

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 417
Second Edition Engrossed 5/15/91

Short Title: Equit. Distrib. for Incompetent.

(Public)

Sponsors: Representative Kennedy.

Referred to: Judiciary I.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE AN ACTION UNDER THE CHAPTER OF LAW
3 CONCERNING DIVORCE AND ALIMONY TO PROTECT THE PROPERTY OF
4 AN INCOMPETENT SPOUSE BUT TO PREVENT THE ENTRY OF A
5 DIVORCE DECREE ON BEHALF OF THE INCOMPETENT AS
6 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Whereas, the decision to obtain a divorce is a personal decision and one that
9 should only be made by the individual involved; and

10 Whereas, an incompetent spouse may for religious or other personal reasons
11 have objections to the entry of a divorce on his or her behalf; and

12 Whereas, the General Assembly recognizes a need to protect the property
13 rights of an incompetent spouse; Now, therefore,

14 The General Assembly of North Carolina enacts:

15 Section 1. Chapter 50 of the General Statutes is amended by adding a new
16 section to read:

17 **"§ 50-22. Action on behalf of an incompetent.**

18 A general guardian for an incompetent spouse may commence, defend or maintain
19 any action authorized by this Chapter; however, the court shall not enter a decree of
20 absolute divorce in such an action filed by the guardian on behalf of the incompetent
21 spouse. As an exception to G.S. 50-21, the court may order equitable distribution on
22 behalf of an incompetent spouse without entering a decree of divorce after the parties
23 have lived separate and apart for a period of one year. Provided, however, that the

1 competent spouse may seek and obtain a divorce from the incompetent spouse upon
2 showing basis for the same."

3 Sec. 2. G.S. 50-21(a) reads as rewritten:

4 "(a) At any time after a husband and wife begin to live separate and
5 apart from each other, a claim for equitable distribution may be filed, either as a
6 separate civil action, or together with any other action brought pursuant to Chapter 50 of
7 the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f).
8 During the pendency of any such action for equitable distribution, discovery may
9 proceed, and the court may enter temporary orders as appropriate and necessary for the
10 purpose of preventing the disappearance, waste, or destruction of marital or separate
11 property or to secure the possession thereof.

12 A judgment for an equitable distribution shall not be entered prior to entry of a
13 decree of absolute divorce, except as provided in G.S. 50-22 and except for a consent
14 judgment, which may be entered at any time during the pendency of the action.

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

19 Sec. 3. This act is effective October 1, 1991.