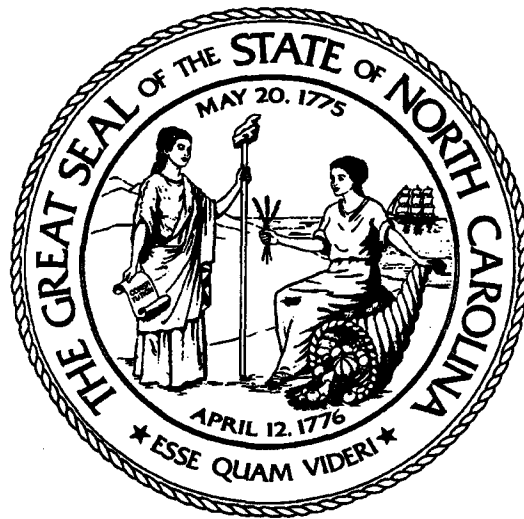


**LEGISLATIVE
RESEARCH COMMISSION**

FAMILY ISSUES COMMITTEE



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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TABLE OF CONTENTS

LETTER OF TRANSMITTAL.....	i
LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP.....	ii
PREFACE.....	1
COMMITTEE PROCEEDINGS.....	3
FINDINGS AND RECOMMENDATIONS.....	15
APPENDICES	
RELEVANT PORTIONS OF UNRATIFIED H.B. 1319 (2ND EDITION) OF THE 1993 SESSION, THE STUDIES BILL, HOUSE BILL 1148, HOUSE JOINT RESOLUTIONS 705 AND 1452, AND SENATE JOINT RESOLUTION 993 OF THE 1993 SESSION	A-1
MEMBERSHIP OF THE LRC COMMITTEE ON FAMILY ISSUES.....	B-1
STATUTES AND RULES IN NORTH CAROLINA ON EQUITABLE DISTRIBUTION AND ALIMONY.	C-1
LEGISLATIVE PROPOSAL I -- A BILL TO BE ENTITLED AN ACT TO ALLOW INTERIM DISTRIBUTIVE AWARDS IN EQUITABLE DISTRIBUTION CASES SUMMARY OF THE BILL.....	D-1
LEGISLATIVE PROPOSAL II -- A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT CLAIMS FOR EQUITABLE DISTRIBUTION BE RESOLVED BEFORE A DIVORCE MAY BE GRANTED SUMMARY OF THE BILL	E-1
LEGISLATIVE PROPOSAL III -- A BILL TO BE ENTITLED AN ACT TO AUTHORIZE DISTRICT COURT JUDGES TO SANCTION PARTIES TO EQUITABLE DISTRIBUTION PROCEEDINGS FOR PURPOSEFUL, PREJUDICIAL DELAY OF THE PROCEEDINGS SUMMARY OF THE BILL	F-1
LEGISLATIVE PROPOSAL IV -- A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PILOT MEDIATION PROGRAM FOR EQUITABLE DISTRIBUTION UNDER THE ADMINISTRATIVE OFFICE OF THE COURTS	

SUMMARY OF THE BILL G-1
COST ESTIMATE G-6

LEGISLATIVE PROPOSAL V -- A BILL TO BE ENTITLED
AN ACT TO MAKE CHANGES IN THE LAWS PERTAINING
TO ALIMONY
SUMMARY OF THE BILL H-1

LEGISLATIVE PROPOSAL VI -- A JOINT RESOLUTION
AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION
TO CONTINUE THE STUDY OF FAMILY LAW REFORM
SUMMARY OF THE BILL I-1

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



January 11, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on issues related to family law and the court system. The report was prepared by the Legislative Research Commission's Committee on Family Issues pursuant to G.S. 120-30.17(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dan Blue".

Daniel T. Blue, Jr.
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight".

Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission





1993-1994

LEGISLATIVE RESEARCH COMMISSION

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of family issues would have been authorized by Part II, Section 2.1, Subdivisions (28), (45), (70), and (85) of House Bill 1319 (2nd edition), which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session. Part II, Section 2.1, Subdivisions (28), (45), (70), and (85) of House Bill 1319 would allow studies authorized for the Legislative Research Commission to consider House Bill 1148, House Joint Resolutions 705 and 1452, and Senate Joint Resolution 993 in determining the nature, scope and aspects of the study. The relevant portions of House Bill 1319, House Bill 1148, House Joint Resolutions 705 and 1452,

and Senate Joint Resolution 993 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Family and Juvenile Law area under the direction of Senator Ballance. The Committee was chaired by Senator Marshall and Representative Easterling. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the Committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Committee on Family Issues met five times to study issues related to family law. The Committee minutes are on file in the Committee notebook in the Legislative Library.

January 26, 1994

The Committee met and adopted its budget. The Committee heard the following presentations:

Divorce Education for Couples With Children

Ms. Liz Johnson, a professional counselor from Charlotte, spoke about how many children are affected by divorce each year. She talked about divorce education courses, which are designed to instruct parents and other people about the effects of divorce on the family. These courses are not mandatory in Mecklenburg County, although there will be court-ordered classes soon.

Ms. Bennett Little Cotten, a marital and family therapist from Raleigh, spoke about the impact of divorce on children. She described two educational programs for divorcing parents and evaluations of these programs' effectiveness in helping parents change. She supported a pilot program of mandatory education for divorcing parents, to help them to be sensitized to their children's needs.

Mr. George O'Neal, Executive Director of the Family Services Center of Wake County, spoke to the Committee in support of a divorce education program to help lessen the trauma for the children. He explained what topics divorce education programs typically cover.

Mr. Jim Drennan, Director of the Administrative Office of the Courts, told the Committee that in the past six months there was an 8.3% increase in domestic case

filings. Ms. Kathy Shuart, Administrator for Court Services, Administrative Office of the Courts, told the Committee about divorce education programs in other states. She also talked about North Carolina's child custody and visitation mediation program, a mandatory referral program that is now in ten counties. The 1994 budget for that program is \$339,784.

Alimony

Professor Suzanne Reynolds, Wake Forest University School of Law, told the Committee that North Carolina is the only state that makes fault the primary basis for alimony; only eighteen states even entertain fault as a factor for alimony. Moreover, all other states besides North Carolina and Texas provide for temporary spousal support. Evidence of fault is not entertained on the issue of temporary support; the focus is on economic need. Alimony pendente lite is the closest thing in this state to temporary spousal support. However, the average time for an alimony pendente lite claim from filing to hearing is from 30 days to 4 months, and the average cost to acquire this temporary support is roughly \$4,000.00 in attorney's fees with a retainer of \$2,500.00.

Equitable Distribution

Ms. Aana Lisa Johnson, Committee member and member of a Mecklenburg County group, Women for Domestic Justice, explained how she was divorced after thirty years of marriage and four children. During their marriage, she and her ex-husband built a successful business. She described the problems that she had encountered in the process of attempting to get an equitable distribution of their property. She suggested the following changes to the laws:

1. Remove the requirement that judges use the "date of separation" values when distributing marital assets.

2. Require post-separation appreciation of marital property, however titled, to be a part of the final distribution.
3. Require income from marital property, however titled, to be distributed to both parties during separation and at final distribution.
4. Prohibit remarriages until the final property settlement.
5. Require court-appointed appraisers, to be paid for from marital funds.
6. Allow for "no-fault" post-separation support, to be provided as soon as practical to the dependent spouse, with priority on the calendar.
7. Require the supporting spouse to provide for children over age 18 who are enrolled in school.
8. Mandatory counseling for both spouses, particularly to make parties aware of the emotional toll divorce will have on the children and ways to diminish it.
9. Mandatory mediation resulting in a parenting agreement, as opposed to child custody.
10. Consider alternatives to the adversarial domestic court system for division of property in divorce: for example, domestic mediation by a qualified legal professional.
11. Restructure the laws, where necessary, so that divorce is more like the dissolution of a business partnership rather than a criminal proceeding in which one or more of the parties must be proven guilty.

Judge Clarence E. Horton, Jr., District Court Judge, Cabarrus County, told the Committee that the judge's responsibility is to classify, evaluate, and distribute the property. Most disputes come at the time of distribution, particularly about family property or businesses and pensions. There are factors that can be considered;

however, there is no true formula to use in distribution. Moreover, there are still a lot of regional differences.

Judge Horton talked about problems of delay of equitable distribution cases. He said that most cases should be settled in a year. However, there cannot be an equitable distribution until there is a divorce. Given this, there is a built-in fourteen-month delay: twelve months for the separation, a month to file, and a month to answer. Equitable distribution cannot be tried sooner, unless both parties agree, and the party with control of the case will most likely not agree. Judge Horton looked at the Court of Appeals cases for the last two years to get an idea of the length of time from the date of divorce to the date of the equitable distribution order. The average was 1.91 years, plus fourteen months for the divorce. That amount of time could be shortened if equitable distribution were considered before the divorce. Another incentive might be not to grant the divorce before there is an equitable distribution.

Judge Horton stated that the statutes should allow for an interim transfer of assets or a temporary distributive award. Judge Horton cited Brown v. Brown, which went on for ten years. Ms. Brown did not have money to pay her attorney, worked minimum wage jobs for five years, and was occasionally without heat in her home. She had no access to any of the income-producing assets. The judge awarded her an interim award of \$400,000 out of \$2.4 million in assets. However, the Court of Appeals overturned the decision on the basis that the statutory language only allowed for an interim transfer of assets and not of funds.

Judge Horton explained that there is a Supreme Court case holding that tax value is not admissible over the objection of a property owner. In most counties the tax values are fairly accurate and would save money. There would have to be legislation to allow the admission of tax values.

Ms. Linda Sharp of Kill Devil Hills spoke about her equitable distribution case. She said that, ten years after separation and almost eight years after divorce, she had not received any funds or assets from the marital estate, although her ex-husband had. Ms. Sharp said that there were other cases like hers in Dare County. She said that there are four district court judgeships in the First Judicial District, but only three are filled. She complained that there is a problem in that district of cases being taken off the calendar and not heard.

Ms. Jan Morgan of Nags Head said that she has experienced the same types of problems in her case. She was separated in 1988, divorced in 1990, and has not yet had a settlement in her equitable distribution case, nor has her ex-husband paid child support on a timely basis. Representative Hackney commented that there could be remedies in the equitable distribution laws, possibly requirements of fines or payment of attorney's fees where there is total obstruction. A discussion followed as to the problem of federal bankruptcy laws where equitable distribution is concerned.

September 14, 1994

Equitable Distribution

Ms. Carlyn Poole, a family law attorney in Raleigh, commented on some of the possible recommendations from the Committee and suggested other ways that the equitable distribution laws could be improved. To address the problem of parties having unequal financial resources, she supported allowing the awarding of interim allocations to the spouse who does not have control of the marital funds and the awarding of attorney's fees. To address the problem of delay between separation and an equitable distribution award, she suggested having very strong disclosure requirements early in the equitable distribution process; the person with control of the assets should have the burden of disclosure, and the trial judge should meet with the parties early on to set time limits and schedules. Also, she commented that changing

the date of valuation was not the solution, that the problem was not the date of valuation, but the year's time between separation and divorce and not being able to have an equitable distribution until after the divorce.

Mr. Wiley Wooten, Legislative Chair of the North Carolina Bar Association's Family Law Section, said that judges need mandatory training in equitable distribution. He supported the interim allocation of marital assets and more certain time limits in equitable distribution cases. He also suggested having expedited procedures for cases involving small estates. He commented that denying a person a divorce until equitable distribution is settled is not an answer. He mentioned several other possibilities: a family court, strict rules on filings of affidavits and accompanying documentation, and more mediation and arbitration.

