

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1291  
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Short Title: Probate Code/Inheritance Tax Amend.

(Public)

Sponsors:

Referred to:

April 12, 1989

A BILL TO BE ENTITLED

AN ACT CONCERNING ADMINISTRATION OF SMALL ESTATES BY THE  
CLERK OF SUPERIOR COURT AND A RELATED PROVISION OF THE  
INHERITANCE TAX LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-25-6 reads as rewritten:

"§ 28A-25-6. **Payment to clerk of money owed ~~intestate~~ decedent.**

(a) As an alternate to the small estate settlement procedures of this Article, any person indebted to ~~an intestate~~ a decedent may satisfy such indebtedness by paying the amount of the debt to the clerk of the superior court of the county of the domicile of the ~~intestate~~ decedent:

(1) If no administrator has been appointed, and

(2) If the amount owed by such a person does not exceed five thousand dollars (\$5,000), and

(3) If the sum tendered to the clerk would not make the aggregate sum which has come into the clerk's hands belonging to the ~~intestate~~ decedent exceed five thousand dollars (\$5,000).

(b) Such payments may not be made to the clerk if the total amount paid or tendered with respect to any one ~~intestate~~ decedent would exceed five thousand dollars (\$5,000), even though disbursements have been made so that the aggregate amount in the clerk's hands at any one time would not exceed five thousand dollars (\$5,000).

1 (c) If the sum tendered pursuant to this section would make the aggregate sum  
2 coming into the clerk's hands with respect to any one ~~intestate~~-decedent exceed five  
3 thousand dollars (\$5,000) the clerk shall appoint an administrator, or the sum may be  
4 administered under the preceding sections of this Article.

5 (d) If it appears to the clerk after making a preliminary survey that disbursements  
6 pursuant to this section would not exhaust funds received pursuant to this section, he  
7 may, in his discretion, appoint an administrator, or the funds may be administered under  
8 the preceding sections of this Article.

9 (e) The receipt from the clerk of the superior court of a payment purporting to be  
10 made pursuant to this section is a full release to the debtor for the payment so made.

11 (f) If no administrator has been appointed, the clerk of superior court shall  
12 disburse the money received under this section for the following purposes and in the  
13 following order:

- 14 (1) To pay the surviving spouse's year's allowance and children's year's  
15 allowance assigned in accordance with law;
- 16 (2) Repealed by Session Laws 1981, c. 383, s. 3.
- 17 (3) Repealed by Session Laws 1981, c. 383, s. 3.
- 18 (4) All other claims shall be disbursed according to the order set out in  
19 G.S. 28A-19-6.

20 Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out  
21 of funds provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of  
22 Chapter 108A of the General Statutes of North Carolina, any lawful claims for  
23 domiciliary care received by the deceased, incurred not more than 90 days prior to his  
24 death. After the death of a spouse who died intestate and after the disbursements have  
25 been made in accordance with this subsection, the balance in the clerk's hands  
26 belonging to the estate of the ~~intestate~~-decedent shall be paid to the surviving spouse,  
27 and if there is no surviving spouse, the clerk shall pay it to the heirs or ~~distributees~~  
28 devises in proportion to their respective interests.

29 (g) The clerk shall not be required to publish notice to creditors.

30 (h) Whenever an administrator is appointed after the clerk of superior court has  
31 received any money pursuant to this section, the clerk shall pay to the administrator all  
32 funds which have not been disbursed. The clerk shall receive no commissions for  
33 payments made to the administrator, and the administrator shall receive no commissions  
34 for receiving such payments."

35 Sec. 2. G.S. 105-24 is rewritten to read:

36 "(a) No safe deposit company, trust company, corporation, bank, or other  
37 institution, person or persons having in possession or control or custody, in whole or in  
38 part, securities, deposits, assets, or property belonging to or standing in the name of a  
39 decedent, or belonging to or standing in the joint names of decedent and one or more  
40 persons, shall deliver or transfer the same to any person whatsoever, whether in a  
41 representative capacity or not, or to the survivor or to the survivors when held in the  
42 joint names of a decedent and one or more persons, without retaining a sufficient  
43 portion or amount thereof to pay taxes or interest assessed under this Article on property  
44 transferred by the decedent; but the Secretary of Revenue may consent in writing to

1 such delivery or transfer, and such consent shall relieve said safe deposit company, trust  
2 company, corporation, bank or other institution, person or persons from the obligation  
3 herein imposed. Securities whose declaration date is after the decedent's death, or  
4 interest that accrues after the decedent's death on money on deposit at a bank, savings  
5 and loan association, credit union, or other corporation, however, may be transferred or  
6 delivered without retaining a portion of the property for the payment of taxes or interest  
7 and without obtaining the written consent of the Secretary to the delivery or transfer.  
8 Provided: The clerk of superior court of the resident county of a decedent may  
9 authorize in writing ~~any bank, safe deposit company, trust company, or any other institution~~  
10 one or more banks, safe deposit companies, trust companies or any other institutions to  
11 transfer to the properly qualified representative of the estate any funds on deposit in the  
12 name of the decedent or the decedent and one or more persons when the ~~total amount of~~  
13 such deposit or deposits aggregate amount of all such deposits in all such institutions is  
14 ~~three hundred dollars (\$300.00)~~ two thousand dollars (\$2,000) or less, and when such  
15 deposit or deposits compose the total cash assets of the estate. Such authorization shall  
16 have the same force and effect as when issued in writing by the Secretary of Revenue.

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

43 Notwithstanding any of the provisions of this section, in any case where a bank  
44 deposit has been heretofore made or is hereafter made, or where savings and loan stock

1 has heretofore been issued or is hereafter issued, in the names of two or more persons  
2 and payable to either or the survivor or survivors of them, such bank or savings and loan  
3 association may, upon the death of either of such persons, allow the person or persons  
4 entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and  
5 the balance thereof shall be retained by the bank or savings and loan association to  
6 cover any taxes that may thereafter be assessed under this Article. When it is  
7 ascertained that there is no liability of such deposit or stock for taxes under this Article,  
8 the Secretary of Revenue shall furnish the bank or savings and loan association his  
9 written consent for the payment of the retained percentage to the person or persons  
10 entitled thereto by law; and the Secretary of Revenue may furnish such written consent  
11 to the bank or savings and loan association upon the qualification of a personal  
12 representative of the deceased. If the person entitled to funds in an account is the  
13 surviving spouse and the account is a joint account of the surviving spouse and the  
14 decedent with right of survivorship, no tax waiver is required from the Secretary of  
15 Revenue to release the funds in the account.

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

23 Sec. 3. This act shall become effective October 1, 1990, and shall apply to  
24 the funds of all decedents dying on or after that date.