

No. 545

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 545

(By Senator SITAW)



PASSED MARCH 12, 1988

In Effect 90 DAYS FROM Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 545
(SENATOR SHAW, *original sponsor*)

[Passed March 12, 1988; in effect ninety days from passage.]

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 referral of decedents' estates to a fiduciary commissioner; exceptions when no disputed claims are filed against the 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 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 appraisal 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, be
4 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
7 shares of the legatees and distributees, and any other matter

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

41 NOTICE OF FILING OF ESTATE ACCOUNTS

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

45 _____
46 _____
47 _____

48 Any person having a claim against the estate of any such
49 deceased person, or who has any beneficial interest therein,

50 may appear before me or the county commission at any time
51 within thirty days after first publication of this notice, and
52 request reference of said estate to a commissioner or object
53 to confirmation of said accounting. In the absence of such
54 request or objection, the accounting may be approved by
55 the county commission.

56

57 Clerk of the County Commission
58 of _____ County, W. Va.

59 If no such request or objection be made to the clerk or to
60 the county commission, the county commission may
61 confirm the report of the personal representative, and
62 thereupon the personal representative and his surety shall
63 be discharged; but if such objection or request be made, the
64 county commission may confirm the accounting or may
65 refer the estate to one of its fiduciary commissioners:
66 *Provided*, That the personal representative shall have
67 twenty days after the date of the filing of a claim or claims
68 against the estate of the decedent to approve or reject said
69 claim before said estate shall be referred to a fiduciary
70 commissioner and if all claims are approved as filed then no
71 reference may be made.

72 (b) If upon the return and recordation of the
73 appraisement, it shall appear to the clerk that there is only
74 one beneficiary of the estate and that said beneficiary is
75 competent at law, there shall be no further administration
76 upon the estate, and no reference to a fiduciary
77 commissioner, unless, for due cause, the county commission
78 shall order further administration and a reference to a
79 fiduciary commissioner: *Provided*, That the personal
80 representative shall have twenty days after the date of the
81 filing of a claim or claims against the estate of the decedent
82 to approve or reject said claim before said estate shall be
83 referred to a fiduciary commissioner and if all claims are
84 approved as filed then no reference may be made. The bond
85 of the personal representative and his surety shall be
86 discharged one year after the date of qualification of the
87 personal representative if no claim shall have been filed
88 with the county clerk and no suit shall have been instituted
89 against the personal representative. The clerk shall publish
90 a notice once a week for two successive weeks in a
91 newspaper of general circulation within the county of

92 administration of the estate, substantially as follows:

93 NOTICE OF UNADMINISTERED ESTATE

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

99 Dated this _____ day of _____, _____.

100

101 Clerk of the County Commission
102 of _____ County, W. Va.

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

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

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

Sam C. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Jedd C. Miller
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Don Tonken
.....
President of the Senate

Robert M. ...
.....
Speaker House of Delegates

The within *approved* this the *30th*
March
day of 1988.

Arthur A. ...
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/88

Time 4:03 p.m.

RECEIVED

1900 APR -5 AM 3 48

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE