

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

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5 FOR

6 **Senate Bill No. 414**

7 (SENATORS PREZIOSO, EDGELL AND PLYMALE, *original sponsors*)

8 \_\_\_\_\_  
9 [Passed March 8, 2014; to take effect July 1, 2014.]  
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11  
12 AN ACT to amend and reenact §11-11-7 of the Code of West Virginia,  
13 1931, as amended; and to amend and reenact §44-1-14 of said  
14 code, all relating to the filing of estate appraisement and  
15 nonprobate inventory forms; eliminating certain filing with  
16 the Tax Commissioner; providing for maintenance and  
17 preservation of certain forms by the county clerk; providing  
18 for disclosure of certain forms under certain circumstances;  
19 and providing for confidentiality of certain forms under  
20 certain circumstances.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §11-11-7 of the Code of West Virginia, 1931, as amended,  
23 be amended and reenacted; and that §44-1-14 of said code be amended  
24 and reenacted, all to read as follows:

1 **CHAPTER 11. TAXATION.**

2 **ARTICLE 11. ESTATE TAXES.**

3 **§11-11-7. Nonprobate inventory of estates; penalties.**

4 (a) The personal representative of every resident decedent who  
5 owned or had an interest in any nonprobate personal property, and  
6 the personal representative of every nonresident decedent who owned  
7 or had an interest in any nonprobate personal property which is a  
8 part of the taxable estate located in West Virginia, shall, under  
9 oath, list and appraise on a nonprobate inventory form prescribed  
10 by the Tax Commissioner all tangible and intangible nonprobate  
11 personal property owned by the decedent or in which the decedent  
12 had an interest, at its fair market value on the date of the  
13 decedent's death. The nonprobate personal property to be included  
14 on the nonprobate inventory form includes, but is not limited to,  
15 the following:

16 (1) Personal property held as joint tenants with right of  
17 survivorship with one or more third parties;

18 (2) Personal property payable on the death of the decedent to  
19 one or more third parties;

20 (3) Personal property held by the decedent as a life tenant;

21 (4) Insurance on the decedent's life payable to beneficiaries  
22 other than the executor or administrator of the decedent's estate;

23 (5) Powers of appointment;

24 (6) Annuities;

1           (7) Transfers during the decedent's life in which any  
2 beneficial interest passes by trust or otherwise to another person  
3 by reason of the death of the decedent;

4           (8) Revocable transfers in trust or otherwise;

5           (9) Taxable gifts under Section 2503 of the United States  
6 Internal Revenue Code of 1986; and

7           (10) All other nonprobate personal property included in the  
8 federal gross estate of the decedent.

9           (b) For purposes of this section, "nonprobate personal  
10 property" means all personal property which does not pass by  
11 operation of the decedent's will or by the laws of intestate  
12 descent and distribution or is otherwise not subject to  
13 administration in a decedent's estate at common law.

14           (c) The personal representative shall prepare the nonprobate  
15 inventory form and file it, together with the appraisement form  
16 required by section fourteen, article one, chapter forty-four of  
17 this code, for estates of decedents dying on or after July 13,  
18 2001, with the clerk of the county commission or the fiduciary  
19 supervisor within ninety days of the date of qualification of the  
20 personal representative in this state: *Provided*, That for estates  
21 of decedents dying on or after July 13, 2001, but before the date  
22 the amendments to this section become effective, the requirement to  
23 file the nonprobate inventory form with the clerk or supervisor  
24 applies only if that form has not already been filed with Tax

1 Commissioner.

2 (d) The nonprobate inventory form shall be maintained and  
3 preserved by the clerk of the county commission or the fiduciary  
4 supervisor, but shall not be recorded in the records of the clerk  
5 of the county commission. The nonprobate inventory form is  
6 confidential tax return information subject to the provisions of  
7 section five-d, article ten, chapter eleven of this code and may  
8 not be disclosed by the clerk of the county commission and his or  
9 her officers and employees or former officers and employees.  
10 Nothing in this section may be construed to hinder, abrogate or  
11 prevent disclosure of information as authorized in section  
12 thirty-five, article eleven, chapter eleven of this code.

13 (e) Any personal representative who fails to comply with the  
14 provisions of this section, without reasonable cause, is guilty of  
15 a misdemeanor and, upon conviction thereof, shall be fined not less  
16 than \$25 nor more than \$500.

17 **CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.**

18 **ARTICLE 1. PERSONAL REPRESENTATIVES.**

19 **§44-1-14. Appraisement of real estate and probate personal**  
20 **property of decedents; disposition; hiring of**  
21 **experts.**

22 (a) The personal representative of an estate of a deceased  
23 person shall appraise the deceased's real estate and personal  
24 probate property, or any real estate or personal probate property

1 in which the deceased person had an interest at the time of his or  
2 her death, as provided in this section.

