

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 542
Committee Substitute Favorable 7/12/93

Short Title: Estate Amount Changes.

(Public)

Sponsors:

Referred to:

March 25, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GENERAL STATUTES COMMISSION TO INCREASE THE AMOUNT OF PROPERTY COLLECTIBLE BY SMALL ESTATE AFFIDAVIT WHERE THE SOLE HEIR AND/OR DEVISEE IS THE SURVIVING SPOUSE, TO INCREASE THE MINIMUM AMOUNT OF INTESTATE PERSONAL PROPERTY PASSING TO THE SURVIVING SPOUSE, AND TO INCREASE THE AMOUNT OF THE YEAR'S ALLOWANCE FOR A SURVIVING SPOUSE AND CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-1(a) reads as rewritten:

"(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

- (1) The name and address of the affiant and the fact that he or she is the public administrator or an heir or creditor of the decedent;

- 1 (2) The name of the decedent and his residence at time of death;
- 2 (3) The date and place of death of the decedent;
- 3 (4) That 30 days have elapsed since the death of the decedent;
- 4 (5) That the value of all the personal property owned by the estate of the
- 5 decedent, less liens and encumbrances thereon, does not exceed ten
- 6 thousand dollars (\$10,000);
- 7 (6) That no application or petition for appointment of a personal
- 8 representative is pending or has been granted in any jurisdiction;
- 9 (7) The names and addresses of those persons who are entitled, under the
- 10 provisions of the Intestate Succession Act, to the personal property of
- 11 the decedent and their relationship, if any, to the decedent; and
- 12 (8) A description sufficient to identify each tract of real property owned
- 13 by the decedent at the time of his death.

14 In those cases in which the affiant is the surviving spouse and sole heir of the
15 decedent, not disqualified under G.S. 28A-4-2, the property described in this subsection
16 that may be collected pursuant to this section may exceed ten thousand dollars
17 (\$10,000) in value but shall not exceed twenty thousand dollars (\$20,000) in value. In
18 such cases, the affidavit shall state: (i) the name and address of the affiant and the fact
19 that he or she is the surviving spouse and is entitled, under the provisions of the
20 Intestate Succession Act, to all of the property of the decedent; (ii) that the value of all
21 of the personal property owned by the estate of the decedent, less liens and
22 encumbrances thereon, does not exceed twenty thousand dollars (\$20,000); and (iii) the
23 information required under subdivisions (2), (3), (4), (6), and (8) of this subsection."

24 Sec. 2. G.S. 28A-25-1.1(a) reads as rewritten:

25 "(a) When a decedent dies testate leaving personal property, less liens and
26 encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in value, at any
27 time after 30 days from the date of death, any person indebted to the decedent or having
28 possession of tangible personal property or an instrument evidencing a debt, obligation,
29 stock or chose in action belonging to the decedent shall make payment of the
30 indebtedness or deliver the tangible personal property or an instrument evidencing a
31 debt, obligation, stock or chose in action to a person claiming to be the public
32 administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as
33 executor in the will, devisee, heir or creditor, of the decedent, not disqualified under
34 G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance
35 with subsection (b) and made by or on behalf of the heir, the person named or
36 designated as executor in the will of the decedent, the creditor, the public administrator,
37 or the devisee, stating:

- 38 (1) The name and address of the affiant and the fact that he is the public
- 39 administrator, a person named or designated as executor in the will,
- 40 devisee, heir or creditor, of the decedent;
- 41 (2) The name of the decedent and his residence at time of death;
- 42 (3) The date and place of death of the decedent;
- 43 (4) That 30 days have elapsed since the death of the decedent;

- 1 (5) That the decedent died testate leaving personal property, less liens and
 2 encumbrances thereon, not exceeding ten thousand dollars (\$10,000)
 3 in value;
- 4 (6) That the decedent's will has been admitted to probate in the court of
 5 the proper county and a duly certified copy of the will has been
 6 recorded in each county in which is located any real property owned
 7 by the decedent at the time of his death;
- 8 (7) That a certified copy of the decedent's will is attached to the affidavit;
- 9 (8) That no application or petition for appointment of a personal
 10 representative is pending or has been granted in any jurisdiction;
- 11 (9) The names and addresses of those persons who are entitled, under the
 12 provisions of the will, or if applicable, of the Intestate Succession Act,
 13 to the property of the decedent; and their relationship, if any, to the
 14 decedent; and
- 15 (10) A description sufficient to identify each tract of real property owned
 16 by the decedent at the time of his death.

17 In those cases in which the affiant is the surviving spouse, is entitled to all of the
 18 property of the decedent, and is not disqualified under G.S. 28A-4-2, the property
 19 described in this subsection that may be collected pursuant to this section may exceed
 20 ten thousand dollars (\$10,000) in value but shall not exceed twenty thousand dollars
 21 (\$20,000) in value. In such cases, the affidavit shall state: (i) the name and address of
 22 the affiant and the fact that he or she is the surviving spouse and is entitled, under the
 23 provisions of the decedent's will, or if applicable, of the Intestate Succession Act, to all
 24 of the property of the decedent; (ii) that the decedent died testate leaving personal
 25 property, less liens and encumbrances thereon, not exceeding twenty thousand dollars
 26 (\$20,000); and (iii) the information required under subdivisions (2), (3), (4), (6), (7), (8),
 27 and (10) of this subsection."

