

No: 672

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984



ENROLLED
Committee Substitute for
SENATE BILL NO. 672

(By Mr. *Boehner*)



PASSED *March 10,* 1984
In Effect *Ninety days from* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 672
(MR. BOETTNER, *original sponsor*)

[Passed March 10, 1984; in effect ninety days from passage.]

AN ACT to amend and reenact section twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article three-a of said chapter forty-four; to further amend said article three-a by adding thereto a new section, designated section four-a; and to amend and reenact section forty-three of said article three-a, all relating to waiver of final settlement of estates; county election on optional system for settlement of estates; providing for settlement by short form; and applications by fiduciary supervisor to county commission for additional funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-29. Waiver of final settlement.

1 In all estates of decedents subject to administration under
2 this article where an inheritance tax release has been filed
3 with the clerk and more than ninety days has elapsed since
4 the filing of any notice required by section one of this
5 article, a final settlement may be waived by a waiver
6 containing an affidavit made by the personal
7 representative, that the time for filing of claims has expired,
8 that no known and unpaid claims exist against the estate,
9 and that all heirs have each been advised of the share or
10 shares to which each is entitled from the estate and signed
11 (1) in the case of an estate having a sole beneficiary, by such
12 sole beneficiary or (2) in the case of multiple beneficiaries,
13 every beneficiary.

14 In the case of a beneficiary under a disability, the duly
15 qualified personal representative of such beneficiary, may
16 sign in lieu of such beneficiary. A personal representative
17 signing such waiver shall be responsible to his or her cestui
18 que trust for any loss resulting from such waiver.

19 The waiver shall be recorded as in the case of and in lieu of
20 a settlement.

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

§44-3A-1. Election to make article applicable.

1 (a) Any county commission which has not heretofore
2 elected to proceed under provisions of this article may do so
3 in accord with this section.

4 (b) If at any time the county commission, by order
5 entered of record, makes a preliminary determination to
6 proceed under the provisions of this article, it shall in such
7 order fix a time for public hearing not less than thirty nor
8 more than forty-five days after the entry of such order and
9 cause to be published as a Class II-a legal advertisement, as
10 provided in section two, article three, chapter fifty-nine of
11 the code, setting forth the reasons for the hearing, its date,
12 place and time, and the fact that the county commission has
13 made a preliminary determination to proceed under this

14 article. The notice shall also recite that within fifteen days
15 after the public hearing the court, after consideration of the
16 following factors, will make a final determination whether
17 to proceed under this article:

18 (1) The relatively expeditious and efficient
19 administration and settlement of estates;

20 (2) The relative cost and convenience to the public and
21 to the estates;

22 (3) Whether the fees provided under article three-a (this
23 article) would be insufficient to fund the salary and
24 expenses of a fiduciary supervisor as described in article
25 three-a of this chapter;

26 (4) Whether the county commission and the public
27 interest is served by the availability of the unsupervised
28 administration of estates having sole beneficiaries based
29 upon the local needs of the county;

30 (5) The availability of physical facilities necessary for
31 the administration of this article.

32 (c) At the hearing the county commission shall receive
33 both written and oral comment from any citizen upon the
34 desirability of proceeding under the provisions of this
35 article. It may limit the time for oral presentations and
36 permit additional written presentations to be filed up to
37 three days after the hearing.

38 (d) Within sixty days of the entry of its preliminary
39 determination order, the court shall enter an order either
40 withdrawing its preliminary determination or finally
41 confirming such determination, which order confirming
42 shall be effective the first day of the next month which is
43 more than twenty days next following entry of such order,
44 and shall order that the provisions of this article are
45 thereafter applicable to proceedings held in such county.

46 (e) The county commission shall make such orders for
47 the closing of estates opened prior to the effective date of
48 the order confirming the commission's determination that
49 the provisions of this article be applicable to proceedings in
50 the county as it may deem expedient which are not
51 inconsistent with the express provisions of this chapter.

§44-3A-4a. Short form settlement.

