

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 5676**

By Delegate Winzenreid

[Originating in the Committee on the Judiciary;

Reported on February 23, 2024]



1 A BILL to amend and reenact §44-2-1 of the Code of West Virginia, 1931, as amended, relating to  
2 changing the maximum amount a County Clerk can charge to settle an estate and  
3 removing reference to Fiduciary Commissioner.

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

**ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF  
DECEDENTS.**

**§44-2-1. Reference of decedents' estates; proceedings thereon.**

1 (a) Except as provided in subsection (b) of this section, upon the return of the  
2 appraisalment by the personal representative to the county clerk, the estate of his or her decedent,  
3 by order of the county commission, must be referred to a fiduciary commissioner for proof and  
4 determination of debts and claims, establishment of their priority, determination of the amount of  
5 the respective shares of the legatees and distributes, and any other matter necessary for the  
6 settlement of the estate: *Provided,* ~~That in counties where there are two or more commissioners,~~  
7 ~~the estates of decedents must be referred to the commissioners in rotation, so there may be an~~  
8 ~~equal division of the work. Notwithstanding any other provision of this code to the contrary, a~~  
9 ~~fiduciary commissioner may not charge to the estate a fee greater than \$300 and expenses for the~~  
10 ~~settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a~~  
11 ~~determination by the county commission that the fee is based upon the actual time spent and~~  
12 ~~actual services rendered pursuant to a schedule of fees or rate of compensation for fiduciary~~  
13 ~~commissioners promulgated by the commission in accordance with the provisions of §59-1-9 of~~  
14 ~~this code~~ *Provided,* That, should an unpaid creditor file a claim against the estate, the clerk shall  
15 send to the personal representative by United States mail a copy of the claim with a letter  
16 explaining that the personal representative must file with the clerk a written rejection to the claim,  
17 or otherwise it will be deemed valid, and within 20 days of receipt of the same the personal  
18 representative shall have 20 days in which to file with the clerk a written rejection, and if rejected,

19 the fiduciary commissioner shall take up the matter of the claim, but if no rejection is made, the  
20 claim shall be deemed valid and no reference to a fiduciary commissioner shall be made.

21 (b) If the personal representative delivers to the clerk an appraisalment of the assets of the  
22 estate showing their value to be \$200,000 or less, exclusive of real estate specifically devised and  
23 nonprobate assets, or if it appears to the clerk that there is only one beneficiary of the probate  
24 estate and that the beneficiary is competent at law, the clerk shall record the appraisalment without  
25 reference to a fiduciary commissioner: If an unpaid creditor files a claim against the estate, the  
26 personal representative has 20 days after the date of the filing of a claim against the estate of the  
27 decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If  
28 the personal representative approves all claims as filed, then no reference may be made  
29 Provided, That for any such estate, should an unpaid creditor file a claim against the estate, the  
30 clerk shall send to the personal representative by United States mail a copy of the claim with a  
31 letter explaining that the personal representative must file with the clerk a written rejection to the  
32 claim, or otherwise it will be deemed valid, and within 20 days of receipt of the same the personal  
33 representative shall have 20 days in which to file with the clerk a written rejection, and if rejected,  
34 the fiduciary commissioner shall take up the matter of the claim, but if no rejection is made, the  
35 claim shall be deemed valid and no reference to a fiduciary commissioner shall be made.

36 (c) Notwithstanding any other provision of this code to the contrary, for any estate upon  
37 which reference to a fiduciary commissioner is made, a fiduciary commissioner may not charge to  
38 the estate a fee greater than \$500 and expenses for the settlement of an estate, except upon: (i)  
39 Approval of the personal representative; or (ii) a determination by the county commission that the  
40 fee is based upon the actual time spent and actual services rendered pursuant to a schedule of  
41 fees or rate of compensation for fiduciary commissioners promulgated by the commission in  
42 accordance with the provisions of §59-1-9 of this code.

43 (d) In counties where there are two or more commissioners, the estates of decedents  
44 referred to a fiduciary commissioner, must be referred to the commissioners in rotation, so there  
45 may be an equal division of the work.

46 ~~(e)~~(e) The personal representative shall, within a reasonable time after the date of  
47 recordation of the appraisalment: (i) File a waiver of final settlement in accordance with the  
48 provisions of §44-2-29 of this code; or (ii) make a report to the clerk of his or her receipts,  
49 disbursements, and distribution and submit an affidavit stating that all claims against the estate for  
50 expenses of administration, taxes, and debts of the decedent have been paid in full. Upon receipt  
51 of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies  
52 to each beneficiary and creditor by first-class mail, postage prepaid. The clerk shall retain the  
53 report for 10 days to allow any beneficiary or creditor to appear before the county commission to  
54 request reference to a fiduciary commissioner. The clerk shall collect a fee of \$10 for recording and  
55 mailing the waiver of final settlement or report.

56 ~~(d)~~(f) If no request or objection is made to the clerk or to the county commission, the county  
57 commission may confirm the report of the personal representative, and the personal  
58 representative and his or her surety shall be discharged; but if an objection or request is made, the  
59 county commission may confirm and record the accounting or may refer the estate to its fiduciary  
60 commissioners. ~~Provided, That the personal representative has 20 days after the date of the filing~~  
61 ~~of a claim against the estate of the decedent to approve or reject the claim before the estate is~~  
62 ~~referred to a fiduciary commissioner, and if all claims are approved as filed, then no reference may~~  
63 ~~be made~~ For any estate referred to a fiduciary commissioner pursuant to this subsection, the  
64 fiduciary fees and costs provided for under subsection (c) of this section shall be assessed as  
65 costs against any requestor or objector who does not substantially prevail on its claim  
66 proportionately according to the number of claimants not substantially prevailing.

67 ~~(e)~~(g) For purposes of this section, the term beneficiary means a person designated in a  
68 will to receive real or personal property.

NOTE: The purpose of this bill is to change the maximum amount a County Clerk can charge to settle an estate and removing reference to Fiduciary 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.