

No. 1070

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

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## ENROLLED

Com. Sub. for  
HOUSE BILL No. 1070

(By Mr. Del. Blatnik)

—●—

Passed April 9, 1985

In Effect July 1, 1985 Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 1070**

(By DELEGATE BLATNIK)

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[Passed April 9, 1985; in effect July 1, 1985.]

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AN ACT to amend and reenact section one, 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 one, five and forty-two, article three-a of said chapter, all relating to the settlement of estates generally; increasing the value of estates exempted from reference to fiduciary commissioners; limiting fees charged by such commissioners and allowing the county commission to approve additional fees in certain cases; election by the county commission to adopt the optional procedure for such settlement; public hearings with respect thereto and notice of such hearings; providing for petition by the voters of the county for such hearings; increasing the maximum amount of probate estate to be supervised by fiduciary supervision without reference to a fiduciary commissioner; and limiting the fee which a fiduciary supervisor may charge to settle an estate.

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

That section one, 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 one, five and 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.**

**§44-2-1. Reference of decedents' estates; proceedings thereon.**

1 (a) Upon the return of the appraisalment by the personal  
2 representative to the county clerk, the estate of his decedent  
3 shall, by order of the county commission to be then made,  
4 be referred to a fiduciary commissioner for proof and  
5 determination of debts and claims, establishment of their  
6 priority, determination of the amount of the respective shares  
7 of the legatees and distributees, and any other matter necessary  
8 and proper for the settlement of the estate: *Provided*, That in  
9 counties where there are two or more such commissioners, the  
10 estates of decedents shall be referred to such commissioners  
11 in rotation, in order that, so far as possible, there may be an  
12 equal division of the work: *Provided, however*, That if the  
13 personal representative shall deliver to the clerk an appraisal-  
14 ment of the assets of the estate showing their value to be fifty  
15 thousand dollars or less, exclusive of property held by the  
16 decedent and another person or other persons as joint tenants  
17 with rights of survivorship, the clerk shall record said  
18 appraisalment and publish a notice as set forth herein: *Provided*  
19 *further*, That a fiduciary commissioner may not charge to the  
20 estate a fee greater than two hundred dollars for the settlement  
21 of an estate, except upon approval of the county commission  
22 because of complicating issues or problems attendant to such  
23 settlement and amount of time involved in and about their  
24 resolution. The personal representative shall, within two  
25 months from the date of recordation of the appraisalment in  
26 such case, make report to the clerk of his receipts, disburse-  
27 ments and distribution, and shall make affidavit that all claims  
28 against the estate, for expenses of administration, taxes and  
29 debts of the decedent, have been paid in full; the clerk shall  
30 be entitled to collect and receive a fee of ten dollars for  
31 recording such report and affidavit, and for publication of the  
32 notice hereinafter provided, said fee to be in lieu of any other  
33 fee provided by law for recording a report of settlement of  
34 the accounts of a decedent's personal representative. It shall  
35 be the duty of the clerk, at least once a month, to cause to  
36 be published once a week for two successive weeks in a  
37 newspaper of general circulation within the county of the  
38 administration of the estate, a notice substantially as follows:

39 NOTICE OF FILING OF ESTATE ACCOUNTS

40 I have before me the account of the executor(s) or  
41 administrator(s) of the estates of the following deceased  
42 persons:

43 .....  
44 .....  
45 .....

46 Any person having a claim against the estate of any such  
47 deceased person, or who has any beneficial interest therein,  
48 may appear before me or the county commission at any time  
49 within thirty days after first publication of this notice, and  
50 request reference of said estate to a commissioner or object  
51 to confirmation of said accounting. In the absence of such  
52 request or objection, the accounting may be approved by the  
53 county commission.

54 .....  
55 Clerk of the County Commission  
56 of.....County, W. Va.

