

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 978*

Short Title: NC Bar/Alimony Law Changes.

(Public)

Sponsors: Representative Hackney.

Referred to: Judiciary I.

April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE LAWS PERTAINING TO ALIMONY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

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 G.S. 50-16.1, 50-16.2, and 50-16.3 are repealed.

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

§ 50-16.1A. Definitions.

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

- (1) 'Alimony' means an order for payment for the support and maintenance of a spouse or former spouse, periodically or in a lump sum, for a specified or for an indefinite term, ordered in an action for divorce, whether absolute or from bed and board, or in an action for alimony without divorce.
- (2) 'Dependent spouse' means a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.
- (3) 'Marital misconduct' means any of the following:
 - a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate sexual acts, or sexual acts defined in G.S.

- 1 14-27.1(4), voluntarily engaged in by a spouse, with someone
2 other than the other spouse;
3 b. Involuntary separation of the spouses in consequence of a
4 criminal act committed prior to the proceeding in which
5 alimony is sought;
6 c. Abandonment of the other spouse;
7 d. Malicious turning out-of-doors of the other spouse;
8 e. Cruel or barbarous treatment endangering the life of the other
9 spouse;
10 f. Indignities rendering the condition of the other spouse
11 intolerable and life burdensome;
12 g. Reckless spending of the income of either party, or the
13 destruction, waste, diversion, or concealment of assets;
14 h. Excessive use of alcohol or drugs so as to render the condition
15 of the other spouse intolerable and life burdensome;
16 i. Willful failure to provide necessary subsistence according to
17 one's means and condition so as to render the condition of the
18 other spouse intolerable and life burdensome.
19 (4) 'Postseparation support' means spousal support to be paid until the
20 earliest of either the date specified in the order of postseparation
21 support, or an order awarding or denying alimony, or a judgment of
22 equitable distribution. In no event shall an initial order of
23 postseparation support provide that such support be paid for a period
24 longer than 12 months from entry of the initial order. Postseparation
25 support may be ordered in an action for divorce, whether absolute or
26 from bed and board, for annulment, or for alimony without divorce,
27 and continues until the time periods described in this subdivision or as
28 determined in a review hearing provided under G.S. 50-16.2A(e).
29 (5) 'Supporting spouse' means a spouse, whether husband or wife, upon
30 whom the other spouse is actually substantially dependent for
31 maintenance and support or from whom such spouse is substantially in
32 need of maintenance and support.

33 **"§ 50-16.2A. Postseparation support.**

- 34 (a) In a proceeding for divorce, whether absolute or from bed and board, for
35 annulment, or for alimony without divorce, either party may move for postseparation
36 support. The verified pleading, verified motion, or affidavit of the moving party shall
37 set forth the factual basis for the relief requested.
38 (b) In ordering postseparation support, the court shall base its award on the
39 financial needs of the parties, the present employment income and other recurring
40 earnings of each party from any source, their income-earning abilities, the separate and
41 marital debt service obligations, those expenses reasonably necessary to support each of
42 the parties, and each party's respective legal obligations to support any other persons.
43 (c) A dependent spouse is entitled to an award of postseparation support if, based
44 on consideration of the factors specified in subsection (b) of this section, the court finds

1 that the resources of the dependent spouse are not adequate to meet his or her
2 reasonable needs and the supporting spouse has the ability to pay.

3 (d) Repeated acts of adultery, excessive alcohol or drug abuse, or cruel and
4 barbarous treatment endangering the life of the other spouse, committed by the
5 dependent spouse prior to separation, shall be grounds for disallowance or reduction of
6 the dependent spouse's entitlement to postseparation support. If such acts are pleaded in
7 defense by the supporting spouse, the judge shall also consider any such acts by the
8 supporting spouse when determining whether or not the dependent spouse's entitlement
9 to postseparation support should be disallowed or reduced.

