

Chapter 50.
Divorce and Alimony.

Article 1.

Divorce, Alimony, and Child Support, Generally.

§ 50-1. Repealed by Session Laws 1971, c. 1185, s. 20.

§ 50-2. Bond for costs unnecessary.

It shall not be necessary for either party to a proceeding for divorce or alimony to give any undertaking to the other party to secure such costs as such other party may recover. (1871-2, c. 193, s. 41; Code, s. 1294; Rev., s. 1558; C.S., s. 1656.)

§ 50-3. Venue; removal of action.

In all proceedings for divorce, the summons shall be returnable to the court of the county in which either the plaintiff or defendant resides.

[In] any action brought under Chapter 50 for alimony or divorce filed in a county where the plaintiff resides but the defendant does not reside, where both parties are residents of the State of North Carolina, and where the plaintiff removes from the State and ceases to be a resident, the action may be removed upon motion of the defendant, for trial or for any motion in the cause, either before or after judgment, to the county in which the defendant resides. The judge, upon such motion, shall order the removal of the action, and the procedures of G.S. 1-87 shall be followed. (1871-2, c. 193, s. 40; Code, s. 1289; Rev., s. 1559; 1915, c. 229, s. 1; C.S., s. 1657; 1977, 2nd Sess., c. 1223.)

§ 50-4. What marriages may be declared void on application of either party.

The district court, during a session of court, on application made as by law provided, by either party to a marriage contracted contrary to the prohibitions contained in the Chapter entitled Marriage, or declared void by said Chapter, may declare such marriage void from the beginning, subject, nevertheless, to G.S. 51-3. (1871-2, c. 193, s. 33; Code, s. 1283; Rev., s. 1560; C.S., s. 1658; 1945, c. 635; 1971, c. 1185, s. 21; 1973, c. 1; 1979, c. 525, s. 10.)

§ 50-5. Repealed by Session Laws 1983, c. 613, s. 1.

§ 50-5.1. Grounds for absolute divorce in cases of incurable insanity.

In all cases where a husband and wife have lived separate and apart for three consecutive years, without cohabitation, and are still so living separate and apart by reason of the incurable insanity of one of them, the court may grant a decree of absolute divorce upon the petition of the sane spouse: Provided, if the insane spouse has been released on a trial basis to the custody of his or her respective spouse such shall not be considered as terminating the status of living "separate and apart" nor shall it be considered as constituting "cohabitation" for the purpose of this section nor shall it prevent the granting of a divorce as provided by this section. Provided further, the evidence shall show that the insane spouse is suffering from incurable insanity, and has been confined or examined for three consecutive years next preceding the bringing of the action in an institution for the care and treatment of the mentally disordered or, if not so confined, has been examined at least three years preceding the institution of the action for divorce and then found to be incurably insane as hereinafter provided. Provided further, that proof of incurable insanity be supported by the testimony of two reputable physicians, one of whom shall be a staff member or the superintendent of the institution where the insane spouse is confined, and one regularly practicing physician in the community wherein such husband and wife reside, who has no connection with the institution in which said insane spouse is confined; and provided further that a sworn statement signed by said staff member or said superintendent of the institution wherein the insane spouse is confined or was examined shall be admissible as

1 evidence of the facts and opinions therein stated as to the mental status of said insane spouse
2 and as to whether or not said insane spouse is suffering from incurable insanity, or the parties
3 according to the laws governing depositions may take the deposition of said staff member or
4 superintendent of the institution wherein the insane spouse is confined; and provided further
5 that incurable insanity may be proved by the testimony of one or more licensed physicians who
6 are members of the staff of one of this State's accredited four-year medical schools or a
7 state-supported mental institution, supported by the testimony of one or more other physicians
8 licensed by the State of North Carolina, that each of them examined the allegedly incurable
9 insane spouse at least three years preceding the institution of the action for divorce and then
10 determined that said spouse was suffering from incurable insanity and that one or more of them
11 examined the allegedly insane spouse subsequent to the institution of the action and that in his
12 or their opinion the said allegedly insane spouse was continuously incurably insane throughout
13 the full period of three years prior to the institution of the said action.

14 In lieu of proof of incurable insanity and confinement for three consecutive years next
15 preceding the bringing of the action in an institution for the care and treatment of the mentally
16 disordered prescribed in the preceding paragraph, it shall be sufficient if the evidence shall
17 show that the allegedly insane spouse was adjudicated to be insane more than three years
18 preceding the institution of the action for divorce, that such insanity has continued without
19 interruption since such adjudication and that such person has not been adjudicated to be sane
20 since such adjudication of insanity; provided, further, proof of incurable insanity existing after
21 the institution of the action for divorce shall be furnished by the testimony of two reputable,
22 regularly practicing physicians, one of whom shall be a psychiatrist.

23 In lieu of proof of incurable insanity and confinement for three consecutive years next
24 preceding the bringing of the action in an institution for the care and treatment of the mentally
25 disordered, or the adjudication of insanity, as prescribed in the preceding paragraphs, it shall
26 be sufficient if the evidence shall show that the insane spouse was examined by two or more
27 members of the staff of one of this State's accredited four-year medical schools, both of whom
28 are medical doctors, at least three years preceding the institution of the action for divorce with a
29 determination at that time by said staff members that said spouse is suffering from incurable
30 insanity, that such insanity has continued without interruption since such determination;
31 provided, further, that sworn statements signed by the staff members of the accredited medical
32 school who examined the insane spouse at least three years preceding the commencement of
33 the action shall be admissible as evidence of the facts and opinions therein stated as to the
34 mental status of said insane spouse as to whether or not said insane spouse was suffering from
35 incurable insanity; provided, further, that proof of incurable insanity under this section existing
36 after the institution of the action for divorce shall be furnished by the testimony of two
37 reputable physicians, one of whom shall be a psychiatrist on the staff of one of the State's
38 accredited four-year medical schools, and one a physician practicing regularly in the
39 community wherein such insane person resides.

40 In all decrees granted under this subdivision in actions in which the insane defendant has
41 insufficient income and property to provide for his or her own care and maintenance, the court
42 shall require the plaintiff to provide for the care and maintenance of the insane defendant for
43 the defendant's lifetime, based upon the standards set out in G.S. 50-16.5(a). The trial court will
44 retain jurisdiction of the parties and the cause, from term to term, for the purpose of making
45 such orders as equity may require to enforce the provisions of the decree requiring plaintiff to
46 furnish the necessary funds for such care and maintenance.

47 Service of process shall be held upon the regular guardian for said defendant spouse, if any,
48 and if no regular guardian, upon a duly appointed guardian ad litem and also upon the
49 superintendent or physician in charge of the institution wherein the insane spouse is confined.
50 Such guardian or guardian ad litem shall make an investigation of the circumstances and notify
51 the next of kin of the insane spouse or the superintendent of the institution of the action and

1 whenever practical confer with said next of kin before filing appropriate pleadings in behalf of
2 the defendant.

3 In all actions brought under this subdivision, if the jury finds as a fact that the plaintiff has
4 been guilty of such conduct as has conduced to the unsoundness of mind of the insane
5 defendant, the relief prayed for shall be denied.

6 The plaintiff or defendant must have resided in this State for six months next preceding
7 institution of any action under this section. (1945, c. 755; 1949, c. 264, s. 5; 1953, c. 1087;
8 1955, c. 887, s. 15; 1963, c. 1173; 1971, c. 1173, ss. 1, 2; 1975, c. 771; 1977, c. 501, s. 1; 1983,
9 c. 613, s. 1.)

10
11 **§ 50-6. Divorce after separation of one year on application of either party.**

12 Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony
13 on the application of either party, if and when the husband and wife have lived separate and
14 apart for one year, and the plaintiff or defendant in the suit for divorce has resided in the State
15 for a period of six months. A divorce under this section shall not be barred to either party by
16 any defense or plea based upon any provision of G.S. 50-7, a plea of res judicata, or a plea of
17 recrimination. Notwithstanding the provisions of G.S. 50-11, or of the common law, a divorce
18 under this section shall not affect the rights of a dependent spouse with respect to alimony
19 which have been asserted in the action or any other pending action.

20 Whether there has been a resumption of marital relations during the period of separation
21 shall be determined pursuant to G.S. 52-10.2. Isolated incidents of sexual intercourse between
22 the parties shall not toll the statutory period required for divorce predicated on separation of
23 one year. (1931, c. 72; 1933, c. 163; 1937, c. 100, ss. 1, 2; 1943, c. 448, s. 3; 1949, c. 264, s. 3;
24 1965, c. 636, s. 2; 1977, c. 817, s. 1; 1977, 2nd Sess., c. 1190, s. 1; 1979, c. 709, s. 1; 1981, c.
25 182; 1983, c. 613, s. 2; c. 923, s. 217; 1987, c. 664, s. 2.)

26
27 **§ 50-7. Grounds for divorce from bed and board.**

28 The court may grant divorces from bed and board on application of the party injured, made
29 as by law provided, in the following cases if either party:

- 30 (1) Abandons his or her family.
- 31 (2) Maliciously turns the other out of doors.
- 32 (3) By cruel or barbarous treatment endangers the life of the other. In addition,
33 the court may grant the victim of such treatment the remedies available
34 under G.S. 50B-1, et seq.
- 35 (4) Offers such indignities to the person of the other as to render his or her
36 condition intolerable and life burdensome.
- 37 (5) Becomes an excessive user of alcohol or drugs so as to render the condition
38 of the other spouse intolerable and the life of that spouse burdensome.
- 39 (6) Commits adultery. (1871-2, c. 193, s. 36; Code, s. 1286; Rev., s. 1562; C.S.,
40 s. 1660; 1967, c. 1152, s. 7; 1971, c. 1185, s. 22; 1979, c. 561, s. 5; 1985, c.
41 574, ss. 1, 2.)

42
43 **§ 50-8. Contents of complaint; verification; venue and service in action by nonresident;
44 certain divorces validated.**

45 In all actions for divorce the complaint shall be verified in accordance with the provisions
46 of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The plaintiff shall set forth in his or
47 her complaint that the complainant or defendant has been a resident of the State of North
48 Carolina for at least six months next preceding the filing of the complaint, and that the facts set
49 forth therein as grounds for divorce, except in actions for divorce from bed and board, have
50 existed to his or her knowledge for at least six months prior to the filing of the complaint:
51 Provided, however, that if the cause for divorce is one-year separation, then it shall not be

1 necessary to allege in the complaint that the grounds for divorce have existed for at least six
2 months prior to the filing of the complaint; it being the purpose of this proviso to permit a
3 divorce after such separation of one year without awaiting an additional six months for filing
4 the complaint: Provided, further, that if the complainant is a nonresident of the State action
5 shall be brought in the county of the defendant's residence, and summons served upon the
6 defendant personally or service of summons accepted by the defendant personally in the
7 manner provided in G.S. 1A-1, Rule 4(j)(1). Notwithstanding any other provision of this
8 section, any suit or action for divorce heretofore instituted by a nonresident of this State in
9 which the defendant was personally served with summons or in which the defendant personally
10 accepted service of the summons and the case was tried and final judgment entered in a court of
11 this State in a county other than the county of the defendant's residence, is hereby validated and
12 declared to be legal and proper, the same as if the suit or action for divorce had been brought in
13 the county of the defendant's residence.

14 In all divorce actions the complaint shall set forth the name and age of any minor child or
15 children of the marriage, and in the event there are no minor children of the marriage, the
16 complaint shall so state. In addition, when there are minor children of the marriage, the
17 complaint shall state the social security number of the plaintiff and, if known, the social
18 security number of the defendant.

19 In all prior suits and actions for divorce heretofore instituted and tried in the courts of this
20 State where the averments of fact required to be contained in the affidavit heretofore required
21 by this section are or have been alleged and set forth in the complaint in said suits or actions
22 and said complaints have been duly verified as required by Rule 11 of the Rules of Civil
23 Procedure, said allegations so contained in said complaints shall be deemed to be, and are
24 hereby made, a substantial compliance as to the allegations heretofore required by this section
25 to be set forth in any affidavit; and all such suits or actions for divorce, as well as the judgments
26 or decrees issued and entered as a result thereof, are hereby validated and declared to be legal
27 and proper judgments and decrees of divorce.

28 In all suits and actions for divorce heretofore instituted and tried in this State on and
29 subsequent to the 5th day of April, 1951, wherein the statements, averments, or allegations in
30 the verification to the complaint in said suits or actions are not in accordance with the
31 provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148 or the requirements of
32 this section as to verification of complaint or the allegations, statements or averments in the
33 verification contain the language that the facts set forth in the complaint are true "to the best of
34 affiant's knowledge and belief" instead of the language "that the same is true to his (or her) own
35 knowledge" or similar variation in language, said allegations, statements and averments in said
36 verifications as contained in or attached to said complaint shall be deemed to be, and are hereby
37 made, a substantial compliance as to the allegations, averments or statements required by this
38 section to be set forth in any such verifications; and all such suits or actions for divorce, as well
39 as the judgments or decrees issued and entered as a result thereof, are hereby validated and
40 declared to be legal and proper judgments and decrees of divorce. The judgment of divorce
41 shall include, where there are minor children of the parties, the social security numbers of the
42 parties. (1868-9, c. 93, s. 46; 1869-70, c. 184; Code, s. 1287; Rev., s. 1563; 1907, c. 1008, s. 1;
43 C.S., s. 1661; 1925, c. 93; 1933, c. 71, ss. 2, 3; 1943, c. 448, s. 1; 1947, c. 165; 1949, c. 264, s.
44 4; 1951, c. 590; 1955, c. 103; 1965, c. 636, s. 3; c. 751, s. 1; 1967, c. 50; c. 954, s. 3; 1969, c.
45 803; 1971, c. 415; 1973, c. 39; 1981, c. 599, s. 15; 1997-433, s. 4.3; 1998-17, s. 1.)

