

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 414**

6 (By Senators Prezioso, Edgell and Plymale)

7 _____
8 [Originating in the Committee on Finance;
9 reported February 18, 2014.]
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11
12 A BILL to amend and reenact §11-11-7 of the Code of West Virginia,
13 1931, as amended; and to amend and reenact §44-1-14 of said
14 code, all relating to eliminating the filing of a nonprobate
15 inventory form along with the estate appraisement filing with
16 the Tax Commissioner; providing for the filing of the
17 nonprobate inventory form along with the estate appraisement
18 filing with the clerk of the county commission or fiduciary
19 supervisor only; providing for confidentiality of nonprobate
20 inventory form; and specifying effective dates.

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

22 That §11-11-7 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that §44-1-14 of said code be amended
24 and reenacted, all to read as follows:

1 **CHAPTER 11. TAXATION.**

2 **ARTICLE 11. ESTATE TAXES.**

3 **§11-11-7. Nonprobate inventory of estates; penalties.**

4 (a) The personal representative of every resident decedent who
5 owned or had an interest in any nonprobate personal property, and
6 the personal representative of every nonresident decedent who owned
7 or had an interest in any nonprobate personal property which is a
8 part of the taxable estate located in West Virginia, shall, under
9 oath, list and appraise on a nonprobate inventory form prescribed
10 by the Tax Commissioner all tangible and intangible nonprobate
11 personal property owned by the decedent or in which the decedent
12 had an interest, at its fair market value on the date of the
13 decedent's death. The nonprobate personal property to be included
14 on the nonprobate inventory form includes, but is not limited to,
15 the following:

16 (1) ~~Personalty~~ Personal property held as joint tenants with
17 right of survivorship with one or more third parties;

18 (2) ~~Personalty~~ Personal property payable on the death of the
19 decedent to one or more third parties;

20 (3) ~~Personalty~~ Personal property held by the decedent as a
21 life tenant;

22 (4) Insurance on the decedent's life payable to beneficiaries
23 other than the executor or administrator of the decedent's estate;

24 (5) Powers of appointment;

1 (6) Annuities;

2 (7) Transfers during the decedent's life in which any
3 beneficial interest passes by trust or otherwise to another person
4 by reason of the death of the decedent;

5 (8) Revocable transfers in trust or otherwise;

6 (9) Taxable gifts under Section 2503 of the United States
7 Internal Revenue Code of 1986; and

8 (10) All other nonprobate ~~personalty~~ personal property
9 included in the federal gross estate of the decedent.

10 (b) For purposes of this section, "nonprobate personal
11 property" means all property which does not pass by operation of
12 the decedent's will or by the laws of intestate descent and
13 distribution or is otherwise not subject to administration in a
14 decedent's estate at common law.

15 (c) The personal representative shall prepare the nonprobate
16 inventory form and file it, together with the appraisement form
17 required by section fourteen, article one, chapter forty-four of
18 this code, for estates of decedents dying on or after ~~the~~
19 ~~thirteenth day of July, 2001~~ July 13, 2001, with the clerk of the
20 county commission or the fiduciary supervisor within ninety days of
21 the date of qualification of the personal representative in this
22 state: *Provided*, That for estates of decedents dying on or after
23 ~~the said thirteenth day of July, 2001~~ July 13, 2001, but before the
24 date the amendments to this section become effective, the

1 requirement to file the nonprobate inventory form with the clerk or
2 supervisor ~~shall apply~~ applies only if that form has not already
3 been filed with Tax Commissioner.

4 (d) The nonprobate inventory form shall be maintained and
5 preserved by the clerk of the county commission or the fiduciary
6 supervisor, but shall not be recorded in the records of the clerk
7 of the county commission. The nonprobate inventory form is
8 confidential tax return information subject to the provisions of
9 section five-d, article ten, chapter eleven of this code and may
10 not be disclosed by the clerk of the county commission and his or
11 her officers and employees or former officers and employees.
12 Nothing in this section may be construed to hinder, abrogate or
13 prevent disclosure of information as authorized in section
14 thirty-five, article eleven, chapter eleven of this code.

