

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 388

AMENDMENT NO. A1

(to be filled in by
Principal Clerk)

H388-ATG-64 [v.3]

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Amends Title [YES]
Third Edition

Date _____, 2025

Senator Daniel

1 moves to amend the bill on page 1, line 6, by rewriting the line to read:

2 "RECORD, TO MODIFY THE EMERGENCY VIDEO NOTARIZATION SUNSET, TO
3 MAKE UPDATES TO THE ELECTIVE SHARE STATUTES, TO UPDATE STATUTES
4 RELATING TO TRUST ADMINISTRATION, AND TO MAKE REVISIONS TO THE
5 YEAR'S ALLOWANCE STATUTES.";

6
7 and on page 11, lines 20-28, by rewriting the lines to read:

8 "**PART X. UPDATES TO ELECTIVE SHARE STATUTES**

9 **SECTION 10.1.** G.S. 30-3.3A reads as rewritten:

10 "**§ 30-3.3A. Valuation of property.**

11 ...

12 (e) Partial or Contingent Interest Property. – The valuation of partial and contingent
13 property interests, outright or in trust, which are limited to commence or terminate upon the death
14 of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or
15 more contingencies, shall be determined by computations based upon the mortality and annuity
16 tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent
17 (6%) of the value of the underlying property in which those interests are limited, unless upon
18 good cause shown by one of the parties, the clerk determines that the use of such tables or rate
19 of return is not appropriate, then the value of such interests shall be determined under subsection
20 (f) of this section. However, in valuing partial and contingent interests passing to the surviving
21 spouse, the following special rules apply:

22 (1) The value of the beneficial interest of a spouse shall be the entire fair market
23 value of any property held in trust if the decedent was the settlor of the trust,
24 if the trust is held for the exclusive benefit of the surviving spouse during the
25 surviving spouse's lifetime, ~~and~~ if the terms of the trust substantially meet the
26 following ~~requirements~~ requirements in form and content:

27 a. ~~During~~ At all times during the lifetime of the surviving spouse, the
28 trust is controlled by (i) one or more nonadverse trustees, trustees,
29 including successor trustees, (ii) the surviving spouse as trustee, or (iii)
30 one or more nonadverse trustees and the surviving spouse as
31 co-trustees, including successor trustees.



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- b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
- c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
- d. ~~In exercising discretion, the trustee~~
- (1a) Notwithstanding any requirements in subdivision (1) of this subsection to the contrary, the terms of the trust may be authorized authorize or required require the trustee, in exercising discretion, to take into consideration all other income assets income, assets, and other means of support available to the surviving spouse.
- (1b) A trust fails to meet the requirements of sub-subdivisions b. and c. of subdivision (1) of this subsection if the terms of the trust do not state the requirement that the trustee shall distribute the income and principal as provided in those sub-subdivisions using the terms "shall," "is required to," or other equivalent term or terms directing the trustee to distribute the income and principal. Nothing in this subdivision shall affect the ability of the trustee to exercise the discretion provided in sub-subdivisions b. and c. of subdivision (1) of this subsection with respect to the timing and amount of distributions necessary for the health, maintenance, and support of the surviving spouse.
- (2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.

...."

SECTION 10.2. G.S. 30-3.4 reads as rewritten:

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's agent if the surviving spouse's power of attorney expressly authorizes the agent to do so or to generally engage in estate, trusts, and other beneficial interests, or, with approval of court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

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1 (b) Time Limitations. – A claim for an elective share must be made within six months
2 after the issuance of letters testamentary or letters of administration in connection with the will
3 or intestate proceeding with respect to which the surviving spouse claims the elective share by
4 ~~(i) filing a verified petition with the clerk of superior court of the county in which the primary~~
5 ~~administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition~~
6 ~~to the personal representative of the decedent's estate. lies.~~ A surviving spouse's incapacity shall
7 not toll the six-month period of limitations.

8 ...

