Committee Substitute
for
Senate Bill 80

BY SENATORS TRUMP AND SWOPE

[Passed April 2, 2021; in effect 90 days from passage (July 1, 2021)]
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)]
AN ACT to amend and reenact §44-1-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §44-1A-1, §44-1A-2, §44-1A-3, §44-1A-4, and §44-1A-5, all relating to payment of small sums to spouse or distributees of decedents upon whose estates there have been no qualifications; allowing the administration of small estates containing under $50,000 in personal property and under $100,000 in real property by affidavit and without appointment of a personal representative; providing for a short title; providing for definitions; identifying affidavit contents and form; establishing duties of fiduciary supervisor and clerk of the county commission; setting forth requirements for death certificate, proof of residence, and bond; setting forth form of affidavit; providing for issuance of certificates and authorization of small estates; setting forth requirements for objections by interested parties and revocation of certificate and authorization; rescinding of certificates and authorization when determination is made that estate does not qualify; detailing methods for payment or delivery of small assets to authorized successors; discharging and releasing payors; setting forth fiduciary duty of authorized successor; detailing treatment 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.

(a) When the State of West Virginia, any of its political subdivisions, the United States, or any employer owes wages, salary, pension payments, or money allowed for burial expenses to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the amount owed does not exceed $5,000, the State of West Virginia, any of its political subdivisions, the United States, or the decedent's employer, after 120 days from the death of the decedent, may pay the amount owed to the decedent's surviving spouse, if any; and if no
spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect.

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

(c) When any person holds an asset or property on behalf of or owed to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the value of that asset or property of the decedent does not exceed $5,000, including a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle, after 120 days from the death of the decedent, that person may pay the amount owed to or transfer the asset or property to the decedent’s surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect. As used in this section, “person” includes a bank, banking institution, credit union, or West Virginia Division of Motor Vehicles.
(d) Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on the account of the property to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see the 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.

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

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

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

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

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

(4) “Small estate” means a probate estate of a decedent who died domiciled in this state in which: (A) The total aggregate fair market value, on the decedent’s date of death, of small
assets does not exceed $50,000; and (B) the total aggregate fair market value on the
decedent’s date of death of all real estate or interests in real property situate in this state of
which the decedent owned or was seized or possessed does not exceed $100,000, excluding
any real estate of the decedent which was held in any nonprobate form. For the purposes of this
article, the fair market value of real estate shall be presumed to be 167 percent of the current
assessed value of the real estate on the land books as reported by the assessor of the county in
which the real estate is situate.

(5) “Successor” means any person, other than a creditor, who is nominated as a
personal representative or executor under the provisions of the will of the decedent, or who is
entitled under the provisions of the decedent’s will or the laws of intestate descent and
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.

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

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

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

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

(3) Whether the decedent had any known will, with the original of the known will to be
attached to the affidavit and tendered for recording in the county as long as the will is in due and
proper form for probate as a will in this state, or whether the decedent died intestate with no
known will;
(4) A listing of the names, current addresses, and relationship to the decedent of any
person nominated as a personal representative under the known will, together with a listing of
the names, current addresses, and relationship to the decedent of the beneficiaries under the
known will entitled to the estate or assets of the decedent. If there is no known will of the
decedent, a listing of the names, current addresses, and relationship to the decedent of all of
the intestate heirs-at-law and distributees of the decedent determined under the laws of
intestate descent and distribution of this state;
(5) That the decedent’s entire personal probate estate as of the date of the decedent’s
death, wherever located, consists only of small assets and the aggregate fair market value of all
of the small assets does not exceed $50,000, together with a description or itemization of the
small assets with an estimate of value, if known or ascertainable;
(6) Whether the decedent died seized and possessed of any probate real estate or
interests in probate real property situate in this state and if so, that the aggregate fair market
value of all of the real estate or interests in real property situate in this state does not exceed
$100,000, together with a description of the real estate, the county in which it is situate, its
assessed value for tax purposes, and its fair market value at the decedent’s date of death;
(7) That if the successor is nominated as a personal representative or executor under
the provisions of the will of the decedent, at least 30 days have elapsed since the decedent’s
date of death and no application for the appointment of a personal representative for the
decedent is pending or has been granted in any jurisdiction. If the successor is not nominated
as a personal representative or executor under the provisions of the will of the decedent, at
least 60 days have elapsed since the decedent’s date of death, no application for the
appointment of a personal representative for the decedent is pending or has been granted in
any jurisdiction, and no affidavit of small estate has been filed by a successor nominated as a personal representative or executor under the provisions of the will of the decedent; and

