

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 546
Judiciary Committee Substitute Adopted 5/2/23

Short Title: Amd LLC Laws/Paternity Docs/Spouse Supp.

(Public)

Sponsors:

Referred to:

April 5, 2023

A BILL TO BE ENTITLED

AN ACT TO CREATE SPECIAL ECONOMIC INTEREST OWNERS OF LIMITED LIABILITY COMPANIES AND TO GRANT THEM INFORMATION RIGHTS AND STANDING TO SEEK JUDICIAL DISSOLUTION, TO CHANGE THE PROCESS FOR ESTABLISHING PATERNITY OF CHILDREN BORN OUT OF WEDLOCK, AND TO DENY ALIMONY TO A DEPENDENT SPOUSE FOR ENGAGING IN COHABITATION AND TO DENY POSTSEPARATION SUPPORT TO A DEPENDENT SPOUSE THAT ENGAGES IN ILLICIT SEXUAL ACTS OR COHABITATION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 57D-1-03 reads as rewritten:

"§ 57D-1-03. Definitions.

Unless otherwise specifically provided, the following definitions apply in this Chapter:

...

(10) Economic interest. – The proprietary interest of an interest owner in the capital, income, losses, credits, and other economic rights and interests of a limited liability company, including the right of the owner of the interest to receive distributions from the limited liability company.

(11) Economic interest owner. – A ~~person~~ person, including a special economic interest owner, who owns an economic interest but is not a member.

...

(15) Interest owner. – A ~~member or member~~ an economic interest owner-owner, or a special economic interest owner.

...

(21) Member. – A person who has been admitted as a member of the LLC as provided in the operating agreement or G.S. 57D-3-01, who was a member of the LLC immediately before the repeal of Chapter 57C of the General Statutes until the person ceases to be a member as provided in the operating agreement or G.S. 57D-3-02, or, with respect to a foreign LLC, a person who has been admitted as a member of the foreign LLC under the law of the jurisdiction in which the foreign LLC is organized until the person ceases to be a member under that law.

...

(25) Ownership interest. – All of an interest owner's rights and obligations as an interest owner in an LLC, including (i) any economic interest, (ii) any right to participate in the management or approve actions proposed by persons responsible for the management of the LLC, (iii) any right to bring a derivative



1 action, and (iv) any right to inspect the books and records of or receive
2 information from the LLC.

3 (26) Person. – An individual or an entity.

4 ...

5 (32c) Special economic interest owner. – A person who owns an economic interest
6 and, as provided in G.S. 57D-3-02, has rights to information and to seek
7 dissolution but is not a member.

8"

9 **SECTION 1.(b)** G.S. 57D-3-02 reads as rewritten:

10 **"§ 57D-3-02. Cessation of membership.**

11 (a) A person ceases to be a member upon the occurrence of any of the following events:

12 (1) The person does any of the following:

13 a. Becomes a debtor in bankruptcy.

14 b. Executes an assignment for the benefit of creditors under any
15 applicable law.

16 c. Has a general receiver appointed for the person pursuant to
17 G.S. 1-507.24 or has a trustee, receiver, or liquidator appointed for the
18 person or for all or substantially all of the person's property.

19 (2) In the case of an individual, the person's death or being adjudicated by a court
20 of competent jurisdiction as incompetent to manage his or her person or
21 property.

22 (3) In the case of a member with an economic interest, the transfer or
23 abandonment of the person's entire economic interest, excluding the
24 liquidation of a member's economic interest in connection with the dissolution
25 and winding up of the LLC under G.S. 57D-6-08(2), regardless of whether the
26 transferee is or becomes a member.

27 (4) The person abandoning all of the rights of his or her ownership interest except
28 his or her economic interest, or any portion thereof.

29 (b) Upon the occurrence of any of the events described in ~~subdivisions (1) and (2)~~
30 subdivision (1) of subsection (a) of this section with respect to a member, that person ~~or that~~
31 ~~person's estate, as applicable,~~ will automatically become an economic interest owner entitled only
32 to the economic interest attributable to the person's ownership interest, ~~but that person or that~~
33 ~~person's estate, as applicable, and any other person who ceases to be a member shall remain liable~~
34 ~~to the LLC for any obligation the person may have under G.S. 57D-4-02, 57D-4-06, and~~
35 ~~57D-6-12(a)(2).interest.~~

36 (c) Upon the occurrence of either of the events described in subdivision (2) of subsection
37 (a) of this section with respect to a member, the member's estate or the member through the
38 member's designated agent or court-appointed guardian will automatically become a special
39 economic interest owner entitled to (i) the economic interest attributable to the member's
40 ownership interest, (ii) the member's information rights as described in G.S. 57D-3-04, and (iii)
41 the member's standing to seek judicial dissolution under G.S. 57D-6-02(2) or under an alternative
42 remedy, if applicable, in the operating agreement.

43 (d) Any person who ceases to be a member shall remain liable to the LLC for any
44 obligation the person may have under G.S. 57D-4-02, 57D-4-06, and 57D-6-12(a)(2)."

45 **SECTION 1.(c)** This section becomes effective October 1, 2023, and applies to
46 requests for information and actions for dissolution commenced on or after that date.

47 **SECTION 2.** G.S. 29-19 reads as rewritten:

48 **"§ 29-19. Succession by, through and from children born out of wedlock.**

49 (a) For purposes of intestate succession, a child born out of wedlock shall be treated as if
50 that child were the legitimate child of the child's mother, so that the child and the child's lineal

1 descendants are entitled to take by, through and from the child's mother and the child's other
2 maternal kindred, both descendants and collaterals, and they are entitled to take from the child.

3 (b) For purposes of intestate succession, a child born out of wedlock shall be entitled to
4 take by, through and from:

5 (1) Any person who has been finally adjudged to be the father of the child
6 pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of
7 G.S. 49-14 through ~~49-16~~;G.S. 49-16.

8 (2) Any person who has acknowledged himself during his own lifetime and the
9 child's lifetime to be the father of the child in a written instrument executed or
10 acknowledged before a certifying officer named in ~~G.S. 52-10(b) and filed~~
11 ~~during his own lifetime and the child's lifetime in the office of the clerk of~~
12 ~~superior court of the county where either he or the child resides.~~G.S. 52-10(b).

13 (3) A person who died prior to or within one year after the birth of the child and
14 who can be established to have been the father of the child by DNA testing.

15"

16 **SECTION 3.(a)** G.S. 50-16.1A reads as rewritten:

17 **"§ 50-16.1A. Definitions.**

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

20 ...

21 (1a) "Cohabitation" means the act as provided in G.S. 50-16.9.

22"

23 **SECTION 3.(b)** G.S. 50-16.3A reads as rewritten:

24 **"§ 50-16.3A. Alimony.**

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

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

43 (a1) If the court finds that the dependent spouse engages in cohabitation at any time during
44 the marriage until a decree of divorce, the court shall not award alimony.

45"

46 **SECTION 3.(c)** G.S. 50-16.2A reads as rewritten:

47 **"§ 50-16.2A. Postseparation support.**

48 ...

49 (d1) If the court finds that the dependent spouse participated in an act of illicit sexual
50 behavior, as provided in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of
51 separation, the court shall not award postseparation support. If the court finds that the dependent

1 spouse engages in cohabitation at any time during the marriage until a decree of divorce, the
2 court shall not award postseparation support.
3"
4 **SECTION 3.(d)** This section is effective October 1, 2023.
5 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
6 law.