

RECEIVED

1992 MAR 27 PM 4: 29

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



# ENROLLED

*Committee Substitute for*

HOUSE BILL No. *7112*

(By Delegate *Mr. Speaker, Mr. Chambers and* )  
*Delegate Bank*



Passed *March 7* 1992

In Effect *ninety days from* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4112**

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)  
[By Request of the Executive]

*March 7, 1992*      *misty days*  
[Passed ~~February 10, 1992~~; in effect, ~~from passage.~~]

AN ACT to repeal section one, article two, chapter thirty-seven; article two, chapter forty-two; section one, article four of said chapter; and sections three through twenty, inclusive, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article one, chapter forty-one of said code; to amend and reenact sections one, two, three and four, article one, chapter forty-two; to further amend article one of said chapter by adding thereto eight new sections, designated sections three-a, three-b, three-c, three-d, three-e, three-f, three-g and ten; to amend and reenact sections one, two and three, article three, chapter forty-two; to further amend article three of said chapter by adding thereto five new sections, designated sections three-a, four, five, six and seven; to amend and reenact sections one and two, article one, chapter forty-three; and to amend and reenact section six, article seven, chapter fifty-five of the code, all relating to intestate succession and distribution of damages in wrongful death actions; spousal and surviving heirs shares; representation; the abolition of dower and curtesy; effects of premarital will on spouse's share; and requiring spousal notice if certain property is conveyed.

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

That section one, article two, chapter thirty-seven; article two, chapter forty-two; section one, article four, chapter forty-two; and sections three through twenty, inclusive, article one, chapter forty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six, article one, chapter forty-one of said code be amended and reenacted; that sections one, two, three and four, article one of chapter forty-two be amended and reenacted; that article one of said chapter forty-two be further amended by adding thereto eight new sections, designated sections three-a, three-b, three-c, three-d, three-e, three-f, three-g and ten; that sections one, two and three, article three, chapter forty-two be amended and reenacted; that article three of said chapter forty-two be further amended by adding thereto five new sections, designated sections three-a, four, five, six and seven; that sections one and two, article one, chapter forty-three be amended and reenacted; and that section six, article seven, chapter fifty-five be amended and reenacted, all to read as follows:

## **CHAPTER 41. WILLS.**

### **ARTICLE 1. CAPACITY TO MAKE; REQUISITES; VALIDITY.**

#### **§41-1-6. Revocation by divorce; no revocation by other changes of circumstances.**

1     If after executing a will the testator is divorced or his  
2     marriage annulled, the divorce or annulment revokes  
3     any disposition or appointment of property made by the  
4     will to the former spouse, any provision conferring a  
5     general or special power of appointment on the former  
6     spouse, and any nomination of the former spouse as  
7     executor, trustee, conservator, or guardian, unless the  
8     will expressly provides otherwise. Property prevented  
9     from passing to a former spouse because of revocation  
10    by divorce or annulment passes as if the former spouse  
11    failed to survive the decedent, and other provisions  
12    conferring some power or office on the former spouse  
13    are interpreted as if the spouse failed to survive the  
14    decedent. Notwithstanding the provisions of section  
15    three, article three, chapter forty-one of this code, the  
16    share of such spouse shall be distributed according to

17 the residuary clause of the decedent's will or according  
18 to the statute of intestate succession for the decedents  
19 property. If provisions are revoked solely by this section,  
20 they are revived by testator's remarriage to the former  
21 spouse. For purposes of this section, divorce or annul-  
22 ment means any divorce or annulment which would  
23 exclude the spouse as a surviving spouse. A decree of  
24 separation which does not terminate the status of  
25 husband and wife is not a divorce for purposes of this  
26 section. No change of circumstances other than as  
27 described in this section revokes a will.

## CHAPTER 42. DESCENT AND DISTRIBUTION.

### ARTICLE 1. DESCENT.

#### §42-1-1. General definitions.

1 Subject to additional definitions contained in the  
2 subsequent articles that are applicable to specific  
3 articles, parts, or sections, and unless the context  
4 otherwise requires in this code:

5 (1) "Agent" includes an attorney-in-fact under a  
6 durable or nondurable power of attorney, an individual  
7 authorized to make decisions concerning another's  
8 health care, and an individual authorized to make  
9 decisions for another under a natural death act.

10 (2) "Beneficiary" as it relates to a trust beneficiary,  
11 includes a person who has any present or future interest,  
12 vested or contingent, and also includes the owner of an  
13 interest by assignment or other transfer; as it relates to  
14 a charitable trust, includes any person entitled to  
15 enforce the trust; as it relates to a "beneficiary of a  
16 beneficiary designation," refers to a beneficiary of an  
17 insurance or annuity policy, of an account with POD  
18 designation, of a security registered in beneficiary form  
19 (TOD), or of a pension, profit-sharing, retirement, or  
20 similar benefit plan, or other nonprobate transfer at  
21 death; and, as it relates to a "beneficiary designated in  
22 a governing instrument," includes a grantee of a deed,  
23 a devisee, a trust beneficiary, a beneficiary of a  
24 beneficiary designation, a donee, appointee, or taker in  
25 default of a power of appointment, or a person in whose

26 favor a power of attorney or a power held in any  
27 individual, fiduciary, or representative capacity is  
28 exercised.

29 (3) "Court" means the county commission or branch in  
30 this state having jurisdiction in matters relating to the  
31 affairs of decedents.

32 (4) "Conservator" means a person who is appointed by  
33 a court to manage the estate of a protected person.

34 (5) "Descendant" of an individual means all of his or  
35 her descendants of all generations, with the relationship  
36 of parent and child at each generation being determined  
37 by the definition of child and parent contained in this  
38 code.

39 (6) "Devise" when used as a noun, means a testamen-  
40 tary disposition of real or personal property and, when  
41 used as a verb, means to dispose of real or personal  
42 property by will.

43 (7) "Devisee" means a person designated in a will to  
44 receive a devise. In the case of a devise to an existing  
45 trust or trustee, or to a trustee on trust described by  
46 will, the trust or trustee is the devisee and the benefi-  
47 ciaries are not devisees.

48 (8) "Distributee" means any person who has received  
49 property of a decedent from his or her personal  
50 representative other than as a creditor or purchaser. A  
51 testamentary trustee is a distributee only to the extent  
52 of distributed assets or increment thereto remaining in  
53 his or her hands. A beneficiary of a testamentary trust  
54 to whom the trustee has distributed property received  
55 from a personal representative is a distributee of the  
56 personal representative. For the purposes of this  
57 provision, "testamentary trustee" includes a trustee to  
58 whom assets are transferred by will, to the extent of the  
59 devised assets.

