

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 259

BY SENATORS TRUMP AND CLINE

[Introduced February 10, 2017; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §44-1-6, §44-1-7 and §44-1-14a of the Code of West Virginia, 1931,
 2 as amended, all relating to requiring potential administrators of intestate estates to give
 3 bond and take oath in the county commission before being granted the administration;
 4 waiving bond requirements for administrators of intestate estates where grantee is sole
 5 beneficiary or sole distributee of the decedent; and requiring interested parties objecting
 6 to the qualifications of a personal representative or venue to file notice with the county
 7 commission sixty days after the date of first publication.

Be it enacted by the Legislature of West Virginia:

1 That §44-1-6, §44-1-7 and §44-1-14a of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted, all to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-6. Bond and oath; termination of grant in certain cases.

1 At the time of the grant of administration upon the estate of any intestate, the person to
 2 whom it is granted shall, in the ~~court~~ county commission or before the clerk granting it, give bond
 3 and take an oath that the deceased has left no will so far as he or she knows, and that he or she
 4 will faithfully perform the duties of ~~his~~ the office to the best of his or her judgment. If a will of the
 5 deceased be afterwards admitted to record, or if, after administration is granted to a creditor or
 6 other person than a distributee, any distributee who shall not have before refused shall apply for
 7 administration, there may be a grant of probate or administration, after reasonable notice to such
 8 creditor or other person theretofore appointed, in like manner as if the former grant had not been
 9 made, and such former grant shall thereupon cease.

§44-1-7. Penalty of bond.

1 (a) Every bond of an executor or administrator shall be in a penalty equal, at the least, to
 2 the full value of the personal estate of the deceased to be administered; and where there is a will
 3 which authorizes the executor or administrator to sell real estate, or receive the rents and profits
 4 thereof, the bond shall be in a penalty equal, at the least, to the full value both of such personal

5 estate and of such real estate, or of such personal estate and of such rents and profits, as the
6 case may be.

7 (b) It is provided, however, that no bond shall be required of the executor if he or she is
8 also the sole beneficiary of the decedent and no bond shall be required of the administrator if he
9 or she is the sole distributee of the decedent, unless at the time the will is admitted to probate or
10 the administrator is appointed or at any time thereafter, on the application of any person
11 interested, or from the knowledge of the county commission or clerk admitting the will to probate
12 or appointing the administrator, it is deemed proper that bond ought to be given.

13 (c) If on the filing of the inventory or appraisal of the estate it shall appear that the
14 penalty of the bond does not comply as to amount with the foregoing requirements, the court
15 county commission in which, or the clerk before whom, such bond was given, shall immediately
16 notify such executor or administrator of such fact and require of him or her a new or additional
17 bond, and the failure of such executor or administrator to give the same within a reasonable time
18 shall be sufficient cause for his or her removal.

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

1 (a) Within thirty days of the filing of the appraisal of any estate or within one hundred
2 twenty days of the date of qualification of the personal representative if an appraisal is not
3 filed as required in section fourteen of this article, the clerk of the county commission shall publish,
4 once a week for two successive weeks, in a newspaper of general circulation within the county of
5 the administration of the estate, a notice, which is to include:

6 (1) The name of the decedent;

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

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

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

- 11 (5) The name and address of the fiduciary commissioner, if any;
- 12 (6) The date of first publication;
- 13 (7) A statement that claims against the estate must be filed within sixty days of the date of
14 first publication in accordance with article two or article three-a of this chapter;
- 15 (8) A statement that any person seeking to impeach or establish a will must make a
16 complaint in accordance with section eleven, twelve or thirteen, article five, chapter forty-one of
17 this code;
- 18 (9) A statement that an interested person objecting to the qualifications of the personal
19 representative or the venue or jurisdiction of the court must be filed with the county commission
20 within sixty days after the date of first publication or thirty days of service of the notice, whichever
21 is later; and
- 22 (10) If the appraisal of the assets of the estate shows the value to be \$200,000 or
23 less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the
24 clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent
25 at law, a statement substantially as follows: "Settlement of the estate of the following named
26 decedents will proceed without reference to a fiduciary commissioner unless within sixty days
27 from the first publication of this notice a reference is requested by a party in interest or an unpaid
28 creditor files a claim and good cause is shown to support reference to a fiduciary commissioner".
29 If a party in interest requests the fiduciary commissioner to conclude the administration of the
30 estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the
31 newspaper, and the personal representative shall be required to pay no further fees, except to
32 the fiduciary commissioner for conducting any hearings, or performing any other duty as a
33 fiduciary commissioner. The time period for filing claims against the estate shall expire upon the
34 time period set out in the notice to creditors published by the clerk of the county commission as
35 required in this subsection (a). If an unpaid creditor files a claim, the fiduciary commissioner shall
36 conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall

37 conclude the administration of the estate as requested by the interested party.

38 (11) This notice shall be published as a Class II legal advertisement in compliance with
39 the provisions of article three, chapter fifty-nine of this code. The publication of such notice shall
40 be equivalent to personal service on creditors, distributees and legatees.

41 (b) If no appraisal is filed within the time period established pursuant to section
42 fourteen of this article, the county clerk shall send a notice to the personal representative by first
43 class mail, postage prepaid, indicating that the appraisal has not been filed.

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

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

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

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

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

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

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

58 (e) Any person interested in the estate who objects to the qualifications of the personal
59 representative or the venue or jurisdiction of the court, shall file notice of an objection with the
60 county commission within ~~ninety~~ sixty days after the date of the first publication as required in
61 subsection (a) of this section or within thirty days after service of the notice as required by
62 subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is

63 forever barred.

64 (f) A personal representative acting in good faith is not personally liable for serving notice
65 under this section, notwithstanding a determination that notice was not required by this section.

66 A personal representative acting in good faith who fails to serve the notice required by this section
67 is not personally liable. The service of the notice in accordance with this subsection may not be
68 construed to admit the validity or enforceability of a claim.

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

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

NOTE: The purpose of this bill is to require potential administrators of intestate estates to give bond and take oath in the county commission before being granted the administration; waive bond requirements for administrators of intestate estates where the grantee is sole beneficiary or sole distributee of the decedent; and require interested parties objecting to the qualifications of a personal representative or venue to file notice with the county commission sixty days after the date of first publication.

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