

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL DRS45346-MQ-58

Short Title: Landlord/Tenant Changes. (Public)

Sponsors: Senators Britt, Perry, and Newton (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY AND REAFFIRM THE STATUTORY AUTHORITY OF  
3 LANDLORDS TO RECOVER OUT-OF-POCKET EXPENSES AND LITIGATION  
4 COSTS IN SUMMARY EJECTMENT PROCEEDINGS AND TO MAKE VARIOUS  
5 CHANGES TO THE LANDLORD/TENANT STATUTES.

6 The General Assembly of North Carolina enacts:

7  
8 **PART I. CLARIFICATION AND REAFFIRMATION OF RECOVERY OF**  
9 **OUT-OF-POCKET EXPENSES AND LITIGATION COSTS IN SUMMARY**  
10 **EJECTMENTS**

11 **SECTION 1.1.** G.S. 42-46 reads as rewritten:

12 "**§ 42-46. Authorized late fees and eviction fees, costs, and expenses.**

13 (a) Late Fee. – In all residential rental agreements in which a definite time for the  
14 payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions  
15 of this subsection, to be chargeable only if any rental payment is five days or more late. If the  
16 rent:

17 (1) Is due in monthly installments, a landlord may charge a late fee not to exceed  
18 fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is  
19 greater.

20 (2) Is due in weekly installments, a landlord may charge a late fee not to exceed  
21 four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is  
22 greater.

23 (3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and  
24 applicable to leases entered into on or after that date.

25 (b) A late fee under subsection (a) of this section may be imposed only one time for each  
26 late rental payment. A late fee for a specific late rental payment may not be deducted from a  
27 subsequent rental payment so as to cause the subsequent rental payment to be in default.

28 (c) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable  
29 to leases entered into on or after that date.

30 (d) A lessor shall not charge a late fee to a lessee pursuant to subsection (a) of this section  
31 because of the lessee's failure to pay for water or sewer services provided pursuant to  
32 G.S. 62-110(g).

33 (e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge ~~a~~an  
34 administrative complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of  
35 the monthly rent, whichever is greater, only if the tenant was in default of the lease, the landlord  
36 filed and served a complaint for summary ejectment and/or money owed, the tenant cured the



1 default or claim, and the landlord dismissed the complaint prior to judgment. The landlord can  
2 include this fee in the amount required to cure the default.

3 (f) Court-Appearance Fee. – Pursuant to a written lease, a landlord may charge ~~a~~an  
4 administrative court-appearance fee in an amount equal to ten percent (10%) of the monthly rent  
5 only if the tenant was in default of the lease and the landlord filed, served, and prosecuted  
6 successfully a complaint for summary ejectment and/or monies owed in the small claims court.  
7 If the tenant appeals the judgment of the magistrate, and the magistrate's judgment is vacated,  
8 any fee awarded by a magistrate to the landlord under this subsection shall be vacated.

9 (g) Second Trial Fee. – Pursuant to a written lease, a landlord may charge a second  
10 administrative trial fee for a new trial following an appeal from the judgment of a magistrate. To  
11 qualify for the fee, the landlord must prove that the tenant was in default of the lease and the  
12 landlord prevailed. The landlord's fee may not exceed twelve percent (12%) of the monthly rent  
13 in the lease.

14 (h) Limitations on Charging and Collection of Fees.~~Administrative Fees and~~  
15 Out-of-Pocket Expenses and Litigation Costs.

16 (1) A landlord who claims administrative fees under subsections (e) through (g)  
17 of this section is entitled to charge and retain only one of the above fees for  
18 the landlord's complaint for summary ejectment and/or money owed.

19 (2) A landlord who earns ~~a~~an administrative fee under subsections (e) through  
20 (g) of this section may not deduct payment of that fee from a tenant's  
21 subsequent rent payment or declare a failure to pay the fee as a default of the  
22 lease for a subsequent summary ejectment action.

23 (3) It is contrary to public policy for a landlord to put in a lease or claim any  
24 administrative fee for filing a complaint for summary ejectment and/or money  
25 owed other than the ones expressly authorized by subsections (e) through (g)  
26 ~~[and] (i) of this section, and a reasonable attorney's fee as allowed by~~  
27 ~~law-section. This limitation does not apply to out-of-pocket expenses or~~  
28 litigation costs.

29 (3a) It is contrary to public policy for a landlord to claim, or for a lease to provide  
30 for the payment of, any out-of-pocket expenses or litigation costs for filing a  
31 complaint for summary ejectment and/or money owed rather than those  
32 expressly authorized under subsection (i) of this section.

33 (4) Any provision of a residential rental agreement contrary to the provisions of  
34 this section is against the public policy of this State and therefore void and  
35 unenforceable.