Several members of Women for Domestic Justice, based in Charlotte, spoke to the Committee about the problems they have had with their equitable distribution cases, including how they had no control of most of the marital assets during the years between the date of separation and the present -- through trial and sometimes through several appeals. Some of the women said that the marital estates in their cases were worth millions of dollars, but they were unable to pay for costly property valuations; some owe large amounts of attorney's fees. They also asserted that their ex-husbands and ex-husbands' attorneys had used delaying tactics and had displayed harassing behavior. Their presentations are reproduced verbatim in the Committee minutes found in the Legislative Library.

A Committee discussion followed on the tactics of some attorneys in equitable distribution cases, the amount of attorney's fees, and the possibility of court-ordered mediation.

October 13, 1994

No-fault Divorce

Mr. William J. Brooks, Jr., Vice President of the North Carolina Family Policy Council, said that no-fault divorce is part of the reason for the increase in the numbers of divorces. He spoke about the trauma of divorce to children. He suggested that fault be restored as a requirement for divorce, at least in cases where a divorce is not contested, and that fault be allowed as a factor in determining the distribution of assets.

Representative Hackney responded that when the state required fault for divorce, couples conspired for one spouse to commit adultery so that they could divorce, and after no-fault divorce was adopted the fault grounds were used only for vindictive purposes. He commented that allowing easier alimony is one way to discourage divorce.

Alimony

Ms. Marcia Armstrong, Vice Chair of the North Carolina Bar Association's Family Law Section, brought a proposed alimony bill from the Bar Association to the Committee. She explained the need for changes to the alimony laws, then she explained the differences between the 1993 alimony reform bill that came before the Committee in January and the proposed bill. Mr. Wiley Wooten also spoke on behalf of the proposed bill.

The Committee decided to have the staff put the bill in proper form to present for consideration at the next meeting.

Equitable Distribution

Ms. Lynn Marshbanks, Co-counsel to the Committee, reviewed some possible recommendations for the Committee to consider. The Committee asked that the following legislation be drafted for consideration: (1) allow courts to order interim distributive awards; (2) require post-separation appreciation of, and income from, marital property to be marital property; (3) encourage courts to appoint appraisers, to be paid from marital funds.

Ms. Marshbanks also presented recommendations to be considered by the North Carolina Association of District Court Judges at their fall conference. The Committee decided to wait until its next meeting to consider those recommendations, since that would be after the conference.

Representative Hackney suggested some additional legislation for the Committee to consider. The Committee asked that the following legislation be drafted for consideration: (1) create five Special District Court Judges' positions; they would be dispatched by the Chief Justice to take control of particularly troublesome equitable distribution cases; (2) sanction attorneys for purposeful delay, evasion of discovery, and purposeful neglect of automatic discovery; (3) prohibit divorce before entry of an equitable distribution order.

Ms. Jane Odom, Committee member, moved that the staff work on draft legislation requiring mediation in pilot counties. The motion passed.

Representative Hackney asked that the staff look at what other states do about stays in equitable distribution proceedings, whether they are automatic or not or whether there is a presumption one way or the other in favor of the stay or against the stay.

November 10, 1994

On the agenda for this meeting were seven bills to be reviewed and acted upon by committee members, and a presentation by Judge Clarence Horton on the recommendations of district court judges. Time permitted consideration of only three of the bills, and hearing Judge Horton's presentation. Review of the remaining four proposals were scheduled for the next meeting on December 1, 1994.

The first bill the Committee reviewed was the Bar Association's Family Law Section proposed changes to the alimony laws. Since the Committee had already heard from the Family Law Section in previous meetings on the purpose and substance of the

bill, the Committee focused on specific language and proposed several changes to ensure clarity and conformity with case and statutory law. At the close of the discussion the bill was adopted, as amended, subject to editorial review by the Committee at its December 1 meeting.

The second bill reviewed was that proposing to require mediation of equitable distribution cases. The bill was drafted to establish a pilot project under the direction of the Administrative Office of the Courts. Under this project, certain participating judicial districts would require that the parties attempt to settle equitable distribution through mediation rather than by trial. Mr. Jim Drennan and Ms. Kathy Shuart, both of the AOC, provided information to the Committee on how such a project would be developed, possible costs for implementation, and a brief explanation of how the child custody mediation pilot project is currently working. The Committee made a few changes to the draft with respect to qualifications of mediators and reporting of mediation results to the court, and adopted the proposal, as amended.

The third bill the Committee considered was the proposal to require the Court to impose sanctions against parties who wilfully obstruct or unreasonably delay equitable distribution proceedings. Under current law, judges have the authority to impose sanctions, but this authority is permissive rather than mandatory, and judges are apparently reluctant to impose the sanctions, as well as attorneys being reluctant to request them. The bill was amended to expand requirements of pretrial procedures, and was approved as amended.

Judge Clarence Horton made a presentation on the findings and recommendations of a committee of the North Carolina Association of District Court Judges. These findings and recommendations may be found in a document entitled "A Search for Solutions: A Report by the Committee to Assess Equitable Distribution Procedures and Dispositions in the North Carolina District Courts." This report was adopted by the

Association at its fall conference held on October 13, 1994 in Boone, N.C. A copy of this report is part of the Committee record and may be found in the Committee notebook in the Legislative Library.

December 1, 1994

The Committee met to consider four legislative proposals, and to review three other proposals the Committee adopted at its November 10 meeting. Following is a summary of the status of each proposal.

Allow Interim Distributive Awards - The Committee reviewed the draft and amended it to clarify the requirement that if an interim award/transfer is made the court make a preliminary finding as to distribution of the assets. The Committee approved the proposal, as amended. The proposal and a summary of it may be found in Appendix D-1, et seq. of this report.

No Divorce until ED - The Committee discussed the policy question of requiring resolution of equitable distribution before a divorce may be granted, and decided to recommend the proposal. The proposal was approved, as amended. The proposal and a summary of it may be found in Appendix E-1, et seq. of this report.

Sanctions for Purposeful Delay of Equitable Distribution - In earlier discussions of the significant problem of how long it takes to dispose of ED cases in some judicial districts, the Committee felt that requiring judges to sanction parties who are wilfully obstructing the process may ultimately have an impact on this type of conduct. The draft proposal was amended to ensure that the sanction would apply only to conduct that was shown to be wilful and unreasonable. The proposal was approved, as amended. A copy of the proposal and a summary of it may be found in Appendix F-1, et seq. of this report.

Pilot Mediation Program - After review of the changes made and the cost analysis provided by the Administrative Office of the Courts, the Committee amended the

proposal to appropriate \$190,415 in each fiscal year for administration and management of the pilot programs by the AOC. The Committee also discussed whether all of the pilots should be mandatory and decided they should be. The Committee adopted the proposal, as amended. A copy of the proposal, summary, and cost analysis may be found in Appendix G-1, et seq. of this report.

Change Alimony Laws - Committee reviewed the changes made to the November 10 draft and approved the draft, as amended. A copy of the proposal and a summary of it may be found in Appendix H-1, et seq. of this report.

Income from and Appreciation of Marital Assets are marital property - The Committee reviewed a draft proposal that would authorize the courts to classify as marital property the income realized from marital property, or increases in the value of marital property, occurring after the date of separation. After review of the draft, the Committee felt this was a more complex issue than the Committee had time to study thoroughly, thus, it decided not to approve the proposed legislation, but rather to recommend to the General Assembly that this matter be given further study. The recommendation is included as Recommendation Seven under the Findings and Recommendations section of this report.

Continue Family Issues Study - Because of the intervention of the special legislative session (crime session) and the regular (short) session, the Committee's time for meeting was seriously limited; thus, it was not able to address all of the family law reform issues it had identified as needing attention. The Committee decided to recommend that the LRC continue the study of family law reform. A copy of the legislative proposal and a summary of it may be found in Appendix I-1, et seq. of this report.

The Committee directed staff to prepare the final report with the approved legislative proposals and recommendations included, and set its meeting date to approve the report as December 21, 1994.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION ONE: The General Assembly should enact the bill found in Appendix D which clarifies that district court judges are authorized to make interim distributive awards while equitable distribution and divorce proceedings are pending.

The Committee finds that in some equitable distribution cases, the spouse who is not in control of the marital assets often is without financial resources to maintain a stable living environment or to pay the legal and other costs involved in proceeding with the action in a timely, fair, and sufficient manner. The Committee was particularly concerned about testimony indicating that some spouses in control of the assets intentionally delay proceedings so as to put the other spouse in a more vulnerable position with respect to settlement negotiations. The Committee finds that the district court judge should have the authority to order the spouse in control of the assets to transfer some or all of them in an amount and manner sufficient to assist the other spouse during the pendency of the proceeding, so long as the judge finds that assets of similar value are likely to be distributed at trial to the spouse to whom the interim distributive award is made.

RECOMMENDATION TWO: The General Assembly should enact the bill found in Appendix E which requires that no judgment for absolute divorce may be issued until all claims for equitable distribution have been resolved.

The Committee finds that in some equitable distribution cases, extraordinary delays in disposing of these cases are the result of dilatory tactics by one spouse, usually the spouse in control of the marital assets. The Committee also finds that the current requirement to resolve equitable distribution after divorce, creates problems with respect to property rights, particularly if one or both of the spouses have

remarried by the time the equitable distribution case comes to trial. Although the views of Committee members and resource persons were mixed as to whether this change should be recommended, the Committee finds that the bill should be introduced to enable further discussion and consideration by one or more standing committees of the General Assembly. Additionally, consideration should be given to the revision of the grounds for absolute divorce and the manner and timing in which a claim for divorce may be asserted.

RECOMMENDATION THREE: The General Assembly should enact the bill found in Appendix F which requires the establishment of certain discovery and pretrial procedures in equitable distribution cases, and also requires district court judges to sanction parties who are found to have wilfully obstructed or unreasonably delayed equitable distribution proceedings

Much of the Committee's equitable distribution study and discussion focused on the unreasonable amount of time it takes to resolve some equitable distribution cases. Since dilatory tactics were alleged to be a significant part of the reason for these delays, the Committee supports the recommendation that parties who engage in such tactics be sanctioned by the judge. Although judges currently have the authority to sanction parties for delay of equitable distribution proceedings, sanctions are rarely requested or imposed. The Committee further finds that poor case handling and scheduling by the court contributes to the problem.

RECOMMENDATION FOUR: The General Assembly should enact the bill found in Appendix G which establishes a pilot mediation program for equitable distribution cases.

The Committee finds that mediation has been successful in helping parties settle contested issues involving child support and property distribution. Although there was some concern that to make mediation mandatory inserts another step in the process and perhaps increases expense, the prevailing view was that often if you can get the parties together and talking with each other, they are able to settle the matters, even though they might have initially resisted efforts to mediate or negotiate. With respect to cost, although the parties bear the expense of mediation, if they are able to settle all claims without a trial then the overall expense of the proceeding will be significantly reduced. Finally, although the parties in selected districts would be required to attend at least one mediation session, the parties have not waived their rights to ultimately resolve the issues at trial.

RECOMMENDATION FIVE: The General Assembly should enact the bill found in Appendix H, which makes changes to the North Carolina alimony laws. There are three primary and several secondary issues that the bill addresses. The primary issues relate to when a claim may be brought for alimony and post separation support, the grounds for each claim, and the factors the court may consider in granting or denying the award and in determining the amount. Secondary issues relate to duration of awards and conforming changes to relevant statutes, such as court procedures for asserting alimony claims.

