

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 635

BY SENATOR TRUMP

[Introduced January 28, 2020; referred to the
Committee on the Judiciary]

1 A BILL to repeal §44-1-8 of the Code of West Virginia, 1931, as amended; and to amend said
 2 code by adding thereto a new article, designated §44-1A-1, §44-1A-2, §44-1A-3, §44-1A-
 3 4, §44-1A-5, and §44-1A-6, all relating to allowing the administration of small estates
 4 containing under \$50,000 in personal property and under \$100,000 in real property by
 5 affidavit and without appointment of a personal representative; and allowing payment or
 6 delivery of small assets of a decedent to an authorized successor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-8. When executor or administrator not to give bond; when surety not required.

1 [Repealed.]

ARTICLE 1A. WEST VIRGINIA SMALL ESTATE ACT.

§44-1a-1. Short title; Definitions.

1 (a) This article may be cited as the “West Virginia Small Estate Act.”

2 (b) For the purposes of this article, the following definitions apply:

3 “Authorized successor” means the successor of a decedent who files an affidavit and is
 4 certified and authorized by the clerk of the county commission, or the fiduciary supervisor thereof,
 5 pursuant to the provisions of this article.

6 “Person” means any individual, corporation, business trust, fiduciary, estate, trust,
 7 partnership, limited liability company, association, joint venture, government, governmental
 8 subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

9 “Small asset” means any probate personal property or asset belonging or presently
 10 distributable to the decedent having a fair market value on the decedent’s date of death of not
 11 more than \$50,000. A small asset includes, but is not limited to, cash, bank account, savings
 12 institution account, credit union account, certificate of deposit, brokerage account, stock, mutual
 13 fund, security, bond, note, promissory note, obligation, instrument evidencing a debt,

14 indebtedness owed to the decedent, proceeds of life insurance payable to the estate, deposit,
15 refund, tax refund, overpayment, chose in action, or item of tangible personal property including
16 a motor vehicle. A small asset does not include real estate or an interest in real property. A small
17 asset does not include a nonprobate asset of the decedent which would not be subject to
18 administration in the decedent's probate estate.

19 "Small estate" means a probate estate of a decedent who died domiciled in this state in
20 which (1) the total aggregate fair market value on the decedent's date of death of small assets
21 does not exceed \$50,000 and (2) the total aggregate fair market value on the decedent's date of
22 death of all real estate or interests in real property situate in this state of which the decedent
23 owned or was seized or possessed does not exceed \$100,000, excluding any real estate of the
24 decedent which was held in any nonprobate form. For the purposes of this article, the fair market
25 value of real estate shall be presumed to be 167 percent of the current assessed value of the real
26 estate on the land books as reported by the assessor of the county in which the real estate is
27 situate.

28 "Successor" means any person, other than a creditor, who is nominated as a personal
29 representative or executor under the provisions of the will of the decedent, or who is entitled under
30 the provisions of the decedent's will or the laws of intestate descent and distribution of this state
31 to a part or all of a small asset of the decedent.

§44-1a-2. Administration of small estate upon affidavit and without appointment.

1 (a) Notwithstanding anything in this code to the contrary, a small estate of a decedent who
2 dies domiciled in this state may be administered upon affidavit and without the appointment of a
3 personal representative, and the small assets of the decedent may be paid or delivered to the
4 authorized successor as provided in this article.

5 (b) Any successor of a decedent who dies domiciled in this state may execute and tender
6 for recording to the clerk of the county commission, or the fiduciary supervisor thereof, of the
7 county in this state which would have jurisdiction over the probate concerning the estate and

8 assets of such decedent an affidavit made upon oath and under penalty of perjury concerning the
9 small estate setting forth in substance:

10 (1) The name and current address of the affiant;

11 (2) The name of the decedent, the date of death of the decedent, and the address and
12 residence of the decedent at his or her death;

13 (3) Whether the decedent had any known will, with the original of the known will to be
14 attached to the affidavit and tendered for recording in the county as long as the will is in due and
15 proper form for probate as a will in this state, or whether the decedent died intestate with no known
16 will;