60 (9) "Estate" includes the property of the decedent,  
61 trust, or other person whose affairs are subject to this  
62 code as originally constituted and as it exists from time  
63 to time during administration.

64 (10) "Exempt property" means that property of a  
65 decedent's estate which is provided for in Section 48,  
66 Article VI of the constitution.

67 (11) "Fiduciary" includes a personal representative,  
68 guardian, conservator and trustee.

69 (12) "Foreign personal representative" means a  
70 personal representative appointed by another  
71 jurisdiction.

72 (13) "Formal proceedings" means proceedings con-  
73 ducted before a judge with notice to interested persons.

74 (14) "Governing instrument" means a deed, will, trust,  
75 insurance or annuity policy, account with POD designa-  
76 tion, security registered in beneficiary form (TOD),  
77 pension, profit-sharing, retirement or similar benefit  
78 plan, instrument creating or exercising a power of  
79 appointment or a power of attorney, or a donative,  
80 appointive, or nominative instrument of any other type.

81 (15) "Guardian" means a person who has qualified as  
82 a guardian of a minor or incapacitated person pursuant  
83 to testamentary or court appointment, but excludes one  
84 who is merely a guardian ad litem.

85 (16) "Heirs" means persons, including the surviving  
86 spouse and the state, who are entitled under the statutes  
87 of intestate succession to the property of a decedent.

88 (17) "Informal proceedings" mean those conducted  
89 without notice to interested persons by an officer of the  
90 court acting as a registrar for probate of a will or  
91 appointment of a personal representative.

92 (18) "Interested person" includes heirs, devisees,  
93 children, spouses, creditors, beneficiaries, and any  
94 others having a property right in or claim against a  
95 trust estate or the estate of a decedent, ward or  
96 protected person. It also includes persons having  
97 priority for appointment as personal representative, and  
98 other fiduciaries representing interested persons. The  
99 meaning as it relates to particular persons may vary  
100 from time to time and must be determined according  
101 to the particular purposes of, and matter involved in,

102 any proceeding.

103 (19) "Issue" of a person means descendant as defined  
104 in subsection (5).

105 (20) "Joint tenants with the right of survivorship" and  
106 "community property with the right of survivorship"  
107 includes co-owners of property held under circumstan-  
108 ces that entitle one or more to the whole of the property  
109 on the death of the other or others, but excludes forms  
110 of co-ownership registration in which the underlying  
111 ownership of each party is in proportion to that party's  
112 contribution.

113 (21) "Lease" includes an oil, gas, or other mineral  
114 lease.

115 (22) "Letters" includes letters testamentary, letters of  
116 guardianship, letters of administration, and letters of  
117 conservatorship.

118 (23) "Minor" means a person who is under eighteen  
119 years of age.

120 (24) "Mortgage" means any deed of trust, conveyance,  
121 agreement, or arrangement in which property is  
122 encumbered or used as security.

123 (25) "Nonresident decedent" means a decedent who  
124 was domiciled in another jurisdiction at the time of his  
125 or her death.

126 (26) "Parent" includes any person entitled to take, or  
127 who would be entitled to take if the child died without  
128 a will, as a parent under this code by intestate succes-  
129 sion from the child whose relationship is in question and  
130 excludes any person who is only a stepparent, foster  
131 parent, or grandparent.

132 (27) "Payor" means a trustee, insurer, business entity,  
133 employer, government, governmental agency or subdi-  
134 vision, or any other person authorized or obligated by  
135 law or a governing instrument to make payments.

136 (28) "Person" means an individual or an organization.

137 (29) "Personal representative" includes executor,  
138 administrator, successor personal representative, special

139 administrator, and persons who perform substantially  
140 the same function under the law governing their status.  
141 “General personal representative” excludes special  
142 administrator.

143 (30) “Petition” means a written request to the court  
144 for an order after notice.

145 (31) “Proceeding” includes action at law and suit in  
146 equity.

147 (32) “Property” includes both real and personal  
148 property or any interest therein and means anything  
149 that may be the subject of ownership.

150 (33) “Security” includes any note, stock, treasury  
151 stock, bond, debenture, evidence of indebtedness,  
152 certificate of interest or participation in an oil, gas, or  
153 mining title or lease or in payments out of production  
154 under such a title or lease, collateral trust certificate,  
155 transferable share, voting trust certificate or, in  
156 general, any interest or instrument commonly known as  
157 a security, or any certificate of interest or participation,  
158 any temporary or interim certificate, receipt, or  
159 certificate of deposit for, or any warrant or right to  
160 subscribe to or purchase, any of the foregoing.

161 (34) “Settlement” in reference to a decedent’s estate,  
162 includes the full process of administration, distribution  
163 and closing.

164 (35) “State” means a state of the United States, the  
165 District of Columbia, the Commonwealth of Puerto Rico,  
166 or any territory or insular possession subject to the  
167 jurisdiction of the United States.

168 (36) “Successor personal representative” means a  
169 personal representative, other than a special administra-  
170 tor, who is appointed to succeed a previously appointed  
171 personal representative.

172 (37) “Successors” means persons, other than creditors,  
173 who are entitled to property of a decedent under his or  
174 her will or this code.

175 (38) “Survive” means that an individual has neither  
176 predeceased an event, including the death of another



177 individual, nor is deemed to have predeceased an event.  
178 The term includes its derivatives, such as “survives,”  
179 “survived,” “survivor,” “surviving.”

180 (39) “Surviving spouse” means the person to whom the  
181 decedent was married at the time of the decedent’s  
182 death.

183 (40) “Testacy proceeding” means a proceeding to  
184 establish a will or determine intestacy.

185 (41) “Testator” includes an individual of either sex.

186 (42) “Trust” includes an express trust, private or  
187 charitable, with additions thereto, wherever and  
188 however created. The term also includes a trust created  
189 or determined by judgment or decree under which the  
190 trust is to be administered in the manner of an express  
191 trust. The term excludes other constructive trusts and  
192 excludes resulting trusts, conservatorships, personal  
193 representatives and custodial arrangements, including  
194 that relating to gifts or transfers to minors, dealing with  
195 special custodial situations, business trusts providing for  
196 certificates to be issued to beneficiaries.

