

No: 2788

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



# ENROLLED

HOUSE BILL No. *2788*

(By Delegates *Humphreys and Garrett*)



Passed *March 14,* 1987

In Effect *Ninety Days from* Passage

**ENROLLED**  
**H. B. 2788**

(By DELEGATES HUMPHREYS and GARRETT)

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[Passed March 14, 1987; in effect ninety days from passage.]

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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, relating to proof and allowance of claims against estates of decedents; reference to fiduciary commissioner; and when reference will be made.

*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 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 appraisement by the  
2       personal representative to the county clerk, the estate of  
3       his decedent shall, by order of the county commission  
4       to be then made, be referred to a fiduciary commissioner  
5       for proof and determination of debts and claims,  
6       establishment of their priority, determination of the  
7       amount of the respective shares of the legatees and  
8       distributees, and any other matter necessary and proper  
9       for the settlement of the estate: *Provided*, That in  
10      counties where there are two or more such commission-

11 ers, the estates of decedents shall be referred to such  
 12 commissioners in rotation, in order that, so far as  
 13 possible, there may be an equal division of the work:  
 14 *Provided, however,* That if the personal representative  
 15 shall deliver to the clerk an appraisement of the assets  
 16 of the estate showing their value to be fifty thousand  
 17 dollars or less, exclusive of property held by the  
 18 decedent and another person or other persons as joint  
 19 tenants with rights of survivorship, the clerk shall  
 20 record said appraisement and publish a notice as set  
 21 forth herein: *Provided further,* That a fiduciary commis-  
 22 sioner may not charge to the estate a fee greater than  
 23 two hundred dollars for the settlement of an estate,  
 24 except upon approval of the county commission because  
 25 of complicating issues or problems attendant to such  
 26 settlement and amount of time involved in and about  
 27 their resolution. The personal representative shall,  
 28 within two months from the date of recordation of the  
 29 appraisement in such case, make report to the clerk of  
 30 his receipts, disbursements and distribution, and shall  
 31 make affidavit that all claims against the estate, for  
 32 expenses of administration, taxes and debts of the  
 33 decedent, have been paid in full; the clerk shall be  
 34 entitled to collect and receive a fee of ten dollars for  
 35 recording such report and affidavit, and for publication  
 36 of the notice hereinafter provided, said fee to be in lieu  
 37 of any other fee provided by law for recording a report  
 38 of settlement of the accounts of a decedent's personal  
 39 representative. It shall be the duty of the clerk, at least  
 40 once a month, to cause to be published once a week for  
 41 two successive weeks in a newspaper of general circu-  
 42 lation within the county of the administration of the  
 43 estate, a notice substantially as follows:

44 NOTICE OF FILING OF ESTATE ACCOUNTS

45 I have before me the account of the executor(s) or  
 46 administrator(s) of the estates of the following deceased  
 47 persons:

48 \_\_\_\_\_  
 49 \_\_\_\_\_  
 50 \_\_\_\_\_

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

59

60 Clerk of the County Commission  
61 of \_\_\_\_\_ County, W. Va.

62 If no such request or objection be made to the clerk  
63 or to the county commission, the county commission may  
64 confirm the report of the personal representative, and  
65 thereupon the personal representative and his surety  
66 shall be discharged; but if such objection or request be  
67 made, the county commission may confirm the account-  
68 ing or may refer the estate to one of its fiduciary  
69 commissioners: *Provided*, That the personal representa-  
70 tive shall have twenty days after the date of the filing  
71 of a claim or claims against the estate of the decedent  
72 to approve or reject said claim before said estate shall  
73 be referred to a fiduciary commissioner.

74 (b)If upon the return and recordation of the appraise-  
75 ment, it shall appear to the clerk that there is only one  
76 beneficiary of the estate and that said beneficiary is  
77 competent at law, there shall be no further administra-  
78 tion upon the estate, and no reference to a fiduciary  
79 commissioner, unless, for due cause, the county commis-  
80 sion shall order further administration and a reference  
81 to a fiduciary commissioner: *Provided*, That the personal  
82 representative shall have twenty days after the date of  
83 the filing of a claim or claims against the estate of the  
84 decedent to approve or reject said claim before said  
85 estate shall be referred to a fiduciary commissioner. The  
86 bond of the personal representative and his surety shall  
87 be discharged one year after the date of qualification of  
88 the personal representative if no claim shall have been  
89 filed with the county clerk and no suit shall have been  
90 instituted against the personal representative. The clerk

91 shall publish a notice once a week for two successive  
92 weeks in a newspaper of general circulation within the  
93 county of administration of the estate, substantially as  
94 follows:

95 NOTICE OF UNADMINISTERED ESTATE

96 Notice is hereby given that, there being only one  
97 beneficiary of the estate of the deceased, there will be  
98 no administration of said estate unless within ninety  
99 days demand for administration be made by a party in  
100 interest or an unpaid creditor.

101 Dated this \_\_\_\_\_ day of \_\_\_\_\_

102 \_\_\_\_\_

103 Clerk of the County Commission

104 of \_\_\_\_\_ County, W.Va.

105 The clerk shall charge to the personal representative,  
106 and receive, the reasonable cost of publication of said  
107 notice.

108 If no person demands administration and no creditor  
109 appears in response to the notice hereinabove provided,  
110 alienation of the decedent's real estate more than six  
111 months after the date of the notice to a bona fide  
112 purchaser for value without notice of any claim against  
113 the estate shall be free of any lien for taxes or debts of  
114 the decedent, notwithstanding the provisions of section  
115 five, article eight, chapter forty-four of this code.

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

*Bruce A. Williams*  
.....  
Chairman Senate Committee

*Lyle Settee*  
.....  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Withers*  
.....  
Clerk of the Senate

*Donald L. Hoyle*  
.....  
Clerk of the House of Delegates

*Don Toussaint*  
.....  
President of the Senate

*Robert C. Byrd*  
.....  
Speaker of the House of Delegates

The within *approved* this the *2<sup>nd</sup>*  
*April* day of ....., 1987.

*Arch A. Moore, Jr.*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/27/56

Time 2:41 p.m.