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SENATE BILL DRS45337-MNz-6B (02/06)

Short Title: Reform/Correct/Wills and Trusts. (Public)

Sponsors: Senators Barringer, Randleman, and Daniel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE JUDICIAL REFORMATION OF WILLS TO CORRECT
3 MISTAKES AND THE JUDICIAL MODIFICATION OF WILLS TO ACHIEVE THE
4 TESTATOR'S TAX OBJECTIVES AND TO REVISE THE NORTH CAROLINA
5 UNIFORM TRUST CODE TO ACHIEVE CONSISTENCY IN THE REFORMATION OF
6 TRUSTS WITH THE REFORMATION OF WILLS, AS RECOMMENDED BY THE
7 GENERAL STATUTES COMMISSION.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Chapter 31 of the General Statutes is amended by adding a new
10 Article to read:

11 "Article 10.

12 "Reformation or Modification of Wills.

13 "**§ 31-61. Reformation of will to correct mistakes.**

14 The court may reform the terms of a will, if the terms of the will are ambiguous, to conform
15 the terms to the testator's intent if it is proved by clear and convincing evidence what the
16 testator's intent was and that the terms of the will were affected by a mistake of fact or law,
17 whether in expression or inducement.

18 "**§ 31-62. Modification of will to achieve testator's tax objectives.**

19 To achieve a testator's tax objectives, the court may modify the terms of a will in a manner
20 that is not contrary to the testator's probable intent. The court may provide that the modification
21 has retroactive effect.

22 "**§ 31-63. Filing of action for reformation or modification of will; bar to caveat.**

23 (a) An action for reformation or modification of a will shall be filed in the superior
24 court division of the General Court of Justice under Article 26 of Chapter 1 of the General
25 Statutes.

26 (b) The personal representative is a necessary party to an action for reformation or
27 modification of a will.

28 (c) If a person interested in the estate files an action for reformation or modification of
29 a will, that person is barred from thereafter filing a caveat to the will under Article 6 of this
30 Chapter."

31 SECTION 2.(a) G.S. 28A-2-4 reads as rewritten:

32 "**§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate**
33 **proceedings.**

34 (a) The clerks of superior court of this State, as ex officio judges of probate, shall have
35 original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this



1 subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings
2 include, but are not limited to, the following:

- 3 (1) Probate of wills.
- 4 (2) Granting and revoking of letters testamentary and letters of administration,
5 or other proper letters of authority for the administration of estates.
- 6 (3) Determination of the elective share for a surviving spouse as provided in
7 G.S. 30-3.
- 8 (4) Proceedings to ascertain heirs or devisees, to approve settlement agreements
9 pursuant to G.S. 28A-2-10, to determine questions of construction of wills,
10 to determine priority among creditors, to determine whether a person is in
11 possession of property belonging to an estate, to order the recovery of
12 property of the estate in possession of third parties, and to determine the
13 existence or nonexistence of any immunity, power, privilege, duty, or right.
14 Any party or the clerk of superior court may file a notice of transfer of
15 a proceeding pursuant to this subdivision to the Superior Court Division of the
16 General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a
17 transfer to superior court, Article 26 of Chapter 1 of the General Statutes
18 shall apply to ~~a trust~~ an estate proceeding pending before the clerk of
19 superior court to the extent consistent with this Article.

20 (b) Nothing in this section shall affect the right of a person to file an action in the
21 Superior Court Division of the General Court of Justice for declaratory relief under Article 26
22 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in
23 an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General
24 Statutes, either party may move for a transfer of the proceeding to the Superior Court Division
25 of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes.
26 In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes
27 shall apply to an estate proceeding to the extent consistent with this Article.

28 (c) Without otherwise limiting the jurisdiction of the Superior Court Division of the
29 General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection
30 (a) or ~~(e)~~ (b) of this section or G.S. 28A-2-5 of the following:

- 31 (1) Actions by or against creditors or debtors of an estate, except as provided in
32 Article 19 of this Chapter.
- 33 (2) Actions involving claims for monetary damages, including claims for breach
34 of fiduciary duty, fraud, and negligence.
- 35 (3) Caveats, except as provided under G.S. 31-36.
- 36 (4) Proceeding to determine proper county of venue as provided in
37 G.S. 28A-3-2.
- 38 (5) Recovery of property transferred or conveyed by a decedent with intent to
39 hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b)."

40 **SECTION 2.(b)** This section is effective when this act becomes law.

41 **SECTION 3.** G.S. 28A-2-4(c), as amended by Section 2 of this act, reads as
42 rewritten:

43 "(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the
44 General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection
45 (a) or (b) of this section or G.S. 28A-2-5 of the following:

- 46 (1) Actions by or against creditors or debtors of an estate, except as provided in
47 Article 19 of this Chapter.
- 48 (2) Actions involving claims for monetary damages, including claims for breach
49 of fiduciary duty, fraud, and negligence.
- 50 (3) Caveats, except as provided under G.S. 31-36.

- 1 (4) Proceeding to determine proper county of venue as provided in
2 G.S. 28A-3-2.
3 (5) Recovery of property transferred or conveyed by a decedent with intent to
4 hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).
5 (6) Actions for reformation or modification of wills under Article 10 of Chapter
6 31 of the General Statutes."

7 **SECTION 4.** G.S. 36C-4-415 reads as rewritten:

8 "**§ 36C-4-415. Reformation to correct mistakes.**

9 The court may reform the terms of a ~~trust, even if unambiguous,~~ trust, if the terms of the
10 trust are ambiguous, to conform the terms to the settlor's ~~intention~~ intent if it is proved by clear
11 and convincing evidence ~~that both what~~ the settlor's intent was and that the terms of the trust
12 were affected by a mistake of fact or law, whether in expression or inducement. ~~Jurisdiction of~~
13 ~~a proceeding brought under this section shall be as provided in G.S. 36C-2-203."~~

14 **SECTION 5.** The Revisor of Statutes shall cause to be printed all explanatory
15 comments of the drafters of Section 4 of this act, as the Revisor may deem appropriate.

16 **SECTION 6.** Except as otherwise provided in this act, this act becomes effective
17 January 1, 2018. Sections 1 and 3 of this act apply to estates of decedents dying before, on, or
18 after that date. Section 4 of this act applies to actions for the reformation of trusts filed on or
19 after that date.