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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Committee Substitute For
SENATE BILL NO. 419

(By Senator OLIVERIO & KUBLE)



PASSED MARCH 11, 1995
In Effect 90 Days From Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 419

(SENATORS OLIVERIO AND KIMBLE, *original sponsors*)

[Passed March 11, 1995; in effect ninety days from passage.]

An ACT to amend and reenact section one, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, four and six, article three of said chapter, all relating to the laws of descent and distribution; defining terms for purposes of descent provisions; redefining the term "beneficiary"; right to elective share of surviving spouse; revising valuations of elective share; providing for the augmented estate; excluding certain powers of appointment, property or property rights, proceeds of insurance, pension, profit sharing, retirement and other benefit plans and other transfers made by a decedent within two years preceding his or her death from augmented estate; payor or third party reliance on governing instrument; payment of funds or transfer or deposit of property to court; filing fee discretionary; discharge of payor or third party; liability of payor or third party upon receipt of written notice of petition for elective share; where notice to be mailed or

served; rights of bona fide purchaser of property from recipient of assets; proceedings for elective share; service of petition; written notice of time and place for hearing; exclusions of portions of decedent's estate for purposes of satisfying certain elective share amounts; and clarifying liability of others for elective share entitlement.

Be it enacted by the Legislature of West Virginia:

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

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 other-
4 wise 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 enforce
15 the trust; as it relates to a "beneficiary of a beneficiary
16 designation", refers to a beneficiary of an account with
17 POD designation, of a security registered in beneficiary
18 form (TOD) or other nonprobate transfer at death; and,
19 as it relates to a "beneficiary designated in a governing
20 instrument", includes a grantee of a deed, a devisee, a
21 trust beneficiary, a beneficiary of a beneficiary designa-
22 tion or a person in whose favor a power of attorney or a

23 power held in any individual, fiduciary or representative
24 capacity is exercised.

25 (3) "Court" means the county commission or branch in
26 this state having jurisdiction in matters relating to the
27 affairs of decedents.

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

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

35 (6) "Devise" when used as a noun, means a testamen-
36 tary disposition of real or personal property and, when
37 used as a verb, means to dispose of real or personal
38 property by will.

39 (7) "Devisee" means a person designated in a will to
40 receive a devise. In the case of a devise to an existing
41 trust or trustee, or to a trustee on trust described by will,
42 the trust or trustee is the devisee and the beneficiaries
43 are not devisees.

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

56 (9) "Estate" includes the property of the decedent,
57 trust or other person whose affairs are subject to this

58 code as originally constituted and as it exists from time
59 to time during administration.

60 (10) "Exempt property" means that property of a
61 decedent's estate which is provided for in section forty-
62 eight, article VI of the constitution.

63 (11) "Fiduciary" includes a personal representative,
64 guardian, conservator and trustee.

65 (12) "Foreign personal representative" means a per-
66 sonal representative appointed by another jurisdiction.

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

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

76 (15) "Guardian" means a person who has qualified as
77 a guardian of a minor or incapacitated person pursuant
78 to testamentary or court appointment, but excludes one
79 who is merely a guardian ad litem.

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

83 (17) "Informal proceedings" mean those conducted
84 without notice to interested persons by an officer of the
85 court acting as a registrar for probate of a will or ap-
86 pointment of a personal representative.

87 (18) "Interested person" includes heirs, devisees,
88 children, spouses, creditors, beneficiaries and any others
89 having a property right in or claim against a trust estate
90 or the estate of a decedent, ward or protected person. It
91 also includes persons having priority for appointment as

92 personal representative and other fiduciaries represent-
93 ing interested persons. The meaning as it relates to
94 particular persons may vary from time to time and must
95 be determined according to the particular purposes of,
96 and matter involved in, any proceeding.

97 (19) "Issue" of a person means descendant as defined
98 in subdivision (5) of this section.

99 (20) "Joint tenants with the right of survivorship" and
100 "community property with the right of survivorship"
101 includes coowners of property held under circumstances
102 that entitle one or more to the whole of the property on
103 the death of the other or others, but excludes forms of
104 coownership registration in which the underlying
105 ownership of each party is in proportion to that party's
106 contribution.

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

108 (22) "Letters" includes letters testamentary, letters of
109 guardianship, letters of administration and letters of
110 conservatorship.

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

113 (24) "Mortgage" means any deed of trust, conveyance,
114 agreement or arrangement in which property is encum-
115 bered or used as security.

