

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 82

Short Title: Estate Amount Changes.

(Public)

Sponsors: Senators Hartsell; Soles, Perdue, Simpson, Odom, and Allran.

Referred to: Judiciary II/Election Laws.

January 30, 1995

A BILL TO BE ENTITLED

1
2 **AN ACT TO INCREASE THE AMOUNT OF PROPERTY COLLECTIBLE BY**
3 **SMALL ESTATE AFFIDAVIT WHERE THE SOLE HEIR AND/OR DEVISEE IS**
4 **THE SURVIVING SPOUSE, TO INCREASE THE MINIMUM AMOUNT OF**
5 **INTESTATE PERSONAL PROPERTY PASSING TO THE SURVIVING SPOUSE,**
6 **AND TO INCREASE THE AMOUNT OF THE YEAR'S ALLOWANCE FOR A**
7 **SURVIVING SPOUSE AND CHILDREN, AS RECOMMENDED BY THE**
8 **GENERAL STATUTES COMMISSION.**

9 The General Assembly of North Carolina enacts:

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

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

1 filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or
2 the public administrator stating:

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

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

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

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

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

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

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

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

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

1 property does not exceed ~~fifteen~~thirty thousand dollars (~~\$15,000~~)
2 (~~\$30,000~~) in value, all of the personal property; if the net personal
3 property exceeds ~~fifteen~~thirty thousand dollars (~~\$15,000~~) (~~\$30,000~~) in
4 value, the sum of ~~fifteen~~thirty thousand dollars (~~\$15,000~~) (~~\$30,000~~) plus
5 one third of the balance of the personal property;

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

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

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

18 **"§ 30-15. When spouse entitled to allowance.**

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

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

27 **"§ 30-17. When children entitled to an allowance.**

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

1 of such child, the allowance may be assigned by a magistrate, upon application of said
2 guardian or next friend.

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

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

15 "**§ 30-26. When above allowance is in full.**

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

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

22 "**§ 30-29. What complaint must show.**

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

28 Sec. 8. This act becomes effective October 1, 1995, and applies to estates of
29 persons dying on or after that date.