

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 841
Second Edition Engrossed 4/27/89
House Committee Substitute Favorable 6/28/89

Short Title: Dissent from a Will Change.

(Public)

Sponsors:

Referred to:

April 11, 1989

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAW CONCERNING THE EFFECT OF A DISSENT FROM A WILL BY A SURVIVING SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 30-3 reads as rewritten:

"§ 30-3. Effect of dissent.

(a) Upon dissent as provided for in G.S. 30-2, the surviving spouse, except as provided in subsection (b) of this section, shall take the same share of the deceased spouse's real and personal property as if the deceased had died intestate; provided, that if the deceased spouse is not survived by a child, children, or any lineal descendants of a deceased child or children, or by a parent, the surviving spouse shall receive only one half of the deceased spouse's net estate as defined in G.S. 29-2(5), which one half shall be estimated and determined before any federal estate tax is deducted or paid and shall be free and clear of such tax.

(b) Whenever the surviving spouse is a second or successive spouse, he or she shall take only one half of the amount provided by the Intestate Succession Act for the surviving spouse if the testator has surviving him lineal descendants by a former marriage but there are no lineal descendants surviving him by the second or successive marriage.

(c) If the surviving spouse dissents from his or her deceased spouse's will and takes ~~an intestate~~ a share as determined by reference to the Intestate Succession Act as provided herein, the residue of the testator's net estate, as defined in G.S. 29-2, shall be

1 distributed to the other devisees and legatees as provided in the testator's last will,
2 diminished pro rata unless the will otherwise provides.

3 If the will to which the dissent is filed makes a disposition to a revocable **inter vivos**
4 trust established by the deceased spouse, then the surviving spouse, upon taking the
5 share of the deceased spouse's real and personal property to which the surviving spouse
6 is entitled by reason of the dissent, shall be deemed for purposes of the trust to have
7 forfeited all remaining benefits under the trust for the benefit of the surviving spouse.
8 The assets remaining in the trust thereafter shall be administered and disposed of as if
9 the surviving spouse had predeceased the testator. The provisions of this paragraph
10 shall be applicable to all property bequeathed or devised to the trust by the will and to
11 all property held by the trustee at the time of the death of the testator or which passes to
12 the trustee by reason of the death of the testator to the extent that the testator had the
13 right to control the disposition of the property at the testator's death. The provisions of
14 this paragraph shall not be applicable to the extent that the will or trust instrument
15 provides otherwise.

16 (d) No personal representative, fiduciary or other person liable for distributing or
17 disposing of property in accordance with the testator's will or an **inter vivos** trust
18 described in this subsection shall be liable for distributing or disposing of property in
19 accordance with such will or trust agreement if the distribution or disposition is
20 otherwise proper and the personal representative, trustee or other person has no actual
21 knowledge of the facts that constitute a revocation of the surviving spouse's rights as a
22 devisee or a beneficiary under the will or trust under this section."

23 Sec. 2. This act shall become effective October 1, 1989, and shall apply to
24 the estates of all decedents dying on or after that date.