116 (25) "Nonresident decedent" means a decedent who
117 was domiciled in another jurisdiction at the time of his
118 or her death.

119 (26) "Parent" includes any person entitled to take, or
120 who would be entitled to take if the child died without a
121 will, as a parent under this code by intestate succession
122 from the child whose relationship is in question and
123 excludes any person who is only a stepparent, foster
124 parent or grandparent.

125 (27) "Payor" means a trustee, insurer, business entity,

126 employer, government, governmental agency or subdivi-
127 sion or any other person authorized or obligated by law
128 or a governing instrument to make payments.

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

130 (29) "Personal representative" includes executor,
131 administrator, successor personal representative, special
132 administrator and persons who perform substantially the
133 same function under the law governing their status.
134 "General personal representative" excludes special
135 administrator.

136 (30) "Petition" means a written request to the court for
137 an order after notice.

138 (31) "Proceeding" includes action at law and suit in
139 equity.

140 (32) "Property" includes both real and personal
141 property or any interest therein and means anything that
142 may be the subject of ownership.

143 (33) "Security" includes any note, stock, treasury
144 stock, bond, debenture, evidence of indebtedness,
145 certificate of interest or participation in an oil, gas or
146 mining title or lease or in payments out of production
147 under such a title or lease, collateral trust certificate,
148 transferable share, voting trust certificate or, in general,
149 any interest or instrument commonly known as a secu-
150 rity or any certificate of interest or participation, any
151 temporary or interim certificate, receipt or certificate of
152 deposit for, or any warrant or right to subscribe to or
153 purchase, any of the foregoing.

154 (34) "Settlement" in reference to a decedent's estate,
155 includes the full process of administration, distribution
156 and closing.

157 (35) "State" means a state of the United States, the
158 District of Columbia, the Commonwealth of Puerto Rico
159 or any territory or insular possession subject to the
160 jurisdiction of the United States.

161 (36) "Successor personal representative" means a
162 personal representative, other than a special administra-
163 tor, who is appointed to succeed a previously appointed
164 personal representative.

165 (37) "Successors" means persons, other than creditors,
166 who are entitled to property of a decedent under his or
167 her will or this code.

168 (38) "Survive" means that an individual has neither
169 predeceased an event, including the death of another
170 individual, nor is deemed to have predeceased an event.
171 The term includes its derivatives, such as "survives",
172 "survived", "survivor" and "surviving".

173 (39) "Surviving spouse" means the person to whom the
174 decedent was married at the time of the decedent's
175 death.

176 (40) "Testacy proceeding" means a proceeding to
177 establish a will or determine intestacy.

178 (41) "Testator" includes an individual of either sex.

179 (42) "Trust" includes an express trust, private or
180 charitable, with additions thereto, wherever and how-
181 ever created. The term also includes a trust created or
182 determined by judgment or decree under which the trust
183 is to be administered in the manner of an express trust.
184 The term excludes other constructive trusts and excludes
185 resulting trusts, conservatorships, personal representa-
186 tives and custodial arrangements, including that relating
187 to gifts or transfers to minors, dealing with special
188 custodial situations, business trusts providing for
189 certificates to be issued to beneficiaries.

190 (43) "Trustee" includes an original, additional or
191 successor trustee, whether or not appointed or confirmed
192 by court.

193 (44) "Will" includes codicil and any testamentary
194 instrument that merely appoints an executor, revokes or
195 revises another will, nominates a guardian or expressly

196 excludes or limits the right of an individual or class to
197 succeed to property of the decedent passing by intestate
198 succession.

**ARTICLE 3. PROVISIONS RELATING TO HUSBAND OR WIFE OF DECE-
DENT.**

§42-3-1. Right to elective share.

