

**Senate Bill No. 376**

(By Senator Trump)

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[Introduced January 30, 2015; referred to the Committee on the Judiciary.]

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9 A BILL to repeal §44-2-2 of the Code of West Virginia, 1931, as amended; to amend said code by  
10 adding thereto a new section, designated §16-5-9a; to amend and reenact §44-1-14a of said  
11 code; to amend said code by adding thereto a new section, designated §44-1-30; and to  
12 amend and reenact §44-2-1 of said code, all relating generally to administration of estates and  
13 trusts; repealing redundant provision requiring fiduciary commissioner to publish notice of  
14 time for receiving claims against decedents’ estates; requiring legal residences to be included  
15 on certificates of death; reducing claim period from ninety to sixty days; increasing value of  
16 estates for which a fiduciary commissioner need not be appointed; and authorizing clerk of  
17 the county commission to require a certified copy of a decedent's certificate of death or other  
18 proof of death and residence.

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

20 That §44-2-2 of the Code of West Virginia, 1931, as amended, be repealed; that said code  
21 be amended by adding thereto a new section, designated §16-5-9a; that §44-1-14a of said code be  
22 amended and reenacted; that said code be amended by adding thereto a new section, designated

1 §44-1-30; and that §44-2-1 of said code be amended and reenacted, all to read as follows:

2 **CHAPTER 16. PUBLIC HEALTH.**

3 **ARTICLE 5. VITAL STATISTICS.**

4 **§16-5-9a. Legal residences to be included on certificates of death.**

5 In order to assist clerks of county commission fulfill their responsibilities under chapter  
6 forty-four of this code, the State Registrar shall require persons completing certificates of death, to  
7 include any known legal residences of the decedent, if different than the place of death.

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

9 **ARTICLE 1. PERSONAL REPRESENTATIVES.**

10 **§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of**  
11 **personal representative.**

12 (a) Within thirty days of the filing of the appraisalment of any estate as required in section  
13 fourteen of this article, the clerk of the county commission shall publish, once a week for two  
14 successive weeks, in a newspaper of general circulation within the county of the administration of  
15 the estate, a notice, which is to include:

16 (1) The name of the decedent;

17 (2) The name and address of the county commission before whom the proceedings are  
18 pending;

19 (3) The name and address of the personal representative;

20 (4) The name and address of any attorney representing the personal representative;

21 (5) The name and address of the fiduciary commissioner, if any;

22 (6) The date of first publication;

1           (7) A statement that claims against the estate must be filed in accordance with the provisions  
2 of article two or article three-a of this chapter;

3           (8) A statement that any person seeking to impeach or establish a will must make a complaint  
4 in accordance with the provisions of section eleven, twelve or thirteen, article five, chapter forty-one  
5 of this code;

6           (9) A statement that an interested person objecting to the qualifications of the personal  
7 representative or the venue or jurisdiction of the court must be filed with the county commission  
8 within three months after the date of first publication or thirty days of service of the notice,  
9 whichever is later; and

10          (10) If the appraisal of the assets of the estate shows the value to be \$100,000 or less,  
11 exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that  
12 there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a  
13 statement substantially as follows: "Settlement of the estate of the following named decedents will  
14 proceed without reference to a fiduciary commissioner unless within ~~ninety~~ sixty days from the first  
15 publication of this notice a reference is requested by a party in interest or an unpaid creditor files a  
16 claim and good cause is shown to support reference to a fiduciary commissioner". If a party in  
17 interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid  
18 creditor files a claim, no further notice to creditors shall be published in the newspaper, and the  
19 personal representative shall be required to pay no further fees, except to the fiduciary commissioner  
20 for conducting any hearings, or performing any other duty as a fiduciary commissioner. The time  
21 period for filing claims against the estate shall expire upon the time period set out in the notice to  
22 creditors published by the clerk of the county commission as required in this subsection (a). In the

1 event that an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the  
2 claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration  
3 of the estate as requested by the interested party.

4 (b) If no appraisalment is filed within the time period established pursuant to section fourteen  
5 of this article, the county clerk shall send a notice to the personal representative by first class mail,  
6 postage prepaid, indicating that the appraisalment has not been filed. Notwithstanding any other  
7 provision of this code to the contrary, the county clerk shall publish the notice required in subsection  
8 (a) of this section within six months of the qualification of the personal representative.

9 (c) The personal representative shall promptly make a diligent search to determine the names  
10 and addresses of creditors of the decedent who are reasonably ascertainable.