1 In all estates of decedents administered under the
2 provisions of this article where an inheritance tax release

3 has been filed with the clerk and more than one hundred
4 twenty days has elapsed since the filing of any notice
5 required by section four, an estate may be closed by a short
6 form settlement filed in compliance with this section.

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

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

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

34 If the short form settlement is proper the fiduciary
35 supervisor shall proceed as in the case of any other
36 settlement.

§44-3A-43. County fiduciary fund.

1 (a) The county commission, or tribunal in lieu thereof,
2 shall create a special county fund pursuant to the provisions
3 of section nine, article one, chapter seven of this code called
4 the "County Fiduciary Fund." All moneys received by the
5 fiduciary supervisor shall be deposited in said fund and the
6 county commission or tribunal shall pay from said fund all

7 salaries and expenses of the fiduciary supervisor and all
8 other expenses associated with the probate system,
9 exclusive of the fees of fiduciary commissioners or special
10 fiduciary commissioners and exclusive of recording fees
11 which shall be collected by the fiduciary supervisor and
12 paid to the clerk of the county commission. The said
13 commission or tribunal is authorized to transfer any other
14 county funds as may be available to said "County Fiduciary
15 Fund."

16 (b) Whenever the fiduciary supervisor finds that the
17 funds appropriated and personnel, facilities or equipment
18 allotted to his or her office are insufficient to permit the full
19 and timely performance of the duties of the office, the
20 supervisor shall make application to the commission for
21 additional appropriations from the fund: *Provided*, That if
22 any such application has been made within the prior six
23 months then the fiduciary supervisor need not make such
24 additional application until at least six months shall have
25 elapsed. The commission may, and if no such application
26 has been previously made for at least six months shall
27 carefully review such application and subject to all other
28 provisions of law for revisions of appropriations during a
29 fiscal year, may make such additional funds, personnel,
30 facilities and equipment as it deems appropriate for all or
31 any of the purposes claimed to be needed by the fiduciary
32 supervisor upon such application, if it refuses to
33 appropriate additional and unexpended funds in the
34 fiduciary fund for use in the full and timely compliance by
35 the fiduciary supervisor with the provisions of this article,
36 then it shall by order state its reasons for refusing so to do.
37 The fiduciary supervisor may apply to the circuit court of
38 the county by application for writ of mandamus for a review
39 of the order of the commission and the circuit court shall
40 have jurisdiction to order the commission to appropriate
41 such unexpended funds as may be suitable to assist the
42 fiduciary supervisor in achieving full and timely
43 compliance with the provisions of this article.

44 (c) Every county commission or tribunal in lieu thereof,
45 which shall adopt and use the procedure set forth in this
46 article, shall report to the legislature on or before the first
47 day of the regular session thereof held in the following year,
48 and on the first day of every regular session held in the next

49 succeeding three years thereafter, as to the moneys received
50 into or spent from the county fiduciary fund of the county to
51 the date of such report, and of all moneys transferred into
52 said fund and spent from it or by such county commission
53 for probate matters or other matters relating to the
54 administration of estates and any applications made to it
55 for additional funds pursuant to subsection (b) of this
56 section. The tax commissioner shall prescribe by
57 procedural rule the form and content of such report which
58 shall be in sufficient detail so as to permit the identification
59 of the activity or activities generating the income of such
60 fund and to identify by function and purpose all
61 expenditures with sufficient detail to enable the
62 Legislature to determine the extent to which the probate
63 system and other estate matters are functioning in an
64 efficient and economical manner and the fiscal implications
65 thereof. Such reports shall be filed by each such county
66 commission or tribunal in lieu thereof with the tax
67 commissioner no later than ten days prior to the first day of
68 each said session of the Legislature and the tax
69 commissioner shall thereafter properly collate and file such
70 reports with the clerk of each house of the Legislature on or
71 before the first day of each such regular session.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
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Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within... *is approved* this the... *30*
day of... *March*, 1984.

.....
[Signature]
Governor



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