

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 395

Short Title: Divorce/Summary Judgment.

(Public)

Sponsors: Representative Hackney.

Referred to: Judiciary III.

March 28, 1991

A BILL TO BE ENTITLED

AN ACT TO ALLOW SUMMARY JUDGMENT FOR ABSOLUTE DIVORCE IN
CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-10 reads as rewritten:

"§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading."

1 Sec. 2. This act becomes effective October 1, 1991, and any judgment of
2 absolute divorce entered prior to that date on the basis of nontestimonial evidence
3 pursuant to G.S. 1A-1, Rule 56, which is proper in all other respects, is valid and of full
4 force and effect.