

SB 427

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



ENROLLED

SENATE BILL NO. 427

(By Senator WOOTON, ET AL)



PASSED MARCH 13, 1999

In Effect ALL NEXT DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

Senate Bill No. 427

(BY SENATORS WOOTON, MINEAR, SHARPE, ROSS AND KESSLER)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections eight, eleven and fourteen, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter; and to amend article four of said chapter by adding thereto a new section, designated section fourteen-a, all relating to the administration of estates and trusts; providing that an executor may be relieved of posting bond where the will so directs; providing for a commission for sheriffs administering estates; providing for criminal penalties to be assessed where a personal administrator fails to appraise an estate; eliminating language that requires appraisements to be done in triplicate; reducing the time for creditors to file a proof of claim for estates that will not be referenced to a fiduciary commissioner; establishing a time period for a fiduciary to make a final settlement of a decedent's estate; providing that a fiduciary may obtain an extension of time under certain circumstances; requiring a fiduciary to report to the county

commission when an estate is not settled within the prescribed time period; permitting the county commission to discharge a fiduciary of his or her duties under certain circumstances; and establishing criminal penalties for a fiduciary's failure to appraise an estate and failure to report to the county commission.

Be it enacted by the Legislature of West Virginia:

That sections eight, eleven and fourteen, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article two of said chapter be amended and reenacted; and that article four of said chapter be amended by adding thereto a new section, designated section fourteen-a, all to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-8. When executor not to give bond.

1 Subject to the provisions of section three, article five of
2 this chapter governing the appointment of a nonresident
3 of this state as an executor, where the will directs that an
4 executor shall not give bond, it shall not be required of
5 him or her, unless at the time the will is admitted to
6 probate or at any time subsequently, on the application of
7 any person interested, or from the knowledge of the court
8 or clerk admitting the will to probate, it is deemed proper
9 that bond ought to be given.

§44-1-11. When sheriff to administer estate.

1 If at any time two months elapse without there being an
2 executor or administrator of the estate of a decedent
3 (except during a contest about the decedent's will, or
4 during the infancy or absence of the executor), the court or
5 clerk before whom the will was admitted to probate, or
6 having jurisdiction to grant administration, shall on
7 motion of any person order the sheriff of the county to
8 take into his or her possession the estate of such decedent
9 and administer the same; whereupon such sheriff, without
10 taking any other oath of office, or giving any other bond or
11 security than he or she may have before taken or given,
12 shall be the administrator or administrator de bonis non of

13 the decedent, with his or her will annexed if there be a
14 will, and shall be entitled to all the rights and bound to
15 perform all the duties of the administrator. For his or her
16 services as administrator of an estate, the sheriff shall
17 receive from the estate a fee of five percent of the estate
18 subject to administration, which fee shall be deposited to
19 the treasury of the county. Every sheriff shall, in the
20 month of January in each year, make a written report to
21 the county commission of his or her county, and if the
22 court is not in session, then he or she shall file the report
23 with the clerk of the court, of the receipts and disburse-
24 ments of each estate so committed to him or her, and at the
25 end of his or her term of office make a complete report and
26 settlement of each estate so committed to him or her, and
27 shall turn over to his or her successor in office all moneys
28 or property in his or her hands remaining unadministered.
29 The court or clerk may, however, at any time afterward
30 revoke such order and allow any other person to qualify as
31 the executor or administrator; and the court, or the clerk
32 thereof, shall, at the expiration of the term of office of any
33 sheriff, commit to his or her successor in office any and all
34 estates which may appear, by the final report above
35 required to be made by the sheriff at the end of his or her
36 term, not to have been fully administered. Every sheriff to
37 whom any estate shall have been committed, as aforesaid,
38 who shall fail to render any report as required herein, or
39 who shall fail to make such settlement within two months
40 after the end of his or her term of office shall be guilty of
41 a misdemeanor and, upon conviction thereof, shall be fined
42 not less than fifty nor more than five hundred dollars.

**§44-1-14. Appraisal of estates in triplicate; disposition; author-
ity of appraisers to act throughout the state;
hiring of experts.**

1 The real and personal estate of every deceased person, or
2 in which such deceased person had an interest at the time
3 of his or her death, shall be appraised by the personal
4 representative of such deceased person. Such personal
5 representative, after first taking an oath for the purpose,
6 shall list and appraise at its real and actual value all the
7 real estate and all the tangible property of every descrip-
8 tion owned by the deceased at the time of his or her death,