9 (e1) Procedure. – ~~An elective share proceeding shall be an estate proceeding and shall be~~
10 ~~conducted in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes.~~
11 The verified petition shall be filed by the clerk upon payment of the costs assessed in
12 G.S. 7A-307. An elective share proceeding shall be an estate proceeding and shall be conducted
13 in accordance with the procedures of Article 2 of Chapter 28A of the General Statutes, except as
14 modified or supplemented by the following:

- 15 (1) Upon the filing of the verified petition, the petition shall be served upon the
16 personal representative in accordance with G.S. 1A-1, Rule 4 of the Rules of
17 Civil Procedure, without issuance of a summons. The petition shall also be
18 served on all responsible persons as those persons become known to the
19 petitioner in accordance with G.S. 1A-1, Rule 4 of the Rules of Civil
20 Procedure, without issuance of a summons. The failure to serve the petition
21 for elective share on the personal representative or any other person within the
22 six-month period described in subsection (b) of this section shall not render
23 the claim for elective share as being untimely filed.
24 (2) After service under subdivision (1) of this subsection, the petitioner, the
25 personal representative, or any other party may cause notice of a hearing
26 before the clerk to be served upon all parties in accordance with G.S. 1A-1,
27 Rule 5 of the Rules of Civil Procedure. At the hearing, the clerk may set
28 deadlines as to the gathering and sharing of information concerning total net
29 assets and may determine any other relevant procedural matters.
30 (3) Within 30 days following the entry of an order resulting from the hearing
31 described in subdivision (2) of this subsection, any party who was present at
32 the hearing may file a responsive pleading to the petition; provided, however,
33 that failure to respond to any averment or claim in the petition shall not be
34 deemed an admission of that averment or claim. An extension of time to file
35 a responsive pleading to the petition may be granted as provided by G.S. 1A-1,
36 Rule 6 of the Rules of Civil Procedure.

37"

38 **SECTION 10.3.** This Part becomes effective January 1, 2026, and applies to claims
39 for elective share filed on or after that date.

40
41 **PART XI. TRUST ADMINISTRATION/CONTEST UPDATES**

42 **SECTION 11.1.** G.S. 36C-6-604 reads as rewritten:

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"§ 36C-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of: of the following:

(1) Three years after the settlor's ~~death~~; or death.

(2) 120 days after the trustee sent the person a copy of the trust instrument and written notice pursuant to G.S. 1A-1, Rule 4 of the Rules of Civil Procedure, informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to administer the trust and distribute the trust property in accordance with the terms of the trust. The trustee is trust and shall not be subject to liability for doing so unless so, except that the trustee shall not distribute trust property to any beneficiary in contravention of the rights of any person who may be affected by the outcome of a pending or possible judicial proceeding if, at the time the distribution is made, any of the following apply:

(1) The trustee knows of a pending judicial proceeding contesting the validity of all or part of the terms of the trust; trust or contesting the identity of the beneficiaries eligible to receive distributions therefrom.

(2) A potential contestant has notified the trustee in writing of a possible judicial proceeding to contest the ~~trust~~; validity of all or part of the terms of the trust or to contest the identity of the beneficiaries eligible to receive distribution therefrom, and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(b1) Any distribution in contravention of the provisions of subsection (b) of this section shall constitute a breach of trust by the trustee. Upon motion of a party and after notice to interested parties, a court, on good cause shown, may make an exception to the provisions of subsection (b) of this section and authorize the trustee to distribute trust assets to a beneficiary, subject to any conditions the court, in the court's discretion, may impose, including the posting of a bond by the beneficiary.

(c) A beneficiary of a trust that is determined to have been ~~invalid~~-invalid, or whose interest in a trust has been determined to be invalid, is liable to return any distribution received. If the beneficiary refuses to return the distribution after being ordered by the court, the beneficiary shall be liable for all costs incurred for recovery of the distribution, including attorneys' fees."

SECTION 11.2. This Part becomes effective January 1, 2026, and applies to settlors dying on or after that date.

PART XII. REVISIONS TO YEAR'S ALLOWANCE STATUTES

SECTION 12.1. G.S. 30-15 reads as rewritten:

"§ 30-15. When spouse entitled to allowance.

