

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

3

HOUSE BILL 561
Committee Substitute Favorable 5/2/05
Senate Judiciary II Committee Substitute Adopted 8/11/05

Short Title: Commissions for Personal Representatives.

(Public)

Sponsors:

Referred to:

March 10, 2005

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO COMMISSIONS ALLOWED TO PERSONAL
3 REPRESENTATIVES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 28A-23-3 reads as rewritten:

6 "§ 28A-23-3. **Commissions allowed personal representatives; representatives guilty**
7 **of misconduct or default.**

8 (a) Personal representatives, collectors or public administrators shall be entitled
9 to commissions to be fixed in the discretion of the clerk of superior court not to exceed
10 five percent (5%) upon the amounts of receipts, including the value of all personal
11 property when received, and upon the expenditures made in accordance with law, which
12 law. In determining the maximum commissions allowable under this subsection, the
13 clerk of superior court may take into consideration fees paid by the estate for
14 professional services performed in the ordinary course of administering the estate,
15 including services performed by attorneys and accountants. However, the clerk is not
16 required to reduce the maximum commissions allowed by the aggregate fees paid to
17 professionals on a dollar-for-dollar basis.

18 The commissions shall be charged as a part of the costs of administration and, upon
19 allowance, may be retained out of the assets of the estate against creditors and all other
20 persons claiming an interest in the estate. ~~Provided, however, when~~ If the gross value of
21 an estate is two thousand dollars (\$2,000) or less, the clerk of superior court is
22 authorized and empowered to may fix the commission to be received by the personal
23 representative, collector or public administrator in an amount as he, the clerk of superior
24 court, in his the clerk's discretion, deems just and adequate.

25 (b) In determining the amount of ~~such~~ the commissions, both upon personal
26 property received and upon expenditures made, the clerk of superior court shall consider
27 the time, responsibility, trouble and skill involved in the management of the estate.

1 Where real property is sold to pay debts or legacies, the commission shall be computed
2 only on the proceeds actually applied in the payment of debts or legacies.

3 (c) The clerk of superior court may allow commissions from time to time during
4 the course of the administration, but the total commissions allowed shall be determined
5 on final settlement of the estate and shall not exceed the limit fixed in this section.

6 (d) Nothing in this section shall be ~~construed~~; construed to:

7 (1) ~~To prevent~~ Prevent the clerk of the superior court from allowing
8 reasonable sums for necessary charges and disbursements incurred in
9 the management of the ~~estate~~; estate.

10 (2) ~~To allow~~ Allow commissions on distribution of the shares of heirs or
11 on distribution of shares of ~~devisees~~; devisees.

12 (3) ~~To abridge~~ Abridge the right of any party interested in the
13 administration of a decedent's estate to appeal an order of the clerk of
14 superior court to a judge of superior court.

15 (e) No personal representative, collector or public administrator, who has been
16 guilty of ~~such~~ default or misconduct in the due execution of his or her office resulting in
17 the revocation of his or her appointment of the personal representative, collector, or
18 public administrator under the provisions of G.S. 28A-9-1, shall be entitled to any
19 commission under the provisions of this section.

20 (f) For the purpose of computing commissions whenever any portion of the
21 dividends, interest, rents or other amounts payable to a personal representative, collector
22 or public administrator is required by any law of the United States or other
23 governmental unit to be withheld for income tax purposes by the person, corporation,
24 organization or governmental unit paying the same, the amount ~~so~~-withheld shall be
25 deemed to have been received and expended.

26 (g) Subsection (a) of this section does not apply if the testator's will specifies a
27 stipulated amount or method or standard for determining the compensation for the
28 services rendered by the personal representative, including a provision in the will that
29 the compensation of the personal representative is to be determined by applying the
30 personal representative's regularly adopted schedule of compensation in effect at the
31 time of performance of those services. Subsection (a) of this section also shall not apply
32 if the testator's will provides that the personal representative is to receive "reasonable
33 compensation" for those services or similar language to that effect if the personal
34 representative and the beneficiaries whose shares would be charged with the payment of
35 the personal representative's compensation consent in writing to the specific amount that
36 constitutes reasonable compensation.

37 (h) Subsection (a) of this section shall apply if the testator's will provides that
38 compensation of the personal representative shall be the amount "as provided by law,"
39 the "maximum amount provided by law," or other similar language."

40 **SECTION 2.** G.S. 28A-19-6, as amended by S.L. 2005-180, reads as
41 rewritten:

42 "**§ 28A-19-6. Order of payment of claims.**

43 (a) After payment of costs and expenses of administration, the claims against the
44 estate of a decedent must be paid in the following order:

1 First class. Claims which by law have a specific lien on property to an amount not
2 exceeding the value of such property.

3 Second class. Funeral expenses to the extent of two thousand five hundred dollars
4 (\$2,500). This limitation shall not include cemetery lot or gravestone. The preferential
5 limitation herein granted shall be construed to be only a limit with respect to preference
6 of payment and shall not be construed to be a limitation on reasonable funeral expenses
7 which may be incurred; nor shall the preferential limitation of payment in the amount of
8 two thousand five hundred dollars (\$2,500) be diminished by any Veterans
9 Administration, social security or other federal governmental benefits awarded to the
10 estate of the decedent or to his or her beneficiaries.

11 Third class. All dues, taxes, and other claims with preference under the laws of the
12 United States.

13 Fourth class. All dues, taxes, and other claims with preference under the laws of the
14 State of North Carolina and its subdivisions.

15 Fifth class. Judgments of any court of competent jurisdiction within the State,
16 docketed and in force, to the extent to which they are a lien on the property of the
17 decedent at his death.

18 Sixth class. Wages due to any employee employed by the decedent, which claim for
19 wages shall not extend to a period of more than 12 months next preceding the death; or
20 if such employee was employed for the year current at the decease, then from the time
21 of such employment; for medical services within the 12 months preceding the decease;
22 for drugs and all other medical supplies necessary for the treatment of such decedent
23 during the last illness of such decedent, said period of last illness not to exceed 12
24 months.

25 Seventh class. A claim for equitable distributions.

26 Eighth class. All other claims.

27 (b) Notwithstanding subsection (a) of this section, if payment of the commissions
28 of the personal representative under G.S. 28A-23-3(g) would cause the estate to be
29 unable to pay all claims against the estate of a decedent, then the commissions shall be
30 limited to the amount allowed under G.S. 28A-23-3(a)."

31 **SECTION 3.** This act becomes effective January 1, 2006, and applies to
32 commissions paid on or after that date.