The Committee finds that changes to the alimony laws are necessary in the interests of fairness to both spouses and in the interests of ensuring that both spouses have the economic wherewithal to get on with their lives after divorce. The Committee also finds that quite often one spouse has control of most, if not all, of the marital assets during the separation period. If the other spouse does not have sufficient assets or cash to provide for the necessities of life and, during the marriage, has been

substantially dependent upon the other spouse for support, then the dependent spouse should continue to be supported by the supporting spouse for a reasonable length of time and in a reasonable amount. The Committee discussed the matter of whether fault should continue to be a ground for making a claim for temporary or permanent alimony. The Committee finds that economic need should be the primary basis on which alimony is awarded, and that certain conduct of one or both spouses may be considered in awarding or denying alimony and establishing the amount thereof.

RECOMMENDATION SIX: The General Assembly should enact the resolution found in Appendix G which authorizes the Legislative Research Commission to continue its study of family law issues.

The legislation authorizing the family issues study included matters pertaining not only to equitable distribution, but to divorce education and to the new child support guidelines. Because of the intervention of the crime session and the short session, the time available for the Committee's study was limited, thus the Committee decided to focus on two issues, alimony and equitable distribution. The Committee finds that the issues of child support guidelines, divorce education, education and specialization of judges, the need for more district court judges, and classification of certain marital property very much need the attention of the General Assembly and therefore should be studied during the 1995 legislative session. If the General Assembly authorizes the LRC to continue its study of family law issues, the study should include consideration of the report of the North Carolina Association of District Court Judges entitled "A Search for Solutions: A report by the Committee to Assess Equitable Distribution Procedures and Dispositions in the North Carolina District Courts." This report was adopted in October, 1994.

RECOMMENDATION SEVEN: The General Assembly should continue to study the issue of whether post-separation income from and appreciation in value of marital property should itself be considered marital property and thereby equitably distributed as other marital property.

The Committee finds that valuation of marital property as of the date of separation poses a particular hardship when the final resolution of equitable distribution claims does not come about for one or more years after the final judgment of divorce. The hardship results because the valuation is old and intervening events may have significantly increased or decreased the property value, or may have produced income or losses from certain types of property, and that these results ought to be considered by the judge when making an equitable distribution award. However, because of the complexity of property valuation and ownership issues, the Committee felt that it had not had sufficient time to consider all that is necessary in order for a bill to be drafted accurately and sufficiently. The Committee feels strongly that this matter should be addressed by the General Assembly in order to make property distributions truly equitable. The Committee recommends that if the General Assembly authorizes the LRC to continue the study of family issues, that the study include the classification of post-separation income/loss from and appreciation/depreciation of marital property.

APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

. . . .

(28) Family Law Reform (H.J.R. 705 - R. Thompson),

. . . .

(45) Divorce Education Program for Couples with Children (H.B. 1148 - Alexander),

. . . .

(70) Equitable Distribution (H.J.R. 1452 - Easterling),

. . . .

(85) Family Law Reform (S.J.R. 993 - Perdue),

. . . .

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...
PART XII.-----EFFECTIVE DATE

Sec. 12.1. This act is effective upon ratification. Part VI of this act is repealed on June 30, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE JOINT RESOLUTION 705

Sponsors: Representatives R. Thompson; Bowman, Cummings, Easterling, Gottovi, Mitchell, Russell, and R. Thompson.

Referred to: Rules, Calendar, and Operations of the House.

April 1, 1993

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY FAMILY LAW REFORM.

3 Whereas, the increasing case load of district courts throughout the State
4 often results in prolonging the resolution of domestic matters; and

5 Whereas, procedural and remedial changes are needed in order to expedite
6 the resolution of equitable distribution and child support and custody issues before the
7 court. Such changes are needed so that parents and children involved in divorce may
8 lead their lives free of extensive and costly litigation that obstructs emotional healing,
9 interferes with harmonious child rearing, and depletes family resources that can best be
10 used for life's essentials; and

11 Whereas, strides have been made in ensuring an equitable distribution of
12 marital property, child support awards that address the needs of children and the
13 financial abilities of parents, and better methods for collecting current and past due
14 child support, problems continue to exist in these areas. State law and judicial system
15 practice should be regularly reviewed to ensure that necessary changes are made that
16 enure to the benefit of children, their parents, and the State;

17 Now, therefore,

18 Be it resolved by the House of Representatives, the Senate concurring:

19 Section 1. The Legislative Research Commission may study the necessity
20 for family law reform, including the following issues:

21 (1) The need for a family court system independent of district court, the
22 exclusive jurisdiction of which would be all matters pertaining to
23 marriage, divorce, child custody and support, spousal support,
24 distribution of marital property, and adoption;

- 1 (2) Procedural changes and additional remedies necessary to expedite the
2 resolution of matters pertaining to equitable distribution, child support
3 awards and collection, and other relevant domestic issues before the
4 court; and
5 (3) Review of the recently adopted child support guidelines to determine
6 if additional factors should be considered in determining child support
7 amounts.

8 Sec. 2. In making appointments to this study committee, the Commission
9 may ensure that public membership on the committee fairly represents the following:

- 10 (1) Members of the family law section of the North Carolina Bar
11 Association;
12 (2) District court judges and clerks of court;
13 (3) Persons qualified to provide mediation services in child custody
14 matters referred by the court; and
15 (4) Citizens who are not affiliated with the legal profession or court
16 system, but who have been a party to a child custody or support, or
17 equitable distribution matter heard or decided by the court within the
18 last five years.

19 Sec. 3. The LRC Committee on Family Law Reform may report to the
20 1993 General Assembly, Regular Session 1994, and may make its final report to the
21 1995 General Assembly.

22 Sec. 4. There is appropriated from the General Fund to the Legislative
23 Research Commission the sum of fifteen thousand dollars (\$15,000) for the 1993-94
24 fiscal year and the sum of fifteen thousand dollars (\$15,000) for the 1994-95 fiscal year
25 to carry out the study of family law reform.

26 Sec. 5. This resolution is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

2

HOUSE BILL 1148
Committee Substitute Favorable 5/11/93

Short Title: Divorce Education Program.

(Public)

Sponsors:

Referred to:

April 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO
2 STUDY THE DEVELOPMENT OF AN EDUCATIONAL PROGRAM FOR
3 DIVORCING COUPLES WITH CHILDREN.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. The Legislative Research Commission is authorized to study the
7 need for and the development of a program to educate and sensitize divorcing couples
8 with children about the needs of their children during the separation and divorce
9 process and after the divorce has been granted. The Commission may address issues
10 that bear on needs of children of divorcing and divorced parents and shall specifically
11 address the following:

- 12 (1) The components of such an educational program including the impact
13 of divorce on children and the family relationship and the couple's
14 financial responsibilities for the children;
- 15 (2) The availability of the educational program to couples at various times
16 throughout the separation and divorce process;
- 17 (3) The availability of community resources for families affected by
18 divorce; and
- 19 (4) An administrative plan to implement the educational program
20 including (a) whether the program should be offered statewide or as a
21 pilot program in selected counties; (b) provisions to allow waiver of
22 the program requirements by the court; (c) cost estimates for the

1 program and estimates of fees to be charged attendees; and (d) other
2 administrative matters necessary for program implementation.

3 Sec. 2. The Legislative Research Commission shall seek input from persons
4 with expertise in assisting families through and after the divorce process in developing
5 the educational program.

6 Sec. 3. The Legislative Research Commission shall report its findings and
7 recommendations to the 1995 General Assembly and may make an interim report to the
8 1994 General Assembly.

9 Sec. 4. This act is effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

H

1

HOUSE JOINT RESOLUTION 1452

Sponsors: Representatives Easterling; and Luebke.

Referred to: Rules, Calendar, and Operations of the House.

May 17, 1993

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY EQUITABLE DISTRIBUTION.

3 Whereas, the resolution of equitable distribution claims by the courts has a
4 substantial impact on the quality of life of many families involved in divorce
5 proceedings; and

6 Whereas, in many judicial districts across the State equitable distribution
7 claims are pending for lengthy periods, sometimes years, which delay has a substantial
8 negative impact on the emotional and financial well-being of the families involved in
9 the claims; and

10 Whereas, the law of equitable distribution and its application by the court
11 system should be reviewed periodically to ensure that it is being applied fairly,
12 equitably, and expeditiously;

13 Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

14 Section 1. The Legislative Research Commission may study the equitable
15 distribution law to determine and make recommendations on how it affects women and
16 families.

17 Sec. 2. The LRC Committee on Equitable Distribution may report to the
18 1993 General Assembly, Regular Session 1994, and may make its final report to the
19 1995 General Assembly.

20 Sec. 3. This resolution is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE JOINT RESOLUTION 993

Sponsors: Senators Perdue; Martin of Guilford, Marshall, Plexico, Seymour, Tally, Cochrane, Jordan, Gunter, Winner of Mecklenburg, Gulley, Martin of Pitt, Ward, Hoyle, Hunt, Cooper, Richardson, Forrester, Allran, and Simpson.

Referred to: Rules and Operation of the Senate.

April 29, 1993

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY FAMILY LAW REFORM.

3 Whereas, the increasing case load of district courts throughout the State
4 often results in prolonging the resolution of domestic matters; and

5 Whereas, procedural and remedial changes are needed in order to expedite
6 the resolution of equitable distribution and child support and custody issues before the
7 court. Such changes are needed so that parents and children involved in divorce may
8 lead their lives free of extensive and costly litigation that obstructs emotional healing,
9 interferes with harmonious child rearing, and depletes family resources that can best be
10 used for life's essentials; and

11 Whereas, strides have been made in ensuring an equitable distribution of
12 marital property, child support awards that address the needs of children and the
13 financial abilities of parents, and better methods for collecting current and past due
14 child support, problems continue to exist in these areas. State law and judicial system
15 practice should be regularly reviewed to ensure that necessary changes are made that
16 enure to the benefit of children, their parents, and the State;

17 Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

18 Section 1. The Legislative Research Commission may study the necessity
19 for family law reform, including the following issues:

20 (1) The need for a family court system independent of district court, the
21 exclusive jurisdiction of which would be all matters pertaining to
22 marriage, divorce, child custody and support, spousal support,
23 distribution of marital property, and adoption;

- 1 (2) Procedural changes and additional remedies necessary to expedite the
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3 awards and collection, and other relevant domestic issues before the
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5 (3) Review of the recently adopted child support guidelines to determine
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7 amounts.

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12 (2) District court judges and clerks of court;
13 (3) Persons qualified to provide mediation services in child custody
14 matters referred by the court; and
15 (4) Citizens who are not affiliated with the legal profession or court
16 system, but who have been a party to a child custody or support, or
17 equitable distribution matter heard or decided by the court within the
18 last five years.

19 Sec. 3. The LRC Committee on Family Law Reform may report to the
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21 1995 General Assembly.

22 Sec. 4. There is appropriated from the General Fund to the Legislative
23 Research Commission the sum of fifteen thousand dollars (\$15,000) for the 1993-94
24 fiscal year and the sum of fifteen thousand dollars (\$15,000) for the 1994-95 fiscal year
25 to carry out the study of family law reform.