36 (5) If the rent is subsidized by the United States Department of Housing and  
37 Urban Development, by the United States Department of Agriculture, by a  
38 State agency, by a public housing authority, or by a local government, any fee  
39 charged pursuant to this section shall be calculated on the tenant's share of the  
40 contract rent only, and the rent subsidy shall not be included.

41 (i) ~~Out-of-Pocket Expenses.~~Expenses and Litigation Costs. – In addition to the late  
42 fees referenced in subsections (a) and (b) of this section and the administrative fees of a landlord  
43 referenced in subsections (e) through (g) of this section, a landlord ~~is also~~also is permitted to  
44 charge and recover from a tenant the following actual out-of-pocket expenses:

45 (1) Filing fees charged by the court.

46 (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North  
47 Carolina Rules of Civil Procedure and G.S. 42-29.

48 (3) Reasonable attorneys' fees actually ~~incurred, paid or owed,~~ pursuant to a  
49 written lease, not to exceed fifteen percent (15%) of the amount owed by the  
50 tenant, or fifteen percent (15%) of the monthly rent stated in the lease if the  
51 eviction is based on a default other than the nonpayment of rent.

1 (j) The out-of-pocket expenses and litigation costs listed in subsection (i) of this section  
2 are allowed to be included by the landlord in the amount required to cure a default.

3 (k) As used in this section, the term "administrative fees" does not include out-of-pocket  
4 expenses, litigation costs, or other fees."

5 **SECTION 1.2.** This Part is effective when it becomes law and is intended to apply  
6 retroactively to all pending controversies as of that date. The amendments contained in this Part  
7 are intended to be clarifying of the General Assembly's intent under previous amendments to this  
8 statute.

## 10 **PART II. VARIOUS CHANGES TO LANDLORD/TENANT STATUTES**

11 **SECTION 2.1.** Article 1 of Chapter 42 of the General Statutes is amended by adding  
12 a new section to read:

### 13 **"§ 42-14.5. Foreseeability not created by criminal record; no duty to screen.**

14 Notwithstanding any other duty or obligation which may be defined by this Chapter or  
15 otherwise provided by law or any theory of liability, the criminal record of any prospective or  
16 current residential lessee, occupant, or guest shall not make any future injury or damage arising  
17 from that residential lessee, occupant, or guest foreseeable by the residential lessor or residential  
18 lessor's agent, nor shall a residential lessor or a residential lessor's agent have a duty to screen  
19 for, or to refuse to rent because of, the criminal record of a prospective or current residential  
20 lessee, occupant, or guest. This statute does not prohibit a residential lessor or residential lessor's  
21 agent from using a criminal background check as grounds for refusing to rent to any prospective  
22 residential lessee or current lessee."

23 **SECTION 2.2.** G.S. 42-25.7 reads as rewritten:

### 24 **"§ 42-25.7. Distress and distraint not permitted.**

25 It is the public policy of the State of North Carolina that distress and distraint are prohibited  
26 and that landlords of residential rental property shall have rights concerning the personal property  
27 of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h),  
28 42-36.2, 28A-25-2, or 28A-25-7."

29 **SECTION 2.3.** G.S. 28A-25-1 reads as rewritten:

### 30 **"§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

31 (a) When a decedent dies intestate leaving personal property, less liens and  
32 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time  
33 after 30 days from the date of death, any person indebted to the decedent or having possession of  
34 tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action  
35 belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal  
36 property or an instrument evidencing a debt, obligation, stock or chose in action to a person  
37 claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or  
38 creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified  
39 copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir  
40 or creditor or the public administrator stating:

- 41 (1) The name and address of the affiant and the fact that the affiant is the public  
42 administrator or an heir or creditor of the decedent;
- 43 (2) The name of the decedent and the decedent's residence at time of death;
- 44 (3) The date and place of death of the decedent;
- 45 (4) That 30 days have elapsed since the death of the decedent;
- 46 (5) That the value of all the personal property owned by the estate of the decedent,  
47 less liens and encumbrances thereon, does not exceed twenty thousand dollars  
48 (\$20,000);
- 49 (6) That no application or petition for appointment of a personal representative is  
50 pending or has been granted in any jurisdiction;

- 1 (7) The names and addresses of those persons who are entitled, under the  
2 provisions of the Intestate Succession Act, to the personal property of the  
3 decedent and their relationship, if any, to the decedent; and  
4 (8) A description sufficient to identify each tract of real property owned by the  
5 decedent at the time of the decedent's death.