46
47 **§ 50-9. Effect of answer of summons by defendant.**

48 In all cases upon an action for a divorce absolute, where judgment of divorce has heretofore
49 been granted and where the plaintiff has caused to be served upon the defendant in person a
50 legal summons, whether by verified complaint or unverified complaint, and such defendant
51 answered such summons, and where the trial of said action was duly and legally had in all other

1 respects and judgments rendered by a judge of the superior court upon issues answered by a
2 judge and jury, in accordance with law, such judgments are hereby declared to have the same
3 force and effect as any judgment upon an action for divorce otherwise had legally and
4 regularly. (1929, c. 290, s. 1; 1947, c. 393.)
5

6 **§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings;**
7 **when notice of trial not required; procedure same as ordinary civil actions.**

8 (a) Except as provided for in subsection (e) of this section, the material facts in every
9 complaint asking for a divorce or for an annulment shall be deemed to be denied by the
10 defendant, whether the same shall be actually denied by pleading or not, and no judgment shall
11 be given in favor of the plaintiff in any such complaint until such facts have been found by a
12 judge or jury.

13 (b) Nothing herein shall require notice of trial to be given to a defendant who has not
14 made an appearance in the action.

15 (c) The determination of whether there is to be a jury trial or a trial before the judge
16 without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

17 (d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute
18 divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of
19 material fact remains for trial by jury, but in the event the court determines that no genuine
20 issue of material fact remains for trial by jury, the court must find the facts as provided herein.
21 The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S.
22 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit,
23 verified motion or other verified pleading.

24 (e) The clerk of superior court, upon request of the plaintiff, may enter judgment in
25 cases in which the plaintiff's only claim against the defendant is for absolute divorce, or
26 absolute divorce and the resumption of a former name, and the defendant has been defaulted for
27 failure to appear, the defendant has answered admitting the allegations of the complaint, or the
28 defendant has filed a waiver of the right to answer, and the defendant is not an infant or
29 incompetent person. (1868-9, c. 93, s. 47; Code, s. 1288; Rev., s. 1564; C.S., s. 1662; 1963, c.
30 540, ss. 1, 2; 1965, c. 105; c. 636, s. 4; 1971, c. 17; 1973, cc. 2, 460; 1981, c. 12; 1983 (Reg.
31 Sess., 1984), c. 1037, s. 4; 1985, c. 140; 1991, c. 568, s. 1; 2004-128, s. 6.)
32

33 **§ 50-11. Effects of absolute divorce.**

34 (a) After a judgment of divorce from the bonds of matrimony, all rights arising out of
35 the marriage shall cease and determine except as hereinafter set out, and either party may marry
36 again without restriction arising from the dissolved marriage.

37 (b) No judgment of divorce shall render illegitimate any child in esse, or begotten of the
38 body of the wife during coverture.

39 (c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of
40 either spouse with respect to any action for alimony or postseparation support pending at the
41 time the judgment for divorce is granted. Furthermore, a judgment of absolute divorce shall not
42 impair or destroy the right of a spouse to receive alimony or postseparation support or affect
43 any other rights provided for such spouse under any judgment or decree of a court rendered
44 before or at the time of the judgment of absolute divorce.

45 (d) A divorce obtained outside the State in an action in which jurisdiction over the
46 person of the dependent spouse was not obtained shall not impair or destroy the right of the
47 dependent spouse to alimony as provided by the laws of this State.

48 (e) An absolute divorce obtained within this State shall destroy the right of a spouse to
49 equitable distribution under G.S. 50-20 unless the right is asserted prior to judgment of absolute
50 divorce; except, the defendant may bring an action or file a motion in the cause for equitable
51 distribution within six months from the date of the judgment in such a case if service of process

1 upon the defendant was by publication pursuant to G.S. 1A-1, Rule 4 and the defendant failed
2 to appear in the action for divorce.

3 (f) An absolute divorce by a court that lacked personal jurisdiction over the absent
4 spouse or lacked jurisdiction to dispose of the property shall not destroy the right of a spouse to
5 equitable distribution under G.S. 50-20 if an action or motion in the cause is filed within six
6 months after the judgment of divorce is entered. The validity of such divorce may be attacked
7 in the action for equitable distribution. (1871-2, c. 193, s. 43; Code, s. 1295; Rev., s. 1569;
8 1919, c. 204; C.S., s. 1663; 1953, c. 1313; 1955, c. 872, s. 1; 1967, c. 1152, s. 3; 1981, c. 190;
9 c. 815, s. 2; 1987, c. 844, s. 3; 1991, c. 569, s. 2; 1995, c. 319, s. 8; 1998-217, s. 7(a), (b).)

10
11 **§ 50-11.1. Children born of voidable marriage legitimate.**

12 A child born of voidable marriage or a bigamous marriage is legitimate notwithstanding the
13 annulment of the marriage. (1951, c. 893, s. 2.)

14
15 **§ 50-11.2. Judgment provisions pertaining to care, custody, tuition and maintenance of
16 minor children.**

17 Where the court has the requisite jurisdiction and upon proper pleadings and proper and due
18 notice to all interested parties the judgment in a divorce action may contain such provisions
19 respecting care, custody, tuition and maintenance of the minor children of the marriage as the
20 court may adjudge; and from time to time such provisions may be modified upon due notice
21 and hearing and a showing of a substantial change in condition; and if there be no minor
22 children, the judgment may so state. The jurisdictional requirements of G.S. 50A-201,
23 50A-203, or 50A-204 shall apply in regard to a custody decree. (1973, c. 927, s. 1; 1979, c.
24 110, s. 11; 1999-223, s. 10.)

25
26 **§ 50-11.3. Certain judgments entered prior to January 1, 1981, validated.**

27 Any judgment of divorce which has been entered prior to January 1, 1981, by a court of
28 competent jurisdiction within the State of North Carolina without a conclusion of law that the
29 plaintiff was entitled to an absolute divorce, but which is proper in all other respects, is hereby
30 rendered valid and of full force and effect. (1977, c. 320; 1981, c. 473.)

31
32 **§ 50-11.4. Certain judgments of divorce validated.**

33 Any judgment of divorce entered as a result of an action instituted prior to October 1, 1983,
34 upon any grounds abolished by Chapter 613 of the 1983 Session Laws as amended by Section
35 217(O) of Chapter 923 of the 1983 Session Laws, which is proper in all other respects, is
36 hereby rendered valid and of full force and effect. (1985 (Reg. Sess., 1986), c. 952.)

37
38 **§ 50-12. Resumption of maiden or premarriage surname.**

39 (a) Any woman whose marriage is dissolved by a decree of absolute divorce may, upon
40 application to the clerk of court of the county in which she resides or where the divorce was
41 granted setting forth her intention to do so, change her name to any of the following:

- 42 (1) Her maiden name; or
- 43 (2) The surname of a prior deceased husband; or
- 44 (3) The surname of a prior living husband if she has children who have that
45 husband's surname.

46 (a1) A man whose marriage is dissolved by decree of absolute divorce may, upon
47 application to the clerk of court of the county in which he resides or where the divorce was
48 granted setting forth his intention to do so, change the surname he took upon marriage to his
49 premarriage surname.

50 (b) The application and fee required by subsection (e) of this section shall be presented
51 to the clerk of the court of the county in which such divorced person resides or where the

1 divorce was granted, and shall set forth the full name of the former spouse of the applicant, the
2 name of the county and state in which the divorce was granted, and the term or session of court
3 at which such divorce was granted, and shall be signed by the woman in her full maiden name,
4 or by the man in his full premarriage surname. The clerks of court of the several counties of the
5 State shall record and index such applications in such manner as shall be required by the
6 Administrative Office of the Courts.

7 (c) If an applicant, since the divorce, has adopted one of the surnames listed in
8 subsection (a) or (a1) of this section, the applicant's use and adoption of that name is validated.

9 (d) In the complaint, or counterclaim for divorce filed by any person in this State, the
10 person may petition the court to adopt any surname as provided by this section, and the court is
11 authorized to incorporate in the divorce decree an order authorizing the person to adopt that
12 surname.

13 (e) For support of the General Court of Justice, a fee in the amount of ten dollars
14 (\$10.00) shall be assessed against each person requesting the resumption of maiden or
15 premarriage surname in accordance with this section. Sums collected under this section shall be
16 remitted to the State Treasurer. (1937, c. 53; 1941, c. 9; 1951, c. 780; 1957, c. 394; 1971, c.
17 1185, s. 23; 1981, c. 494, ss. 1-4; 1985, c. 488; 1993 (Reg. Sess., 1994), c. 565, s. 1; 2005-38, s.
18 1; 2010-31, s. 15.9(a).)

19
20 **§ 50-13. Repealed by Session Laws 1967, c. 1153, s. 1.**

21
22 **§ 50-13.1. Action or proceeding for custody of minor child.**

23 (a) Any parent, relative, or other person, agency, organization or institution claiming
24 the right to custody of a minor child may institute an action or proceeding for the custody of
25 such child, as hereinafter provided. Any person whose actions resulted in a conviction under
26 G.S. 14-27.2 or G.S. 14-27.3 and the conception of the minor child may not claim the right to
27 custody of that minor child. Unless a contrary intent is clear, the word "custody" shall be
28 deemed to include custody or visitation or both.

29 (a1) Notwithstanding any other provision of law, any person instituting an action or
30 proceeding for custody ex parte who has been convicted of a sexually violent offense as
31 defined in G.S. 14-208.6(5) shall disclose the conviction in the pleadings.

32 (b) Whenever it appears to the court, from the pleadings or otherwise, that an action
33 involves a contested issue as to the custody or visitation of a minor child, the matter, where
34 there is a program established pursuant to G.S. 7A-494, shall be set for mediation of the
35 unresolved issues as to custody and visitation before or concurrent with the setting of the matter
36 for hearing unless the court waives mediation pursuant to subsection (c). Issues that arise in
37 motions for contempt or for modifications as well as in other pleadings shall be set for
38 mediation unless mediation is waived by the court. Alimony, child support, and other economic
39 issues may not be referred for mediation pursuant to this section. The purposes of mediation
40 under this section include the pursuit of the following goals:

- 41 (1) To reduce any acrimony that exists between the parties to a dispute
42 involving custody or visitation of a minor child;
- 43 (2) The development of custody and visitation agreements that are in the child's
44 best interest;
- 45 (3) To provide the parties with informed choices and, where possible, to give the
46 parties the responsibility for making decisions about child custody and
47 visitation;
- 48 (4) To provide a structured, confidential, nonadversarial setting that will
49 facilitate the cooperative resolution of custody and visitation disputes and
50 minimize the stress and anxiety to which the parties, and especially the child,
51 are subjected; and

1 (5) To reduce the relitigation of custody and visitation disputes.

2 (c) For good cause, on the motion of either party or on the court's own motion, the court
3 may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a
4 contested custody or visitation matter for mediation. Good cause may include, but is not limited
5 to, the following: a showing of undue hardship to a party; an agreement between the parties for
6 voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor
7 child; allegations of alcoholism, drug abuse, or domestic violence between the parents in
8 common; or allegations of severe psychological, psychiatric, or emotional problems. A
9 showing by either party that the party resides more than fifty miles from the court may be
10 considered good cause.

11 (d) Either party may move to have the mediation proceedings dismissed and the action
12 heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial
13 ground.

14 (e) Mediation proceeding shall be held in private and shall be confidential. Except as
15 provided in this Article, all verbal or written communications from either or both parties to the
16 mediator or between the parties in the presence of the mediator made in a proceeding pursuant
17 to this section are absolutely privileged and inadmissible in court. The mediator may assess the
18 needs and interests of the child, and may interview the child or others who are not parties to the
19 proceedings when he or she thinks appropriate.

20 (f) Neither the mediator nor any party or other person involved in mediation sessions
21 under this section shall be competent to testify to communications made during or in
22 furtherance of such mediation sessions; provided, there is no privilege as to communications
23 made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as
24 permitting an individual to obtain immunity from prosecution for criminal conduct or as
25 excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the
26 General Statutes or G.S. 108A-102.

27 (g) Any agreement reached by the parties as a result of the mediation shall be reduced
28 to writing, signed by each party, and submitted to the court as soon as practicable. Unless the
29 court finds good reason not to, it shall incorporate the agreement in a court order and it shall
30 become enforceable as a court order. If some or all of the issues as to custody or visitation are
31 not resolved by mediation, the mediator shall report that fact to the court.

32 (h) If an agreement that results from mediation and is incorporated into a court order is
33 referred to as a "parenting agreement" or called by some similar name, it shall nevertheless be
34 deemed to be a custody order or child custody determination for purposes of Chapter 50A of
35 the General Statutes, G.S. 14-320.1, G.S. 110-139.1, or other places where those terms appear.

36 (i) If the child whose custody is the subject of an action under this Chapter also is the
37 subject of a juvenile abuse, neglect, or dependency proceeding pursuant to Subchapter 1 of
38 Chapter 7B of the General Statutes, then the custody action under this Chapter is stayed as
39 provided in G.S. 7B-200. (1967, c. 1153, s. 2; 1989, c. 795, s. 15(b); 1998-202, s. 13(p);
40 2004-128, s. 10; 2005-320, s. 5; 2005-423, s. 4; 2007-462, s. 1; 2011-411, s. 4.)

41
42 **§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents;**
43 **taking child out of State.**

44 (a) An order for custody of a minor child entered pursuant to this section shall award
45 the custody of such child to such person, agency, organization or institution as will best
46 promote the interest and welfare of the child. In making the determination, the court shall
47 consider all relevant factors including acts of domestic violence between the parties, the safety
48 of the child, and the safety of either party from domestic violence by the other party and shall
49 make findings accordingly. An order for custody must include findings of fact which support
50 the determination of what is in the best interest of the child. Between the mother and father,
51 whether natural or adoptive, no presumption shall apply as to who will better promote the

1 interest and welfare of the child. Joint custody to the parents shall be considered upon the
2 request of either parent.

3 (b) An order for custody of a minor child may grant joint custody to the parents,
4 exclusive custody to one person, agency, organization, or institution, or grant custody to two or
5 more persons, agencies, organizations, or institutions. Any order for custody shall include such
6 terms, including visitation, as will best promote the interest and welfare of the child. If the
7 court finds that domestic violence has occurred, the court shall enter such orders that best
8 protect the children and party who were the victims of domestic violence, in accordance with
9 the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or
10 without the children because of an act of domestic violence, the absence or relocation shall not
11 be a factor that weighs against the party in determining custody or visitation. Absent an order
12 of the court to the contrary, each parent shall have equal access to the records of the minor
13 child involving the health, education, and welfare of the child.

14 (b1) An order for custody of a minor child may provide visitation rights for any
15 grandparent of the child as the court, in its discretion, deems appropriate. As used in this
16 subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent
17 or a relative of the child where a substantial relationship exists between the grandparent and the
18 child. Under no circumstances shall a biological grandparent of a child adopted by adoptive
19 parents, neither of whom is related to the child and where parental rights of both biological
20 parents have been terminated, be entitled to visitation rights.

