

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

FILED SENATE
May 21, 2012
S.B. 843
PRINCIPAL CLERK

S

D

SENATE DRS65091-MNz-5* (05/15)

Short Title: Intestate Property/Child's Year's Allowance. (Public)

Sponsors: Senator Hartsell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE MINIMUM AMOUNT OF INTESTATE PERSONAL
3 PROPERTY PASSING TO THE SURVIVING SPOUSE AND THE AMOUNT OF THE
4 YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE FOR A SURVIVING CHILD,
5 TO REINSERT ERRONEOUSLY REMOVED REFERENCES TO A CHILD'S "NEXT
6 FRIEND" IN THE STATUTES RELATING TO A CHILD'S YEAR'S ALLOWANCE,
7 AND TO SPECIFY THAT THE CHILD'S YEAR'S ALLOWANCE MAY BE PAID TO A
8 WIDOWER ON THE CHILD'S BEHALF AS WELL AS TO A WIDOW, AS
9 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 29-14(b) reads as rewritten:

- 12 "(b) Personal Property. – The share of the surviving spouse in the personal property is:
- 13 (1) If the intestate is survived by only one child or by any lineal descendant of
14 only one deceased child, and the net personal property does not exceed ~~thirty~~
15 ~~thousand dollars (\$30,000)~~sixty thousand dollars (\$60,000) in value, all of
16 the personal property; if the net personal property exceeds ~~thirty thousand~~
17 ~~dollars (\$30,000)~~sixty thousand dollars (\$60,000) in value, the sum of ~~thirty~~
18 ~~thousand dollars (\$30,000)~~sixty thousand dollars (\$60,000) plus one half of
19 the balance of the personal property;
- 20 (2) If the intestate is survived by two or more children, or by one child and any
21 lineal descendant of one or more deceased children, or by lineal descendants
22 of two or more deceased children, and the net personal property does not
23 exceed ~~thirty thousand dollars (\$30,000)~~sixty thousand dollars (\$60,000) in
24 value, all of the personal property; if the net personal property exceeds ~~thirty~~
25 ~~thousand dollars (\$30,000)~~sixty thousand dollars (\$60,000) in value, the sum
26 of ~~thirty thousand dollars (\$30,000)~~sixty thousand dollars (\$60,000) plus one
27 third of the balance of the personal property;
- 28 (3) If the intestate is not survived by a child, children, or any lineal descendant
29 of a deceased child or children, but is survived by one or more parents, and
30 the net personal property does not exceed ~~fifty thousand dollars~~
31 ~~(\$50,000)~~one hundred thousand dollars (\$100,000) in value, all of the
32 personal property; if the net personal property exceeds ~~fifty thousand dollars~~
33 ~~(\$50,000)~~one hundred thousand dollars (\$100,000) in value, the sum of ~~fifty~~
34 ~~thousand dollars (\$50,000)~~one hundred thousand dollars (\$100,000) plus one
35 half of the balance of the personal property;



* D R S 6 5 0 9 1 - M N Z - 5 *

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

3 **SECTION 2.(a)** G.S. 30-17 reads as rewritten:

4 **"§ 30-17. When children entitled to an allowance.**

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

21 If the child resides with the ~~widow-surviving spouse~~ of the deceased parent at the time ~~such~~
22 ~~the~~ allowance is paid, the allowance shall be paid to ~~said widow~~the surviving spouse for the
23 benefit of ~~said the~~ child. If the child resides with its surviving parent who is other than the
24 ~~widow-surviving spouse~~ of the deceased parent, ~~such the~~ allowance shall be paid to ~~said the~~
25 surviving parent for the use and benefit of ~~such child, regardless of whether the deceased died~~
26 ~~testate or intestate or whether the widow dissented from the will the child. The payment shall~~
27 ~~be made regardless of whether the deceased died testate or intestate or whether the surviving~~
28 ~~spouse petitioned for an elective share under Article 1A of Chapter 30 of the General Statutes.~~
29 Provided, however, the allowance shall not be available to an illegitimate child of a deceased
30 father, unless ~~such the~~ deceased father ~~shall have~~has recognized the paternity of ~~such the~~
31 illegitimate child by deed, ~~will will,~~ or other paper-writing. If the child does not reside with a
32 surviving spouse or a surviving parent when the allowance is paid, the allowance shall be paid
33 to the child's general guardian, if any, and if none, to the clerk of the superior court who shall
34 receive and disburse ~~same the allowance~~ for the benefit of ~~such the~~ child."

35 **SECTION 2.(b)** G.S. 30-20 reads as rewritten:

36 **"§ 30-20. Procedure for assignment.**

37 Upon the application of the surviving spouse, a child by the child's ~~guardian,~~guardian or
38 next friend, or the personal representative of the deceased, the clerk of superior court of the
39 county in which the deceased resided may assign the inquiry to a magistrate of the county. The
40 clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to
41 an allowance according to the provisions of this Article, and determine the money or other
42 personal property of the estate, and pay over to or assign to the surviving spouse and to the
43 children, if any, so much thereof as they shall be entitled to as provided in this Article. Any
44 deficiencies shall be made up from any of the personal property of the deceased, and if the
45 personal property of the estate shall be insufficient to satisfy ~~such the~~ allowance, the clerk of
46 the superior court shall enter judgment against the personal representative for the amount of
47 ~~such the~~ deficiency, to be paid when a sufficiency of such assets shall come into the personal
48 representative's hands."