197 (43) “Trustee” includes an original, additional, or  
198 successor trustee, whether or not appointed or con-  
199 firmed by court.

200 (44) “Will” includes codicil and any testamentary  
201 instrument that merely appoints an executor, revokes or  
202 revises another will, nominates a guardian, or expressly  
203 excludes or limits the right of an individual or class to  
204 succeed to property of the decedent passing by intestate  
205 succession.

#### §42-1-2. Intestate estate.

1 (a) Any part of a decedent’s estate not effectively  
2 disposed of by will passes by intestate succession to the  
3 decedent’s heirs as prescribed in this code, except as  
4 modified by the decedent’s will.

5 (b) A decedent by will may expressly exclude or limit  
6 the right of an individual or class to succeed to property  
7 of the decedent passing by intestate succession. If that  
8 individual or a member of that class survives the

9 decedent, the share of the decedent's intestate estate to  
10 which that individual or class would have succeeded  
11 passes as if that individual or each member of that class  
12 had disclaimed his or her intestate share.

**§42-1-3. Share of spouse.**

1 The intestate share of a decedent's surviving spouse  
2 is:

3 (a) The entire intestate estate if:

4 (1) No descendant or parent of the decedent survives  
5 the decedent; or

6 (2) All of the decedent's surviving descendants are  
7 also descendants of the surviving spouse and there is no  
8 other descendant of the surviving spouse who survives  
9 the decedent;

10 (b) Three fourths of the intestate estate, if no descend-  
11 ant of the decedent survives the decedent, but a parent  
12 of the decedent survives the decedent;

13 (c) Three fifths of the intestate estate, if all of the  
14 decedent's surviving descendants are also descendants of  
15 the surviving spouse and the surviving spouse has one  
16 or more surviving descendants who are not descendants  
17 of the decedent;

18 (d) One half of the intestate estate, if one or more of  
19 the decedent's surviving descendants are not descend-  
20 ants of the surviving spouse.

**§42-1-3a. Share of heirs other than surviving spouse.**

1 Any part of the intestate estate not passing to the  
2 decedent's surviving spouse under section three of this  
3 article, or the entire intestate estate if there is no  
4 surviving spouse, passes in the following order to the  
5 individuals designated below who survive the decedent:

6 (a) To the decedent's descendants by representation;

7 (b) If there is no surviving descendant, to the dece-  
8 dent's parents equally if both survive, or to the surviving  
9 parent;

10 (c) If there is no surviving descendant or parent, to

11 the descendants of the decedent's parents or either of  
12 them by representation;

13 (d) If there is no surviving descendant, parent, or  
14 descendant of a parent, but the decedent is survived by  
15 one or more grandparents or descendants of grandpar-  
16 ents, half of the estate passes to the decedent's paternal  
17 grandparents equally if both survive, or to the surviving  
18 paternal grandparent, or to the descendants of the  
19 decedent's paternal grandparents or either of them if  
20 both are deceased, the descendants taking by represen-  
21 tation; and the other half passes to the decedent's  
22 maternal relatives in the same manner; but, if there is  
23 no surviving grandparent or descendant of a grandpar-  
24 ent on either the paternal or the maternal side, the  
25 entire estate passes to the decedent's relatives on the  
26 other side in the same manner as the half.

**§42-1-3b. Requirement that heir survive decedent for one hundred twenty hours.**

1 An individual who fails to survive the decedent by one  
2 hundred twenty hours is deemed to have predeceased  
3 the decedent for purposes of homestead allowance,  
4 exempt property, and intestate succession, and the  
5 decedent's heirs are determined accordingly. If the time  
6 of death of a decedent or of an individual who would  
7 otherwise be an heir, or the times of death of both,  
8 cannot be determined, and it is not established that the  
9 individual who would otherwise be an heir survived the  
10 decedent by one hundred twenty hours, it is deemed that  
11 the individual failed to survive for the required period.  
12 This section is not to be applied if its application would  
13 result in a taking of intestate estate by the state under  
14 section three-c of this article.

**§42-1-3c. No taker.**

1 If there is no taker under the provisions of this article,  
2 the intestate estate passes to the state.

**§42-1-3d. Representation.**

1 (a) In this section:  
2 (1) "Deceased descendant," "deceased parent," or  
3 "deceased grandparent" means a descendant, parent, or

4 grandparent who either predeceased the decedent or is  
5 deemed to have predeceased the decedent under section  
6 three-b of this article.

7 (2) "Surviving descendant" means a descendant who  
8 neither predeceased the decedent nor is deemed to have  
9 predeceased the decedent under section three-b of this  
10 article.

11 (b) If, under section three-a of this article, a dece-  
12 dent's intestate estate or a part thereof passes "by  
13 representation" to the decedent's descendants, the estate  
14 or part thereof is divided into as many equal shares as  
15 there are: (i) Surviving descendants in the generation  
16 nearest to the decedent which contains one or more  
17 surviving descendants; and (ii) deceased descendants in  
18 the same generation who left surviving descendants, if  
19 any. Each surviving descendant in the nearest genera-  
20 tion is allocated one share. The remaining shares, if any,  
21 are combined and then divided in the same manner  
22 among the surviving descendants of the deceased  
23 descendants as if the surviving descendants who were  
24 allocated a share and their surviving descendants had  
25 predeceased the decedent.

26 (c) If, under section three-a of this article, a decedent's  
27 intestate estate or a part thereof passes "by representa-  
28 tion" to the descendants of the decedent's deceased  
29 parents or either of them or to the descendants of the  
30 decedent's deceased paternal or maternal grandparents  
31 or either of them, the estate or part thereof is divided  
32 into as many equal shares as there are: (i) Surviving  
33 descendants in the generation nearest the deceased  
34 parents or either of them, or the deceased grandparents  
35 or either of them, that contains one or more surviving  
36 descendants; and (ii) deceased descendants in the same  
37 generation who left surviving descendants, if any. Each  
38 surviving descendant in the nearest generation is  
39 allocated one share. The remaining shares, if any, are  
40 combined and then divided in the same manner among  
41 the surviving descendants of the deceased descendants  
42 as if the surviving descendants who were allotted a  
43 share and their surviving descendants had predeceased  
44 the decedent.

**§42-1-3e. Kindred of half blood.**

- 1 Relatives of the half blood inherit the same share they
- 2 would inherit if they were of the whole blood.

