

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 245

Short Title: Opening Empty Lock Boxes.

(Public)

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Sponsors: Senators Hartsell, Soles, Allran, and Simpson.

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Referred to: Judiciary I/Constitution

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February 22, 1995

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE OPENING OF EMPTY LOCK BOXES OF  
2 DECEDENTS OUTSIDE THE PRESENCE OF THE CLERK OF SUPERIOR  
3 COURT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-24 reads as rewritten:

6 **"§ 105-24. ~~Access to safe deposits of decedents;~~ Tax waiver required for transfer of  
7 decedents' property; inventory of lock boxes; withdrawal of bank deposits,  
8 etc., payable to either husband or wife or survivor.**

9 (a) No safe deposit company, trust company, corporation, bank, or other  
10 institution, person or persons having in possession or control or custody, in whole or in  
11 part, securities, deposits, assets, or property belonging to or standing in the name of a  
12 decedent, or belonging to or standing in the joint names of decedent and one or more  
13 persons, shall deliver or transfer the same to any person whatsoever, whether in a  
14 representative capacity or not, or to the survivor or to the survivors when held in the joint  
15 names of a decedent and one or more persons, without retaining a sufficient portion or  
16 amount thereof to pay taxes or interest assessed under this Article on property transferred  
17 by the decedent; but the Secretary of Revenue may consent in writing to such delivery or  
18 transfer, and such consent shall relieve said safe deposit company, trust company,  
19 corporation, bank or other institution, person or persons from the obligation herein  
20

1 imposed. Securities whose declaration date is after the decedent's death, or interest that  
2 accrues after the decedent's death on money on deposit at a bank, savings and loan  
3 association, credit union, or other corporation, however, may be transferred or delivered  
4 without retaining a portion of the property for the payment of taxes or interest and  
5 without obtaining the written consent of the Secretary to the delivery or transfer.  
6 Provided: The clerk of superior court of the resident county of a decedent may authorize  
7 in writing one or more banks, safe deposit companies, trust companies or any other  
8 institutions to transfer to the properly qualified representative of the estate any funds on  
9 deposit in the name of the decedent or the decedent and one or more persons when the  
10 aggregate amount of all such deposits in all such institutions is two thousand dollars  
11 (\$2,000) or less, and when such deposit or deposits compose the total cash assets of the  
12 estate. Such authorization shall have the same force and effect as when issued in writing  
13 by the Secretary of Revenue.

14 (b) ~~Every~~ Except as provided in subsection (c) of this section, every safe deposit  
15 company, trust company, corporation, bank or other institution, person, or persons  
16 engaged in the business of renting lock boxes for the safekeeping of valuable papers and  
17 personal effects, or having in their possession or supervision in such lock boxes such  
18 valuable papers or personal effects shall, upon the death of any person using or having  
19 access to such lock box, as a condition precedent to the opening of such lock box by the  
20 executor, administrator, personal representative lessee or cotenant of such deceased  
21 person, require the presence of the clerk of the superior court of the county in which such  
22 lock box is located. It shall be the duty of the clerk of the superior court, or his  
23 representative, in the presence of an officer or representative of the safe deposit company,  
24 trust company, corporation, bank, or other institution, person or persons, to make an  
25 inventory of the contents of such lock box and to furnish a copy of such inventory to the  
26 Secretary of Revenue, to the executor, administrator, personal representative, or cotenant  
27 of the decedent, and a copy to the safe deposit company, trust company, corporation,  
28 bank, or other institution, person, or persons having possession of such lock box;  
29 provided, that for lock boxes to which decedent merely had access the inventory shall  
30 include only assets in which the decedent has or had an interest. Immediately after the  
31 clerk of superior court has made an inventory of the contents of the lock box, the safe  
32 deposit company, trust company, corporation, bank or other institution, or person shall,  
33 upon request, release to the lessee or cotenant of the lock box any life insurance policy  
34 stored in the lock box for delivery to the beneficiary named in the policy.  
35 Notwithstanding any of the provisions of this section any life insurance company may  
36 pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as  
37 soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the  
38 Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such  
39 notice be not mailed, all of the provisions of this section shall apply.

40 (c) Notwithstanding the provisions of subsection (b) of this section, if the properly  
41 qualified personal representative of an estate believes upon reliable information that a  
42 lock box to which the decedent had access is empty, the personal representative may so  
43 certify to the clerk of superior court of the county in which the lock box is located. Upon

1 receipt of this certificate, the clerk shall authorize in writing the personal representative  
2 or the personal representative's agent to open the lock box outside of the clerk's presence.  
3 The personal representative or the personal representative's agent shall open the lock box  
4 in the presence of an officer or representative of the institution having control or custody  
5 of the lock box, and shall certify to the clerk whether the lock box is or is not empty. The  
6 certificate shall include the name of the officer or representative of the institution who  
7 was present at the time the lock box was opened and shall be signed by the officer or  
8 representative to indicate that he or she was present. If the lock box is empty, no tax  
9 waiver will be required from, and no notice given to, the Secretary of Revenue. If the  
10 lock box is not empty, it shall be closed at once and may be reopened only in accordance  
11 with subsection (b) of this section.

12 (d) Notwithstanding any of the provisions of this section, in any case where a bank  
13 deposit has been heretofore made or is hereafter made, or where savings and loan stock  
14 has heretofore been issued or is hereafter issued, in the names of two or more persons and  
15 payable to either or the survivor or survivors of them, such bank or savings and loan  
16 association may, upon the death of either of such persons, allow the person or persons  
17 entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and  
18 the balance thereof shall be retained by the bank or savings and loan association to cover  
19 any taxes that may thereafter be assessed under this Article. When it is ascertained that  
20 there is no liability of such deposit or stock for taxes under this Article, the Secretary of  
21 Revenue shall furnish the bank or savings and loan association his written consent for the  
22 payment of the retained percentage to the person or persons entitled thereto by law; and  
23 the Secretary of Revenue may furnish such written consent to the bank or savings and  
24 loan association upon the qualification of a personal representative of the deceased. If  
25 the person entitled to funds in an account is the surviving spouse and the account is a  
26 joint account of the surviving spouse and the decedent with right of survivorship, no tax  
27 waiver is required from the Secretary of Revenue to release the funds in the account.

28 (e) Failure to comply with the provisions of this section shall render such safe  
29 deposit company, trust company, corporation, bank or other institution, person or persons  
30 liable for the amount of the taxes and interest due under this Article on property  
31 transferred by the decedent. In any action brought under this provision it shall be a  
32 sufficient defense that the delivery or transfer of securities, deposits, assets, or property  
33 was made in good faith without knowledge of the death of the decedent and without  
34 knowledge of circumstances sufficient to place the defendant on inquiry."

35 Sec. 2. This act becomes effective October 1, 1995, and applies to the estates  
36 of decedents dying on or after that date.