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SESSION 1993

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HOUSE BILL 978*
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Short Title: NC Bar/Alimony Law Changes.

(Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 19, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN THE LAWS PERTAINING TO ALIMONY, AS
3 RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH
4 CAROLINA BAR ASSOCIATION.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 50-16.1, 50-16.2, and 50-16.3 are repealed.

7 Sec. 2. Chapter 50 of the General Statutes is amended by adding the
8 following new sections to read:

9 "**§ 50-16.1A. Definitions.**

10 As used in this Chapter, unless the context clearly requires otherwise, the following
11 definitions apply:

12 (1) 'Alimony' means an order for payment for the support and maintenance
13 of a spouse or former spouse, periodically or in a lump sum, for a
14 specified or for an indefinite term, ordered in an action for divorce,
15 whether absolute or from bed and board, or in an action for alimony
16 without divorce.

17 (2) 'Dependent spouse' means a spouse, whether husband or wife, who is
18 actually substantially dependent upon the other spouse for his or her
19 maintenance and support or is substantially in need of maintenance
20 and support from the other spouse.

21 (3) 'Marital misconduct' means any of the following:

22 a. Illicit sexual behavior. For the purpose of this section, illicit
23 sexual behavior means acts of sexual or deviate sexual

1 intercourse, deviate sexual acts, or sexual acts defined in G.S.
2 14-27.1(4), voluntarily engaged in by a spouse, with someone
3 other than the other spouse;

4 b. Involuntary separation of the spouses in consequence of a
5 criminal act committed prior to the proceeding in which
6 alimony is sought;

7 c. Abandonment of the other spouse;

8 d. Malicious turning out-of-doors of the other spouse;

9 e. Cruel or barbarous treatment endangering the life of the other
10 spouse;

11 f. Indignities rendering the condition of the other spouse
12 intolerable and life burdensome;

13 g. Reckless spending of the income of either party, or the
14 destruction, waste, diversion, or concealment of assets;

15 h. Excessive use of alcohol or drugs so as to render the condition
16 of the other spouse intolerable and life burdensome;

17 i. Willful failure to provide necessary subsistence according to
18 one's means and condition so as to render the condition of the
19 other spouse intolerable and life burdensome.

20 (4) 'Postseparation support' means spousal support to be paid until the
21 earliest of either the date specified in the order of postseparation
22 support, or an order awarding or denying alimony, or a judgment of
23 equitable distribution. In no event shall an initial order of
24 postseparation support provide that such support be paid for a period
25 longer than 12 months from entry of the initial order. Postseparation
26 support may be ordered in an action for divorce, whether absolute or
27 from bed and board, for annulment, or for alimony without divorce,
28 and continues until the time periods described in this subdivision or as
29 determined in a review hearing provided under G.S. 50-16.2A(e).

30 (5) 'Supporting spouse' means a spouse, whether husband or wife, upon
31 whom the other spouse is actually substantially dependent for
32 maintenance and support or from whom such spouse is substantially in
33 need of maintenance and support.

34 **"§ 50-16.2A. Postseparation support.**

35 (a) In a proceeding for divorce, whether absolute or from bed and board, for
36 annulment, or for alimony without divorce, either party may move for postseparation
37 support. The verified pleading, verified motion, or affidavit of the moving party shall
38 set forth the factual basis for the relief requested.

39 (b) In ordering postseparation support, the court shall base its award on the
40 financial needs of the parties, the present employment income and other recurring
41 earnings of each party from any source, their income-earning abilities, the separate and
42 marital debt service obligations, those expenses reasonably necessary to support each of
43 the parties, and each party's respective legal obligations to support any other persons.

1 (c) A dependent spouse is entitled to an award of postseparation support if the
2 court finds that the supporting spouse has, **prima facie**, committed one or more acts of
3 marital misconduct as defined in this Article and if, based on consideration of the
4 factors specified in subsection (b) of this section, the court finds that the resources of the
5 dependent spouse are not adequate to meet his or her reasonable needs and the
6 supporting spouse has the ability to pay.

7 (d) Marital misconduct as defined in this Article committed by the dependent
8 spouse prior to separation, shall be grounds for disallowance or reduction of the
9 dependent spouse's entitlement to postseparation support. If such acts are pleaded in
10 defense by the supporting spouse, the judge shall also consider any such acts by the
11 supporting spouse when determining whether or not the dependent spouse's entitlement
12 to postseparation support should be disallowed or reduced.