**§42-1-3f. Afterborn heirs.**

- 1 An individual in gestation at a particular time is
- 2 treated as living at that time if the individual lives one
- 3 hundred twenty hours or more after birth.

**§42-1-3g. Advancements.**

- 1 (a) If an individual dies intestate as to all or a portion
- 2 of his or her estate, property the decedent gave during
- 3 the decedent's lifetime to an individual who, at the
- 4 decedent's death, is an heir is treated as an advancement
- 5 against the heir's intestate share only if (i) the decedent
- 6 declared in a contemporaneous writing or the heir
- 7 acknowledged in writing that the gift is an advancement
- 8 or (ii) the decedent's contemporaneous writing or the
- 9 heir's written acknowledgement otherwise indicates that
- 10 the gift is to be taken into account in computing the
- 11 division and distribution of the decedent's intestate
- 12 estate.

- 13 (b) For purposes of subsection (a), property advanced
- 14 is valued as of the time the heir came into possession
- 15 or enjoyment of the property or as of the time of the
- 16 decedent's death, whichever first occurs.

- 17 (c) If the recipient of the property fails to survive the
- 18 decedent, the property is not taken into account in
- 19 computing the division and distribution of the decedent's
- 20 intestate estate, unless the decedent's contemporaneous
- 21 writing provides otherwise.

**§42-1-4. Alienage.**

- 1 No individual is disqualified to take as an heir because
- 2 the individual or an individual through whom he or she
- 3 claims is or has been an alien.

**§42-1-10. Individuals related to decedent through two lines.**

- 1 An individual who is related to the decedent through
- 2 two lines of relationship is entitled to only a single share

3 based on the relationship that would entitle the individ-  
 4 ual to the larger share.

**ARTICLE 3. PROVISIONS RELATING TO HUSBAND OR WIFE OF  
 DECEDENT.**

**§42-3-1. Right to elective share.**

1 (a) The surviving spouse of a decedent who dies  
 2 domiciled in this state has a right of election, under the  
 3 limitations and conditions stated in this part, to take an  
 4 elective-share amount equal to the value of the elective-  
 5 share percentage of the augmented estate, determined  
 6 by the length of time the spouse and the decedent were  
 7 married to each other, in accordance with the following  
 8 schedule:

| 9 If the decedent and the spouse<br>10 were married to each other | The elective-share<br>percentage is: |
|---|--------------------------------------|
| 11 Less than 1 year .....   | Supplemental Amount Only             |
| 12 1 year but less than 2 years.....                              | 3% of the augmented estate.          |
| 13 2 years but less than 3 years.....                             | 6% of the augmented estate.          |
| 14 3 years but less than 4 years.....                             | 9% of the augmented estate.          |
| 15 4 years but less than 5 years.....                             | 12% of the augmented estate.         |
| 16 5 years but less than 6 years.....                             | 15% of the augmented estate.         |
| 17 6 years but less than 7 years.....                             | 18% of the augmented estate.         |
| 18 7 years but less than 8 years.....                             | 21% of the augmented estate.         |
| 19 8 years but less than 9 years.....                             | 24% of the augmented estate.         |
| 20 9 years but less than 10 years.....                            | 27% of the augmented estate.         |
| 21 10 years but less than 11 years.....                           | 30% of the augmented estate.         |
| 22 11 years but less than 12 years.....                           | 34% of the augmented estate.         |
| 23 12 years but less than 13 years.....                           | 38% of the augmented estate.         |
| 24 13 years but less than 14 years.....                           | 42% of the augmented estate.         |
| 25 14 years but less than 15 years.....                           | 46% of the augmented estate.         |
| 26 15 years or more.....  | 50% of the augmented estate.         |

27 (b) If the sum of the amounts described in subdivi-  
 28 sions (3) and (4), subsection (b) of section two, and  
 29 subdivisions (1) and (3), subsection (a), section six of this  
 30 article, and that part of the elective-share amount  
 31 payable from the decedent's probate and reclaimable  
 32 estates under subsections (b) and (c), section six of this  
 33 article, is less than twenty-five thousand dollars, the  
 34 surviving spouse is entitled to a supplemental elective-  
 35 share amount equal to fifty thousand dollars, minus the  
 36 sum of the amounts described in those sections. The

37 supplemental elective share amount is payable from the  
38 decedent's probate estate and from recipients of the  
39 decedent's probate estate and from recipients of the  
40 decedent's reclaimable estate in the order of priority set  
41 forth in subsections (b) and (c), section six of this article.

42 (c) The right, if any, of the surviving spouse of a  
43 decedent who dies domiciled outside this state to take  
44 an elective share in property in this state is governed  
45 by the law of the decedent's domicile at death.

**§42-3-2. Augmented estate.**

1 (a) Definitions.

2 (1) In this section:

3 (i) "Bona fide purchaser" means a purchaser for value  
4 in good faith and without notice of an adverse claim. The  
5 notation of a state documentary fee on a recorded  
6 instrument is prima facie evidence that the transfer  
7 described therein was made to a bona fide purchaser.

8 (ii) "Nonadverse party" means a person who does not  
9 have a substantial beneficial interest in the trust or  
10 other property arrangement that would be adversely  
11 affected by the exercise or nonexercise of the power that  
12 he or she possesses respecting the trust or other property  
13 arrangement. A person having a general power of  
14 appointment over property is deemed to have a benefi-  
15 cial interest in the property.

16 (iii) "Presently exercisable general power of appoint-  
17 ment" means a power of appointment under which, at  
18 the time in question, the decedent by an exercise of the  
19 power could have created an interest, present or future,  
20 in himself or herself or his or her creditors.

21 (iv) "Probate estate" means property, whether real or  
22 personal, movable or immovable, wherever situated,  
23 that would pass by intestate succession if the decedent  
24 died without a valid will.

25 (v) "Right to income" includes a right to payments  
26 under an annuity or similar contractual arrangement.

27 (vi) "Value of property owned by the surviving spouse

28 at the decedent's death" and "value of property to which  
29 the surviving spouse succeeds by reason of the dece-  
30 dent's death" include the commuted value of any present  
31 or future interest then held by the surviving spouse and  
32 the commuted value of amounts payable to the surviving  
33 spouse after the decedent's death under any trust, life  
34 insurance settlement option, annuity contract, public or  
35 private pension, disability compensation, death benefit  
36 or retirement plan, or any similar arrangement,  
37 exclusive of the federal social security system.

