

1 **H. B. 4398**

2
3 (By Delegates Boggs and Reynolds)

4 [By Request of the Division of Tax]

5 [Introduced February 4, 2014; referred to the
6 Committee on the Judiciary then Finance.]

7
8
9
10 A BILL to amend and reenact §11-11-7 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §44-1-14 of said
12 code, all relating to eliminating the filing of nonprobate
13 inventory with the Tax Commissioner for decedents dying on and
14 after July 1, 2014; providing the filing of a nonprobate
15 inventory with the clerk of the county commission or fiduciary
16 representative only; providing criminal offenses and penalties
17 for failure to comply; and specifying effective dates.

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

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

22 **CHAPTER 11. TAXATION.**

23 **ARTICLE 11. ESTATE TAXES.**

1 **§11-11-7. Nonprobate inventory of estates; penalties.**

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

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

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

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

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

22 (5) Powers of appointment;

23 (6) Annuities;

24 (7) Transfers during the decedent's life in which any

1 beneficial interest passes by trust or otherwise to another person
2 by reason of the death of the decedent;

3 (8) Revocable transfers in trust or otherwise;

4 (9) Taxable gifts under section 2503 of the United States
5 Internal Revenue Code of 1986; and

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

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

13 (c) The personal representative shall prepare the nonprobate
14 inventory form and file it, together with the appraisement form
15 required by section fourteen, article one, chapter forty-four of
16 this code for estates of decedents dying on or after July 13, 2001,
17 with the clerk of the county commission or the fiduciary supervisor
18 within ninety days of the date of qualification of the personal
19 representative in this state: *Provided*, That for estates of
20 decedents dying on or after ~~the said thirteenth day of~~ July 13,
21 2001, but before the date the amendments to this section become
22 effective, the requirement to file the nonprobate inventory form
23 with the clerk or supervisor ~~shall~~ may apply only if that form has
24 not already been filed with Tax Commissioner.

1 (d) Any personal representative who fails to comply with the
2 provisions of this section, without reasonable cause, is guilty of
3 a misdemeanor and, upon conviction thereof, shall be fined not less
4 than \$25 nor more than \$500.

5 (e) On and after July 1, 2014, the provisions of this section
6 no longer apply.

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

8 **ARTICLE 1. PERSONAL REPRESENTATIVES.**

9 **§44-1-14. Appraisement of real estate and probate personal**
10 **property of decedents; disposition; and hiring of**
11 **experts.**

12 (a) The personal representative of an estate of a deceased
13 person shall appraise the deceased's real estate and personal
14 probate property, or any real estate or personal probate property
15 in which the deceased person had an interest at the time of his or
16 her death, as provided in this section.

17 (b) After having taken the appropriate oath, the personal
18 representative shall, on the appraisement form prescribed by the
19 Tax Commissioner, list the following items owned by the decedent or
20 in which the decedent had an interest and the fair market value of
21 the items at the date of the decedent's death:

22 (1) All probate and nonprobate real estate including, but not
23 limited to, real estate owned by the decedent, as a joint tenant

1 with right of survivorship with one or more parties, as a life
2 estate, subject to a power of appointment of the decedent, or in
3 which any beneficial interest passes by trust or otherwise to
4 another person by reason of the death of the decedent; and

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

10 (c) Any real estate or interest in real estate so appraised
11 must be identified with particularity and description. The personal
12 representative shall identify the source of title in the decedent
13 and the location of the realty for purposes of real property ad
14 valorem taxation.

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

20 (e) The personal representative shall complete, under oath, a
21 questionnaire included in the appraisal form designed by the Tax
22 Commissioner for the purpose of reporting to the Tax Commissioner
23 whether the estate of the decedent is subject to estate tax as
24 provided in article eleven, chapter eleven of this code and whether

1 the decedent owned or had an interest in any nonprobate personal
2 property: *Provided*, That the Tax Commissioner shall design a
3 questionnaire that is as much as possible phrased in understandable
4 English. *Provided further*: That for estates of decedents dying on
5 and after July 1, 2014, the personal representative may no longer
6 complete the form provided in this subsection and instead comply
7 with subsection (k) of this section.

