

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 775*

Short Title: Revise Simultaneous Death Act.

(Public)

Sponsors: Representatives Ross; Alexander and Hurley.

Referred to: Judiciary I.

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE UNIFORM SIMULTANEOUS DEATH ACT, AS
3 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 24 of Chapter 28A of the General Statutes reads as
6 rewritten:

7 "Article 24.

8 "~~Uniform-120-Hour Survivorship Requirement; Revised Simultaneous Death Act.~~

9 "~~§ 28A-24-1. Disposition of property where no sufficient evidence of survivorship.~~
10 Definitions.

11 ~~Where the title to property or the devolution thereof depends upon priority of death~~
12 ~~and there is no sufficient evidence that the persons have died otherwise than~~
13 ~~simultaneously, the property of each person shall be disposed of as if he had survived,~~
14 ~~except as provided otherwise in this Article.~~

15 In this Article:

- 16 (1) "Co-owners with right of survivorship" includes joint tenants in a joint
17 tenancy with right of survivorship, tenants by the entireties, and other
18 co-owners of property or accounts held under circumstances that
19 entitle one or more to the whole of the property or account on the
20 death of the other or others.
- 21 (2) "Governing instrument" means a deed, will, trust, insurance or annuity
22 policy, account with a POD designation, pension, profit sharing,
23 retirement, or similar benefit plan, instrument creating or exercising a
24 power of appointment or a power of attorney, or a dispositive,
25 appointive, or nominative instrument of any similar type.
- 26 (3) "Payor" means a trustee, insurer, business entity, employer,
27 government, governmental agency or subdivision, or any other person
28 authorized or obligated by law or a governing instrument to make
29 payments.

1 ~~"§ 28A-24-2. Beneficiaries of another person's disposition of property.~~
2 Requirement of survival by 120 hours.

3 (a) ~~Other than as provided in subsection (b) below, if property is so disposed of~~
4 ~~that the right of a beneficiary to succeed to any interest therein is conditional upon his~~
5 ~~surviving another person and both persons die, and there is no sufficient evidence that~~
6 ~~the two have died other than simultaneously, the beneficiary shall be deemed not to~~
7 ~~have survived. Except as otherwise provided in this Article, where the title to property,~~
8 ~~the devolution of property, the right to elect an interest in property, or any other right or~~
9 ~~benefit depends upon an individual's survivorship of the death of another individual, an~~
10 ~~individual who is not established by clear and convincing evidence to have survived the~~
11 ~~other individual by at least 120 hours is deemed to have predeceased the other~~
12 ~~individual.~~

13 (b) ~~If property is so disposed of that it is to be distributed among such members~~
14 ~~of a class as survive another person and there is no sufficient evidence that one or more~~
15 ~~members of the class and such other person died other than simultaneously, each~~
16 ~~member of the class so dying will be deemed to have survived such other person. If the~~
17 ~~language of the governing instrument disposes of property in such a way that two or~~
18 ~~more beneficiaries are designated to take alternatively by reason of surviving each other~~
19 ~~and it is not established by clear and convincing evidence that any such beneficiary has~~
20 ~~survived any other such beneficiary by at least 120 hours, the property shall be divided~~
21 ~~into as many equal shares as there are alternative beneficiaries, and these shares shall be~~
22 ~~distributed respectively to each such beneficiary's estate.~~

23 (c) ~~If property is so disposed of that its disposition depends upon the time of~~
24 ~~death of two or more beneficiaries designated to take alternatively by reason of~~
25 ~~survivorship and there is no sufficient evidence that such beneficiaries have died~~
26 ~~otherwise than simultaneously, the property thus disposed of shall be divided into as~~
27 ~~many equal portions as there are alternative beneficiaries who would have taken the~~
28 ~~whole property if they had survived and such portions shall be distributed respectively~~
29 ~~to each such beneficiary. If the language of the governing instrument disposes of~~
30 ~~property in such a way that it is to be distributed to the member or members of a class~~
31 ~~who survived an individual, each member of the class will be deemed to have survived~~
32 ~~that individual by at least 120 hours unless it is established by clear and convincing~~
33 ~~evidence that the individual survived the class member or members by at least 120~~
34 ~~hours.~~

35 ~~"§ 28A-24-3. Joint tenants or tenants by the entirety. Co-owners with right of~~
36 ~~survivorship; requirement of survival by 120 hours.~~

37 (a) ~~Where there is no sufficient evidence that two joint tenants or tenants by the~~
38 ~~entirety have died otherwise than simultaneously, the property shall be distributed one~~
39 ~~half as if one had survived and one half as if the other had survived. If there are more~~
40 ~~than two joint tenants and all of them have so died, the property thus distributed shall be~~
41 ~~in the proportion that one bears to the whole number of joint tenants.~~