13 (e) An initial order providing for postseparation support shall expire after 12
14 months. However, upon motion of either party, a court shall review the terms of the
15 initial postseparation support order and may modify or continue the order of
16 postseparation support for an additional fixed period of time in order to allow a pending
17 request for alimony or equitable distribution to be determined.

18 The court in considering an award of postseparation support after the 12-month
19 expiration of the initial order shall consider the factors described in subsection (b) of
20 this section and may also consider either party's marital misconduct, as defined in this
21 Article occurring either prior or subsequent to the initial order. This subsection shall
22 not enlarge the time periods established under G.S. 50-16.1A(4) and shall be in addition
23 to the provision for modification based on change of circumstances provided in G.S. 50-
24 16.9.

25 **"§ 50-16.3A. Alimony.**

26 (a) Entitlement: Upon either party's filing a claim for alimony or alimony without
27 divorce in an action for divorce, whether absolute or from bed and board, the court shall
28 award alimony to the dependent spouse upon a finding that one spouse is a dependent
29 spouse, that the other spouse is a supporting spouse, that the supporting spouse has
30 committed one or more acts of marital misconduct as defined in this Article and that an
31 award of alimony is equitable after considering all relevant factors, including those set
32 out in subsection (b) of this section.

33 The action for alimony may be heard on the merits prior to the entry of a judgment
34 for equitable distribution, and if awarded, the amount may be reviewed by the court **de**
35 **novo** after the conclusion of the equitable distribution claim.

36 (b) Amount and duration: The court shall exercise its discretion in determining
37 the amount, duration, and manner of payment of alimony. The duration of the award
38 may be for a specified or for an indefinite term. In determining the amount, duration,
39 and manner of payment of alimony, the court shall consider all relevant factors,
40 including:

- 41 (1) The relative earnings and earning capacities of the spouses;
- 42 (2) The ages and the physical, mental, and emotional conditions of the
43 spouses;

- 1 (3) The amount and sources of earned and unearned income of both
2 spouses, including, but not limited to, earnings, dividends, and benefits
3 such as medical, retirement, insurance, social security, or others;
4 (4) The duration of the marriage;
5 (5) The contribution by one spouse to the education, training, or increased
6 earning power of the other spouse;
7 (6) The extent to which the earning power, expenses, or financial
8 obligations of a spouse will be affected by reason of serving as the
9 custodian of a minor child;
10 (7) The standard of living of the spouses established during the marriage;
11 (8) The relative education of the spouses and the time necessary to acquire
12 sufficient education or training to enable the spouse seeking alimony
13 to find employment to meet his or her reasonable economic needs;
14 (9) The relative assets and liabilities of the spouses and the relative debt
15 service requirements of the spouses, including legal obligations of
16 support;
17 (10) The property brought to the marriage by either spouse;
18 (11) The contribution of a spouse as homemaker;
19 (12) The relative needs of the spouses;
20 (13) The marital misconduct of either of the spouses during the marriage
21 and prior to the date of the parties' separation. Nothing herein shall
22 prevent a court from considering incidents of post date-of-separation
23 marital misconduct as corroborating evidence supporting other
24 evidence that marital misconduct occurred during the marriage and
25 prior to date of separation;
26 (14) The federal, State, and local tax ramifications of the alimony award;
27 (15) The expenditures of either spouse for the support or education of their
28 child or children beyond the age of majority;
29 (16) Any other factor relating to the economic circumstances of the parties
30 which the court finds to be just and proper.

31 (c) Findings of fact: The court shall set forth the reasons for its award or denial
32 of alimony and, if making an award, the reasons for its amount, duration, and manner of
33 payment. The court must make a specific finding of fact on each of the factors in
34 subsection (b) of this section if evidence is offered on that factor.

35 (d) In the claim for alimony, either spouse may request a jury trial on the issue of
36 marital misconduct as defined in G.S. 50-16.1A. If a jury trial is requested, the jury will
37 decide whether either spouse or both have established marital misconduct."

38 Sec. 3. G.S. 50-16.4 reads as rewritten:

39 **"§ 50-16.4. Counsel fees in actions for alimony.**

40 At any time that a dependent spouse would be entitled to ~~alimony pendente lite~~
41 ~~postseparation support~~ pursuant to G.S. ~~50-16.3, 50-16.2A,~~ the court may, upon
42 application of such spouse, enter an order for reasonable counsel fees for the benefit of
43 such spouse, to be paid and secured by the supporting spouse in the same manner as
44 alimony."