9 including, but not limited to, all real estate and tangible
10 property in which the decedent had an interest as joint
11 tenant or otherwise or in which any beneficial interest
12 passes to another person by reason of the death of such
13 decedent whose estate is being so appraised and irrespec-
14 tive of whether such real estate or tangible property is
15 subject to administration and located in each county or the
16 counties, as the case may be. The personal representative
17 shall also list and appraise at its real and actual value all
18 of the decedent's intangible property of every description,
19 including moneys, credits, investments, annuities, life
20 insurance policies, (irrespective of whether such policies
21 are payable to named beneficiaries or in trust or other-
22 wise), judgments and decrees for moneys, notes, bonds,
23 accounts and all other evidences of debt, whether owing to
24 him or her by persons or corporations in or out of the state,
25 and the number and value, including both the par value, if
26 any, and the actual value, of any shares of capital stock
27 owned by the decedent in any corporation, and every other
28 item of intangible property of whatsoever nature or kind,
29 including all intangible property in which the decedent
30 had an interest as joint tenant or otherwise or in which
31 any beneficial interest passes to another by reason of the
32 death of such decedent, and irrespective of whether such
33 intangible property is subject to administration and
34 whether located in this state or elsewhere. Any real estate
35 or interest therein so appraised shall be identified with
36 particularity and description, shall identify the source of
37 title in the decedent and the location of such realty for
38 purposes of real property ad valorem taxation. In addition
39 to all other information required by law, the appraisement
40 shall contain and include a questionnaire designed and
41 formulated by the tax commissioner which is designed for
42 the purpose of examining the personal representative to
43 determine that he or she has made a thorough and proper
44 search and investigation as to the existence and value of
45 each and every kind and species of property required to be
46 included within, and subject to appraisement by, the
47 provisions of this or any other section of this code, which
48 said questionnaire shall be completed and answered upon
49 the oath or adjuration of the personal representative or
50 fiduciary.

51 The appraisalment, list and questionnaire aforesaid shall
52 be executed and signed by the personal representative. The
53 original appraisalment, list and questionnaire and two
54 copies thereof must be returned to the clerk of the county
55 commission by whom such personal representative was
56 appointed or to the fiduciary supervisor within ninety days
57 of the date of qualification of the personal representative.
58 Such clerk or supervisor shall inspect such appraisalment,
59 list and questionnaire, see that the same are in proper
60 form, and that all property, if any, suggested by the
61 questionnaire is included within the appraisalment. If such
62 appraisalment, list and questionnaire are returned to a
63 fiduciary supervisor within ten days after they are re-
64 ceived and approved by him or her, such supervisor shall
65 deliver the same to the clerk of the county commission.
66 Upon receipt of the appraisalment, list and questionnaire,
67 the clerk of the county commission shall record the same,
68 with the certificate of approval of the supervisor, and mail
69 a certified copy of the same to the tax commissioner of
70 West Virginia. The date of return of an appraisalment shall
71 be entered by the clerk of the county commission in his or
72 her record of fiduciaries. The appraisalment and list shall
73 be prima facie evidence of the value of the property
74 embraced therein, and that the personal estate embraced
75 therein which is subject to administration came to the
76 hands of the personal representative. No person shall be
77 permitted by any means whatsoever to avoid the appraise-
78 ment and listing of his or her estate and of all property,
79 real, tangible and intangible, of whatsoever nature and
80 kind, in which a beneficial interest passes to another by
81 reason of the death of the decedent and irrespective of
82 whether such property is subject to administration as
83 herein provided, nor shall his or her personal representa-
84 tive be permitted to do so. Any personal representative
85 who refuses or declines, without reasonable cause, to
86 comply with the provisions of this section shall be guilty
87 of a misdemeanor and, upon conviction thereof, shall be
88 fined not less than twenty-five dollars nor more than five
89 hundred.

90 Every personal representative shall have authority to
91 retain or hire the services of such expert or experts as may

92 be deemed appropriate to assist and advise him or her in
93 and about his or her duties in appropriately and accurately
94 appraising all or any part of the assets or property to be
95 appraised according to the provisions of this section. Such
96 expert or experts so retained or hired shall be compensated
97 a reasonable sum by the personal representative from the
98 assets coming into his or her hands or of which he or she is
99 embraced, which compensation and the reasonableness
100 thereof shall be subject to review and approval by the
101 county commission, upon recommendation of the fiduciary
102 supervisor.

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF
DECEDENTS.**

§44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisement by the personal
2 representative to the county clerk, the estate of his or her
3 decedent shall, by order of the county commission to be
4 then made, be referred to a fiduciary commissioner for
5 proof and determination of debts and claims, establish-
6 ment of their priority, determination of the amount of the
7 respective shares of the legatees and distributees, and any
8 other matter necessary and proper for the settlement of the
9 estate: *Provided*, That in counties where there are two or
10 more such commissioners, the estates of decedents shall be
11 referred to such commissioners in rotation, in order that,
12 so far as possible, there may be an equal division of the
13 work. Notwithstanding any other provision of this code to
14 the contrary, a fiduciary commissioner may not charge to
15 the estate a fee greater than three hundred dollars and
16 expenses for the settlement of an estate, except upon: (i)
17 Approval of the personal representative; or (ii) a determi-
18 nation by the county commission after a hearing that
19 complicating issues or problems attendant to such settle-
20 ment substantiate the allowance of a greater fee.

