

70. 2162

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

HOUSE BILL No. 2162

(By ~~MR.~~ Del. Bradley + Buchanan)



Passed March 15, 1989

In Effect From Passage

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OFFICE OF THE SECRETARY OF STATE

ENROLLED

H. B. 2162

(By DELEGATES BRADLEY and BUCHANAN)

[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
2 under the provisions of any estate tax law of this state
3 heretofore or hereafter enacted, the amount of the tax
4 so paid shall be prorated among the persons interested
5 in the estate to whom such property is or may be
6 transferred or to whom any benefit accrues in conform-
7 ity with the provisions of section sixteen-a, article two,
8 and section eighteen, article three-a, chapter forty-four
9 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.

1 (a) Notwithstanding any other provision of law, no
2 individual who is a nonresident of this state nor any
3 nonresident banking institution nor any corporation
4 having its principal office or place of business outside
5 this state may be appointed or act as executor, admin-
6 istrator, curator, guardian or committee in this state,
7 except that:

8 (1) An individual who is a nonresident of this state
9 may be appointed ancillary administrator of a nonres-
10 ident decedent's assets situate in this state if such
11 nonresident individual is lawfully acting as executor in
12 said decedent's state of domicile and submits letters of
13 probate authenticated by the probate authorities of the
14 decedent's state of domicile to the clerk of the county
15 commission of any county of this state wherein ancillary

16 administration is sought;

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

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

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

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

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

49 (7) An individual who is a nonresident of this state
50 may be appointed as committee of a resident incompe-
51 tent: *Provided*, That such appointment is made in
52 accordance with the provisions of section one, article
53 eleven, chapter twenty-seven of this code and if such
54 nonresident individual may otherwise qualify as

55 committee.

56 (b) Nonresident individuals enumerated in subsection
57 (a) of this section shall give bond with corporate surety
58 thereon, qualified to do business in this state, and the
59 amount of such bond shall not be less than double the
60 value of the personal assets and double the value of any
61 real property authorized to be sold or double the value
62 of any rents and profits from any real property which
63 the nonresident individual is authorized to receive,
64 except that:

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

73 (2) Where the terms of a decedent's will direct that
74 a nonresident individual enumerated in subdivisions (1),
75 (3), (4) and (6) of subsection (a) of this section named in
76 a decedent's will shall not give bond or give bond at a
77 specified amount, it shall not be required or shall be
78 required only to the extent required under the terms of
79 the will, unless at the time the will is admitted to record
80 or at any time subsequently, on the application of any
81 person interested, or from the knowledge of the commis-
82 sion or clerk admitting the will to record, it is deemed
83 proper that greater bond be given.

84 (c) When a nonresident individual is appointed as
85 executor, administrator, testamentary guardian or
86 committee pursuant to the provisions of subsection (a)
87 of this section, said individual thereby constitutes the
88 clerk of the county commission wherein such appoint-
89 ment was made as his true and lawful attorney-in-fact
90 upon whom may be served all notices and process in any
91 action or proceeding against him as executor, adminis-
92 trator, testamentary guardian or committee or with
93 respect to such estate, and such qualification shall be a
94 manifestation of said nonresident individual's agree-

95 ment that any notice or process, which is served in the
96 manner hereinafter provided in this subsection, shall be
97 of the same legal force and validity as though such
98 nonresident was personally served with notice and
99 process within this state. Service shall be made by
100 leaving the original and two copies of any notice or
101 process, together with a fee of five dollars, with the clerk
102 of such county commission. The fee of five dollars shall
103 be deposited with the county treasurer. Such clerk shall
104 thereupon endorse upon one copy thereof the day and
105 hour of service and shall file such copy in his office and
106 such service shall constitute personal service upon such
107 nonresident: *Provided*, That the other copy of such notice
108 or process shall be forthwith sent by registered or
109 certified mail, return receipt requested, deliver to
110 addressee only, by said clerk to such nonresident at the
111 address last furnished by him to said clerk and either:
112 (1) Such nonresident's return receipt signed by him or
113 (2) the registered or certified mail bearing thereon the
114 stamp of the post office department showing that
115 delivery therefor was refused by such nonresident is
116 appended to the original notice or process filed there-
117 with in the office of the clerk of the county commission
118 from which such notice or process was issued. No notice
119 or process may be served on such clerk of the county
120 commission or accepted by him less than thirty days
121 before the return day thereof. The clerk of such county
122 commission shall keep a record in his office of all such
123 notices and processes and the day and hour of service
124 thereof. The provision for service of notice or process
125 herein provided is cumulative and nothing herein
126 contained shall be construed as a bar to service by
127 publication where proper or the service of notice or
128 process in any other lawful mode or manner.

129 (d) The personal estate of a resident decedent, infant
130 or incompetent may not be removed from this state until
131 the inventory or appraisal of that resident dece-
132 dent's, infant's or incompetent's assets has been filed and
133 any new or additional bond required to satisfy the
134 penalties specified in subsection (b) of this section has
135 been furnished. The liability of a nonresident executor,
136 administrator, testamentary guardian or committee and

137 of any such surety shall be joint and several and a civil
138 action on any such bond may be instituted and main-
139 tained against the surety, notwithstanding any other
140 provision of this code to the contrary, even though no
141 civil action has been instituted against such nonresident.

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

152 (f) If a nonresident appointed pursuant to subsection
153 (a) of this section fails or refuses to file an accounting
154 required by this chapter, and the failure continues for
155 two months after the due date, he may, upon notice and
156 hearing, be removed or subjected to any other approp-
157 riate order by the county commission, and if his failure
158 or refusal to account continues for six months, he shall
159 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 V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Irvin C. Mills
Clerk of the Senate

Donald T. Hoop
Clerk of the House of Delegates

Raymond T. Tucker
President of the Senate

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

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

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/21

Time 4:25