17 (4) A listing of the names, current addresses, and relationship to the decedent of any
18 person nominated as a personal representative under the known will together with a listing of the
19 names, current addresses, and relationship to the decedent of the beneficiaries under the known
20 will entitled to the estate or assets of the decedent, or if there is no known will of the decedent, a
21 listing of the names, current addresses, and relationship to the decedent of all of the intestate
22 heirs at law and distributees of the decedent determined under the laws intestate descent and
23 distribution of this state;

24 (5) That the decedent's entire personal probate estate as of the date of the decedent's
25 death, wherever located, consists only of small assets and the aggregate fair market value of all
26 of the small assets does not exceed \$50,000, together with a description or itemization of the
27 same with an estimate of value, if known or ascertainable ;

28 (6) Whether the decedent died seized and possessed of any probate real estate or
29 interests in probate real property situate in this state and if so, that the aggregate fair market value
30 of all of the real estate or interests in real property situate in this state does not exceed \$100,000,
31 together with a description of the real estate, the county in which it is situate, its assessed value
32 for tax purposes, and its fair market value at the decedent's date of death;

33 (7) That if the successor is nominated as a personal representative or executor under the

34 provisions of the will of the decedent at least 30 days have elapsed since the decedent's date of
 35 death and no application for the appointment of a personal representative for the decedent is
 36 pending or has been granted in any jurisdiction, or if the successor is not nominated as a personal
 37 representative or executor under the provisions of the will of the decedent at least 60 days have
 38 elapsed since the decedent's date of death, no application for the appointment of a personal
 39 representative for the decedent is pending or has been granted in any jurisdiction, and no affidavit
 40 of small estate has been filed by a successor nominated as a personal representative or executor
 41 under the provisions of the will of the decedent; and

42 (8) That the affiant will faithfully administer the small assets of the decedent in accordance
 43 with law and pay or deliver the same to the successor or successors so entitled, after paying any
 44 known or ascertainable creditors of the decedent.

45 (c) The clerk of the county commission, or the fiduciary supervisor thereof, shall upon
 46 receipt of such affidavit review and inspect the same, and if the county clerk or fiduciary supervisor
 47 determines the same to be true and proper, the county clerk or fiduciary supervisor shall record
 48 and index the affidavit, together with the original of any will tendered therewith, in the same
 49 manner and upon the same fees as wills and affidavits of beneficiaries or heirs are recorded and
 50 indexed in case of probate administration with appointment of a personal representative. The
 51 clerk of the county commission, or the fiduciary supervisor thereof, may require a certified copy
 52 of the decedent's death certificate or other proof of death and residence prior to fulfilling the
 53 responsibilities under this article.

54 (d) No bond, security, or oath may be required when no appointment of a personal
 55 representative is made for a small estate under the provisions of this article.

56 (e) A document substantially in the following form may be used as the affidavit provided
 57 in subsection (b) of this section with the effect as prescribed in this article:

58 **IN THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA**

59 **IN RE: THE ESTATE OF _____**

60 **DOD: _____**

61 **AFFIDAVIT FOR SMALL ESTATE**

62 **STATE OF _____,**

63 **COUNTY OF _____, to-wit:**

64 I, _____, being a Successor of the Decedent identified
65 below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the
66 best of my knowledge and belief as follows:

67
68 1. My name is _____, and my current address is
69 _____
70 _____.

71 2. The Decedent, _____, died
72 on _____ (date of death), a resident of _____
73 County, State of West Virginia, with his/her usual residence being _____
74 _____.

75 A certified death certificate has been furnished herewith for filing in this County. I am a
76 Successor of the decedent as _____ (state relationship).

77 **3. TESTACY () [Check if applies] or () [Check if Not Applicable]**

78 At the date of death, the Decedent died with an ORIGINAL Last Will and Testament of
79 the Decedent dated _____, without any codicil thereto () or with codicil(s)
80 thereto dated _____ () [Check if applies]. The aforesaid ORIGINAL Last Will
81 and Testament of the decedent, together with any codicil(s), is furnished herewith for recording in
82 this County as permitted by West Virginia Code § 44-1A-2(b).

