

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 604

Short Title: Create DV Exceptions to One-Year Separation. (Public)

Sponsors: Representatives Charles Smith and Lowery (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

April 17, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE EXCEPTIONS TO THE ONE-YEAR SEPARATION REQUIREMENT
3 OF DIVORCE PROCEEDINGS WHEN A CONVICTION OF A CRIME OF DOMESTIC
4 VIOLENCE HAS OCCURRED.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 1 of Chapter 50 of the General Statutes is amended by adding
7 a new section to read:

8 "**§ 50-6.1. Exception to one-year separation requirement.**

9 (a) Pursuant to G.S. 50-8(c), the separation requirement under G.S. 50-6 may be waived
10 by either party if each of the following circumstances exists:

11 (1) One party was convicted of a crime of domestic violence, as set forth in
12 G.S. 15A-534.1(a), against the other party or was convicted of a crime against
13 the other party outside of this State that would have constituted a crime of
14 domestic violence, as set forth in G.S. 15A-534.1(a), had the crime been
15 committed in this State.

16 (2) The crime under subdivision (1) of this subsection occurred during the
17 marriage that is the subject of the divorce proceedings.

18 (b) If the court presiding over divorce proceedings under this Chapter finds that the
19 requirements of subsection (a) of this section have been met, the court shall grant the divorce if
20 the parties live separate and apart and if either party has resided in the State for a period of six
21 months next preceding the filing of the complaint."

22 **SECTION 2.** G.S. 50-8 reads as rewritten:

23 "**§ 50-8. Contents of complaint; verification; venue and service in action by nonresident;**
24 **certain divorces validated.**

25 (a) In all actions for divorce the complaint shall be verified in accordance with the
26 provisions of Rule 11 of the Rules of Civil Procedure and G.S. 1-148. The plaintiff shall set forth
27 in ~~his or her~~ the complaint that the complainant or defendant has been a resident of the State of
28 North Carolina for at least six months ~~next immediately~~ next preceding the filing of the complaint,
29 and that the facts set forth ~~therein~~ as grounds for divorce, except in actions for divorce from bed
30 and board, have existed to ~~his or her~~ the complainant's knowledge for at least six months prior to
31 the filing of the ~~complaint~~. ~~Provided, however, that if~~ complaint.

32 (b) If the cause for divorce filed pursuant to this section is one-year separation, or if that
33 one-year separation is waived pursuant to G.S. 50-6.1, then it shall not be necessary to allege in
34 the complaint that the grounds for divorce have existed for at least six months prior to the filing
35 of the complaint; it being the purpose of this proviso to permit a divorce after ~~such~~ the separation



1 of one year without awaiting an additional six months for filing the complaint: Provided, further,
2 that if the complainant is a nonresident of the State action shall be brought in the county of the
3 defendant's residence, and summons served upon the defendant personally or service of summons
4 accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1).

5 (c) If the complainant filing an action for divorce pursuant to this section seeks a waiver
6 of the one-year separation requirement pursuant to G.S. 50-6.1, the complainant shall set forth in
7 the complaint the grounds for the granting of that waiver. If the defendant in an action for divorce
8 brought pursuant to this section seeks a waiver of the one-year separation requirement pursuant
9 to G.S. 50-6.1, the defendant shall set forth in the defendant's answer the grounds for the granting
10 of that waiver.

11 (d) Notwithstanding any other provision of this section, any suit or action for divorce
12 ~~heretofore~~ instituted by a nonresident of this State in which the defendant was personally served
13 with summons or in which the defendant personally accepted service of the summons and the
14 case was tried and final judgment entered in a court of this State in a county other than the county
15 of the defendant's residence, is ~~heretofore~~ validated and declared to be legal and proper, the same as
16 if the suit or action for divorce had been brought in the county of the defendant's residence.

17 (e) In all divorce actions the complaint shall set forth the name and age of any minor
18 child or children of the marriage, and in the event there are no minor children of the marriage,
19 the complaint shall so state.

20 (f) In all prior suits and actions for divorce ~~heretofore~~ instituted and tried in the courts of
21 this State where the averments of fact required to be contained in the affidavit ~~heretofore~~ required
22 by this section are or have been alleged and set forth in the complaint in said suits or actions and
23 said complaints have been duly verified as required by Rule 11 of the Rules of Civil Procedure,
24 said allegations so contained in said complaints shall be deemed to be, and are hereby made, a
25 substantial compliance as to the allegations ~~heretofore~~ required by this section to be set forth in
26 any affidavit; and all such suits or actions for divorce, as well as the judgments or decrees issued
27 and entered as a result thereof, are ~~heretofore~~ validated and declared to be legal and proper judgments
28 and decrees of divorce.

29 (g) In all suits and actions for divorce ~~heretofore~~ instituted and tried in this State on and
30 subsequent to the 5th day of April, 1951, wherein the statements, averments, or allegations in the
31 verification to the complaint in said suits or actions are not in accordance with the provisions of
32 Rule 11 of the Rules of Civil Procedure and G.S. 1-148 or the requirements of this section as to
33 verification of complaint or the allegations, statements or averments in the verification contain
34 the language that the facts set forth in the complaint are true "to the best of affiant's knowledge
35 and belief" instead of the language "that the same is true to his (or her) own knowledge" or similar
36 variation in language, said allegations, statements and averments in said verifications as
37 contained in or attached to said complaint shall be deemed to be, and are hereby made, a
38 substantial compliance as to the allegations, averments or statements required by this section to
39 be set forth in any such verifications; and all such suits or actions for divorce, as well as the
40 judgments or decrees issued and entered as a result thereof, are hereby validated and declared to
41 be legal and proper judgments and decrees of divorce."

42 **SECTION 3.** This act is effective when it becomes law and applies to divorce
43 proceedings beginning before, on, or after that date.