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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

Committee Substitute for

SENATE BILL NO. 474

(By Senator Mitchell, et al)

PASSED March 9, 2002

In Effect ninety days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 474

(SENATORS MITCHELL, FANNING, KESSLER, MINARD, OLIVERIO,
ROWE, FACEMYER AND MCKENZIE, *original sponsors*)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to repeal section thirteen-a, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fourteen of said article; to further amend said article by adding thereto a new section, designated section fourteen-a; to amend and reenact section one, article two of said chapter; and to amend and reenact section twelve, article four of said chapter, all relating to the administration of estates; eliminating certain requirements that county clerks publish and that personal representatives mail notices; eliminating the requirement that county clerks mail appraisement and questionnaires to heirs and beneficiaries; requiring county clerks to publish a notice regarding estates;

requiring county clerks to notify the personal representative that no appraisal has been filed; establishing time limits for the filing of objections; requiring personal representatives to send notice to certain individuals; providing for a fee for publication; limiting the liability of the personal representative in certain circumstances; defining terms; providing that the allowable expense of a fiduciary for payment to a surety may be based on the rates set by the insurance commissioner; and providing that nonprobate inventory form shall be confidential tax information.

Be it enacted by the Legislature of West Virginia:

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article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fourteen of said article be amended and reenacted; that said article be further amended by adding thereto a new section, designated article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

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisal of real estate and probate personal property of decedents; disposition; and hiring of experts.

1 (a) The personal representative of an estate of a deceased
2 person shall appraise the deceased's real estate and
3 personal probate property, or any real estate or personal
4 probate property in which the deceased person had an
5 interest at the time of his or her death, as provided in this
6 section.

7 (b) After having taken the appropriate oath, the personal
8 representative shall, on the appraisal form prescribed
9 by the tax commissioner, list the following items owned by
10 the decedent or in which the decedent had an interest and
11 the fair market value of the items at the date of the dece-
12 dent's death:

13 (1) All probate and nonprobate real estate including, but
14 not limited to, real estate owned by the decedent, as a joint
15 tenant with right of survivorship with one or more parties,
16 as a life estate, subject to a power of appointment of the
17 decedent, or in which any beneficial interest passes by
18 trust or otherwise to another person by reason of the death
19 of the decedent; and

20 (2) All probate personal property, whether tangible or
21 intangible, including, but not limited to, stocks and bonds,
22 bank accounts, mortgages, notes, cash, life insurance
23 payable to the executor or administrator of the decedent's
24 estate and all other items of probate personal property.

25 (c) Any real estate or interest in real estate so appraised
26 must be identified with particularity and description. The
27 personal representative shall identify the source of title in
28 the decedent and the location of the realty for purposes of
29 real property ad valorem taxation.

30 (d) For purposes of this section, the term "probate
31 personal property" means all property which passes by or
32 under the decedent's will or by the laws of intestate
33 descent and distribution or is otherwise subject to admin-
34 istration in a decedent's estate under common law.

35 (e) The personal representative shall complete, under
36 oath, a questionnaire included in the appraisal form
37 designed by the tax commissioner for the purpose of
38 reporting to the tax commissioner whether the estate of
39 the decedent is subject to estate tax as provided in article
40 eleven, chapter eleven of this code and whether the
41 decedent owned or had an interest in any nonprobate
42 personal property; *Provided*, That the tax commissioner
43 shall design a questionnaire that is as much as possible
44 phrased in understandable English.

45 (f) The appraisal form must be executed and signed
46 by the personal representative. The original appraisal
47 form and two copies thereof, together with the completed

48 and notarized nonprobate inventory form required by
49 section seven, article eleven, chapter eleven of this code,
50 shall be returned to the clerk of the county commission by
51 whom the personal representative was appointed or to the
52 fiduciary supervisor within ninety days of the date of
53 qualification of the personal representative. The clerk or
54 supervisor shall inspect the appraisal form to deter-
55 mine whether it is in proper form. If the appraisal
56 form is returned to a fiduciary supervisor, within ten days
57 after being received and approved, the supervisor shall
58 deliver the documents to the clerk of the county commis-
59 sion. Upon receipt of the appraisal form, the clerk of
60 the county commission shall record it with the certificate
61 of approval of the supervisor and mail a certified copy of
62 the appraisal form, together with the unrecorded
63 nonprobate inventory form, to the tax commissioner. The
64 date of return of an appraisal form must be entered by
65 the clerk of the county commission in his or her record of
66 fiduciaries. The nonprobate inventory form shall be
67 considered confidential tax return information subject to
68 the provisions of section five-d, article ten, chapter eleven
69 of this code and may not be disclosed by the clerk of the
70 county commission and his or her officers and employees
71 or former officers and employees, except to the tax
72 commissioner as provided in this section. Nothing in this
73 section shall be construed to hinder, abrogate, or prevent
74 disclosure of information as authorized in section thirty-
75 five, article eleven of said chapter.