38 (2) In subsections (b) (2) (iii) and (iv), "transfer"  
39 includes an exercise or release of a power of appoint-  
40 ment, but does not include a lapse of a power of  
41 appointment.

42 (b) The augmented estate consists of the sum of:

43 (1) The value of the decedent's probate estate, reduced  
44 by funeral and administration expenses, homestead  
45 exemption, property exemption, and enforceable claims;

46 (2) The value of the decedent's reclaimable estate. The  
47 decedent's reclaimable estate is composed of all prop-  
48 erty, whether real or personal, movable or immovable,  
49 wherever situated, not included in the decedent's  
50 probate estate, of any of the following types:

51 (i) Property to the extent the passing of the principal  
52 thereof to or for the benefit of any person, other than  
53 the decedent's surviving spouse, was subject to a  
54 presently exercisable general power of appointment  
55 held by the decedent alone, if the decedent held that  
56 power immediately before his or her death, or if and to  
57 the extent the decedent, while married to his or her  
58 surviving spouse and during the two-year period next  
59 preceding the decedent's death, released that power or  
60 exercised that power in favor of any person other than  
61 the decedent or the decedent's estate, spouse or surviv-  
62 ing spouse;

63 (ii) Property, to the extent of the decedent's unilater-  
64 ally severable interest therein, held by the decedent and  
65 any other person, except the decedent's surviving  
66 spouse, with right of survivorship, acquired during the



67 marriage of the decedent and the surviving spouse, if  
68 the decedent held that interest immediately before his  
69 or her death or if and to the extent the decedent, while  
70 married to his or her surviving spouse and during the  
71 two-year period preceding the decedent's death, trans-  
72 ferred that interest to any person other than the  
73 decedent's surviving spouse;

74 (iii) Proceeds of insurance, including accidental death  
75 benefits, on the life of the decedent payable to any  
76 person other than the decedent's surviving spouse, if the  
77 decedent owned the insurance policy, had the power to  
78 change the beneficiary of the insurance policy, or the  
79 insurance policy was subject to a presently exercisable  
80 general power of appointment held by the decedent  
81 alone immediately before his or her death or if and to  
82 the extent the decedent, while married to his or her  
83 surviving spouse and during the two-year period next  
84 preceding the decedent's death, transferred that policy  
85 to any person other than the decedent's surviving spouse;  
86 and

87 (iv) Property transferred by the decedent to any  
88 person other than a bona fide purchaser at any time  
89 during the decedent's marriage to the surviving spouse,  
90 to or for the benefit of any person, other than the  
91 decedent's surviving spouse, if the transfer is of any of  
92 the following types:

93 (A) Any transfer to the extent that the decedent  
94 retained at the time of or during the two-year period  
95 next preceding his or her death the possession or  
96 enjoyment of, or right to income from the property;

97 (B) Any transfer to the extent that, at the time of or  
98 during the two-year period next preceding the dece-  
99 dent's death, the income or principal was subject to a  
100 power, exercisable by the decedent alone or in conjunc-  
101 tion with any other person or exercisable by a nonad-  
102 verse party, for the benefit of the decedent or the  
103 decedent's estate;

104 (C) Any transfer of property, to the extent the  
105 decedent's contribution to it, as a percentage of the  
106 whole, was made within two years before the decedent's

107 death, by which the property is held, at the time of or  
108 during the two-year period next preceding the dece-  
109 dent's death, by the decedent and another, other than the  
110 decedent's surviving spouse, with right of survivorship;  
111 or

112 (D) Any transfer made to a donee within two years  
113 before the decedent's death to the extent that the  
114 aggregate transfers to any one donee in either of the  
115 years exceed ten thousand dollars.

116 (3) The value of property to which the surviving  
117 spouse succeeds by reason of the decedent's death, other  
118 than by homestead exemption, exempt property, testate  
119 succession, or intestate succession, including the pro-  
120 ceeds of insurance, including accidental death benefits,  
121 on the life of the decedent and benefits payable under  
122 a retirement plan in which the decedent was a partic-  
123 ipant, exclusive of the federal social security system; and

124 (4) The value of property owned by the surviving  
125 spouse at the decedent's death, reduced by enforceable  
126 claims against that property or that spouse, plus the  
127 value of amounts that would have been includible in the  
128 surviving spouse's reclaimable estate had the spouse  
129 predeceased the decedent. But amounts that would have  
130 been includible in the surviving spouse's reclaimable  
131 estate under subsection (b) (2) (iii) are not valued as if  
132 he or she were deceased.

133 (c) Any transfer or exercise or release of a power of  
134 appointment is excluded from the decedent's reclaima-  
135 ble estate (i) to the extent the decedent received  
136 adequate and full consideration in money or money's  
137 worth for the transfer, exercise or release, or (ii) if  
138 irrevocably made with the written consent or joinder of  
139 the surviving spouse.

140 (d) Property is valued as of the decedent's death, but  
141 property irrevocably transferred during the two-year  
142 period next preceding the decedent's death which is  
143 included in the decedent's reclaimable estate under  
144 subsection (b) (2) (i), (ii) and (iv) is valued as of the time  
145 of the transfer. If the terms of more than one of the  
146 subparagraphs or sub-subparagraphs of subsection (b)

147 (2) apply, the property is included in the augmented  
148 estate under the subparagraph or sub-subparagraph  
149 that yields the highest value. For the purposes of this  
150 subsection, an “irrevocable transfer of property”  
151 includes an irrevocable exercise or release of a power  
152 of appointment.

153 (e) (1) Although under this section a payment, item of  
154 property, or other benefit is included in the decedent’s  
155 reclaimable estate, a payor or other third party is not  
156 liable for having made a payment or transferred an item  
157 of property or other benefit to a beneficiary designated  
158 in a governing instrument, or for having taken any other  
159 action in good faith reliance on the validity of a  
160 governing instrument, upon request and satisfactory  
161 proof of the decedent’s death, before the payor or other  
162 third party received written notice from the surviving  
163 spouse or spouse’s representative of an intention to file  
164 a petition for the elective share or that a petition for the  
165 elective share has been filed. A payor or other third  
166 party is liable for payments made or other actions taken  
167 after the payor or other third party received written  
168 notice of an intention to file a petition for the elective  
169 share or that a petition for the elective share has been  
170 filed.

