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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992



# ENROLLED

Committee Substitute for  
**SENATE BILL NO.** 310

(By Senator Humphreys)



**PASSED** March 6, 1992

In Effect 90 days from **Passage**

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 310**

(SENATOR HUMPHREYS, *original sponsor*)

[Passed March 6, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section forty-two, article three-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fees to be charged by a fiduciary supervisor; and basis for fee charged.

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

That section forty-two, article three-a, 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 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.**

**§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.**

1 (a) When necessary solely for the purpose of financ-  
2 ing the cost of settling estates, the county commission  
3 may authorize the fiduciary supervisor to charge and  
4 collect at the time of qualification of the fiduciary of  
5 a decedent's estate, a fee not to exceed: (1) Twenty-

6 five dollars for all estates in which the gross assets do  
7 not exceed ten thousand dollars; (2) one hundred  
8 dollars for all estates in which the gross assets are  
9 more than ten thousand dollars and do not exceed fifty  
10 thousand dollars; and (3) one hundred seventy-five  
11 dollars for all estates in which the gross assets exceed  
12 fifty thousand dollars. Of the sums collected by the  
13 fiduciary supervisor, five dollars shall be forwarded to  
14 the state tax commissioner. The moneys so forwarded  
15 to the state tax commissioner shall be deposited in the  
16 office of the treasurer of the state in the special fund,  
17 designated "The Inheritance Tax Administration  
18 Fund", to be used to defray, in whole or in part, the  
19 costs of administration of taxes imposed by article  
20 eleven, chapter eleven of this code in order to facili-  
21 tate the prompt administration of the provisions  
22 imposed by said article. The remaining amounts shall  
23 be deposited in the county fiduciary fund as provided  
24 in section forty-three of this article. Such fee shall be  
25 paid to include all services of the fiduciary supervisor  
26 for the settlement of every such decedent's estate  
27 which is settled pursuant to the provisions of section  
28 nineteen of this article. All such fees shall also include  
29 the cost of publication of the notice required by section  
30 four of this article, and the notice required by section  
31 nineteen of this article, but shall not include the cost  
32 of any mailings or of the cost of recording any  
33 documents required to be recorded in the office of the  
34 clerk of the county commission by the provisions of  
35 this chapter.

36 In the event the fiduciary supervisor is required to  
37 examine and prepare a statement of deficiencies,  
38 including reasons for disapproving any of the docu-  
39 ments required to be filed by the personal representa-  
40 tive of any decedent's estate, he shall charge and  
41 collect from such personal representative a fee of ten  
42 dollars.

43 (b) In addition to the fees set forth in subsection (a)  
44 of this section, the fiduciary supervisor shall charge a  
45 fee to be fixed by the county commission in the  
46 manner provided in subsection (c) of this section for

47 conducting hearings, granting continuances of hear-  
48 ings, considering evidence, for drafting recommenda-  
49 tions with respect to such hearings and for appearing  
50 before the county commission with respect thereto  
51 and any other matters of an extraordinary nature not  
52 normally included within a summary settlement as  
53 contemplated by section nineteen of this article. Such  
54 fee shall be used to defray the costs imposed by or  
55 incidental to any extraordinary demands by or condi-  
56 tions imposed by a fiduciary or imposed by the  
57 circumstances of the estate.

58 (c) The fiduciary supervisor or fiduciary commis-  
59 sioner shall prepare a voucher for the county commis-  
60 sion, which voucher shall be itemized and shall set  
61 forth in detail all of the services performed and the  
62 amount charged for such service or services. Such  
63 voucher shall also indicate in each instance if the  
64 service was actually performed by the fiduciary  
65 supervisor or fiduciary commissioner or whether such  
66 service was performed by an employee or deputy of  
67 such supervisor or commissioner. All vouchers shall  
68 reflect the services rendered pursuant to the initial fee  
69 charged and collected as provided in subsection (a) of  
70 this section and, in addition thereto, shall indicate  
71 those services for which charges are to be made over  
72 and above that amount. In the case of any service for  
73 which a fee is not fixed by this section, or the fee fixed  
74 is based on time expended, the voucher shall show the  
75 actual time personally expended by the supervisor or  
76 commissioner, to the nearest tenth of an hour. All  
77 such vouchers shall be verified prior to submission to  
78 the county commission for approval. Upon approval of  
79 any such voucher, the same shall be charged against  
80 the estate to which the same applies. In reviewing any  
81 fee charged by either the fiduciary supervisor or a  
82 fiduciary commissioner the county commission shall  
83 consider the following:

- 84 (1) The time and effort expended;
- 85 (2) The difficulty of the questions raised;
- 86 (3) The skill required to perform properly the

87 services rendered;

88 (4) The reasonableness of the fee;

89 (5) Any time limitations imposed by the personal  
90 representative, any beneficiary or claimant, or by the  
91 attendant circumstances; and

92 (6) Any unusual or extraordinary circumstances or  
93 demands or conditions imposed by the personal repre-  
94 sentative, any beneficiary or claimant or by the  
95 attendant circumstances. The county commission may  
96 approve any such voucher or may reduce the same, as  
97 it deems proper, after considering those matters set  
98 forth in this subsection. Any such approval shall be by  
99 order of the commission and be entered of record by  
100 the clerk of the county commission in the fiduciary  
101 record book and the general order books of the  
102 commission. In no event shall any fee for any service,  
103 whether performed by the fiduciary supervisor or the  
104 fiduciary commissioner, be fixed, charged or approved  
105 which is based upon or with reference to the mone-  
106 tary value of the estate or of the amount in contro-  
107 versy upon any disputed issue or fact of law.

108 (d) For every estate other than a decedent's estate,  
109 there shall be charged by the fiduciary supervisor at  
110 the time of qualification, a fee of twenty-five dollars,  
111 which fee shall include all services performed by the  
112 fiduciary supervisor with respect to such estate from  
113 the time of qualification of the personal representative  
114 thereof until and including the filing of the first  
115 annual settlement. For each additional or subsequent  
116 annual or triennial settlement, the fiduciary supervi-  
117 sor shall charge and collect a fee of ten dollars.

118 (e) The county commission or other tribunal in lieu  
119 thereof, shall, by order, establish or fix a schedule of  
120 suggested fees or rates of compensation for the guid-  
121 ance of the fiduciary supervisor and any fiduciary  
122 commissioner in preparing their respective vouchers  
123 for fees other than those fees fixed by any provision of  
124 this section or of this chapter. A copy of these fees or  
125 rates shall be posted in a conspicuous place in the  
126 county courthouse.

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

*Lomer Heck*  
.....  
Chairman Senate Committee

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

Originated in the Senate.

In effect ninety days from passage.

*David E. Albus*  
.....  
Clerk of the Senate

*David L. Hoop*  
.....  
Clerk of the House of Delegates

*Walt Switzer*  
.....  
President of the Senate

*Bob Cole*  
.....  
Speaker House of Delegates

The within *is approved* this the *17<sup>th</sup>*  
day of *March* ....., 1992.

*Gaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/12/92

Time 4:15 pm