

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 245

Judiciary I/Constitution Committee Substitute Adopted 4/24/95

Short Title: Opening Empty Lock Boxes.

(Public)

Sponsors:

Referred to:

February 22, 1995

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE OPENING OF EMPTY LOCK BOXES OF DECEDENTS OUTSIDE THE PRESENCE OF THE CLERK OF SUPERIOR COURT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-24 reads as rewritten:

"§ 105-24. ~~Access to safe deposits of decedents;~~ Tax waiver required for transfer of decedents' property in some cases; inventory of lock boxes; withdrawal of bank deposits, etc., payable to either husband or wife or survivor.

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

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

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

41 (c) Notwithstanding the provisions of subsection (b) of this section, if the properly  
42 qualified personal representative of an estate believes upon reliable information that a  
43 lock box to which the decedent had access is empty, the personal representative may so

1 certify to the clerk of superior court of the county in which the lock box is located. Upon  
2 receipt of this certificate, the clerk may authorize in writing the personal representative or  
3 the personal representative's named agent to open the lock box outside of the clerk's  
4 presence. The personal representative or the personal representative's agent shall open  
5 the lock box in the presence of an officer or representative of the institution having  
6 control or custody of the lock box, and the personal representative or the personal  
7 representative's agent shall certify to the clerk whether the lock box is or is not empty.  
8 The certificate shall include the name of the officer or representative of the institution  
9 who was present at the time the lock box was opened and shall be signed by the officer or  
10 representative to indicate that he or she was present. If the lock box is empty, no tax  
11 waiver will be required from, and no notice given to, the Secretary of Revenue. If the  
12 lock box is not empty, the officer or representative of the institution shall close the lock  
13 box at once and the lock box may be reopened only in accordance with subsection (b) of  
14 this section.

15 (d) Notwithstanding any of the provisions of this section, in any case where a bank  
16 deposit has been heretofore made or is hereafter made, or where savings and loan stock  
17 has heretofore been issued or is hereafter issued, in the names of two or more persons and  
18 payable to either or the survivor or survivors of them, such bank or savings and loan  
19 association may, upon the death of either of such persons, allow the person or persons  
20 entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and  
21 the balance thereof shall be retained by the bank or savings and loan association to cover  
22 any taxes that may thereafter be assessed under this Article. When it is ascertained that  
23 there is no liability of such deposit or stock for taxes under this Article, the Secretary of  
24 Revenue shall furnish the bank or savings and loan association his written consent for the  
25 payment of the retained percentage to the person or persons entitled thereto by law; and  
26 the Secretary of Revenue may furnish such written consent to the bank or savings and  
27 loan association upon the qualification of a personal representative of the deceased. If  
28 the person entitled to funds in an account is the surviving spouse and the account is a  
29 joint account of the surviving spouse and the decedent with right of survivorship, no tax  
30 waiver is required from the Secretary of Revenue to release the funds in the account.

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

38 Sec. 2. This act becomes effective October 1, 1995, and applies to the estates  
39 of decedents dying on or after that date.