

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 164

BY SENATOR TRUMP

[Introduced January 9, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §44-3A-24 of the Code of West Virginia, 1931, as amended, relating
2 to the administrative closing of stale or unprogressed estates.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS
AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.**

§44-3A-24. Reports of delinquent filings.

1 (a) On the last day of December and June of each year every fiduciary commissioner and
2 special fiduciary commissioner shall file with the fiduciary supervisor a list of all estates referred
3 to him or her since the effective date of this section, either generally or for a limited purpose in
4 which any appraisement or other document required to be filed with him or her in a specified time
5 has not been timely filed, stating the document whose filing is delinquent and the date the
6 document was due to be filed: *Provided*, That the commissioner shall omit from the list any estate
7 and any document for whose filing a proper continuance has been granted.

8 (b) On January 5 and July 5 of each year the fiduciary supervisor shall file with the county
9 commission a like list of estates referred to him or her since the effective date of this section in
10 which the filing of any paper is delinquent, and embrace therein the lists required to be filed with
11 him or her on the first day of the month by the various commissioners. In the report filed July 5 of
12 each year the fiduciary supervisor shall further include in the report a list of all estates referred to
13 him or her since the effective date of this section which have not been duly closed within a period
14 of three years from the opening of such estate and in which no progress, or in his or her opinion,
15 unsatisfactory progress, has been made toward settlement, for any cause, within the preceding
16 12 months.

17 (c) The county commission, after consultation with the fiduciary supervisor shall take care
18 to require prompt disposition of all matters and causes reported to it by the semiannual reports
19 required herein of delinquent and unprogressed estates; enter an order in the name of the county

20 commission directing the appointed personal representative to file a statement to show cause
21 why the county commission should not find the personal representative delinquent in his or her
22 administration of the respective estate and should not remove the personal representative from
23 office; administratively close the estate; or take such other action against the personal
24 representative as may be proper.

25 (1) The order to show cause shall be mailed by the fiduciary supervisor to the personal
26 representative at the last known address appearing in the records of the fiduciary supervisor. A
27 copy of the order shall also be mailed to the heirs at law, beneficiaries under the will, any creditors
28 who have filed claims which are not released, any surety on any bond, and any other person
29 interested in the estate at their last known addresses appearing in the records of the fiduciary
30 supervisor.

31 (2) The personal representative shall have 30 days after the mailing of the order to show
32 cause to file properly any delinquent documents required for the administration of the estate or to
33 file a verified statement, under oath, stating why he or she should not be found delinquent in the
34 administration of the respective estate and should not be removed from office or the estate
35 administratively closed.

36 (3) If, within the 30-day time period, the personal representative fails to file properly the
37 delinquent documents, or fails to file a verified statement, or files a verified statement which the
38 fiduciary supervisor upon review finds and determines does not present good cause, the fiduciary
39 supervisor shall give notice of the failure, delinquency, or finding to the county commission, the
40 personal representative, the heirs at law, beneficiaries under the will, any creditors who have filed
41 claims which are not released, any surety on any bond, and any other person interested in the
42 estate and shall advise that the personal representative shall be removed from office and such
43 other appropriate person appointed as personal representative as the county commission may
44 determine or that the estate shall be administratively closed 30 days following the date of the
45 notice at a hearing thereon to be held before the county commission at a date and time fixed for

46 presentation. In addition, on the first Monday of the next month, the fiduciary supervisor shall
47 publish a notice of this action as a Class I-0 legal advertisement.

48 (4) The personal representative or any person interested may file an objection at, or prior
49 to, the time set by the notice for presentation to the county commission. The commission shall
50 proceed to hear the presentation of the proposed removal or closing and findings and hear
51 interested parties, if any appear, and may enter an appropriate order to approve, modify and
52 approve, or refuse to approve, the proposed removal or closing and the findings of the fiduciary
53 supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner
54 generally for supervision or for the purpose of the resolution of any disputed matter. An appeal
55 from the decision of the county commission may, without any formal bill of exceptions, be taken
56 to the circuit court of the county by the personal representative or any interested party. The appeal
57 shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record
58 made before the fiduciary supervisor and the county commission.

59 (d) In addition, the fiduciary supervisor and the fiduciary commissioners, shall be
60 empowered, and where appropriate, shall on their own motion, petition the circuit court to compel
61 compliance with the provisions of this chapter, in the same manner and to the same extent
62 heretofore provided in the case of commissioners of accounts, or by any other proper proceeding.

NOTE: The purpose of this bill is to correct an omission from this section to add that this applies to an estate which has not been duly closed within a period of three years from the opening of the estate.

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