

# WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

**Enrolled**  
**Committee Substitute**  
**for**  
**Senate Bill 80**

BY SENATORS TRUMP AND SWOPE

[Passed April 2, 2021; in effect 90 days from passage (July 1, 2021)]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2021 APR 15 P 3: 39

FILED

SB80

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1 AN ACT to amend and reenact §44-1-28 of the Code of West Virginia, 1931, as amended; and  
2 to amend said code by adding thereto a new article, designated §44-1A-1, §44-1A-2,  
3 §44-1A-3, §44-1A-4, and §44-1A-5, all relating to payment of small sums to spouse or  
4 distributees of decedents upon whose estates there have been no qualifications;  
5 allowing the administration of small estates containing under \$50,000 in personal  
6 property and under \$100,000 in real property by affidavit and without appointment of a  
7 personal representative; providing for a short title; providing for definitions; identifying  
8 affidavit contents and form; establishing duties of fiduciary supervisor and clerk of the  
9 county commission; setting forth requirements for death certificate, proof of residence,  
10 and bond; setting forth form of affidavit; providing for issuance of certificates and  
11 authorization of small estates; setting forth requirements for objections by interested  
12 parties and revocation of certificate and authorization; rescinding of certificates and  
13 authorization when determination is made that estate does not qualify; detailing methods  
14 for payment or delivery of small assets to authorized successors; discharging and  
15 releasing payors; setting forth fiduciary duty of authorized successor; detailing treatment  
16 of real estate in a small estate; and providing for applicability.

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

## **ARTICLE 1. PERSONAL REPRESENTATIVES.**

### **§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.**

1 (a) When the State of West Virginia, any of its political subdivisions, the United States, or  
2 any employer owes wages, salary, pension payments, or money allowed for burial expenses to  
3 a decedent who died domiciled in this state, upon whose estate there has been no qualification,  
4 and the amount owed does not exceed \$5,000, the State of West Virginia, any of its political  
5 subdivisions, the United States, or the decedent's employer, after 120 days from the death of  
6 the decedent, may pay the amount owed to the decedent's surviving spouse, if any; and if no

7 spouse survived the decedent, then to the distributees of the decedent under the laws of the  
8 State of West Virginia, as established by an affidavit to that effect.

9 (b) When the Treasurer holds property in accordance with §36-8-1 *et seq.* of this code  
10 on behalf of a decedent upon whose estate there has been no qualification, and the amount of  
11 the property is \$5,000 or less, the Treasurer may remit the property to the surviving spouse of  
12 the decedent, if any; and if no spouse survives the decedent, then to the distributees of the  
13 decedent under the laws of the State of West Virginia. When the Treasurer holds property in  
14 accordance with §36-8-1 *et seq.* of this code on behalf of a decedent whose estate is closed or  
15 has no present qualification and a valid will or an affidavit naming the decedent's distributees  
16 has been filed with the appropriate probate jurisdiction, the Treasurer may remit the property to  
17 the distributees as reflected in the will, or in the absence of a will, as established by the affidavit,  
18 in accordance with the laws of intestate descent and distribution.

19 (c) When any person holds an asset or property on behalf of or owed to a decedent who  
20 died domiciled in this state, upon whose estate there has been no qualification, and the value of  
21 that asset or property of the decedent does not exceed \$5,000, including a bank account, a  
22 savings institution account, a credit union account, a certificate of deposit, a brokerage account,  
23 stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument  
24 evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to  
25 the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of  
26 tangible personal property including a motor vehicle, after 120 days from the death of the  
27 decedent, that person may pay the amount owed to or transfer the asset or property to the  
28 decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the  
29 distributees of the decedent under the laws of the State of West Virginia, as established by an  
30 affidavit to that effect. As used in this section, "person" includes a bank, banking institution,  
31 credit union, or West Virginia Division of Motor Vehicles.

32 (d) Payment in accordance with this section is in full discharge and acquittance to all  
33 persons whomsoever on the account of the property to the same extent as if that person dealt  
34 with a personal representative of the decedent. That person is not required to see the  
35 application of the asset or proceeds or to inquire into the truth of any statement in the affidavit.