1 (a) The surviving spouse of a decedent who dies domi-
2 ciled in this state has a right of election, against either
3 the will or the intestate share, under the limitations and
4 conditions stated in this part, to take the elective-share
5 percentage of the augmented estate, determined by the
6 length of time the spouse and the decedent were married
7 to each other, in accordance with the following schedule:
8 If the decedent and the spouse The elective-share
9 were married to each other percentage is:
10 Less than 1 year Supplemental Amount Only
11 1 year but less than 2 years 3% of the augmented estate.
12 2 years but less than 3 years 6% of the augmented estate.
13 3 years but less than 4 years 9% of the augmented estate.
14 4 years but less than 5 years 12% of the augmented estate.
15 5 years but less than 6 years 15% of the augmented estate.
16 6 years but less than 7 years 18% of the augmented estate.
17 7 years but less than 8 years 21% of the augmented estate.
18 8 years but less than 9 years 24% of the augmented estate.
19 9 years but less than 10 years 27% of the augmented estate.
20 10 years but less than 11 years 30% of the augmented estate.
21 11 years but less than 12 years 34% of the augmented estate.
22 12 years but less than 13 years 38% of the augmented estate.
23 13 years but less than 14 years 42% of the augmented estate.
24 14 years but less than 15 years 46% of the augmented estate.

25 15 years or more 50% of the augmented estate.

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

40 (c) The right, if any, of the surviving spouse of a
41 decedent who dies domiciled outside this state to take an
42 elective share in property in this state is governed by the
43 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.
5 The 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 other
10 property arrangement that would be adversely affected
11 by the exercise or nonexercise of the power that he or
12 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, that
23 would pass by intestate succession if the decedent died
24 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 decedent's
30 death" include the commuted value of any present or
31 future interest then held by the surviving spouse and the
32 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, exclusive
37 of the federal social security system.

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

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

42 (2) The value of the decedent's reclaimable estate. The
43 decedent's reclaimable estate is composed of all prop-
44 erty, whether real or personal, movable or immovable,
45 wherever situated, not included in the decedent's pro-
46 bate estate, of any of the following types:

47 (i) Property to the extent the passing of the principal
48 thereof to or for the benefit of any person, other than the
49 decedent's surviving spouse, was subject to a presently
50 exercisable general power of appointment created by the

51 decedent during the marriage and held by the decedent
52 alone if the decedent held that power immediately before
53 his or her death;

54 (ii) Property, to the extent of the decedent's contribu-
55 tion to it during the marriage, as a percentage of the
56 whole, by which the property is held by the decedent and
57 any other person, except the decedent's surviving spouse,
58 with right of survivorship, acquired during the marriage
59 of the decedent and the surviving spouse, if the decedent
60 held that interest immediately before his or her death;

61 (iii) Property transferred by the decedent to any person
62 other than a bona fide purchaser at any time during the
63 decedent's marriage to the surviving spouse, to or for the
64 benefit of any person, other than the decedent's surviv-
65 ing spouse, if the transfer is of any of the following types:

66 (A) Any transfer to the extent that the decedent
67 retained at the time of his or her death the possession or
68 enjoyment of, or right to income from the property;

69 (B) Any transfer to the extent that, at the time of the
70 decedent's death, the income or principal was subject to
71 a power, exercisable by the decedent alone or in con-
72 junction with any other person or exercisable by a
73 nonadverse party, for the benefit of the decedent or the
74 decedent's estate; or

75 (C) Any transfer made to a donee within two years
76 before the decedent's death to the extent that the aggre-
77 gate transfers to any one donee in either of the years
78 exceed ten thousand dollars.

79 (3) The value of property to which the surviving spouse
80 succeeds by reason of the decedent's death, other than by
81 homestead exemption, exempt property, testate succes-
82 sion or intestate succession, including the proceeds of
83 insurance, including accidental death benefits, on the
84 life of the decedent and benefits payable under a retire-
85 ment plan in which the decedent was a participant,
86 exclusive of the federal social security system; and

87 (4) The value of property owned by the surviving
88 spouse at the decedent's death, reduced by enforceable
89 claims against that property or that spouse, plus the
90 value of amounts that would have been includible in the
91 surviving spouse's reclaimable estate had the spouse
92 predeceased the decedent.

93 (c) Any transfer is excluded from the decedent's
94 reclaimable estate: (i) To the extent the decedent re-
95 ceived adequate and full consideration in money or
96 money's worth for the transfer, exercise or release; or (ii)
97 if irrevocably made with the written consent or joinder
98 of the surviving spouse. Life insurance, accident insur-
99 ance, pension, profit sharing, retirement and other
100 benefit plans payable to persons other than the dece-
101 dent's surviving spouse or the decedent's estate is also
102 excluded.

