## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2005

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### HOUSE BILL 561 Committee Substitute Favorable 5/2/05

Sponsors:

Referred to:

#### March 10, 2005

1	A BILL TO BE ENTITLED
2	AN ACT RELATING TO COMMISSIONS ALLOWED TO PERSONAL
3	REPRESENTATIVES.
4	The General Assembly of North Carolina enacts:
5	<b>SECTION 1.</b> G.S. 28A-23-3 reads as rewritten:
6	"§ 28A-23-3. Commissions allowed personal representatives; representatives guilty
7	of misconduct or default.
8	(a) Personal representatives, collectors or public administrators shall be entitled
9	to commissions to be fixed in the discretion of the clerk of superior court not to exceed
10	five percent (5%) upon the amounts of receipts, including the value of all personal
11	property when received, and upon the expenditures made in accordance with law, which
12	commissions shall be charged as a part of the costs of administration and, upon
13	allowance, may be retained out of the assets of the estate against creditors and all other
14	persons claiming an interest in the estate. Provided, however, when the gross value of
15	an estate is two thousand dollars (\$2,000) or less, the clerk of superior court is
16	authorized and empowered to fix the commission to be received by the personal
17	representative, collector or public administrator in an amount as he, the clerk of superior
18	court, in his the clerk's discretion, deems just and adequate.
19	(b) In determining the amount of such commissions, both upon personal property
20	received and upon expenditures made, the clerk of superior court shall consider the
21	time, responsibility, trouble and skill involved in the management of the estate. Where
22	real property is sold to pay debts or legacies, the commission shall be computed only on
23	the proceeds actually applied in the payment of debts or legacies.
24	(c) The clerk of superior court may allow commissions from time to time during
25	the course of the administration, but the total commissions allowed shall be determined

on final settlement of the estate and shall not exceed the limit fixed in this section.

27 (d) Nothing in this section shall be construed:

(Public)

1	(1	
2		sums for necessary charges and disbursements incurred in the
3	(2	management of the estate; or
4	(2	
5		distribution of shares of devisees; or
6	(3	
7		decedent's estate to appeal an order of the clerk of superior court to a
8	(14) -	judge of superior court.
9		determining the maximum commissions allowable pursuant to subsection
10		ection, the clerk of superior court may take into account the fees paid by the
11	-	rofessional services performed that were a part of the ordinary routine of
12		on, including services performed by attorneys and accountants. The
13		uthorized by this subsection does not require the clerk to reduce the
14		commissions allowed by the aggregate fees paid to professionals on a
15	dollar-for-do	
16		o personal representative, collector or public administrator, who has been
17	•••	ch-default or misconduct in the due execution of his <u>or her</u> office resulting in
18		on of his or her appointment of the personal representative, collector, or
19	<b>▲</b>	inistrator under the provisions of G.S. 28A-9-1, shall be entitled to any
20		under the provisions of this section.
21		or the purpose of computing commissions whenever any portion of the
22		nterest, rents or other amounts payable to a personal representative, collector
23		administrator is required by any law of the United States or other
24	-	al unit to be withheld for income tax purposes by the person, corporation,
25	-	n or governmental unit paying the same, the amount so withheld shall be
26		ave been received and expended.
27	-	he provisions of subsection (a) of this section do not apply when the
28		11 specifies a stipulated amount or method or standard for determining the
29		on for the services rendered by the personal representative, including:
30	<u>(1</u>	
31		representative is to be determined by applying its regularly adopted
32		schedule of compensation in effect at the time of performance of those
33		services.
34	<u>(2</u>	
35		"reasonable compensation" for those services or similar language to
36		that effect.
37	<u>(h)</u> <u>N</u>	otwithstanding the provisions of subdivision (g)(2) of this section:
38	<u>(1</u>	
39		"reasonable compensation" or similar language to that effect, the
40		personal representative shall receive commissions as determined under
41		subsection (a) of this section unless the personal representative and the
42		beneficiaries whose shares would be charged with the payment of the
43		personal representative's compensation consent in writing to the
44		specific amount that constitutes reasonable compensation.

# General Assembly of North Carolina

1	(2) When the will provides that compensation of the personal
2	representative shall be the amount "as provided by law," the
3	"maximum amount provided by law," or other similar language, that
4	language shall be construed as the intention that the personal
5	representative shall receive commissions as determined under
6	subsection (a) of this section."
7	<b>SECTION 2.</b> G.S. 28A-19-6 reads as rewritten:
8 9	"§ 28A-19-6. Order of payment of claims.
9 10	After payment of costs and expenses of administration, the claims against the estate of a decedent must be paid in the following order:
10	First class. Claims which by law have a specific lien on property to an amount not
11	exceeding the value of such property.
12	Second class. Funeral expenses to the extent of two thousand five hundred dollars
13 14	(\$2,500). This limitation shall not include cemetery lot or gravestone. The preferential
15	limitation herein granted shall be construed to be only a limit with respect to preference
16	of payment and shall not be construed to be a limitation on reasonable funeral expenses
17	which may be incurred; nor shall the preferential limitation of payment in the amount of
18	two thousand five hundred dollars (\$2,500) be diminished by any Veterans
19	Administration, social security or other federal governmental benefits awarded to the
20	estate of the decedent or to his or her beneficiaries.
21	Third class. All dues, taxes, and other claims with preference under the laws of the
22	United States.
23	Fourth class. All dues, taxes, and other claims with preference under the laws of the
24	State of North Carolina and its subdivisions.
25	Fifth class. Judgments of any court of competent jurisdiction within the State,
26	docketed and in force, to the extent to which they are a lien on the property of the
27	decedent at his death.
28	Sixth class. Wages due to any employee employed by the decedent, which claim for
29	wages shall not extend to a period of more than 12 months next preceding the death; or
30	if such employee was employed for the year current at the decease, then from the time
31	of such employment; for medical services within the 12 months preceding the decease;
32	for drugs and all other medical supplies necessary for the treatment of such decedent
33	during the last illness of such decedent, said period of last illness not to exceed 12
34	months.
35	Seventh class. All other claims.
36	Notwithstanding the above provisions, if payment of the commissions of the
37	personal representative under G.S. 28A-23-3(g) would cause the estate to be unable to
38	pay all claims against the estate of a decedent, then the commissions shall be limited to
39	the amount allowed under G.S. 28A-23-3(a)."
40	SECTION 3. This act becomes effective January 1, 2006, and applies to
41	commissions paid on or after that date.