**ARTICLE 1A. WEST VIRGINIA SMALL ESTATE ACT.**

**§44-1A-1. Short title; definitions.**

1 (a) This article may be cited as the West Virginia Small Estate Act.

2 (b) For the purposes of this article, the following definitions apply:

3 (1) "Authorized successor" means the successor of a decedent who files an affidavit and  
4 is certified and authorized by the clerk of the county commission or the fiduciary supervisor  
5 thereof, pursuant to the provisions of this article.

6 (2) "Person" means any individual, corporation, business trust, fiduciary, estate, trust,  
7 partnership, limited liability company, association, joint venture, government, governmental  
8 subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

9 (3) "Small asset" means any probate personal property or asset belonging or presently  
10 distributable to the decedent having a fair market value on the decedent's date of death of not  
11 more than \$50,000. A small asset includes, but is not limited to, cash, a bank account, a savings  
12 institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a  
13 mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument  
14 evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to  
15 the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of  
16 tangible personal property including a motor vehicle. A small asset does not include real estate  
17 or an interest in real property. A small asset does not include a nonprobate asset of the  
18 decedent which would not be subject to administration in the decedent's probate estate.

19 (4) "Small estate" means a probate estate of a decedent who died domiciled in this state  
20 in which: (A) The total aggregate fair market value, on the decedent's date of death, of small

21 assets does not exceed \$50,000; and (B) the total aggregate fair market value on the  
22 decedent's date of death of all real estate or interests in real property situate in this state of  
23 which the decedent owned or was seized or possessed does not exceed \$100,000, excluding  
24 any real estate of the decedent which was held in any nonprobate form. For the purposes of this  
25 article, the fair market value of real estate shall be presumed to be 167 percent of the current  
26 assessed value of the real estate on the land books as reported by the assessor of the county in  
27 which the real estate is situate.

28 (5) "Successor" means any person, other than a creditor, who is nominated as a  
29 personal representative or executor under the provisions of the will of the decedent, or who is  
30 entitled under the provisions of the decedent's will or the laws of intestate descent and  
31 distribution of this state to a part or all of a small asset of the decedent.

**§44-1A-2. Administration of a small estate upon affidavit and without appointment.**

1 (a) Notwithstanding any provisions of this code to the contrary, the small estate of a  
2 decedent who dies domiciled in this state may be administered upon affidavit and without the  
3 appointment of a personal representative, and the small assets of the decedent may be paid or  
4 delivered to the authorized successor as provided in this article.

5 (b) Any successor of a decedent who dies domiciled in this state may execute and  
6 tender for recording to the clerk of the county commission, or the fiduciary supervisor of the  
7 clerk of the county commission, of the county in this state which would have jurisdiction over the  
8 probate concerning the estate and assets of the decedent an affidavit made upon oath and  
9 under penalty of perjury concerning the small estate setting forth in substance:

10 (1) The name and current address of the affiant;

11 (2) The name of the decedent, the date of death of the decedent, and the address and  
12 residence of the decedent at his or her death;

13 (3) Whether the decedent had any known will, with the original of the known will to be  
14 attached to the affidavit and tendered for recording in the county as long as the will is in due and

15 proper form for probate as a will in this state, or whether the decedent died intestate with no  
16 known will;

17 (4) A listing of the names, current addresses, and relationship to the decedent of any  
18 person nominated as a personal representative under the known will, together with a listing of  
19 the names, current addresses, and relationship to the decedent of the beneficiaries under the  
20 known will entitled to the estate or assets of the decedent. If there is no known will of the  
21 decedent, a listing of the names, current addresses, and relationship to the decedent of all of  
22 the intestate heirs-at-law and distributees of the decedent determined under the laws of  
23 intestate descent and distribution of this state;

24 (5) That the decedent's entire personal probate estate as of the date of the decedent's  
25 death, wherever located, consists only of small assets and the aggregate fair market value of all  
26 of the small assets does not exceed \$50,000, together with a description or itemization of the  
27 small assets with an estimate of value, if known or ascertainable;

28 (6) Whether the decedent died seized and possessed of any probate real estate or  
29 interests in probate real property situate in this state and if so, that the aggregate fair market  
30 value of all of the real estate or interests in real property situate in this state does not exceed  
31 \$100,000, together with a description of the real estate, the county in which it is situate, its  
32 assessed value for tax purposes, and its fair market value at the decedent's date of death;