21 (c) An order for custody of a minor child may provide for such child to be taken outside
22 of the State, but if the order contemplates the return of the child to this State, the judge may
23 require the person, agency, organization or institution having custody out of this State to give
24 bond or other security conditioned upon the return of the child to this State in accordance with
25 the order of the court.

26 (d) If, within a reasonable time, one parent fails to consent to adoption pursuant to
27 Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of
28 the other consenting parent shall not be effective in an action for custody of the child.

29 (e) An order for custody of a minor child may provide for visitation rights by electronic
30 communication. In granting visitation by electronic communication, the court shall consider the
31 following:

- 32 (1) Whether electronic communication is in the best interest of the minor child.
- 33 (2) Whether equipment to communicate by electronic means is available,
34 accessible, and affordable to the parents of the minor child.
- 35 (3) Any other factor the court deems appropriate in determining whether to
36 grant visitation by electronic communication.

37 The court may set guidelines for electronic communication, including the hours in which the
38 communication may be made, the allocation of costs between the parents in implementing
39 electronic communication with the child, and the furnishing of access information between
40 parents necessary to facilitate electronic communication. Electronic communication with a
41 minor child may be used to supplement visitation with the child. Electronic communication
42 may not be used as a replacement or substitution for custody or visitation. The amount of time
43 electronic communication is used shall not be a factor in calculating child support or be used to
44 justify or support relocation by the custodial parent out of the immediate area or the State.
45 Electronic communication between the minor child and the parent may be subject to
46 supervision as ordered by the court. As used in this subsection, "electronic communication"
47 means contact, other than face-to-face contact, facilitated by electronic means, such as by
48 telephone, electronic mail, instant messaging, video conferencing, wired or wireless
49 technologies by Internet, or other medium of communication. (1957, c. 545; 1967, c. 1153, s.
50 2; 1977, c. 501, s. 2; 1979, c. 967; 1981, c. 735, ss. 1, 2; 1985, c. 575, s. 3; 1987, c. 541, s. 2; c.
51 776; 1995 (Reg. Sess., 1996), c. 591, s. 5; 2004-186, s. 17.1; 2009-314, s. 1.)

1
2 **§ 50-13.2A. Action for visitation of an adopted grandchild.**

3 A biological grandparent may institute an action or proceeding for visitation rights with a
4 child adopted by a stepparent or a relative of the child where a substantial relationship exists
5 between the grandparent and the child. Under no circumstances shall a biological grandparent
6 of a child adopted by adoptive parents, neither of whom is related to the child and where
7 parental rights of both biological parents have been terminated, be entitled to visitation rights.
8 A court may award visitation rights if it determines that visitation is in the best interest of the
9 child. An order awarding visitation rights shall contain findings of fact which support the
10 determination by the judge of the best interest of the child. Procedure, venue, and jurisdiction
11 shall be as in an action for custody. (1985, c. 575, s. 2.)
12

13 **§ 50-13.3. Enforcement of order for custody.**

14 (a) An order providing for the custody of a minor child is enforceable by proceedings
15 for civil contempt, and its disobedience may be punished by proceedings for criminal contempt,
16 as provided in Chapter 5A, Contempt, of the General Statutes.

17 Notwithstanding the provisions of G.S. 1-294, an order pertaining to child custody which
18 has been appealed to the appellate division is enforceable in the trial court by proceedings for
19 civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court
20 of the appellate division in which the appeal is pending may stay any order for civil contempt
21 entered for child custody until the appeal is decided, if justice requires.

22 (b) Any court of this State having jurisdiction to make an award of custody of a minor
23 child in an action or proceeding therefor, shall have the power of injunction in such action or
24 proceeding as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule
25 65. (1967, c. 1153, s. 2; 1969, c. 895, s. 16; 1977, c. 711, s. 26; 1983, c. 530, s. 2.)
26

27 **§ 50-13.4. Action for support of minor child.**

28 (a) Any parent, or any person, agency, organization or institution having custody of a
29 minor child, or bringing an action or proceeding for the custody of such child, or a minor child
30 by his guardian may institute an action for the support of such child as hereinafter provided.

31 (b) In the absence of pleading and proof that the circumstances otherwise warrant, the
32 father and mother shall be primarily liable for the support of a minor child. In the absence of
33 pleading and proof that the circumstances otherwise warrant, parents of a minor,
34 unemancipated child who is the custodial or noncustodial parent of a child shall share this
35 primary liability for their grandchild's support with the minor parent, the court determining the
36 proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the
37 parents of the child requiring support were unemancipated minors at the time of the child's
38 conception, the parents of both minor parents share primary liability for their grandchild's
39 support until both minor parents reach the age of 18 or become emancipated. If only one parent
40 of the child requiring support was an unemancipated minor at the time of the child's conception,
41 the parents of both parents are liable for any arrearages in child support owed by the adult or
42 emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the
43 absence of pleading and proof that the circumstances otherwise warrant, any other person,
44 agency, organization or institution standing in loco parentis shall be secondarily liable for such
45 support. Such other circumstances may include, but shall not be limited to, the relative ability
46 of all the above-mentioned parties to provide support or the inability of one or more of them to
47 provide support, and the needs and estate of the child. The judge may enter an order requiring
48 any one or more of the above-mentioned parties to provide for the support of the child as may
49 be appropriate in the particular case, and if appropriate the court may authorize the application
50 of any separate estate of the child to his support. However, the judge may not order support to
51 be paid by a person who is not the child's parent or an agency, organization or institution

1 standing in loco parentis absent evidence and a finding that such person, agency, organization
2 or institution has voluntarily assumed the obligation of support in writing. The preceding
3 sentence shall not be construed to prevent any court from ordering the support of a child by an
4 agency of the State or county which agency may be responsible under law for such support.

5 The judge may order responsible parents in a IV-D establishment case to perform a job
6 search, if the responsible parent is not incapacitated. This includes IV-D cases in which the
7 responsible parent is a noncustodial mother or a noncustodial father whose affidavit of
8 parentage has been filed with the court or when paternity is not at issue for the child. The court
9 may further order the responsible parent to participate in work activities, as defined in 42
10 U.S.C. § 607, as the court deems appropriate.

11 (c) Payments ordered for the support of a minor child shall be in such amount as to
12 meet the reasonable needs of the child for health, education, and maintenance, having due
13 regard to the estates, earnings, conditions, accustomed standard of living of the child and the
14 parties, the child care and homemaker contributions of each party, and other facts of the
15 particular case. Payments ordered for the support of a minor child shall be on a monthly basis,
16 due and payable on the first day of each month. The requirement that orders be established on a
17 monthly basis does not affect the availability of garnishment of disposable earnings based on an
18 obligor's pay period.

19 The court shall determine the amount of child support payments by applying the
20 presumptive guidelines established pursuant to subsection (c1) of this section. However, upon
21 request of any party, the Court shall hear evidence, and from the evidence, find the facts
22 relating to the reasonable needs of the child for support and the relative ability of each parent to
23 provide support. If, after considering the evidence, the Court finds by the greater weight of the
24 evidence that the application of the guidelines would not meet or would exceed the reasonable
25 needs of the child considering the relative ability of each parent to provide support or would be
26 otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an
27 amount other than the amount determined by application of the presumptive guidelines, the
28 court shall make findings of fact as to the criteria that justify varying from the guidelines and
29 the basis for the amount ordered.

30 Payments ordered for the support of a child shall terminate when the child reaches the age
31 of 18 except:

- 32 (1) If the child is otherwise emancipated, payments shall terminate at that time;
- 33 (2) If the child is still in primary or secondary school when the child reaches age
34 18, support payments shall continue until the child graduates, otherwise
35 ceases to attend school on a regular basis, fails to make satisfactory
36 academic progress towards graduation, or reaches age 20, whichever comes
37 first, unless the court in its discretion orders that payments cease at age 18 or
38 prior to high school graduation.

39 In the case of graduation, or attaining age 20, payments shall terminate without order by the
40 court, subject to the right of the party receiving support to show, upon motion and with notice
41 to the opposing party, that the child has not graduated or attained the age of 20.

42 If an arrearage for child support or fees due exists at the time that a child support obligation
43 terminates, payments shall continue in the same total amount that was due under the terms of
44 the previous court order or income withholding in effect at the time of the support obligation.
45 The total amount of these payments is to be applied to the arrearage until all arrearages and fees
46 are satisfied or until further order of the court.

47 (c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe
48 uniform statewide presumptive guidelines for the computation of child support obligations of
49 each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop
50 criteria for determining when, in a particular case, application of the guidelines would be unjust
51 or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the

1 General Assembly by the Administrative Office of the Courts by delivering copies to the
2 President Pro Tempore of the Senate and the Speaker of the House of Representatives. The
3 purpose of the guidelines and criteria shall be to ensure that payments ordered for the support
4 of a minor child are in such amount as to meet the reasonable needs of the child for health,
5 education, and maintenance, having due regard to the estates, earnings, conditions, accustomed
6 standard of living of the child and the parties, the child care and homemaker contributions of
7 each party, and other facts of the particular case. The guidelines shall include a procedure for
8 setting child support, if any, in a joint or shared custody arrangement which shall reflect the
9 other statutory requirements herein.

10 Periodically, but at least once every four years, the Conference of Chief District Judges
11 shall review the guidelines to determine whether their application results in appropriate child
12 support award amounts. The Conference may modify the guidelines accordingly. The
13 Conference shall give the Department of Health and Human Services, the Administrative
14 Office of the Courts, and the general public an opportunity to provide the Conference with
15 information relevant to the development and review of the guidelines. Any modifications of the
16 guidelines or criteria shall be reported to the General Assembly by the Administrative Office of
17 the Courts before they become effective by delivering copies to the President Pro Tempore of
18 the Senate and the Speaker of the House of Representatives. The guidelines, when adopted or
19 modified, shall be provided to the Department of Health and Human Services and the
20 Administrative Office of the Courts, which shall disseminate them to the public through local
21 IV-D offices, clerks of court, and the media.

22 Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District
23 Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines
24 and the factors adopted by the Conference of Chief District Judges pursuant to this subsection
25 as formerly written shall constitute criteria for varying from the amount of support determined
26 by the guidelines.

27 (d) In non-IV-D cases, payments for the support of a minor child shall be ordered to be
28 paid to the person having custody of the child or any other proper person, agency, organization
29 or institution, or to the State Child Support Collection and Disbursement Unit, for the benefit of
30 the child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid
31 to the State Child Support Collection and Disbursement Unit for the benefit of the child.

32 (d1) For child support orders initially entered on or after January 1, 1994, the immediate
33 income withholding provisions of G.S. 110-136.5(c1) shall apply.

34 (e) Payment for the support of a minor child shall be paid by lump sum payment,
35 periodic payments, or by transfer of title or possession of personal property of any interest
36 therein, or a security interest in or possession of real property, as the court may order. The court
37 may order the transfer of title to real property solely owned by the obligor in payment of
38 arrearages of child support so long as the net value of the interest in the property being
39 transferred does not exceed the amount of the arrearage being satisfied. In every case in which
40 payment for the support of a minor child is ordered and alimony or postseparation support is
41 also ordered, the order shall separately state and identify each allowance.

42 (e1) In IV-D cases, the order for child support shall provide that the clerk shall transfer
43 the case to another jurisdiction in this State if the IV-D agency requests the transfer on the basis
44 that the obligor, the custodian of the child, and the child do not reside in the jurisdiction in
45 which the order was issued. The IV-D agency shall provide notice of the transfer to the obligor
46 by delivery of written notice in accordance with the notice requirements of Chapter 1A-1, Rule
47 5(b) of the Rules of Civil Procedure. The clerk shall transfer the case to the jurisdiction
48 requested by the IV-D agency, which shall be a jurisdiction in which the obligor, the custodian
49 of the child, or the child resides. Nothing in this subsection shall be construed to prevent a party
50 from contesting the transfer.

1 (f) Remedies for enforcement of support of minor children shall be available as herein
2 provided.

- 3 (1) The court may require the person ordered to make payments for the support
4 of a minor child to secure the same by means of a bond, mortgage or deed of
5 trust, or any other means ordinarily used to secure an obligation to pay
6 money or transfer property, or by requiring the execution of an assignment
7 of wages, salary or other income due or to become due.
- 8 (2) If the court requires the transfer of real or personal property or an interest
9 therein as provided in subsection (e) as a part of an order for payment of
10 support for a minor child, or for the securing thereof, the court may also
11 enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70
12 and G.S. 1-228.
- 13 (3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the
14 General Statutes, shall be available in actions for child-support payments as
15 in other cases.
- 16 (4) The remedies of attachment and garnishment, as provided in Article 35 of
17 Chapter 1 of the General Statutes, shall be available in an action for
18 child-support payments as in other cases, and for such purposes the child or
19 person bringing an action for child support shall be deemed a creditor of the
20 defendant. Additionally, in accordance with the provisions of G.S. 110-136,
21 a continuing wage garnishment proceeding for wages due or to become due
22 may be instituted by motion in the original child support proceeding or by
23 independent action through the filing of a petition.
- 24 (5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the
25 General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for
26 child support as in other cases.
- 27 (6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes,
28 may be appointed in action for child support as in other cases.
- 29 (7) A minor child or other person for whose benefit an order for the payment of
30 child support has been entered shall be a creditor within the meaning of
31 Article 3A of Chapter 39 of the General Statutes pertaining to fraudulent
32 conveyances.
- 33 (8) Except as provided in Article 15 of Chapter 44 of the General Statutes, a
34 judgment for child support shall not be a lien against real property unless the
35 judgment expressly so provides, sets out the amount of the lien in a sum
36 certain, and adequately describes the real property affected; but past due
37 periodic payments may by motion in the cause or by a separate action be
38 reduced to judgment which shall be a lien as other judgments and may
39 include provisions for periodic payments.
- 40 (9) An order for the periodic payments of child support or a child support
41 judgment that provides for periodic payments is enforceable by proceedings
42 for civil contempt, and disobedience may be punished by proceedings for
43 criminal contempt, as provided in Chapter 5A of the General Statutes.

