

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4329

BY DELEGATE CRISS

[Introduced January 21, 2022; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §44-1-28, §44-1A-1, §44-1A-2, and §44-1A-4 of the Code of West
2 Virginia, 1931, as amended, relating to the West Virginia Small Estate Act; updating
3 definitions; adding a definition of the term “interested person” for purposes of identifying
4 those who have a property right in or a claim against the estate of a decedent or property;
5 and clarifying treatment of real estate of decedents in small estates.

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 a
3 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 120 days from the death of the
6 decedent, may pay the amount owed to the decedent’s surviving spouse, if any; and if no spouse
7 survived the decedent, then to the distributees of the decedent under the laws of the State of
8 West Virginia, as established by an affidavit to that effect.

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

17 reflected in the will, or in the absence of a will, as established by the affidavit, in accordance with
18 the laws of intestate descent and distribution.

19 (c) When any person holds an asset or property on behalf of or owed to a decedent who
20 died domiciled in this state, upon whose estate there has been no qualification, and the value of
21 that asset or property of the decedent does not exceed \$5,000, including a bank account, a
22 savings institution account, a credit union account, a certificate of deposit, a brokerage account,
23 stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument
24 evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the
25 estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible
26 personal property including a motor vehicle, after 120 days from the death of the decedent, that
27 person may pay the amount owed to or transfer the asset or property to the decedent's surviving
28 spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent
29 under the laws of the State of West Virginia, as established by an affidavit to that effect. As used
30 in this section, "person" means any individual, corporation, business trust, fiduciary, estate, trust,
31 partnership, limited liability company, association, joint venture, government, governmental
32 subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity
33 and expressly includes a bank, ~~banking~~ financial institution, credit union, or West Virginia Division
34 of Motor Vehicles.

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

§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) "Interested Person" means heirs, devisees, distributees, legatees, children, spouses,~~
7 ~~or creditors of the decedent and beneficiaries and any others having a property right in or a claim~~
8 ~~against the estate of a decedent or property in a small estate. Interested persons include persons~~
9 ~~having priority for appointment as a personal representative and other fiduciaries representing~~
10 ~~interested persons. The meaning of the term interested person varies from time to time. The~~
11 ~~meaning must be determined according to the particular purposes or matter involved in the~~
12 ~~proceeding. An interested person may also include a bank, financial institution, credit union, or~~
13 ~~person that is holding assets related to the estate.~~

14 ~~(2)~~ (3) "Person" means any individual, corporation, business trust, fiduciary, estate, trust,
15 partnership, limited liability company, association, joint venture, government, governmental
16 subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

17 ~~(3)~~ (4) "Small asset" means any probate personal property or asset belonging or presently
18 distributable to the decedent having a fair market value on the decedent's date of death of not
19 more than \$50,000. A small asset includes, but is not limited to, cash, a bank account, a savings
20 institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a
21 mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing
22 a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a
23 deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal
24 property including a motor vehicle. A small asset does not include real estate or an interest in real
25 property. A small asset does not include a nonprobate asset of the decedent which would not be
26 subject to administration in the decedent's probate estate.

27 ~~(4)~~ (5) "Small estate" means a probate estate of a decedent who died domiciled in this
28 state in which: (A) The total aggregate fair market value, on the decedent's date of death, of small

29 all probate personal property and all probate personal assets does not exceed \$50,000; and (B)
30 the total aggregate fair market value on the decedent's date of death of all real estate or interests
31 in real property situate in this state of which the decedent owned or was seized or possessed
32 does not exceed \$100,000, excluding any real estate of the decedent which was held in any
33 nonprobate form. For the purposes of this article, the fair market value of real estate shall be
34 presumed to be 167 percent of the current assessed value of the real estate on the land books
35 as reported by the assessor of the county in which the real estate is situate. It is provided,
36 however, that a probate estate of a testate decedent in which the decedent's will provides for real
37 estate devised to be sold and not a mere power to sell the decedent's real estate shall not be
38 considered to be a small estate.

