

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2480

By Delegate Rowe

[Introduced January 11, 2023; 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 in
 4 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 an

4 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 a
10 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 will.

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

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

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

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

28 (2) The value of the decedent's reclaimable estate. The decedent's reclaimable estate is
29 composed of all property, whether real or personal, movable or immovable, wherever situated, not

30 included in the decedent's probate estate, of any of the following types:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-17. Food and fuel for family.

1 [Repealed.]

NOTE: 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.