8 (f) The appraisalment form ~~must~~ shall be executed and signed by
9 the personal representative. The original appraisalment form and two
10 of its copies ~~thereof~~, together with the completed and notarized
11 nonprobate inventory form required by section seven, article
12 eleven, chapter eleven of this code, shall be returned to the clerk
13 of the county commission by whom the personal representative was
14 appointed or to the fiduciary supervisor within ninety days of the
15 date of qualification of the personal representative. The clerk or
16 supervisor shall inspect the appraisalment form to determine whether
17 it is in proper form. If the appraisalment form is returned to a
18 fiduciary supervisor, within ten days after being received and
19 approved, the supervisor shall deliver the documents to the clerk
20 of the county commission. Upon receipt of the appraisalment form,
21 the clerk of the county commission shall record it with the
22 certificate of approval of the supervisor and mail a certified copy
23 of the appraisalment form, together with the unrecorded nonprobate
24 inventory form, to the Tax Commissioner. The date of return of an

1 appraisal form must be entered by the clerk of the county
2 commission in his or her record of fiduciaries. The nonprobate
3 inventory form ~~shall be considered~~ is confidential tax return
4 information subject to the provisions of section five-d, article
5 ten, chapter eleven of this code and may not be disclosed by the
6 clerk of the county commission and his or her officers and
7 employees or former officers and employees, except to the Tax
8 Commissioner as provided in this section. Nothing in this section
9 ~~shall~~ may be construed to hinder, abrogate, or prevent disclosure
10 of information as authorized in section thirty-five, article eleven
11 of ~~said~~ this chapter.

12 (g) An executed and signed appraisal form is prima facie
13 evidence:

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

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

16 (3) That the property was received by the personal
17 representative.

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

22 (i) Every personal representative has authority to retain the
23 services of an expert as may be appropriate to assist and advise
24 him or her concerning his or her duties in appraising any asset or

1 property pursuant to the provisions of this section. An expert so
2 retained shall be compensated a reasonable sum by the personal
3 representative from the assets of the estate. The compensation and
4 its reasonableness is subject to review and approval by the county
5 commission, upon recommendation of the fiduciary supervisor.

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

12 (k) Beginning on and after July 1, 2014:

13 (1) The personal representative of every resident decedent who
14 owned or had an interest in any nonprobate personal property, and
15 the personal representative of every nonresident decedent who owned
16 or had an interest in any nonprobate personal property which is a
17 part of the estate located in West Virginia, shall, under oath,
18 list and appraise on a nonprobate inventory form, all tangible and
19 intangible nonprobate personal property owned by the decedent or in
20 which the decedent had an interest, at its fair market value on the
21 date of the decedent's death. The nonprobate personal property to
22 be included on the nonprobate inventory form includes, but is not
23 limited to, the following:

24 (i) Personal property held as joint tenants with right of

- 1 survivorship with one or more third parties;
- 2 (ii) Personal property payable on the death of the decedent to
3 one or more third parties;
- 4 (iii) Personal property held by the decedent as a life tenant;
- 5 (iv) Insurance on the decedent's life payable to beneficiaries
6 other than the executor or administrator of the decedent's estate;
- 7 (v) Powers of appointment;
- 8 (vi) Annuities;
- 9 (vii) Transfers during the decedent's life in which any
10 beneficial interest passes by trust or otherwise to another person
11 by reason of the death of the decedent;
- 12 (viii) Revocable transfers in trust or otherwise;
- 13 (ix) Taxable gifts under section 2503 of the United States
14 Internal Revenue Code of 1986; and
- 15 (x) All other nonprobate personal property included in the
16 federal gross estate of the decedent.
- 17 (2) For purposes of this section, "nonprobate personal
18 property" means all property which does not pass by operation of
19 the decedent's will or by the laws of intestate descent and
20 distribution or is otherwise not subject to administration in a
21 decedent's estate at common law.
- 22 (3) The personal representative shall prepare the nonprobate
23 inventory form and file it, together with the appraisement form
24 required by this section for estates of decedents dying on or after

1 July 1, 2014, with the clerk of the county commission or the
2 fiduciary supervisor within ninety days of the date of
3 qualification of the personal representative in this state.

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

NOTE: The purpose of this bill is to eliminate the nonprobate appraisal filing with the State Tax Commissioner and require that it only be filed with the clerk of the county commission or fiduciary representative.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.