26 Sec. 5. This resolution is effective upon ratification.

APPENDIX B

**FAMILY ISSUES COMMITTEE
MEMBERSHIP
1994 - 1995**

LRC MEMBER: Sen. Frank W. Ballance, Jr.
P.O. Box 616
Warrenton, NC 27589
(919)257-1012

President Pro Tempore's Appointments

Sen. Elaine Marshall, Cochair
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Sen. John Blackmon
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Charlotte, NC 28233
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Ms. Kathy Burris
P.O. Box 3519
Kill Devils Hills, NC 27948

Judge William G. Jones
District Court Judge
700 E. Fourth St., Suite 304
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Sen. William N. Martin
P.O. Box 21325
Greensboro, NC 27420
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Mrs. Jane Odom
15131 Birling Court
Charlotte, NC 28278

Sen. Beverly Perdue
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New Bern, NC 28563
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Speaker's Appointments

Rep. Ruth M. Easterling, Cochair
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Rep. Jerry Braswell
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Rep. Michael Decker
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Rep. Joe Hackney
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APPENDIX C

§50-16.1. Definitions.

As used in the statutes relating to alimony and alimony pendente lite unless the context otherwise requires, the term:

- (1) "Alimony" means payment for the support and maintenance of a spouse, either in lump sum or on a continuing basis, ordered in an action for divorce, whether absolute or from bed and board, or an action for alimony without divorce.
- (2) "Alimony pendente lite" means alimony ordered to be paid pending the final judgment of divorce in an action for divorce, whether absolute or from bed and board, or in an action for annulment, or on the merits in an action for alimony without divorce.
- (3) "Dependent spouse" means a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.
- (4) "Supporting spouse" means a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent or from whom such other spouse is substantially in need of maintenance and support.

§50-16.2. Grounds for alimony.

A dependent spouse is entitled to an order for alimony when:

- (1) The supporting spouse has committed adultery.
- (2) There has been an involuntary separation of the spouses in consequence of a criminal act committed by the supporting spouse prior to the proceeding in which alimony is sought, and the spouses have lived separate and apart for one year, and the plaintiff or defendant in the proceeding has resided in this State for six months.
- (3) The supporting spouse has engaged in an unnatural or abnormal sex act with a person of the same sex or of a different sex or with a beast.
- (4) The supporting spouse abandons the dependent spouse.
- (5) The supporting spouse maliciously turns the dependent spouse out of doors.
- (6) The supporting spouse by cruel or barbarous treatment endangers the life of the dependent spouse.
- (7) The supporting spouse offers such indignities to the person of the dependent spouse as to render his or her condition intolerable and life burdensome.
- (8) The supporting spouse is a spendthrift.
- (9) The supporting spouse is an excessive user of alcohol or drugs so as to render the condition of the dependent spouse intolerable and the life of the dependent spouse burdensome.
- (10) The supporting spouse willfully fails to provide the dependent spouse with necessary subsistence according to his or her means and condition so as to render the condition of the dependent spouse intolerable and the life of the dependent spouse burdensome.

§50-16.3. Grounds for alimony pendente lite.

(a) A dependent spouse who is a party to an action for absolute divorce, divorce from bed and board, annulment, or alimony without divorce, shall be entitled to an order for alimony pendente lite when:

- (1) It shall appear from all the evidence presented pursuant to G.S. 50-16.8(f), that such spouse is entitled to the relief demanded by such spouse in the action in which the application for alimony pendente lite is made, and
- (2) It shall appear that the dependent spouse has not sufficient means whereon to subsist during the prosecution or defense of the suit and to defray the necessary expenses thereof.

(b) The determination of the amount and the payment of alimony pendente lite shall be in the same manner as alimony, except that the same shall be limited to the pendency of the suit in which the application is made.

§50-16.4. Counsel fees in actions for alimony.

At any time that a dependent spouse would be entitled to alimony pendente lite pursuant to G.S. 50-16.3, the court may, upon application of such spouse, enter an order for reasonable counsel fees for the benefit of such spouse, to be paid and secured by the supporting spouse in the same manner as alimony.

§50-16.5. Determination of amount of alimony.

(a) Alimony shall be in such amount as the circumstances render necessary, having due regard to the estates, earnings, earning capacity, condition, accustomed standard of living of the parties, and other facts of the particular case.

(b) Except as provided in G.S. 50-16.6 in case of adultery, the fact that the dependent spouse has committed an act or acts which would be grounds for alimony if such spouse were the supporting spouse shall be grounds for disallowance of alimony or reduction in the amount of alimony when pleaded in defense by the supporting spouse.

§50-16.6. When alimony not payable.

(a) Alimony or alimony pendente lite shall not be payable when adultery is pleaded in bar of demand for alimony or alimony pendente lite, made in an action or cross action, and the issue of adultery is found against the spouse seeking alimony, but this shall not be a bar to reasonable counsel fees.

(b) Alimony, alimony pendente lite, and counsel fees may be barred by an express provision of a valid separation agreement so long as the agreement is performed.

§50-16.7. How alimony and alimony pendente lite paid; enforcement of decree.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 50-16.8. Procedure in actions for alimony and alimony pendente lite.

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

(b) Payment of alimony may be ordered:

- (1) Upon application of the dependent spouse in an action by such spouse for divorce, either absolute or from bed and board; or
- (2) Upon application of the dependent spouse in a separate action instituted for the purpose of securing an order for alimony without divorce; or
- (3) Upon application of the dependent spouse as a cross action in a suit for divorce, whether absolute or from bed and board, or a proceeding for alimony without divorce, instituted by the other spouse.

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

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

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

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

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

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

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

(h) In any case where a claim is made for alimony without divorce, when there is a minor child, the pleading shall set forth the name and age of each such child; and if there be no minor child, the pleading shall so state.

§ 50-16.9. Modification of order.

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

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

(b) If a dependent spouse who is receiving alimony under a judgment or order of a court of this State shall remarry, said alimony shall terminate.

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

§50-16.10. Alimony without action.

Alimony without action may be allowed by confession of judgment under G.S. 1A-1, Rule 68.1.

§50-16.11. Judgment that a supporting spouse is not liable for alimony.

If a final judgment is entered in any action denying alimony because none of the grounds specified in G.S. 50-16.2 exists, upon motion by the supporting spouse, the court shall enter a judgment against the spouse to whom the payments were made for the amount of all alimony paid by the supporting spouse to that spouse pending a final disposition of the case. In addition, upon motion by the supporting spouse, if a final judgment is entered in any action denying alimony because none of the grounds specified in G.S. 50-16.2 exists, the court may enter a judgment against the spouse to whom the payments were made for the amount of alimony **pendente lite** paid by the supporting spouse to that spouse pending a final disposition of the case. When there has been judgment entered granting permanent alimony, after a prior denial of alimony **pendente lite** upon the same allegations, the court may enter judgment against the supporting spouse and in favor of the dependent spouse in an amount equal to the

monthly permanent alimony awarded multiplied by the number of months between entry of the prior order denying alimony pendente lite and entering of the final judgment.

A judgment awarded against a dependent spouse under this section may not be satisfied by setting off any award of child support to the dependent spouse.

§50-17. Alimony in real estate, writ of possession issued.

In all cases in which the court grants alimony by the assignment of real estate, the court has power to issue a writ of possession when necessary in the judgment of the court to do so.

§ 50-20. Distribution by court of marital property upon divorce.

(a) Upon application of a party, the court shall determine what is the marital property and shall provide for an equitable distribution of the marital property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

- (1) "Marital property" means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this subsection. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.
- (2) "Separate property" means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.
- (3) "Distributive award" means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:

- a. As a lump sum by agreement;

- b. Over a period of time in fixed amounts by agreement;
- c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or
- d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform

Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.

(c) There shall be an equal division by using net value of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably. Factors the court shall consider under this subsection are as follows:

- (1) The income, property, and liabilities of each party at the time the division of property is to become effective;
- (2) Any obligation for support arising out of a prior marriage;
- (3) The duration of the marriage and the age and physical and mental health of both parties;
- (4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;
- (5) The expectation of nonvested pension, retirement, or other deferred compensation rights, which is separate property;
- (6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;
- (7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;
- (8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;
- (9) The liquid or nonliquid character of all marital property;
- (10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;
- (11) The tax consequences to each party;
- (11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and
- (12) Any other factor which the court finds to be just and proper.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) In any action in which the court determines that an equitable distribution of all or portions of the marital property in kind would be impractical, the court in lieu of such distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an

equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital property, that party may cause a notice of **lis pendens** to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the **lis pendens**, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of **lis pendens** upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of **lis pendens** can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the marital or separate property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(i1) After an action for equitable distribution has been filed the Court may, for just cause, order the spouse in control of marital assets to transfer the use and possession of some or all of those assets to the other spouse provided that any and all assets so transferred shall be subject to a full accounting when the property is ultimately allocated in an equitable distribution judgment. Any property transfer made pursuant to this subsection shall be made without prejudice to the rights of either spouse to claim a contrary classification, value, or distribution in the final equitable distribution trial.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation.

§ 50-21. Procedures in actions for equitable distribution of property.

(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall

not be binding at trial as to completeness or value. The court may extend the limits in this subsection for good cause shown. During the pendency of the equitable distribution, discovery may proceed, and the court may enter orders as appropriate and necessary for the purpose of preventing the dissipation, waste, or destruction of marital or separate property or to secure the possession of the same.

A judgment for an equitable distribution shall not be entered prior to a decree of absolute divorce, except for a consent judgment, which may be entered at any time during the pendency of the action, or except if the parties have been separated for at least six months and they consent, in a pleading or other writing filed with the court.

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

(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the parties.

(c) Nothing in G.S. 50-20 or this section shall restrict or extend the right to a jury as provided by the Constitution of North Carolina.

§ 50-22. Action on behalf of an incompetent.

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

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FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

Senate/House 95-RSZ-1.9A
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Allow Interim Dist. Awards/ED

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW INTERIM DISTRIBUTIVE AWARDS IN EQUITABLE
3 DISTRIBUTION CASES, AS RECOMMENDED BY THE LRC STUDY COMMITTEE
4 ON FAMILY ISSUES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 50-20(i1) reads as rewritten:
7 "(i1) After an action for equitable distribution has been
8 filed the ~~Court~~ court may, for just cause, order the spouse in
9 control of marital assets to make a cash payment to the other
10 spouse or to transfer the use and possession of some or all of
11 ~~those~~ the marital assets to the other ~~spouse~~ spouse, provided
12 that any and all payments so made or assets so transferred shall
13 ~~be~~ are subject to a full accounting when the property is
14 ultimately allocated in an equitable distribution judgment. When
15 the court orders a payment to be made or an asset to be
16 transferred under this subsection, the court shall make a
17 preliminary finding that assets of similar value are likely to be
18 distributed at trial to the spouse receiving the asset or cash
19 payment. Any ~~property~~ transfer made ~~pursuant to~~ under this
20 subsection shall be made without prejudice to the rights of

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GENERAL ASSEMBLY OF NORTH CAROLINA

FOR REVIEW ONLY SESSION 1995

1 either spouse to claim a contrary classification, value, or
2 distribution in the final equitable distribution trial."

3 Sec. 2. This act becomes effective October 1, 1995 and
4 applies to all equitable distribution actions filed on or after
5 that date. This act shall not apply to equitable distribution
6 claims pending on the date of ratification.