33 (7) That if the successor is nominated as a personal representative or executor under  
34 the provisions of the will of the decedent, at least 30 days have elapsed since the decedent's  
35 date of death and no application for the appointment of a personal representative for the  
36 decedent is pending or has been granted in any jurisdiction. If the successor is not nominated  
37 as a personal representative or executor under the provisions of the will of the decedent, at  
38 least 60 days have elapsed since the decedent's date of death, no application for the  
39 appointment of a personal representative for the decedent is pending or has been granted in

40 any jurisdiction, and no affidavit of small estate has been filed by a successor nominated as a  
41 personal representative or executor under the provisions of the will of the decedent; and

42 (8) That the affiant will faithfully administer the small assets of the decedent in  
43 accordance with the law and pay or deliver the small assets to the successor or successors so  
44 entitled, after paying any known or ascertainable creditors of the decedent.

45 (c) The clerk of the county commission, or the fiduciary supervisor of the clerk of the  
46 county commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the  
47 county clerk or fiduciary supervisor determines the affidavit to be in completed form, the county  
48 clerk or fiduciary supervisor shall record and index the affidavit, together with the original of any  
49 will tendered with the affidavit, in the same manner and upon the same fees as wills and  
50 affidavits of beneficiaries or heirs are recorded and indexed in case of probate administration  
51 with appointment of a personal representative. The clerk of the county commission, or the  
52 fiduciary supervisor of the clerk of the county commission, may require a certified copy of the  
53 decedent's death certificate or other proof of death and residence prior to fulfilling the  
54 responsibilities under this article.

55 (d) A bond, security, or oath is not required when an appointment of a personal  
56 representative is not made for a small estate under the provisions of this article.

57 (e) A document substantially in the following form may be used as the affidavit provided  
58 in subsection (b) of this section with the effect as prescribed in this article:

59 IN THE COUNTY COMMISSION OF \_\_\_\_\_ COUNTY, WEST VIRGINIA

60 RE: THE ESTATE OF \_\_\_\_\_

61 DOD: \_\_\_\_\_

62 AFFIDAVIT FOR SMALL ESTATE

63 STATE OF \_\_\_\_\_,

64 COUNTY OF \_\_\_\_\_, to-wit:



65 I, \_\_\_\_\_, being a Successor of the Decedent identified  
66 below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the  
67 best of my knowledge and belief as follows:

68 1. My name is \_\_\_\_\_, and my current address is  
69 \_\_\_\_\_  
70 \_\_\_\_\_.

71 2. The Decedent, \_\_\_\_\_, died on  
72 \_\_\_\_\_ (date of death), a resident of \_\_\_\_\_ County, State  
73 of West Virginia, with his/her usual residence being  
74 \_\_\_\_\_  
75 \_\_\_\_\_.

76 A certified death certificate has been furnished herewith for filing in this County. I am a  
77 Successor of the decedent as \_\_\_\_\_ (state relationship).

78 3. TESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

79 At the date of death, the Decedent died with an original Last Will and Testament of the  
80 Decedent dated \_\_\_\_\_, without any codicil thereto ( ) or with codicil(s)  
81 thereto dated \_\_\_\_\_ ( ) [Check if applies]. The aforesaid original Last Will  
82 and Testament of the decedent, together with any codicil(s), is furnished herewith for recording  
83 in this County as permitted by West Virginia Code § 44-1A-2(b).

84 Under the Last Will and Testament of the Decedent, the following person(s) is/are  
85 nominated to be the personal representative(s) of the Estate:

86 a. Name: \_\_\_\_\_

87 Address: \_\_\_\_\_

88 \_\_\_\_\_

89 b. Name: \_\_\_\_\_

90 Address: \_\_\_\_\_

91 \_\_\_\_\_

92 Pursuant to the provisions of the above referenced Will of the Decedent, the following  
93 persons are the named beneficiaries of the estate of the Decedent:

