

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4512

BY DELEGATE ROWE

[Introduced February 02, 2022; Referred to the
Committee on the Judiciary

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §42-2-1; to amend and reenact §42-3-2 of said code, as amended; and to
 3 repeal §44-1-17 of said code; all relating to the creation of an exempt property allowance
 4 in the surviving spouse or minor children of a decedent.

Be it enacted by the Legislature of West Virginia:

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 2. DISTRIBUTION EXEMPT PROPERTY ALLOWANCE OF SURVIVING SPOUSE OR MINOR.

§42-2-1. Exempt property allowance.

1 (a) A surviving spouse of a decedent who was domiciled in this State is entitled to an
 2 exempt property allowance not exceeding \$15,000 in excess of any security interests therein in
 3 motor vehicles, household goods, furniture, toys, animals, appliances, books, wearing apparel,
 4 and implements, professional books or tools of the trade of the decedent. If there is no surviving
 5 spouse of the decedent, the minor children of the decedent are entitled in equal shares to such
 6 exempt property allowance.

7 (b) The right of the surviving spouse or minor children of the decedent to the exempt
 8 property allowance has priority over all claims against the estate.

9 (c) The right of the surviving spouse or minor children of the decedent to the exempt
 10 property allowance is in addition to any benefit or share passing to the surviving spouse or minor
 11 children by the will of the decedent, by intestate succession, or by way of elective share.

ARTICLE 3. PROVISIONS RELATING TO HUSBAND OR WIFE OF DECEDENT.

§42-3-2. Augmented estate.

1 (a) Definitions.

2 (1) In this section:

3 (i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of

4 an adverse claim. The notation of a state documentary fee on a recorded instrument is prima facie
5 evidence that the transfer described therein was made to a bona fide purchaser.

6 (ii) "Nonadverse party" means a person who does not have a substantial beneficial interest
7 in the trust or other property arrangement that would be adversely affected by the exercise or
8 nonexercise of the power that he or she possesses respecting the trust or other property
9 arrangement. A person having a general power of appointment over property is deemed to have
10 a beneficial interest in the property.

11 (iii) "Presently exercisable general power of appointment" means a power of appointment
12 under which, at the time in question, the decedent by an exercise of the power could have created
13 an interest, present or future, in himself or herself or his or her creditors.

14 (iv) "Probate estate" means property, whether real or personal, movable or immovable,
15 wherever situated, that would pass by intestate succession if the decedent died without a valid
16 will.

17 (v) "Right to income" includes a right to payments under an annuity or similar contractual
18 arrangement.

19 (vi) "Value of property owned by the surviving spouse at the decedent's death" and "value
20 of property to which the surviving spouse succeeds by reason of the decedent's death" include
21 the commuted value of any present or future interest then held by the surviving spouse and the
22 commuted value of amounts payable to the surviving spouse after the decedent's death under
23 any trust, life insurance settlement option, annuity contract, public or private pension, disability
24 compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the
25 federal social security system.

26 (b) The augmented estate consists of the sum of:

27 (1) The value of the decedent's probate estate, reduced by funeral and administration
28 expenses, ~~homestead exemption, property exemption~~ exempt property and enforceable claims;

29 (2) The value of the decedent's reclaimable estate. The decedent's reclaimable estate is

30 composed of all property, whether real or personal, movable or immovable, wherever situated,
31 not included in the decedent's probate estate, of any of the following types:

32 (i) Property to the extent the passing of the principal thereof to or for the benefit of any
33 person, other than the decedent's surviving spouse, was subject to a presently exercisable
34 general power of appointment created by the decedent during the marriage and held by the
35 decedent alone if the decedent held that power immediately before his or her death;

36 (ii) Property, to the extent of the decedent's contribution to it during the marriage, as a
37 percentage of the whole, by which the property is held by the decedent and any other person,
38 except the decedent's surviving spouse, with right of survivorship, acquired during the marriage
39 of the decedent and the surviving spouse, if the decedent held that interest immediately before
40 his or her death;

41 (iii) Property transferred by the decedent to any person other than a bona fide purchaser
42 at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any
43 person, other than the decedent's surviving spouse, if the transfer is of any of the following types:

44 (A) Any transfer to the extent that the decedent retained at the time of his or her death the
45 possession or enjoyment of, or right to income from the property;

46 (B) Any transfer to the extent that, at the time of the decedent's death, the income or
47 principal was subject to a power, exercisable by the decedent alone or in conjunction with any
48 other person or exercisable by a nonadverse party, for the benefit of the decedent or the
49 decedent's estate; or

50 (C) Any transfer made to a donee within two years before the decedent's death to the
51 extent that the aggregate transfers to any one donee in either of the years exceed \$10,000;

52 (3) The value of property to which the surviving spouse succeeds by reason of the
53 decedent's death, other than by homestead exemption, exempt property, testate succession or
54 intestate succession, including the proceeds of insurance, including accidental death benefits, on
55 the life of the decedent and benefits payable under a retirement plan in which the decedent was

56 a participant, exclusive of the federal social security system; and

57 (4) The value of property owned by the surviving spouse at the decedent's death, reduced
58 by enforceable claims against that property or that spouse, plus the value of amounts that would
59 have been includible in the surviving spouse's reclaimable estate had the spouse predeceased
60 the decedent.