76 (g) An executed and signed appraisal form is prima
77 facie evidence:

78 (1) Of the value of the property listed;

79 (2) That the property is subject to administration; and

80 (3) That the property was received by the personal
81 representative.

82 (h) Any personal representative who refuses or declines,
83 without reasonable cause, to comply with the provisions of

84 this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

87 (i) Every personal representative has authority to retain the services of an expert as may be appropriate to assist and advise him or her concerning his or her duties in appraising any asset or property pursuant to the provisions of this section. An expert so retained shall be compensated a reasonable sum by the personal representative from the assets of the estate. The compensation and its reasonableness is subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

97 (j) Except as specifically provided in subdivision (1), subsection (b) of this section and in section seven, article eleven, chapter eleven of this code, the personal representative is not required to list and appraise nonprobate real estate or nonprobate personal property of the decedent on the forms required in this section or section seven of said article.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

1 (a) Within thirty days of the filing of the appraisal of any estate as required in section fourteen of this article, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

7 (1) The name of the decedent;

8 (2) The name and address of the county commission before whom the proceedings are pending;

10 (3) The name and address of the personal representative;

11 (4) The name and address of any attorney representing the personal representative;

13 (5) The name and address of the fiduciary commissioner,
14 if any;

15 (6) The date of first publication;

16 (7) A statement that claims against the estate must be
17 filed in accordance with the provisions of article two or
18 article three-a of this chapter;

19 (8) A statement that any person seeking to impeach or
20 establish a will must make a complaint in accordance with
21 the provisions of section eleven, twelve or thirteen, article
22 five, chapter forty-one of this code;

23 (9) A statement that an interested person objecting to the
24 qualifications of the personal representative or the venue
25 or jurisdiction of the court must be filed with the county
26 commission within three months after the date of first
27 publication or thirty days of service of the notice, which-
28 ever is later; and

29 (10) If the appraisal of the assets of the estate shows
30 the value to be one hundred thousand dollars or less,
31 exclusive of real estate specifically devised and
32 nonprobate assets, or, if it appears to the clerk that there
33 is only one beneficiary of the probate estate and that the
34 beneficiary is competent at law, a statement substantially
35 as follows: "Settlement of the estate of the following
36 named decedents will proceed without reference to a
37 fiduciary commissioner unless within ninety days from the
38 first publication of this notice a reference is requested by
39 a party in interest or an unpaid creditor files a claim and
40 good cause is shown to support reference to a fiduciary
41 commissioner".

42 (b) If no appraisal is filed within the time period
43 established pursuant to section fourteen of this article, the
44 county clerk shall send a notice to the personal representa-
45 tive by first class mail, postage prepaid, indicating that the
46 appraisal has not been filed. Notwithstanding any
47 other provision of this code to the contrary, the county

48 clerk shall publish the notice required in subsection (a) of
49 this section within six months of the qualification of the
50 personal representative.

51 (c) The personal representative shall promptly make a
52 diligent search to determine the names and addresses of
53 creditors of the decedent who are reasonably ascertain-
54 able.

55 (d) The personal representative shall, within ninety days
56 after the date of first publication, serve a copy of the
57 notice, published pursuant to subsection (a) of this section,
58 by first class mail, postage prepaid, or by personal service
59 on the following persons:

60 (1) If the personal representative is not the decedent's
61 surviving spouse and not the sole beneficiary or sole heir,
62 the decedent's surviving spouse, if any;

63 (2) If there is a will and the personal representative is not
64 the sole beneficiary, any beneficiaries;

65 (3) If there is not a will and the personal representative
66 is not the sole heir, any heirs;

67 (4) The trustee of any trust in which the decedent was a
68 grantor, if any; and

69 (5) All creditors identified under subsection(c) of this
70 section, other than a creditor who filed a claim as provided
71 in article two of this chapter or a creditor whose claim has
72 been paid in full.

73 (e) Any person interested in the estate who objects to the
74 qualifications of the personal representative or the venue
75 or jurisdiction of the court, shall file notice of an objection
76 with the county commission within ninety days after the
77 date of the first publication as required in subsection (a) of
78 this section or within thirty days after service of the notice
79 as required by subsection (d) of this section, whichever is
80 later. If an objection is not timely filed, the objection is
81 forever barred.

82 (f) A personal representative acting in good faith is not
83 personally liable for serving notice under this section,
84 notwithstanding a determination that notice was not
85 required by this section. A personal representative acting
86 in good faith who fails to serve the notice required by this
87 section is not personally liable. The service of the notice
88 in accordance with this subsection may not be construed
89 to admit the validity or enforceability of a claim.

90 (g) The clerk of the county commission shall collect a fee
91 of twenty dollars for the publication of the notice required
92 in this section.

93 (h) For purposes of this section, the term beneficiary
94 means a person designated in a will to receive real or
95 personal property.

