

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH80250-LL-115 (3/14)

Short Title: Inheritance by Illegitimate Child. (Public)

Sponsors: Representatives Davis and Stam (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW AN ILLEGITIMATE CHILD TO INHERIT FROM A PERSON WHO
3 DIED PRIOR TO OR WITHIN ONE YEAR AFTER THE BIRTH OF THAT CHILD IF
4 PATERNITY CAN BE ESTABLISHED BY DNA TESTING.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 29-19(b) reads as rewritten:

7 "§ 29-19. Succession by, through and from illegitimate children.

8 (a) For purposes of intestate succession, an illegitimate child shall be treated as if that
9 child were the legitimate child of the child's mother, so that the child and the child's lineal
10 descendants are entitled to take by, through and from the child's mother and the child's other
11 maternal kindred, both descendants and collaterals, and they are entitled to take from the child.

12 (b) For purposes of intestate succession, an illegitimate child shall be entitled to take
13 by, through and from:

14 (1) Any person who has been finally adjudged to be the father of such child
15 pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of
16 G.S. 49-14 through 49-16;

17 (2) Any person who has acknowledged himself during his own lifetime and the
18 child's lifetime to be the father of such child in a written instrument executed
19 or acknowledged before a certifying officer named in G.S. 52-10(b) and
20 filed during his own lifetime and the child's lifetime in the office of the clerk
21 of superior court of the county where either he or the child resides.

22 (3) A person who died prior to or within one year after the birth of the child and
23 who can be established to have been the father of the child by DNA testing.

24 Notwithstanding the above provisions, no person shall be entitled to take hereunder unless
25 the person has given written notice of the basis of the person's claim to the personal
26 representative of the putative father within six months after the date of the first publication or
27 posting of the general notice to creditors.

28 (c) Any person described under subdivision ~~(b)(1) or (2)~~ (b)(1), (2), or (3) above and
29 the person's lineal and collateral kin shall be entitled to inherit by, through and from the
30 illegitimate child.

31 (d) Any person who acknowledges that he is the father of an illegitimate child in his
32 duly probated last will shall be deemed to have intended that such child be treated as expressly
33 provided for in said will or, in the absence of any express provision, the same as a legitimate
34 child."

35 SECTION 2. G.S. 30-17 reads as rewritten:

36 "§ 30-17. When children entitled to an allowance.



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

16 If the child resides with the surviving spouse of the deceased parent at the time the
17 allowance is paid, the allowance shall be paid to the surviving spouse for the benefit of the
18 child. If the child resides with its surviving parent who is other than the surviving spouse of the
19 deceased parent, the allowance shall be paid to the surviving parent for the use and benefit of
20 the child. The payment shall be made regardless of whether the deceased died testate or
21 intestate or whether the surviving spouse petitioned for an elective share under Article 1A of
22 Chapter 30 of the General Statutes. Provided, however, the allowance shall not be available to
23 an illegitimate child of a deceased father, unless the deceased father has recognized the
24 paternity of the illegitimate child by deed, will, or other ~~paper-writing. paper-writing,~~ or unless
25 the deceased father died prior to or within one year after the birth of the child and is established
26 to have been the father of the child by DNA testing. If the child does not reside with a surviving
27 spouse or a surviving parent when the allowance is paid, the allowance shall be paid to the
28 child's general guardian, if any, and if none, to the clerk of the superior court who shall receive
29 and disburse the allowance for the benefit of the child."

30 **SECTION 3.** This act is effective when it becomes law, and applies to estates of
31 persons dying on or after that date.