

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Introduced**

## **Senate Bill 80**

BY SENATORS TRUMP AND SWOPE

[Introduced February 10, 2021; referred  
to the Committee on the Judiciary]

1 A BILL to repeal §44-1-28 of the Code of West Virginia, 1931, as amended; and to amend said  
 2 code by adding thereto a new article, designated §44-1A-1, §44-1A-2, §44-1A-3, §44-1A-  
 3 4, §44-1A-5, and §44-1A-6, all relating to allowing the administration of small estates  
 4 containing under \$50,000 in personal property and under \$100,000 in real property by  
 5 affidavit and without appointment of a personal representative; providing a mechanism for  
 6 administration of a small estate upon affidavit and without appointment; detailing methods  
 7 for payment or delivery of small assets to authorized successors; discharging and  
 8 releasing payors; detailing treatment of real estate in a small estate; providing for the  
 9 applicability of this article in relation to other sections of the West Virginia Code; providing  
 10 an effective date; and allowing payment or delivery of small assets of a decedent to an  
 11 authorized successor.

*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1 [Repealed.]

**ARTICLE 1A. WEST VIRGINIA SMALL ESTATE ACT.**

**§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) "Person" means any individual, corporation, business trust, fiduciary, estate, trust,  
 7 partnership, limited liability company, association, joint venture, government, governmental

8 subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

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

19 (4) "Small estate" means a probate estate of a decedent who died domiciled in this state  
20 in which: (A) The total aggregate fair market value, on the decedent's date of death, of small  
21 assets does not exceed \$50,000; and (B) the total aggregate fair market value on the decedent's  
22 date of death of all real estate or interests in real property situate in this state of which the  
23 decedent owned or was seized or possessed does not exceed \$100,000, excluding any real  
24 estate of the decedent which was held in any nonprobate form. For the purposes of this article,  
25 the fair market value of real estate shall be presumed to be 167 percent of the current assessed  
26 value of the real estate on the land books as reported by the assessor of the county in which the  
27 real estate is situate.

28 (5) "Successor" means any person, other than a creditor, who is nominated as a personal  
29 representative or executor under the provisions of the will of the decedent, or who is entitled under  
30 the provisions of the decedent's will or the laws of intestate descent and distribution of this state  
31 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 anything in this code to the contrary, the small estate of a decedent

2 who dies domiciled in this state may be administered upon affidavit and without the appointment  
3 of a personal representative, and the small assets of the decedent may be paid or delivered to  
4 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 thereof, of the  
7 county in this state which would have jurisdiction over the probate concerning the estate and  
8 assets of the decedent an affidavit made upon oath and under penalty of perjury concerning the  
9 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, or 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 true and proper, 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 no appointment of a personal  
56 representative is 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  
69 1. My name is \_\_\_\_\_, and my current address is  
70 \_\_\_\_\_  
71 \_\_\_\_\_.

72 2. The Decedent, \_\_\_\_\_, died on  
73 \_\_\_\_\_ (date of death), a resident of \_\_\_\_\_ County, State of  
74 West Virginia, with his/her usual residence being  
75 \_\_\_\_\_  
76 \_\_\_\_\_.

77 A certified death certificate has been furnished herewith for filing in this County. I am a Successor  
78 of the decedent as \_\_\_\_\_ (state relationship).

79 3. TESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

80 At the date of death, the Decedent died with an original Last Will and Testament of the  
 81 Decedent dated \_\_\_\_\_, without any codicil thereto ( ) or with codicil(s)  
 82 thereto dated \_\_\_\_\_ ( ) [Check if applies]. The aforesaid original Last Will  
 83 and Testament of the decedent, together with any codicil(s), is furnished herewith for recording in  
 84 this County as permitted by West Virginia Code § 44-1A-2(b).

85 Under the Last Will and Testament of the Decedent, the following person(s) is/are  
 86 nominated to be the personal representative(s) of the Estate:

87 a. Name: \_\_\_\_\_

88 Address: \_\_\_\_\_

89 \_\_\_\_\_

90 b. Name: \_\_\_\_\_

91 Address: \_\_\_\_\_

92 \_\_\_\_\_

93 Pursuant to the provisions of the above referenced Will of the Decedent, the following  
 94 persons are the named beneficiaries of the estate of the Decedent:

