

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 132
Second Edition Engrossed 4/17/97

Short Title: Clerks/Year's Allowance.

(Public)

Sponsors: Senators Odom and Rand.

Referred to: Judiciary.

February 17, 1997

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 to assign allowance.**

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

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

18 Where any personal property of the deceased spouse shall be located outside the
19 township or county where the deceased spouse resided at the time of his death, the

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

5 Section 2. G.S. 30-17 reads as rewritten:

6 **"§ 30-17. When children entitled to an allowance.**

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

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

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

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

38 **"§ 30-19. Value of property ascertained.**

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

42 **"§ 30-20. Procedure for assignment.**

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

13 **"§ 30-21. Report of clerk or magistrate.**

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

26 **"§ 30-22. Repealed by Session Laws 1971, c. 528, s. 25.**

27 **"§ 30-23. Right of appeal.**

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

33 **"§ 30-24. Hearing on appeal.**

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

39 **"§ 30-25. Personal representative entitled to credit.**

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

1 **"§ 30-26. When above allowance is in full.**

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

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

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

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

23 Section 5. This act becomes effective October 1, 1997, and applies to
 24 applications for year's allowances filed on or after that date.