



SENATE BILL 644: Landlord/Tenant Changes.

2021-2022 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	May 5, 2021
Introduced by:	Sens. Britt, Perry, Newton	Prepared by:	Kristen L. Harris*
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: Senate Bill 644 would do the following:

- Reaffirm the intent of the General Assembly that landlords may recover out-of-pocket expenses and litigation costs in summary ejectment proceedings.
- Provide that a tenant's criminal record would not affect the foreseeability of any future injury or damage caused by the tenant, and that a landlord would have no duty to screen a potential renter's criminal history nor refuse to rent to a person because of their criminal record.
- Allow authorized persons to direct the removal or disposal of certain personal property of a decedent located in leased premises.

CURRENT LAW/BILL ANALYSIS:

PART I. CLARIFICATION AND REAFFIRMATION OF RECOVERY OF OUT-OF-POCKET EXPENSES AND LITIGATION COSTS IN SUMMARY EJECTMENTS

Section 1.1 – Landlords are currently permitted, pursuant to a written lease, to charge and collect either a complaint-filing fee, a court-appearance fee, or a second trial fee in certain circumstances.¹ Landlords are also permitted to charge and recover from a tenant certain actual out-of-pocket expenses, including filing fees charged by the court, certain costs for service of process, and reasonable attorney's fees incurred, pursuant to a written lease, not to exceed a certain amount.²

This section would provide that the complaint-filing fee, court-appearance fee, and second trial fee are administrative fees and are the only administrative fees that landlords may recover in a summary ejectment proceeding. This section would further provide that out-of-pocket expenses and litigation costs are not administrative fees and that it is contrary to public policy for a landlord to claim, or a lease to provide for the payment of, any out-of-pocket expenses or litigation costs for the filing of a complaint for summary ejectment and/or money owed other than those expenses authorized under G.S. 42-46(i).

Section 1.2 – Provides that this Part is effective when it becomes law and is intended to apply retroactively to all pending controversies³ as of that date and the amendment contained in Section 1.1 is intended to clarify the General Assembly's intent under previous amendments to G.S. 42-46.

PART II. VARIOUS CHANGES TO LANDLORD/TENANT STATUTES

¹ G.S. 42-46(e)-(g).

² G.S. 42-46(i).

³ According to [Lexology](#), as of August 2020, at least 17 class action lawsuits challenging eviction fee charges in North Carolina were filed since 2016.

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Section 2.1 – Enacts G.S. 42-14.5 to provide that the criminal record of any prospective or current residential lessee, occupant, or guest will not make any future injury or damage arising from the lessee, occupant, or guest foreseeable by the lessor or the lessor's agent. The residential lessor or the lessor's agent would not be required to screen for or refuse to rent because of the criminal record of a prospective or current lessee, occupant, or guest. A residential lessor or the lessor's agent would not be prohibited from using a criminal background check as grounds for refusing to rent to any prospective or current lessee.

This section codifies *Davenport v. D.M. Rental Properties, Inc.*, wherein the N.C. Court of Appeals found that an altercation between two tenants at a mobile home park was not foreseeable and that there was no duty on a landlord to screen potential tenants and no liability for failing to evict a tenant.

Section 2.2 – Under current law a landlord's rights concerning a residential tenant's personal property are limited to those set forth in statutory provisions cross-referenced in G.S. 42-25.7.

This section would make a conforming change to this statute by including a cross-reference to G.S. 28A-25-2 as amended in Section 2.5 of the bill.

Sections 2.3 and 2.4 – Currently, under G.S. 28A-25-1 (applicable to intestate decedents) and G.S. 28A-25-1.1 (applicable to testate decedents), when a person dies leaving personal property having an unencumbered value not exceeding \$20,000, any person having possession of the decedent's personal property is required to deliver it to a person who claims to be a qualified personal representative of the decedent and who presents a certified copy of an affidavit meeting the requirements set forth in those statutes.

These sections would amend these statutes to provide that a person claiming to be a duly qualified personal representative of the decedent who presents an affidavit meeting the statutory requirements is entitled to remove or otherwise dispose of the decedent's personal property that is located in demised premises.

Section 2.5 – G.S. 28A-25-2 currently provides that a person who delivers the decedent's personal property pursuant to an affidavit meeting the statutory requirements is discharged and released to the same extent as if the person dealt with a duly qualified personal representative of the decedent.

This section would amend G.S. 28A-25-2 to also provide that a lessor or lessor's agent that removes, discards, or otherwise disposes of the personal property located in demised premises at the direction of an affiant who is statutorily authorized to collect the decedent's personal property, is discharged and released to the same extent as if the lessor dealt with a duly qualified personal representative of the decedent.

EFFECTIVE DATE: Part I would be effective when it becomes law. Sections 2.3, 2.4, and 2.5 would be effective when they become law and apply to decedents dying on or after that date. The remainder of the act would become effective when it becomes law.

* *Nicholas Giddings, Legislative Analysis Division, substantially contributed to this summary.*