

SUMMARY STATEMENT: CHANGES TO CLAIMS FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION

The proposed bill entitled “Procedures In Civil Actions for Alienation of Affection and Criminal Conversation” will establish new statutory procedures and clarify existing law related to these two claims. The primary goals of this proposed bill are:

1. Acts of a defendant occurring after spouses have separated and are living apart with the intent for the separation to be permanent will no longer be grounds for a claim. Currently acts of a defendant occurring after the date of separation of spouses and occurring any time prior to the date of a divorce judgment can be grounds for claims for alienation of affection (“AOA”) and criminal conversation (“CC”). The proposed bill makes claims for AOA and CC consistent in timing with the “fault grounds” for alimony, including adultery, which are based upon acts occurring on or before the date of separation of the spouses. Most citizens assume this to be the law now and many are surprised to learn that there is a difference from the alimony statute concerning the cut-off date for acts which are the basis for a claim. Spouses may be separated for a year or many years following the date of their separation without being divorced. Persons with whom either of them might have an affectionate or romantic relationship initiated after the date of separation remain subject to suit under the existing law. Grounds for claims would be terminated at the date of separation under the proposed bill.
2. A one (1) year statute of limitations would apply to AOA and CC claims instead of the current three (3) year statute of limitations. The one year statute of limitations would be the same as such common law tort claims as libel and slander. Claims for AOA and CC are fact intensive and it serves the best interest of justice to have these matters brought before the courts while facts are fresh on the minds of parties and witnesses before memories fade and evidence is lost. To protect innocent defendants from harassment and nuisance lawsuits, and

because of the intensely personal nature of these claims, plaintiffs should be required to bring forth their claims promptly within one year so that a judge or jury can resolve the claims. Otherwise, threats of claims of such a personal nature, even when entirely false, are subject to abuse by vengeful spouses. Justifiable claims must be brought forward within one year following the last act of the defendant for which damages are sought and no later than one year following the date of separation of the spouses.

3. The statute of repose and the statute of limitations would both be one year under the proposed bill. The current case law on how long a complaining party has to discover and bring a claim for AOA/CC is confusing and difficult for judges to apply. A one year statute of repose measured from the last act of the defendant, but in any case no later than one year from the date of separation of the spouses, defines clearly when a claim must be filed with the court.
4. Claims for Alienation of Affection and Criminal Conversation against business entities would be prohibited by the proposed bill. This will prevent nuisance law suits against businesses for Alienation of Affection where a disgruntled spouse seeks to embarrass or damage a business or an employee of a business causing unnecessary expense to the business and causing specious litigation.
5. In all other respects, the existing claims for Alienation of Affection and Criminal Conversation would remain unchanged as presently existing under North Carolina common law. There are no changes to the right to a jury trial, to compensatory and punitive damages, or to the recognized grounds for claims.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

Short Title: Procedures in Actions for Alienation of Affection/Criminal Conversation

Sponsors:

Referred to:

A BILL TO BE ENTITLED
PROCEDURES IN CIVIL ACTIONS FOR ALIENATION OF AFFECTION AND
CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52 of the General Statutes is amended by adding a new section to read:

“ § 52-13. Procedures in causes of action for alienation of affection and criminal conversation.

No act of the defendant after the date of separation of the claimant and the claimant’s spouse shall give rise to a cause of action for Alienation of Affection or Criminal Conversation. In no event shall any action for Alienation of Affection or Criminal Conversation be commenced more than one year after the last act of the defendant giving rise to the cause of action. The date of separation shall be interpreted according to Chapter 50 of the North Carolina General Statutes. A cause of action for Alienation of Affection or Criminal Conversation shall lie only against natural persons.

BACKGROUND ON THE PROPOSED BILL ENTITLED “PROCEDURES IN ACTIONS FOR ALIENATION OF AFFECTION/CRIMINAL CONVERSATION”

The Family Law Section of the Association has been dealing with the perceived problems with the common law causes of action for Alienation of Affection (“AOA”) and Criminal Conversation (“CC”) for many years. Twice previously, legislation was introduced which would have completely abolished both torts. This legislation passed in the House twice, but failed in the Senate both times.

The Family Law Section in 2008 conducted a survey at its annual meeting to learn what family lawyers thought should be done, if anything, concerning AOA/CC. The Family Law Section Council reviewed the survey results and worked to find what improvements in AOA/CC would best meet the broad consensus of the respondents to the survey as well as other family lawyers who expressed opinions. A number of draft bills were considered by the Section addressing various concerns. In September 2008 the Council made final revisions to the draft bill and unanimously adopted the draft bill being submitted to the Board for sponsorship.

The current bill takes a new approach to AOA/CC. Instead of trying to cure many perceived problems arising from these claims in our state’s courts by abolishing the causes of action, a more refined remedial approach has been undertaken in the present bill. The most egregious problems are addressed with the aim of making the claims more easily understood by the general public, more easily applied by lawyers and judges, and more focused in their application to defendants.

The first change the proposed bill would make is the changed end date for the accrual of claims. Under present law, claims for AOA/CC can accrue until the date a divorce judgment is entered by a court. Under the proposed bill, the last date a claim can accrue is the date of separation of the spouses as defined under the existing alimony statute. This would make the accrual of claims in AOA/CC the same date as the last date evidence of adultery or other “marital fault” can be considered under the alimony statute. For the large majority of North Carolina residents, this is what they now assume the law to be, only to learn otherwise when they consult their lawyer about AOA/CC.