57 If no such request or objection be made to the clerk or to  
58 the county commission, the county commission may confirm  
59 the report of the personal representative, and thereupon the  
60 personal representative and his surety shall be discharged; but  
61 if such objection or request be made, the county commission  
62 may confirm the accounting or may refer the estate to one of  
63 its fiduciary commissioners.

64 (b) If upon the return and recordation of the appraisalment,  
65 it shall appear to the clerk that there is only one beneficiary  
66 of the estate and that said beneficiary is competent at law,  
67 there shall be no further administration upon the estate, and  
68 no reference to a fiduciary commissioner, unless, for due cause,  
69 the county commission shall order further administration and  
70 a reference to a fiduciary commissioner. The bond of the  
71 personal representative and his surety shall be discharged one  
72 year after the date of qualification of the personal represen-  
73 tative if no claim shall have been filed with the county clerk  
74 and no suit shall have been instituted against the personal  
75 representative. The clerk shall publish a notice once a week  
76 for two successive weeks in a newspaper of general circulation  
77 within the county of administration of the estate, substantially  
78 as follows:

79 NOTICE OF UNADMINISTERED ESTATE

80 Notice is hereby given that, there being only one beneficiary  
81 of the estate of the deceased, there will be no administration  
82 of said estate unless within ninety days demand for adminis-  
83 tration be made by a party in interest or an unpaid creditor.

84 Dated this..... day of .....  
85 .....  
86 Clerk of the County Commission  
87 of.....County, W. Va.

88 The clerk shall charge to the personal representative, and  
89 receive, the reasonable cost of publication of said notice.

90 If no person demands administration and no creditor  
91 appears in response to the notice hereinabove provided,  
92 alienation of the decedent's real estate more than six months  
93 after the date of the notice to a bona fide purchaser for value  
94 without notice of any claim against the estate shall be free of  
95 any lien for taxes or debts of the decedent, notwithstanding  
96 the provisions of section five, article eight, chapter forty-four  
97 of this code.

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

**§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) Prior to the adoption of the optional procedure  
5 provided for under this article, the county commission shall  
6 fix a time for public hearing on the issue of adoption of the  
7 fiduciary supervisor system as described in this article and  
8 cause to be published as a Class II-0 legal advertisement, as  
9 provided in section two, article three, chapter fifty-nine of the  
10 code, setting forth the reasons for the hearing, its date, place  
11 and time. Whenever ten percent or more of the voters of the  
12 county participating in the next preceding general election  
13 shall so petition the county commission in writing, the  
14 commission shall within sixty days of the filing of such petition  
15 conduct the public hearing provided by this subsection. The  
16 provisions hereof relating to the publication of notice of such

17 hearing shall apply to the hearing held pursuant to such  
18 petition. The notice in either case shall also recite that within  
19 fifteen days after the public hearing the commission, after  
20 consideration of the following factors, will make a final  
21 determination whether to proceed under this article:

22 (1) The relatively expeditious and efficient administration  
23 and settlement of estates;

24 (2) The relative cost and convenience to the public and to  
25 the estates;

26 (3) Whether the fees provided under this article would be  
27 insufficient to fund the salary and expenses of a fiduciary  
28 supervisor as described in this article;

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

33 (5) The availability of physical facilities necessary for the  
34 administration of this article.

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

41 (d) Within sixty days of the public hearing, the commission  
42 shall enter an order either adopting or rejecting the provisions  
43 of this article.

44 (e) The county commission shall make such orders for the  
45 closing of estates opened prior to the effective date of the order  
46 adopting the provisions of this article as it may deem expedient  
47 which are not inconsistent with the express provisions of this  
48 chapter.

**§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.**

1 When the personal representation<sup>ve</sup> shall deliver to the  
2 fiduciary supervisor, the appraisement required by section  
3 fourteen, article one of this chapter, and is notified as to the

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4 completeness thereof, the fiduciary supervisor shall, unless  
5 otherwise ordered by the county commission, proceed to  
6 receive claims and proceed to supervise settlement of the  
7 estate.