95 a. Name: \_\_\_\_\_

96 Address: \_\_\_\_\_

97 \_\_\_\_\_

98 Relationship to Decedent: \_\_\_\_\_

99 Share or percentage or particular item: \_\_\_\_\_

100 b. Name: \_\_\_\_\_

101 Address: \_\_\_\_\_

102 \_\_\_\_\_

103 Relationship to Decedent: \_\_\_\_\_

104 Share or percentage or particular item: \_\_\_\_\_

105 c. Name: \_\_\_\_\_

106 Address: \_\_\_\_\_

107 \_\_\_\_\_

108 Relationship to Decedent: \_\_\_\_\_

109 Share or percentage or particular item: \_\_\_\_\_

110 d. Name: \_\_\_\_\_

111 Address: \_\_\_\_\_

112 \_\_\_\_\_

113 Relationship to Decedent: \_\_\_\_\_

114 Share or percentage or particular item: \_\_\_\_\_

115 e. Name: \_\_\_\_\_

116 Address: \_\_\_\_\_

117 \_\_\_\_\_

118 Relationship to Decedent: \_\_\_\_\_

119 Share or percentage or particular item: \_\_\_\_\_

120 (If more space is needed, attach additional page(s) to affidavit)

121 4. INTESTACY ( ) [Check if applies] or ( ) [Check if Not Applicable]

122 At the date of death, the Decedent died intestate with no known will. The Decedent left as  
123 his/her heirs at law and distributees in accordance with the laws of intestate descent and  
124 distribution of the State of West Virginia the following persons:

125 a. Name: \_\_\_\_\_

126 Address: \_\_\_\_\_

127 Relationship to Decedent: \_\_\_\_\_

128 Share or percentage: \_\_\_\_\_

129 b. Name: \_\_\_\_\_

130 Address: \_\_\_\_\_

131 Relationship to Decedent: \_\_\_\_\_



132 Share or percentage: \_\_\_\_\_

133 c. Name: \_\_\_\_\_

134 Address: \_\_\_\_\_

135 Relationship to Decedent: \_\_\_\_\_

136 Share or percentage: \_\_\_\_\_

137 d. Name: \_\_\_\_\_

138 Address: \_\_\_\_\_

139 Relationship to Decedent: \_\_\_\_\_

140 Share or percentage: \_\_\_\_\_

141 e. Name: \_\_\_\_\_

142 Address: \_\_\_\_\_

143 Relationship to Decedent: \_\_\_\_\_

144 Share or percentage: \_\_\_\_\_

145 (If more space is needed, attach additional page(s) to affidavit)

146 5. The Decedent's entire personal probate estate, as of the date of the Decedent's death,  
147 wherever located, consists only of Small Assets and the aggregate fair market value of the Small  
148 Assets does not exceed \$50,000. The Small Assets of the Decedent are described and itemized  
149 as follows:

150

|           | <u>Description</u> | <u>Fair<br/>Market<br/>value</u> |
|-----------|--------------------|----------------------------------|
| <u>a.</u> |                    |                                  |
| <u>b.</u> |                    |                                  |
| <u>c.</u> |                    |                                  |
| <u>d.</u> |                    |                                  |
| <u>e.</u> |                    |                                  |
| <u>f.</u> |                    |                                  |
|           | <u>Total</u>       |                                  |

151

152 (If more space is needed, attach additional page(s) to affidavit)

153 6. The Decedent did ( ) / did not ( ) [Check one which applies] die seized and possessed  
 154 of any probate real estate or interests in probate real estate in the state of West Virginia. If the  
 155 Decedent died seized and possessed of any probate real estate or interest in real estate in the  
 156 state of West Virginia, the aggregate fair market value of all of the real estate or interests in real  
 157 property situate in this state does not exceed \$100,000 and the real estate of the Decedent in  
 158 West Virginia is as follows:

159

|          | <u>Description</u> | <u>County</u> | <u>Assessed Value</u> | <u>Fair Market value</u> |
|----------|--------------------|---------------|-----------------------|--------------------------|
| <u>A</u> |                    |               |                       |                          |
| <u>B</u> |                    |               |                       |                          |
| <u>C</u> |                    |               |                       |                          |
| <u>D</u> |                    |               |                       |                          |
| <u>E</u> |                    |               |                       |                          |
|          | <u>Total</u>       |               |                       |                          |

160

161 (If more space is needed, attach additional page(s) to affidavit)

162 7. ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who  
 163 was nominated as a personal representative or executor under the provisions of the above Will  
 164 of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no  
 165 application for the appointment of a personal representative for the Decedent is pending or has  
 166 been granted in any jurisdiction;

167 or

168 ( ) [Check if applies] or ( ) [Check if Not Applicable] If the affiant is a Successor who  
 169 was NOT nominated as a personal representative or executor under the provisions of the above  
 170 Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed  
 171 since the Decedent's date of death and no application for the appointment of a personal  
 172 representative for the Decedent is pending or has been granted in any jurisdiction, and no affidavit

173 of Small Estate has been filed by a Successor nominated as a personal representative or executor  
174 under the provisions of the Will of the Decedent.