44 Notwithstanding the provisions of G.S. 1-294, an order for the payment
45 of child support which has been appealed to the appellate division is
46 enforceable in the trial court by proceedings for civil contempt during the
47 pendency of the appeal. Upon motion of an aggrieved party, the court of the
48 appellate division in which the appeal is pending may stay any order for civil
49 contempt entered for child support until the appeal is decided, if justice
50 requires.

1 (10) The remedies provided by Chapter 1 of the General Statutes, Article 28,
2 Execution; Article 29B, Execution Sales; and Article 31, Supplemental
3 Proceedings, shall be available for the enforcement of judgments for child
4 support as in other cases, but amounts so payable shall not constitute a debt
5 as to which property is exempt from execution as provided in Article 16 of
6 Chapter 1C of the General Statutes.

7 (11) The specific enumeration of remedies in this section shall not constitute a
8 bar to remedies otherwise available.

9 (g) An individual who brings an action or motion in the cause for the support of a minor
10 child, and the individual who defends the action, shall provide to the clerk of the court in which
11 the action is brought or the order is issued, the individual's social security number.

12 (h) Child support orders initially entered or modified on and after October 1, 1998, shall
13 contain the name of each of the parties, the date of birth of each party, and the court docket
14 number. The Administrative Office of the Courts shall transmit to the Department of Health
15 and Human Services, Child Support Enforcement Program, on a timely basis, the information
16 required to be included on orders under this subsection and the social security number of each
17 party as required under subsection (g) of this section. (1967, c. 1153, s. 2; 1969, c. 895, s. 17;
18 1975, c. 814; 1977, c. 711, s. 26; 1979, c. 386, s. 10; 1981, c. 472; c. 613, ss. 1, 3; 1983, c. 54;
19 c. 530, s. 1; 1985, c. 689, s. 17; 1985 (Reg. Sess., 1986), c. 1016; 1989, c. 529, ss. 1, 2; 1989
20 (Reg. Sess., 1990), c. 1067, s. 2; 1993, c. 335, s. 1; c. 517, s. 5; 1995, c. 319, s. 9; c. 518, s. 1;
21 1997-433, ss. 2.1(a), 2.2, 4.4, 7.1; 1997-443, ss. 11A.118(a), 11A.122; 1998-17, s. 1; 1998-176,
22 s. 1; 1999-293, ss. 3, 4; 1999-456, s. 13; 2001-237, s. 1; 2003-288, s. 1; 2008-12, s. 1.)
23

24 **§ 50-13.5. Procedure in actions for custody or support of minor children.**

25 (a) Procedure. – The procedure in actions for custody and support of minor children
26 shall be as in civil actions, except as provided in this section and in G.S. 50-19. In this G.S.
27 50-13.5 the words "custody and support" shall be deemed to include custody or support, or
28 both.

29 (b) Type of Action. – An action brought under the provisions of this section may be
30 maintained as follows:

31 (1) As a civil action.

32 (2) Repealed by Session Laws 1979, c. 110, s. 12.

33 (3) Joined with an action for annulment, or an action for divorce, either absolute
34 or from bed and board, or an action for alimony without divorce.

35 (4) As a cross action in an action for annulment, or an action for divorce, either
36 absolute or from bed and board, or an action for alimony without divorce.

37 (5) By motion in the cause in an action for annulment, or an action for divorce,
38 either absolute or from bed and board, or an action for alimony without
39 divorce.

40 (6) Upon the court's own motion in an action for annulment, or an action for
41 divorce, either absolute or from bed and board, or an action for alimony
42 without divorce.

43 (7) In any of the foregoing the judge may issue an order requiring that the body
44 of the minor child be brought before him.

45 (c) Jurisdiction in Actions or Proceedings for Child Support and Child Custody. –

46 (1) The jurisdiction of the courts of this State to enter orders providing for the
47 support of a minor child shall be as in actions or proceedings for the
48 payment of money or the transfer of property.

49 (2) The courts of this State shall have jurisdiction to enter orders providing for
50 the custody of a minor child under the provisions of G.S. 50A-201, 50A-202,
51 and 50A-204.

- 1 (3) through (6) Repealed by Session Laws 1979, c. 110, s. 12.
2 (d) Service of Process; Notice; Interlocutory Orders. –
3 (1) Service of process in civil actions for the custody of minor children shall be
4 as in other civil actions. Motions for support of a minor child in a pending
5 action may be made on 10 days notice to the other parties and compliance
6 with G.S. 50-13.5(e). Motions for custody of a minor child in a pending
7 action may be made on 10 days notice to the other parties and after
8 compliance with G.S. 50A-205.
9 (2) If the circumstances of the case render it appropriate, upon gaining
10 jurisdiction of the minor child the court may enter orders for the temporary
11 custody and support of the child, pending the service of process or notice as
12 herein provided.
13 (3) A temporary order for custody which changes the living arrangements of a
14 child or changes custody shall not be entered ex parte and prior to service of
15 process or notice, unless the court finds that the child is exposed to a
16 substantial risk of bodily injury or sexual abuse or that there is a substantial
17 risk that the child may be abducted or removed from the State of North
18 Carolina for the purpose of evading the jurisdiction of North Carolina courts.
19 (e) Notice to Additional Persons in Support Actions and Proceedings; Intervention. –
20 (1) The parents of the minor child whose addresses are reasonably ascertainable;
21 any person, agency, organization or institution having actual care, control, or
22 custody of a minor child; and any person, agency, organization or institution
23 required by court order to provide for the support of a minor child, either in
24 whole or in part, not named as parties and served with process in an action or
25 proceeding for the support of such child, shall be given notice by the party
26 raising the issue of support.
27 (2) The notice herein required shall be in the manner provided by the Rules of
28 Civil Procedure for the service of notices in actions. Such notice shall advise
29 the person to be notified of the name of the child, the names of the parties to
30 the action or proceeding, the court in which the action or proceeding was
31 instituted, and the date thereof.
32 (3) In the discretion of the court, failure of such service of notice shall not affect
33 the validity of any order or judgment entered in such action or proceeding.
34 (4) Any person required to be given notice as herein provided may intervene in
35 an action or proceeding for support of a minor child by filing in apt time
36 notice of appearance or other appropriate pleadings.
37 (f) Venue. – An action or proceeding in the courts of this State for custody and support
38 of a minor child may be maintained in the county where the child resides or is physically
39 present or in a county where a parent resides, except as hereinafter provided. If an action for
40 annulment, for divorce, either absolute or from bed and board, or for alimony without divorce
41 has been previously instituted in this State, until there has been a final judgment in such case,
42 any action or proceeding for custody and support of the minor children of the marriage shall be
43 joined with such action or be by motion in the cause in such action. If an action or proceeding
44 for the custody and support of a minor child has been instituted and an action for annulment or
45 for divorce, either absolute or from bed and board, or for alimony without divorce is
46 subsequently instituted in the same or another county, the court having jurisdiction of the prior
47 action or proceeding may, in its discretion direct that the action or proceeding for custody and
48 support of a minor child be consolidated with such subsequent action, and in the event
49 consolidation is ordered, shall determine in which court such consolidated action or proceeding
50 shall be heard.

1 (g) Custody and Support Irrespective of Parents' Rights Inter Partes. – Orders for
2 custody and support of minor children may be entered when the matter is before the court as
3 provided by this section, irrespective of the rights of the wife and the husband as between
4 themselves in an action for annulment or an action for divorce, either absolute or from bed and
5 board, or an action for alimony without divorce.

6 (h) Court Having Jurisdiction. – When a district court having jurisdiction of the matter
7 shall have been established, actions or proceedings for custody and support of minor children
8 shall be heard without a jury by the judge of such district court, and may be heard at any time.

9 (i) District Court; Denial of Parental Visitation Right; Written Finding of Fact. – In any
10 case in which an award of child custody is made in a district court, the trial judge, prior to
11 denying a parent the right of reasonable visitation, shall make a written finding of fact that the
12 parent being denied visitation rights is an unfit person to visit the child or that such visitation
13 rights are not in the best interest of the child.

14 (j) Custody and Visitation Rights of Grandparents. – In any action in which the custody
15 of a minor child has been determined, upon a motion in the cause and a showing of changed
16 circumstances pursuant to G.S. 50-13.7, the grandparents of the child are entitled to such
17 custody or visitation rights as the court, in its discretion, deems appropriate. As used in this
18 subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent
19 or a relative of the child where a substantial relationship exists between the grandparent and the
20 child. Under no circumstances shall a biological grandparent of a child adopted by adoptive
21 parents, neither of whom is related to the child and where parental rights of both biological
22 parents have been terminated, be entitled to visitation rights. (1858-9, c. 53, s. 2; 1871-2, c.
23 193, ss. 39, 46; Code, ss. 1292, 1296, 1570, 1662; Rev., ss. 1567, 1570, 1854; 1919, c. 24; C.S.,
24 ss. 1664, 1667, 2242; 1921, c. 13; 1923, c. 52; 1939, c. 115; 1941, c. 120; 1943, c. 194; 1949, c.
25 1010; 1951, c. 893, s. 3; 1953, cc. 813, 925; 1955, cc. 814, 1189; 1957, c. 545; 1965, c. 310, s.
26 2; 1967, c. 1153, s. 2; 1971, c. 1185, s. 24; 1973, c. 751; 1979, c. 110, s. 12; c. 563; c. 709, s. 3;
27 1981, c. 735, s. 3; 1983, c. 587; 1985, c. 575, s. 4; 1987 (Reg. Sess., 1988), c. 893, s. 3.1;
28 1999-223, ss. 11, 12.)
29

30 **§ 50-13.6. Counsel fees in actions for custody and support of minor children.**

31 In an action or proceeding for the custody or support, or both, of a minor child, including a
32 motion in the cause for the modification or revocation of an existing order for custody or
33 support, or both, the court may in its discretion order payment of reasonable attorney's fees to
34 an interested party acting in good faith who has insufficient means to defray the expense of the
35 suit. Before ordering payment of a fee in a support action, the court must find as a fact that the
36 party ordered to furnish support has refused to provide support which is adequate under the
37 circumstances existing at the time of the institution of the action or proceeding; provided
38 however, should the court find as a fact that the supporting party has initiated a frivolous action
39 or proceeding the court may order payment of reasonable attorney's fees to an interested party
40 as deemed appropriate under the circumstances. (1967, c. 1153, s. 2; 1973, c. 323.)
41

42 **§ 50-13.7. Modification of order for child support or custody.**

43 (a) Except as otherwise provided in G.S. 50-13.7A, an order of a court of this State for
44 support of a minor child may be modified or vacated at any time, upon motion in the cause and
45 a showing of changed circumstances by either party or anyone interested subject to the
46 limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-201, 50A-202, and
47 50A-204, an order of a court of this State for custody of a minor child may be modified or
48 vacated at any time, upon motion in the cause and a showing of changed circumstances by
49 either party or anyone interested.

50 (b) When an order for support of a minor child has been entered by a court of another
51 state, a court of this State may, upon gaining jurisdiction, and upon a showing of changed

1 circumstances, enter a new order for support which modifies or supersedes such order for
2 support, subject to the limitations of G.S. 50-13.10. Subject to the provisions of G.S. 50A-201,
3 50A-202, and 50A-204, when an order for custody of a minor child has been entered by a court
4 of another state, a court of this State may, upon gaining jurisdiction, and a showing of changed
5 circumstances, enter a new order for custody which modifies or supersedes such order for
6 custody. (1858-9, c. 53; 1868-9, c. 116, s. 36; 1871-2, c. 193, s. 46; Code, ss. 1296, 1570, 1661;
7 Rev., ss. 1570, 1853; C.S., ss. 1664, 2241; 1929, c. 270, s. 1; 1939, c. 115; 1941, c. 120; 1943,
8 c. 194; 1949, c. 1010; 1953, c. 813; 1957, c. 545; 1965, c. 310, s. 2; 1967, c. 1153, s. 2; 1979, c.
9 110, s. 13; 1981, c. 682, s. 12; 1987, c. 739, s. 3; 1999-223, s. 13; 2007-175, s. 1.)

10
11 **§ 50-13.7A. Custody and visitation upon military temporary duty, deployment, or**
12 **mobilization.**

13 (a) Purpose. – It is the purpose of this section to provide a means by which to facilitate
14 a fair, efficient, and swift process to resolve matters regarding custody and visitation when a
15 parent receives temporary duty, deployment, or mobilization orders from the military.

16 (b) Definitions. – As used in this section:

17 (1) The term "deployment" means the temporary transfer of a service member
18 serving in an active-duty status to another location in support of combat or
19 some other military operation.

20 (2) The term "mobilization" means the call-up of a National Guard or Reserve
21 service member to extended active duty status. For purposes of this
22 definition, "mobilization" does not include National Guard or Reserve
23 annual training.

24 (3) The term "temporary duty" means the transfer of a service member from one
25 military base to a different location, usually another base, for a limited
26 period of time to accomplish training or to assist in the performance of a
27 noncombat mission.

28 (c) Custody. – When a parent who has custody, or has joint custody with primary
29 physical custody, receives temporary duty, deployment, or mobilization orders from the
30 military that involve moving a substantial distance from the parent's residence or otherwise
31 have a material effect on the parent's ability to exercise custody responsibilities:

32 (1) Any temporary custody order for the child during the parent's absence shall
33 end no later than 10 days after the parent returns, but shall not impair the
34 discretion of the court to conduct a hearing for emergency custody upon
35 return of the parent and within 10 days of the filing of a verified motion for
36 emergency custody alleging an immediate danger of irreparable harm to the
37 child; and

38 (2) The temporary duty, mobilization, or deployment and the temporary
39 disruption to the child's schedule shall not be a factor in a determination of
40 change of circumstances if a motion is filed to transfer custody from the
41 service member.

42 (d) Visitation. – If the parent with visitation rights receives military temporary duty,
43 deployment, or mobilization orders that involve moving a substantial distance from the parent's
44 residence or otherwise have a material effect on the parent's ability to exercise visitation rights,
45 the court may delegate the parent's visitation rights, or a portion thereof, to a family member
46 with a close and substantial relationship to the minor child for the duration of the parent's
47 absence, if delegating visitation rights is in the child's best interest.

48 (e) Expedited Hearings. – Upon motion of a parent who has received military
49 temporary duty, deployment, or mobilization orders, the court shall, for good cause shown,
50 hold an expedited hearing in custody and visitation matters instituted under this section when

1 the military duties of the parent have a material effect on the parent's ability, or anticipated
2 ability, to appear in person at a regularly scheduled hearing.