1 Sec. 4. G.S. 50-16.5 is repealed.

2 Sec. 5. G.S. 50-16.6 reads as rewritten:

3 **"§ 50-16.6. When alimony not payable.**

4 (a) ~~Alimony or alimony pendente lite shall not be payable when adultery is~~
5 ~~pleaded in bar of demand for alimony or alimony pendente lite, made in an action or~~
6 ~~cross action, and the issue of adultery is found against the spouse seeking alimony, but~~
7 ~~this shall not be a bar to reasonable counsel fees.~~

8 (b) ~~Alimony, alimony pendente lite, postseparation support, and counsel fees may~~
9 ~~be barred by an express provision of a valid separation agreement so long as the~~
10 ~~agreement is performed."~~

11 Sec. 6. G.S. 50-16.7 reads as rewritten:

12 **"§ 50-16.7. How alimony and ~~alimony pendente lite~~ postseparation support paid;**
13 **enforcement of decree.**

14 (a) ~~Alimony or alimony pendente lite~~ postseparation support shall be paid by lump
15 sum payment, periodic payments, or by transfer of title or possession of personal
16 property or any interest therein, or a security interest in or possession of real property,
17 as the court may order. In every case in which either alimony or ~~alimony pendente lite~~
18 postseparation support is allowed and provision is also made for support of minor
19 children, the order shall separately state and identify each allowance.

20 (b) The court may require the supporting spouse to secure the payment of
21 alimony or ~~alimony pendente lite~~ postseparation support so ordered by means of a bond,
22 mortgage, or deed of trust, or any other means ordinarily used to secure an obligation to
23 pay money or transfer property, or by requiring the supporting spouse to execute an
24 assignment of wages, salary, or other income due or to become due.

25 (c) If the court requires the transfer of real or personal property or an interest
26 therein as a part of an order for alimony or ~~alimony pendente lite~~ postseparation support
27 as provided in subsection (a) or for the securing thereof, the court may also enter an
28 order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

29 (d) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the
30 General Statutes, shall be available in actions for alimony or ~~alimony pendente lite~~
31 postseparation support as in other cases.

32 (e) The remedies of attachment and garnishment, as provided in Article 35 of
33 Chapter 1 of the General Statutes, shall be available in actions for alimony or ~~alimony~~
34 ~~pendente lite~~ postseparation support as in other cases, and for such purposes the
35 dependent spouse shall be deemed a creditor of the supporting spouse.

36 (f) The remedy of injunction, as provided in Article 37 of Chapter 1 of the
37 General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for alimony or
38 ~~alimony pendente lite~~ postseparation support as in other cases.

39 (g) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may
40 be appointed in actions for alimony or ~~alimony pendente lite~~ postseparation support as in
41 other cases.

42 (h) A dependent spouse for whose benefit an order for the payment of alimony or
43 ~~alimony pendente lite~~ postseparation support has been entered shall be a creditor within

1 the meaning of Article 3 of Chapter 39 of the General Statutes pertaining to fraudulent
2 conveyances.

3 (i) A judgment for alimony or ~~alimony pendente lite postseparation support~~
4 obtained in an action therefor shall not be a lien against real property unless the
5 judgment expressly so provides, sets out the amount of the lien in a sum certain, and
6 adequately describes the real property affected; but past-due periodic payments may by
7 motion in the cause or by a separate action be reduced to judgment which shall be a lien
8 as other judgments.

9 (j) Any order for the payment of alimony or ~~alimony pendente lite postseparation~~
10 ~~support~~ is enforceable by proceedings for civil contempt, and its disobedience may be
11 punished by proceedings for criminal contempt, as provided in Chapter 5A of the
12 General Statutes.

13 Notwithstanding the provisions of G.S. 1-294 or G.S. 1-289, an order for the
14 periodic payment of alimony that has been appealed to the appellate division is
15 enforceable in the trial court by proceedings for civil contempt during the pendency of
16 the appeal. Upon motion of an aggrieved party, the court of the appellate division in
17 which the appeal is pending may stay any order for civil contempt entered for alimony
18 until the appeal is decided if justice requires.

19 (k) The remedies provided by Chapter 1 of the General Statutes Article 28,
20 Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings,
21 shall be available for the enforcement of judgments for alimony and ~~alimony pendente~~
22 ~~lite postseparation support~~ as in other cases, but amounts so payable shall not constitute
23 a debt as to which property is exempt from execution as provided in Article 16 of
24 Chapter 1C of the General Statutes.

25 (l) The specific enumeration of remedies in this section shall not constitute a bar
26 to remedies otherwise available."

