

COMMITTEE SUBSTITUTE

FOR

**H. B. 2266**

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(BY DELEGATE(S) SHOTT, ELLINGTON AND GEARHEART)

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(Originating in the House Committee on the Judiciary)

[February 4, 2015]

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A BILL to repeal §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §44-1-14a of said code, relating to the publication requirements of the administration of estates.

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

That §44-2-2 and §44-2-3 of the Code of West Virginia, 1931, as amended, be repealed; and that §44-1-14a of said code be amended and reenacted to read as follows:

**ARTICLE 1. PERSONAL REPRESENTATIVES.**

**§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.**

1 (a) Within thirty days of the filing of the appraisal of  
2 any estate or within one hundred twenty days of the date of  
3 qualification of the personal representative if an appraisal is  
4 not filed as required in section fourteen of this article, the clerk  
5 of the county commission shall publish, once a week for two  
6 successive weeks, in a newspaper of general circulation within  
7 the county of the administration of the estate, a notice, which is  
8 to include:

9 (1) The name of the decedent;

10 (2) The name and address of the county commission before  
11 whom the proceedings are pending;

12 (3) The name and address of the personal representative;

13 (4) The name and address of any attorney representing the  
14 personal representative;

15 (5) The name and address of the fiduciary commissioner, if  
16 any;

17 (6) The date of first publication;

18 (7) A statement that claims against the estate must be filed  
19 within ninety days of the date of first publication in accordance  
20 with ~~the provisions of~~ article two or article three-a of this  
21 chapter;

22 (8) A statement that any person seeking to impeach or  
23 establish a will must make a complaint in accordance with ~~the~~  
24 ~~provisions of~~ section eleven, twelve or thirteen, article five,  
25 chapter forty-one of this code;

26 (9) A statement that an interested person objecting to the  
27 qualifications of the personal representative or the venue or  
28 jurisdiction of the court must be filed with the county commis-  
29 sion within three months after the date of first publication or  
30 thirty days of service of the notice, whichever is later; and

31 (10) If the appraisal of the assets of the estate shows the  
32 value to be \$100,000 or less, exclusive of real estate specifically  
33 devised and nonprobate assets, or, if it appears to the clerk that  
34 there is only one beneficiary of the probate estate and that the  
35 beneficiary is competent at law, a statement substantially as  
36 follows: "Settlement of the estate of the following named  
37 decedents will proceed without reference to a fiduciary commis-

38 sioner unless within ninety days from the first publication of this  
39 notice a reference is requested by a party in interest or an unpaid  
40 creditor files a claim and good cause is shown to support  
41 reference to a fiduciary commissioner.” If a party in interest  
42 requests the fiduciary commissioner to conclude the administra-  
43 tion of the estate or an unpaid creditor files a claim, no further  
44 notice to creditors shall be published in the newspaper, and the  
45 personal representative shall be required to pay no further fees,  
46 except to the fiduciary commissioner for conducting any  
47 hearings, or performing any other duty as a fiduciary commis-  
48 sioner. The time period for filing claims against the estate shall  
49 expire upon the time period set out in the notice to creditors  
50 published by the clerk of the county commission as required in  
51 this subsection (a). ~~In the event that~~ If an unpaid creditor files a  
52 claim, the fiduciary commissioner shall conduct a hearing on the  
53 claim filed by the creditor, otherwise, the fiduciary commis-  
54 sioner shall conclude the administration of the estate as re-  
55 quested by the interested party.

56 (11) This notice shall be published as a Class II legal  
57 advertisement in compliance with the provisions of article three,

58 chapter fifty-nine of this code. The publication of such notice  
59 shall be equivalent to personal service on creditors, distributees  
60 and legatees.

61 (b) If no appraisal is filed within the time period  
62 established pursuant to section fourteen of this article, the county  
63 clerk shall send a notice to the personal representative by first  
64 class mail, postage prepaid, indicating that the appraisal has  
65 not been filed. ~~Notwithstanding any other provision of this code~~  
66 ~~to the contrary, the county clerk shall publish the notice required~~  
67 ~~in subsection (a) of this section within six months of the qualifi-~~  
68 ~~cation of the personal representative.~~

69 (c) The personal representative shall promptly make a  
70 diligent search to determine the names and addresses of creditors  
71 of the decedent who are reasonably ascertainable.

72 (d) The personal representative shall, within ninety days  
73 after the date of first publication, serve a copy of the notice,  
74 published pursuant to subsection (a) of this section, by first class  
75 mail, postage prepaid, or by personal service on the following  
76 persons:

77 (1) If the personal representative is not the decedent's  
78 surviving spouse and not the sole beneficiary or sole heir, the  
79 decedent's surviving spouse, if any;

80 (2) If there is a will and the personal representative is not the  
81 sole beneficiary, any beneficiaries;

82 (3) If there is not a will and the personal representative is not  
83 the sole heir, any heirs;

84 (4) The trustee of any trust in which the decedent was a  
85 grantor, if any; and

86 (5) All creditors identified under subsection (c) of this  
87 section, other than a creditor who filed a claim as provided in  
88 article two of this chapter or a creditor whose claim has been  
89 paid in full.

90 (e) Any person interested in the estate who objects to the  
91 qualifications of the personal representative or the venue or  
92 jurisdiction of the court, shall file notice of an objection with the  
93 county commission within ninety days after the date of the first  
94 publication as required in subsection (a) of this section or within  
95 thirty days after service of the notice as required by subsection

96 (d) of this section, whichever is later. If an objection is not  
97 timely filed, the objection is forever barred.

98 (f) A personal representative acting in good faith is not  
99 personally liable for serving notice under this section, notwith-  
100 standing a determination that notice was not required by this  
101 section. A personal representative acting in good faith who fails  
102 to serve the notice required by this section is not personally  
103 liable. The service of the notice in accordance with this subsec-  
104 tion may not be construed to admit the validity or enforceability  
105 of a claim.

106 (g) The clerk of the county commission shall collect a fee of  
107 \$20 for the publication of the notice required in this section.

108 (h) For purposes of this section, the term beneficiary means  
109 a person designated in a will to receive real or personal property.