3 (f) Electronic Communications. – Upon motion of a parent who has received military
4 temporary duty, deployment, or mobilization orders, the court shall, upon reasonable advance
5 notice and for good cause shown, allow the parent to present testimony and evidence by
6 electronic means in custody and visitation matters instituted under this section when the
7 military duties of the parent have a material effect on the parent's ability to appear in person at a
8 regularly scheduled hearing. The phrase "electronic means" includes communication by
9 telephone, video teleconference, or the Internet.

10 (g) [Best Interest of the Child. –] Nothing in this section shall alter the duty of the court
11 to consider the best interest of the child in deciding custody or visitation matters. (2007-175, s.
12 2.)
13

14 **§ 50-13.8. Custody of persons incapable of self-support upon reaching majority.**

15 For the purposes of custody, the rights of a person who is mentally or physically incapable
16 of self-support upon reaching his majority shall be the same as a minor child for so long as he
17 remains mentally or physically incapable of self-support. (1967, c. 1153, s. 2; 1971, c. 218, s. 3;
18 1973, c. 476, s. 133; 1979, c. 838, s. 29; 1989, c. 210.)
19

20 **§ 50-13.9. Procedure to insure payment of child support.**

21 (a) Upon its own motion or upon motion of either party, the court may order at any time
22 that support payments be made to the State Child Support Collection and Disbursement Unit
23 for remittance to the party entitled to receive the payments. For child support orders initially
24 entered on or after January 1, 1994, the immediate income withholding provisions of G.S.
25 110-136.5(c1) apply.

26 (b) After entry of an order by the court under subsection (a) of this section, the State
27 Child Support Collection and Disbursement Unit shall transmit child support payments that are
28 made to it to the custodial parent or other party entitled to receive them, unless a court order
29 requires otherwise.

30 (b1) In a IV-D case:

31 (1) The designated child support enforcement agency shall have the sole
32 responsibility and authority for monitoring the obligor's compliance with all
33 child support orders in the case and for initiating any enforcement
34 procedures that it considers appropriate.

35 (2) The clerk of court shall maintain all official records in the case.

36 (3) The designated child support enforcement agency shall maintain any other
37 records needed to monitor the obligor's compliance with or to enforce the
38 child support orders in the case, including records showing the amount of
39 each payment of child support received from or on behalf of the obligor,
40 along with the dates on which each payment was received. In any action
41 establishing, enforcing, or modifying a child support order, the payment
42 records maintained by the designated child support agency shall be
43 admissible evidence, and the court shall permit the designated representative
44 to authenticate those records.

45 (b2) In a non-IV-D case:

46 (1) Repealed by Session Laws 2005, ch. 389, s. 1.

47 (2) The clerk of court shall maintain all official records and all case data
48 concerning child support matters previously enforced by the clerk of court.

49 (3) Repealed by Session Laws 2005, ch. 389, s. 1.

50 (c) In a IV-D case, the parties affected by the order shall inform the designated child
51 support enforcement agency of any change of address or other condition that may affect the

1 administration of the order. The court may provide in the order that a party failing to inform the
2 court or, as appropriate, the designated child support enforcement agency, of a change of
3 address within a reasonable period of time may be held in civil contempt.

4 (d) Upon affidavit of an obligee, the clerk or a district court judge may order the obligor
5 to appear and show cause why the obligor should not be subjected to income withholding or
6 adjudged in contempt of court, or both. The order shall require the obligor to appear and show
7 cause why the obligor should not be subjected to income withholding or adjudged in contempt
8 of court, or both, and shall order the obligor to bring to the hearing records and information
9 relating to the obligor's employment, the obligor's licensing privileges, and the amount and
10 sources of the obligor's disposable income. The order shall state:

- 11 (1) That the obligor is under a court order to provide child support, the name of
12 each child for whose benefit support is due, and information sufficient to
13 identify the order;
- 14 (2) That the obligor is delinquent and the amount of overdue support;
- 15 (2a) That the court may order the revocation of some or all of the obligor's
16 licensing privileges if the obligor is delinquent in an amount equal to the
17 support due for one month;
- 18 (3) That the court may order income withholding if the obligor is delinquent in
19 an amount equal to the support due for one month;
- 20 (4) That income withholding, if implemented, will apply to the obligor's current
21 payors and all subsequent payors and will be continued until terminated
22 pursuant to G.S. 110-136.10;
- 23 (5) That failure to bring to the hearing records and information relating to his
24 employment and the amount and sources of his disposable income will be
25 grounds for contempt;
- 26 (6) That if income withholding is not an available or appropriate remedy, the
27 court may determine whether the obligor is in contempt or whether any other
28 enforcement remedy is appropriate.

29 The order may be signed by the clerk or a district court judge, and shall be served on the
30 obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. On motion of the person to
31 whom support is owed in a non-IV-D case, with the approval of the district court judge, if the
32 district court judge finds it is in the best interest of the child, no order shall be issued.

33 (e) Repealed by Session Laws 2005, ch. 389, s. 1.

34 (f) Repealed by Session Laws 2005, ch. 389, s. 1.

35 (g) Nothing in this section shall preclude the independent initiation by a party of
36 proceedings for civil contempt or for income withholding. (1983, c. 677, s. 1; 1985 (Reg.
37 Sess., 1986), c. 949, ss. 3-6; 1989, c. 479; 1993, c. 517, s. 6; c. 553, s. 67.1; 1995, c. 444, s. 1;
38 c. 538, s. 1.2; 1997-443, s. 11A.118(a); 1999-293, ss. 11-14; 2001-237, s. 7; 2005-389, s. 1;
39 2006-264, s. 97.)

40
41 **§ 50-13.10. Past due child support vested; not subject to retroactive modification; entitled**
42 **to full faith and credit.**

43 (a) Each past due child support payment is vested when it accrues and may not
44 thereafter be vacated, reduced, or otherwise modified in any way for any reason, in this State or
45 any other state, except that a child support obligation may be modified as otherwise provided
46 by law, and a vested past due payment is to that extent subject to divestment, if, but only if, a
47 written motion is filed, and due notice is given to all parties either:

- 48 (1) Before the payment is due or
- 49 (2) If the moving party is precluded by physical disability, mental incapacity,
50 indigency, misrepresentation of another party, or other compelling reason

1 from filing a motion before the payment is due, then promptly after the
2 moving party is no longer so precluded.

3 (b) A past due child support payment which is vested pursuant to G.S. 50-13.10(a) is
4 entitled, as a judgment, to full faith and credit in this State and any other state, with the full
5 force, effect, and attributes of a judgment of this State, except that no arrearage shall be entered
6 on the judgment docket of the clerk of superior court or become a lien on real estate, nor shall
7 execution issue thereon, except as provided in G.S. 50-13.4(f)(8) and (10).

8 (c) As used in this section, "child support payment" includes all payments required by
9 court or administrative order in civil actions and expedited process proceedings under this
10 Chapter, by court order in proceedings under Chapter 49 of the General Statutes, and by
11 agreements entered into and approved by the court under G.S. 110-132 or G.S. 110-133.

12 (d) For purposes of this section, a child support payment or the relevant portion thereof,
13 is not past due, and no arrearage accrues:

- 14 (1) From and after the date of the death of the minor child for whose support the
15 payment, or relevant portion, is made;
- 16 (2) From and after the date of the death of the supporting party;
- 17 (3) During any period when the child is living with the supporting party
18 pursuant to a valid court order or to an express or implied written or oral
19 agreement transferring primary custody to the supporting party;
- 20 (4) During any period when the supporting party is incarcerated, is not on work
21 release, and has no resources with which to make the payment.

22 (e) When a child support payment that is to be made to the State Child Support
23 Collection and Disbursement Unit is not received by the Unit when due, the payment is not a
24 past due child support payment for purposes of this section, and no arrearage accrues, if the
25 payment is actually made to and received on time by the party entitled to receive it and that
26 receipt is evidenced by a canceled check, money order, or contemporaneously executed and
27 dated written receipt. Nothing in this section shall affect the duties of the clerks or the IV-D
28 agency under this Chapter or Chapter 110 of the General Statutes with respect to payments not
29 received by the Unit on time, but the court, in any action to enforce such a payment, may enter
30 an order directing the clerk or the IV-D agency to enter the payment on the clerk's or IV-D
31 agency's records as having been made on time, if the court finds that the payment was in fact
32 received by the party entitled to receive it as provided in this subsection. (1987, c. 739, s. 4;
33 1999-293, s. 15.)

34
35 **§ 50-13.11. Orders and agreements regarding medical support and health insurance**
36 **coverage for minor children.**

37 (a) The court may order a parent of a minor child or other responsible party to provide
38 medical support for the child, or the parties may enter into a written agreement regarding
39 medical support for the child. An order or agreement for medical support for the child may
40 require one or both parties to pay the medical, hospital, dental, or other health care related
41 expenses.

42 (a1) The court shall order the parent of a minor child or other responsible party to
43 maintain health insurance for the benefit of the child when health insurance is available at a
44 reasonable cost. If health insurance is not presently available at a reasonable cost, the court
45 shall order the parent of a minor child or other responsible party to maintain health insurance
46 for the benefit of the child when health insurance becomes available at a reasonable cost. As
47 used in this subsection, health insurance is considered reasonable in cost if it is employment
48 related or other group health insurance, regardless of service delivery mechanism. The court
49 may require one or both parties to maintain dental insurance.

50 (b) The party ordered or under agreement to provide health insurance shall provide
51 written notice of any change in the applicable insurance coverage to the other party.

1 (c) The employer or insurer of the party required to provide health, hospital, and dental
2 insurance shall release to the other party, upon written request, any information on a minor
3 child's insurance coverage that the employer or insurer may release to the party required to
4 provide health, hospital, and dental insurance.

5 (d) When a court order or agreement for health insurance is in effect, the signature of
6 either party shall be valid authorization to the insurer to process an insurance claim on behalf of
7 a minor child.

8 (e) If the party who is required to provide health insurance fails to maintain the
9 insurance coverage for the minor child, the party shall be liable for any health, hospital, or
10 dental expenses incurred from the date of the court order or agreement that would have been
11 covered by insurance if it had been in force.

12 (f) When a noncustodial parent ordered to provide health insurance changes
13 employment and health insurance coverage is available through the new employer, the obligee
14 shall notify the new employer of the noncustodial parent's obligation to provide health
15 insurance for the child. Upon receipt of notice from the obligee, the new employer shall enroll
16 the child in the employer's health insurance plan. (1989 (Reg. Sess., 1990), c. 1067, s. 1; 1991,
17 c. 419, s. 2; c. 761, s. 42; 1997-433, s. 3.1; 1998-17, s. 1; 2003-288, s. 3.2.)

18
19 **§ 50-13.12. Forfeiture of licensing privileges for failure to pay child support or for failure**
20 **to comply with subpoena issued pursuant to child support or paternity**
21 **establishment proceedings.**

22 (a) As used in this section, the term:

- 23 (1) "Licensing board" means a department, division, agency, officer, board, or
24 other unit of state government that issues hunting, fishing, trapping, drivers,
25 or occupational licenses or licensing privileges.
26 (2) "Licensing privilege" means the privilege of an individual to be authorized
27 to engage in an activity as evidenced by hunting, fishing, or trapping
28 licenses, regular and commercial drivers licenses, and occupational,
29 professional, and business licenses.
30 (3) "Obligee" means the individual or agency to whom a duty of support is owed
31 or the individual's legal representative.
32 (4) "Obligor" means the individual who owes a duty to make child support
33 payments under a court order.
34 (5) "Occupational license" means a license, certificate, permit, registration, or
35 any other authorization issued by a licensing board that allows an obligor to
36 engage in an occupation or profession.

37 (b) Upon a finding by the district court judge that the obligor is willfully delinquent in
38 child support payments equal to at least one month's child support, or upon a finding that a
39 person has willfully failed to comply with a subpoena issued pursuant to a child support or
40 paternity establishment proceeding, and upon findings as to any specific licensing privileges
41 held by the obligor or held by the person subject to the subpoena, the court may revoke some or
42 all of such privileges until the obligor shall have paid the delinquent amount in full, or, as
43 applicable, until the person subject to the subpoena has complied with the subpoena. The court
44 may stay any such revocation pertaining to the obligor upon conditions requiring the obligor to
45 make full payment of the delinquency over time. Any such stay shall further be conditioned
46 upon the obligor's maintenance of current child support. The court may stay the revocation
47 pertaining to the person subject to the subpoena upon a finding that the person has complied
48 with or is no longer subject to the subpoena. Upon an order revoking such privileges of an
49 obligor that does not stay the revocation, the clerk of superior court shall notify the appropriate
50 licensing board that the obligor is delinquent in child support payments and that the obligor's
51 licensing privileges are revoked until such time as the licensing board receives proof of

1 certification by the clerk that the obligor is no longer delinquent in child support payments.
2 Upon an order revoking such privileges of a person subject to the subpoena that does not stay
3 the revocation, the clerk of superior court shall notify the appropriate licensing board that the
4 person has failed to comply with the subpoena issued pursuant to a child support or paternity
5 establishment proceeding and that the person's licensing privileges are revoked until such time
6 as the licensing board receives proof of certification by the clerk that the person is in
7 compliance with or no longer subject to the subpoena.

8 (c) An obligor may file a request with the clerk of superior court for certification that
9 the obligor is no longer delinquent in child support payments upon submission of proof
10 satisfactory to the clerk that the obligor has paid the delinquent amount in full. A person whose
11 licensing privileges have been revoked under subsection (b) of this section because of a willful
12 failure to comply with a subpoena may file a request with the clerk of superior court for
13 certification that the person has met the requirements of or is no longer subject to the subpoena.
14 The clerk shall provide a form to be used for a request for certification. If the clerk finds that
15 the obligor has met the requirements for reinstatement under this subsection, then the clerk
16 shall certify that the obligor is no longer delinquent and shall provide a copy of the certification
17 to the obligor. Upon request of the obligor, the clerk shall mail a copy of the certification to the
18 appropriate licensing board. If the clerk finds that the person whose licensing privileges have
19 been revoked under subsection (b) of this section for failure to comply with a subpoena has
20 complied with or is no longer subject to the subpoena, then the clerk shall certify that the
21 person has met the requirements of or is no longer subject to the subpoena and shall provide a
22 copy of the certification to the person. Upon request of the person, the clerk shall mail a copy
23 of the certification to the appropriate licensing board.