171 (2) The written notice of intention to file a petition for  
172 the elective share or that a petition for the elective share  
173 has been filed must be mailed to the payor’s or other  
174 third party’s main office or home by registered or  
175 certified mail, return receipt requested, or served upon  
176 the payor or other third party in the same manner as  
177 a summons in a civil action. Upon receipt of written  
178 notice of intention to file a petition for the elective share  
179 or that a petition for the elective share has been filed,  
180 a payor or other third party may pay any amount owed  
181 or transfer or deposit any item of property held by it  
182 to or with the court having jurisdiction of the probate  
183 proceedings relating to the decedent’s estate, or if no  
184 proceedings have been commenced, to or with the court  
185 having jurisdiction of probate proceedings relating to  
186 decedents’ estates located in the county of the decedent’s  
187 residence. The court shall hold the funds or item of

188 property and, upon its determination under subsection  
189 (d) of section four of this article, shall order disburse-  
190 ment in accordance with the determination. If no  
191 petition is filed in the court within the specified time  
192 under subsection (a) of section four of this article or, if  
193 filed, the demand for an elective share is withdrawn  
194 under subsection (c) of section four of this article, the  
195 court shall order disbursement to the designated  
196 beneficiary. Payments, transfers, or deposits made to or  
197 with the court discharge the payor or other third party  
198 from all claims for the value of amounts paid to or items  
199 of property transferred to or deposited with the court.

200 (3) Upon petition to the probate court by the benefi-  
201 ciary designated in a governing instrument, the court  
202 may order that all or part of the property be paid to  
203 the beneficiary in an amount and subject to conditions  
204 consistent with this section.

205 (f) (1) A person who purchases property from a  
206 recipient for value and without notice, or who receives  
207 a payment or other item of property in partial or full  
208 satisfaction of a legally enforceable obligation, is neither  
209 obligated under this part to return the payment, item  
210 of property, or benefit nor is liable under this part for  
211 the amount of the payment or the value of the item of  
212 property or benefit. But a person who, not for value,  
213 receives a payment, item of property, or any other  
214 benefit included in the decedent's reclaimable estate is  
215 obligated to return the payment, item of property, or  
216 benefit, or is personally liable for the amount of the  
217 payment or the value of the item of property or benefit,  
218 as provided in section six of this article.

219 (2) If any section or part of any section of this part  
220 is preempted by federal law with respect to a payment,  
221 an item of property, or any other benefit included in the  
222 decedent's reclaimable estate, a person who, not for  
223 value, receives the payment, item of property, or any  
224 other benefit is obligated to return that payment, item  
225 of property, or benefit, or is personally liable for the  
226 amount of that payment or the value of that item of  
227 property or benefit, as provided in section six of this  
228 article to the person who would have been entitled to it

229 were that section or part of that section not preempted.

**§42-3-3. Right of election personal to surviving spouse.**

1 (a) The right of election may be exercised only by a  
2 surviving spouse who is living when the petition for the  
3 elective share is filed in the court under subsection (a)  
4 of section (3) of this article. If the election is not  
5 exercised by the surviving spouse personally, it may be  
6 exercised on the surviving spouse's behalf by his or her  
7 conservator, guardian, or agent under the authority of  
8 a power of attorney.

9 (b) If the election is exercised on behalf of a surviving  
10 spouse who is an incapacitated person, the court must  
11 set aside that portion of the elective-share and supple-  
12 mental elective-share amounts due from the decedent's  
13 probate estate and recipients of the decedent's reclaim-  
14 able estate under subsections (b) and (c) of section six  
15 of this article and must appoint a trustee to administer  
16 that property for the support of the surviving spouse.  
17 For the purposes of this subsection, an election on behalf  
18 of a surviving spouse by an agent under a durable power  
19 of attorney is presumed to be on behalf of a surviving  
20 spouse who is an incapacitated person. The trustee must  
21 administer the trust in accordance with the following  
22 terms and such additional terms as the court determines  
23 appropriate:

24 (1) Expenditures of income and principal may be  
25 made in the manner, when, and to the extent that the  
26 trustee determines suitable and proper for the surviving  
27 spouse's support, without court order but with regard  
28 to other support, income, and property of the surviving  
29 spouse and benefits of medical or other forms of  
30 assistance from any state or federal government or  
31 governmental agency for which the surviving spouse  
32 must qualify on the basis of need;

33 (2) During the surviving spouse's incapacity, neither  
34 the surviving spouse nor anyone acting on behalf of the  
35 surviving spouse has a power to terminate the trust; but  
36 if the surviving spouse regains capacity, the surviving  
37 spouse then acquires the power to terminate the trust  
38 and acquire full ownership of the trust property free of

39 trust, by delivering to the trustee a writing signed by  
40 the surviving spouse declaring the termination;

41 (3) Upon the surviving spouse's death, the trustee  
42 shall transfer the unexpended trust property under the  
43 residuary clause, if any, of the will of the predeceased  
44 spouse against whom the elective share was taken, as if  
45 that predeceased spouse died immediately after the  
46 surviving spouse.

**§42-3-3a. Waiver of right to elect; other rights.**

1 (a) The right of election of a surviving spouse and the  
2 rights of the surviving spouse to homestead exemption,  
3 exempt property, or any of them, may be waived, wholly  
4 or partially, before or after marriage, by a written  
5 contract, agreement, or waiver signed by the surviving  
6 spouse.

7 (b) A surviving spouse's waiver is not enforceable if  
8 the surviving spouse proves that:

9 (1) He or she did not execute the waiver voluntarily;  
10 or

11 (2) The waiver was unconscionable when it was  
12 executed and, before execution of the waiver, he or she:

13 (i) Was not provided a fair and reasonable disclosure  
14 of the property or financial obligations of the decedent;

15 (ii) Did not voluntarily and expressly waive, in  
16 writing, any right to disclosure of the property or  
17 financial obligations of the decedent beyond the disclo-  
18 sure provided; and

19 (iii) Did not have, or reasonably could not have had,  
20 an adequate knowledge of the property or financial  
21 obligations of the decedent.

22 (c) An issue of unconscionability of a waiver is for  
23 decision by the court as a matter of law.

24 (d) Unless it provides to the contrary, a waiver of "all  
25 rights," or equivalent language, in the property or estate  
26 of a present or prospective spouse or a complete  
27 property settlement entered into after or in anticipation  
28 of separation or divorce is a waiver of all rights of

29 elective share, homestead allowance, and exempt  
30 property by each spouse in the property of the other and  
31 renunciation by each of all benefits that would otherwise  
32 pass to him or her from the other by intestate succession  
33 or by virtue of any will executed before the waiver or  
34 property settlement.

