

NORTH CAROLINA GENERAL ASSEMBLY  
1961 SESSION

CHAPTER 749  
HOUSE BILL 741

1 AN ACT TO AMEND CHAPTER 30 OF THE GENERAL STATUTES RELATING TO THE  
2 SURVIVING SPOUSE'S YEAR'S ALLOWANCE.

3  
4 The General Assembly of North Carolina do enact:

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6 **Section 1.** G.S. 30-15, as the same presently appears in the 1959 Cumulative  
7 Supplement of Recompiled Volume 2A of the General Statutes of North Carolina, is hereby  
8 rewritten to read as follows:

9 **"§ 30-15. When spouse entitled to allowance.** Every surviving spouse of an intestate or of a  
10 testator, whether or not he has dissented from the will, shall, unless he has forfeited his right  
11 thereto as provided by law, be entitled, out of the personal property of the deceased spouse, to  
12 an allowance of the value of one thousand dollars (\$1,000.00) for his support for one year after  
13 the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment  
14 or execution, acquired against the property of the deceased spouse, and shall, in cases of  
15 testacy, be charged against the share of the surviving spouse."

16 **Sec. 2.** G.S. 30-16 is hereby rewritten to read as follows:

17 **"§ 30-16. Duty of personal representative or justice to assign allowance.** It shall be the duty  
18 of every administrator, collector, or executor of a will, on application in writing, signed by the  
19 surviving spouse, at any time within one year after the death of the deceased spouse, to assign  
20 to the surviving spouse the year's allowance as provided in this Article.

21 "If there shall be no administration, or if the personal representative shall fail or refuse to  
22 apply to a justice of the peace, as provided in § 30-20, for ten days after the surviving spouse  
23 has filed the aforesaid application, or if the surviving spouse is the personal representative, the  
24 surviving spouse may make application to the justice, and it shall be the duty of the justice to  
25 proceed in the same manner as though the application had been made by the personal  
26 representative.

27 "Where any personal property of the deceased spouse shall be located outside the township  
28 or county where the deceased spouse resided at the time of his death, the personal  
29 representative or the surviving spouse may apply to any justice of the peace of any township or  
30 county where such personal property is located, and it shall be the duty of such justice to assign  
31 the year's allowance as if the deceased spouse had resided and died in that township."

32 **Sec. 3.** G.S. 30-17 is hereby amended by striking out the word "distributive" as the  
33 same appears immediately before the word "share" in line seven thereof; and by striking out the  
34 word "personal" as the same appears immediately after the word "the" and immediately before  
35 the word "estate" in line seven thereof.

36 **Sec. 4.** G.S. 30-18, is hereby rewritten to read as follows:

37 **"§ 30-18. From what property allowance assigned.** Such allowance shall be made in money  
38 or other personal property of the estate of the deceased spouse."

39 **Sec. 5.** G.S. 30-19 is hereby rewritten to read as follows:

40 **"§ 30-19. Value of property ascertained.** The value of the personal property assigned to the  
41 surviving spouse and children shall be ascertained by a justice of the peace and two persons  
42 qualified to act as jurors of the county in which administration was granted or the will  
43 probated."

1           **Sec. 6.** G.S. 30-20 is hereby rewritten to read as follows:

2   "**§ 30-20. Procedure for assignment.** Upon the application of the surviving spouse, or  
3 whenever it shall appear that a child is entitled to an allowance as provided by § 30-17, the  
4 personal representative of the deceased shall apply to a justice of the peace of the township in  
5 which the deceased resided, or some other township, to summon two persons qualified to act as  
6 jurors, who, having been sworn by the justice to act impartially as commissioners shall, with  
7 him, ascertain the person or persons entitled to an allowance according to the provisions of this  
8 Article, and determine the money or other personal property of the estate, and pay over to or  
9 assign to the surviving spouse and to the children, if any, so much thereof as they shall be  
10 entitled to as provided in this Article. Any deficiencies shall be made up from any of the  
11 personal property of the deceased, and if the personal property of the estate shall be insufficient  
12 to satisfy such allowance, the Clerk of the Superior Court shall enter judgment against the  
13 personal representative for the amount of such deficiency, to be paid when a sufficiency of such  
14 assets shall come into his hands."

