

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 270

Short Title: Alimony Changes.

(Public)

Sponsors: Representatives Hackney, Alexander, Braswell, Easterling, McAllister; Gardner, Luebke, Cummings, and Bowie.

Referred to: Judiciary II.

February 23, 1995

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

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 50-16.1, 50-16.2, 50-16.3, 50-16.5, and 50-16.11 are repealed.
8 Sec. 2. Chapter 50 of the General Statutes is amended by adding the following
9 new sections to read:

10 "**§ 50-16.1A. Definitions.**

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

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

18 (2) 'Dependent spouse' means a spouse, whether husband or wife, who is
19 actually substantially dependent upon the other spouse for his or her

1 maintenance and support or is substantially in need of maintenance and
2 support from the other spouse.

3 (3) 'Marital misconduct' means any of the following acts that occur during
4 the marriage and prior to or on the date of separation:

5 a. Illicit sexual behavior. For the purpose of this section, illicit
6 sexual behavior means acts of sexual or deviate sexual
7 intercourse, deviate sexual acts, or sexual acts defined in G.S. 14-
8 27.1(4), voluntarily engaged in by a spouse with someone other
9 than the other spouse;

10 b. Involuntary separation of the spouses in consequence of a
11 criminal act committed prior to the proceeding in which alimony
12 is sought;

13 c. Abandonment of the other spouse;

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

15 e. Cruel or barbarous treatment endangering the life of the other
16 spouse;

17 f. Indignities rendering the condition of the other spouse intolerable
18 and life burdensome;

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

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

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

26 (4) 'Postseparation support' means spousal support to be paid until the
27 earliest of either the date specified in the order of postseparation
28 support, or an order awarding or denying alimony. Postseparation
29 support may be ordered in an action for divorce, whether absolute or
30 from bed and board, for annulment, or for alimony without divorce.

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

35 **"§ 50-16.2A. Postseparation support.**

36 (a) In an action brought pursuant to Chapters 50, 51, 50A, 50B, and Article 9 of
37 Chapter 110, of the General Statutes, either party may move for postseparation support.
38 The verified pleading, verified motion, or affidavit of the moving party shall set forth the
39 factual basis for the relief requested.

40 (b) In ordering postseparation support, the court shall base its award on the
41 financial needs of the parties, considering the parties' accustomed standard of living, the
42 present employment income and other recurring earnings of each party from any source,
43 their income-earning abilities, the separate and marital debt service obligations, those

1 expenses reasonably necessary to support each of the parties, and each party's respective
2 legal obligations to support any other persons.

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

8 (d) At a hearing on postseparation support, the judge may consider repeated acts of
9 illicit sexual behavior or excessive use of alcohol or drugs by the dependent spouse
10 occurring prior to or on the date of separation in deciding whether to award
11 postseparation support and in deciding the amount of postseparation support. If the judge
12 considers these acts by the dependent spouse, the judge shall also consider any marital
13 misconduct by the supporting spouse in deciding whether to award postseparation
14 support and in deciding the amount of postseparation support.

15 (e) Nothing herein shall prevent a court from considering incidents of post date-of-
16 separation marital misconduct as corroborating evidence supporting other evidence that
17 marital misconduct occurred during the marriage and prior to date of separation.

18 **"§ 50-16.3A. Alimony.**

19 (a) Entitlement. – In an action brought pursuant to Chapters 50, 50A, 50B, and
20 Article 9 of Chapter 110, of the General Statutes, either party may move for alimony.
21 The court shall award alimony to the dependent spouse upon a finding that one spouse is
22 a dependent spouse, that the other spouse is a supporting spouse, and that an award of
23 alimony is equitable after considering all relevant factors, including those set out in
24 subsection (b) of this section.

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

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

33 (1) The relative earnings and earning capacities of the spouses;

34 (2) The ages and the physical, mental, and emotional conditions of the
35 spouses;

36 (3) The amount and sources of earned and unearned income of both
37 spouses, including, but not limited to, earnings, dividends, and benefits
38 such as medical, retirement, insurance, social security, or others;

39 (4) The duration of the marriage;

40 (5) The contribution by one spouse to the education, training, or increased
41 earning power of the other spouse;

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

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

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

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

32 **"§ 50-16.4. Counsel fees in actions for ~~alimony~~-alimony, postseparation support.**

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

38 Sec. 4. G.S. 50-16.6 reads as rewritten:

39 **"§ 50-16.6. When ~~alimony~~-alimony, postseparation support, counsel fees not**
40 **payable.**

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

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

3 (b) Alimony, ~~alimony pendente lite~~, postseparation support, and counsel fees may be
4 barred by an express provision of a valid separation agreement or premarital agreement
5 so long as the agreement is ~~performed~~, performed, by Chapter 31A of the General
6 Statutes, or by a judgment pursuant to G.S. 50-11 or G.S. 50-19."

7 Sec. 5. G.S. 50-16.7 reads as rewritten:

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

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

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

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

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

28 (e) The remedies of attachment and garnishment, as provided in Article 35 of
29 Chapter 1 and Article 9 of Chapter 110 of the General Statutes, shall be available in
30 actions for alimony or ~~alimony pendente lite~~ postseparation support as in other cases, and
31 for such purposes the dependent spouse shall be deemed a creditor of the supporting
32 spouse.

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

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

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

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

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

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

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

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

25 Sec. 6. G.S. 50-16.8 reads as rewritten:

26 **"§ 50-16.8. Procedure in actions for ~~alimony and alimony pendente lite~~. postseparation**
27 **support.**

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 7. G.S. 50-16.9 reads as rewritten:

23 "**§ 50-16.9. Modification of order.**

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

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

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

38 As used in this subsection, cohabitation means the act of two adults dwelling together
39 continuously and habitually in a private relationship, heterosexual or homosexual in
40 nature, even if this relationship is not solemnized by marriage. Cohabitation is evidenced
41 by the voluntary mutual assumption of those marital rights, duties, and obligations which
42 are usually manifested by married people, and which include but are not necessarily

1 dependent on sexual relations. Cohabitation asserted pursuant to this section must be
2 established by the asserting party by clear, cogent, and convincing evidence.

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

8 Sec. 8. G.S. 50-11(c) reads as rewritten:

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

16 Sec. 9. G.S. 50-13.4(e) reads as rewritten:

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

23 Sec. 10. G.S. 50-19 reads as rewritten:

24 "**§ 50-19. Maintenance of certain actions as independent actions permissible.**

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

28 (1) Alimony;

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

30 (3) Custody and support of minor children;

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

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

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

38 Sec. 11. G.S. 52B-7(b) reads as rewritten:

39 "(b) If a provision of a premarital agreement modifies or eliminates spousal support
40 and that modification or elimination causes one party to the agreement to be eligible for
41 support under a program of public assistance at the time of separation or marital
42 dissolution, a court, notwithstanding the terms of the agreement, may require the other
43 party to provide support to the extent necessary to avoid that eligibility. Before the court

1 orders support under this subsection, the court must find that the party for whom support
2 is ordered is a dependent spouse, as defined by G.S. ~~50-16.1~~, 50-16.1A, and that ~~there are~~
3 ~~grounds for alimony under G.S. 50-16.2 or alimony pendente lite under G.S. 50-16.3.~~ the
4 requirements of G.S. 50-16.2A regarding postseparation support or G.S. 50-16.3A
5 regarding alimony have been met."

6 Sec. 12. This act becomes effective October 1, 1995, and applies to civil
7 actions filed on or after that date. This act shall not apply to pending litigation.