(a) Every surviving spouse of a decedent, whether or not the surviving spouse has petitioned for an elective share, shall be entitled to receive an allowance having the value of sixty thousand dollars (\$60,000) for the surviving spouse's support for one year after the death of the deceased spouse unless the spouse is barred from seeking an allowance under G.S. 31A-1 or

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1 another applicable law. The spouse's allowance shall be in addition to the spouse's share of the
2 decedent's estate if the decedent died intestate but shall be charged against the spouse's share of
3 the decedent's estate if the decedent died testate.

4 (b) The right of a surviving spouse to file a claim for an allowance must be exercised
5 during the lifetime of the surviving spouse by (i) the surviving spouse, (ii) the surviving spouse's
6 agent under a durable power of attorney, or (iii), with approval of the court, by the guardian of
7 the surviving spouse's estate or general guardian. A claim for an allowance must be made by
8 filing a verified petition with the clerk of court of the county in which venue would be proper
9 under G.S. 28A-3-1. There is no time limitation on bringing a claim for an allowance except that,
10 if a personal representative has been appointed for the decedent's estate, the claim must be made
11 within six months after the issuance of letters testamentary or letters of administration. In
12 addition, if a personal representative has been appointed for the decedent's estate, a copy of the
13 verified petition must be personally delivered or sent by first-class mail by the petitioner to the
14 personal representative.

15 (c) If the surviving spouse dies after the petition is filed but before the claim for an
16 allowance has been fully satisfied, any deficiency judgment existing at the time of the surviving
17 spouse's death shall not expire.

18 (d) The spouse's allowance shall be exempt from any lien by judgment or execution
19 against the property of the decedent or any other claim made against or owed by the decedent's
20 estate. The spouse's allowance takes priority over any child's allowance under
21 ~~G.S. 30-17~~. G.S. 30-17, except as set forth in subsection (e) of this section.

22 (e) If a surviving spouse entitled to an allowance fails to file a petition for an allowance
23 within six months after the date of death of the decedent and an eligible person files a petition
24 for a child's allowance in accordance with G.S. 30-17 before the spouse files a petition for an
25 allowance, then the spouse's priority to receive the allowance prior to the child named in the
26 petition is waived and the clerk may proceed to assign the full child's allowance to the eligible
27 child named in the petition. If a petition for the spousal allowance is filed jointly with a petition
28 for a child's allowance, then the spouse retains the right to receive the allowance prior to the child
29 named in the petition. The waiver described in this subsection shall not affect the spouse's right
30 to an allowance, only the spouse's priority to receive an allowance over any child's allowance
31 under G.S. 30-17.

32 (f) A proceeding for a spouse's allowance shall be an estate proceeding governed by the
33 provisions of Article 2 of Chapter 28 of the General Statutes."

34 **SECTION 12.2.** G.S. 30-17 reads as rewritten:

35 **"§ 30-17. When children entitled to an allowance.**

36 (a) Every child of a decedent who is under the age of 21 years at the time of the decedent's
37 death, including an adopted child or a child in utero, and every child who is under the age of 21
38 years at the time of the decedent's death with whom the decedent stood in loco parentis at the
39 time of death, shall be entitled to receive an allowance having a value of ten thousand dollars
40 (\$10,000) for the child's support for one year after the death of the decedent. The allowance shall
41 be in addition to the child's share of the decedent's estate regardless of whether the decedent died
42 testate or intestate.

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(b) The right of a child to file a claim for an allowance must be exercised during the lifetime of the child by the person with priority to file on behalf of the child as provided in subsection (c) of this section. A claim for an allowance must be made by filing a verified petition with the clerk of court of the county in which venue would be proper under G.S. 28A-3-1. There is no time limitation on bringing a claim for an allowance except that, if a personal representative has been appointed for the decedent's estate, the claim must be made within six months after the issuance of letters testamentary or letters of administration. In addition, if a personal representative has been appointed for the decedent's estate, a copy of the verified petition must be personally delivered or sent by first-class mail by the petitioner to the personal representative.

