

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 455
Committee Substitute Favorable 5/16/17

Short Title: Combine Funeral and Grave Expense Allowances.

(Public)

Sponsors:

Referred to:

March 27, 2017

A BILL TO BE ENTITLED

AN ACT TO COMBINE THE SECOND AND THIRD CLASSES OF CLAIMS AGAINST THE ESTATE OF A DECEDENT AND TO COMBINE THE ALLOWABLE AMOUNTS FOR FUNERAL EXPENSES, GRAVESTONES, AND A BURIAL PLACE TO EQUAL FIVE THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 28A-19-6(a) reads as rewritten:

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

(a) After payment of costs and expenses of administration, the claims against the 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 exceeding the value of such property.

(2) ~~Second class.~~ Funeral expenses Funeral expenses, costs associated with gravestones, and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of ~~three five thousand five hundred dollars (\$3,500).~~ three thousand five hundred dollars (\$3,500). This limitation shall not include burial place or gravestone. ~~(\$5,000).~~ The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of ~~three thousand five hundred dollars (\$3,500)~~ be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

~~Third class.~~ Costs associated with gravestones and reasonable costs for the purchase of a suitable burial place as provided in G.S. 28A-19-9 to the extent of one thousand five hundred dollars (\$1,500). The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable gravestone or burial place expenses which may be incurred; nor shall the preferential limitation of payment in the amount of one thousand five hundred dollars (\$1,500) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to the decedent's beneficiaries.

(3) ~~Fourth class.~~ All dues, taxes, and other claims with preference under the laws of the United States.

(4) ~~Fifth class.~~ All dues, taxes, and other claims with preference under the laws of the State of North Carolina and its subdivisions.



1 (5) ~~Sixth class.~~ Judgments of any court of competent jurisdiction within the
2 State, docketed and in force, to the extent to which they are a lien on the
3 property of the decedent at the decedent's death. The Department of Health
4 and Human Services is a ~~sixth class~~ creditor under this subdivision for
5 purposes of determining the order of claims against the estate; provided,
6 however, that judgments in favor of other ~~sixth class~~ creditors under this
7 subdivision docketed and in force before the Department seeks recovery for
8 medical assistance shall be paid prior to recovery by the Department.

9 (6) ~~Seventh class.~~ Wages due to any employee employed by the decedent, which
10 claim for wages shall not extend to a period of more than 12 months next
11 preceding the death; or if such employee was employed for the year current
12 at the decease, then from the time of such employment; for medical services
13 within the 12 months preceding the decease; for drugs and all other medical
14 supplies necessary for the treatment of such decedent during the last illness
15 of such decedent, said period of last illness not to exceed 12 months.

16 (7) ~~Eighth class.~~ A claim for equitable distribution.

17 (8) ~~Ninth class.~~ All other claims."

18 **SECTION 1.(b)** G.S. 28A-19-9 reads as rewritten:

19 **"§ 28A-19-9. Gravestone and burial place authorized.**

20 (a) If the decedent has duly appointed a health care agent pursuant to Article 3 of
21 Chapter 32A of the General Statutes to provide for these expenses, the health care agent may
22 make arrangements to provide a suitable gravestone to mark the grave of the testator or
23 intestate, and the personal representative shall reimburse the health care agent subject to the
24 monetary limitations and procedures contained in this section. If the decedent did not have a
25 health care agent, or if the health care agent does not act, it is lawful for a personal
26 representative or the decedent's duly appointed health care agent to provide a suitable
27 gravestone to mark the graves of the testator or intestate and to pay for the cost of erecting the
28 same. The cost thereof shall be treated as a ~~third class~~ claim under G.S. 28A-19-6 and credited
29 as such in final accounts. The costs thereof shall be in the sound discretion of the personal
30 representative or health care agent, having due regard to the value of the estate and to the
31 interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate.
32 Where the personal representative or health care agent desires to spend more than one thousand
33 five hundred dollars (\$1,500) for the purpose of a gravestone, and the will does not grant
34 specific authority to the personal representative for such expenditures in excess of one thousand
35 five hundred dollars (\$1,500), the personal representative shall file a petition before the clerk of
36 the court, and such order as will be made by the court shall specify the amount to be expended
37 for such purpose. In specifying the amount, the clerk may consider the value of the estate. To
38 the extent that the personal representative or health care agent advances the costs for providing
39 a suitable gravestone to mark the graves of the testator or intestate and for erecting the same,
40 the advancement shall be considered as an obligation of the decedent's estate, and the
41 decedent's estate shall be primarily liable for the costs for providing a suitable gravestone to
42 mark the graves of the testator or intestate and for erecting the same.

43 (b) It is lawful for the decedent's duly appointed health care agent to provide a suitable
44 burial place for the testator or intestate. If the decedent did not have a health care agent, or if
45 the health care agent does not act, then the personal representative may provide a suitable burial
46 place for the testator or intestate. The cost of a suitable burial place shall be in the sound
47 discretion of the personal representative or the decedent's health care agent, having due regard
48 to the value of the estate and to the interests of creditors and needs of the surviving spouse and
49 the heirs and devisees of the estate, and shall be treated as a ~~third class~~ claim under
50 G.S. 28A-19-6."

51 **SECTION 1.(c)** G.S. 108A-70.5(c) reads as rewritten:

1 "(c) The amount the Department recovers from the estate of any recipient shall not
2 exceed the amount of medical assistance made on behalf of the recipient and shall be
3 recoverable only for medical care services prescribed in subsection (b) of this section. The
4 Department is a ~~sixth class~~ creditor, as prescribed in G.S. 28A-19-6, for purposes of
5 determining the order of claims against an estate; ~~provided, however, that judgments in favor of~~
6 ~~other sixth class creditors docketed and in force before the Department seeks recovery for~~
7 ~~medical assistance shall be paid prior to recovery by the Department estate."~~

8 **SECTION 2.** This act becomes effective October 1, 2017, and applies to estates of
9 decedents dying on or after that date.