**§42-3-4. Proceeding for elective share; time limit.**

1 (a) Except as provided in subsection (b), the election  
2 must be made by filing in the court and mailing or  
3 delivering to the personal representative, if any, a  
4 petition for the elective share within nine months after  
5 the date of the decedent's death, or within six months  
6 after the probate of the decedent's will, whichever  
7 limitation later expires. The surviving spouse must give  
8 notice of the time and place set for hearing to persons  
9 interested in the estate and to the distributees and  
10 recipients of portions of the augmented estate whose  
11 interests will be adversely affected by the taking of the  
12 elective share. Except as provided in subsection (b), the  
13 decedent's reclaimable estate, described in subdivision  
14 (2), subsection (b) of section two of this article, is not  
15 included within the augmented estate for the purpose of  
16 computing the elective share, if the petition is filed more  
17 than nine months after the decedent's death.

18 (b) Within nine months after the decedent's death, the  
19 surviving spouse may petition the court for an extension  
20 of time for making an election. If, within nine months  
21 after the decedent's death, the spouse gives notice of the  
22 petition to all persons interested in the decedent's  
23 reclaimable estate, the court for cause shown by the  
24 surviving spouse may extend the time for election. If the  
25 court grants the spouse's petition for an extension, the  
26 decedent's reclaimable estate, described in subdivision  
27 (2), subsection (b) of section two of this article, is not  
28 excluded from the augmented estate for the purpose of  
29 computing the elective-share and supplemental elective-  
30 share amounts, if the spouse makes an election by filing  
31 in the court and mailing or delivering to the personal  
32 representative, if any, a petition for the elective share  
33 within the time allowed by the extension.

34 (c) The surviving spouse may withdraw his or her  
35 demand for an elective share at any time before entry  
36 of a final determination by the court.

37 (d) After notice and hearing, the court shall deter-  
38 mine the elective share and supplemental elective-share  
39 amounts, and shall order its payment from the assets of  
40 the augmented estate or by contribution as appears  
41 appropriate under section six of this article. If it  
42 appears that a fund or property included in the  
43 augmented estate has not come into the possession of the  
44 personal representative, or has been distributed by the  
45 personal representative, the court nevertheless shall fix  
46 the liability of any person who has any interest in the  
47 fund or property or who has possession thereof, whether  
48 as trustee or otherwise. The proceeding may be main-  
49 tained against fewer than all persons against whom  
50 relief could be sought, but no person is subject to  
51 contribution in any greater amount than he or she would  
52 have been under section two had relief been secured  
53 against all persons subject to contribution.

54 (e) An order or judgment of the court may be enforced  
55 as necessary in suit for contribution or payment in other  
56 courts of this state or other jurisdictions.

**§42-3-5. Effect of election on statutory benefits.**

1 If the right of election is exercised by or on behalf of  
2 the surviving spouse, the surviving spouse's homestead  
3 exemption and exempt property, if any, are not charged  
4 against but are in addition to the elective share and  
5 supplemental elective-share amounts.

**§42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.**

1 (a) In a proceeding for an elective share, the following  
2 are applied first to satisfy the elective-share amount and  
3 to reduce or eliminate any contributions due from the  
4 decedent's probate estate and recipients of the dece-  
5 dent's reclaimable estate:

6 (1) Amounts included in the augmented estate which  
7 pass or have passed to the surviving spouse by testate



8 or intestate succession;

9 (2) Amounts included in the augmented estate under  
10 subdivision (3), subsection (b), section two of this article;

11 (3) Amounts included in the augmented estate which  
12 would have passed to the spouse but were disclaimed;  
13 and

14 (4) Amounts included in the augmented estate under  
15 subdivision (4), subsection (b), section two of this article  
16 up to the applicable percentage thereof. For the  
17 purposes of this subsection, the “applicable percentage”  
18 is twice the elective-share percentage set forth in the  
19 schedule in section one of this article appropriate to the  
20 length of time the spouse and the decedent were married  
21 to each other.

22 (b) If, after the application of subsection (a), the  
23 elective-share amount is not fully satisfied or the  
24 surviving spouse is entitled to a supplemental elective-  
25 share amount, amounts included in the decedent’s  
26 probate estate and that portion of the decedent’s  
27 reclaimable estate other than amounts irrevocably  
28 transferred within two years before the decedent’s death  
29 are applied first to satisfy the unsatisfied balance of the  
30 elective-share amount or the supplemental elective-  
31 share amount. The decedent’s probate estate and that  
32 portion of the decedent’s reclaimable estate are so  
33 applied that liability for the unsatisfied balance of the  
34 elective-share amount or for the supplemental elective-  
35 share amount is equitably apportioned among the  
36 recipients of the decedent’s probate estate and that  
37 portion of the decedent’s reclaimable estate in propor-  
38 tion to the value of their interests therein.

39 (c) If, after the application of subsections (a) and (b),  
40 the elective share or supplemental elective-share amount  
41 is not fully satisfied, the remaining portion of the  
42 decedent’s reclaimable estate is so applied that liability  
43 for the unsatisfied balance of the elective share or  
44 supplemental elective-share amount is equitably appor-  
45 tioned among the recipients of that portion of the  
46 decedent’s reclaimable estate in proportion to the value  
47 of their interests therein.

48 (d) Only original recipients of the reclaimable estate  
49 described in subdivision (2) of subsection (b) of section  
50 two of this article, and the donees of the recipients of  
51 the reclaimable estate to the extent the donees have the  
52 property or its proceeds, are liable to make a propor-  
53 tional contribution toward satisfaction of the surviving  
54 spouse's elective share or supplemental elective-share  
55 amount. A person liable to make contribution may  
56 choose to give up the proportional part of the reclaim-  
57 able estate or to pay the value of the amount for which  
58 he or she is liable.