21 (b) If the personal representative delivers to the clerk an
22 appraisement of the assets of the estate showing their
23 value to be fifty thousand dollars or less, exclusive of real
24 estate specifically devised and nonprobate assets, or, if it
25 appears to the clerk that there is only one beneficiary of
26 the probate estate and that the beneficiary is competent at

64 in lieu of any other fee provided by law for recording a
65 report of settlement of the accounts of a decedent's
66 personal representative. At least once a month the clerk
67 shall cause to be published once a week for two successive
68 weeks in a newspaper of general circulation within the
69 county of the administration of the estate, with regard to
70 reports received in the prior month, a notice substantially
71 as follows:

72 NOTICE OF FILING OF ESTATE ACCOUNTS
73 OR WAIVERS OF FINAL SETTLEMENT

74 "I have before me the account or waiver of final settle-
75 ment of the executor(s) or administrator(s) of the estates of
76 the following deceased persons:

77 _____
78 _____
79 _____

80 Any person having a claim against the estate of any such
81 deceased person, or who has any beneficial interest
82 therein, may appear before me or the county commission
83 at any time within thirty days after first publication of
84 this notice, and request reference of said estate to a
85 commissioner or object to confirmation of the accounting.
86 In the absence of such request or objection, the accounting
87 may be approved by the county commission.

88 _____
89 Clerk of the County Commission of
90 _____ County, W. Va."

91 If no such request or objection is made to the clerk or to
92 the county commission, the county commission may
93 confirm the report of the personal representative and
94 thereupon the personal representative and his or her surety
95 shall be discharged; but if such objection or request is
96 made, the county commission may confirm the accounting
97 and record the same or may refer the estate to one of its
98 fiduciary commissioners: *Provided*, That the personal
99 representative has twenty days after the date of the filing
100 of a claim or claims against the estate of the decedent to

101 approve or reject the claim before the estate is referred to
102 a fiduciary commissioner and if all claims are approved as
103 filed, then no reference may be made.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-14a. Final settlement by fiduciaries for decedent's estates; penalty.

1 (a) The provisions of this chapter notwithstanding, every
2 fiduciary for the estate of a resident decedent shall, within
3 five years of appointment as fiduciary make a full and
4 final settlement, report and accounting for the decedent's
5 estate in the manner provided for in this code for
6 accountings by fiduciaries, and further shall, at the time of
7 making the final settlement, notify in writing the clerk of
8 the county commission of the county where the fiduciary
9 was appointed that the final settlement has been made.

10 (b) If the fiduciary is unable to make a full and final
11 settlement, report and accounting of the decedent's estate
12 within the above time period because there have been
13 unusual or extraordinary circumstances, demands or
14 conditions imposed upon the fiduciary which have caused
15 a delay in the final settlement, he or she may request an
16 extension of time in which to make the settlement. Such
17 request must be in writing to the county commission and
18 include a date by which the fiduciary reasonably expects
19 to make the full and final settlement.

20 (c) Any fiduciary failing to comply with this section, in
21 whole or in part, is personally liable to the beneficiaries or
22 creditors of the decedent's estate for any loss or waste
23 cause by the failure to make the final settlement. The
24 fiduciary shall be guilty of a misdemeanor and, upon
25 conviction thereof, shall be fined not less than two hun-
26 dred fifty dollars nor more than one thousand dollars for
27 failure to comply with this section, except for good and
28 sufficient cause shown.

29 (d) In the event the fiduciary has not made the final
30 settlement of the estate within five years of appointment,
31 the fiduciary shall notify the county commission that the
32 final settlement has not been made. If the fiduciary does
33 not establish good cause for not making the final settle-

34 ment within the five-year period, as determined by the
35 county commission, the fiduciary is discharged of his or
36 her duties as fiduciary. The sheriff of the county shall
37 then take charge of the estate and proceed to make a final
38 settlement of the estate in an expeditious manner.

39 (e) A fiduciary who fails to notify the county commission
40 in accordance with subsection (d) of this section shall be
41 guilty of a misdemeanor and, upon conviction thereof,
42 shall be fined not less than fifty dollars nor more than five
43 hundred dollars.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within *approved* this the *6th*
Day of *April*, 1999
[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 4/1/99

Time 10:27 am