15           **Sec. 7.** G.S. 30-21 is hereby rewritten to read as follows:

16   "**§ 30-21. Report of commissioners.** The commissioners shall make and sign three lists of the  
17 money or other personal property assigned to each person, stating their quantity and value, and  
18 the deficiency to be paid by the personal representative. Where the allowance is to the  
19 surviving spouse, one of these lists shall be delivered to him. Where the allowance is to a child,  
20 one of these lists shall be delivered to the surviving parent with whom the child is living; or to  
21 the child's guardian or next friend if the child is not living with said surviving parent; or to the  
22 child if said child is not living with the surviving parent and has no guardian or next friend.  
23 One list shall be delivered to the personal representative. One list shall be returned by the  
24 justice, within twenty days after the assignment, to the Superior Court of the county in which  
25 administration was granted or the will probated, and the clerk shall file and record the same,  
26 together with any judgment entered pursuant to § 30-20."

27           **Sec. 8.** G.S. 30-22 is hereby rewritten to read as follows:

28   "**§ 30-22. Fees of commissioners.** Any person appointed by any justice of the peace to allot or  
29 set apart to any surviving spouse or child a year's allowance under the statute, and who shall  
30 serve, shall be paid the sum of one dollar (\$1.00) a day or fraction of a day engaged, and the  
31 same shall be taxed as a part of the bill of costs of the proceeding."

32           **Sec. 9.** G.S. 30-23 is hereby rewritten to read as follows:

33   "**§ 30-23. Right of appeal.** The personal representative, or the surviving spouse, or child by  
34 his guardian or next friend, or any creditor, legatee or heir of the deceased, may appeal from the  
35 finding of the commissioners to the Superior Court of the county, and, within ten days after the  
36 assignment, cite the adverse party to appear before such court on a certain day, not less than  
37 five nor exceeding ten days after the service of the citation."

38           **Sec. 10.** G.S. 30-26 is hereby rewritten to read as follows:

39   "**§ 30-26. When above allowance is in full.** If the estate of a deceased be insolvent, or if his  
40 personal estate does not exceed two thousand dollars (\$2,000.00), the allowances for the year's  
41 support of the surviving spouse and the children shall not, in any case, exceed the value  
42 prescribed in G.S. 30-15 and G.S. 30-17; and the allowances made to them as above prescribed  
43 shall preclude them from any further allowances."

44           **Sec. 11.** G.S. 30-27 is hereby rewritten to read as follows:

45   "**§ 30-27. Surviving spouse or child may apply to Superior Court.** It shall not, however, be  
46 obligatory on a surviving spouse or child to have the support assigned as above prescribed.  
47 Without application to the personal representative, the surviving spouse, or the child through  
48 his guardian or next friend, may at any time within one year after the decedent's death, apply to  
49 the Superior Court of the county in which administration was granted or the will probated to  
50 have a year's support assigned."

1           **Sec. 12.** G.S. 30-29 is hereby amended by changing the semicolon in line six  
2 thereof to a period, and striking out that portion appearing after the period so inserted.

3           **Sec. 13.** G.S. 30-30 is hereby rewritten to read as follows:

4   "**§ 30-30. Judgment and order for commissioners.** If the material allegations of the  
5 complaint be found true, the judgment shall be that plaintiff is entitled to the relief sought; and  
6 the court shall thereupon issue an order to the sheriff or other proper officer of the county,  
7 commanding him to summon a justice of the peace and two persons qualified to act as jurors,  
8 who shall determine the money or other personal property of the estate and assign to the  
9 plaintiff a sufficiency thereof for plaintiff's support for one year from the decedent's death. Any  
10 deficiency shall be made up from any of the personal property of the deceased, and if the  
11 personal property of the estate shall be insufficient for such support, the Clerk of the Superior  
12 Court shall enter judgment against the personal representative for the amount of such  
13 deficiency, to be paid when a sufficiency of such assets shall come into his hands."

14           **Sec. 14.** All laws and clauses of laws in conflict with the provisions of this Act are  
15 hereby repealed.

16           **Sec. 15.** This Act shall be effective from and after its ratification.

17           In the General Assembly read three times and ratified, this the 13th day of June,  
18 1961.