3 (b) After having taken the appropriate oath, the personal  
4 representative shall, on the appraisement form prescribed by the  
5 Tax Commissioner, list the following items owned by the decedent or  
6 in which the decedent had an interest and the fair market value of  
7 the items at the date of the decedent's death:

8 (1) All probate and nonprobate real estate including, but not  
9 limited to, real estate owned by the decedent, as a joint tenant  
10 with right of survivorship with one or more parties, as a life  
11 estate, subject to a power of appointment of the decedent, or in  
12 which any beneficial interest passes by trust or otherwise to  
13 another person by reason of the death of the decedent; and

14 (2) All probate personal property, whether tangible or  
15 intangible, including, but not limited to, stocks and bonds, bank  
16 accounts, mortgages, notes, cash, life insurance payable to the  
17 executor or administrator of the decedent's estate and all other  
18 items of probate personal property.

19 (c) Any real estate or interest in real estate so appraised  
20 must be identified with particularity and description. The  
21 personal representative shall identify the source of title in the  
22 decedent and the location of the realty for purposes of real  
23 property ad valorem taxation.

24 (d) For purposes of this section, the term "probate personal

1 property" means all personal property which passes by or under the  
2 decedent's will or by the laws of intestate descent and  
3 distribution or is otherwise subject to administration in a  
4 decedent's estate under common law.

5 (e) The personal representative shall complete, under oath, a  
6 questionnaire included in the appraisal form designed by the Tax  
7 Commissioner for the purpose of reporting whether the decedent  
8 owned or had an interest in any nonprobate personal property:  
9 *Provided*, That the Tax Commissioner shall design a questionnaire  
10 that is as much as possible phrased in understandable English.

11 (f) The appraisal form shall be executed and signed by the  
12 personal representative. The original appraisal form and two of  
13 its copies, together with the completed and notarized nonprobate  
14 inventory form required by section seven, article eleven, chapter  
15 eleven of this code, shall be returned to the clerk of the county  
16 commission by whom the personal representative was appointed or to  
17 the fiduciary supervisor within ninety days of the date of  
18 qualification of the personal representative. The clerk or  
19 supervisor shall inspect the appraisal form to determine whether  
20 it is in proper form. If the appraisal form is returned to a  
21 fiduciary supervisor, within ten days after being received and  
22 approved, the supervisor shall deliver the documents to the clerk  
23 of the county commission. Upon receipt of the appraisal form,  
24 the clerk of the county commission shall record it with the

1 certificate of approval of the supervisor. The date of return of  
2 an appraisement form must be entered by the clerk of the county  
3 commission in his or her record of fiduciaries. The nonprobate  
4 inventory form shall be maintained and preserved by the clerk of  
5 the county commission or the fiduciary supervisor, but shall not be  
6 recorded in the records of the clerk of the county commission. The  
7 nonprobate inventory form is confidential tax return information  
8 subject to the provisions of section five-d, article ten, chapter  
9 eleven of this code and may not be disclosed by the clerk of the  
10 county commission and his or her officers and employees or former  
11 officers and employees. Nothing in this section may be construed  
12 to hinder, abrogate or prevent disclosure of information as  
13 authorized in section thirty-five, article eleven, chapter eleven  
14 of this code.

15 (g) An executed and signed appraisement form is prima facie  
16 evidence:

17 (1) Of the value of the property listed;

18 (2) That the property is subject to administration; and

19 (3) That the property was received by the personal  
20 representative.

21 (h) Any personal representative who refuses or declines,  
22 without reasonable cause, to comply with the provisions of this  
23 section is guilty of a misdemeanor and, upon conviction thereof,  
24 shall be fined not less than \$25 nor more than \$500.

1           (i) Every personal representative has authority to retain the  
2 services of an expert as may be appropriate to assist and advise  
3 him or her concerning his or her duties in appraising any asset or  
4 property pursuant to the provisions of this section. An expert so  
5 retained shall be compensated a reasonable sum by the personal  
6 representative from the assets of the estate. The compensation and  
7 its reasonableness is subject to review and approval by the county  
8 commission, upon recommendation of the fiduciary supervisor.

9           (j) Except as specifically provided in subdivision (1),  
10 subsection (b) of this section and in section seven, article  
11 eleven, chapter eleven of this code, the personal representative is  
12 not required to list and appraise nonprobate real estate or  
13 nonprobate personal property of the decedent on the forms required  
14 in this section or section seven, article eleven, chapter eleven of  
15 this code.