175 8. The undersigned Affiant will faithfully administer the Small Assets of the Decedent in  
176 accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

177 Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

178 \_\_\_\_\_

179 Signature of Affiant/Successor

180 Taken, subscribed, and sworn to before me the undersigned authority by  
181 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

182 {seal}

183 My Commission expires: \_\_\_\_\_

184 \_\_\_\_\_

185 Notary Public

186 (f) Upon acceptance and recording of the affidavit provided in this section, the county clerk  
187 or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is  
188 nominated in an attached will, and the beneficiaries under the will in the case of testacy or the  
189 heirs-at-law in the case of intestacy, all of whom are listed on the affidavit, and shall issue a  
190 certificate and authorization of a small estate, with a copy of the affidavit attached to the certificate  
191 and authorization, to the authorized successor who completed the affidavit, authorizing the  
192 successor to be paid, transferred, and delivered the small assets of the decedent with authority  
193 to pay, transfer, and deliver the small assets to the successor or successors of the decedent  
194 entitled pursuant to the provisions of this article and the other laws of the State of West Virginia  
195 and with authority to faithfully perform the duties of the office as may be necessary to collect and  
196 administer the small assets of the decedent including, but not limited to, making application for  
197 and executing receipts, assignments, transfers, releases, waivers, applications, claims, claims for  
198 refunds, and federal, state, or local tax returns of the decedent concerning the small assets,

199 pursuing litigation for or against the decedent or the decedent's estate, and paying or settling the  
200 funeral expenses or the claims of creditors of the decedent.

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

210 (h) The authorized successor may act under the certificate and authorization of small  
211 estate issued under the provisions of this article for a period of six months from the date of the  
212 original issuance of the certificate and authorization but may, upon a showing of good cause in  
213 an application made to the county clerk or fiduciary supervisor, be granted an extension of an  
214 additional time period not to exceed six months upon issuance of an extended certificate and  
215 authorization of small estate to be issued by the county clerk or fiduciary supervisor.

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

**§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;

12           (2) Paying or delivering the small asset to a successor entitled to the small asset who is  
13 sui juris; or

14           (3) For any successor entitled to the small asset who is, or is reasonably believed to be,  
15 incapacitated or under a legal disability, by paying or delivering the small asset to the successor's  
16 conservator or, if no conservator exists, guardian; to any custodian of an account for the  
17 successor under §36-7-1 et seq. of this code (the West Virginia Uniform Transfers to Minors Act);  
18 or to an adult relative or other person having legal or physical care or custody of the successor to  
19 be expended on the successor's behalf directly to the incapacitated or disabled successor or  
20 applying it for the successor's benefit. Any successor may be represented and bound under the  
21 provisions of virtual representation set forth in §44D-3-1 et seq. of this code with respect to  
22 affidavits required and designations of persons to receive payment or delivery of a small asset  
23 under this article.

24           (d) Upon the presentation of the certificate and authorization of a small estate, the  
25 authorized successor may endorse or negotiate any small asset that is a check, draft, or other  
26 negotiable instrument that is payable to the decedent or the decedent's estate.

27 (e) A transfer agent of any security, upon the surrender of any certificate evidencing the  
28 security, shall change the registered ownership on the books of a corporation from the decedent  
29 to the successor entitled to the small asset upon the presentation of the certificate and  
30 authorization of small estate.

31 (f) The payment or delivery of a small asset made in good faith to, or by the authorized  
32 successor, and upon an affidavit filed in good faith and upon reasonable premises by the  
33 authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of the  
34 small assets constituting the small estate of the decedent is subsequently found to exceed  
35 \$50,000.

36 (g) The authorized successor is liable to the successors of the decedent, including any  
37 personal representative subsequently appointed for the decedent's estate, for any breach of  
38 fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer the  
39 small asset and causing injury to the entitled successor for a period of three years after the date  
40 of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary  
41 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 in the  
12 recorded affidavit provided in this article, the provisions of §41-5-19 and §41-5-20 of this code  
13 apply, including in like manner as if the will, if any is attached to and tendered with the affidavit,  
14 had been duly admitted to probate.

15 (d) Nothing in this article releases or discharges any claim which a creditor may have  
16 against the decedent, the decedent's estate, or the assets of the decedent.

**§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 elective share as provided in §42-3-1 et seq. of  
9 this code.

**§44-1A-6. Effective date.**

1 The provisions of this article shall be effective on January 1, 2022.

NOTE: The purpose of this bill is to allow the administration of small estates containing under \$50,000 in personal property and under \$100,000 in real property by affidavit and without appointment of a personal representative and allow payment or delivery of small assets of a decedent to an authorized successor.

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