94 a. Name: \_\_\_\_\_

95 Address: \_\_\_\_\_

96 \_\_\_\_\_

97 Relationship to Decedent: \_\_\_\_\_

98 Share or percentage or particular item: \_\_\_\_\_

99 b. Name: \_\_\_\_\_

100 Address: \_\_\_\_\_

101 \_\_\_\_\_

102 Relationship to Decedent: \_\_\_\_\_

103 Share or percentage or particular item: \_\_\_\_\_

104 c. Name: \_\_\_\_\_

105 Address: \_\_\_\_\_

106 \_\_\_\_\_

107 Relationship to Decedent: \_\_\_\_\_

108 Share or percentage or particular item: \_\_\_\_\_

109 d. Name: \_\_\_\_\_

110 Address: \_\_\_\_\_

111 \_\_\_\_\_

112 Relationship to Decedent: \_\_\_\_\_

113 Share or percentage or particular item: \_\_\_\_\_

114 e. Name: \_\_\_\_\_

115 Address: \_\_\_\_\_

116 \_\_\_\_\_

117 Relationship to Decedent: \_\_\_\_\_

118 Share or percentage or particular item: \_\_\_\_\_

119 (If more space is needed, attach additional page(s) to affidavit)

120 4. INTESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

121 At the date of death, the Decedent died intestate with no known will. The Decedent left

122 as his/her heirs-at-law and distributees in accordance with the laws of intestate descent and

123 distribution of the State of West Virginia the following persons:

124 a. Name: \_\_\_\_\_

125 Address: \_\_\_\_\_

126 Relationship to Decedent: \_\_\_\_\_

127 Share or percentage: \_\_\_\_\_

128 b. Name: \_\_\_\_\_

129 Address: \_\_\_\_\_

130 Relationship to Decedent: \_\_\_\_\_

131 Share or percentage: \_\_\_\_\_

132 c. Name: \_\_\_\_\_

133 Address: \_\_\_\_\_

134 Relationship to Decedent: \_\_\_\_\_

135 Share or percentage: \_\_\_\_\_

136 d. Name: \_\_\_\_\_

137 Address: \_\_\_\_\_

138 Relationship to Decedent: \_\_\_\_\_

139 Share or percentage: \_\_\_\_\_

140 e. Name: \_\_\_\_\_

141 Address: \_\_\_\_\_

142 Relationship to Decedent: \_\_\_\_\_

143 Share or percentage: \_\_\_\_\_

144 (If more space is needed, attach additional page(s) to affidavit)

145 5. The Decedent's entire personal probate estate, as of the date of the Decedent's  
 146 death, wherever located, consists only of small assets and the aggregate fair market value of  
 147 the small assets does not exceed \$50,000. The small assets of the Decedent are described and  
 148 itemized as follows:

|   | Description | Fair Market value |
|---|-------------|-------------------|
| . |             |                   |
| . |             |                   |
| . |             |                   |
| . |             |                   |
| . |             |                   |
| . |             |                   |
|   | Total       |                   |

149 (If more space is needed, attach additional page(s) to affidavit)

150 6. The Decedent did ( ) / did not ( ) [Check one which applies] die seized and  
 151 possessed of any probate real estate or interests in probate real estate in the state of West  
 152 Virginia. If the Decedent died seized and possessed of any probate real estate or interest in real  
 153 estate in the state of West Virginia, the aggregate fair market value of all of the real estate or  
 154 interests in real property situate in this state does not exceed \$100,000 and the real estate of  
 155 the Decedent in West Virginia is as follows:

|  | Description | County | Assessed Value | Fair Market value |
|--|-------------|--------|----------------|-------------------|
|  |             |        |                |                   |
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|  |             |        |                |                   |

|  |       |  |  |  |
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|  |       |  |  |  |
|  | Total |  |  |  |

156 (If more space is needed, attach additional page(s) to affidavit)

157 7. ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor  
158 who was nominated as a personal representative or executor under the provisions of the above  
159 Will of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no  
160 application for the appointment of a personal representative for the Decedent is pending or has  
161 been granted in any jurisdiction;

162 or

163 ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who  
164 was NOT nominated as a personal representative or executor under the provisions of the above  
165 Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have  
166 elapsed since the Decedent's date of death and no application for the appointment of a personal  
167 representative for the Decedent is pending or has been granted in any jurisdiction, and no  
168 affidavit of Small Estate has been filed by a Successor nominated as a personal representative  
169 or executor under the provisions of the Will of the Decedent.

