

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 414**

4 (By Senators Prezioso, Edgell and Plymale)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported January 23, 2014.]

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9
10 A BILL to amend and reenact §11-11-7 of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact §44-1-14 of
12 said code, all relating to eliminating the filing of a nonprobate
13 inventory form with the Tax Commissioner for decedents dying on
14 and after July 1, 2014; providing for the filing of the
15 nonprobate inventory form with the clerk of the county commission
16 or fiduciary supervisor only; providing criminal penalties for
17 failure to comply; and specifying effective dates.

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

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

22 **CHAPTER 11. TAXATION.**

23 **ARTICLE 11. ESTATE TAXES.**

24 **§11-11-7. Nonprobate inventory of estates; penalties.**

25 (a) The personal representative of every resident decedent who

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

- 12 (1) ~~Personalty~~ Personal property held as joint tenants with right
13 of survivorship with one or more third parties;
- 14 (2) ~~Personalty~~ Personal property payable on the death of the
15 decedent to one or more third parties;
- 16 (3) ~~Personalty~~ Personal property held by the decedent as a life
17 tenant;
- 18 (4) Insurance on the decedent's life payable to beneficiaries
19 other than the executor or administrator of the decedent's
20 estate;
- 21 (5) Powers of appointment;
- 22 (6) Annuities;
- 23 (7) Transfers during the decedent's life in which any beneficial
24 interest passes by trust or otherwise to another person by reason
25 of the death of the decedent;
- 26 (8) Revocable transfers in trust or otherwise;

1 (9) Taxable gifts under section 2503 of the United States
2 Internal Revenue Code of 1986; and
3 (10) All other nonprobate ~~personalty~~ personal property included
4 in the federal gross estate of the decedent.
5 (b) For purposes of this section, "nonprobate personal property"
6 means all property which does not pass by operation of the
7 decedent's will or by the laws of intestate descent and
8 distribution or is otherwise not subject to administration in a
9 decedent's estate at common law.
10 (c) The personal representative shall prepare the nonprobate
11 inventory form and file it, together with the appraisement form
12 required by section fourteen, article one, chapter forty-four of
13 this code for estates of decedents dying on or after July 13,
14 2001, with the clerk of the county commission or the fiduciary
15 supervisor within ninety days of the date of qualification of the
16 personal representative in this state: *Provided*, That for estates
17 of decedents dying on or after ~~the said thirteenth day of July~~
18 13, 2001, but before the date the amendments to this section
19 become effective, the requirement to file the nonprobate
20 inventory form with the clerk or supervisor ~~shall~~ may apply only
21 if that form has not already been filed with Tax Commissioner.
22 (d) Any personal representative who fails to comply with the
23 provisions of this section, without reasonable cause, is guilty
24 of a misdemeanor and, upon conviction thereof, shall be fined not
25 less than \$25 nor more than \$500.
26 (e) On and after July 1, 2014, the provisions of this section no

1 longer apply.

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

3 **ARTICLE 1. PERSONAL REPRESENTATIVES.**

4 **§44-1-14. Appraisement of real estate and probate personal**
5 **property of decedents; disposition; hiring of experts.**

6 (a) The personal representative of an estate of a deceased person
7 shall appraise the deceased's real estate and personal probate
8 property, or any real estate or personal probate property in
9 which the deceased person had an interest at the time of his or
10 her death, as provided in this section.

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

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

22 (2) All probate personal property, whether tangible or
23 intangible, including, but not limited to, stocks and bonds, bank
24 accounts, mortgages, notes, cash, life insurance payable to the
25 executor or administrator of the decedent's estate and all other

1 items of probate personal property.

2 (c) Any real estate or interest in real estate so appraised must
3 be identified with particularity and description. The personal
4 representative shall identify the source of title in the decedent
5 and the location of the realty for purposes of real property ad
6 valorem taxation.

7 (d) For purposes of this section, the term "probate personal
8 property" means all property which passes by or under the
9 decedent's will or by the laws of intestate descent and
10 distribution or is otherwise subject to administration in a
11 decedent's estate under common law.