27 Sec. 7. G.S. 50-16.8 reads as rewritten:

28 "**§ 50-16.8. Procedure in actions for ~~alimony and alimony pendente lite.~~**
29 **postseparation support.**

30 (a) ~~The procedure in actions for alimony and actions for alimony pendente lite~~
31 ~~shall be as in other civil actions except as provided in this section and in G.S. 50-19.~~

32 (b) ~~Payment of alimony may be ordered:~~

33 (1) ~~Upon application of the dependent spouse in an action by such spouse~~
34 ~~for divorce, either absolute or from bed and board; or~~

35 (2) ~~Upon application of the dependent spouse in a separate action~~
36 ~~instituted for the purpose of securing an order for alimony without~~
37 ~~divorce; or~~

38 (3) ~~Upon application of the dependent spouse as a cross action in a suit for~~
39 ~~divorce, whether absolute or from bed and board, or a proceeding for~~
40 ~~alimony without divorce, instituted by the other spouse.~~

41 (c) ~~A cross action for divorce, either absolute or from bed and board, shall be~~
42 ~~allowable in an action for alimony without divorce.~~

43 (d) ~~Payment of alimony pendente lite may be ordered:~~

- 1 (1) ~~Upon application of the dependent spouse in an action by such spouse~~
2 ~~for absolute divorce, divorce from bed and board, annulment, or for~~
3 ~~alimony without divorce; or~~
- 4 (2) ~~Upon application of the dependent spouse as a cross action in a suit for~~
5 ~~divorce, whether absolute or from bed and board, annulment, or for~~
6 ~~alimony without divorce, instituted by the other spouse.~~
- 7 (e) ~~No order for alimony pendente lite shall be made unless the supporting~~
8 ~~spouse shall have had five days' notice thereof; but if the supporting spouse shall have~~
9 ~~abandoned the dependent spouse and left the State, or shall be in parts unknown, or is~~
10 ~~about to remove or dispose of his or her property for the purpose of defeating the claim~~
11 ~~of the dependent spouse, no notice is necessary.~~
- 12 (f) ~~When an application is made for alimony pendente lite, the party shall be~~
13 ~~heard orally, upon affidavit, verified pleading, or other proof, and the judge shall find~~
14 ~~the facts from the evidence so presented.~~
- 15 (g) ~~When a district court having jurisdiction of the matter shall have been~~
16 ~~established, application for alimony pendente lite shall be made to such district court,~~
17 ~~and may be heard without a jury by a judge of said court at any time.~~
- 18 (h) ~~In any case where a claim is made for alimony without divorce, when there is~~
19 ~~a minor child, the pleading shall set forth the name and age of each such child; and if~~
20 ~~there be no minor child, the pleading shall so state. When an application is made for~~
21 ~~postseparation support, the court may base its award on a verified pleading, affidavit, or~~
22 ~~other competent evidence. The court shall set forth the reasons for its award or denial~~
23 ~~of postseparation support, and if making an award, the reasons for its amount, duration,~~
24 ~~and manner of payment.~~

25 Sec. 8. G.S. 50-16.9 reads as rewritten:

26 "**§ 50-16.9. Modification of order.**

27 (a) ~~An order of a court of this State for alimony or alimony pendente lite,~~
28 ~~postseparation support, whether contested or entered by consent, may be modified or~~
29 ~~vacated at any time, upon motion in the cause and a showing of changed circumstances~~
30 ~~by either party or anyone interested. This section shall not apply to orders entered by~~
31 ~~consent before October 1, 1967.~~

32 Any motion to modify or terminate alimony or ~~alimony pendente lite~~ postseparation
33 support based on a resumption of marital relations between parties who remain married
34 to each other shall be determined pursuant to G.S. 52-10.2.

35 (b) ~~If a dependent spouse who is receiving alimony under a judgment or order of~~
36 ~~a court of this State shall remarry, said alimony shall terminate. If a dependent spouse~~
37 ~~who is receiving postseparation support or alimony from a supporting spouse under a~~
38 ~~judgment or order of a court of this State remarries or engages in cohabitation, the~~
39 ~~postseparation support or alimony shall terminate. Postseparation support or alimony~~
40 ~~shall terminate upon the death of either the supporting or the dependent spouse.~~

41 As used in this subsection, cohabitation means the act of two adults dwelling
42 together continuously and habitually in a private relationship, heterosexual or
43 homosexual in nature, even if this relationship is not solemnized by marriage.
44 Cohabitation is evidenced by the voluntary mutual assumption of those marital rights,

1 duties, and obligations which are usually manifested by married people, and which
2 include but are not necessarily dependent on sexual relations.