170 8. The undersigned Affiant will faithfully administer the small assets of the Decedent in  
171 accordance with the law and pay or deliver the same to the Successor or Successors so  
172 entitled.

173 Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

174 \_\_\_\_\_

175 Signature of Affiant/Successor

176 Taken, subscribed, and sworn to before me the undersigned authority by  
177 \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

178 {seal}

179 My Commission expires: \_\_\_\_\_

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Notary Public

(f) Upon acceptance and recording of the affidavit provided in this section, the county clerk or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is nominated in an attached will, and the beneficiaries under the will when the decedent dies with a will or the heirs-at-law when the decedent dies without a will, all of whom are listed on the affidavit, and shall issue a certificate and authorization of a small estate to the authorized successor who completed the affidavit, authorizing the successor to be paid, transferred, and delivered the small assets of the decedent with authority to pay, transfer, and deliver the small assets to the successor or successors of the decedent entitled pursuant to the provisions of this article and the other laws of the State of West Virginia and with authority to faithfully perform the duties of the office necessary to collect and administer the small assets of the decedent including, but not limited to, making application for and executing receipts, assignments, transfers, releases, waivers, applications, claims, claims for refunds, and federal, state, or local tax returns of the decedent concerning the small assets, pursuing litigation for or against the decedent or the decedent's estate, and paying or settling the funeral expenses or the claims of creditors of the decedent.

(g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or fiduciary supervisor any party interested in the estate of the decedent files a written objection with the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination, report, and recommendation which may, among other things, revoke the certificate and authorization of small estate and require full and complete probate administration of the estate of the decedent in accordance with the other applicable provisions of this article. Upon any revocation of the certificate and authorization of small estate, the authorized successor shall

205 provide an accounting and report of all payments or deliveries made of the small assets of the  
206 decedent.

207 (h) The authorized successor may act under the certificate and authorization of small  
208 estate issued under the provisions of this article for a period of six months from the date of the  
209 original issuance of the certificate and authorization but may, upon a showing of good cause in  
210 an application made to the county clerk or fiduciary supervisor, be granted an extension of an  
211 additional time period not to exceed six months upon issuance of an extended certificate and  
212 authorization of small estate to be issued by the county clerk or fiduciary supervisor.

213 (i) If at any time after the original issuance of the certificate and authorization by the  
214 county clerk or fiduciary supervisor, the authorized successor or an interested person  
215 determines that the probate estate of the decedent does not qualify as a small estate because  
216 the aggregate values of all of the small assets or the real estate of the decedent exceed the  
217 values provided in this article, upon application by an interested party the county clerk or  
218 fiduciary supervisor shall rescind the certificate and authorization of the small estate and shall  
219 mail a written order of rescission to the authorized successor and other interested parties, and a  
220 probate under the other provisions of this article shall be commenced by an interested party.

**§44-1A-3. Payment or delivery of small assets to authorized successor.**

1 (a) Any person having possession of a small asset of the decedent shall pay or deliver  
2 the small asset to the authorized successor of the decedent upon being presented the certificate  
3 and authorization of a small estate of the county clerk or fiduciary supervisor.

4 (b) The authorized successor has a fiduciary duty to safeguard and promptly pay or  
5 deliver the small asset or assets to the successor or successors of the decedent entitled to the  
6 small asset as required by the laws of the State of West Virginia.

7 (c) The authorized successor may discharge his or her fiduciary duty concerning the  
8 payment or delivery of the small asset or assets by:

9           (1) Applying the small asset in payment of the administrative costs of obtaining the  
10 certificate and authorization of a small estate under this article, the funeral expenses of the  
11 decedent, or the claims of any known or ascertainable creditors of the decedent as provided by  
12 the laws of the State of West Virginia;

13           (2) Paying or delivering the small asset to a successor entitled to the small asset who is  
14 sui juris; or

15           (3) For any successor entitled to the small asset who is, or is reasonably believed to be,  
16 incapacitated or under a legal disability, by paying or delivering the small asset to the  
17 successor's conservator or, if no conservator exists, guardian; to any custodian of an account  
18 for the successor under §36-7-1 *et seq.* of this code (the West Virginia Uniform Transfers to  
19 Minors Act); or to an adult relative or other person having legal or physical care or custody of  
20 the successor to be expended on the successor's behalf directly to the incapacitated or disabled  
21 successor or applying it for the successor's benefit. Any successor may be represented and  
22 bound under the provisions of virtual representation set forth in §44D-3-1 *et seq.* of this code  
23 with respect to affidavits required and designations of persons to receive payment or delivery of  
24 a small asset under this article.

