

April 12, 1999

H 979. MODIFY RIGHTS OF DECEDENT'S SPOUSE. TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE. Repeals Art. 1 of GS Ch. 30 (dissent by surviving spouse from will of decedent), and adds new Art. 1A to GS Ch. 30 establishing right of decedent's spouse to claim "elective share" in total net assets of decedent. Defines elective share as the applicable percentage (1/2 to 1/3, depending on number of children also surviving decedent) of total net assets less any "property passing to surviving spouse" (defined below). Defines total net assets to include property typically administered in decedent's estate as well as property passing outside of estate such as life insurance owned by decedent, trust assets, survivorship assets held by decedent and spouse, etc., less funeral bills, cost of administration, debts, claims and year's allowances. Defines "property passing to surviving spouse" as one-half of value of survivorship property held by spouse and decedent, life insurance proceeds received by spouse, gifts on which gift taxes paid, etc., minus death taxes on such property. Right to claim elective share must be exercised within six months after issuance of letters of administration of estate. Establishes procedures for hearing before clerk to determine elective share. Establishes rules for valuing property subject to exercise of discretion by fiduciary or subject to contingent future events, and for determining fair market value of probate and non probate assets, as well as trust assets. Decision of clerk may be appealed to superior court in same manner as in other special proceedings, and superior court judge may review clerk's findings and hear additional evidence. Establishes procedure for personal representative to apportion liability for elective share among other beneficiaries and to recover property already distributed. Allows written waiver by spouse of right to seek elective share. Makes various conforming changes to intestate succession law and other laws dealing with wills and estates. Applies to estates of persons dying on or after Oct. 1, 1999.

Intro. by Baddour.

Ref. to Judiciary IV

GS 30, 29, 31, 31C, 84

April 20, 1999

H 979. MODIFY RIGHTS OF DECEDENT'S SPOUSE. Intro. 4/12/99. House committee substitute makes the following changes to 1st edition. Deletes provision setting minimum applicable share of \$25,000 and clarifies that "total net assets" does not include wrongful death proceeds.

June 30, 2000

H 979. MODIFY RIGHTS OF DECEDENT'S SPOUSE. Intro. 4/12/99. Senate committee substitute and amendment make the following changes to 2nd edition. (1) The bill's definition of "total net assets" had included "all proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse." The committee substitute deletes this provision. (2) New GS 30-3.4 sets the procedures for the calling for a hearing on the claim of a surviving spouse to an elective share. The original bill called for the clerk of court to give notice of the hearing to the personal representative of the deceased spouse; the committee substitute calls for the surviving spouse to give the notice. (3) New GS 30-3.4(g) provides that any party in interest may appeal from the decision of the clerk of the superior court. The committee substitute deletes a provision in the original bill stating that the procedure on such an appeal would be the same as in other special proceedings. (4) The amendment sets effective date as January 1, 2001.