8 The county commission shall not remove the estate from  
9 supervision by the fiduciary supervisor and no reference to a  
10 fiduciary commissioner shall be made if the appraisement,  
11 properly completed, shows the total value of all assets included  
12 in the estate which are subject to administration (exclusive of  
13 real property, unless the will, if any, requires administration  
14 thereof) to be one hundred thousand dollars or less: *Provided*,  
15 That if a dispute arises as to a matter of law or fact, then  
16 the matter may be referred to a fiduciary commissioner for  
17 the sole purpose of taking evidence as to making a recommen-  
18 dation as to the disputed facts and applicable law in such  
19 dispute.

20 The county commission shall not refer any estate to a  
21 fiduciary commissioner:

22 (a) If the personal representative is also the sole beneficiary  
23 of the estate; nor

24 (b) If the surviving spouse is the sole beneficiary of the  
25 estate unless the spouse requests such reference; nor

26 (c) (1) If all the beneficiaries of the estate advise the  
27 fiduciary supervisor by verified writing that no dispute is likely  
28 to arise with respect to the administration of the estate; and  
29 (2) it appears to the county commission or to the fiduciary  
30 supervisor thereof that there are ample assets in the estate to  
31 satisfy all claims of creditors and others against the estate and  
32 that proper distribution thereof will be made, including the  
33 payment of all taxes due thereon; and

34 (3) If the personal representative agrees thereto or; nor

35 (d) If the county commission or fiduciary supervisor, subject  
36 to the approval of the county commission, finds that there are  
37 ample assets in the estate to satisfy all claims of creditors and  
38 other <sup>against</sup> the estate and that proper distribution thereof  
39 will be made including, but not limited to, the payment of all  
40 taxes due thereon and that no disputed question of law or fact  
41 has arisen or is likely to arise.

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42 The commission shall, before making any reference to a  
 43 fiduciary commissioner, find by its order that none of the  
 44 prohibitions contained in this section obtains: *Provided*, That  
 45 in any case in which a reference would otherwise be prohibited,  
 46 the commission may refer a matter for the sole purpose of  
 47 resolving a disputed question of law or fact or may, if the  
 48 matter can be resolved expeditiously, permit the fiduciary  
 49 supervisor to conduct the necessary proceedings and to prepare  
 50 a recommendation on such disputed question.

51 In the event reference is made because of the failure to meet  
 52 any of the conditions in the preceding paragraph which  
 53 preclude reference to a fiduciary commissioner, such reference  
 54 may be made generally or for the sole purpose of determining  
 55 those matters in dispute. In any event, such reference shall be  
 56 withdrawn at any time upon the settlement or determination  
 57 or resolution of the reason or reasons giving rise to such  
 58 reference or at any other time deemed appropriate by the  
 59 county commission or by the fiduciary supervisor, subject to  
 60 the approval of the county commission. If no such reference  
 61 is made and it is later found that a dispute or other condition  
 62 has arisen which makes reference to a fiduciary commissioner  
 63 necessary, then reference to a fiduciary commissioner may be  
 64 made, either generally or for the settlement, determination or  
 65 resolution of the dispute or condition and shall, in any event,  
 66 be later withdrawn at any time required by this section or  
 67 deemed appropriate by the fiduciary supervisor with the  
 68 approval of the county commission.

69 In counties where there are two or more such fiduciary  
 70 commissioners, the estates of decedents shall be referred to  
 71 such commissioners in rotation in order that, so far as  
 72 possible, there may be an equal division of the work.