39 ~~(5)~~ (6) "Successor" means any person, other than a creditor, who is nominated as a
40 personal representative or executor under the provisions of the will of the decedent, or who is
41 entitled under the provisions of the decedent's will or the laws of intestate descent and distribution
42 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 tender
6 for recording to the clerk of the county commission, or the fiduciary supervisor of the clerk of the
7 county commission, of the county in this state which would have jurisdiction over the probate
8 concerning the estate and assets of the decedent an affidavit made upon oath and under penalty
9 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 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. 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 of 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 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 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. 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 the law and pay or deliver the small assets to the successor or successors so entitled, after
44 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 county
46 commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the county
47 clerk or fiduciary supervisor determines the affidavit to be in completed form, the county clerk or
48 fiduciary supervisor shall record and index the affidavit, together with the original of any will
49 tendered with the affidavit, in the same manner and upon the same fees as wills and affidavits of
50 beneficiaries or heirs are recorded and indexed in case of probate administration with
51 appointment of a personal representative. The clerk of the county commission, or the fiduciary
52 supervisor of the clerk of the county commission, may require a certified copy of the decedent's
53 death certificate or other proof of death and residence prior to fulfilling the responsibilities under
54 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 of
73 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 Successor
77 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 in
83 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 as
122 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 death,
 146 wherever located, consists only of small assets and the aggregate fair market value of the small
 147 assets does not exceed \$50,000. The small assets of the Decedent are described and itemized
 148 as follows:

	Description	Fair Market value
a.		
b.		
c.		
d.		
e.		
f.		
	Total	

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 possessed
 151 of any probate real estate or interests in probate real estate in the state of West Virginia. If the
 152 Decedent died seized and possessed of any probate real estate or interest in real estate in the
 153 state of West Virginia, the aggregate fair market value of all of the real estate or interests in real
 154 property situate in this state does not exceed \$100,000 and the real estate of the Decedent in
 155 West Virginia is as follows:

	Description	County	Assessed Value	Fair Market value
A				
B				
C				
D				
E				
	Total			

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 who
158 was nominated as a personal representative or executor under the provisions of the above Will
159 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 elapsed
166 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 affidavit
168 of Small Estate has been filed by a Successor nominated as a personal representative or executor
169 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 entitled.

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

173 _____

174 Signature of Affiant/Successor

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

177 {seal}

178 My Commission expires: _____

179 _____

180 Notary Public

181 (f) Upon acceptance and recording of the affidavit provided in this section, the county clerk
182 or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is

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

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

205 (h) The authorized successor may act under the certificate and authorization of small
206 estate issued under the provisions of this article for a period of six months from the date of the
207 original issuance of the certificate and authorization but may, upon a showing of good cause in
208 an application made to the county clerk or fiduciary supervisor, be granted an extension of an

209 additional time period not to exceed six months upon issuance of an extended certificate and
210 authorization of small estate to be issued by the county clerk or fiduciary supervisor.

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

§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 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 deliver
5 the small asset or assets to the successor or successors of the decedent entitled to the small
6 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 successor's
17 conservator or, if no conservator exists, guardian; to any custodian of an account for the
18 successor under §36-7-1 *et seq.* of this code (the West Virginia Uniform Transfers to Minors Act);
19 or to an adult relative or other person having legal or physical care or custody of the successor to
20 be expended on the successor's behalf directly to the incapacitated or disabled successor or
21 applying it for the successor's benefit. Any successor may be represented and bound under the
22 provisions of virtual representation set forth in §44D-3-1 *et seq.* of this code with respect to
23 affidavits required and designations of persons to receive payment or delivery of a small asset
24 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 the
35 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 authorization
5 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 the
10 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 the
12 recorded affidavit provided in this article, the provisions of §44-8-5, §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. The authorized successor or a successor or creditor of a decedent in a
15 small estate may within six months of the issuance of the certificate and authorization of small
16 estate commence a proceeding in equity before the circuit court under the provisions of § 44-8-7
17 of this code to subject real estate to the payment of debts when the small assets are insufficient
18 for the payment thereof.

19 (d) Nothing in this article releases or discharges any claim which a creditor may have
20 against the decedent, the decedent's estate, or the assets of the decedent, and creditors of a
21 small estate ~~has~~ have the same rights provided under the provisions of §44-2-27 and §44-3A-33
22 of 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 spouse
8 of a decedent who dies domiciled in this state to his or her elective share as provided in §42-3-1
9 *et seq.* of this code.

NOTE: The purpose of this bill is to clarify the definition of an “interested person” for purposes of the West Virginia Small Estate Act.

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