

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

1

HOUSE BILL 652

Short Title: Inheritance by Illegitimate Child. (Public)

Sponsors: Representatives Davis and Stam (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee C.

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ILLEGITIMATE CHILD TO INHERIT FROM A PERSON WHO
DIED PRIOR TO OR WITHIN ONE YEAR AFTER THE BIRTH OF THAT CHILD IF
PATERNITY CAN BE ESTABLISHED BY DNA TESTING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 29-19(b) reads as rewritten:

"§ 29-19. Succession by, through and from illegitimate children.

(a) For purposes of intestate succession, an illegitimate child shall be treated as if that child were the legitimate child of the child's mother, so that the child and the child's lineal descendants are entitled to take by, through and from the child's mother and the child's other maternal kindred, both descendants and collaterals, and they are entitled to take from the child.

(b) For purposes of intestate succession, an illegitimate child shall be entitled to take by, through and from:

(1) Any person who has been finally adjudged to be the father of such child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;

(2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of the clerk of superior court of the county where either he or the child resides.

(3) A person who died prior to or within one year after the birth of the child and who can be established to have been the father of the child by DNA testing.

Notwithstanding the above provisions, no person shall be entitled to take hereunder unless the person has given written notice of the basis of the person's claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

(c) Any person described under subdivision ~~(b)(1) or (2)~~ (b)(1), (2), or (3) above and the person's lineal and collateral kin shall be entitled to inherit by, through and from the illegitimate child.

(d) Any person who acknowledges that he is the father of an illegitimate child in his duly probated last will shall be deemed to have intended that such child be treated as expressly provided for in said will or, in the absence of any express provision, the same as a legitimate child."

SECTION 2. G.S. 30-17 reads as rewritten:



1 "§ 30-17. When children entitled to an allowance.

2 Whenever any parent dies survived by any child under the age of 18 years, including an
3 adopted child or a child with whom the widow may be pregnant at the death of her husband, or
4 a child who is less than 22 years of age and is a full-time student in any educational institution,
5 or a child under 21 years of age who has been declared mentally incompetent, or a child under
6 21 years of age who is totally disabled, or any other person under the age of 18 years residing
7 with the deceased parent at the time of death to whom the deceased parent or the surviving
8 parent stood in loco parentis, every such child shall be entitled to receive an allowance of five
9 thousand dollars (\$5,000) for the child's support for the year next ensuing the death of the
10 parent. The allowance shall be in addition to the child's share of the deceased parent's estate and
11 shall be exempt from any lien by judgment or execution against the property of the deceased
12 parent. The personal representative of the deceased parent shall, within one year after the
13 parent's death, assign to every such child the allowance herein provided for; but if there is no
14 personal representative or if the personal representative fails or refuses to act within 10 days
15 after written application by a guardian or next friend on behalf of the child, the allowance may
16 be assigned by a magistrate or clerk of court upon application.

17 If the child resides with the surviving spouse of the deceased parent at the time the
18 allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the
19 child. If the child resides with its surviving parent who is other than the surviving spouse of the
20 deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of
21 the child. The payment shall be made regardless of whether the deceased died testate or
22 intestate or whether the surviving spouse petitioned for an elective share under Article 1A of
23 Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to
24 an illegitimate child of a deceased father, unless the deceased father has recognized the
25 paternity of the illegitimate child by deed, will, or other ~~paper-writing~~ paper-writing, or unless
26 the deceased father died prior to or within one year after the birth of the child and is established
27 to have been the father of the child by DNA testing. If the child does not reside with a surviving
28 spouse or a surviving parent when the allowance is paid, the allowance shall be paid to the
29 child's general guardian, if any, and if none, to the clerk of the superior court who shall receive
30 and disburse the allowance for the benefit of the child."

31 **SECTION 3.** This act is effective when it becomes law, and applies to estates of
32 persons dying on or after that date.