

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 409
Judiciary II Committee Substitute Adopted 5/13/13
PROPOSED HOUSE COMMITTEE SUBSTITUTE S409-PCS75341-RK-56

Short Title: Assess Costs/Restraining Orders.

(Public)

Sponsors:

Referred to:

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND PROCEDURES AND TO PROVIDE FOR COSTS AND ATTORNEYS' FEES IN CHAPTER 50B PROTECTIVE ORDER AND CHAPTER 50C NO-CONTACT ORDER CASES IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-2 reads as rewritten:

"§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders; temporary custody.

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(a1) Except as provided in subsection (e) of this section, No court costs or attorneys' fees shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena-subpoena. The purpose of this subsection is to comply with federal law that would preclude the State from receiving federal funds if certain costs or other penalties were assessed for the bringing of a claim or action under this Chapter, except under certain circumstances.~~in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.~~

...

(e) No court costs shall be assessed against a party for the filing or service of a civil action or the filing of a motion in any existing action filed under Chapter 50 of the General Statutes, or for the service of any orders, and no attorneys' fees shall be assessed against the party, unless prior to assessing any costs or attorneys' fees, the court finds from evidence presented to the court that the person (i) was not a victim or filing on behalf of a victim of unlawful conduct, (ii) filed the action knowing that he or she was not a victim or filed the action knowing that the person upon whose behalf the filing was made was not a victim of



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1 unlawful conduct, and (iii) initiated the action for an improper purpose to harass the defendant.
2 The failure to comply with procedural requirements in this Chapter shall not be the basis for a
3 finding that the party was not a victim."

4 **SECTION 2.** G.S. 50C-2(b) reads as rewritten:

5 "(b) No court costs shall be assessed against the plaintiff for the filing or service of the
6 complaint, or the service of any ~~orders-orders,~~ and no attorneys' fees shall be assessed against
7 the plaintiff, unless prior to assessing any costs or attorneys' fees, the court finds from evidence
8 presented to the court that the plaintiff (i) was not a victim of unlawful conduct, (ii) filed the
9 action knowing that he or she was not the victim of unlawful conduct, and (iii) initiated the
10 action for an improper purpose to harass the defendant. The failure to comply with procedural
11 requirements in this Chapter shall not be the basis for a finding that the plaintiff was not a
12 victim."

13 **SECTION 3.** G.S. 50C-7 reads as rewritten:

14 "**§ 50C-7. Permanent civil no-contact order.**

15 Upon a finding that the victim has suffered an act of unlawful conduct committed by the
16 respondent, a permanent civil no-contact order may issue if the court additionally finds that
17 process was properly served on the respondent, the respondent has answered the complaint and
18 notice of hearing was given, or the respondent is in default. No permanent civil no-contact
19 order shall be issued without notice to the respondent."

20 **SECTION 4.** G.S. 50C-8(a) reads as rewritten:

21 "(a) A temporary civil no-contact order shall be effective for not more than 10 days as
22 the court fixes, unless within the time so fixed the temporary civil no-contact order, for good
23 cause shown, is extended for a like period or a longer period if the respondent consents. The
24 reasons for the extension shall be stated in the temporary order. ~~In case-~~ If a temporary ex parte
25 civil no-contact order order:

26 (1) ~~is-Is~~ granted without notice and a motion for a permanent civil no-contact
27 order is made, it shall be set down for hearing ~~at the earliest possible time~~
28 ~~and takes precedence over all matters except older matters of the same~~
29 ~~eharacter.~~ within 10 days from the date of the motion.

30 (2) Is denied, the trial on the plaintiff's motion for a civil no-contact order shall
31 be set for hearing within 30 days from the date of the denial.

32 When the motion for a permanent civil no-contact order comes on for hearing, the
33 complainant may proceed with a motion for a permanent civil no-contact order, and, if the
34 complainant fails to do so, the judge shall dissolve the temporary civil no-contact order. On two
35 days' notice to the complainant or on such shorter notice to that party as the judge may
36 prescribe, the respondent may appear and move its dissolution or modification. In that event the
37 judge shall proceed to hear and determine such motion as expeditiously as the ends of justice
38 require."

39 **SECTION 5.** G.S. 50C-5(b)(7) reads as rewritten:

40 "(b) The court may grant one or more of the following forms of relief in its orders under
41 this Chapter:

42 ...

43 (7) Order other relief deemed necessary and appropriate by the ~~court-court,~~
44 including assessing attorneys' fees to either party."

45 **SECTION 6.** This act becomes effective October 1, 2013, and applies to actions
46 commenced on or after that date.