

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 542

Short Title: Estate Amount Changes.

(Public)

Sponsors: Representative Kennedy.

Referred to: Courts and Justice.

March 25, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GENERAL STATUTES COMMISSION TO INCREASE THE AMOUNT OF PROPERTY COLLECTIBLE BY SMALL ESTATE AFFIDAVIT, 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.

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~~ twenty thousand dollars (~~\$10,000~~) (\$20,000) 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 disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir or creditor or the public administrator stating:

- (1) The name and address of the affiant and the fact that he or she is the public administrator or an heir or creditor of the decedent;
(2) The name of the decedent and his residence at time of death;
(3) The date and place of death of the decedent;

- 1 (4) That 30 days have elapsed since the death of the decedent;
2 (5) That the value of all the personal property owned by the estate of the
3 decedent, less liens and encumbrances thereon, does not exceed ~~ten~~
4 twenty thousand dollars ~~(\$10,000);~~ (\$20,000);
5 (6) That no application or petition for appointment of a personal
6 representative is pending or has been granted in any jurisdiction;
7 (7) The names and addresses of those persons who are entitled, under the
8 provisions of the Intestate Succession Act, to the personal property of
9 the decedent and their relationship, if any, to the decedent; and
10 (8) A description sufficient to identify each tract of real property owned
11 by the decedent at the time of his death."

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

13 "(a) When a decedent dies testate leaving personal property, less liens and
14 encumbrances thereon, not exceeding ~~ten~~ twenty thousand dollars ~~(\$10,000)~~ (\$20,000) in
15 value, at any time after 30 days from the date of death, any person indebted to the
16 decedent or having possession of tangible personal property or an instrument evidencing
17 a debt, obligation, stock or chose in action belonging to the decedent shall make
18 payment of the indebtedness or deliver the tangible personal property or an instrument
19 evidencing a debt, obligation, stock or chose in action to a person claiming to be the
20 public administrator appointed pursuant to G.S. 28A-12-1, a person named or
21 designated as executor in the will, devisee, heir or creditor, of the decedent, not
22 disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit
23 filed in accordance with subsection (b) and made by or on behalf of the heir, the person
24 named or designated as executor in the will of the decedent, the creditor, the public
25 administrator, or the devisee, stating:

- 26 (1) The name and address of the affiant and the fact that he is the public
27 administrator, a person named or designated as executor in the will,
28 devisee, heir or creditor, of the decedent;
29 (2) The name of the decedent and his residence at time of death;
30 (3) The date and place of death of the decedent;
31 (4) That 30 days have elapsed since the death of the decedent;
32 (5) That the decedent died testate leaving personal property, less liens and
33 encumbrances thereon, not exceeding ~~ten~~ twenty thousand dollars
34 ~~(\$10,000)~~ (\$20,000) in value;
35 (6) That the decedent's will has been admitted to probate in the court of
36 the proper county and a duly certified copy of the will has been
37 recorded in each county in which is located any real property owned
38 by the decedent at the time of his death;
39 (7) That a certified copy of the decedent's will is attached to the affidavit;
40 (8) That no application or petition for appointment of a personal
41 representative is pending or has been granted in any jurisdiction;
42 (9) The names and addresses of those persons who are entitled, under the
43 provisions of the will, or if applicable, of the Intestate Succession Act,

1 to the property of the decedent; and their relationship, if any, to the
2 decedent; and

3 (10) A description sufficient to identify each tract of real property owned
4 by the decedent at the time of his death."

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

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

8 (1) If the intestate is survived by only one child or by any lineal
9 descendant of only one deceased child, and the net personal property
10 does not exceed ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)-(\$30,000)~~ in
11 value, all of the personal property; if the net personal property exceeds
12 ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)-(\$30,000)~~ in value, the sum of
13 ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)-(\$30,000)~~ plus one half of the
14 balance of the personal property;

15 (2) If the intestate is survived by two or more children, or by one child and
16 any lineal descendant of one or more deceased children, or by lineal
17 descendants of two or more deceased children, and the net personal
18 property does not exceed ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)-~~
19 ~~(\$30,000)~~ in value, all of the personal property; if the net personal
20 property exceeds ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)-(\$30,000)~~ in
21 value, the sum of ~~fifteen-thirty~~ thousand dollars ~~(\$15,000)-(\$30,000)~~
22 plus one third of the balance of the personal property;

23 (3) If the intestate is not survived by a child, children, or any lineal
24 descendant of a deceased child or children, but is survived by one or
25 more parents, and the net personal property does not exceed ~~twenty-five~~
26 ~~fifty~~ thousand dollars ~~(\$25,000)-(\$50,000)~~ in value, all of the personal
27 property; if the net personal property exceeds ~~twenty-five-fifty~~ thousand
28 dollars ~~(\$25,000)-(\$50,000)~~ in value, the sum of ~~twenty-five-fifty~~
29 thousand dollars ~~(\$25,000)-(\$50,000)~~ plus one half of the balance of the
30 personal property;

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

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

35 **"§ 30-15. When spouse entitled to allowance.**

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

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

44 **"§ 30-17. When children entitled to an allowance.**

1 Whenever any parent dies leaving any child under the age of 18 years, including an
2 adopted child or a child with whom the widow may be pregnant at the death of her
3 husband, or a child who is less than 22 years of age and is a full-time student in any
4 educational institution, or a child under 21 years of age who has been declared mentally
5 incompetent, or a child under 21 years of age who is totally disabled, or any other
6 person under the age of 18 years residing with the deceased parent at the time of death
7 to whom the deceased parent or the surviving parent stood in loco parentis, every such
8 child shall be entitled, besides its share of the estate of such deceased parent, to an
9 allowance of ~~one two~~ two thousand dollars ~~(\$1,000)-(\$2,000)~~ for its support for the year next
10 ensuing the death of such parent, less, however, the value of any articles consumed by
11 said child since the death of said parent. Such allowance shall be exempt from any lien
12 by judgment or execution against the property of such parent. The personal
13 representative of the deceased parent, within one year after the parent's death, shall
14 assign to every such child the allowance herein provided for; but if there is no personal
15 representative or if he fails or refuses to act within 10 days after written request by a
16 guardian or next friend on behalf of such child, the allowance may be assigned by a
17 magistrate, upon application of said guardian or next friend.

18 If the child resides with the widow of the deceased parent at the time such allowance
19 is paid, the allowance shall be paid to said widow for the benefit of said child. If the
20 child resides with its surviving parent who is other than the widow of the deceased
21 parent, such allowance shall be paid to said surviving parent for the use and benefit of
22 such child, regardless of whether the deceased died testate or intestate or whether the
23 widow dissented from the will. Provided, however, the allowance shall not be available
24 to an illegitimate child of a deceased father, unless such deceased father shall have
25 recognized the paternity of such illegitimate child by deed, will or other paper-writing.
26 If the child does not reside with a parent when the allowance is paid, it shall be paid to
27 its general guardian, if any, and if none, to the clerk of the superior court who shall
28 receive and disburse same for the benefit of such child."

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

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

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

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

37 **"§ 30-29. What complaint must show.**

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

43 Sec. 8. This act becomes effective October 1, 1993, and applies to estates of
44 persons dying on or after that date.