WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

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ENROLLED

HOUSE BILL No. 2162

(By Mr. Del. Bradley & Buchanan)

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Passed March 15, 1989

In Effect From Passage
AN ACT to amend and reenact section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article five, chapter forty-four of said code, all relating to the administration of estates; providing for the apportionment of West Virginia estate taxes; including a reference to the apportionment provision governing estates administered under authority of a fiduciary supervisor within the said estate tax provision; prohibiting certain nonresidents from serving as fiduciaries; setting forth exceptions; permitting nonresidents to serve as administrators of resident decedents' assets; requiring nonresident fiduciaries to give bond and setting forth the minimum amounts thereof; exceptions; appointment of clerk of the county commission as attorney-in-fact for purpose of receiving notice or process; prescribing the procedure by which notice or process may be perfected; prohibiting the removal from this state of estate assets until certain conditions are satisfied; making it a misdemeanor offense to remove estate assets from this state without complying with the appropriate laws; setting forth penalties; and providing for the removal of nonresident fiduciaries.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article eleven, chapter eleven of
the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article five, chapter forty-four of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-28. Apportionment of West Virginia estate taxes; deduction of taxes by the fiduciary from shares of beneficiaries.

1 Whenever there is an estate tax levied or assessed under the provisions of any estate tax law of this state heretofore or hereafter enacted, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues in conformity with the provisions of section sixteen-a, article two, and section eighteen, article three-a, chapter forty-four of this code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state nor any nonresident banking institution nor any corporation having its principal office or place of business outside this state may be appointed or act as executor, administrator, curator, guardian or committee in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent's state of domicile and submits letters of probate authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary
administration is sought;

(2) An individual who is a nonresident of this state
may be appointed ancillary administrator of a nonres-
ident decedent's assets situate in this state if such
nonresident individual is acting as administrator in said
decedent's state of domicile and submits letters of
administration authenticated by the probate authorities
of the decedent's state of domicile to the clerk of the
county commission of any county of this state wherein
ancillary administration is sought;

(3) An individual who is a nonresident of this state
may be appointed and act as testamentary guardian of
a nonresident infant and thereby exercise dominion and
control over such nonresident infant's assets situate in
this state upon submission of authenticated documenta-
tion that such nonresident testamentary guardian was
so appointed at the place of domicile of the nonresident
infant. Such authenticated documentation shall be
submitted to the clerk of the county commission of any
county of this state wherein assets belonging to such
nonresident infant are situate;

(4) An individual who is a nonresident of this state
and who is named executor by a resident decedent may
qualify and act as executor in this state;

(5) An individual who is a nonresident of this state
may be appointed and act as administrator of a resident
decedent's assets in this state if appointed in accordance
with the provisions of section four, article one of this
chapter;

(6) An individual who is a nonresident of this state
may be appointed as the testamentary guardian of a
resident infant if appointed in accordance with the
provisions of section one, article ten of this chapter;

(7) An individual who is a nonresident of this state
may be appointed as committee of a resident incompe-
tent: Provided, That such appointment is made in
accordance with the provisions of section one, article
eleven, chapter twenty-seven of this code and if such
nonresident individual may otherwise qualify as
(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendant or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of section seven, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent’s will direct that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6) of subsection (a) of this section named in a decedent’s will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

c) When a nonresident individual is appointed as executor, administrator, testamentary guardian or committee pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him as executor, administrator, testamentary guardian or committee or with respect to such estate, and such qualification shall be a manifestation of said nonresident individual’s agree-
ment that any notice or process, which is served in the
manner hereinafter provided in this subsection, shall be
of the same legal force and validity as though such
nonresident was personally served with notice and
process within this state. Service shall be made by
leaving the original and two copies of any notice or
process, together with a fee of five dollars, with the clerk
of such county commission. The fee of five dollars shall
be deposited with the county treasurer. Such clerk shall
thereupon endorse upon one copy thereof the day and
hour of service and shall file such copy in his office and
such service shall constitute personal service upon such
nonresident: Provided, That the other copy of such notice
or process shall be forthwith sent by registered or
certified mail, return receipt requested, deliver to
addressee only, by said clerk to such nonresident at the
address last furnished by him to said clerk and either:
(1) Such nonresident’s return receipt signed by him or
(2) the registered or certified mail bearing thereon the
stamp of the post office department showing that
delivery therefor was refused by such nonresident is
appended to the original notice or process filed there-
with in the office of the clerk of the county commission
from which such notice or process was issued. No notice
or process may be served on such clerk of the county
commission or accepted by him less than thirty days
before the return day thereof. The clerk of such county
commission shall keep a record in his office of all such
notices and processes and the day and hour of service
thereof. The provision for service of notice or process
herein provided is cumulative and nothing herein
contained shall be construed as a bar to service by
publication where proper or the service of notice or
process in any other lawful mode or manner.

(d) The personal estate of a resident decedent, infant
or incompetent may not be removed from this state until
the inventory or appraisement of that resident dece-
dent’s, infant’s or incompetent’s assets has been filed and
any new or additional bond required to satisfy the
penalties specified in subsection (b) of this section has
been furnished. The liability of a nonresident executor,
administrator, testamentary guardian or committee and
of any such surety shall be joint and several and a civil
action on any such bond may be instituted and main-
tained against the surety, notwithstanding any other
provision of this code to the contrary, even though no
civil action has been instituted against such nonresident.

(e) Any such nonresident who removes from this state
assets administered in and situate in this state without
complying with the provisions of this section, the
provisions of article eleven, chapter forty-four of this
code or any other requirement pertaining to fiduciasries
generally, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one
thousand dollars or confined in the county jail for not
more than one year, or, in the discretion of the court,
by both such fine and imprisonment.

(f) If a nonresident appointed pursuant to subsection
(a) of this section fails or refuses to file an accounting
required by this chapter, and the failure continues for
two months after the due date, he may, upon notice and
hearing, be removed or subjected to any other approp-
riate order by the county commission, and if his failure
or refusal to account continues for six months, he shall
be removed by the county commission.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
Chairman Senate Committee

Bernard N. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Ford C. Viele
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Larry F. Twining
President of the Senate

W.O.W.
Speaker of the House of Delegates

The within is approved this the 27th day of January, 1989.

Governor