



SENATE BILL 546: Amd LLC Laws/Paternity Docs/Spouse Supp.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	May 3, 2023
Introduced by:	Sen. Sawrey	Prepared by:	Kristen L. Harris Staff Attorney
Analysis of:	Second Edition		

OVERVIEW: Senate Bill 546 would do the following:

- Create a new type of ownership interest in a limited liability company after a person ceases to be a member due to being declared incompetent or his or her death.
- Remove a filing requirement for documents establishing paternity for children born out of wedlock.
- Deny alimony and postseparation support to dependent spouses who engage in illicit sexual behavior or cohabitation.

CURRENT LAW:

Chapter 57D Limited Liability Company Act

Under G.S. 57D-3-02 [Cessation of membership], a person ceases to be a member of a limited liability company upon any of the following:

- The person becomes a debtor in bankruptcy.
- The person executes an assignment for the benefit of creditors under any applicable law.
- The person has a receiver, trustee, or liquidator appointed for the person or his or her property.
- The person is declared incompetent or passes.

When any of the above occur, the person or the person's estate will automatically become an economic interest owner entitled only to the economic interest attributable to the person's ownership interest. G.S. 57D-3-02.

Under G.S. 57D-3-04 [Information rights], a member of a limited liability company may obtain documents including, but not limited to, the following: the articles of organization, the operating agreement, federal, state, or local income tax returns, a list of names and last known mailing addresses of current interest owners, and information from which the status of the business and financial condition of the LLC may be ascertained.

Under G.S. 57D-6-02(2) [Grounds for judicial dissolution], a superior court may dissolve an LLC in a proceeding brought by a member if it is established that (i) it is not practicable to conduct the LLC's business in conformance with the operating agreement and Chapter 57D of the General Statutes or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member.

Chapter 50 Divorce and Alimony

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Under G.S. 50-16.3A, a court must not award alimony to a dependent spouse if it finds the dependent spouse participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation. If the court finds that both the dependent and supporting spouse participated in an act of illicit sexual behavior then alimony shall be denied or awarded in the discretion of the court. Any act that has been condoned by either party shall not be considered by the court.

Under G.S. 50-16.2A, in deciding postseparation support, the court must consider martial misconduct by the dependent spouse occurring prior to or on the date of separation, and in considering these acts, also consider any misconduct by the supporting spouse in deciding whether to award support and the amount of support.

BILL ANALYSIS:

Section 1(a) would amend and create new definitions in Chapter 57D (North Carolina Limited Liability Company Act) of the General Statutes.

A "special economic interest owner" would mean " a person who owns an economic interest and, as provided in G.S. 57D-3-02 [Cessation of membership], has a right to information and to seek dissolution but is not a member."

A "special economic interest owner" would be included in the definitions of "economic interest owner" and "interest owner."

Section 1(b) would add a new subsection to G.S. 57D-3-02 [Cessation of membership] providing upon either the occurrence of a member's death or a member being declared incompetent to manage his or her person or property, the member's estate, or the member through his or her designated agent or guardian would automatically become a special economic interest owner entitled to (i) the economic interest attributable to the member's ownership interest, (ii) the member's information rights as described in G.S. 57D-3-04 [Information rights], and (iii) the member's standing to seek judicial dissolution under G.S. 57D-6-02(2) [Grounds for judicial dissolution] or under an alternative remedy, if applicable, in the operating agreement.

Section 2 would no longer require a written document executed by a person acknowledging himself to be the father of a child born out of wedlock and before a certifying officer identified in G.S. 52-10(b) to be filed with the clerk. A certifying officer includes a notary public, a judge, a magistrate, and clerk of the General Court of Justice.

Section 3(a) would add a definition for "cohabitation" in G.S. 50-16.1A [Definitions.]

Section 3(b) would prohibit a court from awarding alimony to a dependent spouse if the court finds that the dependent spouse engaged in cohabitation at any time during the marriage until a decree of divorce.

Section 3(c) would prohibit a court from awarding postseparation support to a dependent spouse if the court finds that the dependent spouse (i) participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation or (ii) engaged in cohabitation at any time during the marriage until a decree of divorce.

EFFECTIVE DATE: Section 1 of this act would be effective October 1, 2023, and apply to requests for information and actions for dissolution commenced on or after that date. Section 3 of this act would be effective October 1, 2023. Except as otherwise provided, the remainder of this act would be effective when it becomes law.