

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Senate Bill 443**

By Senator Tarr

[Passed March 10, 2023; to take effect July 01, 2023]

1 AN ACT to amend and reenact §44-3A-42 of the Code of West Virginia, 1931, as amended,  
2 relating to 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 Auditor. The moneys so forwarded to the State Auditor shall be deposited in the Office of  
8 the Treasurer of the state in the special fund, designated The Inheritance Tax Administration Fund,  
9 to be used to defray, in whole or in part, costs incurred by the State Auditor in order to facilitate the  
10 prompt administration of the provisions imposed by this article. The remaining amounts shall be  
11 deposited in the county fiduciary fund as provided in §44-3A-43 of this code. Such fee shall be paid  
12 to include all services of the fiduciary supervisor for the settlement of every such decedent's estate  
13 which is settled pursuant to the provisions of §44-3A-19 of this code. All such fees shall also  
14 include the cost of publication of the notice required by §44-3A-4 of this code, and the notice  
15 required by §44-3A-19 of this code, but shall not include the cost of any mailings or of the cost of  
16 recording any documents required to be recorded in the office of the clerk of the county  
17 commission by the provisions of this chapter.

18 In the event the fiduciary supervisor is required to examine and prepare a statement of

19 deficiencies, including reasons for disapproving any of the documents required to be filed by the  
20 personal representative of any decedent's estate, he shall charge and collect from such personal  
21 representative a fee of \$10.

22 (b) In addition to the fees set forth in subsection (a) of this section, the fiduciary supervisor  
23 shall charge a fee to be fixed by the county commission in the manner provided in subsection (c) of  
24 this section for conducting hearings, granting continuances of hearings, considering evidence, for  
25 drafting recommendations with respect to such hearings and for appearing before the county  
26 commission with respect thereto and any other matters of an extraordinary nature not normally  
27 included within a summary settlement as contemplated by §44-3A-19 of this code. Such fee shall  
28 be used to defray the costs imposed by or incidental to any extraordinary demands by or  
29 conditions imposed by a fiduciary or imposed by the circumstances of the estate.

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

- 45 (1) The time and effort expended;
- 46 (2) The difficulty of the questions raised;
- 47 (3) The skill required to perform properly the services rendered;
- 48 (4) The reasonableness of the fee;
- 49 (5) Any time limitations imposed by the personal representative, any beneficiary or
- 50 claimant, or by the attendant circumstances; and

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

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

66 (e) The county commission or other tribunal in lieu thereof shall, by order, establish or fix a  
67 schedule of suggested fees or rates of compensation for the guidance of the fiduciary supervisor  
68 and any fiduciary commissioner in preparing their respective vouchers for fees other than those  
69 fees fixed by any provision of this section or of this chapter. A copy of these fees or rates shall be  
70 posted in a conspicuous place in the county courthouse.

71 (f) The amendments to this section enacted in the year 2023 shall be effective on July 1,  
72 2023.