

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1235
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Short Title: Clerks/Year's Allowance.

(Public)

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

Referred to: Finance.

May 21, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S
3 YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.

4 The General Assembly of North Carolina enacts:

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

6 **"§ 30-16. Duty of personal representative, ~~or~~ magistrate or clerk of court to assign**
7 **allowance.**

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

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

1 Where any personal property of the deceased spouse shall be located outside the
2 township or county where the deceased spouse resided at the time of his death, the
3 personal representative or the surviving spouse may apply to any magistrate or to any
4 clerk of court of any township or county where such personal property is located, and it
5 shall be the duty of such magistrate or clerk to assign the year's allowance as if the
6 deceased spouse had resided and died in that township."

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

8 **"§ 30-17. When children entitled to an allowance.**

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

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

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

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

40 **"§ 30-19. Value of property ascertained.**

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

1 **"§ 30-20. Procedure for assignment.**

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

14 **"§ 30-21. Report of magistrate or clerk of court.**

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

27 **"§ 30-22: Repealed by Session Laws 1971, c. 528, s. 25.**

28 **"§ 30-23. Right of appeal.**

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

34 **"§ 30-24. Hearing on appeal.**

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

40 **"§ 30-25. Personal representative entitled to credit.**

41 Upon the settlement of the accounts of the personal representative, he shall be
42 credited with the articles assigned, and the value of the deficiency assessed as aforesaid,

1 if the same shall have been paid, unless the allowance be impeached for fraud or gross
2 negligence in him.

3 **"§ 30-26. When above allowance is in full.**

4 If the estate of a deceased be insolvent, or if his personal estate does not exceed ten
5 thousand dollars (\$10,000), the allowances for the year's support of the surviving spouse
6 and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and G.S.
7 30-17; and the allowances made to them as above prescribed shall preclude them from
8 any further allowances."

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

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

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

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