103 (d) Property is valued as of the decedent's death, but
104 property irrevocably transferred during the two-year
105 period next preceding the decedent's death which is
106 included in the decedent's reclaimable estate under
107 paragraph (iii), subdivision (2), subsection (b) of this
108 section is valued as of the time of the transfer. If the
109 terms of more than one of the paragraphs or subpara-
110 graphs of subdivision (2), subsection (b) of this section
111 apply, the property is included in the augmented estate
112 under the paragraph or subparagraph that yields the
113 highest value.

114 (e) (1) Although under this section a payment, item of
115 property or other benefit is included in the decedent's
116 reclaimable estate, a payor or other third party is not
117 liable for having made a payment or transferred an item
118 of property or other benefit to a beneficiary designated
119 in a governing instrument, or for having taken any other
120 action in reliance on the validity of a governing instru-
121 ment, upon request and satisfactory proof of the dece-
122 dent's death, before the payor or other third party
123 received written notice from the surviving spouse or

124 spouse's representative of an intention to file a petition
125 for the elective share or that a petition for the elective
126 share has been filed. A payor or other third party is only
127 liable for actions taken two or more business days after
128 the payor or other third party has actual receipt of such
129 written notice of an intention to file a petition for the
130 elective share or that a petition for the elective share has
131 been filed.

132 Any form of service of notice other than that described
133 in subdivision (2) of this subsection shall not be suffi-
134 cient to impose liability on a payor or other third party
135 for actions taken pursuant to the governing instrument.

136 (2) The written notice shall indicate the name of the
137 decedent, the date of the decedent's death, the name of
138 the person asserting an interest, the nature of the
139 payment or item of property or other benefit and a
140 statement that the spouse intends to file a petition for
141 the elective share or that a petition for the elective share
142 has been filed.

143 (3) The written notice must be mailed to the payor's or
144 other third party's main office or home by registered or
145 certified mail, return receipt requested, or served upon
146 the payor or other third party in the same manner as a
147 summons in a civil action. Notice to a sales representa-
148 tive of the payor or other third party shall not constitute
149 notice to the payor or other third party. Upon receipt of
150 written notice of intention to file a petition for the
151 elective share or that a petition for the elective share has
152 been filed, a payor or other third party may pay any
153 amount owed or transfer or deposit any item of property
154 held by it to or with the court having jurisdiction of the
155 probate proceedings relating to the decedent's estate, or
156 if no proceedings have been commenced, to or with the
157 court having jurisdiction of probate proceedings relating
158 to decedents' estates located in the county of the dece-
159 dent's residence. The availability of such actions under
160 this section shall not prevent the payor or other third

161 party from taking any other action authorized by law or
162 the governing instrument. If no probate proceedings
163 have been commenced, the payor or other third party
164 shall file with the court a copy of the written notice
165 received by the payor or other third party, with the
166 payment of funds or transfer or deposit of property. The
167 court shall not charge a filing fee to the payor or other
168 third party for any such payment, transfer or deposit
169 with the court, even if no probate proceedings have been
170 commenced before such payment, transfer or deposit.
171 The court shall hold the funds or item of property and,
172 upon its determination under subsection (d), section four
173 of this article, shall order disbursement in accordance
174 with the determination. If no petition is filed in the
175 court within the specified time under subsection (a) of
176 said section or, if filed, the demand for an elective share
177 is withdrawn under subsection (c) of said section, the
178 court shall order disbursement to the designated benefi-
179 ciary. A filing fee, if any, may be charged upon disburse-
180 ment either to the recipient or against the funds or
181 property on deposit with the court, in the discretion of
182 the court. Payments, transfers or deposits made to or
183 with the court discharge the payor or other third party
184 from all claims under the governing instrument or
185 applicable law for the value of amounts paid to or items
186 of property transferred to or deposited with the court.

187 (4) Upon petition to the probate court by the benefi-
188 ciary designated in a governing instrument, the court
189 may order that all or part of the property be paid to the
190 beneficiary in an amount and subject to conditions
191 consistent with this section.

192 (f) (1) A bona fide purchaser who purchases property
193 from a recipient, or who receives a payment or other
194 item of property in partial or full satisfaction of a legally
195 enforceable obligation, is neither obligated under this
196 part to return the payment, item or property or benefit
197 nor is liable under this part for the amount of the
198 payment or the value of the item of property or benefit.

199 But a person who, not for value, receives a payment, item
200 of property or any other benefit included in the dece-
201 dent's reclaimable estate is obligated to return the
202 payment, item of property or benefit, or is personally
203 liable for the amount of the payment or the value of the
204 item of property or benefit, as provided in section six of
205 this article.