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

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

21 **"§ 50-16.3A. Alimony.**

22 (a) Entitlement: Upon either party's filing a claim for alimony or alimony without
23 divorce in an action for divorce, whether absolute or from bed and board, the court shall
24 award alimony to the dependent spouse upon a finding that one spouse is a dependent
25 spouse and the other spouse is a supporting spouse and that an award of alimony is
26 equitable after considering all relevant factors, including those set out in subsection (b)
27 of this section.

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

31 (b) Amount and duration: The court shall exercise its discretion in determining
32 the amount, duration, and manner of payment of alimony. The duration of the award
33 may be for a specified or for an indefinite term. In determining the amount, duration,
34 and manner of payment of alimony, the court shall consider all relevant factors,
35 including:

- 36 (1) The relative earnings and earning capacities of the spouses;
- 37 (2) The ages and the physical, mental, and emotional conditions of the
38 spouses;
- 39 (3) The amount and sources of earned and unearned income of both
40 spouses, including, but not limited to, earnings, dividends, and benefits
41 such as medical, retirement, insurance, social security, or others;
- 42 (4) The duration of the marriage;
- 43 (5) The contribution by one spouse to the education, training, or increased
44 earning power of the other spouse;

- 1 (6) The extent to which the earning power, expenses, or financial
2 obligations of a spouse will be affected by reason of serving as the
3 custodian of a minor child;
4 (7) The standard of living of the spouses established during the marriage;
5 (8) The relative education of the spouses and the time necessary to acquire
6 sufficient education or training to enable the spouse seeking alimony
7 to find employment to meet his or her reasonable economic needs;
8 (9) The relative assets and liabilities of the spouses and the relative debt
9 service requirements of the spouses, including legal obligations of
10 support;
11 (10) The property brought to the marriage by either spouse;
12 (11) The contribution of a spouse as homemaker;
13 (12) The relative needs of the spouses;
14 (13) The marital misconduct of either of the spouses during the marriage
15 and prior to the date of the parties' separation. Nothing herein shall
16 prevent a court from considering incidents of post date-of-separation
17 marital misconduct as corroborating evidence supporting other
18 evidence that marital misconduct occurred during the marriage and
19 prior to date of separation;
20 (14) The federal, State, and local tax ramifications of the alimony award;
21 (15) The expenditures of either spouse for the support or education of their
22 child or children beyond the age of majority;
23 (16) Any other factor relating to the economic circumstances of the parties
24 which the court finds to be just and proper.

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

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

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

33 **"§ 50-16.4. Counsel fees in actions for alimony.**

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

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

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

41 **"§ 50-16.6. When alimony not payable.**

42 (a) ~~Alimony or alimony pendente lite shall not be payable when adultery is~~
43 ~~pleaded in bar of demand for alimony or alimony pendente lite, made in an action or~~

1 cross action, and the issue of adultery is found against the spouse seeking alimony, but
2 this shall not be a bar to reasonable counsel fees.

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

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

7 "**§ 50-16.7. How alimony and ~~alimony pendente lite~~ postseparation support paid;
8 **enforcement of decree.****

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

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

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

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

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

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

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

37 (h) A dependent spouse for whose benefit an order for the payment of alimony or
38 ~~alimony pendente lite~~ postseparation support has been entered shall be a creditor within
39 the meaning of Article 3 of Chapter 39 of the General Statutes pertaining to fraudulent
40 conveyances.

41 (i) A judgment for alimony or ~~alimony pendente lite~~ postseparation support
42 obtained in an action therefor shall not be a lien against real property unless the
43 judgment expressly so provides, sets out the amount of the lien in a sum certain, and
44 adequately describes the real property affected; but past-due periodic payments may by

1 motion in the cause or by a separate action be reduced to judgment which shall be a lien
2 as other judgments.