42 (b) ~~For the purpose of this section, the term "joint tenants" includes owners of~~
43 ~~property held under circumstances which entitled one or more to the whole of the~~
44 ~~property on the death of the other or others.~~

1 Except as otherwise provided in this Article, (i) if it is not established by clear and
2 convincing evidence that one of two co-owners with right of survivorship survived the
3 other co-owner by at least 120 hours, one-half of the property passes as if one had
4 survived by at least 120 hours and one-half as if the other had survived by at least 120
5 hours and (ii) if there are more than two co-owners with right of survivorship and it is
6 not established by clear and convincing evidence that at least one of them survived the
7 others by at least 120 hours, the property passes to the estates of each of the co-owners
8 in the proportion that one bears to the whole number of co-owners.

9 **"§ 28A-24-4. Insurance policies. Survival of an event; 120-hour period not**
10 **applicable.**

11 ~~Where the insured and the beneficiary in a policy of life or accident insurance have~~
12 ~~died and there is no sufficient evidence that they have died otherwise than~~
13 ~~simultaneously, the proceeds of the policy shall be distributed as if the insured had~~
14 ~~survived the beneficiary.~~

15 For purposes of a governing instrument that requires survival of an event, other than
16 the death of another individual, the 120-hour survivorship requirement of this Article
17 does not apply.

18 **"§ 28A-24-5. Article does not apply if decedent provides otherwise. Victim deemed**
19 **to survive slayer.**

20 ~~This Article shall not apply in the case of wills, living trusts, deeds, contracts of~~
21 ~~insurance, or any other situation wherein provision has been made for distribution of~~
22 ~~property different from the provisions of this Article, or wherein provision has been~~
23 ~~made for a presumption as to survivorship which results in a distribution of property~~
24 ~~different from that herein provided.~~

25 Notwithstanding any other provisions of this Article, solely for the purpose of
26 determining whether the victim is entitled to any right or benefit that depends on
27 surviving the death of a slayer under G.S. 31A-3, the slayer is deemed to have
28 predeceased the victim and the victim is deemed to have survived the slayer by at least
29 120 hours (or any greater survival period required of the victim under the slayer's will or
30 other governing instrument) unless it is established by clear and convincing evidence
31 that the slayer survived the victim by at least 120 hours.

32 **"§ 28A-24-6. Uniformity of interpretation. Exceptions to the 120-hour survival**
33 **requirement.**

34 ~~This Article shall be so construed and interpreted as to effectuate its general purpose~~
35 ~~to make uniform the law in those states which enact it.~~

36 Survival by 120 hours is not required if any of the following apply:

- 37 (1) The governing instrument contains language dealing explicitly with
38 simultaneous deaths or deaths in a common disaster and the language
39 is operable under the facts of the case.
- 40 (2) The governing instrument expressly indicates that an individual is not
41 required to survive the death of another individual by any specified
42 period or expressly requires the individual to survive another
43 individual for a specified period; but survival must be established by
44 clear and convincing evidence.

- 1 (3) The imposition of a 120-hour requirement of survival would cause a
2 nonvested property interest or a power of appointment to fail to qualify
3 for validity under G.S. 41-15; but survival must be established by clear
4 and convincing evidence.
- 5 (4) The application of a 120-hour requirement of survival to multiple
6 governing instruments would result in an unintended failure or
7 duplication of a disposition; but survival must be established by clear
8 and convincing evidence.
- 9 (5) The application of a 120-hour requirement of survival would deprive
10 an individual or the estate of an individual of an otherwise available
11 tax exemption, deduction or credit, expressly including the marital
12 deduction, resulting in the imposition of a tax upon a donor or testator
13 or other person (or their estate) as the transferor of any property. "Tax"
14 includes any federal or State gift, estate or inheritance tax.
- 15 (6) The application of a 120-hour requirement of survival would result in
16 an escheat.

17 **§ 28A-24-7. Short title. Evidence of death or status.**

18 ~~This Article may be cited as the Uniform Simultaneous Death Act.~~

19 For purposes of this Article, the following rules of evidence apply relating to the
20 determination of death and status of a beneficiary subject to a requirement of
21 survivorship and of the person the beneficiary must survive:

- 22 (1) Death occurs when an individual is determined to be dead pursuant to
23 G.S. 90-323 or Chapter 28C of the General Statutes.
- 24 (2) A certified or authenticated copy of a death certificate purporting to be
25 issued by an official or agency in the place where the death
26 purportedly occurred is prima facie evidence of the fact, place, date,
27 and time of death and the identity of the decedent. In the absence of
28 evidence disputing the death certificate, that certificate shall be
29 conclusive evidence of the fact, place, date, and time of death and the
30 identity of the decedent.
- 31 (3) A certified or authenticated copy of any record or report of a
32 governmental agency, domestic or foreign, that an individual is
33 missing, detained, dead, or alive is prima facie evidence of the status
34 and of the dates, circumstances, and places disclosed by the record or
35 report. The record or report is conclusive evidence of the status and of
36 the dates, circumstances, and places disclosed by the record or report
37 unless there is evidence to the contrary.
- 38 (4) In the absence of prima facie evidence of death under subdivision (2)
39 or (3) of this section, the fact of death may be established by clear and
40 convincing evidence, including circumstantial evidence.