61 (c) Any transfer is excluded from the decedent's reclaimable estate: (i) To the extent the
62 decedent received adequate and full consideration in money or money's worth for the transfer,
63 exercise or release; or (ii) if irrevocably made with the written consent or joinder of the surviving
64 spouse. Life insurance, accident insurance, pension, profit sharing, retirement and other benefit
65 plans payable to persons other than the decedent's surviving spouse or the decedent's estate is
66 also excluded.

67 (d) Property is valued as of the decedent's death, but property irrevocably transferred
68 during the two-year period next preceding the decedent's death which is included in the
69 decedent's reclaimable estate under paragraph (iii), subdivision (2), subsection (b) of this section
70 is valued as of the time of the transfer. If the terms of more than one of the paragraphs or
71 subparagraphs of subdivision (2), subsection (b) of this section apply, the property is included in
72 the augmented estate under the paragraph or subparagraph that yields the highest value.

73 (e)(1) Although under this section a payment, item of property or other benefit is included
74 in the decedent's reclaimable estate, a payor or other third party is not liable for having made a
75 payment or transferred an item of property or other benefit to a beneficiary designated in a
76 governing instrument, or for having taken any other action in reliance on the validity of a governing
77 instrument, upon request and satisfactory proof of the decedent's death, before the payor or other
78 third party received written notice from the surviving spouse or spouse's representative of an
79 intention to file a petition for the elective share or that a petition for the elective share has been
80 filed. A payor or other third party is only liable for actions taken two or more business days after
81 the payor or other third party has actual receipt of such written notice of an intention to file a

82 petition for the elective share or that a petition for the elective share has been filed.

83 Any form of service of notice other than that described in subdivision (2) of this subsection
84 shall not be sufficient to impose liability on a payor or other third party for actions taken pursuant
85 to the governing instrument.

86 (2) The written notice shall indicate the name of the decedent, the date of the decedent's
87 death, the name of the person asserting an interest, the nature of the payment or item of property
88 or other benefit and a statement that the spouse intends to file a petition for the elective share or
89 that a petition for the elective share has been filed.

90 (3) The written notice must be mailed to the payor's or other third party's main office or
91 home by registered or certified mail, return receipt requested, or served upon the payor or other
92 third party in the same manner as a summons in a civil action. Notice to a sales representative of
93 the payor or other third party shall not constitute notice to the payor or other third party. Upon
94 receipt of written notice of intention to file a petition for the elective share or that a petition for the
95 elective share has been filed, a payor or other third party may pay any amount owed or transfer
96 or deposit any item of property held by it to or with the court having jurisdiction of the probate
97 proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or
98 with the court having jurisdiction of probate proceedings relating to decedents' estates located in
99 the county of the decedent's residence. The availability of such actions under this section shall
100 not prevent the payor or other third party from taking any other action authorized by law or the
101 governing instrument. If no probate proceedings have been commenced, the payor or other third
102 party shall file with the court a copy of the written notice received by the payor or other third party,
103 with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee
104 to the payor or other third party for any such payment, transfer or deposit with the court, even if
105 no probate proceedings have been commenced before such payment, transfer or deposit. The
106 court shall hold the funds or item of property and, upon its determination under subsection (d),
107 section four of this article, shall order disbursement in accordance with the determination. If no

108 petition is filed in the court within the specified time under subsection (a) of said section or, if filed,
109 the demand for an elective share is withdrawn under subsection (c) of said section, the court shall
110 order disbursement to the designated beneficiary. A filing fee, if any, may be charged upon
111 disbursement either to the recipient or against the funds or property on deposit with the court, in
112 the discretion of the court. Payments, transfers or deposits made to or with the court discharge
113 the payor or other third party from all claims under the governing instrument or applicable law for
114 the value of amounts paid to or items of property transferred to or deposited with the court.

115 (4) Upon petition to the probate court by the beneficiary designated in a governing
116 instrument, the court may order that all or part of the property be paid to the beneficiary in an
117 amount and subject to conditions consistent with this section.

118 (f)(1) A bona fide purchaser who purchases property from a recipient, or who receives a
119 payment or other item of property in partial or full satisfaction of a legally enforceable obligation,
120 is neither obligated under this part to return the payment, item or property or benefit nor is liable
121 under this part for the amount of the payment or the value of the item of property or benefit. But
122 a person who, not for value, receives a payment, item of property or any other benefit included in
123 the decedent's reclaimable estate is obligated to return the payment, item of property or benefit,
124 or is personally liable for the amount of the payment or the value of the item of property or benefit,
125 as provided in section six of this article.

126 (2) If any section or part of any section of this part is preempted by federal law with respect
127 to a payment, an item of property or any other benefit included in the decedent's reclaimable
128 estate, a person who, not for value, receives the payment, item of property, or any other benefit
129 is obligated to return that payment, item of property, or benefit, or is personally liable for the
130 amount of that payment or the value of that item of property or benefit, as provided in section six
131 of this article to the person who would have been entitled to it were that section or part of that
132 section not preempted.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-17. Food and fuel for family.

1 [Repealed].

NOTE: The purpose of this bill is to create in the surviving spouse or the minor children of a decedent an exempt property allowance not exceeding \$15,000 in the tangible items of the decedent which is equal to the exemption from levy which is permitted to living individuals. The bill repeals an antiquated provision providing food and fuel for family members.

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