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

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

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

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

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

22 "**§ 50-16.8. Procedure in actions for ~~alimony and alimony pendente lite~~**
23 **postseparation support.**

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

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

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

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

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

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

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

38 (1) ~~Upon application of the dependent spouse in an action by such spouse~~
39 ~~for absolute divorce, divorce from bed and board, annulment, or for~~
40 ~~alimony without divorce; or~~

41 (2) ~~Upon application of the dependent spouse as a cross action in a suit for~~
42 ~~divorce, whether absolute or from bed and board, annulment, or for~~
43 ~~alimony without divorce, instituted by the other spouse.~~

1 ~~(e) No order for alimony pendente lite shall be made unless the supporting~~
2 ~~spouse shall have had five days' notice thereof; but if the supporting spouse shall have~~
3 ~~abandoned the dependent spouse and left the State, or shall be in parts unknown, or is~~
4 ~~about to remove or dispose of his or her property for the purpose of defeating the claim~~
5 ~~of the dependent spouse, no notice is necessary.~~

6 ~~(f) When an application is made for alimony pendente lite, the party shall be~~
7 ~~heard orally, upon affidavit, verified pleading, or other proof, and the judge shall find~~
8 ~~the facts from the evidence so presented.~~

9 ~~(g) When a district court having jurisdiction of the matter shall have been~~
10 ~~established, application for alimony pendente lite shall be made to such district court,~~
11 ~~and may be heard without a jury by a judge of said court at any time.~~

12 ~~(h) In any case where a claim is made for alimony without divorce, when there is~~
13 ~~a minor child, the pleading shall set forth the name and age of each such child; and if~~
14 ~~there be no minor child, the pleading shall so state. When an application is made for~~
15 ~~postseparation support, the court may base its award on a verified pleading, affidavit, or~~
16 ~~other competent evidence. The court shall set forth the reasons for its award or denial~~
17 ~~of postseparation support, and if making an award, the reasons for its amount, duration,~~
18 ~~and manner of payment.~~"

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

20 "**§ 50-16.9. Modification of order.**

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

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

29 ~~(b) If a dependent spouse who is receiving alimony under a judgment or order of~~
30 ~~a court of this State shall remarry, said alimony shall terminate. If a dependent spouse~~
31 ~~who is receiving postseparation support or alimony from a supporting spouse under a~~
32 ~~judgment or order of a court of this State remarries or engages in cohabitation, the~~
33 ~~postseparation support or alimony shall terminate. Postseparation support or alimony~~
34 ~~shall terminate upon the death of either the supporting or the dependent spouse.~~

35 As used in this subsection, cohabitation means the act of an adult man and an adult
36 woman dwelling together continuously and habitually in a private relationship even if
37 this relationship is not solemnized by marriage. Cohabitation is evidenced by the
38 voluntary mutual assumption of those marital rights, duties, and obligations which are
39 usually manifested by married people, and which include but are not necessarily
40 dependent on sexual relations.

41 (c) When an order for alimony has been entered by a court of another
42 jurisdiction, a court of this State may, upon gaining jurisdiction over the person of both
43 parties in a civil action instituted for that purpose, and upon a showing of changed
44 circumstances, enter a new order for alimony which modifies or supersedes such order

1 for alimony to the extent that it could have been so modified in the jurisdiction where
2 granted."

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

4 **"§ 50-16.11. Judgment that a supporting spouse is not liable for alimony.**

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

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

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

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

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

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

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

39 **"§ 50-19. Maintenance of certain actions as independent actions permissible.**

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

- 43 (1) Alimony;
44 (2) ~~Alimony pendente lite;~~ Postseparation support;

- 1 (3) Custody and support of minor children;
2 (4) Custody and support of a person incapable of self-support upon
3 reaching majority; or
4 (5) Divorce pursuant to G.S. 50-5.1 or G.S. 50-6.

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

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

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

20 Sec. 14. This act becomes effective October 1, 1993, and applies to actions,
21 claims, or motions filed on or after that date.