41 **§ 28A-24-8. Protection of payors, bona fide purchasers, and other third parties;**
42 **personal liability of recipient.**

43 (a) A payor or other third party is not liable for having made a payment or
44 transferred an item of property or any other benefit to a person designated in a

1 governing instrument who, under this Article, is not entitled to the payment or item of
2 property, or for having taken any other action in good faith reliance on the person's
3 apparent entitlement under the terms of the governing instrument, before the payor or
4 other third party received written notice of a claimed lack of entitlement under this
5 Article. A payor or other third party is liable for a payment made or other action taken
6 after the payor or other third party received written notice of a claimed lack of
7 entitlement under this Article.

8 Written notice of a claimed lack of entitlement under this Article must be mailed to
9 the payor's or other third party's main office or home by registered or certified mail,
10 return receipt requested, or served upon the payor or other third party in the same
11 manner as a summons in a civil action. Upon receipt of written notice of a claimed lack
12 of entitlement under this Article, a payor or other third party may pay any amount owed
13 or transfer or deposit any item of property other than tangible personal property held by
14 it to or with the clerk of the superior court having jurisdiction of the probate
15 proceedings relating to the decedent's estate, or if no proceedings have been
16 commenced, to or with the clerk of the superior court having jurisdiction of probate
17 proceedings relating to decedents' estates located in the county of the decedent's
18 residence. The clerk shall hold the funds or item of property and, upon the clerk's
19 determination under this Article, shall order disbursement in accordance with the
20 determination. Payments, transfers, or deposits made to or with the clerk discharge the
21 payor or other third party from all claims for the value of amounts paid to or items of
22 property transferred to or deposited with the clerk.

23 (b) A person who purchases property for value and without notice, or who
24 received a payment or other item of property in partial or full satisfaction of a legally
25 enforceable obligation, is neither obligated under this Article to return the payment,
26 item of property, or benefit, nor liable under this Article for the amount of the payment
27 or the value of the item of property or benefit. But a person who, not for value, receives
28 a payment, item of property, or any other benefit to which the person is not entitled
29 under this Article is obligated to return the payment, item of property, or benefit, or is
30 personally liable for the amount of the payment or the value of the item of property or
31 benefit, to the person who is entitled to it under this Article."

32 **SECTION 2.** G.S. 29-13 reads as rewritten:

33 "**§ 29-13. Descent and distribution upon ~~intestaey~~. intestacy; 120-hour**
34 **survivorship requirement, revised simultaneous death act, Article 24,**
35 **Chapter 28A.**

36 (a) All the estate of a person dying intestate shall descend and be distributed,
37 subject to the payment of costs of administration and other lawful claims against the
38 estate, and subject to the payment of State inheritance or estate taxes, as provided in this
39 Chapter.

40 (b) The determination of whether an heir has predeceased a person dying
41 intestate shall be made as provided by Article 24 of Chapter 28A of the General
42 Statutes."

43 **SECTION 3.(a)** The catch line of G.S. 31-42 reads as rewritten:

1 "§ 31-42. Failure of devises by lapse or otherwise; ~~renunciation.~~ renunciation;
2 120-hour survivorship requirement, revised simultaneous death act,
3 Article 24, Chapter 28A."

4 **SECTION 3.(b)** G.S. 31-42 is amended by adding a new subsection to read:

5 "(c1) The determination of whether a devisee has predeceased the testator shall be
6 made as provided by Article 24 of Chapter 28A of the General Statutes."

7 **SECTION 4.** G.S. 31A-14 reads as rewritten:

8 "**§ 31A-14. ~~Uniform~~ Revised Simultaneous Death Act not applicable.**

9 The ~~Uniform~~ Revised Simultaneous Death Act, G.S. 28A-24-1—through
10 G.S. 28A-24-7, Article 24 of Chapter 28A of the General Statutes, shall not apply to
11 cases governed by this Chapter."

12 **SECTION 5.** This act becomes effective October 1, 2007, and applies to
13 determinations of title to or devolution of property dependent upon the death of an
14 individual occurring on or after that date.