

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 958
SENATE BILL 236

1 AN ACT TO AMEND CHAPTER 29 OF THE GENERAL STATUTES RELATING TO
2 INTESTATE SUCCESSION.

3
4 The General Assembly of North Carolina do enact:

5 **Section 1.** G.S. 29-2(1) is hereby amended by rewriting that portion appearing after
6 the semicolon in line 4 thereof to read as follows:

7 "except that no gift to a spouse shall be considered an advancement unless so
8 designated by the intestate donor in a writing signed by the donor at the time
9 of the gift."

10 **Sec. 2.** G.S. 29-10 is hereby rewritten to read as follows:

11 **"§ 29-10. Renunciation.** (a) An heir may renounce the succession to his share of the estate of
12 an intestate, and such renunciation shall be retroactive to the date of the death of the intestate.
13 The renunciation shall be by a signed and acknowledged writing, executed by the heir in
14 person, or by his duly authorized attorney, guardian, or next friend when approved by the Clerk
15 of the Superior Court and the Resident Judge of the Superior Court, and shall be delivered to
16 the Clerk of the Superior Court of the county in which the administrator or collector qualifies.

17 "(b) Such renunciation must be filed within four months after the death of the intestate if
18 letters of administration are not issued within that period, or if letters of administration are
19 issued during that period, then within two months after the date of such issuance, or if litigation
20 that affects the share of the heir in the estate is pending at the expiration of such period for
21 filing the renunciation, then within such reasonable time as may be allowed by written order of
22 the Clerk of the Superior Court.

23 "(c) In case of such renunciation the property shall descend in accordance with the
24 applicable provisions of this Chapter as though the person renouncing had died immediately
25 prior to the intestate; provided that in no event shall the persons who inherit by representation
26 in the place of the renouncer receive from the renouncement a greater share of the estate than
27 the renouncer would have received.

28 "(d) If no renunciation is made in the manner and within the time provided for in
29 Subsections (a) and (b) hereof, the heir shall be conclusively deemed to have waived his or her
30 right to renounce.

31 "(e) Any mortgage, deed of trust, or other encumbrance, or any conveyance or contract
32 to convey any property or interest in the estate of an intestate made by an heir during the period
33 allowed for renunciation, or any such transaction by a person relating to his expectancy to
34 inherit, shall constitute a waiver of his right of renunciation as provided in Subsection (a)
35 hereof. Provided such waiver shall be effective as against the personal representative only from
36 the time written notice thereof is delivered by any interested party to the Clerk of the Superior
37 Court of the county in which renunciation must be filed.

38 "(f) Every renunciation and notice of waiver of renunciation as provided for in
39 Subsections (a) and (e) hereof shall be filed with the Clerk of Superior Court and cross-indexed
40 by the clerk in a record entitled 'Renunciation' to be kept by him pursuant to G.S. 2-42(33).

41 "(g) If a decedent dies intestate as to a portion of his estate, this Section shall apply to
42 that portion."

43 **Sec. 3.** G.S. 29-27 is hereby rewritten to read as follows:

1 **"§ 29-27. Death of advancee before intestate donor.** If the advancee dies before the intestate
2 donor leaving a lineal heir or heirs who take by intestate succession from the intestate donor,
3 the advancement shall be taken into account in the same manner as if it had been made directly
4 to such heir or heirs, but the value shall be determined as of the time the original advancee
5 came into possession or enjoyment, or when the heir or heirs came into possession or
6 enjoyment, or at the time of the death of the intestate donor, whichever first occurs."

7 **Sec. 4.** G.S. 29-30, as the same presently appears in the 1959 Cumulative
8 Supplement to Recompiled Volume 2A of the General Statutes of North Carolina, is hereby
9 amended by inserting immediately after the word "shall" and immediately before the word
10 "include" in line 3 of Subsection (b) thereof the following: "at the election of the surviving
11 spouse".

12 **Sec. 5.** G.S. 29-30 is hereby further amended by striking out the first 13 lines of
13 Subsection (c) and inserting in lieu thereof the following:

14 "(c) The election provided for in Subsection (a) shall be made by the filing of a notice
15 thereof with the Clerk of the Superior Court of the county in which the administration of the
16 estate is pending, or, if no administration is pending, then with the Clerk of the Superior Court
17 of any county in which the administration of the estate could be commenced. Such election
18 shall be made:

- 19 (1) At any time within one month after the expiration of the time fixed for the
20 filing of a dissent, or
- 21 (2) In case of intestacy, then within twelve months after the death of the
22 deceased spouse if letters of administration are not issued within that period,
23 or
- 24 (3) If letters of administration are issued within twelve months after the date of
25 the death of the deceased spouse, then within one month after the expiration
26 of the time limited for filing claims against the estate, or
- 27 (4) If litigation that affects the share of the surviving spouse in the estate is
28 pending, then within such reasonable time as may be allowed by written
29 order of the Clerk of the Superior Court. The notice of election shall:
 - 30 a. Be directed to the clerk with whom filed;
 - 31 b. State that the surviving spouse making the same elects to take under
32 this Section rather than under the provisions of G.S. 29-14 or
33 G.S. 29-21, as applicable;
 - 34 c. Set forth the names of all heirs, devisees, legatees, personal
35 representatives and all other persons in possession of or claiming an
36 estate or an interest in the property described in Subsection (a); and
 - 37 d. Request the allotment of the life estate provided for in Subsection
38 (a)."

39 **Sec. 6.** G.S. 29-30 is hereby further amended by striking out the words "Subsection
40 (a)" as they appear immediately after the word "in" and immediately before the comma
41 preceding the word "the" in line 2 of Subsection (d), and inserting in lieu thereof the following:
42 "either G.S. 29-14, G.S. 29-21, or G.S. 30-3(a)".

43 **Sec. 7.** G.S. 29-30(g) is hereby rewritten to read as follows:

44 "(g) Neither the household furnishings in the dwelling house nor the life estates taken by
45 election under this Section shall be subject to the payment of debts due from the estate of the
46 deceased spouse, except those debts secured by such property as follows:

- 47 (1) By a mortgage or deed of trust in which the surviving spouse has waived his
48 or her rights by joining with the other spouse in the making thereof; or
- 49 (2) By a purchase money mortgage or deed of trust, or by a conditional sales
50 contract of personal property in which title is retained by the vendor, made
51 prior to or during the marriage; or

- 1 (3) By a mortgage or deed of trust made prior to the marriage; or
2 (4) By a mortgage or deed of trust constituting a lien on the property at the time
3 of its acquisition by the deceased spouse either before or during the
4 marriage."

5 **Sec. 8.** G.S. 29-30(h) is hereby rewritten to read as follows:

6 "(h) If no election is made in the manner and within the time provided for in Subsection
7 (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to
8 take under the provisions of this Section, and any interest which the surviving spouse may have
9 had in the real estate of the deceased spouse by virtue of this Section shall terminate."

10 **Sec. 9.** All laws and clauses of laws in conflict with this Act are hereby repealed.

11 **Sec. 10.** This Act shall become effective July 1, 1961, and shall be applicable only
12 to estates of persons dying on or after July 1, 1961.

13 In the General Assembly read three times and ratified, this the 17th day of June,
14 1961.