206 (2) If any section or part of any section of this part is
207 preempted by federal law with respect to a payment, an
208 item of property or any other benefit included in the
209 decedent's reclaimable estate, a person who, not for
210 value, receives the payment, item of property or any
211 other benefit is obligated to return that payment, item of
212 property, or benefit, or is personally liable for the
213 amount of that payment or the value of that item of
214 property or benefit, as provided in section six of this
215 article to the person who would have been entitled to it
216 were that section or part of that section not preempted.

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

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

19 (b) Within nine months after the decedent's death, the
20 surviving spouse may petition the court for an extension
21 of time for making an election. If, within nine months
22 after the decedent's death, the spouse gives notice of the
23 petition to all persons interested in the decedent's
24 reclaimable estate, against whom the spouse chooses to
25 proceed under subsection (d) of this section, the court for
26 cause shown by the surviving spouse may extend the
27 time for election. If the court grants the spouse's peti-
28 tion for an extension, the decedent's reclaimable estate,
29 described in subdivision (2), subsection (b), section two
30 of this article, in the hands of those persons against
31 whom the spouse chooses to proceed under subsection (d)
32 of this section, is not excluded from the augmented
33 estate for the purpose of computing the elective share
34 and supplemental elective-share amounts, but is ex-
35 cluded for the purpose of satisfying the elective-share
36 amount and the supplemental elective-share amount
37 under subsections (b) and (c), section six of this article,
38 if the spouse makes an election by filing in the court and
39 mailing or delivering to the personal representative, if
40 any, a petition for the elective share within the time
41 allowed by the extension.

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

45 (d) After notice and hearing, the court shall determine
46 the elective share and supplemental elective-share
47 amounts and shall order its payment from the assets of
48 the augmented estate or by contribution as appears
49 appropriate under section six of this article. If it ap-
50 pears that a fund or property included in the augmented
51 estate has not come into the possession of the personal
52 representative, or has been distributed by the personal
53 representative, the court nevertheless shall fix the
54 liability of any person who has any interest in the fund
55 or property or who has possession thereof, whether as
56 trustee or otherwise. The proceeding may be maintained

57 against fewer than all persons against whom relief could
58 be sought, but no person is subject to contribution in any
59 greater amount than he or she would have been under
60 section two of this article had relief been secured against
61 all persons subject to contribution.

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

§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 decedent's
5 reclaimable estate:

6 (1) Amounts included in the augmented estate which
7 pass or have passed to the surviving spouse by testate or
8 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 purposes
17 of this subsection, the "applicable percentage" is
18 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 surviving
24 spouse is entitled to a supplemental elective-share

25 amount, amounts included in the decedent's probate
26 estate and that portion of the decedent's reclaimable
27 estate other than amounts irrevocably transferred within
28 two years before the decedent's death are applied first to
29 satisfy the unsatisfied balance of the elective-share
30 amount or the supplemental elective-share amount. The
31 decedent's probate estate and that portion of the de-
32 cedent's reclaimable estate are so applied that liability for
33 the unsatisfied balance of the elective-share amount or
34 for the supplemental elective-share amount is equitably
35 apportioned among the recipients of the decedent's
36 probate estate and that portion of the decedent's re-
37 claimable estate in proportion to the value of their
38 interests therein.

39 (c) If, after the application of subsections (a) and (b) of
40 this section, the elective share or supplemental elective-
41 share amount is not fully satisfied, the remaining portion
42 of the decedent's reclaimable estate is so applied that
43 liability for the unsatisfied balance of the elective share
44 or supplemental elective-share amount is equitably
45 apportioned 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), subsection (b), section two
50 of this article, and the donees of the recipients of the
51 reclaimable estate to the extent the original recipients or
52 their donees have the property or its proceeds, are liable
53 to make a proportional contribution toward satisfaction
54 of the surviving spouse's elective share or supplemental
55 elective-share amount. A person liable to make contri-
56 bution may choose to give up the proportional part of the
57 reclaimable estate or to pay the value of the amount for
58 which he or she is liable.

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

Randy Schoonover
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Carol E. Adams
.....
Clerk of the Senate

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

Carl Roy Tomblin
.....
President of the Senate

Paul C. Barber
.....
Speaker House of Delegates

The within *is approved* this the *24th*
March
day of, 1995.

Gaston Capreol
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/23/95

Time 3:52 pm