

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1091

Short Title: Clarify Action for Divorce/Incompetent Spouse. (Public)

Sponsors: Representative Rhyne.

Referred to: Judiciary II.

April 7, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY LAWS PERTAINING TO CIVIL ACTIONS ON BEHALF OF AN  
3 INCOMPETENT SPOUSE AS RELATED TO DIVORCE PROCEEDINGS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 50-22 reads as rewritten:

6 "**§ 50-22. Action on behalf of an incompetent.**

7 ~~A general guardian for an incompetent spouse may commence, defend or maintain any~~  
8 ~~action authorized by this Chapter; however, the court shall not enter a decree of absolute~~  
9 ~~divorce in such an action filed by the guardian on behalf of the incompetent spouse. As an~~  
10 ~~exception to G.S. 50-21, the court may order equitable distribution on behalf of an incompetent~~  
11 ~~spouse without entering a decree of divorce after the parties have lived separate and apart for a~~  
12 ~~period of one year. Provided, however, that the competent spouse may seek and obtain a~~  
13 ~~divorce from the incompetent spouse upon showing basis for the same.~~duly appointed  
14 attorney-in-fact who has the power to sue and defend civil actions on behalf of an incompetent  
15 spouse and who has been appointed pursuant to a durable power of attorney executed in  
16 accordance with Chapter 32A of the General Statutes, a guardian appointed in accordance with  
17 Chapter 35A of the General Statutes, or a guardian ad litem appointed in accordance with  
18 G.S. 1A-1, Rules 17 and 25(b), may commence, defend, maintain, arbitrate, mediate, or settle  
19 any action authorized by this Chapter on behalf of an incompetent spouse. However, only a  
20 competent spouse may commence an action for absolute divorce."

21 **SECTION 2.** This act is effective when it becomes law.