**§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 the
- 2 cost of settling estates, the county commission may authorize
- 3 the fiduciary supervisor to charge and collect at the time of
- 4 qualification of the fiduciary of a decedent's estate, a fee not
- 5 to exceed: (A) twenty-five dollars for all estates in which the
- 6 probate assets do not exceed three thousand dollars; (B)
- 7 seventy-five dollars for all estates in which the probate assets

8 are more than three thousand dollars and do not exceed ten  
9 thousand dollars; and (C) one hundred twenty-five dollars for  
10 all estates in which the probate assets exceed ten thousand  
11 dollars. Of the sums collected by the fiduciary supervisor, five  
12 dollars shall be forwarded to the state tax commissioner. The  
13 moneys so forwarded to the state tax commissioner shall be  
14 deposited in the office of the treasurer of the state in the  
15 special fund, designated "The Inheritance Tax Administration  
16 Fund," to be used to defray, in whole or in part, the costs  
17 of administration of taxes imposed by article eleven, chapter  
18 eleven of this code in order to facilitate the prompt  
19 administration of the provisions imposed by said article. The  
20 remaining amounts shall be deposited in the county fiduciary  
21 fund as provided in section forty-three of this article. Such fee  
22 shall be paid to include all services of the fiduciary supervisor  
23 for the settlement of every such decedent's estate which is  
24 settled pursuant to the provisions of section nineteen, article  
25 three-a of this chapter. All such fees shall also include the cost  
26 of publication of the notice required by section four, article  
27 three-a of this chapter, and the notice required by section  
28 nineteen, article three-a of this chapter, but shall not include  
29 the cost of any mailings or of the cost of recording any  
30 documents required to be recorded in the office of the clerk  
31 of the county commission by the provisions of this chapter.

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

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

49 extraordinary demands by or conditions imposed by a  
50 fiduciary or imposed by the circumstances of the estate.

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

73 (1) The time and effort expended;

74 (2) The difficulty of the questions raised;

75 (3) The skill required to perform properly the services  
76 rendered;

77 (4) The reasonableness of the fee;

78 (5) Any time limitations imposed by the personal represen-  
79 tative, any beneficiary or claimant, or by the attendant  
80 circumstances; and

81 (6) Any unusual or extraordinary circumstances or demands  
82 or conditions imposed by the personal representative, any  
83 beneficiary or claimant or by the attendant circumstances. The  
84 county commission may approve any such voucher or may  
85 reduce the same, as it deems proper, after considering those  
86 matters set forth in this subsection. Any such approval shall  
87 be by order of the commission and be entered of record by

88 the clerk of the county commission in the fiduciary record  
89 book and the general order books of the commission. In no  
90 event shall any fee for any service, whether performed by the  
91 fiduciary supervisor or the fiduciary commissioner, be fixed,  
92 charged or approved which is based upon or with reference  
93 to the monetary value of the estate or of the amount in  
94 controversy upon any disputed issue or fact of law.

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

104 (e) The county commission or other tribunal in lieu thereof,  
105 shall, by order, establish or fix a schedule of suggested fees  
106 or rates of compensation for the guidance of the fiduciary  
107 supervisor and any fiduciary commissioner in preparing their  
108 respective vouchers for fees other than those fees fixed by any  
109 provision of this section or of this chapter. A copy of these  
110 fees or rates shall be posted in a conspicuous place in the  
111 county courthouse.

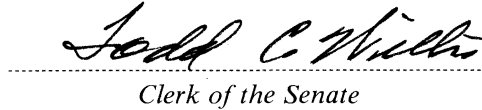
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

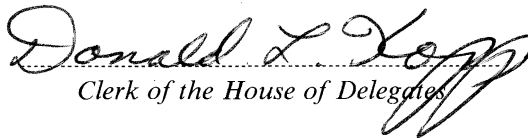
  
Chairman Senate Committee

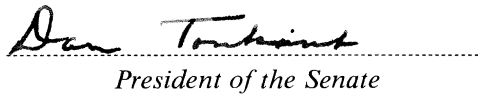
  
Chairman House Committee

Originating in the House.

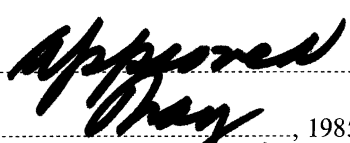
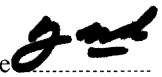

Takes effect from July 1, 1985.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within  approved this the  day of  , 1985.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/19/85

Time 6:50 p.m.