15 ~~(d)~~ (e) Any personal representative who fails to comply with
16 the provisions of this section, without reasonable cause, is guilty
17 of a misdemeanor and, upon conviction thereof, shall be fined not
18 less than ~~twenty-five dollars~~ \$25 nor more than ~~five hundred~~
19 ~~dollars~~ \$500.

20 **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

21 **ARTICLE 1. PERSONAL REPRESENTATIVES.**

22 **§44-1-14. Appraisement of real estate and probate personal**
23 **property of decedents; disposition; hiring of**
24 **experts.**

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

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

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

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

22 (c) Any real estate or interest in real estate so appraised
23 must be identified with particularity and description. The personal
24 representative shall identify the source of title in the decedent

1 and the location of the realty for purposes of real property ad
2 valorem taxation.

3 (d) For purposes of this section, the term "probate personal
4 property" means all property which passes by or under the
5 decedent's will or by the laws of intestate descent and
6 distribution or is otherwise subject to administration in a
7 decedent's estate under common law.

8 (e) The personal representative shall complete, under oath, a
9 questionnaire included in the appraisal form designed by the Tax
10 Commissioner for the purpose of reporting ~~to the Tax Commissioner~~
11 ~~whether the estate of the decedent is subject to estate tax as~~
12 ~~provided in article eleven, chapter eleven of this code~~ and whether
13 the decedent owned or had an interest in any nonprobate personal
14 property: *Provided*, That the Tax Commissioner shall design a
15 questionnaire that is as much as possible phrased in understandable
16 English.

17 (f) The appraisal form ~~must~~ shall be executed and signed by
18 the personal representative. The original appraisal form and two
19 of its copies ~~thereof~~, together with the completed and notarized
20 nonprobate inventory form required by section seven, article
21 eleven, chapter eleven of this code, shall be returned to the clerk
22 of the county commission by whom the personal representative was
23 appointed or to the fiduciary supervisor within ninety days of the
24 date of qualification of the personal representative. The clerk or

1 supervisor shall inspect the appraisalment form to determine whether
2 it is in proper form. If the appraisalment form is returned to a
3 fiduciary supervisor, within ten days after being received and
4 approved, the supervisor shall deliver the documents to the clerk
5 of the county commission. Upon receipt of the appraisalment form,
6 the clerk of the county commission shall record it with the
7 certificate of approval of the supervisor ~~and mail a certified copy~~
8 ~~of the appraisalment form, together with the unrecorded nonprobate~~
9 ~~inventory form, to the Tax Commissioner.~~ The date of return of an
10 appraisalment form must be entered by the clerk of the county
11 commission in his or her record of fiduciaries. The nonprobate
12 inventory form shall be maintained and preserved by the clerk of
13 the county commission or the fiduciary supervisor, but shall not be
14 recorded in the records of the clerk of the county commission. The
15 nonprobate inventory form ~~shall be considered~~ is confidential tax
16 return information subject to the provisions of section five-d,
17 article ten, chapter eleven of this code and may not be disclosed
18 by the clerk of the county commission and his or her officers and
19 employees or former officers and employees. ~~except to the Tax~~
20 ~~Commissioner as provided in this section~~ Nothing in this section
21 ~~shall~~ may be construed to hinder, abrogate or prevent disclosure of
22 information as authorized in section thirty-five, article eleven,
23 ~~of said~~ chapter eleven of this code.

24 (g) An executed and signed appraisalment form is prima facie

1 evidence:

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

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

4 (3) That the property was received by the personal
5 representative.

6 (h) Any personal representative who refuses or declines,
7 without reasonable cause, to comply with the provisions of this
8 section is guilty of a misdemeanor and, upon conviction thereof,
9 shall be fined not less than \$25 nor more than \$500.

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

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