Spouses who are separated with the intent to remain permanently apart and who are awaiting a divorce after twelve months may start an affectionate or romantic relationship following their separation. Under the existing law, their new partner is subject to suit for AOA/CC by their estranged spouse no matter how long the spouses have been separated, even if it has been many years, so long as they are not yet divorced. The existing law creates a trap for the unwary and unsuspecting and allows an estranged or former spouse to prevent their former spouse from bringing closure to the relationship and moving on with his or her personal life. The proposed bill eliminates the exposure to a suit for acts occurring after the date of separation. It preserves the rights of spouses to seek damages against third parties for claims arising prior to the date of separation which arguably could have contributed to the deterioration of their former marital relationship. It is believed that legislators who may have formerly voted against the complete abolition of AOA/CC will find this a much more acceptable remedy which they can support.

The second change the proposed bill would make is a change to the statute of limitations for AOA/CC from 3 years to 1 year. The perceived problem is that groundless threats of claims for AOA/CC are frequently used by divorcing spouses to gain unfair bargaining advantage in domestic cases on a variety of tangentially related issues, including division of marital property, custody, alimony, and child support. Also, under the present law, stale claims continue to be a threat for many years after the parties first separated if a final divorce judgment has not been entered. For instance, parties may have been separated for a year or two when one of the parties enters into a romantic relationship with a new partner. The relationship continues and four or five years after the date of separation the estranged spouses finally divorce. Under the present law, a former spouse would have a claim that could be filed any time within three years following the date of the divorce judgment - - - as long as eight years following the original date of separation under the example given. Under the proposed bill, a claim must be filed within one year of the date of the separation of the spouses under any circumstances. That allows a spouse with a meritorious claim to preserve that claim and pursue it if filed within one year. It prevents claims and threats of claims

from dragging on for years following the date of separation.

The one year statute of limitations in the proposed bill is similar to several other common law tort claims recognized in North Carolina, such as libel and slander. AOA/CC are fact specific claims involving intensely personal and private matters. Evidence is frequently based on fading memories of parties and key witnesses of events that are subject to varying interpretations. It is important that these matters be brought to trial promptly before memories fade and witnesses become unavailable. The shortened statute of limitations serves all parties well in this respect. It also is believed that meritorious claims will not be negatively affected by the shortened statute of limitations and that frivolous or harassing claims will be avoided.

The statute of repose under the proposed bill is one year. The current case law is confusing about the application of the statute of repose putting lawyers at a disadvantage in advising their clients and judges at a disadvantage in ruling on the facts of the cases coming before them. The clear-cut statute of repose measured from the last act of the defendant or the date of separation of the parties, whichever is earlier, will remedy these problems by its greater clarity and ease of application.

There have been attempts in a number of cases filed in North Carolina to recover damages from businesses where claims for Alienation of Affection have been filed based upon the actions of employees having romantic affairs associated with their employment. If these claims were allowed, businesses would be put in the position of policing the private affairs of their employees. There are no reported North Carolina cases of a plaintiff winning a recovery on these claims against a business defendant, but they have continued to be filed. These claims are particularly wasteful of the courts' time and resources as well as the time and resources of the businesses named as defendants in these cases. Under the proposed bill, only natural persons can be named as parties thereby excluding all business entities. In the past, some major business groups across the state supported abolition of AOA/CC based upon this identified problem under the existing law. It is believed that these business groups will find this particular provision of the proposed legislation most favorable to their interests and they will lend their considerable support to passage of the proposed bill.

Except as specified in the proposed bill, the tort claims for AOA/CC will remain unchanged, including the ability to recover compensatory and punitive damages for all acts for which recovery has been allowed in the past and the right to a jury trial. The changes being proposed are only procedural and are aimed at improving the administration of justice rather than abolishing or redefining the nature of the claims. There are no identified constitutional issues associated with the changes in the proposed bill. Obviously, a new approach is being taken towards AOA/CC than in former legislative proposals that were supported by the Association, but since those efforts were unsuccessful there is no continuing inconsistency. It is believed by many that the former legislation might fail again if re-introduced in the Legislature. There are no identified conflicts with other areas of the law that would cause concerns by other sections of the Association or other legal organizations in our state.

The proposed bill was originally drafted by Charles Montgomery as legislative chair of the Family Law Section in conjunction with the executive committee of the Section. The final proposed draft was revised and adopted by the Family Law Section Council at its meeting in Winston-Salem in September 2008 working as a committee of the whole. It was adopted unanimously by the Council. The names and addresses of all participants will be provided shortly.

Joe Hackney served as a sponsor of the prior bill on AOA/CC. Since he is presently Speaker of the House, it may be necessary to identify a new sponsor. It is particularly important to seek broad support in the Senate where past legislation on this topic has failed. The North Carolina Citizens for Business and Industry representing statewide chambers of commerce have been supportive of past measures and it is believed that it will again find this proposed bill beneficial to its members and constituents. Socially conservative organizations that opposed past measures are likely to find the proposed bill acceptable since it neither changes the grounds for the claims nor changes the damages that can be recovered in a successful claim. Since this bill is aimed at the better administration of justice related to these claims and not at fundamentally changing or abolishing the claims, there should be a broad consensus of support among lawyers, in the Legislature, and by the public at large.