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

(Public)

Sponsors:

Referred to:

April 5, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE SPECIAL ECONOMIC INTEREST OWNERS OF LIMITED
3 LIABILITY COMPANIES AND TO GRANT THEM INFORMATION RIGHTS AND
4 STANDING TO SEEK JUDICIAL DISSOLUTION, TO CHANGE THE PROCESS FOR
5 ESTABLISHING PATERNITY OF CHILDREN BORN OUT OF WEDLOCK, AND TO
6 AMEND THE LAWS ON ALIMONY AND POSTSEPARATION SUPPORT FOR
7 DEPENDENT SPOUSES.

8 The General Assembly of North Carolina enacts:

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

10 "§ 57D-1-03. Definitions.

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

12 ...

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

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

19 ...

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

22 ...

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

31 ...

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



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1 responsible for the management of the LLC, (iii) any right to bring a derivative
2 action, and (iv) any right to inspect the books and records of or receive
3 information from the LLC.

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

5 ...

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

9"

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

11 **"§ 57D-3-02. Cessation of membership.**

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

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

14 a. Becomes a debtor in bankruptcy.

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

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

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

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

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

30 (b) Upon the occurrence of any of the events described in ~~subdivisions (1) and (2)~~
31 subdivision (1) of subsection (a) of this section with respect to a member, that person ~~or that~~
32 ~~person's estate, as applicable, will automatically become an economic interest owner entitled only~~
33 ~~to the economic interest attributable to the person's ownership interest, but that person or that~~
34 ~~person's estate, as applicable, and any other person who ceases to be a member shall remain liable~~
35 ~~to the LLC for any obligation the person may have under G.S. 57D-4-02, 57D-4-06, and~~
36 ~~57D-6-12(a)(2)-interest.~~

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

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

46 **SECTION 2.(a)** G.S. 29-19 reads as rewritten:

47 **"§ 29-19. Succession by, through and from children born out of wedlock.**

48 (a) For purposes of intestate succession, a child born out of wedlock shall be treated as if
49 that child were the legitimate child of the child's mother, so that the child and the child's lineal
50 descendants are entitled to take by, through and from the child's mother and the child's other
51 maternal kindred, both descendants and collaterals, and they are entitled to take from the child.

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

- 3 (1) Any person who has been finally adjudged to be the father of the child
4 pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of
5 G.S. 49-14 through ~~49-16~~; G.S. 49-16.
6 (2) Any person who has acknowledged himself during his own lifetime and the
7 child's lifetime to be the father of the child in a written instrument executed or
8 acknowledged before a certifying officer named in ~~G.S. 52-10(b) and filed~~
9 ~~during his own lifetime and the child's lifetime in the office of the clerk of~~
10 ~~superior court of the county where either he or the child resides.~~ G.S. 52-10(b).
11 (3) A person who died prior to or within one year after the birth of the child and
12 who can be established to have been the father of the child by DNA testing.

13"

14 **SECTION 2.(b)** G.S. 130A-101(f) reads as rewritten:

15 "(f) If the mother was unmarried at all times from date of conception through date of birth,
16 the name of the father shall not be entered on the certificate unless the child's mother and father
17 complete an affidavit acknowledging paternity which contains the following:

- 18 (1) A sworn statement by the mother consenting to the assertion of paternity by
19 the father and declaring that the father is the child's natural father and that the
20 mother was unmarried at all times from the date of conception through the
21 date of birth;
22 (2) A sworn statement by the father declaring that he believes he is the natural
23 father of the child;
24 (3) Information explaining in plain language the effect of signing the affidavit,
25 including a statement of parental rights and responsibilities and an
26 acknowledgment of the receipt of this information; and
27 (4) The social security numbers of both parents.

28 The State Registrar, in consultation with the Child Support Enforcement Section of the
29 Division of Social Services, shall develop and disseminate a form affidavit for use in compliance
30 with this section, together with an information sheet that contains all the information required to
31 be disclosed by subdivision (3) of this subsection.

32 Upon the execution of the affidavit, the declaring father shall be listed as the father on the
33 birth certificate, subject to the declaring father's right to rescind under G.S. 110-132. The
34 executed affidavit shall be filed with the registrar along with the birth certificate. In the event
35 paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any
36 action to establish paternity. The surname of the child shall be determined by the mother, except
37 if the father's name is entered on the certificate, the mother and father shall agree upon the child's
38 surname. If there is no agreement, the child's surname shall be the same as that of the mother.

39 ~~The execution and filing of this affidavit with the registrar does not affect rights of inheritance~~
40 ~~unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."~~

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

42 "**§ 50-16.1A. Definitions.**

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

45 ...

46 (1a) "Cohabitation" means the act as provided in G.S. 50-16.9.

47"

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

49 "**§ 50-16.3A. Alimony.**

50 (a) Entitlement. – In an action brought pursuant to Chapter 50 of the General Statutes,
51 either party may move for alimony. The court shall award alimony to the dependent spouse upon

1 a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and
2 that an award of alimony is equitable after considering all relevant factors, including those set
3 out in subsection (b) of this section. If the court finds that the dependent spouse participated in
4 an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior
5 to or on the date of separation, the court shall not award alimony. If the court finds that the
6 supporting spouse participated in an act of illicit sexual behavior, as defined in
7 G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the court
8 shall order that alimony be paid to a dependent spouse. If the court finds that the dependent and
9 the supporting spouse each participated in an act of illicit sexual behavior during the marriage
10 and prior to or on the date of separation, then alimony shall be denied or awarded in the discretion
11 of the court after consideration of all of the circumstances. Any act of illicit sexual behavior by
12 either party that has been condoned by the other party shall not be considered by the court.

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

17 (a1) If the court finds that the dependent spouse engaged in cohabitation with another prior
18 to a decree of divorce, the court shall not award alimony.

19"

20 **SECTION 3.(c)** G.S. 50-16.9 reads as rewritten:

21 "**§ 50-16.9. Modification of order.**

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

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

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

33 As used in this subsection, cohabitation means the act of two adults dwelling together
34 continuously and habitually in a private heterosexual relationship, even if this relationship is not
35 solemnized by marriage, or a private homosexual relationship. Cohabitation is evidenced by the
36 voluntary mutual assumption of those marital rights, duties, and obligations which are usually
37 manifested by married people, and which include, but are not necessarily dependent on, sexual
38 relations. Nothing in this section shall be construed to make lawful conduct which is made
39 unlawful by other statutes.

40 (b1) If a dependent spouse who is receiving postseparation support from a supporting
41 spouse under a judgment or order of a court of this State engages in an act of illicit sexual
42 behavior, as defined in G.S. 50-16.1A(3)a., the postseparation support shall terminate.

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

48 **SECTION 4.** Section 1 of this act becomes effective October 1, 2023, and applies to
49 requests for information and actions for dissolution commenced on or after that date. Section 2
50 of this act is effective when it becomes law and applies to the estates of decedents opened on or

1 after that date. Section 3 of this act becomes effective October 1, 2023. The remainder of this act
2 is effective when it becomes law.