

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 80

BY SENATORS TRUMP AND SWOPE

[Originating in the Committee on the Judiciary;

reported on February 23, 2021]

1 A BILL to amend and reenact §44-1-28 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new article, designated §44-1A-1, §44-1A-2, §44-
3 1A-3, §44-1A-4, and §44-1A-5, all relating to payment of small sums to spouse or
4 distributees of decedents upon whose estates there have been no qualifications;
5 allowing the administration of small estates containing under \$50,000 in personal
6 property and under \$100,000 in real property by affidavit and without appointment of a
7 personal representative; providing for a short title; providing for definitions; identifying
8 affidavit contents and form; establishing duties of fiduciary supervisor and clerk of the
9 county commission; setting forth requirements for death certificate, proof of residence,
10 and bond; setting forth form of affidavit; providing for issuance of certificates and
11 authorization of small estates; setting forth requirements for objections by interested
12 parties and revocation of certificate and authorization; rescinding of certificates and
13 authorization when determination is made that estate does not qualify; detailing methods
14 for payment or delivery of small assets to authorized successors; discharging and
15 releasing payors; setting forth fiduciary duty of authorized successor; detailing treatment
16 of real estate in a small estate; and providing for applicability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES.

**§44-1-28. Payment of small sums due employees to distributees of decedents upon
whose estates there have been no qualifications.**

1 (a) When the State of West Virginia, any of its political subdivisions, the United States, or
2 any employer owes wages, salary, pension payments, or money allowed for burial expenses to
3 a decedent who died domiciled in this state, upon whose estate there has been no qualification,
4 and the amount owed does not exceed \$5,000, the State of West Virginia, any of its political
5 subdivisions, the United States, or the decedent's employer, after ~~one hundred and twenty~~ 120
6 days from the death of the decedent, may pay the amount owed to the decedent's surviving

7 spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent
8 under the laws of the State of West Virginia, as established by an affidavit to that effect.

9 (b) When the ~~state~~ Treasurer holds property in accordance with ~~article eight, chapter~~
10 ~~thirty-six~~ §36-8-1 et seq. of this code on behalf of a decedent upon whose estate there has been
11 no qualification, and the amount of the property is \$5,000 or less, the Treasurer may remit the
12 property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent,
13 then to the distributees of the decedent under the laws of the State of West Virginia. When the
14 ~~state~~ Treasurer holds property in accordance with ~~article eight, chapter thirty-six~~ §36-8-1 et seq.
15 of this code on behalf of a decedent whose estate is closed or has no present qualification and
16 a valid will or an affidavit naming the decedent's distributees has been filed with the appropriate
17 probate jurisdiction, the Treasurer may remit the property to the distributees as reflected in the
18 will, or in the absence of a will, as established by the affidavit, in accordance with the laws of
19 intestate descent and distribution.

20 (c) ~~Payment in accordance with this section is in full discharge and acquittance to all~~
21 ~~persons whomsoever on account of the property.~~ When any person holds an asset or property
22 on behalf of or owed to a decedent who died domiciled in this state, upon whose estate there
23 has been no qualification, and the value of that asset or property of the decedent does not
24 exceed \$5,000, including a bank account, a savings institution account, a credit union account,
25 a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a
26 promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the
27 decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an
28 overpayment, a chose in action, or an item of tangible personal property including a motor
29 vehicle, after 120 days from the death of the decedent, that person may pay the amount owed
30 to or transfer the asset or property to the decedent's surviving spouse, if any; and if no spouse
31 survived the decedent, then to the distributees of the decedent under the laws of the State of

32 West Virginia, as established by an affidavit to that effect. As used in this section, “person”
33 includes a bank, banking institution, credit union, or West Virginia Division of Motor Vehicles.

34 (d) Payment in accordance with this section is in full discharge and acquittance to all
35 persons whomsoever on the account of the property to the same extent as if that person dealt
36 with a personal representative of the decedent. That person is not required to see the
37 application of the asset or proceeds or to inquire into the truth of any statement in the affidavit.