11 (d) The personal representative shall, within ninety days after the date of first publication,  
12 serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail,  
13 postage prepaid, or by personal service on the following persons:

14 (1) If the personal representative is not the decedent's surviving spouse and not the sole  
15 beneficiary or sole heir, the decedent's surviving spouse, if any;

16 (2) If there is a will and the personal representative is not the sole beneficiary, any  
17 beneficiaries;

18 (3) If there is not a will and the personal representative is not the sole heir, any heirs;

19 (4) The trustee of any trust in which the decedent was a grantor, if any; and

20 (5) All creditors identified under subsection (c) of this section, other than a creditor who filed  
21 a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

22 (e) Any person interested in the estate who objects to the qualifications of the personal

1 representative or the venue or jurisdiction of the court, shall file notice of an objection with the  
2 county commission within ninety days after the date of the first publication as required in subsection  
3 (a) of this section or within thirty days after service of the notice as required by subsection (d) of this  
4 section, whichever is later. If an objection is not timely filed, the objection is forever barred.

5 (f) A personal representative acting in good faith is not personally liable for serving notice  
6 under this section, notwithstanding a determination that notice was not required by this section. A  
7 personal representative acting in good faith who fails to serve the notice required by this section is  
8 not personally liable. The service of the notice in accordance with this subsection may not be  
9 construed to admit the validity or enforceability of a claim.

10 (g) The clerk of the county commission shall collect a fee of \$20 for the publication of the  
11 notice required in this section.

12 (h) For purposes of this section, the term beneficiary means a person designated in a will to  
13 receive real or personal property.

14 **§44-1-30. Death certificate or other proof of death and residence may be required.**

15 The clerk of the county commission may require a certified copy of a decedents death  
16 certificate or other proof of death and residence prior to fulfilling the clerk's responsibilities under  
17 this chapter.

18 **ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF**  
19 **DECEDENTS.**

20 **§44-2-1. Reference of decedents' estates; proceedings thereon.**

21 (a) Upon the return of the appraisal by the personal representative to the county clerk,  
22 the estate of his or her decedent, by order of the county commission, must be referred to a fiduciary

1 commissioner for proof and determination of debts and claims, establishment of their priority,  
2 determination of the amount of the respective shares of the legatees and distributes, and any other  
3 matter necessary for the settlement of the estate: *Provided*, That in counties where there are two or  
4 more commissioners, the estates of decedents must be referred to the commissioners in rotation, so  
5 there may be an equal division of the work. Notwithstanding any other provision of this code to the  
6 contrary, a fiduciary commissioner may not charge to the estate a fee greater than \$300 and expenses  
7 for the settlement of an estate, except upon: (I) Approval of the personal representative; or (ii) a  
8 determination by the county commission that the fee is based upon the actual time spent and actual  
9 services rendered pursuant to a schedule of fees or rate of compensation for fiduciary commissioners  
10 promulgated by the commission in accordance with the provisions of section nine, article one,  
11 chapter fifty-nine of this code.

12 (b) If the personal representative delivers to the clerk an appraisalment of the assets of the  
13 estate showing their value to be ~~\$100,000~~ \$200,000 or less, exclusive of real estate ~~specifically~~  
14 ~~devised~~ and nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the  
15 probate estate and that the beneficiary is competent at law, the clerk shall record the appraisalment.  
16 If an unpaid creditor files a claim against the estate, the personal representative has twenty days after  
17 the date of the filing of a claim against the estate of the decedent to approve or reject the claim before  
18 the estate is referred to a fiduciary commissioner. If the personal representative approves all claims  
19 as filed, then no reference may be made.

20 The personal representative shall, within a reasonable time after the date of recordation of  
21 the appraisalment: (I) File a waiver of final settlement in accordance with the provisions of section  
22 twenty-nine of this article; or (ii) make a report to the clerk of his or her receipts, disbursements and

1 distribution and submit an affidavit stating that all claims against the estate for expenses of  
2 administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver  
3 of final settlement or report, the clerk shall record the waiver or report and mail copies to each  
4 beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the report for ten  
5 days to allow any beneficiary or creditor to appear before the county commission to request reference  
6 to a fiduciary commissioner. The clerk shall collect a fee of \$10 for recording and mailing the  
7 waiver of final settlement or report.

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

15           (c) For purposes of this section, the term beneficiary means a person designated in a will to  
16 receive real or personal property.

NOTE: The purpose of this bill is to improve the process of administering estates. It requires legal residences to be included on certificates of death, when known; reduces claim period from ninety to sixty days; increases value of estates for which a fiduciary commissioner need not be appointed; repeals redundant provision requiring fiduciary commissioner to publish notice of time for receiving claims against decedents estates; and authorizes the clerk of the county commission to require a certified copy of a decedent's certificate of death or other proof of death and residence.

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

§16-5-9a and §44-1-30 are new; therefore, strike-throughs and underscoring have been omitted.