SUMMARY
ALLOW INTERIM DISTRIBUTIVE AWARDS IN
EQUITABLE DISTRIBUTION ACTIONS

This bill clarifies current law to ensure that in a claim for equitable distribution, a court may, for just cause, order the spouse in control of marital assets to make a cash payment or other type of transfer of marital assets to the other spouse during the period before all of the marital property is finally distributed by the court. In making this transfer, the court must also make a preliminary finding that the spouse receiving the cash or transfer is likely to receive assets of similar value at the equitable distribution trial.

G.S. Section #

Description

50-20(i1)

After action for equitable distribution has been filed, authorizes the court to order the spouse in control of marital assets to make a cash payment or other property transfer to the other spouse prior to final disposition of the marital property. Court must make a preliminary finding that receiving spouse is likely to receive assets of similar value at the trial.

Section 2

Act becomes effective October 1, 1995 and applies to claims filed on or after that date. Act does not apply to pending litigation.

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APPENDIX E

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

FOR REVIEW ONLY

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95-LNZ-018A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: No Divorce until ED.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT CLAIMS FOR EQUITABLE DISTRIBUTION BE
3 RESOLVED BEFORE A DIVORCE MAY BE GRANTED.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 50-21(a) reads as rewritten:
6 "(a) At any time after a husband and wife begin to live
7 separate and apart from each other, a claim for equitable
8 distribution may be filed, either as a separate civil action, or
9 together with any other action brought pursuant to Chapter 50 of
10 the General Statutes, or as a motion in the cause as provided by
11 G.S. 50-11(e) or (f). Within 90 days after service of a claim
12 for equitable distribution, the party who first asserts the claim
13 shall prepare and serve upon the opposing party an equitable
14 distribution inventory affidavit listing all property claimed by
15 the party to be marital property and all property claimed by the
16 party to be separate property, and the estimated date-of-
17 separation fair market value of each item of marital and separate
18 property. Within 30 days after service of the inventory
19 affidavit, the party upon whom service is made shall prepare and
20 serve an inventory affidavit upon the other party. The inventory
21 affidavits prepared and served pursuant to this subsection shall
22 be subject to amendment and shall not be binding at trial as to
23 completeness or value. The court may extend the time limits in
24 this subsection for good cause shown. During the pendency of the

1 action for equitable distribution, discovery may proceed, and the
2 court may enter temporary orders as appropriate and necessary for
3 the purpose of preventing the disappearance, waste, or
4 destruction of marital or separate property or to secure the
5 possession thereof.

6 ~~A judgment for equitable distribution shall not be entered prior~~
7 ~~to entry of a decree of absolute divorce, except for a consent~~
8 ~~judgment, which may be entered at any time during the pendency of~~
9 ~~the action, or except if the parties have been separated for at~~
10 ~~least six months and they consent, in a pleading or other writing~~
11 ~~filed with the court, to an equitable distribution trial prior to~~
12 ~~the entry of the decree for absolute divorce. A judgment for~~
13 ~~absolute divorce shall not be entered prior to the resolution of~~
14 ~~all claims for equitable distribution.~~

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

20 Sec. 2. This act becomes effective October 1, 1995 and
21 applies to actions filed on or after that date.

22

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SUMMARY
NO JUDGMENT FOR ABSOLUTE DIVORCE UNTIL
ALL CLAIMS FOR EQUITABLE DISTRIBUTION RESOLVED

This bill provides that a court may not enter a judgment for absolute divorce prior to the resolution of all equitable distribution claims. Current law prohibits an equitable distribution judgment before divorce, except for consent judgment or consent to trial before divorce.

G.S. Section #
50-21(a)

Description

Repeals current law prohibiting equitable distribution judgment before divorce, provides that there can be no judgment for absolute divorce until all equitable distribution claims have been resolved.

Sec. 2.

Act is effective October 1, 1995 and applies to actions filed on or after that date.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

FOR REVIEW ONLY

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95-LNZ-017A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Equit.Distrib./Sanction Delay.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE DISTRICT COURT JUDGES TO SANCTION PARTIES TO
3 EQUITABLE DISTRIBUTION PROCEEDINGS FOR PURPOSEFUL, PREJUDICIAL
4 DELAY OF THE PROCEEDINGS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 50-21 reads as rewritten:
7 "§ 50-21. Procedures in actions for equitable distribution of
8 property. property; sanctions for purposeful and
9 prejudicial delay.
10 (a) At any time after a husband and wife begin to live
11 separate and apart from each other, a claim for equitable
12 distribution may be filed, either as a separate civil action, or
13 together with any other action brought pursuant to Chapter 50 of
14 the General Statutes, or as a motion in the cause as provided by
15 G.S. 50-11(e) or (f). Within 90 days after service of a claim
16 for equitable distribution, the party who first asserts the claim
17 shall prepare and serve upon the opposing party an equitable
18 distribution inventory affidavit listing all property claimed by
19 the party to be marital property and all property claimed by the
20 party to be separate property, and the estimated date-of-
21 separation fair market value of each item of marital and separate
22 property. Within 30 days after service of the inventory
23 affidavit, the party upon whom service is made shall prepare and
24 serve an inventory affidavit upon the other party. The inventory

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1 affidavits prepared and served pursuant to this subsection shall
2 be subject to amendment and shall not be binding at trial as to
3 completeness or value. The court may extend the time limits in
4 this subsection for good cause shown. The affidavits shall be
5 subject to the requirements of G.S. 1A-1, Rule 11 and shall be
6 deemed to be in the nature of interrogatories propounded to the
7 parties. Any party failing to supply the information designated
8 in the affidavit shall be subject to G.S. 1A-1, Rules 26, 33, and
9 37. During the pendency of the action for equitable distribution,
10 discovery may proceed, and the court may shall enter temporary
11 orders as appropriate and necessary for the purpose of preventing
12 the disappearance, waste, or destruction of marital or separate
13 property or to secure the possession thereof.

14 A judgment for an equitable distribution shall not be entered
15 prior to entry of a decree of absolute divorce, except for a
16 consent judgment, which may be entered at any time during the
17 pendency of the action, or except if the parties have been
18 separated for at least six months and they consent, in a pleading
19 or other writing filed with the court, to an equitable
20 distribution trial prior to the entry of the decree for absolute
21 divorce.

22 Real or personal property located outside of North Carolina is
23 subject to equitable distribution in accordance with the
24 provisions of G.S. 50-20, and the court may include in its order
25 appropriate provisions to ensure compliance with the order of
26 equitable distribution.

27 (b) For purposes of equitable distribution, marital property
28 shall be valued as of the date of the separation of the parties.
29 (c) Nothing in G.S. 50-20 or this section shall restrict or
30 extend the right to trial by jury as provided by the Constitution
31 of North Carolina.

32 (d) Within 120 days after the filing of the initial pleading or
33 motion in the cause for equitable distribution, the party first
34 serving the pleading or application shall apply to the court to
35 conduct a scheduling and discovery conference. If that party
36 fails to make application, then the other party may do so. At
37 the conference the court shall determine a schedule of discovery
38 as well as consider and rule upon any motions for appointment of
39 expert witnesses, or other applications, including applications
40 to determine the date of separation, and shall set a date for the
41 disclosure of expert witnesses and a date on or before which an
42 initial pretrial conference shall be held.

43 At the initial pretrial conference the court shall make inquiry
44 as to the status of the case and shall enter a date for the

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1 completion of discovery, the completion of a mediated settlement
2 conference, and the filing and service of motions, and shall
3 determine a date on or after which a final pretrial conference
4 shall be held and a date on or after which the case shall proceed
5 to trial.

6 The final pretrial conference shall be conducted pursuant to
7 the Rules of Civil Procedure and the General Rules of Practice in
8 the applicable district or superior court, adopted pursuant to
9 G.S. 7A-34. The court shall rule upon any matters reasonably
10 necessary to effect a fair and prompt disposition of the case in
11 the interests of justice.

12 (e) Upon motion of either party or upon the court's own
13 initiative, the court shall impose an appropriate sanction on a
14 party when the court finds that:

15 (1) the party has willfully obstructed or unreasonably
16 delayed, or has attempted to obstruct or
17 unreasonably delay discovery proceedings, including
18 failure to make discovery pursuant to G.S. 1A-1,
19 Rule 37, or has wilfully obstructed or unreasonably
20 delayed or attempted to obstruct or unreasonably
21 delay any pending equitable distribution
22 proceeding, and

23 (2) the willful obstruction or unreasonable delay of
24 the proceedings is or would be prejudicial to the
25 interests of the opposing party.

26 The sanction may include an order to pay the other party the
27 amount of the reasonable expenses incurred because of the wilfull
28 obstruction or unreasonable delay, including a reasonable
29 attorney's fee, and including appointment by the court, at the
30 offending party's expense, an accountant, appraiser, or other
31 expert whose services the court finds are necessary to secure in
32 order for the discovery or other equitable distribution
33 proceeding to be timely conducted."

34 Sec. 2. This act becomes effective October 1, 1995 and
35 applies to claims for equitable distribution filed on or after
36 that date, and to pending litigation as to G.S. 50-21(e) only.

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SUMMARY
SANCTIONS FOR INTENTIONAL DELAY OF
EQUITABLE DISTRIBUTION PROCEEDINGS

FOR REVIEW ONLY

This bill requires certain procedures to expedite the resolution of equitable distribution claims, and requires the court to sanction parties who are found to have wilfully obstructed or unreasonably delayed the proceedings and the delay is harmful to the other party.

<u>G.S. Section #</u>	<u>Description</u>
50-21(a)	Party to an equitable distribution (ED) claim must prepare and serve inventory (of property) affidavits on the other party within specified time frame. If time frame not met, sanctions under Rules of Civil Procedure
50-21(d)	Establishes time frame for calendaring equitable distribution cases. Party filing claim for ED has 120 days to apply to the court for a scheduling and discovery conference. At conference, court must set a discovery schedule and must rule upon certain motions and set a date for initial pretrial conference. At pretrial conference, court determines status of the case and enters date for completion of discovery and other relevant procedures, and sets date for final pretrial conference and for trial.
50-21(e)	On its own initiative or upon motion of a party, court must sanction a party who has wilfully obstructed or unreasonably delayed equitable distribution proceedings, or has attempted to do so, and the wilfull obstruction or unreasonable delay has harmed the other party. Sanction may include reasonable expenses incurred because of the obstruction or delay, including reasonable attorney's fee, and appointment by the court, at the offending party's expenses, experts necessary to ensure that the proceeding is timely conducted.
Section 2.	Act is effective October 1, 1995 and applies to claims filed on or after that date, and to pending litigation only with respect to G.s. 50-21(e).

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S/H

D

Senate/House 95-RSZ-2.8A
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Pilot Mediation/Equit. Dist.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO ESTABLISH A PILOT MEDIATION PROGRAM FOR EQUITABLE
3 DISTRIBUTION UNDER THE ADMINISTRATIVE OFFICE OF THE COURTS, AS
4 RECOMMENDED BY THE LRC STUDY COMMITTEE ON FAMILY ISSUES.
5 The General Assembly of North Carolina enacts:
6 Section 1. There is established a pilot program in
7 judicial districts selected by the Director of the Administrative
8 Office of the Courts in which parties to equitable distribution
9 cases may be required to attend a pretrial settlement conference
10 conducted by a mediator. The purpose of the pilot program is to
11 determine whether mediation helps expedite equitable distribution
12 cases, reduces costs to the litigants, and is a more satisfactory
13 process than litigation.

