eleven of this
16 code in order to facilitate the prompt administration of
17 the provisions imposed by said article. The remaining
18 amounts shall be deposited in the county fiduciary fund
19 as provided in section forty-three of this article. Such fee
20 shall be paid to include all services of the fiduciary super-
21 visor for the settlement of every such decedent's estate
22 which is settled pursuant to the provisions of section
23 nineteen, article three-a of this chapter. All such fees
24 shall also include the cost of publication of the notice
25 required by section four, article three-a of this chapter
26 and the notice required by section nineteen, article three-a
27 of this chapter, but shall not include the cost of any

28 mailings or of the cost of recording any documents re-
29 quired to be recorded in the office of the clerk of the
30 county commission by the provisions of this chapter.

31 In the event the fiduciary supervisor is required to
32 examine and prepare a statement of deficiencies, in-
33 cluding reasons for disapproving any of the documents
34 required to be filed by the personal representative of any
35 decedent's estate, he shall charge and collect from such
36 personal representative a fee of ten dollars.

37 (b) In addition to the fees set forth in subsection (a)
38 of this section, the fiduciary supervisor shall charge a
39 fee to be fixed by the county commission in the manner
40 provided in subsection (c) of this section for conducting
41 hearings, granting continuances of hearings, considering
42 evidence, for drafting recommendations with respect to
43 such hearings and for appearing before the county com-
44 mission with respect thereto and any other matters of an
45 extraordinary nature not normally included within a
46 summary settlement as contemplated by section nineteen,
47 article three-a of this chapter. Such fee shall be used to
48 defray the costs imposed by or incidental to any extra-
49 ordinary demands by or conditions imposed by a fiduciary
50 or imposed by the circumstances of the estate.

51 (c) The fiduciary supervisor or fiduciary commissioner
52 shall prepare a voucher for the county commission, which
53 voucher shall be itemized and shall set forth in detail all
54 of the services performed and the amount charged for
55 such service or services. Such voucher shall also indicate
56 in each instance if the service was actually performed by
57 the fiduciary supervisor or fiduciary commissioner or
58 whether such service was performed by an employee or
59 deputy of such supervisor or commissioner. All vouchers
60 shall reflect the services rendered pursuant to the initial
61 fee charged and collected as provided in subsection (a) of
62 this section and, in addition thereto, shall indicate those
63 services for which charges are to be made over and above
64 that amount. In the case of any service for which a fee
65 is not fixed by this section, or the fee fixed is based on
66 time expended, the voucher shall show the actual time
67 personally expended by the supervisor or commissioner,

68 to the nearest tenth of an hour. All such vouchers shall
69 be verified prior to submission to the county commission
70 for approval. Upon approval of any such voucher, the
71 same shall be charged against the estate to which the
72 same applies. In reviewing any fee charged by either
73 the fiduciary supervisor or a fiduciary commissioner the
74 county commission shall consider the following:

- 75 (1) The time and effort expended;
- 76 (2) The difficulty of the questions raised;
- 77 (3) The skill required to perform properly the services
78 rendered;
- 79 (4) The reasonableness of the fee;
- 80 (5) Any time limitations imposed by the personal
81 representative, any beneficiary or claimant, or by the
82 attendant circumstances; and
- 83 (6) Any unusual or extraordinary circumstances or
84 demands or conditions imposed by the personal repre-
85 sentative, any beneficiary or claimant or by the attendant
86 circumstances. The county commission may approve any
87 such voucher or may reduce the same, as it deems proper,
88 after considering those matters set forth in this subsec-
89 tion. Any such approval shall be by order of the com-
90 mission and be entered of record by the clerk of the
91 county commission in the fiduciary record book and the
92 general order books of the commission. In no event shall
93 any fee for any service, whether performed by the fidu-
94 ciary supervisor or the fiduciary commissioner, be fixed,
95 charged or approved which is based upon or with refer-
96 ence to the monetary value of the estate or of the amount
97 in controversy upon any disputed issue or fact of law.

98 (d) For every estate other than a decedent's estate,
99 there shall be charged by the fiduciary supervisor at the
100 time of qualification, a fee of twenty-five dollars, which
101 fee shall include all services performed by the fiduciary
102 supervisor with respect to such estate from the time of
103 qualification of the personal representative thereof until
104 and including the filing of the first annual settlement.
105 For each additional or subsequent annual or triennial
106 settlement, the fiduciary supervisor shall charge and
107 collect a fee of ten dollars.

108 (e) The county commission or other tribunal in lieu
109 thereof, shall, by order, establish or fix a schedule of
110 suggested fees or rates of compensation for the guidance
111 of the fiduciary supervisor and any fiduciary commis-
112 sioner in preparing their respective vouchers for fees
113 other than those fees fixed by any provision of this sec-
114 tion or of this chapter. A copy of these fees or rates shall
115 be posted in a conspicuous place in the county courthouse.

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

Samuel E. Elchen
Chairman Senate Committee

Ronald Anello
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Paul C. Nicks
Clerk of the Senate

Donald L. Stepp
Clerk of the House of Delegates

Warren P. McFarlan
President of the Senate

W. H. Lee, Jr.
Speaker House of Delegates

The within is approved this the 27
day of March, 1983.

John M. Ryznar
Governor

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SECY. OF STATE