24 (d) If licensing privileges are revoked under this section, the obligor may petition the
25 district court for a reinstatement of such privileges. The court may order the privileges
26 reinstated conditioned upon full payment of the delinquency over time. Any order allowing
27 license reinstatement shall additionally require the obligor's maintenance of current child
28 support. If the licensing privileges of a person other than the obligor are revoked under this
29 section for failure to comply with a subpoena, the person may petition the district court for
30 reinstatement of the privileges. The court may order the privileges reinstated if the person has
31 complied with or is no longer subject to the subpoena that was the basis for revocation. Upon
32 reinstatement under this subsection, the clerk of superior court shall certify that the obligor is
33 no longer delinquent and provide a copy of the certification to the obligor. Upon request of the
34 obligor, the clerk shall mail a copy of the certification to the appropriate licensing board. Upon
35 reinstatement of the person whose licensing privileges were revoked based on failure to comply
36 with a subpoena, the clerk of superior court shall certify that the person has complied with or is
37 no longer subject to the subpoena. Upon request of the person whose licensing privileges are
38 reinstated, the clerk shall mail a copy of the certification to the appropriate licensing board.

39 (e) An obligor or other person whose licensing privileges are reinstated under this
40 section may provide a copy of the certification set forth in either subsection (c) or (d) to each
41 licensing agency to which the obligor or other person applies for reinstatement of licensing
42 privileges. Upon request of the obligor or other person, the clerk shall mail a copy of the
43 certification to the appropriate licensing board. Upon receipt of a copy of the certification, the
44 licensing board shall reinstate the license.

45 (f) Upon receipt of notification by the clerk that an obligor's or other person's licensing
46 privileges are revoked pursuant to this section, the board shall note the revocation on its records
47 and take all necessary steps to implement and enforce the revocation. These steps shall not
48 include the board's independent revocation process pursuant to Chapter 150B of the General
49 Statutes, the Administrative Procedure Act, which process is replaced by the court process
50 prescribed by this section. The revocation pertaining to an obligor shall remain in full force and
51 effect until the board receives certification under this section that the obligor is no longer

1 delinquent in child support payments. The revocation pertaining to the person whose licensing
2 privileges were revoked on the basis of failure to comply with a subpoena shall remain in full
3 force and effect until the board receives certification of reinstatement under subsection (d) of
4 this section. (1995, c. 538, ss. 1, 1.1; 1997-433, s. 5.3; 1998-17, s. 1.)
5

6 **§ 50-13.13. Motion or claim for relief from child support order based on finding of**
7 **nonpaternity.**

8 (a) Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure,
9 or any other provision of law, an individual who, as the father of a child, is required to pay
10 child support under an order that was entered by a North Carolina court pursuant to Chapter 49,
11 50, 52C, or 110 of the General Statutes, or under an agreement between the parties pursuant to
12 G.S. 52-10.1 or otherwise, and that is subject to modification by a North Carolina court under
13 applicable law may file a motion or claim seeking relief from a child support order as provided
14 in this section.

15 (b) A motion or claim for relief under this section shall be filed as a motion or claim in
16 the cause in the pending child support action, or as an independent civil action, and shall be
17 filed within one year of the date the moving party knew or reasonably should have known that
18 he was not the father of the child. The motion or claim shall be verified by the moving party
19 and shall state all of the following:

- 20 (1) The basis, with particularity, on which the moving party believes that he is
21 not the child's father.
- 22 (2) The moving party has not acknowledged paternity of the child or
23 acknowledged paternity without knowing that he was not the child's
24 biological father.
- 25 (3) The moving party has not adopted the child, has not legitimated the child
26 pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's legal father
27 pursuant to G.S. 49A-1.
- 28 (4) The moving party did not act to prevent the child's biological father from
29 asserting his paternal rights regarding the child.

30 (c) The court may appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17, to
31 represent the interest of the child in connection with a proceeding under this section.

32 (d) Notwithstanding G.S. 8-50.1(b1), the court shall, upon motion or claim of a party in
33 a proceeding under this section, order the moving party, the child's mother, and the child to
34 submit to genetic paternity testing if the court finds that there is good cause to believe that the
35 moving party is not the child's father and that the moving party may be entitled to relief under
36 this section. If genetic paternity testing is ordered, the provisions of G.S. 8-50.1(b1) shall
37 govern the admissibility and weight of the genetic test results. The moving party shall pay the
38 costs of genetic testing. If a party fails to comply with an order for genetic testing without good
39 cause, the court may hold the party in civil or criminal contempt or impose appropriate
40 sanctions under G.S. 1A-1, Rule 37, of the North Carolina Rules of Civil Procedure, or both.
41 Nothing in this subsection shall be construed to require additional genetic paternity testing if
42 paternity has been set aside pursuant to G.S. 49-14 or G.S. 110-132.

43 (e) The moving party's child support obligation shall be suspended while the motion or
44 claim is pending before the court if the support is being paid on behalf of the child to the State,
45 or any other assignee of child support, where the child is in the custody of the State or other
46 assignee, or where the moving party is an obligor in a IV-D case as defined in G.S. 110-129(7).

47 The moving party's child support obligation shall not be suspended while the motion or
48 claim is pending before the court if the support is being paid to the mother of the child.

49 (f) The court may grant relief from a child support order under this section if paternity
50 has been set aside pursuant to G.S. 49-14 or G.S. 110-132, or if the moving party proves by
51 clear and convincing evidence, and the court, sitting without a jury, finds both of the following:

- 1 (1) The results of a valid genetic test establish that the moving party is not the
2 child's biological father.
- 3 (2) The moving party either (i) has not acknowledged paternity of the child or
4 (ii) acknowledged paternity without knowing that he was not the child's
5 biological father. For purposes of this section, "acknowledging paternity"
6 means that the moving party has done any of the following:
- 7 a. Publicly acknowledged the child as his own and supported the child
8 while married to the child's mother.
 - 9 b. Acknowledged paternity in a sworn written statement, including an
10 affidavit of parentage executed under G.S. 110-132(a) or G.S.
11 130A-101(f).
 - 12 c. Executed a consent order, a voluntary support agreement under G.S.
13 110-132 or G.S. 110-133, or any other legal agreement to pay child
14 support as the child's father.
 - 15 d. Admitted paternity in open court or in any pleading.

16 (g) If the court determines that the moving party has not satisfied the requirements of
17 this section, the court shall deny the motion or claim, and all orders regarding the child's
18 paternity, support, or custody shall remain enforceable and in effect until modified as otherwise
19 provided by law. If the court finds that the moving party did not act in good faith in filing a
20 motion or claim pursuant to this section, the court shall award reasonable attorneys' fees to the
21 prevailing party. The court shall make findings of fact and conclusions of law to support its
22 award of attorneys' fees under this subsection.

23 (h) If the court determines that the moving party has satisfied the requirements of this
24 section, the court shall enter an order, including written findings of fact and conclusions of law,
25 terminating the moving party's child support obligation regarding the child. The court may tax
26 as costs to the mother of the child the expenses of genetic testing.

27 Any unpaid support due prior to the filing of the motion or claim is due and owing. If the
28 court finds that the mother of the child used fraud, duress, or misrepresentation, resulting in the
29 belief on the part of the moving party that he was the father of the child, the court may order
30 the mother of the child to reimburse any child support amounts paid and received by the mother
31 after the filing of the motion or claim. The moving party has no right to reimbursement of past
32 child support paid on behalf of the child to the State, or any other assignee of child support,
33 where the child is in the custody of the State or other assignee, or where the moving party is an
34 obligor in a IV-D case as defined in G.S. 110-129(7).

35 If the child was born in North Carolina and the moving party is named as the father on the
36 child's birth certificate, the court shall order the clerk of superior court to notify the State
37 Registrar of the court's order pursuant to G.S. 130A-118(b)(2). If relief is granted under this
38 subsection, a party may, to the extent otherwise provided by law, apply for modification of or
39 relief from any judgment or order involving the moving party's paternity of the child.

40 (i) Any servicemember who is deployed on military orders, and is subject to the
41 protections of the Servicemembers Civil Relief Act, shall have the period for filing a motion
42 pursuant to subsection (b) of this section tolled during the servicemember's deployment. If the
43 period remaining allowed for the filing of the motion following the servicemember's
44 redeployment is less than 30 days, then the servicemember shall have 30 days for filing the
45 motion. (2011-328, s. 3.)

46
47 **§§ 50-14 through 50-15. Repealed by Session Laws 1967, c. 1152, s. 1.**

48
49 **§ 50-16. Repealed by Session Laws 1967, c. 1152, s. 1; c. 1153, s. 1.**

50
51 **§ 50-16.1: Repealed by Session Laws 1995, c. 319, s. 1.**

1
2 **§ 50-16.1A. Definitions.**

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

- 5 (1) "Alimony" means an order for payment for the support and maintenance of a
6 spouse or former spouse, periodically or in a lump sum, for a specified or for
7 an indefinite term, ordered in an action for divorce, whether absolute or from
8 bed and board, or in an action for alimony without divorce.
- 9 (2) "Dependent spouse" means a spouse, whether husband or wife, who is
10 actually substantially dependent upon the other spouse for his or her
11 maintenance and support or is substantially in need of maintenance and
12 support from the other spouse.
- 13 (3) "Marital misconduct" means any of the following acts that occur during the
14 marriage and prior to or on the date of separation:
- 15 a. Illicit sexual behavior. For the purpose of this section, illicit sexual
16 behavior means acts of sexual or deviate sexual intercourse, deviate
17 sexual acts, or sexual acts defined in G.S. 14-27.1(4), voluntarily
18 engaged in by a spouse with someone other than the other spouse;
 - 19 b. Involuntary separation of the spouses in consequence of a criminal
20 act committed prior to the proceeding in which alimony is sought;
 - 21 c. Abandonment of the other spouse;
 - 22 d. Malicious turning out-of-doors of the other spouse;
 - 23 e. Cruel or barbarous treatment endangering the life of the other spouse;
 - 24 f. Indignities rendering the condition of the other spouse intolerable
25 and life burdensome;
 - 26 g. Reckless spending of the income of either party, or the destruction,
27 waste, diversion, or concealment of assets;
 - 28 h. Excessive use of alcohol or drugs so as to render the condition of the
29 other spouse intolerable and life burdensome;
 - 30 i. Willful failure to provide necessary subsistence according to one's
31 means and condition so as to render the condition of the other spouse
32 intolerable and life burdensome.
- 33 (3a) through (3d) Reserved for future codification purposes.
- 34 (3e) "Payor" means any payor, including any federal, State, or local
35 governmental unit, of disposable income to an obligor. When the payor is an
36 employer, payor means employer as defined under 20 U.S.C. § 203(d) of the
37 Fair Labor Standards Act.
- 38 (4) "Postseparation support" means spousal support to be paid until the earlier of
39 any of the following:
- 40 a. The date specified in the order for postseparation support.
 - 41 b. The entry of an order awarding or denying alimony.
 - 42 c. The dismissal of the alimony claim.
 - 43 d. The entry of a judgment of absolute divorce if no claim of alimony is
44 pending at the time of entry of the judgment of absolute divorce.
 - 45 e. Termination of postseparation support as provided in G.S.
46 50-16.9(b).

47 Postseparation support may be ordered in an action for divorce, whether
48 absolute or from bed and board, for annulment, or for alimony without
49 divorce. However, if postseparation support is ordered at the time of the
50 entry of a judgment of absolute divorce, a claim for alimony must be
51 pending at the time of the entry of the judgment of divorce.

1 (5) "Supporting spouse" means a spouse, whether husband or wife, upon whom
2 the other spouse is actually substantially dependent for maintenance and
3 support or from whom such spouse is substantially in need of maintenance
4 and support. (1995, c. 319, s. 2; 1998-176, s. 8; 2005-177, s. 1.)
5

6 **§ 50-16.2: Repealed by Session Laws 1995, c. 319, s. 1.**
7

8 **§ 50-16.2A. Postseparation support.**

9 (a) In an action brought pursuant to Chapter 50 of the General Statutes, either party
10 may move for postseparation support. The verified pleading, verified motion, or affidavit of the
11 moving party shall set forth the factual basis for the relief requested.

12 (b) In ordering postseparation support, the court shall base its award on the financial
13 needs of the parties, considering the parties' accustomed standard of living, the present
14 employment income and other recurring earnings of each party from any source, their
15 income-earning abilities, the separate and marital debt service obligations, those expenses
16 reasonably necessary to support each of the parties, and each party's respective legal obligations
17 to support any other persons.

18 (c) Except when subsection (d) of this section applies, a dependent spouse is entitled to
19 an award of postseparation support if, based on consideration of the factors specified in
20 subsection (b) of this section, the court finds that the resources of the dependent spouse are not
21 adequate to meet his or her reasonable needs and the supporting spouse has the ability to pay.

22 (d) At a hearing on postseparation support, the judge shall consider marital misconduct
23 by the dependent spouse occurring prior to or on the date of separation in deciding whether to
24 award postseparation support and in deciding the amount of postseparation support. When the
25 judge considers these acts by the dependent spouse, the judge shall also consider any marital
26 misconduct by the supporting spouse in deciding whether to award postseparation support and
27 in deciding the amount of postseparation support.

28 (e) Nothing herein shall prevent a court from considering incidents of post
29 date-of-separation marital misconduct as corroborating evidence supporting other evidence that
30 marital misconduct occurred during the marriage and prior to date of separation. (1995, c. 319,
31 s. 2.)
32

33 **§ 50-16.3: Repealed by Session Laws 1995, c. 319, s. 1.**
34

35 **§ 50-16.3A. Alimony.**

36 (a) Entitlement. – In an action brought pursuant to Chapter 50 of the General Statutes,
37 either party may move for alimony. The court shall award alimony to the dependent spouse
38 upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting
39 spouse, and that an award of alimony is equitable after considering all relevant factors,
40 including those set out in subsection (b) of this section. If the court finds that the dependent
41 spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during
42 the marriage and prior to or on the date of separation, the court shall not award alimony. If the
43 court finds that the supporting spouse participated in an act of illicit sexual behavior, as defined
44 in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the
45 court shall order that alimony be paid to a dependent spouse. If the court finds that the
46 dependent and the supporting spouse each participated in an act of illicit sexual behavior during
47 the marriage and prior to or on the date of separation, then alimony shall be denied or awarded
48 in the discretion of the court after consideration of all of the circumstances. Any act of illicit
49 sexual behavior by either party that has been condoned by the other party shall not be
50 considered by the court.