**§42-3-7. Entitlement of spouse; premarital will.**

1 (a) If a testator's surviving spouse married the  
2 testator after the testator executed his or her will, the  
3 surviving spouse is entitled to receive, as an intestate  
4 share no less than the value of the share of the estate  
5 he or she would have received if the testator had died  
6 intestate as to that portion of the testator's estate, if any,  
7 that neither is devised to a child of the testator who was  
8 born before the testator married the surviving spouse  
9 and who is not a child of the surviving spouse nor is  
10 devised or passes to a descendant of such a child, unless:

11 (1) It appears from the will or other evidence that the  
12 will was made in contemplation of the testator's  
13 marriage to the surviving spouse;

14 (2) The will expresses the intention that it is to be  
15 effective notwithstanding any subsequent marriage; or

16 (3) The testator provided for the spouse by transfer  
17 outside the will and the intent that the transfer be in  
18 lieu of a testamentary provision is shown by the  
19 testator's statements or is reasonably inferred from the  
20 amount of the transfer or other evidence.

21 (b) In satisfying the share provided by this section,  
22 devises made by the will to the testator's surviving  
23 spouse, if any, are applied first, and other devises, other  
24 than a devise to a child of the testator who was born  
25 before the testator married the surviving spouse and  
26 who is not a child of the surviving spouse or a devise  
27 or substitute gift to a descendant of such a child, abate.

**CHAPTER 43. DOWER AND VALUATION  
OF LIFE ESTATES.**

**ARTICLE 1. DOWER.**

**§43-1-1. Dower and curtesy abolished.**

1       The estates of dower and curtesy are abolished.

**§43-1-2. Notice of conveyance.**

1       (a) For purposes of this section, "conveyance" means  
2       a dispositive act intended to create a property interest  
3       in land and includes the creation of a security interest  
4       in real estate.

5       (b) Any married person who conveys an interest in  
6       real estate shall notify his or her spouse prior to or  
7       within thirty days of the time of the conveyance if the  
8       conveyance involves an interest in real estate to which  
9       dower would have attached if the conveyance had been  
10      made prior to the date of enactment of this statute.

11      (c) A person making a conveyance described in the  
12      previous sections shall have the burden of proof to show  
13      compliance with this section. Such burden shall be met  
14      either by:

15      (1) The signature of the spouse of the conveying party  
16      on the conveyance instrument; or

17      (2) Such other forms of competent evidence as are  
18      admissible in a court of general jurisdiction in this state  
19      under the rules of evidence.

20      (d) When a married person fails to comply with the  
21      notification requirements of this section, then in the  
22      event of a subsequent divorce within five years of said  
23      conveyance, the value of the real estate conveyed, as  
24      determined at the time of the conveyance, shall be  
25      deemed a part of the conveyancer's marital property for  
26      purposes of determining equitable distribution or  
27      awards of support, notwithstanding that any consider-  
28      ation for said interest in the real estate may already be  
29      included in the marital property.

30      (e) Nothing in this section shall be construed to create  
31      a lien or claim against the interest in real estate

32 conveyed in violations of this provision.

**CHAPTER 55. ACTIONS, SUITS AND  
ARBITRATION; JUDICIAL SALE.**

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-6. By whom action for wrongful death to be  
brought; amount and distribution of dam-  
ages; period of limitation.**

1 (a) Every such action shall be brought by and in the  
2 name of the personal representative of such deceased  
3 person who has been duly appointed in this state, or in  
4 any other state, territory or district of the United States,  
5 or in any foreign country, and the amount recovered in  
6 every such action shall be recovered by said personal  
7 representative and be distributed in accordance here-  
8 with. If the personal representative was duly appointed  
9 in another state, territory or district of the United  
10 States, or in any foreign country, such personal repre-  
11 sentative shall, at the time of filing of the complaint,  
12 post bond with a corporate surety thereon authorized to  
13 do business in this state, in the sum of one hundred  
14 dollars, conditioned that such personal representative  
15 shall pay all costs adjudged against him or her and that  
16 he or she shall comply with the provisions of this section.  
17 The circuit court may increase or decrease the amount  
18 of said bond, for good cause.

19 (b) In every such action for wrongful death the jury,  
20 or in a case tried without a jury, the court, may award  
21 such damages as to it may seem fair and just, and, may  
22 direct in what proportions the damages shall be  
23 distributed to the surviving spouse and children,  
24 including adopted children and stepchildren, brothers,  
25 sisters, parents and any persons who were financially  
26 dependent upon the decedent at the time of his or her  
27 death or would otherwise be equitably entitled to share  
28 in such distribution after making provision for those  
29 expenditures, if any, specified in subdivision (2),  
30 subsection (c) of this section. If there are no such  
31 survivors, then the damages shall be distributed in  
32 accordance with the decedent's will or, if there is no will,  
33 in accordance with the laws of descent and distribution

34 as set forth in chapter forty-two of this code. If the jury  
35 renders only a general verdict on damages and does not  
36 provide for the distribution thereof, the court shall  
37 distribute the damages in accordance with the provi-  
38 sions of this subsection.

39 (c) (1) The verdict of the jury shall include, but may  
40 not be limited to, damages for the following: (A) Sorrow,  
41 mental anguish, and solace which may include society,  
42 companionship, comfort, guidance, kindly offices and  
43 advice of the decedent; (B) compensation for reasonably  
44 expected loss of (i) income of the decedent, and (ii)  
45 services, protection, care and assistance provided by the  
46 decedent; (C) expenses for the care, treatment and  
47 hospitalization of the decedent incident to the injury  
48 resulting in death; and (D) reasonable funeral expenses.

49 (2) In its verdict the jury shall set forth separately the  
50 amount of damages, if any, awarded by it for reasonable  
51 funeral, hospital, medical and said other expenses  
52 incurred as a result of the wrongful act, neglect or  
53 default of the defendant or defendants which resulted  
54 in death, and any such amount recovered for such  
55 expenses shall be so expended by the personal  
56 representative.

57 (d) Every such action shall be commenced within two  
58 years after the death of such deceased person, subject  
59 to the provisions of section eighteen, article two, chapter  
60 fifty-five. The provisions of this section shall not apply  
61 to actions brought for the death of any person occurring  
62 prior to the first day of July, one thousand nine hundred  
63 eighty-eight.

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

*Thomas Luck*  
-----  
Chairman Senate Committee

*Ernest C. Moore*  
-----  
Chairman House Committee

Originating in the House.

*the  
8/22/92*

*ministry days from*  
Takes effect from passage.

*Russell E. Adams*  
-----  
Clerk of the Senate

*Donald J. Kopp*  
-----  
Clerk of the House of Delegates

*Vent Bonnette*  
-----  
President of the Senate

*Shafiqur Rahman*  
-----  
Speaker of the House of Delegates

The within *is approved* this the *27th*  
day of *March* 1992.

*Mark W. Warner*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 4:40 pm