14 Sec. 2. This procedure may be implemented in a judicial
15 district or any part of a judicial district if the Director of
16 the Administrative Office of the Courts and the chief district
17 court judge of that district determine that use of this program
18 may assist in achieving objectives stated in Section 1 of this
19 act. The Director of the Administrative Office of the Courts may

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1 terminate any pilot program after consultation with the chief
2 district court judge.

3 Sec. 3. The Supreme Court shall adopt rules to
4 implement this act. The definitions in G.S. 7A-38(b)(2) and
5 (b)(3) apply to this act.

6 Sec. 4. When a petition for equitable distribution is
7 contested in a participating district, the court shall set the
8 matter for a pretrial mediation of the contested issues before or
9 concurrent with the setting of the matter for hearing, unless the
10 court determines that mediation is inappropriate in that case.

11 Sec. 5. The parties have the right to stipulate to a
12 mediator, subject to the standards and rules adopted by the
13 Supreme Court. Upon failure of the parties to agree within the
14 time established by the rules, the chief district court judge
15 shall appoint a mediator.

16 Sec. 6. Either party may move to have the mediator
17 disqualified, due to the mediator's bias or undue familiarity
18 with a party.

19 Sec. 7. The mediator shall use his or her best efforts
20 to effect a settlement of the contested issues.

21 Sec. 8. After the mediation, the mediator shall file
22 with the court as soon as practicable a mediation agreement
23 executed by the parties. The agreement shall explain what issues
24 were settled during the mediation and how those issues were
25 settled or it shall state that the parties failed to settle any
26 issues. The court may incorporate the agreement into a court
27 order.

28 Sec. 9. Upon failure of a party to attend a court
29 ordered mediation, the court may impose any lawful sanction,
30 including the payment of attorneys' fees, mediator fees, and
31 expenses incurred in attending the conference, contempt, or any
32 other sanction authorized by G.S. 1A-1, Rule 37(b).

33 Sec. 10. The Supreme Court shall establish standards
34 for the qualification and conduct of mediators and mediator
35 training programs. Standards for the qualification for a
36 mediator shall include the following minimum requirements:

- 37 (1) A commission as a notary public under Chapter 10A-3
38 of the General Statutes; and
39 (2) At least 40 hours of training in mediation
40 techniques by a qualified instructor of mediation

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1 in accordance with rules adopted by the Supreme
2 Court.

3 Sec. 11. A mediator acting under this legislation has
4 judicial immunity in the same manner and to the same extent as a
5 judge of the General Court of Justice.

6 Sec. 12. The plaintiff and the defendant shall each pay
7 one half of the costs of the mediation, unless otherwise ordered
8 by the court or agreed to by the parties. The rules adopted by
9 the Supreme Court under Section 3 shall set out a method whereby
10 parties found by the court to be unable to pay the costs of the
11 mediation may participate without cost.

12 Sec. 13. All conduct or communications made during a
13 mediation are presumed to be made in compromise negotiations and
14 are governed by Rule 408 of the North Carolina Rules of Evidence.

15 Sec. 14. The Administrative Office of the Courts shall
16 evaluate the pilot program and file a report with the General
17 Assembly on or before the convening of the 1999 Session. The
18 pilot shall terminate April 1, 1999.

19 Sec. 15. Nothing in this act or in the rules
20 promulgated by the Supreme Court implementing this act shall
21 restrict the right to trial.

22 Sec. 16. The Administrative Office of the Courts may
23 solicit funds from private sources to establish, conduct, and
24 evaluate this pilot program.

25 Sec. 17. There is appropriated from the General Fund to
26 the Judicial Department the sum of one hundred ninety thousand
27 four hundred fifteen dollars (\$190,415) for the 1995-96 fiscal
28 year and the sum of one hundred ninety thousand four hundred
29 fifteen dollars (\$190,415) for the 1996-97 fiscal year to
30 implement this act.

31 Sec. 18. This act becomes effective October 1, 1995.

SUMMARY
PILOT PROGRAM FOR MEDIATION OF
EQUITABLE DISTRIBUTION CASES

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FOR REVIEW ONLY

This bill requires the Administrative Office of the Courts to establish a pilot program in selected judicial districts in which parties to equitable distribution cases may be required to attend a pretrial settlement conference conducted by a mediator.

<u>G.S. Section #</u>	<u>Description</u>
Section 1	Pilot program established in judicial districts selected by the Director of the Administrative Office of the Courts. Purpose is to determine whether mediation helps expedite equitable distribution cases, reduces costs to litigants, and is overall a more satisfactory process than litigation.
Section 2	Director of AOC and chief district court judge decide if pilot program for that district is appropriate to achieve purposes set out in Section 1. Pilot program may be terminated by Director of AOC upon consultation with chief district court judge.
Section 3	Supreme Court adopts rules to implement the programs. Mediation and Mediator defined.
Section 4	If ED claim is contested in a participating district, court sets matter for mediation, unless court determines that mediation would be inappropriate in this case.
Section 5	Parties may select a mediator subject to requirements and time limits established by rules of Supreme Court. If parties do not select in time, court may appoint mediator.
Section 6	Either party may have mediator disqualified due to bias or undue familiarity with a party.
Sections 7, 8	Mediator must do his or her best to effect a settlement; mediator must file mediation agreement reached with the court as soon as practicable after mediation completed; agreement must show what issues were settled, or, if no settlement reached, the agreement shall so state. Court may incorporate the agreement into a court order.
Section 9	If either party fails to attend mediation, court may impose sanctions.

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- Section 10 Supreme Court establishes standards for qualifications and conduct of mediators. Qualification standards must include: commission as notary public, not less than 40 hours of training.
- Section 11 Mediator has judicial immunity.
- Section 12 Each party pays half of cost of mediation, unless otherwise agreed to by parties or ordered by court. Rules must enable parties who cannot afford to pay a mediator to participate in mediation without cost.
- Section 13 All conduct and communications during mediation same as in compromise negotiations and subject to rules of evidence.
- Section 14 AOC must evaluate the program and file a report with General Assembly not later than convening of 1999 Session. Pilot terminates April 1, 1999.
- Section 15 This act does not restrict the parties' right to trial.
- Section 16 AOC may solicit funds from private sources to support the program.
- Section 17 Appropriates funds for the program (\$190,415) for each year of the 1995 biennium.
- Section 18. Act become effective October 1, 1995.

**COST ESTIMATE OF PILOT PROGRAM
FOR MEDIATION OF EQUITABLE DISTRIBUTION**

(Draft Bill 11-15-94)

	<u>OPTION 1</u>	<u>OPTION 2</u>
<u>ANNUAL COST COMPONENTS¹</u>		
Evaluation of Pilot Program ²	\$48,571	\$48,571
State Administration ³ (Certification of Mediators)	35,311 (1 position)	35,311 (1)
Local Administration ⁴ (Processing/Screening of Cases)	53,266 (1.5 positions)	106,533 (3)
 	<hr/>	<hr/>
ANNUAL COST⁵	\$137,148	\$190,415

ASSUMPTIONS:

1. Pilots would be established in 3 judicial districts - a small, medium, and large district.
2. Assumes \$170,000 for outside consultant spread over 3.5 years. Total cost based on comparable external evaluations of arbitration (\$120,000), dispute centers (\$160,000), and mediated settlement (\$180,000).
3. Assumes one case manager/position needed to handle certification duties; comparable to mediated settlement experience.
4. OPTION 1 assumes program structure is primarily administrative - preparing orders for mediation, notifying parties, etc. - and that attorneys/parties have primary calendaring responsibilities.

OPTION 2 assumes program structure would be both administrative and management oriented - screening cases, initiating mediation, tracking/calendaring cases.
5. Second year costs could be slightly less depending on amount of non-recurring expenditures in first year.

SOURCE: Administrative Office of the Courts



ADMINISTRATIVE OFFICE OF THE COURTS
JUSTICE BUILDING

P O BOX 2446
RALEIGH, N.C. 27602

JAMES C. DRENNAN
DIRECTOR

DALLAS A. CAMERON, JR.
ASSISTANT DIRECTOR

DIVISION FOR COURT SERVICES
KATHY SHUART
ADMINISTRATOR

MEMORANDUM

Date: November 30, 1994
To: Jim Drennan
From: Kathy Shuart *Kathy Shuart*
Re: Pilot Program for Mediation of Equitable
Distribution Issues

At the last meeting of the Legislative Study Committee on Family Issues, we were asked to provide information on the costs associated with operating a pilot program for mediation of equitable distribution issues. At that meeting, you noted that our previous experience operating pilot dispute resolution programs suggests that any costs are likely to fall into one of three categories: evaluation; state program administration; and local program administration.

In preparing an assessment, I have contacted Professor Stevens Clarke at the Institute of Government and Judge Clarence Horton for their input on the evaluation and local administration respectively. With their comments in hand, I offer the following estimates on the cost of operating a pilot program.

Evaluation. Professor Clarke estimates that the cost of an evaluation would run in the same neighborhood as the previous Institute of Government's evaluations of dispute resolution programs he has conducted: \$160,000-\$180,000.

State Program Administration. Since this program is based in part on the Mediated Settlement Conference Pilot Program, we would anticipate that the AOC's role would be that of certifying body for training programs and mediators. Our experience with the Mediated Settlement Conference Program is that certification activities--reviewing applications; corresponding with applicants, mediators, and

training programs; maintaining the master list; distributing to the clerks and judges the updates to the master list; and updating the profile notebooks--are considerable, and consume 1/2-3/4 of a support staff person's time, and on average 1/4 of a professional staff person's time. Based on this experience, we would estimate the costs associated with certification to be approximately \$35,511, or the position cost for one clerical support staff.

Local Program Administration. What if any resources are required locally depends in part on the structure of the program. If the intent is to simply make this process available to the parties and the judge, and calendaring of these issues remains the responsibility of the attorneys/parties, then the administrative tasks should be as follows:

- preparing the order for mediation
- notification to the parties
- maintenance of the local mediator list
- appointment of a mediator when there is no agreement among the parties as to who shall serve
- coordination with local mediators when problems arise with specific cases
- preparing orders citing parties into court who do not comply with the original order

In some districts, it may be that this can be handled by existing secretarial staffs. In others, it will require additional staffing. Estimated cost: 3 pilot districts; small (0 staff); medium (0-.5 staff); and large (.5-1 staff); position cost for staff - \$35,511 (Legal Assistant III, same as Arbitration Coordinator); cost would range from \$17,755 (.5 x \$35,511) to \$53,266 (1.5 x \$35,511).

However, if the intent is to target equitable distribution issues and proactively move them towards mediation and disposition, that will require all of the above activities, and three additional ones:

- screening cases to identify mediation cases
- actively initiating the mediation process
- tracking mediation in order to set cases on the trial calendar where necessary

Again, these are activities that do not occur in the vast majority of judicial districts today, and I suspect would be considered by most Chief District Judges to be beyond the capacity of their existing staff. If this is the intent of the legislation, I would recommend a part-time or full-time staff person in each pilot site, depending on the anticipated caseload. Estimated cost: Three judicial districts; small (.5 staff), medium (1 staff), and large (1.5 staff); position cost for staff (Legal Asst. III; same

grade as Arbitration Coordinator) \$35,511; 3 x \$35,511 = \$106,533.

My observation is that, by and large, we do not manage this docket at all right now, so any work that might be undertaken would be new. This differs from the mediated settlement conference experience, where we hoped that the activities undertaken in support of mediated settlement would replace trial scheduling activities that were already being handled by staff.



DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

FOR REVIEW ONLY

SESSION 1995

H/S

D

95-LNZ-016

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Alimony Changes.