25           (d) Upon the presentation of the certificate and authorization of a small estate, the  
26 authorized successor may endorse or negotiate any small asset that is a check, draft, or other  
27 negotiable instrument that is payable to the decedent or the decedent's estate.

28           (e) A transfer agent of any security, upon the surrender of any certificate evidencing the  
29 security, shall change the registered ownership on the books of a corporation from the decedent  
30 to the successor entitled to the small asset upon the presentation of the certificate and  
31 authorization of small estate.

32           (f) The payment or delivery of a small asset made in good faith to, or by the authorized  
33 successor, and upon an affidavit filed in good faith and upon reasonable premises by the  
34 authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of



35 the small assets constituting the small estate of the decedent is subsequently found to exceed  
36 \$50,000.

37 (g) The authorized successor is liable to the successors of the decedent, including any  
38 personal representative subsequently appointed for the decedent's estate, for any breach of  
39 fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer a  
40 small asset and causing injury to the entitled successor for a period of three years after the date  
41 of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary  
42 supervisor.

**§44-1A-4. Discharge and release of payor; treatment of real estate in a small estate.**

1 (a) Any person paying or delivering a small asset pursuant to the provisions of this article  
2 is discharged and released to the same extent as if that person dealt with the personal  
3 representative of the decedent. That person is not required to see the application of the small  
4 asset or to inquire into the truth of any statement in the affidavit or the certificate and  
5 authorization of a small estate presented under this article.

6 (b) If any person to whom the certificate and authorization of small estate is presented  
7 refuses to pay or deliver any small asset to the authorized successor, the small asset may be  
8 recovered, or its payment or delivery compelled, and damages may be recovered, on proof of  
9 rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled to  
10 the small asset in the magistrate court or circuit court of this state having jurisdiction.

11 (c) For any real estate or interest in real property of the decedent which is reported on  
12 the recorded affidavit provided in this article, the provisions of §41-5-19 and §41-5-20 of this  
13 code shall apply, and any will attached to and tendered with the affidavit shall be deemed to be  
14 duly admitted to probate.

15 (d) Nothing in this article releases or discharges any claim which a creditor may have  
16 against the decedent, the decedent's estate, or the assets of the decedent, and creditors of a

17 small estate has the same rights provided under the provisions of §44-2-27 and §44-3A-33 of  
18 this code as against distributees and legatees.

**§44-1A-5. Construction of article.**

1 (a) The remedies provided by this article are in addition to, and not in exclusion of, any  
2 other remedies provided by the laws of this state.

3 (b) For any will attached to and tendered with the affidavit provided in this article, the  
4 provisions of §41-5-11 of this code apply in like manner as if the will had been probated by an  
5 order of the county commission entered on the date of the issuance of the certificate and  
6 authorization of a small estate by the county clerk or fiduciary supervisor.

7 (c) Nothing in this article may be construed to affect or limit the right of a surviving  
8 spouse of a decedent who dies domiciled in this state to his or her elective share as provided in  
9 §42-3-1 *et seq.* of this code.

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

*Mark Raymond*  
.....  
Chairman, Senate Committee

*Dean Jeffries*  
.....  
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

*Joe Orrin*  
.....  
Clerk of the Senate

*Steve Harrison*  
.....  
Clerk of the House of Delegates

*C. P. Br...*  
.....  
President of the Senate

*Ray Hoke*  
.....  
Speaker of the House of Delegates

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2021 APR 15 P 3:40

FILED

The \_\_\_\_\_ within \_\_\_\_\_ is approved \_\_\_\_\_ this  
the 15<sup>th</sup> .....  
Day of April ..... 2021.

*James Justice*  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 07 2021

Time 3:15 pm