83 Under the Last Will and Testament of the Decedent, the following person(s) is/are
84 nominated to be the personal representative(s) of the Estate:

85 a. Name: _____

86 Address: _____

87 _____

88 b. Name: _____

89 Address: _____

90 _____

91 Pursuant to the provisions of the above referenced Will of the Decedent, the
92 following persons are the named beneficiaries of the estate of the Decedent:

93 a. Name: _____

94 Address: _____

95 _____

96 Relationship to Decedent: _____

97 Share or percentage or particular item: _____

98 b. Name: _____

99 Address: _____

100 _____

101 Relationship to Decedent: _____

102 Share or percentage or particular item: _____

103 c. Name: _____

104 Address: _____

105 _____

106 Relationship to Decedent: _____

107 Share or percentage or particular item: _____

108 d. Name: _____

109 Address: _____

110 _____

111 Relationship to Decedent: _____

112 Share or percentage or particular item: _____

113 e. Name: _____

114 Address: _____

115 _____

116 Relationship to Decedent: _____

117 Share or percentage or particular item: _____

118 (If more space is needed, attach additional page(s) to affidavit)

119 **4. INTESTACY () [Check if applies] or () [Check if Not Applicable]** At the
120 date of death, the Decedent died intestate with no known will. The Decedent left as his/her
121 heirs at law and distributees in accordance with the laws of intestate descent and
122 distribution of the State of West Virginia the following persons:

123 a. Name: _____

124 Address: _____

125 Relationship to Decedent: _____

126 Share or percentage: _____

127 b. Name: _____

128 Address: _____

129 Relationship to Decedent: _____

130 Share or percentage: _____

131 c. Name: _____

132 Address: _____

133 Relationship to Decedent: _____

134 Share or percentage: _____

135 d. Name: _____

136 Address: _____

137 Relationship to Decedent: _____

138 Share or percentage: _____

139 e. Name: _____

140 Address: _____

141 Relationship to Decedent: _____

142 Share or percentage: _____

143 (If more space is needed, attach additional page(s) to affidavit)

144 5. The Decedent's entire personal probate estate, as of the date of the Decedent's death,
 145 wherever located, consists only of Small Assets and the aggregate fair market value of the Small
 146 Assets does not exceed \$50,000. The Small Assets of the Decedent are described and itemized
 147 as follows:

148

	<u>Description</u>	<u>Fair Market value</u>
<u>a.</u>		
<u>b.</u>		
<u>c.</u>		
<u>d.</u>		
<u>e.</u>		
<u>f.</u>		
	<u>Total</u>	

149

150 (If more space is needed, attach additional page(s) to affidavit)

151 6. The Decedent did () / did not () [Check one which applies] die seized and possessed
 152 of any probate real estate or interests in probate real estate in the State of West Virginia. If the
 153 Decedent died seized and possessed of any probate real estate or interest in real estate in the
 154 State of West Virginia, the aggregate fair market value of all of the real estate or interests in real
 155 property situate in this State does not exceed \$100,000 and the real estate of the Decedent in
 156 West Virginia is as follows:

157

	<u>Descriptio</u>	<u>Count</u>	<u>Assesse</u> <u>d Value</u>	<u>Fai</u> <u>r Market</u> <u>value</u>
<u>n</u>		<u>y</u>		
<u>a</u>				
<u>b</u>				
<u>c</u>				
<u>d</u>				
<u>e</u>				
	<u>Total</u>			

158

(If more space is needed, attach additional page(s) to affidavit)

159

160 7. () [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who
 161 was nominated as a personal representative or executor under the provisions of the above Will
 162 of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no
 163 application for the appointment of a personal representative for the Decedent is pending or has
 164 been granted in any jurisdiction;

165 or

166 () [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who
 167 was NOT nominated as a personal representative or executor under the provisions of the above
 168 Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed

169 since the Decedent's date of death and no application for the appointment of a personal
170 representative for the Decedent is pending or has been granted in any jurisdiction, and no affidavit
171 of Small Estate has been filed by a Successor nominated as a personal representative or executor
172 under the provisions of the Will of the Decedent.