49 **SECTION 2.(c)** G.S. 30-21 reads as rewritten:

50 **"§ 30-21. Report of clerk or magistrate.**

1 The clerk of court, or magistrate upon assignment, shall make and sign three lists of the
2 money or other personal property assigned to each person, stating their quantity and value, and
3 the deficiency to be paid by the personal representative. Where the allowance is to the
4 surviving spouse, one of these lists shall be delivered to the surviving spouse. Where the
5 allowance is to a child, one of these lists shall be delivered to the surviving parent with whom
6 the child is living; or to the child's guardian or next friend if the child is not living with ~~said the~~
7 surviving parent; or to the child if ~~said the~~ child is not living with the surviving parent and has
8 no guardian-guardian or next friend. One list shall be delivered to the personal representative.
9 One list shall be returned by the magistrate or clerk, within 20 days after the assignment, to the
10 superior court of the county in which administration was granted or the will probated, and the
11 clerk shall file and record the ~~same,~~list, together with any judgment entered pursuant to
12 G.S. 30-20."

13 **SECTION 2.(d)** G.S. 30-23 reads as rewritten:

14 "**§ 30-23. Right of appeal.**

15 The personal representative, or the surviving spouse, or child by a the child's
16 guardian-guardian or next friend, or any creditor, devisee, or heir of the deceased, may appeal
17 from the finding of the magistrate or clerk of court to the superior court of the county, by filing
18 a copy of the assignment and a notice of appeal within 10 days after the assignment, and the
19 appeal shall be heard as provided in G.S. 1-301.2, provided that the hearing on the appeal shall
20 be at the next available session of superior court."

21 **SECTION 2.(e)** G.S. 30-27 reads as rewritten:

22 "**§ 30-27. Surviving spouse or child may apply to superior court.**

23 In addition to any support otherwise assigned to the surviving spouse or child ~~as above~~
24 ~~prescribed, under this Article,~~ without application to the personal representative, the surviving
25 spouse, or the child through the child's guardian or next friend may, after the date specified in
26 the general notice to creditors as provided for in G.S. 28A-14-1(a), and within one year after
27 the decedent's death, apply to the superior court of the county in which administration was
28 granted or the will probated to have a year's support assigned at an amount other than
29 prescribed in G.S. 30-15 and G.S. 30-17."

30 **SECTION 3.** G.S. 30-17, as amended by Section 2(a) of this act, reads as
31 rewritten:

32 "**§ 30-17. When children entitled to an allowance.**

33 Whenever any parent dies survived by any child under the age of 18 years, including an
34 adopted child or a child with whom the widow may be pregnant at the death of her husband, or
35 a child who is less than 22 years of age and is a full-time student in any educational institution,
36 or a child under 21 years of age who has been declared mentally incompetent, or a child under
37 21 years of age who is totally disabled, or any other person under the age of 18 years residing
38 with the deceased parent at the time of death to whom the deceased parent or the surviving
39 parent stood in loco parentis, every such child shall be entitled to receive an allowance of ~~two~~
40 ~~thousand dollars (\$2,000)~~ five thousand dollars (\$5,000) for the child's support for the year next
41 ensuing the death of the parent. The allowance shall be in addition to the child's share of the
42 deceased parent's estate and shall be exempt from any lien by judgment or execution against the
43 property of the deceased parent. The personal representative of the deceased parent shall,
44 within one year after the parent's death, assign to every such child the allowance herein
45 provided for; but if there is no personal representative or if the personal representative fails or
46 refuses to act within 10 days after written application by a guardian or next friend on behalf of
47 the child, the allowance may be assigned by a magistrate or clerk of court upon application.

48 If the child resides with the surviving spouse of the deceased parent at the time the
49 allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the
50 child. If the child resides with its surviving parent who is other than the surviving spouse of the
51 deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of

1 the child. The payment shall be made regardless of whether the deceased died testate or
2 intestate or whether the surviving spouse petitioned for an elective share under Article 1A of
3 Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to
4 an illegitimate child of a deceased father, unless the deceased father has recognized the
5 paternity of the illegitimate child by deed, will, or other paper-writing. If the child does not
6 reside with a surviving spouse or a surviving parent when the allowance is paid, the allowance
7 shall be paid to the child's general guardian, if any, and if none, to the clerk of the superior
8 court who shall receive and disburse the allowance for the benefit of the child."

9 **SECTION 4.** Section 2 of this act is effective when this act becomes law. The
10 remainder of this act becomes effective January 1, 2013, and applies to estates of persons dying
11 on or after that date.