1 The claim for alimony may be heard on the merits prior to the entry of a judgment for
2 equitable distribution, and if awarded, the issues of amount and of whether a spouse is a
3 dependent or supporting spouse may be reviewed by the court after the conclusion of the
4 equitable distribution claim.

5 (b) Amount and Duration. – The court shall exercise its discretion in determining the
6 amount, duration, and manner of payment of alimony. The duration of the award may be for a
7 specified or for an indefinite term. In determining the amount, duration, and manner of
8 payment of alimony, the court shall consider all relevant factors, including:

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

39 (c) Findings of Fact. – The court shall set forth the reasons for its award or denial of
40 alimony and, if making an award, the reasons for its amount, duration, and manner of payment.
41 Except where there is a motion before the court for summary judgment, judgment on the
42 pleadings, or other motion for which the Rules of Civil Procedure do not require special
43 findings of fact, the court shall make a specific finding of fact on each of the factors in
44 subsection (b) of this section if evidence is offered on that factor.

45 (d) In the claim for alimony, either spouse may request a jury trial on the issue of
46 marital misconduct as defined in G.S. 50-16.1A. If a jury trial is requested, the jury will decide
47 whether either spouse or both have established marital misconduct. (1995, c. 319, s. 2; c. 509, s.
48 135.2(b); 1998-176, s. 11.)

49
50 **§ 50-16.4. Counsel fees in actions for alimony, postseparation support.**

1 At any time that a dependent spouse would be entitled to alimony pursuant to G.S.
2 50-16.3A, or postseparation support pursuant to G.S. 50-16.2A, the court may, upon
3 application of such spouse, enter an order for reasonable counsel fees, to be paid and secured
4 by the supporting spouse in the same manner as alimony. (1967, c. 1152, s. 2; 1995, c. 319, s.
5 3; 2010-14, s. 1.)

6
7 **§ 50-16.5: Repealed by Session Laws 1995, c. 319, s. 1.**

8
9 **§ 50-16.6. When alimony, postseparation support, counsel fees not payable.**

10 (a) Repealed by Session Laws 1995, c. 319, s. 4.

11 (b) Alimony, postseparation support, and counsel fees may be barred by an express
12 provision of a valid separation agreement or premarital agreement so long as the agreement is
13 performed. (1871-2, c. 193, s. 39; Code, s. 1292; Rev., s. 1567; 1919, c. 24; C.S., s. 1667; 1921,
14 c. 123; 1923, c. 52; 1951, c. 893, s. 3; 1953, c. 925; 1955, cc. 814, 1189; 1967, c. 1152, s. 2;
15 1995, c. 319, s. 4; c. 509, s. 135.3(f).)

16
17 **§ 50-16.7. How alimony and postseparation support paid; enforcement of decree.**

18 (a) Alimony or postseparation support shall be paid by lump sum payment, periodic
19 payments, income withholding, or by transfer of title or possession of personal property or any
20 interest therein, or a security interest in or possession of real property, as the court may order.
21 The court may order the transfer of title to real property solely owned by the obligor in
22 payment of lump-sum payments of alimony or postseparation support or in payment of
23 arrearages of alimony or postseparation support so long as the net value of the interest in the
24 property being transferred does not exceed the amount of the arrearage being satisfied. In every
25 case in which either alimony or postseparation support is allowed and provision is also made
26 for support of minor children, the order shall separately state and identify each allowance.

27 (b) The court may require the supporting spouse to secure the payment of alimony or
28 postseparation support so ordered by means of a bond, mortgage, or deed of trust, or any other
29 means ordinarily used to secure an obligation to pay money or transfer property, or by requiring
30 the supporting spouse to execute an assignment of wages, salary, or other income due or to
31 become due.

32 (c) If the court requires the transfer of real or personal property or an interest therein as
33 a part of an order for alimony or postseparation support as provided in subsection (a) or for the
34 securing thereof, the court may also enter an order which shall transfer title, as provided in G.S.
35 1A-1, Rule 70 and G.S. 1-228.

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

38 (e) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1
39 and Article 9 of Chapter 110 of the General Statutes, shall be available in actions for alimony
40 or postseparation support as in other cases, and for such purposes the dependent spouse shall be
41 deemed a creditor of the supporting spouse.

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

45 (g) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be
46 appointed in actions for alimony or postseparation support as in other cases.

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

50 (i) A judgment for alimony or postseparation support obtained in an action therefor
51 shall not be a lien against real property unless the judgment expressly so provides, sets out the

1 amount of the lien in a sum certain, and adequately describes the real property affected; but
2 past-due periodic payments may by motion in the cause or by a separate action be reduced to
3 judgment which shall be a lien as other judgments.

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

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

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

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

19 (11) The dependent spouse may apply to the court for an order of income withholding for
20 current or delinquent payments of alimony or postseparation support or for any portion of the
21 payments. If the court orders income withholding, a notice of obligation to withhold shall be
22 served on the payor as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of the
23 notice shall be filed with the clerk of court and served upon the supporting spouse by first-class
24 mail. (1967, c. 1152, s. 2; 1969, c. 541, s. 5; c. 895, s. 18; 1977, c. 711, s. 26; 1985, c. 482, s. 1;
25 c. 689, s. 18; 1995 c. 319, s. 5; 1998-176, ss. 2, 3; 1999-456, s. 14.)
26

27 **§ 50-16.8. Procedure in actions for postseparation support.**

28 When an application is made for postseparation support, the court may base its award on a
29 verified pleading, affidavit, or other competent evidence. The court shall set forth the reasons
30 for its award or denial of postseparation support, and if making an award, the reasons for its
31 amount, duration, and manner of payment. (1871-2, c. 193, ss. 37, 38, 39; 1883, c. 67; Code, ss.
32 1290, 1291, 1292; Rev., ss. 1565, 1566, 1567; 1919, c. 24; C.S., ss. 1665, 1666, 1667; 1921, c.
33 123; 1923, c. 52; 1951, c. 893, s. 3; 1953, c. 925; 1955, cc. 814, 1189; 1961, c. 80; 1967, c.
34 1152, s. 2; 1971, c. 1185, s. 25; 1979, c. 709, s. 4; 1995, c. 319, s. 6.)
35

36 **§ 50-16.9. Modification of order.**

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

41 Any motion to modify or terminate alimony or postseparation support based on a
42 resumption of marital relations between parties who remain married to each other shall be
43 determined pursuant to G.S. 52-10.2.

44 (b) If a dependent spouse who is receiving postseparation support or alimony from a
45 supporting spouse under a judgment or order of a court of this State remarries or engages in
46 cohabitation, the postseparation support or alimony shall terminate. Postseparation support or
47 alimony shall terminate upon the death of either the supporting or the dependent spouse.

48 As used in this subsection, cohabitation means the act of two adults dwelling together
49 continuously and habitually in a private heterosexual relationship, even if this relationship is
50 not solemnized by marriage, or a private homosexual relationship. Cohabitation is evidenced by
51 the voluntary mutual assumption of those marital rights, duties, and obligations which are

1 usually manifested by married people, and which include, but are not necessarily dependent on,
2 sexual relations. Nothing in this section shall be construed to make lawful conduct which is
3 made unlawful by other statutes.

4 (c) When an order for alimony has been entered by a court of another jurisdiction, a
5 court of this State may, upon gaining jurisdiction over the person of both parties in a civil
6 action instituted for that purpose, and upon a showing of changed circumstances, enter a new
7 order for alimony which modifies or supersedes such order for alimony to the extent that it
8 could have been so modified in the jurisdiction where granted. (1871-2, c. 193, ss. 38, 39;
9 1883, c. 67; Code, ss. 1291, 1292; Rev., ss. 1566, 1567; 1919, c. 24; C.S., ss. 1666, 1667; 1921,
10 c. 123; 1923, c. 52; 1951, c. 893, s. 3; 1953, c. 925; 1955, cc. 814, 1189; 1961, c. 80; 1967, c.
11 1152, s. 2; 1987, c. 664, s. 3; 1995, c. 319, s. 7.)

12
13 **§ 50-16.10. Alimony without action.**

14 Alimony without action may be allowed by confession of judgment under G.S. 1A-1, Rule
15 68.1. (1967, c. 1152, s. 2; 1985, c. 689, s. 19.)

16
17 **§ 50-16.11: Repealed by Session Laws 1995, c. 319, s. 1.**

18
19 **§ 50-17. Alimony in real estate, writ of possession issued.**

20 In all cases in which the court grants alimony by the assignment of real estate, the court has
21 power to issue a writ of possession when necessary in the judgment of the court to do so.
22 (1868-9, c. 123, s. 1; Code, s. 1293; Rev., s. 1568; C.S., s. 1668.)

23
24 **§ 50-18. Residence of military personnel; payment of defendant's travel expenses by
25 plaintiff.**

26 In any action instituted and prosecuted under this Chapter, allegation and proof that the
27 plaintiff or the defendant has resided or been stationed at a United States Army, Navy, Marine
28 Corps, Coast Guard, or Air Force installation or reservation or any other location pursuant to
29 military duty within this State for a period of six months next preceding the institution of the
30 action shall constitute compliance with the residence requirements set forth in this Chapter;
31 provided that personal service is had upon the defendant or service is accepted by the
32 defendant, within or without the State as by law provided.

33 Upon request of the defendant or attorney for the defendant, the court may order the
34 plaintiff to pay necessary travel expenses from defendant's home to the site of the court in order
35 that the defendant may appear in person to defend said action. (1959, c. 1058; 2011-183, s.
36 39.)

37
38 **§ 50-19. Maintenance of certain actions as independent actions permissible.**

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

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

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

1 (c) Repealed by Session Laws 1991, c. 569, s. 1. (1979, c. 709, s. 2; 1985, c. 689, s. 20;
2 1991, c. 569, s. 1; 1995, c. 319, s. 10.)
3

4 **§ 50-20. Distribution by court of marital and divisible property.**

5 (a) Upon application of a party, the court shall determine what is the marital property
6 and divisible property and shall provide for an equitable distribution of the marital property and
7 divisible property between the parties in accordance with the provisions of this section.

8 (b) For purposes of this section:

9 (1) "Marital property" means all real and personal property acquired by either
10 spouse or both spouses during the course of the marriage and before the date
11 of the separation of the parties, and presently owned, except property
12 determined to be separate property or divisible property in accordance with
13 subdivision (2) or (4) of this subsection. Marital property includes all vested
14 and nonvested pension, retirement, and other deferred compensation rights,
15 and vested and nonvested military pensions eligible under the federal
16 Uniformed Services Former Spouses' Protection Act. It is presumed that all
17 property acquired after the date of marriage and before the date of separation
18 is marital property except property which is separate property under
19 subdivision (2) of this subsection. This presumption may be rebutted by the
20 greater weight of the evidence.

21 (2) "Separate property" means all real and personal property acquired by a
22 spouse before marriage or acquired by a spouse by devise, descent, or gift
23 during the course of the marriage. However, property acquired by gift from
24 the other spouse during the course of the marriage shall be considered
25 separate property only if such an intention is stated in the conveyance.
26 Property acquired in exchange for separate property shall remain separate
27 property regardless of whether the title is in the name of the husband or wife
28 or both and shall not be considered to be marital property unless a contrary
29 intention is expressly stated in the conveyance. The increase in value of
30 separate property and the income derived from separate property shall be
31 considered separate property. All professional licenses and business licenses
32 which would terminate on transfer shall be considered separate property.

33 (3) "Distributive award" means payments that are payable either in a lump sum
34 or over a period of time in fixed amounts, but shall not include alimony
35 payments or other similar payments for support and maintenance which are
36 treated as ordinary income to the recipient under the Internal Revenue Code.

37 (4) "Divisible property" means all real and personal property as set forth below:
38 a. All appreciation and diminution in value of marital property and
39 divisible property of the parties occurring after the date of separation
40 and prior to the date of distribution, except that appreciation or
41 diminution in value which is the result of postseparation actions or
42 activities of a spouse shall not be treated as divisible property.
43 b. All property, property rights, or any portion thereof received after the
44 date of separation but before the date of distribution that was
45 acquired as a result of the efforts of either spouse during the marriage
46 and before the date of separation, including, but not limited to,
47 commissions, bonuses, and contractual rights.
48 c. Passive income from marital property received after the date of
49 separation, including, but not limited to, interest and dividends.
50 d. Increases and decreases in marital debt and financing charges and
51 interest related to marital debt.

1 (c) There shall be an equal division by using net value of marital property and net value
2 of divisible property unless the court determines that an equal division is not equitable. If the
3 court determines that an equal division is not equitable, the court shall divide the marital
4 property and divisible property equitably. The court shall consider all of the following factors
5 under this subsection:

- 6 (1) The income, property, and liabilities of each party at the time the division of
7 property is to become effective.
- 8 (2) Any obligation for support arising out of a prior marriage.
- 9 (3) The duration of the marriage and the age and physical and mental health of
10 both parties.
- 11 (4) The need of a parent with custody of a child or children of the marriage to
12 occupy or own the marital residence and to use or own its household effects.
- 13 (5) The expectation of pension, retirement, or other deferred compensation
14 rights that are not marital property.
- 15 (6) Any equitable claim to, interest in, or direct or indirect contribution made to
16 the acquisition of such marital property by the party not having title,
17 including joint efforts or expenditures and contributions and services, or lack
18 thereof, as a spouse, parent, wage earner or homemaker.
- 19 (7) Any direct or indirect contribution made by one spouse to help educate or
20 develop the career potential of the other spouse.
- 21 (8) Any direct contribution to an increase in value of separate property which
22 occurs during the course of the marriage.
- 23 (9) The liquid or nonliquid character of all marital property and divisible
24 property.
- 25 (10) The difficulty of evaluating any component asset or any interest in a
26 business, corporation or profession, and the economic desirability of
27 retaining such asset or interest, intact and free from any claim or interference
28 by the other party.
- 29 (11) The tax consequences to each party, including those federal and State tax
30 consequences that would have been incurred if the marital and divisible
31 property had been sold or liquidated on the date of valuation. The trial court
32 may, however, in its discretion, consider whether or when such tax
33 consequences are reasonably likely to occur in determining the equitable
34 value deemed appropriate for this factor.
- 35 (11a) Acts of either party to maintain, preserve, develop, or expand; or to waste,
36 neglect, devalue or convert the marital property or divisible property, or
37 both, during the period after separation of the parties and before the time of
38 distribution.
- 39 (11b) In the event of the death of either party prior to the entry of any order for the
40 distribution of property made pursuant to this subsection:
 - 41 a. Property passing to the surviving spouse by will or through intestacy
42 due to the death of a spouse.
 - 43 b. Property held as tenants by the entirety or as joint tenants with rights
44 of survivorship passing to the surviving spouse due to the death of a
45 spouse.
 - 46 c. Property passing to the surviving spouse from life insurance,
47 individual retirement accounts, pension or profit-sharing plans, any
48 private or governmental retirement plan or annuity of which the
49 decedent controlled the designation of beneficiary (excluding any
50 benefits under the federal social security system), or any other
51 retirement accounts or contracts, due to the death of a spouse.