173 8. The undersigned Affiant will faithfully administer the Small Assets of the Decedent in
174 accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

175 Witness my hand and seal this ____ day of _____, 20____.

176 _____

177 Signature of Affiant/Successor

178 Taken, subscribed, and sworn to before me the undersigned authority by
179 _____, this ____ day of _____, 20____.

180 {seal}

181 My Commission expires: _____

182 _____

183 Notary Public

184 (f) Upon acceptance and recording of the affidavit provided herein, the county clerk or
185 fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is
186 nominated in an attached will, and the beneficiaries under the will in the case of testacy or the
187 heirs at law in the case of intestacy, all of whom are so listed on the affidavit, and shall issue a
188 certificate and authorization of small estate, with a copy of the affidavit attached thereto, to the
189 authorized successor who completed the affidavit, authorizing the successor to be paid,
190 transferred, and delivered the small assets of the decedent with authority to pay, transfer, and
191 deliver the same to the successor or successors of the decedent so entitled pursuant to the
192 provisions of this article and the other laws of the State of West Virginia and with authority to
193 faithfully perform the duties of the office as may be necessary to collect and administer the small
194 assets of the decedent including, but not limited to, making application for and executing receipts,

195 assignments, transfers, releases, waivers, applications, claims, claims for refunds, and federal,
196 state, or local tax returns of the decedent concerning the small assets, pursuing litigation for or
197 against the decedent or the decedent's estate, and paying or settling the funeral expenses or the
198 claims of creditors of the decedent.

199 (g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or
200 fiduciary supervisor any party interested in the estate of the decedent files a written objection with
201 the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or
202 fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination, report,
203 and recommendation which may, among other things, revoke the certificate and authorization of
204 small estate and require full and complete probate administration of the estate of the decedent in
205 accordance with the other applicable provisions of this article. Upon any revocation of the
206 certificate and authorization of small estate, the authorized successor shall provide an accounting
207 and report of all payments or deliveries made of the small assets of the decedent.

208 (h) The authorized successor may act under the certificate and authorization of small
209 estate issued under the provisions of this article for a period of six months from the date of the
210 original issuance of the certificate and authorization but may, upon a showing of good cause in
211 an application made to the county clerk or fiduciary supervisor, be granted an extension of an
212 additional time period not to exceed six months upon issuance of an extended certificate and
213 authorization of small estate to be issued by the county clerk or fiduciary supervisor.

214 (i) If, at any time after the original issuance of the certificate and authorization by the county
215 clerk or fiduciary supervisor, the authorized successor or an interested person determines that
216 the probate estate of the decedent does not qualify as a small estate because the aggregate
217 values of all of the small assets or the real estate of the decedent exceed the values provided in
218 this article, the county clerk or fiduciary supervisor shall rescind the certificate and authorization
219 of small estate and shall mail a written order of rescission to the authorized successor and other
220 interested parties, and a probate under the other provisions of this article shall be commenced.

§44-1A-3. Payment or delivery of small assets to authorized successor.

1 (a) Any person having possession of a small asset of the decedent shall pay or deliver the
2 small asset to the authorized successor of the decedent upon being presented the certificate and
3 authorization of small estate of the county clerk or fiduciary supervisor.

4 (b) The authorized successor has a fiduciary duty to safeguard and promptly pay or deliver
5 the small asset or assets to the successor or successors of the decedent entitled thereto as
6 required by the laws of the State of West Virginia.

