

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1235

Short Title: Clerks/Year's Allowance.

(Public)

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Sponsors: Senators Odom, Ballantine, Gulley, and Rand.

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Referred to: Judiciary II/Election Laws.

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May 21, 1996

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S  
YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 30-16 reads as rewritten:

**"§ 30-16. Duty of personal representative or magistrate to assign allowance.**

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a ~~magistrate,~~ magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the ~~magistrate,~~ magistrate or clerk, and it shall be the duty of the magistrate or clerk to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of his death, the personal representative or the surviving spouse may apply to any magistrate or to any

1 clerk of court of any township or county where such personal property is located, and it  
2 shall be the duty of such magistrate or clerk to assign the year's allowance as if the  
3 deceased spouse had resided and died in that township."

4 Sec. 2. G.S. 30-17 reads as rewritten:

5 **"§ 30-17. When children entitled to an allowance.**

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

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

34 Sec. 3. Part 2 of Article 4 of Chapter 30 of the General Statutes reads as  
35 rewritten:

36 **"PART 2. ASSIGNED BY ~~MAGISTRATE.~~ MAGISTRATE OR CLERK.**

37 **"§ 30-19. Value of property ascertained.**

38 The value of the personal property assigned to the surviving spouse and children shall  
39 be ascertained by a magistrate or the clerk of court of the county in which administration  
40 was granted or the will probated.

41 **"§ 30-20. Procedure for assignment.**

42 Upon the application of the surviving spouse, a child by his guardian or next friend, or  
43 the personal representative of the deceased, the clerk of superior court of the county in

1 which the deceased resided ~~shall~~ may assign the inquiry to a magistrate of the county. The  
2 magistrate or clerk of court ~~shall~~ shall, upon assignment, ascertain the person or persons  
3 entitled to an allowance according to the provisions of this Article, and determine the  
4 money or other personal property of the estate, and pay over to or assign to the surviving  
5 spouse and to the children, if any, so much thereof as they shall be entitled to as provided  
6 in this Article. Any deficiencies shall be made up from any of the personal property of  
7 the deceased, and if the personal property of the estate shall be insufficient to satisfy such  
8 allowance, the clerk of the superior court shall enter judgment against the personal  
9 representative for the amount of such deficiency, to be paid when a sufficiency of such  
10 assets shall come into his hands.

11 **"§ 30-21. Report of magistrate.**

12 The magistrate or clerk of court ~~shall~~ shall, upon assignment, make and sign three lists  
13 of the money or other personal property assigned to each person, stating their quantity  
14 and value, and the deficiency to be paid by the personal representative. Where the  
15 allowance is to the surviving spouse, one of these lists shall be delivered to him. Where  
16 the allowance is to a child, one of these lists shall be delivered to the surviving parent  
17 with whom the child is living; or to the child's guardian or next friend if the child is not  
18 living with said surviving parent; or to the child if said child is not living with the  
19 surviving parent and has no guardian or next friend. One list shall be delivered to the  
20 personal representative. One list shall be returned by the ~~magistrate,~~ magistrate or clerk,  
21 within 20 days after the assignment, to the superior court of the county in which  
22 administration was granted or the will probated, and the clerk shall file and record the  
23 same, together with any judgment entered pursuant to G.S. 30-20.

24 **"§ 30-22: Repealed by Session Laws 1971, c. 528, s. 25.**

25 **"§ 30-23. Right of appeal.**

26 The personal representative, or the surviving spouse, or child by his guardian or next  
27 friend, or any creditor, legatee or heir of the deceased, may appeal from the finding of the  
28 magistrate or clerk of court to the superior court of the county, and, within 10 days after  
29 the assignment, cite the adverse party to appear before such court on a certain day, not  
30 less than five nor exceeding 10 days after the service of the citation.

31 **"§ 30-24. Hearing on appeal.**

32 At or before the day named, the appellant shall file with the clerk a copy of the  
33 assignment and a statement of his exceptions thereto, and the issues thereby raised shall  
34 be decided ~~as other issues are directed to be de novo.~~ When the issues shall have been  
35 decided, judgment shall be entered accordingly, if it may be without injustice, without remitting  
36 the proceedings to the magistrate.

37 **"§ 30-25. Personal representative entitled to credit.**

38 Upon the settlement of the accounts of the personal representative, he shall be  
39 credited with the articles assigned, and the value of the deficiency assessed as aforesaid,  
40 if the same shall have been paid, unless the allowance be impeached for fraud or gross  
41 negligence in him.

42 **"§ 30-26. When above allowance is in full.**

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

6 Sec. 4. G.S. 7A-307(b1) reads as rewritten:

7 "(b1) The clerk shall assess the following miscellaneous fees:

- 8 (1) Filing and indexing a will with no probate  
9 – first page \$ 1.00  
10 – each additional page or fraction thereof .25  
11 (2) Issuing letters to fiduciaries, per letter over five  
12 letters issued 1.00  
13 (3) Inventory of safe deposits of a decedent, per box, per day 15.00  
14 (4) Taking a deposition 5.00  
15 (5) Docketing and indexing a will probated in another  
16 county in the State  
17 – first page 1.00  
18 – each additional page or fraction thereof .25  
19 (6) Hearing petition for year's allowance to surviving  
20 spouse or child, in cases not assigned to a  
21 magistrate, and allotting the same 4.00".

22 Sec. 5. This act becomes effective October 1, 1996, and applies to applications  
23 for year's allowances filed on or after that date.