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

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

9 (3) “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, a bank account, a savings
12 institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a
13 mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument
14 evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to
15 the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of
16 tangible personal property including a motor vehicle. A small asset does not include real estate
17 or an interest in real property. A small asset does not include a nonprobate asset of the
18 decedent which would not be subject to administration in the decedent’s probate estate.

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

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

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

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

5 (b) Any successor of a decedent who dies domiciled in this state may execute and
6 tender for recording to the clerk of the county commission, or the fiduciary supervisor of the
7 clerk of the county commission, of the county in this state which would have jurisdiction over the
8 probate concerning the estate and assets of the decedent an affidavit made upon oath and
9 under penalty of perjury concerning the 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
16 known 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
19 the names, current addresses, and relationship to the decedent of the beneficiaries under the
20 known will entitled to the estate or assets of the decedent. If there is no known will of the
21 decedent, a listing of the names, current addresses, and relationship to the decedent of all of
22 the intestate heirs-at-law and distributees of the decedent determined under the laws of
23 intestate descent and 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 small assets 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
30 value of all of the real estate or interests in real property situate in this state does not exceed
31 \$100,000, together with a description of the real estate, the county in which it is situate, its
32 assessed value 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
34 the provisions of the will of the decedent, at least 30 days have elapsed since the decedent's
35 date of death and no application for the appointment of a personal representative for the
36 decedent is pending or has been granted in any jurisdiction. If the successor is not nominated
37 as a personal representative or executor under the provisions of the will of the decedent, at
38 least 60 days have elapsed since the decedent's date of death, no application for the

39 appointment of a personal representative for the decedent is pending or has been granted in
40 any jurisdiction, and no affidavit of small estate has been filed by a successor nominated as a
41 personal representative or executor 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
43 accordance with the law and pay or deliver the small assets to the successor or successors so
44 entitled, after paying any known or ascertainable creditors of the decedent.

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

55 (d) A bond, security, or oath is not required when an appointment of a personal
56 representative is not made for a small estate under the provisions of this article.

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

59 IN THE COUNTY COMMISSION OF _____ COUNTY, WEST VIRGINIA

60 RE: THE ESTATE OF _____

61 DOD: _____

62 AFFIDAVIT FOR SMALL ESTATE

63 STATE OF _____,

64 COUNTY OF _____, to-wit:

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

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

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

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

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

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

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

86 a. Name: _____

87 Address: _____

88 _____

89 b. Name: _____

90 Address: _____

91 _____

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

94 a. Name: _____

95 Address: _____

96 _____

97 Relationship to Decedent: _____

98 Share or percentage or particular item: _____

99 b. Name: _____

100 Address: _____

101 _____

102 Relationship to Decedent: _____

103 Share or percentage or particular item: _____

104 c. Name: _____

105 Address: _____

106 _____

107 Relationship to Decedent: _____

108 Share or percentage or particular item: _____

109 d. Name: _____

110 Address: _____

111 _____

112 Relationship to Decedent: _____

113 Share or percentage or particular item: _____

114 e. Name: _____

115 Address: _____

116 _____

117 Relationship to Decedent: _____

118 Share or percentage or particular item: _____

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

120 4. INTESTACY () [Check if applies] or () [Check if Not Applicable]

121 At the date of death, the Decedent died intestate with no known will. The Decedent left
122 as his/her heirs-at-law and distributees in accordance with the laws of intestate descent and
123 distribution of the State of West Virginia the following persons:

124 a. Name: _____

125 Address: _____

126 Relationship to Decedent: _____

127 Share or percentage: _____

128 b. Name: _____

129 Address: _____

130 Relationship to Decedent: _____

131 Share or percentage: _____

132 c. Name: _____

133 Address: _____

134 Relationship to Decedent: _____

135 Share or percentage: _____

136 d. Name: _____

137 Address: _____

138 Relationship to Decedent: _____

139 Share or percentage: _____

140 e. Name: _____

141 Address: _____

142 Relationship to Decedent: _____

143 Share or percentage: _____

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

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

	<u>Description</u>	<u>Fair Market value</u>
.		
.		
.		
.		
.		
.		
.	<u>Total</u>	

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

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

	<u>Description</u>	<u>County</u>	<u>Assessed Value</u>	<u>Fair Market value</u>
	<u>Total</u>			

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

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

162 or

163 () [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who
 164 was NOT nominated as a personal representative or executor under the provisions of the above
 165 Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have
 166 elapsed since the Decedent's date of death and no application for the appointment of a personal
 167 representative for the Decedent is pending or has been granted in any jurisdiction, and no
 168 affidavit of Small Estate has been filed by a Successor nominated as a personal representative
 169 or executor under the provisions of the Will of the Decedent.