(Public)

Sponsors:

Referred to:

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 CAROLINA BAR
4 ASSOCIATION AND THE LRC STUDY COMMITTEE ON FAMILY ISSUES.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 50-16.1, 50-16.2, 50-16.3, 50-16.5, and
7 50-16.11 are repealed.
8 Sec. 2. Chapter 50 of the General Statutes is amended by
9 adding the following new sections to read:
10 "§ 50-16.1A. Definitions.
11 As used in this Chapter, unless the context clearly requires
12 otherwise, the following definitions apply:
13 (1) 'Alimony' means an order for payment for the
14 support and maintenance of a spouse or former
15 spouse, periodically or in a lump sum, for a
16 specified or for an indefinite term, ordered in an
17 action for divorce, whether absolute or from bed
18 and board, or in an action for alimony without
19 divorce.
20 (2) 'Dependent spouse' means a spouse, whether husband
21 or wife, who is actually substantially dependent
22 upon the other spouse for his or her maintenance

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

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

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

13 b. Involuntary separation of the spouses in
14 consequence of a criminal act committed prior
15 to the proceeding in which alimony is sought;

16 c. Abandonment of the other spouse;

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

19 e. Cruel or barbarous treatment endangering the
20 life of the other spouse;

21 f. Indignities rendering the condition of the
22 other spouse intolerable and life burdensome;

23 g. Reckless spending of the income of either
24 party, or the destruction, waste, diversion,
25 or concealment of assets;

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

29 i. Willful failure to provide necessary
30 subsistence according to one's means and
31 condition so as to render the condition of the
32 other spouse intolerable and life burdensome.

33 (4) 'Post separation support' means spousal support to
34 be paid until the earliest of either the date
35 specified in the order of post separation support,
36 or an order awarding or denying alimony. Post
37 separation support may be ordered in an action for
38 divorce, whether absolute or from bed and board,
39 for annulment, or for alimony without divorce.

40 (5) 'Supporting spouse' means a spouse, whether husband
41 or wife, upon whom the other spouse is actually
42 substantially dependent for maintenance and support
43 or from whom such spouse is substantially in need
44 of maintenance and support.

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1 "§ 50-16.2A. Post separation support.

2 (a) In an action brought pursuant to Chapters 50, 51, 50A,
3 50B, and Article 9 of Chapter 110, of the General Statutes,
4 either party may move for post separation support. The verified
5 pleading, verified motion, or affidavit of the moving party shall
6 set forth the factual basis for the relief requested.

7 (b) In ordering post separation support, the court shall base
8 its award on the financial needs of the parties, considering the
9 parties' accustomed standard of living, the present employment
10 income and other recurring earnings of each party from any
11 source, their income-earning abilities, the separate and marital
12 debt service obligations, those expenses reasonably necessary to
13 support each of the parties, and each party's respective legal
14 obligations to support any other persons.

15 (c) Except when subsection (d) of this section applies, a
16 dependent spouse is entitled to an award of post separation
17 support if, based on consideration of the factors specified in
18 subsection (b) of this section, the court finds that the
19 resources of the dependent spouse are not adequate to meet his or
20 her reasonable needs and the supporting spouse has the ability to
21 pay.

22 (d) At a hearing on post separation support, the judge may
23 consider repeated acts of illicit sexual behavior or excessive
24 use of alcohol or drugs by the dependent spouse occurring prior
25 to or on the date of separation in deciding whether to award post
26 separation support and in deciding the amount of post separation
27 support. If the judge considers these acts by the dependent
28 spouse, the judge shall also consider any marital misconduct by
29 the supporting spouse in deciding whether to award post
30 separation support and in deciding the amount of post separation
31 support.

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

37 "§ 50-16.3A. Alimony.

38 (a) Entitlement. In an action brought pursuant to Chapters 50,
39 50A, 50B, and Article 9 of Chapter 110, of the General Statutes,
40 either party may move for alimony. The court shall award alimony
41 to the dependent spouse upon a finding that one spouse is a
42 dependent spouse, that the other spouse is a supporting spouse,
43 and that an award of alimony is equitable after considering all

FOR REVIEW ONLY

1 relevant factors, including those set out in subsection (b) of
2 this section.

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

8 (b) Amount and duration. The court shall exercise its
9 discretion in determining the amount, duration, and manner of
10 payment of alimony. The duration of the award may be for a
11 specified or for an indefinite term. In determining the amount,
12 duration, and manner of payment of alimony, the court shall
13 consider all relevant factors, including:

- 14 (1) The relative earnings and earning capacities of the
15 spouses;
- 16 (2) The ages and the physical, mental, and emotional
17 conditions of the spouses;
- 18 (3) The amount and sources of earned and unearned
19 income of both spouses, including, but not limited
20 to, earnings, dividends, and benefits such as
21 medical, retirement, insurance, social security, or
22 others;
- 23 (4) The duration of the marriage;
- 24 (5) The contribution by one spouse to the education,
25 training, or increased earning power of the other
26 spouse;
- 27 (6) The extent to which the earning power, expenses, or
28 financial obligations of a spouse will be affected
29 by reason of serving as the custodian of a minor
30 child;
- 31 (7) The standard of living of the spouses established
32 during the marriage;
- 33 (8) The relative education of the spouses and the time
34 necessary to acquire sufficient education or
35 training to enable the spouse seeking alimony to
36 find employment to meet his or her reasonable
37 economic needs;
- 38 (9) The relative assets and liabilities of the spouses
39 and the relative debt service requirements of the
40 spouses, including legal obligations of support;
- 41 (10) The property brought to the marriage by either
42 spouse;
- 43 (11) The contribution of a spouse as homemaker;
- 44 (12) The relative needs of the spouses;

FOR REVIEW ONLY

1 (13) The marital misconduct of either of the spouses.
2 Nothing herein shall prevent a court from
3 considering incidents of post date-of-separation
4 marital misconduct as corroborating evidence
5 supporting other evidence that marital misconduct
6 occurred during the marriage and prior to date of
7 separation;

8 (14) The federal, State, and local tax ramifications of
9 the alimony award;

10 (15) Any other factor relating to the economic
11 circumstances of the parties which the court finds
12 to be just and proper.

13 (c) Findings of fact. The court shall set forth the reasons
14 for its award or denial of alimony and, if making an award, the
15 reasons for its amount, duration, and manner of payment. Except
16 where there is a motion before the court for summary judgment,
17 judgment on the pleadings, or other motion for which the Rules of
18 Civil Procedure do not require special findings of fact, the
19 court shall make a specific finding of fact on each of the
20 factors in subsection (b) of this section if evidence is offered
21 on that factor.

22 (d) In the claim for alimony, either spouse may request a jury
23 trial on the issue of marital misconduct as defined in G.S. 50-
24 16.1A. If a jury trial is requested, the jury will decide
25 whether either spouse or both have established marital
26 misconduct."

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

28 "§ 50-16.4. Counsel fees in actions for ~~alimony.~~ alimony, post
29 separation support.

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

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

38 "§ 50-16.6. When ~~alimony~~ alimony, post separation support,
39 counsel fees not payable.

40 (a) ~~Alimony or alimony pendente lite shall not be payable when~~
41 adultery is pleaded in bar of demand for alimony or alimony
42 pendente lite, made in an action or cross action, and the issue
43 of adultery is found against the spouse seeking alimony, but this
44 shall not be a bar to reasonable counsel fees.

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

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

7 "§ 50-16.7. How alimony and ~~alimony pendente lite~~ post
8 separation support paid; enforcement of decree.

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

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

24 (c) If the court requires the transfer of real or personal
25 property or an interest therein as a part of an order for alimony
26 or ~~alimony pendente lite~~ post separation support as provided in
27 subsection (a) or for the securing thereof, the court may also
28 enter an order which shall transfer title, as provided in G.S.
29 1A-1, Rule 70 and G.S. 1-228.

30 (d) The remedy of arrest and bail, as provided in Article 34
31 of Chapter 1 of the General Statutes, shall be available in
32 actions for alimony or ~~alimony pendente lite~~ post separation
33 support as in other cases.

34 (e) The remedies of attachment and garnishment, as provided in
35 Article 35 of Chapter 1 and Article 9 of Chapter 110 of the
36 General Statutes, shall be available in actions for alimony or
37 ~~alimony pendente lite~~ post separation support as in other cases,
38 and for such purposes the dependent spouse shall be deemed a
39 creditor of the supporting spouse.

40 (f) The remedy of injunction, as provided in Article 37 of
41 Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall
42 be available in actions for alimony or ~~alimony pendente lite~~ post
43 separation support as in other cases.

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

4 (h) A dependent spouse for whose benefit an order for the
5 payment of alimony or ~~alimony pendente lite~~ post separation
6 support has been entered shall be a creditor within the meaning
7 of Article 3 of Chapter 39 of the General Statutes pertaining to
8 fraudulent conveyances.

9 (i) A judgment for alimony or ~~alimony pendente lite~~ post
10 separation support obtained in an action therefor shall not be a
11 lien against real property unless the judgment expressly so
12 provides, sets out the amount of the lien in a sum certain, and
13 adequately describes the real property affected; but past-due
14 periodic payments may by motion in the cause or by a separate
15 action be reduced to judgment which shall be a lien as other
16 judgments.

17 (j) Any order for the payment of alimony or ~~alimony pendente~~
18 lite post separation support is enforceable by proceedings for
19 civil contempt, and its disobedience may be punished by
20 proceedings for criminal contempt, as provided in Chapter 5A of
21 the General Statutes.

22 Notwithstanding the provisions of G.S. 1-294 or G.S. 1-289, an
23 order for the periodic payment of alimony that has been appealed
24 to the appellate division is enforceable in the trial court by
25 proceedings for civil contempt during the pendency of the appeal.
26 Upon motion of an aggrieved party, the court of the appellate
27 division in which the appeal is pending may stay any order for
28 civil contempt entered for alimony until the appeal is decided if
29 justice requires.

30 (k) The remedies provided by Chapter 1 of the General Statutes
31 Article 28, Execution; Article 29B, Execution Sales; and Article
32 31, Supplemental Proceedings, shall be available for the
33 enforcement of judgments for alimony and ~~alimony pendente lite~~
34 post separation support as in other cases, but amounts so payable
35 shall not constitute a debt as to which property is exempt from
36 execution as provided in Article 16 of Chapter 1C of the General
37 Statutes.

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

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

41 "§ 50-16.8. Procedure in actions for ~~alimony and alimony~~
42 pendente lite post separation support.

FOR REVIEW ONLY

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

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

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

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

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

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

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

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

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

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

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

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

42 ~~(h) In any case where a claim is made for alimony without~~
43 ~~divorce, when there is a minor child, the pleading shall set~~
44 ~~forth the name and age of each such child; and if there be no~~

FOR REVIEW ONLY

1 ~~minor child, the pleading shall so state.~~ When an application is
2 made for post separation support, the court may base its award on
3 a verified pleading, affidavit, or other competent evidence. The
4 court shall set forth the reasons for its award or denial of post
5 separation support, and if making an award, the reasons for its
6 amount, duration, and manner of payment."

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

8 "§ 50-16.9. Modification of order.

9 (a) An order of a court of this State for alimony or ~~alimony~~
10 ~~pendente lite, post separation support,~~ whether contested or
11 entered by consent, may be modified or vacated at any time, upon
12 motion in the cause and a showing of changed circumstances by
13 either party or anyone interested. This section shall not apply
14 to orders entered by consent before October 1, 1967.

