WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 2991

(By Delegates Cann, Kominar, Amores, Stemple, Palumbo and Hrutkay)

Passed March 13, 2004

In Effect Ninety Days from Passage
AN ACT to amend and reenact §44-2-1 of the code of West Virginia, 1931, as amended, relating to the fee charged by fiduciary commissioners in settling an estate.

Be it enacted by the Legislature of West Virginia:

That §44-2-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 representative to the county clerk, the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and
distributees, and any other matter necessary for the settlement 
of the estate: Provided, That in counties where there are two or 
more commissioners, the estates of decedents must be referred 
to the commissioners in rotation, so there may be an equal 
division of the work. Notwithstanding any other provision of 
this code to the contrary, a fiduciary commissioner may not 
charge to the estate a fee greater than three hundred dollars and 
expenses for the settlement of an estate, except upon: (i) 
Approval of the personal representative; or (ii) a determination 
by the county commission that the fee is based upon the actual 
time spent and actual services rendered pursuant to a schedule 
of fees or rate of compensation for fiduciary commissioners 
promulgated by the commission in accordance with the 
provisions of section nine, article one, chapter fifty-nine of this 
code.

(b) If the personal representative delivers to the clerk an 
appraisal of the assets of the estate showing their value to 
be one hundred thousand dollars or less, exclusive of real estate 
specifically devised and nonprobate assets, or if it appears to 
the clerk that there is only one beneficiary of the probate estate 
and that the beneficiary is competent at law, the clerk shall 
record the appraisal. If an unpaid creditor files a claim 
against the estate, the personal representative has twenty days 
after the date of the filing of a claim against the estate of the 
decedent to approve or reject the claim before the estate is 
referred to a fiduciary commissioner. If the personal representa-
tive approves all claims as filed, then no reference may be 
made.

The personal representative shall, within a reasonable time 
after the date of recordation of the appraisal: (i) File a 
waiver of final settlement in accordance with the provisions of 
section twenty-nine of this article; or (ii) make a report to the 
clerk of his or her receipts, disbursements and distribution and 
submit an affidavit stating that all claims against the estate for
expenses of administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for ten days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of ten dollars for recording and mailing the waiver of final settlement or report.

If no request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, the personal representative and his or her surety shall be discharged; but if an objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: Provided, That the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made.

(c) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the __th day of __, 2004.

Governor
PRESENTED TO THE
GOVERNOR
DATE 3/3/67
TIME 10:00 AM