170 8. The undersigned Affiant will faithfully administer the small assets of the Decedent in
 171 accordance with the law and pay or deliver the same to the Successor or Successors so
 172 entitled.

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

174 _____

175 Signature of Affiant/Successor

176 Taken, subscribed, and sworn to before me the undersigned authority by
177 _____, this day of _____, 20 .

178 {seal}

179 My Commission expires: _____

180 _____

181 Notary Public

182 (f) Upon acceptance and recording of the affidavit provided in this section, the county
183 clerk or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if
184 any is nominated in an attached will, and the beneficiaries under the will when the decedent
185 dies with a will or the heirs-at-law when the decedent dies without a will, all of whom are listed
186 on the affidavit, and shall issue a certificate and authorization of a small estate to the authorized
187 successor who completed the affidavit, authorizing the successor to be paid, transferred, and
188 delivered the small assets of the decedent with authority to pay, transfer, and deliver the small
189 assets to the successor or successors of the decedent entitled pursuant to the provisions of this
190 article and the other laws of the State of West Virginia and with authority to faithfully perform the
191 duties of the office necessary to collect and administer the small assets of the decedent
192 including, but not limited to, making application for and executing receipts, assignments,
193 transfers, releases, waivers, applications, claims, claims for refunds, and federal, state, or local
194 tax returns of the decedent concerning the small assets, pursuing litigation for or against the
195 decedent or the decedent's estate, and paying or settling the funeral expenses or the claims of
196 creditors of the decedent.

197 (g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or
198 fiduciary supervisor any party interested in the estate of the decedent files a written objection
199 with the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or
200 fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination,
201 report, and recommendation which may, among other things, revoke the certificate and

202 authorization of small estate and require full and complete probate administration of the estate
203 of the decedent in accordance with the other applicable provisions of this article. Upon any
204 revocation of the certificate and authorization of small estate, the authorized successor shall
205 provide an accounting and report of all payments or deliveries made of the small assets of the
206 decedent.

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

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

§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
2 the small asset to the authorized successor of the decedent upon being presented the certificate
3 and authorization of a small estate of the county clerk or fiduciary supervisor.

4 (b) The authorized successor has a fiduciary duty to safeguard and promptly pay or
5 deliver the small asset or assets to the successor or successors of the decedent entitled to the
6 small asset as 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 a small estate under this article, the funeral expenses of the
11 decedent, or the claims of any known or ascertainable creditors of the decedent as provided by
12 the laws of the State of West Virginia;

13 (2) Paying or delivering the small asset to a successor entitled to the small asset who is
14 sui juris; or

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

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

28 (e) A transfer agent of any security, upon the surrender of any certificate evidencing the
29 security, shall change the registered ownership on the books of a corporation from the decedent
30 to the successor entitled to the small asset upon the presentation of the certificate and
31 authorization of small estate.

32 (f) The payment or delivery of a small asset made in good faith to, or by the authorized
33 successor, and upon an affidavit filed in good faith and upon reasonable premises by the
34 authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of
35 the small assets constituting the small estate of the decedent is subsequently found to exceed
36 \$50,000.

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

§44-1A-4. Discharge and release of payor; treatment of real estate in a 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
5 authorization of a small estate presented under this article.

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 to
10 the small asset 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 on
12 the recorded affidavit provided in this article, the provisions of §41-5-19 and §41-5-20 of this
13 code shall apply, and any will attached to and tendered with the affidavit shall be deemed to be
14 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, and creditors of a
17 small estate has the same rights provided under the provisions of §44-2-27 and §44-3A-33 of
18 this code as against distributees and legatees.

§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 a small estate by the county clerk or fiduciary supervisor.

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