

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 82

Judiciary II/Election Laws Committee Substitute Adopted 3/13/95

Short Title: Estate Amount Changes.

(Public)

Sponsors:

Referred to:

January 30, 1995

A BILL TO BE ENTITLED

AN ACT 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, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO INCREASE THE LIMITATION FOR FUNERAL EXPENSES.

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

1 disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit
2 filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or
3 the public administrator stating:

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

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

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

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

- 1 (1) The name and address of the affiant and the fact that he is the public
2 administrator, a person named or designated as executor in the will,
3 devisee, heir or creditor, of the decedent;
- 4 (2) The name of the decedent and his residence at time of death;
- 5 (3) The date and place of death of the decedent;
- 6 (4) That 30 days have elapsed since the death of the decedent;
- 7 (5) That the decedent died testate leaving personal property, less liens and
8 encumbrances thereon, not exceeding ten thousand dollars (\$10,000) in
9 value;
- 10 (6) That the decedent's will has been admitted to probate in the court of the
11 proper county and a duly certified copy of the will has been recorded in
12 each county in which is located any real property owned by the
13 decedent at the time of his death;
- 14 (7) That a certified copy of the decedent's will is attached to the affidavit;
- 15 (8) That no application or petition for appointment of a personal
16 representative is pending or has been granted in any jurisdiction;
- 17 (9) The names and addresses of those persons who are entitled, under the
18 provisions of the will, or if applicable, of the Intestate Succession Act,
19 to the property of the decedent; and their relationship, if any, to the
20 decedent; and
- 21 (10) A description sufficient to identify each tract of real property owned by
22 the decedent at the time of his death.

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

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

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

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

- 1 (2) If the intestate is survived by two or more children, or by one child and
2 any lineal descendant of one or more deceased children, or by lineal
3 descendants of two or more deceased children, and the net personal
4 property does not exceed ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)~~
5 ~~(\$30,000)~~ in value, all of the personal property; if the net personal
6 property exceeds ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)~~ ~~(\$30,000)~~ in
7 value, the sum of ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)~~ ~~(\$30,000)~~ plus
8 one third of the balance of the personal property;
- 9 (3) If the intestate is not survived by a child, children, or any lineal
10 descendant of a deceased child or children, but is survived by one or
11 more parents, and the net personal property does not exceed ~~twenty-five~~
12 ~~fifty~~ thousand dollars ~~(\$25,000)~~ ~~(\$50,000)~~ in value, all of the personal
13 property; if the net personal property exceeds ~~twenty-five~~ ~~fifty~~ thousand
14 dollars ~~(\$25,000)~~ ~~(\$50,000)~~ in value, the sum of ~~twenty-five~~ ~~fifty~~
15 thousand dollars ~~(\$25,000)~~ ~~(\$50,000)~~ plus one half of the balance of the
16 personal property;
- 17 (4) If the intestate is not survived by a child, children, or any lineal
18 descendant of a deceased child or children, or by a parent, all of the
19 personal property."

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

21 "**§ 30-15. When spouse entitled to allowance.**

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

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

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

31 Whenever any parent dies leaving any child under the age of 18 years, including an
32 adopted child or a child with whom the widow may be pregnant at the death of her
33 husband, or a child who is less than 22 years of age and is a full-time student in any
34 educational institution, or a child under 21 years of age who has been declared mentally
35 incompetent, or a child under 21 years of age who is totally disabled, or any other person
36 under the age of 18 years residing with the deceased parent at the time of death to whom
37 the deceased parent or the surviving parent stood in loco parentis, every such child shall
38 be entitled, besides its share of the estate of such deceased parent, to an allowance of ~~one~~
39 ~~two~~ thousand dollars ~~(\$1,000)~~ ~~(\$2,000)~~ for its support for the year next ensuing the death
40 of such parent, less, however, the value of any articles consumed by said child since the
41 death of said parent. Such allowance shall be exempt from any lien by judgment or
42 execution against the property of such parent. The personal representative of the deceased
43 parent, within one year after the parent's death, shall assign to every such child the

1 allowance herein provided for; but if there is no personal representative or if he fails or
2 refuses to act within 10 days after written request by a guardian or next friend on behalf
3 of such child, the allowance may be assigned by a magistrate, upon application of said
4 guardian or next friend.

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

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

17 **"§ 30-26. When above allowance is in full.**

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

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

24 **"§ 30-29. What complaint must show.**

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

30 Sec. 8. G.S. 28A-19-6 reads as rewritten:

31 **"§ 28A-19-6. Order of payment of claims.**

32 After payment of costs and expenses of administration, the claims against the estate of
33 a decedent must be paid in the following order:

34 First class. Claims which by law have a specific lien on property to an amount not
35 exceeding the value of such property.

36 Second class. Funeral expenses to the extent of ~~two~~-four thousand dollars ~~(\$2,000)~~-
37 (\$4,000). This limitation shall not include cemetery lot or gravestone. The preferential
38 limitation herein granted shall be construed to be only a limit with respect to preference
39 of payment and shall not be construed to be a limitation on reasonable funeral expenses
40 which may be incurred; nor shall the preferential limitation of payment in the amount of
41 ~~two~~-four thousand dollars ~~(\$2,000)~~-(\$4,000) be diminished by any Veterans
42 Administration, social security or other federal governmental benefits awarded to the
43 estate of the decedent or to his or her beneficiaries.

1 Third class. All dues, taxes, and other claims with preference under the laws of the
2 United States.

3 Fourth class. All dues, taxes, and other claims with preference under the laws of the
4 State of North Carolina and its subdivisions.

5 Fifth class. Judgments of any court of competent jurisdiction within the State,
6 docketed and in force, to the extent to which they are a lien on the property of the
7 decedent at his death.

8 Sixth class. Wages due to any employee employed by the decedent, which claim for
9 wages shall not extend to a period of more than 12 months next preceding the death; or if
10 such employee was employed for the year current at the decease, then from the time of
11 such employment; for medical services within the 12 months preceding the decease; for
12 drugs and all other medical supplies necessary for the treatment of such decedent during
13 the last illness of such decedent, said period of last illness not to exceed 12 months.

14 Seventh class. All other claims."

15 Sec. 9. This act becomes effective October 1, 1995, and applies to estates of
16 persons dying on or after that date.