15 Any motion to modify or terminate alimony or ~~alimony pendente~~
16 ~~lite post separation support~~ based on a resumption of marital
17 relations between parties who remain married to each other shall
18 be determined pursuant to G.S. 52-10.2.

19 (b) ~~If a dependent spouse who is receiving alimony under a~~
20 ~~judgment or order of a court of this State shall remarry, said~~
21 ~~alimony shall terminate.~~ If a dependent spouse who is receiving
22 post separation support or alimony from a supporting spouse under
23 a judgment or order of a court of this State remarries or engages
24 in cohabitation, the post separation support or alimony shall
25 terminate. Post separation support or alimony shall terminate
26 upon the death of either the supporting or the dependent spouse.

27 As used in this subsection, cohabitation means the act of two
28 adults dwelling together continuously and habitually in a private
29 relationship, heterosexual or homosexual in nature, even if this
30 relationship is not solemnized by marriage. Cohabitation is
31 evidenced by the voluntary mutual assumption of those marital
32 rights, duties, and obligations which are usually manifested by
33 married people, and which include but are not necessarily
34 dependent on sexual relations. Cohabitation asserted pursuant to
35 this section must be established by the asserting party by clear,
36 cogent, and convincing evidence.

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

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

FOR REVIEW ONLY

1 "(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6
2 shall not affect the rights of either spouse with respect to any
3 action for alimony or ~~alimony pendente lite~~ post separation
4 support pending at the time the judgment for divorce is granted.
5 Furthermore, a judgment of absolute divorce shall not impair or
6 destroy the right of a spouse to receive alimony or ~~alimony~~
7 ~~pendente lite~~ post separation support or affect any other rights
8 provided for such spouse under any judgment or decree of a court
9 rendered before or at the time of the judgment of absolute
10 divorce."

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

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

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

21 "§ 50-19. Maintenance of certain actions as independent actions
22 permissible.

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

- 27 (1) Alimony;
- 28 (2) ~~Alimony pendente lite~~; Post separation support;
- 29 (3) Custody and support of minor children;
- 30 (4) Custody and support of a person incapable of
31 self-support upon reaching majority; or
- 32 (5) Divorce pursuant to G.S. 50-5.1 or G.S. 50-6.

33 (b) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a),
34 any action described in subdivision (a)(1) through (a)(5) of this
35 section that is filed as an independent, separate action may be
36 prosecuted during the pendency of an action for divorce under
37 G.S. 50-5.1 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
40 eliminates spousal support and that modification or elimination
41 causes one party to the agreement to be eligible for support
42 under a program of public assistance at the time of separation or
43 marital dissolution, a court, notwithstanding the terms of the
44 agreement, may require the other party to provide support to the

FOR REVIEW ONLY

1 extent necessary to avoid that eligibility. Before the court
2 orders support under this subsection, the court must find that
3 the party for whom support is ordered is a dependent spouse, as
4 defined by G.S. ~~50-16.1~~, 50-16.1A, and that ~~there are grounds for~~
5 ~~alimony under G.S. 50-16.2 or alimony pendente lite under G.S.~~
6 ~~50-16.3.~~ the requirements of G.S. 50-16.2A regarding post
7 separation support or G.S. 50-16.3A regarding alimony have been
8 met."

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

12
13

SUMMARY
PROPOSED ALIMONY LAW CHANGES

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Section #
Sec. 1.

Repeals current law.

- § 50-16.1. Definitions
- § 50-16.2. Grounds for Alimony
- § 50-16.3. Grounds for Alimony Pendente Lite
- § 50-16.5 Determination of Amount of Alimony
- § 50-16.11. Judgment/Supporting Spouse not liable

Sec. 2. Adds three new sections to replace those repealed.

§ 50-16.1A. Defines terms used in new sections.

'Alimony' Same as current law except for change allowing judge to make award for specified or indefinite time. Current law unclear regarding judge's discretion as to duration of award.

'Dependent spouse' Same as current law.

'Marital Misconduct' Essentially same as current law, except: not defined in current law, substitutes terms for 'adultery', 'unnatural sex act', and 'spendthrift'.

'Postseparation support' [pss] Support to be paid until earliest of date specified in pss order or order awarding or denying alimony. Current law uses term 'alimony pendente lite', does not define the term but sets out the grounds for obtaining an award.

'Supporting spouse' Same as current law.

§ 50-16.2A Postseparation support. Rewrites current law (alimony pendente lite) as follows:

- (a) Permits either party to a divorce action to move for post separation support in a verified pleading setting forth the factual basis for the relief requested.
- (b) The court must base its award on financial needs of the parties; specifies things to be considered. Current law requires dependency and marital fault.
- (c) Dependent spouse **entitled** to postseparation support if court finds resources are not adequate to meet dependent spouse's needs, and, supporting spouse has ability to pay. **But**
- (d) If the dependent spouse engages in repeated acts of illicit sexual behavior or excessive use of alcohol or drugs, judge **may** consider these acts in deciding whether to award and amount. If the judge considers these acts, then the judge must also consider marital

misconduct by the supporting spouse. ~~Under current law, if dependent spouse engages in marital misconduct, no alimony regardless of dependent status, even though supporting spouse has also engaged in marital misconduct.~~

- (e) Ok for court to consider post-separation acts of marital misconduct as corroborating evidence to support other evidence that marital misconduct occurred during the marriage and prior to separation. Not in current law.

§ 50-16.3A

Alimony.

- (a) Entitlement: Party entitled if:

Requested pursuant to claim filed for divorce or alimony without divorce; and court finds:

Party is dependent spouse and other party is supporting spouse, and

Award is equitable considering all relevant factors.

Action may be heard on merits prior to entry of judgment for Equitable Distribution and, if awarded, amount may be reviewed de novo after conclusion of ED claim.

Current law: Pursuant to claim for divorce or alimony without divorce, court finds:

One spouse is dependent, other is supporting, and Supporting spouse guilty of marital fault.

- (b) Amount and duration: In determining amount, duration, and manner of payment, court must consider specified factors. Most are economic in nature, one is marital misconduct by either party.

Current law: Requires fault for an award; no guidance to judge in determining amount and duration.

- (c) Findings of fact required.

- (d) Jury trial authorized on issue of marital misconduct.

Section 3
Section 4

Conforming changes only.

Repeals G.S. 50-16.5 regarding determination of the amount of alimony (amount is dealt with in proposed section G.S. 50-16.3A(b)).

Section 5

Repeals the part of G.S. 50-16.6 establishing that a dependent spouse's established adultery is a bar to the payment of alimony or alimony pendente lite but is not a bar to reasonable counsel fees.

Leaves intact the provision that a valid separation agreement that is performed may contain a provision that bars the payment of alimony, [postseparation support], and counsel fees.

Section 6
Section 7
Section 8

Conforming changes only.

Rewrites the procedure for actions for postseparation support.

Rewrites section on modification of orders for alimony, postseparation support. Effect of rewrite is to provide that alimony and ps support terminate not only upon marriage but also upon cohabitation, and defines cohabitation.

Sections 9-13
Section 14

Conforming changes only.

Effective date of act.

APPENDIX I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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H/S

HOUSE JOINT RESOLUTION 95-LNZ-019
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Sponsors:

Referred to:

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY FAMILY LAW REFORM.
3 Be it resolved by the House of Representatives, the Senate
4 concurring:
5 Whereas, the increasing case load of district courts
6 throughout the State often results in prolonging the resolution
7 of domestic matters; and
8 Whereas, procedural and remedial changes are needed in
9 order to expedite the resolution of equitable distribution and
10 child support and custody issues before the court. Such changes
11 are needed so that parents and children involved in divorce may
12 lead their lives free of extensive and costly litigation that
13 obstructs emotional healing, interferes with harmonious child
14 rearing, and depletes family resources that can best be used for
15 life's essentials; and
16 Whereas, strides have been made in ensuring an equitable
17 distribution of marital property, child support awards that
18 address the needs of children and the financial abilities of
19 parents, and better methods for collecting current and past due
20 child support, problems continue to exist in these areas. State
21 law and judicial system practice should be regularly reviewed to
22 ensure that necessary changes are made that enure to the benefit
23 of children, their parents, and the State; and
24 Whereas, the 1993-95 LRC Family Issues Study Committee
25 proposed six bills to address some of the problems in equitable

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1 distribution and alimony, there remains much work to do in
2 addressing the many complex problems related to family law,

3 Now, therefore,

4 Be it resolved by the House of Representatives, the Senate
5 concurring:

6 Section 1. The Legislative Research Commission may
7 continue its study of the necessity for family law reform. The
8 study should include the following issues:

- 9 (1) Procedural changes and additional remedies
10 necessary to expedite the resolution of matters
11 pertaining to equitable distribution, child support
12 awards and collection, and other relevant domestic
13 issues before the court; and
14 (2) Review of the recently adopted child support
15 guidelines to determine if additional factors
16 should be considered in determining child support
17 amounts;
18 (3) Consideration of the report of the North Carolina
19 Association of District Court Judges entitled: "A
20 Search for Solutions: A Report by the Committee to
21 Assess Equitable Distribution Procedures and
22 Dispositions in the North Carolina District Court",
23 October, 1994; and
24 (4) Other family law matters that the 1993 LRC Family
25 Issues Committee did not have sufficient time to
26 fully study and address.

27 Sec. 2. In making appointments to this study committee,
28 the Commission may ensure that public membership on the committee
29 fairly represents the following:

- 30 (1) Members of the family law section of the North
31 Carolina Bar Association;
32 (2) District court judges and clerks of court;
33 (3) Persons qualified to provide mediation services in
34 child custody matters referred by the court; and
35 (4) Citizens who are not affiliated with the legal
36 profession or court system, but who have been a
37 party to a child custody or support, or equitable
38 distribution matter heard or decided by the court
39 within the last five years.

40 Sec. 3. The LRC Committee on Family Law Reform may
41 report to the 1995 General Assembly, Regular Session 1996, and
42 may make its final report to the 1997 General Assembly.

43 Sec. 4. There is appropriated from the General Fund to
44 the Legislative Research Commission the sum of fifteen thousand

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1 dollars (\$15,000) for the 1995-96 fiscal year and the sum of
2 fifteen thousand dollars (\$15,000) for the 1996-97 fiscal year to
3 continue the study of family law reform.

4 Sec. 5. This resolution is effective upon ratification.
5

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SUMMARY
LRC MAY CONTINUE STUDY OF FAMILY ISSUES

This bill authorizes the Legislative Research Commission to continue the study of family issues.

<u>G.S. Section #</u>	<u>Description</u>
Whereas Clauses	Describe reasons study is needed and why it should be continued.
Section 1	Authorizes LRC to continue study of: (1) Procedural changes necessary to expedite resolution of matters pertaining to equitable distribution, child support, and other relevant domestic issues; (2) Recently adopted child support guidelines; (3) Consider the Report of the Association of District Court Judges; and (4) Other matters that the 1993 study did not have time to study.
Section 2	Authorizes LRC to ensure that membership on the study committee includes public members representing: (1) Family law section of N.C. Bar Association, (2) District court judges and clerks of court; (3) Mediators in child custody matters; and (4) Citizens who have been a party to an equitable distribution or child custody matter heard in court within last 5 years.
Section 3	Authorizes LRC to report to 1995 General Assembly in short session, and to 1997 General Assembly.
Section 4	Appropriates \$15,000 each year to conduct study.
Section 5	Resolution effective upon ratification.