**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, by order of the county commission, must be
4 referred to a fiduciary commissioner for proof and deter-
5 mination of debts and claims, establishment of their
6 priority, determination of the amount of the respective
7 shares of the legatees and distributees, and any other
8 matter necessary for the settlement of the estate: *Provided*,
9 That in counties where there are two or more commission-
10 ers, the estates of decedents must be referred to the
11 commissioners in rotation, so there may be an equal
12 division of the work. Notwithstanding any other provision
13 of this code to the contrary, a fiduciary commissioner may
14 not charge to the estate a fee greater than three hundred
15 dollars and expenses for the settlement of an estate, except
16 upon: (i) Approval of the personal representative; or (ii) a
17 determination by the county commission after a hearing
18 that complicating issues or problems attendant to the
19 settlement substantiate the allowance of a greater fee.

20 (b) If the personal representative delivers to the clerk an
21 appraisalment of the assets of the estate showing their
22 value to be one hundred thousand dollars or less, exclusive
23 of real estate specifically devised and nonprobate assets,
24 or, if it appears to the clerk that there is only one benefi-
25 ciary of the probate estate and that the beneficiary is
26 competent at law, the clerk shall record the appraisalment.
27 If an unpaid creditor files a claim against the estate, the
28 personal representative has twenty days after the date of
29 the filing of a claim against the estate of the decedent to
30 approve or reject the claim before the estate is referred to
31 a fiduciary commissioner. If the personal representative
32 approves all claims as filed, then no reference may be
33 made.

34 The personal representative shall, within a reasonable
35 time after the date of recordation of the appraisalment: (i)
36 File a waiver of final settlement in accordance with the
37 provisions of section twenty-nine of this article; or (ii)
38 make a report to the clerk of his or her receipts, disburse-
39 ments and distribution and submit an affidavit stating
40 that all claims against the estate for expenses of adminis-
41 tration, taxes and debts of the decedent have been paid in
42 full. Upon receipt of the waiver of final settlement or
43 report, the clerk shall record the waiver or report and mail
44 copies to each beneficiary and creditor by first-class mail,
45 postage prepaid. The clerk shall retain the report for ten
46 days to allow any beneficiary or creditor to appear before
47 the county commission to request reference to a fiduciary
48 commissioner. The clerk shall collect a fee of ten dollars
49 for recording and mailing the waiver of final settlement or
50 report.

51 If no request or objection is made to the clerk or to the
52 county commission, the county commission may confirm
53 the report of the personal representative, the personal
54 representative and his or her surety shall be discharged;
55 but if an objection or request is made, the county commis-
56 sion may confirm and record the accounting or may refer

57 the estate to its fiduciary commissioners: *Provided*, That
58 the personal representative has twenty days after the date
59 of the filing of a claim against the estate of the decedent to
60 approve or reject the claim before the estate is referred to
61 a fiduciary commissioner and if all claims are approved as
62 filed, then no reference may be made.

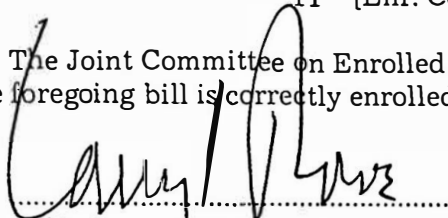
63 (c) For purposes of this section, the term beneficiary
64 means a person designated in a will to receive real or
65 personal property.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-12. Compensation and expenses of fiduciaries.

1 The fiduciary commissioner in stating and settling the
2 account shall allow the fiduciary any reasonable expenses
3 incurred by him as such; and also, except in cases in which
4 it is otherwise provided, a reasonable compensation in the
5 form of a commission on receipts or otherwise. Any
6 executor, administrator, guardian, committee, assignee,
7 receiver, special fiduciary commissioner, or other fidu-
8 ciary, required by law or by the order of any court or judge
9 to give a bond or obligation as such, may include, as a part
10 of the lawful expense of executing his duties, such reason-
11 able sum paid a company, authorized under the laws of
12 this state so to do, for becoming his surety on such bond or
13 obligation, as may be allowed by the court in which, or the
14 fiduciary commissioner before whom, he is required to
15 account, or a judge of such court, not exceeding, however,
16 the amount authorized by the insurance commissioner
17 pursuant to the provisions of article twenty, chapter
18 thirty-three of this code and the legislative rules promul-
19 gated thereunder.

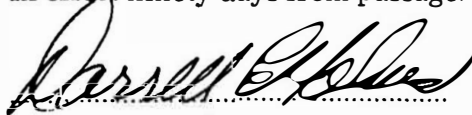
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

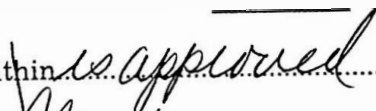

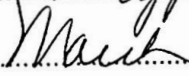
In effect ninety days from passage.

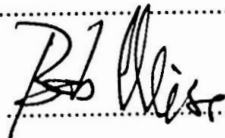

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within  is approved this the 
Day of , 2002.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/02

Time 11:10 a.m.