(c) The person entitled to file a petition on behalf of the child for a child's allowance shall be in the following order of priority:

(1) The child, if the child is at least 18 years old or an emancipated minor at the time of the filing of the petition.

~~(1)~~(2) The general guardian or guardian of the estate of the child, if any.

~~(2)~~(3) The surviving parent of the child if the child resides with the surviving parent.

~~(3)~~(4) The person with whom the child resides.

If the clerk of court determines that no person entitled to file a petition pursuant to this subsection is a fit or suitable individual, the clerk, upon the clerk's own motion, may appoint another individual if the clerk determines that individual better represents the best interests of the child as the representative.

(d) The child's allowance shall be exempt from any lien by judgment or execution against the property of the decedent or any other claim made against or owed by the decedent's estate except that the spouse's allowance under G.S. 30-15 shall take priority over any child's allowance. A child's allowance shall only be awarded after the full spouse's allowance under G.S. 30-15 has been awarded.

(e) A proceeding for a child's allowance shall be an estate proceeding governed by the provisions of Article 2 of Chapter 28 of the General Statutes."

SECTION 12.3. G.S. 30-20 reads as rewritten:

"§ 30-20. Procedure for assignment; order of clerk.

(a) The clerk of court shall first ascertain if the surviving spouse is entitled to an allowance according to the provisions of this Article, and, if so, enter an order setting forth the personal property of the estate to be awarded to the surviving spouse. Once the spouse's allowance has been awarded, the clerk of court shall next ascertain if any children of the decedent are entitled to an allowance according to the provisions of this Article, and, if so, enter an order setting forth the personal property of the estate to be awarded for the child's allowance. If a personal representative has been appointed for the decedent's estate, the clerk of court shall provide a copy of any order awarding an allowance to the personal representative of the decedent's estate.

(b) If the personal property of the estate is insufficient to satisfy the allowances awarded, the clerk of the superior court shall enter judgment against the decedent's estate for the amount of the deficiency. If a personal representative has been appointed for the decedent's estate, the deficiency shall be satisfied by the personal representative when a sufficiency of such assets shall come into the possession of the personal representative.

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~~(e) The clerk of court may, on the clerk's own motion, determine that a hearing is necessary to determine whether a year's allowance should be awarded pursuant to the provisions of this Article and, if so, what personal property should be awarded. If the clerk of court makes such a determination, the clerk shall direct the petitioner to commence a contested estate proceeding pursuant to G.S. 30-23 in order to determine the year's allowance."~~

SECTION 12.4. G.S. 30-23.1 reads as rewritten:

"§ 30-23.1. Contested proceeding regarding allowance.

(a) If no contested estate proceeding ~~under G.S. 30-20(e)~~ was commenced by the petitioner or by order of the clerk joining respondents to the proceeding to determine an award of an allowance under this Article, any person with standing, including the personal representative of the decedent's estate, may bring a proceeding to challenge the award of a spousal allowance or a child's allowance, including, but not limited to, a proceeding to challenge the validity of an award of a year's allowance, a proceeding to challenge the amount of a year's allowance awarded, and a proceeding to challenge the assets awarded as part of a year's allowance. If a contested estate proceeding was commenced ~~under G.S. 30-20(e)~~, by the petitioner or by order of the clerk joining the respondents to the proceeding to determine an award of an allowance under this Article, then any person with standing, including the personal representative of the decedent's estate, who was not a party to the contested estate proceeding may bring a proceeding in accordance with this section.

(b) Any proceeding to challenge the award of the allowance brought pursuant to this section shall be conducted as an estate proceeding in accordance with the provisions of Article 2 of Chapter 28A of the General Statutes and must be brought within one year of the date the order awarding the year's allowance was entered."

SECTION 12.5. G.S. 28A-25-6 reads as rewritten:

"§ 28A-25-6. Payment to clerk of money owed decedent.

