

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2967

BY DELEGATES NELSON AND BOGGS

(BY REQUEST OF THE TAX AND REVENUE DEPARTMENT)

[Introduced March 13, 2017; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §44-3A-3 of the Code of West Virginia, 1931, as amended, relating
2 generally to administration of estates and trusts; transferring to county commissions duty
3 to administer fiduciary supervisor/fiduciary commissioner qualifying test and provide
4 annual training seminar.

Be it enacted by the Legislature of West Virginia

1 That §44-3A-3 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; to read as follows:

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF OF CLAIM.

**§44-3A-3. Office of fiduciary supervisor created; general powers; qualifications; tests for
qualification; training program; salary.**

1 (a) There is hereby created within the county commission an office, designated the
2 fiduciary supervisor, who shall be appointed by order of the commission and whose office, with
3 the consent of the clerk of the county commission, shall be housed within the office of such clerk
4 or shall be housed in such other office as the commission may designate. Such fiduciary
5 supervisor shall at the local option of each such commission, be either a part-time or full-time
6 employee as may be required by the county commission and shall receive such salary as may be
7 fixed by order of the county commission.

8 (b) The fiduciary supervisor shall have general supervision of all fiduciary matters and of
9 the fiduciaries or personal representatives thereof and of all fiduciary commissioners and of all
10 matters referred to such commissioners and shall make all ex parte settlements of the accounts
11 of such fiduciaries except as to those matters referred to fiduciary commissioners for settlement.

12 (c) The county commission shall determine that the person to be appointed as fiduciary
13 supervisor is fully qualified by education or experience, or both, to perform the duties assigned to
14 such office by this chapter or other provisions of this code. Such person shall have the requisite
15 knowledge of the legal issues raised and problems presented by any of the proceedings had and
16 documents filed pursuant to the chapter, the procedures required with respect thereto, the rights

17 of all parties and interested persons with respect to such procedures and the duties to be
18 performed in examining and approving the several and various papers and documents presented
19 to the fiduciary supervisor. ~~The State Tax Commissioner~~ Each county commission shall design
20 and supervise a test to be given to all persons selected or appointed as fiduciary supervisor who
21 are not licensed to practice law in this state, if any, which test shall include such matters as the
22 ~~Tax Commissioner~~ county commission deems appropriate to determine the proficiency,
23 experience, knowledge and skill to perform all of the duties imposed upon or to be imposed upon
24 fiduciary supervisors generally. Such test shall be administered under the authority of the ~~State~~
25 ~~Tax Commissioner~~ county commission by such person or persons as it ~~he or she~~ may designate
26 either at the county wherein the fiduciary supervisor is to serve or at such other place as the ~~Tax~~
27 ~~Commissioner~~ county commission may designate. The results of the test given to any person or
28 persons shall be kept confidential except as to those persons who have completed the same to
29 the satisfaction of the ~~Tax Commissioner~~ county commission and except as to those persons who
30 may desire their individual test results to be made public. ~~Each county commission shall be~~
31 ~~notified as to the names of those persons who have satisfactorily completed such test. The Tax~~
32 ~~Commissioner shall provide for the uniformity of the test to be given and for grading and evaluating~~
33 ~~the results thereof.~~

34 ~~The Tax Commissioner~~ Each county commission that has appointed a fiduciary supervisor
35 who is not licensed to practice law in this state shall at least annually conduct a training program
36 for fiduciary supervisors who are not licensed to practice law in this state. The training program
37 shall be conducted at such times and places and consist of such subjects as the ~~Tax~~
38 ~~Commissioner~~ county commission may determine. All fiduciary supervisors who are not licensed
39 to practice law shall be required to attend such training programs and those supervisors as are
40 so licensed may attend.

41 (d) The fiduciary supervisor shall give bond with good security to be approved by the
42 county commission in an amount equal to the amount posted by the clerk of the county
43 commission in the county wherein such fiduciary supervisor is to serve.

44 (e) Neither the fiduciary supervisor nor any person to whom the duties of fiduciary
45 supervisor have been delegated, in whole or in part (excluding fiduciary commissioners) shall
46 engage in the practice of law, for compensation or otherwise, with respect to the administration
47 of any estate or trust wherein the fiduciary thereof has qualified in his or her county or with respect
48 to any proceedings before him or her or which are or may be referred to a fiduciary commissioner
49 in his or her county. Nor shall a fiduciary commissioner or special fiduciary commissioner engage
50 in the practice of law with respect to matters referred to him or her as such commissioner. Any
51 fiduciary supervisor or person to whom any of the functions or duties of the fiduciary supervisor
52 have been delegated or fiduciary commissioner or special fiduciary commissioner who so
53 engages in the practice of law contrary to the limited prohibitions of this section, shall be removed
54 from his or her office or employment and, in addition thereto, shall be guilty of a misdemeanor
55 and, upon conviction thereof, shall be fined \$1,000.

NOTE: The purpose of this bill is to remove the requirements for the State Tax Commissioner to administer the fiduciary supervisor/fiduciary commissioner qualifying test and annual training seminar. These responsibilities will be given to the respective county commissions.

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