3 (c) When an order for alimony has been entered by a court of another
4 jurisdiction, a court of this State may, upon gaining jurisdiction over the person of both
5 parties in a civil action instituted for that purpose, and upon a showing of changed
6 circumstances, enter a new order for alimony which modifies or supersedes such order
7 for alimony to the extent that it could have been so modified in the jurisdiction where
8 granted."

9 Sec. 9. G.S. 50-16.11 reads as rewritten:

10 **"§ 50-16.11. Judgment that a supporting spouse is not liable for alimony.**

11 If a final judgment is entered in any action denying alimony because none of the
12 ~~grounds specified in G.S. 50-16.2 exists,~~ requirements of G.S. 50-16.3A(a) have been
13 met, upon motion by the supporting spouse, the court shall enter a judgment against the
14 spouse to whom the payments were made for the amount of all alimony paid by the
15 supporting spouse to that spouse pending a final disposition of the case. In addition,
16 upon motion by the supporting spouse, if a final judgment is entered in any action
17 denying alimony because none of the ~~grounds specified in G.S. 50-16.2 exists,~~
18 requirements of G.S. 50-16.3A(a) have been met, the court may enter a judgment
19 against the spouse to whom the payments were made for the amount of ~~alimony pendente~~
20 ~~lite-postseparation support~~ paid by the supporting spouse to that spouse pending a final
21 disposition of the case. When there has been judgment entered granting permanent
22 alimony, after a prior denial of ~~alimony pendente lite-postseparation support~~ upon the
23 same allegations, the court may enter judgment against the supporting spouse and in
24 favor of the dependent spouse in an amount equal to the monthly permanent alimony
25 awarded multiplied by the number of months between entry of the prior order denying
26 ~~alimony pendente lite-postseparation support~~ and entering of the final judgment.

27 A judgment awarded against a dependent spouse under this section may not be
28 satisfied by setting off any award of child support to the dependent spouse."

29 Sec. 10. G.S. 50-11(c) reads as rewritten:

30 "(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the
31 rights of either spouse with respect to any action for alimony or ~~alimony pendente lite~~
32 postseparation support pending at the time the judgment for divorce is granted.
33 Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a
34 spouse to receive alimony or ~~alimony pendente lite-postseparation support~~ or affect any
35 other rights provided for such spouse under any judgment or decree of a court rendered
36 before or at the time of the judgment of absolute divorce."

37 Sec. 11. G.S. 50-13.4(e) reads as rewritten:

38 "(e) Payment for the support of a minor child shall be paid by lump sum payment,
39 periodic payments, or by transfer of title or possession of personal property of any
40 interest therein, or a security interest in or possession of real property, as the court may
41 order. In every case in which payment for the support of a minor child is ordered and
42 alimony or ~~alimony pendente lite-postseparation support~~ is also ordered, the order shall
43 separately state and identify each allowance."

44 Sec. 12. G.S. 50-19 reads as rewritten:

1 **"§ 50-19. Maintenance of certain actions as independent actions permissible.**

2 (a) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a), any action for
3 divorce under the provisions of G.S. 50-5.1 or G.S. 50-6 that is filed as an independent,
4 separate action may be prosecuted during the pendency of an action for:

5 (1) Alimony;

6 (2) ~~Alimony pendente lite;~~ Postseparation support;

7 (3) Custody and support of minor children;

8 (4) Custody and support of a person incapable of self-support upon
9 reaching majority; or

10 (5) Divorce pursuant to G.S. 50-5.1 or G.S. 50-6.

11 (b) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a), any action
12 described in subdivision (a)(1) through (a)(5) of this section that is filed as an
13 independent, separate action may be prosecuted during the pendency of an action for
14 divorce under G.S. 50-5.1 or G.S. 50-6."

15 Sec. 13. G.S. 52B-7(b) reads as rewritten:

16 "(b) If a provision of a premarital agreement modifies or eliminates spousal
17 support and that modification or elimination causes one party to the agreement to be
18 eligible for support under a program of public assistance at the time of separation or
19 marital dissolution, a court, notwithstanding the terms of the agreement, may require the
20 other party to provide support to the extent necessary to avoid that eligibility. Before
21 the court orders support under this subsection, the court must find that the party for
22 whom support is ordered is a dependent spouse, as defined by G.S. ~~50-16.1, 50-16.1A,~~
23 ~~and that there are grounds for alimony under G.S. 50-16.2 or alimony pendente lite under G.S.~~
24 ~~50-16.3. the requirements of G.S. 50-16.2A regarding postseparation support or G.S. 50-~~
25 ~~16.3A regarding alimony have been met."~~

26 Sec. 14. This act becomes effective October 1, 1993, and applies to civil
27 actions filed on or after that date. This act shall not apply to pending litigation.