6 In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not  
7 disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected  
8 pursuant to this section may exceed twenty thousand dollars (\$20,000) in value but shall not  
9 exceed thirty thousand dollars (\$30,000) in value, after reduction for any spousal allowance paid  
10 to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the  
11 name and address of the affiant and the fact that the affiant is the surviving spouse and is entitled,  
12 under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii)  
13 that the value of all of the personal property owned by the estate of the decedent, less liens and  
14 encumbrances thereon, does not exceed thirty thousand dollars (\$30,000); and (iii) the  
15 information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

16 ...

17 (d) The public administrator or an heir that has presented an affidavit as provided in  
18 subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's  
19 personal property located in the demised premises."

20 **SECTION 2.4.** G.S. 28A-25-1.1 reads as rewritten:

21 "**§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

22 (a) When a decedent dies testate leaving personal property, less liens and encumbrances  
23 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days from  
24 the date of death, any person indebted to the decedent or having possession of tangible personal  
25 property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the  
26 decedent shall make payment of the indebtedness or deliver the tangible personal property or an  
27 instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the  
28 public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as  
29 executor in the will, devisee, heir or creditor, of the decedent, not disqualified under  
30 G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with  
31 subsection (b) and made by or on behalf of the heir, the person named or designated as executor  
32 in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

- 33 (1) The name and address of the affiant and the fact that the affiant is the public  
34 administrator, a person named or designated as executor in the will, devisee,  
35 heir or creditor, of the decedent;  
36 (2) The name of the decedent and the decedent's residence at time of death;  
37 (3) The date and place of death of the decedent;  
38 (4) That 30 days have elapsed since the death of the decedent;  
39 (5) That the decedent died testate leaving personal property, less liens and  
40 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in  
41 value;  
42 (6) That the decedent's will has been admitted to probate in the court of the proper  
43 county and a duly certified copy of the will has been recorded in each county  
44 in which is located any real property owned by the decedent at the time of the  
45 decedent's death;  
46 (7) That a certified copy of the decedent's will is attached to the affidavit;  
47 (8) That no application or petition for appointment of a personal representative is  
48 pending or has been granted in any jurisdiction;  
49 (9) The names and addresses of those persons who are entitled, under the  
50 provisions of the will, or if applicable, of the Intestate Succession Act, to the  
51 property of the decedent; and their relationship, if any, to the decedent; and

1 (10) A description sufficient to identify each tract of real property owned by the  
2 decedent at the time of the decedent's death.

3 In those cases in which the affiant is the surviving spouse, is entitled to all of the property of  
4 the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this  
5 subsection that may be collected pursuant to this section may exceed twenty thousand dollars  
6 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in value, after reduction  
7 for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the  
8 affidavit shall state: (i) the name and address of the affiant and the fact that the affiant is the  
9 surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of  
10 the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died  
11 testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty  
12 thousand dollars (\$30,000); and (iii) the information required under subdivisions (2), (3), (4), (6),  
13 (7), (8), and (10) of this subsection.

14 ...

15 (d) The public administrator, person named or designated as executor in the will, devisee,  
16 or heir that has presented an affidavit as provided in subsection (a) of this section shall be entitled  
17 to remove or otherwise dispose of the decedent's personal property located in the demised  
18 premises."

19 **SECTION 2.5.** G.S. 28A-25-2 reads as rewritten:

20 "**§ 28A-25-2. Effect of affidavit.**

21 The person paying, delivering, transferring or issuing personal property or the evidence  
22 thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or  
23 G.S. 28A-25-1.1(a) is discharged and released to the same extent as if the person dealt with a  
24 duly qualified personal representative of the decedent. A lessor or lessor's agent of the demised  
25 premises that, at the direction of an affiant authorized pursuant to G.S. 28A-25-1(d) or  
26 G.S. 28A-25-1.1(d), removes, throws away, or otherwise disposes of the personal property  
27 located in demised premises is discharged and released to the same extent as if the lessor dealt  
28 with a duly qualified personal representative of the decedent. The person or lessor is not required  
29 to see to the application of the personal property or evidence thereof or to inquire into the truth  
30 of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay,  
31 deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its  
32 payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought  
33 for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee  
34 incident to the action shall be taxed against the person whose refusal to comply with the  
35 provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or  
36 creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable  
37 therefor to any duly qualified personal representative or collector of the decedent's estate or to  
38 any other person having an interest in the estate."

39 **SECTION 2.6.** Sections 2.3, 2.4, and 2.5 are effective when they become law and  
40 apply to decedents dying on or after that date. The remainder of this Part is effective when it  
41 becomes law.

### 42 **PART III. EFFECTIVE DATE**

43 **SECTION 3.1.** Except as otherwise provided, this act is effective when it becomes  
44 law.  
45