(a) As an alternative to the small estate settlement procedures of this Article, any person indebted to a decedent may satisfy such indebtedness by paying the amount of the debt to the clerk of the superior court of the county of the domicile of the decedent if all of the following conditions are met:

- (1) No administrator has been appointed.
- (2) Except as otherwise provided in G.S. 90-210.64(d), the amount owed by such person does not exceed five thousand dollars (\$5,000).
- (3) Except as otherwise provided in G.S. 90-210.64(d), the sum tendered to the clerk would not make the aggregate sum which has come into the clerk's hands belonging to the decedent exceed five thousand dollars (\$5,000).

(b) Such payments may not be made to the clerk if the total amount paid or tendered with respect to any one decedent would exceed five thousand dollars (\$5,000), even though disbursements have been made so that the aggregate amount in the clerk's hands at any one time would not exceed five thousand dollars (\$5,000).

(c) If the sum tendered pursuant to this section would make the aggregate sum coming into the clerk's hands with respect to any one decedent exceed five thousand dollars (\$5,000) the clerk shall appoint an administrator, or the sum may be administered under the preceding sections of this Article.

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1 (d) If it appears to the clerk after making a preliminary survey that disbursements
2 pursuant to this section would not exhaust funds received pursuant to this section, the clerk may,
3 in the clerk's discretion, appoint an administrator, or the funds may be administered under the
4 preceding sections of this Article.

5 (e) The receipt from the clerk of the superior court of a payment purporting to be made
6 pursuant to this section is a full release to the debtor for the payment so made.

7 (f) If no administrator has been appointed, the clerk of superior court shall, upon motion
8 of the clerk or upon the application of an interested party, disburse the money received under this
9 section for the following purposes and in the following order:

10 (1) To pay the surviving spouse's year's allowance and children's year's allowance
11 assigned in accordance with ~~law-law~~, except that if (i) it has been greater than
12 six months since the date of death of the decedent and (ii) there has been no
13 petition filed and assignment of a spouse's or child's year's allowance, the clerk
14 may disburse the money received under this section in accordance with the
15 other provisions of this subsection.

16 (2), (3) Repealed by Session Laws 1981, c. 383, s. 3.

17 (4) All other claims shall be disbursed according to the order set out in
18 G.S. 28A-19-6.

19 Notwithstanding the foregoing provisions of this subsection, the clerk shall pay, out of funds
20 provided the deceased pursuant to G.S. 111-18 and Part 3 of Article 2 of Chapter 108A of the
21 General ~~Statutes of North Carolina, Statutes~~, any lawful claims for care provided by an adult care
22 home to the deceased, incurred not more than 90 days prior to the deceased's death. After the
23 death of a ~~spouse who died intestate~~ the decedent and after the disbursements have been made in
24 accordance with this subsection, the balance in the clerk's hands belonging to the estate of the
25 decedent shall be paid to the surviving spouse, and if there is no surviving spouse, the clerk shall
26 pay it to the heirs or beneficiaries in proportion to their respective interests.

27 (g) The clerk shall not be required to publish notice to creditors.

28 (h) Whenever an administrator is appointed after a clerk of superior court has received
29 any money pursuant to this section, the clerk shall pay to the administrator all funds which have
30 not been disbursed. The clerk shall receive no commissions for payments made to the
31 administrator, and the administrator shall receive no commissions for receiving such payments."

32 **SECTION 12.6.** Section 12.5 of this act is effective when it becomes law. The
33 remainder of this Part becomes effective January 1, 2026, and applies to petitions filed on or after
34 that date.
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PART XIII. EFFECTIVE DATE AND AUTHORIZATION TO PRINT COMMENTS

SECTION 13.(a) The Revisor of Statutes shall cause to be printed, as annotations to Chapter 55 of the published General Statutes, all relevant portions of the Official Comments to the Model Business Corporation Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 13.(b) Parts I, II, III, IV, V, and VII of this act become effective October 1, 2025. Part VIII of this act becomes effective January 1, 2026, and applies to attested written wills stored as electronic records on or after that date, regardless of the date of execution of the attested written will. Except as otherwise provided, the remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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and vote information, is available in the
Senate Principal Clerk's Office**