12 (e) The personal representative shall complete, under oath, a
13 questionnaire included in the appraisal form designed by the
14 Tax Commissioner for the purpose of reporting to the Tax
15 Commissioner whether the estate of the decedent is subject to
16 estate tax as provided in article eleven, chapter eleven of this
17 code and whether the decedent owned or had an interest in any
18 nonprobate personal property: *Provided*, That the Tax Commissioner
19 shall design a questionnaire that is as much as possible phrased
20 in understandable English: *Provided, however, That for estates*
21 *of decedents dying on and after July 1, 2014, the personal*
22 *representative may no longer complete the form provided in this*
23 *subsection and instead comply with subsection (k) of this*
24 *section.*

25 (f) The appraisal form ~~must~~ shall be executed and signed by
26 the personal representative. The original appraisal form and

1 two of its copies ~~thereof~~, together with the completed and
2 notarized nonprobate inventory form required by section seven,
3 article eleven, chapter eleven of this code, shall be returned to
4 the clerk of the county commission by whom the personal
5 representative was appointed or to the fiduciary supervisor
6 within ninety days of the date of qualification of the personal
7 representative. The clerk or supervisor shall inspect the
8 appraisal form to determine whether it is in proper form. If
9 the appraisal form is returned to a fiduciary supervisor,
10 within ten days after being received and approved, the supervisor
11 shall deliver the documents to the clerk of the county
12 commission. Upon receipt of the appraisal form, the clerk of
13 the county commission shall record it with the certificate of
14 approval of the supervisor and mail a certified copy of the
15 appraisal form, together with the unrecorded nonprobate
16 inventory form, to the Tax Commissioner. The date of return of an
17 appraisal form must be entered by the clerk of the county
18 commission in his or her record of fiduciaries. The nonprobate
19 inventory form ~~shall be considered~~ is confidential tax return
20 information subject to the provisions of section five-d, article
21 ten, chapter eleven of this code and may not be disclosed by the
22 clerk of the county commission and his or her officers and
23 employees or former officers and employees, except to the Tax
24 Commissioner as provided in this section. Nothing in this section
25 ~~shall~~ may be construed to hinder, abrogate or prevent disclosure
26 of information as authorized in section thirty-five, article

eleven of ~~said~~ this chapter.

(g) An executed and signed appraisal form is prima facie evidence:

(1) Of the value of the property listed;

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

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

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

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

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

1 (j) Beginning on and after July 1, 2014:

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

13 (i) Personal property held as joint tenants with right of
14 survivorship with one or more third parties;

15 (ii) Personal property payable on the death of the decedent to
16 one or more third parties;

17 (iii) Personal property held by the decedent as a life tenant;

18 (iv) Insurance on the decedent's life payable to beneficiaries
19 other than the executor or administrator of the decedent's
20 estate;

21 (v) Powers of appointment;

22 (vi) Annuities;

23 (vii) Transfers during the decedent's life in which any
24 beneficial interest passes by trust or otherwise to another
25 person by reason of the death of the decedent;

26 (viii) Revocable transfers in trust or otherwise;

1 (ix) Taxable gifts under section 2503 of the United States

2 Internal Revenue Code of 1986; and

3 (x) All other nonprobate personal property included in the

4 federal gross estate of the decedent.

5 (2) For purposes of this section, "nonprobate personal property"

6 means all property which does not pass by operation of the

7 decedent's will or by the laws of intestate descent and

8 distribution or is otherwise not subject to administration in a

9 decedent's estate at common law.

10 (3) The personal representative shall prepare the nonprobate

11 inventory form and file it, together with the appraisement form

12 required by this section for estates of decedents dying on or

13 after July 1, 2014, with the clerk of the county commission or

14 the fiduciary supervisor within ninety days of the date of

15 qualification of the personal representative in this state.

16 (k) Any personal representative who fails to comply with the

17 provisions of this section, without reasonable cause, is guilty

18 of a misdemeanor and, upon conviction thereof, shall be fined not

19 less than \$25 nor more than \$500.

(NOTE: The purpose of this bill is to eliminate the nonprobate appraisement filing with the State Tax Commissioner and require that it only be filed with the clerk of the county commission or fiduciary supervisor.

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