

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3239

By Delegate Criss

[By Request of the Department of Tax and Revenue]

[Introduced February 02, 2023; Referred to the
Committee on Finance]

1 A BILL to amend and reenact, §44-3A-42 of the Code of West Virginia, 1931, as amended,
2 directing payment of the estate administration fee to the State Auditor.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS
AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.**

**§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary supervisor; disposition
of fees.**

1 (a) When necessary solely for the purpose of financing the cost of settling estates, the
2 county commission may authorize the fiduciary supervisor to charge and collect at the time of
3 qualification of the fiduciary of a decedent's estate a fee not to exceed: (1) \$25 for all estates in
4 which the gross assets do not exceed \$10,000; (2) \$100 for all estates in which the gross assets
5 are more than \$10,000 and do not exceed \$50,000; and (3) \$175 for all estates in which the gross
6 assets exceed \$50,000. Of the sums collected by the fiduciary supervisor, \$5 shall be forwarded to
7 the ~~State Tax Commissioner~~ State Auditor. The moneys so forwarded to the ~~State Tax~~
8 ~~Commissioner~~ State Auditor shall be deposited in the Office of the Treasurer of the state in the
9 special fund, designated "The Inheritance Tax Administration Fund", to be used to defray, in whole
10 or in part, ~~the costs of administration of taxes imposed by article eleven, chapter eleven of this~~
11 ~~code~~ costs incurred by the State Auditor in order to facilitate the prompt administration of the
12 provisions imposed by said this article. The remaining amounts shall be deposited in the county
13 fiduciary fund as provided in § 44-3A-43 of this article. Such fee shall be paid to include all services
14 of the fiduciary supervisor for the settlement of every such decedent's estate which is settled
15 pursuant to the provisions of § 44-3A-19 of this article. All such fees shall also include the cost of
16 publication of the notice required by § 44-3A-4 of this article, and the notice required by § 44-3A-19
17 of this article, but shall not include the cost of any mailings or of the cost of recording any
18 documents required to be recorded in the office of the clerk of the county commission by the

19 provisions of this chapter.

20 In the event the fiduciary supervisor is required to examine and prepare a statement of
21 deficiencies, including reasons for disapproving any of the documents required to be filed by the
22 personal representative of any decedent's estate, he shall charge and collect from such personal
23 representative a fee of \$10.

24 (b) In addition to the fees set forth in subsection (a) of this section, the fiduciary supervisor
25 shall charge a fee to be fixed by the county commission in the manner provided in subsection (c) of
26 this section for conducting hearings, granting continuances of hearings, considering evidence, for
27 drafting recommendations with respect to such hearings and for appearing before the county
28 commission with respect thereto and any other matters of an extraordinary nature not normally
29 included within a summary settlement as contemplated by section nineteen of this article. Such fee
30 shall be used to defray the costs imposed by or incidental to any extraordinary demands by or
31 conditions imposed by a fiduciary or imposed by the circumstances of the estate.

32 (c) The fiduciary supervisor or fiduciary commissioner shall prepare a voucher for the
33 county commission, which voucher shall be itemized and shall set forth in detail all of the services
34 performed and the amount charged for such service or services. Such voucher shall also indicate
35 in each instance if the service was actually performed by the fiduciary supervisor or fiduciary
36 commissioner or whether such service was performed by an employee or deputy of such
37 supervisor or commissioner. All vouchers shall reflect the services rendered pursuant to the initial
38 fee charged and collected as provided in subsection (a) of this section and, in addition thereto,
39 shall indicate those services for which charges are to be made over and above that amount. In the
40 case of any service for which a fee is not fixed by this section, or the fee fixed is based on time
41 expended, the voucher shall show the actual time personally expended by the supervisor or
42 commissioner, to the nearest tenth of an hour. All such vouchers shall be verified prior to
43 submission to the county commission for approval. Upon approval of any such voucher, the same
44 shall be charged against the estate to which the same applies. In reviewing any fee charged by

45 either the fiduciary supervisor or a fiduciary commissioner, the county commission shall consider
46 the following:

47 (1) The time and effort expended;

48 (2) The difficulty of the questions raised;

49 (3) The skill required to perform properly the services rendered;

50 (4) The reasonableness of the fee;

51 (5) Any time limitations imposed by the personal representative, any beneficiary or
52 claimant, or by the attendant circumstances; and

53 (6) Any unusual or extraordinary circumstances or demands or conditions imposed by the
54 personal representative, any beneficiary or claimant or by the attendant circumstances. The
55 county commission may approve any such voucher or may reduce the same, as it deems proper,
56 after considering those matters set forth in this subsection. Any such approval shall be by order of
57 the commission and be entered of record by the clerk of the county commission in the fiduciary
58 record book and the general order books of the commission. In no event shall any fee for any
59 service, whether performed by the fiduciary supervisor or the fiduciary commissioner, be fixed,
60 charged or approved which is based upon or with reference to the monetary value of the estate or
61 of the amount in controversy upon any disputed issue or fact of law.

62 (d) For every estate other than a decedent's estate, there shall be charged by the fiduciary
63 supervisor at the time of qualification a fee of \$25, which fee shall include all services performed by
64 the fiduciary supervisor with respect to such estate from the time of qualification of the personal
65 representative thereof until and including the filing of the first annual settlement. For each
66 additional or subsequent annual or triennial settlement, the fiduciary supervisor shall charge and
67 collect a fee of \$10.

68 (e) The county commission or other tribunal in lieu thereof shall, by order, establish or fix a
69 schedule of suggested fees or rates of compensation for the guidance of the fiduciary supervisor
70 and any fiduciary commissioner in preparing their respective vouchers for fees other than those

71 fees fixed by any provision of this section or of this chapter. A copy of these fees or rates shall be
72 posted in a conspicuous place in the county courthouse.

73 (f) The amendments to this section enacted in the year 2023 shall be effective on July 1,
74 2023.

NOTE: The purpose of this bill is to cause the fees under this section to be sent directly to the State Auditor instead of the Tax Commissioner.

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