1 d. The surviving spouse's right to claim an "elective share" pursuant to
2 G.S. 30-3.1 through G.S. 30-33, unless otherwise waived.

3 (12) Any other factor which the court finds to be just and proper.

4 (c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires
5 no interest in the marital property and divisible property of his or her spouse from a former
6 marriage until a final determination of equitable distribution is made in the marital property and
7 divisible property of the spouse's former marriage.

8 (d) Before, during or after marriage the parties may by written agreement, duly
9 executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by
10 a written agreement valid in the jurisdiction where executed, provide for distribution of the
11 marital property or divisible property, or both, in a manner deemed by the parties to be
12 equitable and the agreement shall be binding on the parties.

13 (e) Subject to the presumption of subsection (c) of this section that an equal division is
14 equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible
15 property is equitable. This presumption may be rebutted by the greater weight of the evidence,
16 or by evidence that the property is a closely held business entity or is otherwise not susceptible
17 of division in-kind. In any action in which the presumption is rebutted, the court in lieu of
18 in-kind distribution shall provide for a distributive award in order to achieve equity between the
19 parties. The court may provide for a distributive award to facilitate, effectuate or supplement a
20 distribution of marital or divisible property. The court may provide that any distributive award
21 payable over a period of time be secured by a lien on specific property.

22 (f) The court shall provide for an equitable distribution without regard to alimony for
23 either party or support of the children of both parties. After the determination of an equitable
24 distribution, the court, upon request of either party, shall consider whether an order for alimony
25 or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

26 (g) If the court orders the transfer of real or personal property or an interest therein, the
27 court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and
28 G.S. 1-228.

29 (h) If either party claims that any real property is marital property or divisible property,
30 that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1
31 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose
32 interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property
33 free of any claim resulting from the equitable distribution proceeding. The court may cancel the
34 notice of lis pendens upon substitution of a bond with surety in an amount determined by the
35 court to be sufficient provided the court finds that the claim of the spouse against property
36 subject to the notice of lis pendens can be satisfied by money damages.

37 (i) Upon filing an action or motion in the cause requesting an equitable distribution or
38 alleging that an equitable distribution will be requested when it is timely to do so, a party may
39 seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the
40 disappearance, waste or conversion of property alleged to be marital property, divisible
41 property, or separate property of the party seeking relief. The court, in lieu of granting an
42 injunction, may require a bond or other assurance of sufficient amount to protect the interest of
43 the other spouse in the property. Upon application by the owner of separate property which was
44 removed from the marital home or possession of its owner by the other spouse, the court may
45 enter an order for reasonable counsel fees and costs of court incurred to regain its possession,
46 but such fees shall not exceed the fair market value of the separate property at the time it was
47 removed.

48 (i1) Unless good cause is shown that there should not be an interim distribution, the
49 court may, at any time after an action for equitable distribution has been filed and prior to the
50 final judgment of equitable distribution, enter orders declaring what is separate property and
51 may also enter orders dividing part of the marital property, divisible property or debt, or marital

1 debt between the parties. The partial distribution may provide for a distributive award and may
2 also provide for a distribution of marital property, marital debt, divisible property, or divisible
3 debt. Any such orders entered shall be taken into consideration at trial and proper credit given.

4 Hearings held pursuant to this subsection may be held at sessions arranged by the chief
5 district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to
6 the reporting requirements of G.S. 7A-198.

7 (j) In any order for the distribution of property made pursuant to this section, the court
8 shall make written findings of fact that support the determination that the marital property and
9 divisible property has been equitably divided.

10 (k) The rights of the parties to an equitable distribution of marital property and divisible
11 property are a species of common ownership, the rights of the respective parties vesting at the
12 time of the parties' separation.

13 (l) (1) A claim for equitable distribution, whether an action is filed or not, survives
14 the death of a spouse so long as the parties are living separate and apart at
15 the time of death.

16 (2) The provisions of Article 19 of Chapter 28A of the General Statutes shall be
17 applicable to a claim for equitable distribution against the estate of the
18 deceased spouse.

19 (3) Any claim for equitable distribution against the surviving spouse made by
20 the estate of the deceased spouse must be filed with the district court within
21 one year of the date of death of the deceased spouse or be forever barred.
22 (1981, c. 815, s. 1; 1983, c. 309; c. 640, ss. 1, 2; c. 758, ss. 1-4; 1985, c. 31,
23 ss. 1-3; c. 143; c. 660, ss. 1-3; 1987, c. 663; c. 844, s. 2; 1991, c. 635, ss. 1,
24 1.1; 1991 (Reg. Sess., 1992), c. 960, s. 1; 1995, c. 240, s. 1; c. 245, s. 2;
25 1997-212, ss. 2-5; 1997-302, s. 1; 1998-217, s. 7(c); 2001-364, ss. 2, 3;
26 2002-159, s. 33; 2003-168, ss. 1, 2; 2005-353, s. 1; 2011-284, s. 51.)
27

28 **§ 50-20.1. Pension and retirement benefits.**

29 (a) The award of vested pension, retirement, or other deferred compensation benefits
30 may be made payable:

31 (1) As a lump sum by agreement;

32 (2) Over a period of time in fixed amounts by agreement;

33 (3) By appropriate domestic relations order as a prorated portion of the benefits
34 made to the designated recipient at the time the party against whom the
35 award is made actually begins to receive the benefits; or

36 (4) By awarding a larger portion of other assets to the party not receiving the
37 benefits and a smaller share of other assets to the party entitled to receive the
38 benefits.

39 (b) The award of nonvested pension, retirement, or other deferred compensation
40 benefits may be made payable:

41 (1) As a lump sum by agreement;

42 (2) Over a period of time in fixed amounts by agreement; or

43 (3) By appropriate domestic relations order as a prorated portion of the benefits
44 made to the designated recipient at the time the party against whom the
45 award is made actually begins to receive the benefits.

46 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, the court
47 shall not require the administrator of the fund or plan involved to make any payments until the
48 party against whom the award is made actually begins to receive the benefits unless the plan
49 permits an earlier distribution.

50 (d) The award shall be determined using the proportion of time the marriage existed (up
51 to the date of separation of the parties), simultaneously with the employment which earned the

1 vested and nonvested pension, retirement, or deferred compensation benefit, to the total amount
2 of time of employment. The award shall be based on the vested and nonvested accrued benefit,
3 as provided by the plan or fund, calculated as of the date of separation, and shall not include
4 contributions, years of service, or compensation which may accrue after the date of separation.
5 The award shall include gains and losses on the prorated portion of the benefit vested at the
6 date of separation.

7 (e) No award shall exceed fifty percent (50%) of the benefits the person against whom
8 the award is made is entitled to receive as vested and nonvested pension, retirement, or other
9 deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i)
10 other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in
11 distributing any asset or any interest in a business, corporation, or profession; or (iii) it is
12 economically desirable for one party to retain an asset or interest that is intact and free from
13 any claim or interference by the other party; or (iv) more than one pension or retirement system
14 or deferred compensation plan or fund is involved, but the benefits award may not exceed fifty
15 percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In
16 no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of
17 fifty percent (50%).

18 (f) In the event the person receiving the award dies, the unpaid balance, if any, of the
19 award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession,
20 or by beneficiary designation with the plan consistent with the terms of the plan unless the plan
21 prohibits such designation. In the event the person against whom the award is made dies, the
22 award to the recipient shall remain payable to the extent permitted by the pension or retirement
23 system or deferred compensation plan or fund involved.

24 (g) The court may require distribution of the award by means of a qualified domestic
25 relations order, or as defined in section 414(p) of the Internal Revenue Code of 1986, or by
26 other appropriate order. To facilitate the calculating and payment of distributive awards, the
27 administrator of the system, plan, or fund may be ordered to certify the total contributions,
28 years of service, and pension, retirement, or other deferred compensation benefits payable.

29 (h) This section and G.S. 50-21 shall apply to all pension, retirement, and other deferred
30 compensation plans and funds, including vested and nonvested military pensions eligible under
31 the federal Uniform Services Former Spouses Protection Act, and including funds administered
32 by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128,
33 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at
34 the date of separation, as determined by the court. (1997-212, s. 1.)
35

36 **§ 50-21. Procedures in actions for equitable distribution of property; sanctions for**
37 **purposeful and prejudicial delay.**

38 (a) At any time after a husband and wife begin to live separate and apart from each
39 other, a claim for equitable distribution may be filed and adjudicated, either as a separate civil
40 action, or together with any other action brought pursuant to Chapter 50 of the General
41 Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after
42 service of a claim for equitable distribution, the party who first asserts the claim shall prepare
43 and serve upon the opposing party an equitable distribution inventory affidavit listing all
44 property claimed by the party to be marital property and all property claimed by the party to be
45 separate property, and the estimated date-of-separation fair market value of each item of marital
46 and separate property. Within 30 days after service of the inventory affidavit, the party upon
47 whom service is made shall prepare and serve an inventory affidavit upon the other party. The
48 inventory affidavits prepared and served pursuant to this subsection shall be subject to
49 amendment and shall not be binding at trial as to completeness or value. The court may extend
50 the time limits in this subsection for good cause shown. The affidavits are subject to the
51 requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to

1 interrogatories propounded to the parties. Any party failing to supply the information required
2 by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the
3 pendency of the action for equitable distribution, discovery may proceed, and the court shall
4 enter temporary orders as appropriate and necessary for the purpose of preventing the
5 disappearance, waste, or destruction of marital or separate property or to secure the possession
6 thereof.

7 Real or personal property located outside of North Carolina is subject to equitable
8 distribution in accordance with the provisions of G.S. 50-20, and the court may include in its
9 order appropriate provisions to ensure compliance with the order of equitable distribution.

10 (b) For purposes of equitable distribution, marital property shall be valued as of the date
11 of the separation of the parties, and evidence of preseparation and postseparation occurrences
12 or values is competent as corroborative evidence of the value of marital property as of the date
13 of the separation of the parties. Divisible property and divisible debt shall be valued as of the
14 date of distribution.

15 (c) Nothing in G.S. 50-20 or this section shall restrict or extend the right to trial by jury
16 as provided by the Constitution of North Carolina.

17 (d) Within 120 days after the filing of the initial pleading or motion in the cause for
18 equitable distribution, the party first serving the pleading or application shall apply to the court
19 to conduct a scheduling and discovery conference. If that party fails to make application, then
20 the other party may do so. At the conference the court shall determine a schedule of discovery
21 as well as consider and rule upon any motions for appointment of expert witnesses, or other
22 applications, including applications to determine the date of separation, and shall set a date for
23 the disclosure of expert witnesses and a date on or before which an initial pretrial conference
24 shall be held.

25 At the initial pretrial conference the court shall make inquiry as to the status of the case and
26 shall enter a date for the completion of discovery, the completion of a mediated settlement
27 conference, if applicable, and the filing and service of motions, and shall determine a date on or
28 after which a final pretrial conference shall be held and a date on or after which the case shall
29 proceed to trial.

30 The final pretrial conference shall be conducted pursuant to the Rules of Civil Procedure
31 and the General Rules of Practice in the applicable district or superior court, adopted pursuant
32 to G.S. 7A-34. The court shall rule upon any matters reasonably necessary to effect a fair and
33 prompt disposition of the case in the interests of justice.

34 (e) Upon motion of either party or upon the court's own initiative, the court shall
35 impose an appropriate sanction on a party when the court finds that:

- 36 (1) The party has willfully obstructed or unreasonably delayed, or has attempted
37 to obstruct or unreasonably delay, discovery proceedings, including failure
38 to make discovery pursuant to G.S. 1A-1, Rule 37, or has willfully
39 obstructed or unreasonably delayed or attempted to obstruct or unreasonably
40 delay any pending equitable distribution proceeding, and
- 41 (2) The willful obstruction or unreasonable delay of the proceedings is or would
42 be prejudicial to the interests of the opposing party.

43 Delay consented to by the parties is not grounds for sanctions. The sanction may include an
44 order to pay the other party the amount of the reasonable expenses and damages incurred
45 because of the willful obstruction or unreasonable delay, including a reasonable attorneys' fee,
46 and including appointment by the court, at the offending party's expense, of an accountant,
47 appraiser, or other expert whose services the court finds are necessary to secure in order for the
48 discovery or other equitable distribution proceeding to be timely conducted. (1981, c. 815, s. 6;
49 1983, c. 671, s. 1; 1985, c. 689, s. 21; 1987, c. 844, s. 1; 1991, c. 610, s. 2; 1991 (Reg. Sess.,
50 1992), c. 910, s. 1; 1993, c. 209, s. 1; 1995, c. 244, s. 1; c. 245, s. 1; 1997-302, s. 2; 2001-364,
51 s. 1.)

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§ 50-22. Action on behalf of an incompetent.

A duly appointed attorney-in-fact who has the power to sue and defend civil actions on behalf of an incompetent spouse and who has been appointed pursuant to a durable power of attorney executed in accordance with Chapter 32A of the General Statutes, a guardian appointed in accordance with Chapter 35A of the General Statutes, or a guardian ad litem appointed in accordance with G.S. 1A-1, Rules 17 and 25(b), may commence, defend, maintain, arbitrate, mediate, or settle any action authorized by this Chapter on behalf of an incompetent spouse. However, only a competent spouse may commence an action for absolute divorce. (1991, c. 610, s. 1; 2009-224, s. 1.)

§§ 50-23 through 50-29. Reserved for future codification purposes.