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

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

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

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

IN THE COUNTY COMMISSION OF _________ COUNTY, WEST VIRGINIA

RE: THE ESTATE OF _______________________

DOD: _______________________

AFFIDAVIT FOR SMALL ESTATE

STATE OF ________________,

COUNTY OF ________________, to-wit:
I, ________________________, being a Successor of the Decedent identified below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the best of my knowledge and belief as follows:

1. My name is ________________________, and my current address is

2. The Decedent, ________________________, died on ________________ (date of death), a resident of ________________ County, State of West Virginia, with his/her usual residence being _________________________.

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

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

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

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

a. Name: ________________________
   Address: ________________________

b. Name: ________________________
   Address: ________________________
Pursuant to the provisions of the above referenced Will of the Decedent, the following persons are the named beneficiaries of the estate of the Decedent:

a. Name: ________________________________
   Address: ________________________________
   Relationship to Decedent: __________________
   Share or percentage or particular item: ________________

b. Name: ________________________________
   Address: ________________________________
   Relationship to Decedent: __________________
   Share or percentage or particular item: ________________

c. Name: ________________________________
   Address: ________________________________
   Relationship to Decedent: __________________
   Share or percentage or particular item: ________________

d. Name: ________________________________
   Address: ________________________________
   Relationship to Decedent: __________________
   Share or percentage or particular item: ________________

e. Name: ________________________________
   Address: ________________________________
   Relationship to Decedent: __________________
   Share or percentage or particular item: ________________
4. INTESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

At the date of death, the Decedent died intestate with no known will. The Decedent left as his/her heirs-at-law and distributees in accordance with the laws of intestate descent and distribution of the State of West Virginia the following persons:

a. Name: ____________________ 
Address: ____________________ 
Relationship to Decedent: ____________________ 
Share or percentage: ____________________ 

b. Name: ____________________ 
Address: ____________________ 
Relationship to Decedent: ____________________ 
Share or percentage: ____________________ 

c. Name: ____________________ 
Address: ____________________ 
Relationship to Decedent: ____________________ 
Share or percentage: ____________________ 

d. Name: ____________________ 
Address: ____________________ 
Relationship to Decedent: ____________________ 
Share or percentage: ____________________ 

e. Name: ____________________ 
Address: ____________________ 
Relationship to Decedent: ____________________ 
Share or percentage: ____________________
5. The Decedent’s entire personal probate estate, as of the date of the Decedent’s death, wherever located, consists only of small assets and the aggregate fair market value of the small assets does not exceed $50,000. The small assets of the Decedent are described and itemized as follows:

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

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(If more space is needed, attach additional page(s) to affidavit)
7. ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who was nominated as a personal representative or executor under the provisions of the above Will of the Decedent, at least 30 days have elapsed since the Decedent’s date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction;

or

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

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

Witness my hand and seal this ___ day of ____________, 20__.

______________________________.

Signature of Affiant/Successor

Taken, subscribed, and sworn to before me the undersigned authority by _______________, this ___ day of ____________, 20__.

{seal}

My Commission expires: ________________________.
(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
provide an accounting and report of all payments or deliveries made of the small assets of the
decedent.

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

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

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

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

(c) The authorized successor may discharge his or her fiduciary duty concerning the
payment or delivery of the small asset or assets by:
(1) Applying the small asset in payment of the administrative costs of obtaining the certificate and authorization of a small estate under this article, the funeral expenses of the decedent, or the claims of any known or ascertainable creditors of the decedent as provided by the laws of the State of West Virginia;

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

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

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

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

(f) The payment or delivery of a small asset made in good faith to, or by the authorized successor, and upon an affidavit filed in good faith and upon reasonable premises by the authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of
the small assets constituting the small estate of the decedent is subsequently found to exceed $50,000.

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

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

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

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

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

(d) Nothing in this article releases or discharges any claim which a creditor may have against the decedent, the decedent’s estate, or the assets of the decedent, and creditors of a
small estate has the same rights provided under the provisions of §44-2-27 and §44-3A-33 of this code as against distributees and legatees.

§44-1A-5. Construction of article.

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

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

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

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The 15th day of April, 2021, is approved this 2021.

Governor