28 Sec. 3. G.S. 29-14(b) reads as rewritten:

29 "(b) Personal Property. – The share of the surviving spouse in the personal
 30 property is:

- 31 (1) If the intestate is survived by only one child or by any lineal
 32 descendant of only one deceased child, and the net personal property
 33 does not exceed ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)–(\$30,000)~~ in
 34 value, all of the personal property; if the net personal property exceeds
 35 ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)–(\$30,000)~~ in value, the sum of
 36 ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)–(\$30,000)~~ plus one half of the
 37 balance of the personal property;
- 38 (2) If the intestate is survived by two or more children, or by one child and
 39 any lineal descendant of one or more deceased children, or by lineal
 40 descendants of two or more deceased children, and the net personal
 41 property does not exceed ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)~~
 42 ~~(\$30,000)~~ in value, all of the personal property; if the net personal
 43 property exceeds ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)–(\$30,000)~~ in

1 value, the sum of ~~fifteen~~thirty thousand dollars ~~(\$15,000)~~(\$30,000)
2 plus one third of the balance of the personal property;

3 (3) If the intestate is not survived by a child, children, or any lineal
4 descendant of a deceased child or children, but is survived by one or
5 more parents, and the net personal property does not exceed ~~twenty-five~~
6 fifty thousand dollars ~~(\$25,000)~~(\$50,000) in value, all of the personal
7 property; if the net personal property exceeds ~~twenty-five~~fifty thousand
8 dollars ~~(\$25,000)~~(\$50,000) in value, the sum of ~~twenty-five~~fifty
9 thousand dollars ~~(\$25,000)~~(\$50,000) plus one half of the balance of the
10 personal property;

11 (4) If the intestate is not survived by a child, children, or any lineal
12 descendant of a deceased child or children, or by a parent, all of the
13 personal property."

14 Sec. 4. G.S. 30-15 reads as rewritten:

15 **"§ 30-15. When spouse entitled to allowance.**

16 Every surviving spouse of an intestate or of a testator, whether or not he has
17 dissented from the will, shall, unless he has forfeited his right thereto as provided by
18 law, be entitled, out of the personal property of the deceased spouse, to an allowance of
19 the value of ~~five-ten~~ thousand dollars ~~(\$5,000)~~(\$10,000) for his support for one year
20 after the death of the deceased spouse. Such allowance shall be exempt from any lien,
21 by judgment or execution, acquired against the property of the deceased spouse, and
22 shall, in cases of testacy, be charged against the share of the surviving spouse."

23 Sec. 5. G.S. 30-17 reads as rewritten:

24 **"§ 30-17. When children entitled to an allowance.**

25 Whenever any parent dies leaving any child under the age of 18 years, including an
26 adopted child or a child with whom the widow may be pregnant at the death of her
27 husband, or a child who is less than 22 years of age and is a full-time student in any
28 educational institution, or a child under 21 years of age who has been declared mentally
29 incompetent, or a child under 21 years of age who is totally disabled, or any other
30 person under the age of 18 years residing with the deceased parent at the time of death
31 to whom the deceased parent or the surviving parent stood in loco parentis, every such
32 child shall be entitled, besides its share of the estate of such deceased parent, to an
33 allowance of ~~one-two~~ thousand dollars ~~(\$1,000)~~(\$2,000) for its support for the year next
34 ensuing the death of such parent, less, however, the value of any articles consumed by
35 said child since the death of said parent. Such allowance shall be exempt from any lien
36 by judgment or execution against the property of such parent. The personal
37 representative of the deceased parent, within one year after the parent's death, shall
38 assign to every such child the allowance herein provided for; but if there is no personal
39 representative or if he fails or refuses to act within 10 days after written request by a
40 guardian or next friend on behalf of such child, the allowance may be assigned by a
41 magistrate, upon application of said guardian or next friend.

42 If the child resides with the widow of the deceased parent at the time such allowance
43 is paid, the allowance shall be paid to said widow for the benefit of said child. If the
44 child resides with its surviving parent who is other than the widow of the deceased

1 parent, such allowance shall be paid to said surviving parent for the use and benefit of
2 such child, regardless of whether the deceased died testate or intestate or whether the
3 widow dissented from the will. Provided, however, the allowance shall not be available
4 to an illegitimate child of a deceased father, unless such deceased father shall have
5 recognized the paternity of such illegitimate child by deed, will or other paper-writing.
6 If the child does not reside with a parent when the allowance is paid, it shall be paid to
7 its general guardian, if any, and if none, to the clerk of the superior court who shall
8 receive and disburse same for the benefit of such child."

9 Sec. 6. G.S. 30-26 reads as rewritten:

10 **"§ 30-26. When above allowance is in full.**

11 If the estate of a deceased be insolvent, or if his personal estate does not exceed ~~five~~
12 ten thousand dollars (~~\$5,000~~), (\$10,000), the allowances for the year's support of the
13 surviving spouse and the children shall not, in any case, exceed the value prescribed in
14 G.S. 30-15 and 30-17; and the allowances made to them as above prescribed shall
15 preclude them from any further allowances."

16 Sec. 7. G.S. 30-29 reads as rewritten:

17 **"§ 30-29. What complaint must show.**

18 In the complaint the plaintiff shall set forth, besides the facts entitling plaintiff to a
19 year's support and the value of the support claimed, the further facts that the estate of
20 the decedent is not insolvent, and that the personal estate of which he died possessed
21 exceeded ~~five-ten~~ thousand dollars (~~\$5,000~~), (\$10,000), and also whether or not an
22 allowance has been made to plaintiff and the nature and value thereof."

23 Sec. 8. This act becomes effective October 1, 1993, and applies to estates of
24 persons dying on or after that date.