7 (c) The authorized successor may discharge his or her fiduciary duty concerning the
8 payment or delivery of the small asset or assets by:

9 (1) Applying the small asset in payment of the administrative costs of obtaining the
10 certificate and authorization of small estate under this article, the funeral expenses of the
11 decedent, or the claims of any known or ascertainable creditors of the decedent;

12 (2) Paying or delivering the small asset to a successor entitled thereto who is *sui juris*; or

13 (3) For any successor entitled thereto who is, or is reasonably believed to be, incapacitated
14 or under a legal disability, by paying or delivering the small asset to such successor's conservator
15 or, if no conservator exists, guardian; to any custodian of an account for the successor under
16 §36-7-1 *et seq.* of this code (the West Virginia Uniform Transfers to Minors Act); or to an adult
17 relative or other person having legal or physical care or custody of such successor to be expended
18 on such successor's behalf directly to the incapacitated or disabled successor or applying it for
19 such successor's benefit. Any successor may be represented and bound under the provisions of
20 virtual representation set forth in §44D-3-1 *et seq.* of this code with respect to affidavits required
21 and designations of persons to receive payment or delivery of a small asset under this article.

22 (d) Upon the presentation of the certificate and authorization of small estate, the
23 authorized successor may endorse or negotiate any small asset that is a check, draft, or other
24 negotiable instrument that is payable to the decedent or the decedent's estate.

25 (e) A transfer agent of any security, upon the surrender of any certificate evidencing the

26 security, shall change the registered ownership on the books of a corporation from the decedent
27 to the successor entitled thereto upon the presentation of the certificate and authorization of small
28 estate.

29 (f) The payment or delivery of a small asset made in good faith to, or by the authorized
30 successor, and upon an affidavit filed in good faith and upon reasonable premises by the
31 authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of the
32 small assets constituting the small estate of the decedent is subsequently found to exceed
33 \$50,000.

34 (g) The authorized successor is liable to the successors of the decedent, including any
35 personal representative subsequently appointed for the decedent's estate, for any breach of
36 fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer the
37 small asset and causing injury to such entitled successor for a period of three years after the date
38 of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary
39 supervisor.

§44-1A-4. Discharge and release of payor; treatment of real estate in small estate.

1 (a) Any person paying or delivering a small asset pursuant to the provisions of this article
2 is discharged and released to the same extent as if that person dealt with the personal
3 representative of the decedent. That person is not required to see the application of the small
4 asset or to inquire into the truth of any statement in the affidavit or the certificate and authorization
5 of small estate presented hereunder.

6 (b) If any person to whom the certificate and authorization of small estate is presented
7 refuses to pay or deliver any small asset to the authorized successor, the small asset may be
8 recovered, or its payment or delivery compelled, and damages may be recovered, on proof of
9 rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled thereto
10 in the magistrate court or circuit court of this state having jurisdiction.

11 (c) For any real estate or interest in real property of the decedent which is reported in the

12 recorded affidavit provided in this article, the provisions of §41-5-19 and §41-5-20 of this code
 13 apply, including in like manner as if the will, if any is attached to and tendered with the affidavit,
 14 had been duly admitted to probate.

15 (d) Nothing in this article releases or discharges any claim which a creditor may have
 16 against the decedent, the decedent's estate, or the assets of the decedent.

§44-1A-5. Construction of article.

1 (a) The remedies provided by this article are in addition to, and not in exclusion of, any
 2 other remedies provided by the laws of this state.

3 (b) For any will attached to and tendered with the affidavit provided in this article, the
 4 provisions of §41-5-11 of this code apply in like manner as if the will had been probated by an
 5 order of the county commission entered on the date of the issuance of the certificate and
 6 authorization of small estate by the county clerk or fiduciary supervisor.

7 (c) Nothing herein may be construed to affect or limit the right of a surviving spouse of a
 8 decedent who dies domiciled in this state to elective share as provided in §42-3-1 et seq. of this
 9 code.

§44-1A-6. Effective date.

1 The provisions of this article shall be effective on the first day of January, 2021.

NOTE: The purpose of this bill is to allow the administration of small estates containing under \$50,000 in personal property and under \$100,000 in real property by affidavit and without appointment of a personal representative and allow payment or delivery of small assets of a decedent to an authorized successor.

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