



Abolishing Torts Would Expose Marriages to Interference and Adultery

Applicable Bills: **House Bill 681, Senate Bill 1503**

Abolishing the civil actions of Alienation of Affection & Criminal Conversation would eliminate the only practical legal consequences for a third party who—with wrongful and malicious intent—breaks up a marriage and/or commits adultery with another’s husband or wife.

Alienation of Affection: This is a civil action, or tort, that establishes liability when a third party intrudes into a marriage and alienates the affections of a married person from their spouse resulting in the break-up of the marriage. This is not an action against the spouse but is an action against the third party. In order to succeed in such a claim, the plaintiff must establish:

- (1) That [the husband and wife] were happily married, and that a genuine love and affection existed between them;
- (2) That the love and affection so existing was alienated and destroyed; [and]
- (3) That the wrongful and malicious acts of the defendant produced and brought about the loss and alienation of such love and affection.¹

Criminal Conversation: This is a tort action against a third party for committing adultery with another person’s husband or wife. The plaintiff must prove the following:

- (1) The husband or wife was married; and
- (2) The third party had sexual intercourse with the husband or wife.²

Points to Consider:

1) State policy should protect marriages, not contribute to the breakdown of the family. For hundreds of years in North Carolina, marriage has been viewed as sacred, valued, and worthy of protection. These tort actions are designed to deter interference in marriages, including adultery, and to protect citizens from the devastation of divorce. There are few things more important to children than a stable home and family, and building a protective wall around marriages through the maintenance of these laws helps to support the sanctity of the family. According to a legislative staff analysis, the tort of alienation of affection is designed to “protect the marital right of the affection, society, companionship and assistance of the other spouse.”³ By abolishing these two laws, the State’s policy will shift dramatically away from this principle to a position that exposes marriages to third party intrusion. No longer will an aggrieved spouse have any legal recourse against a third party who, **through wrongful and malicious acts**, breaks up their marriage. No longer could a third party be held accountable for their wrongful and malicious acts of interference and adultery. The State’s policy should remain absolutely clear—if you pursue someone who is married, and wrongfully and maliciously break-up their marriage or commit adultery with someone else’s husband or wife, you can be held liable for your actions.

2) Abolishing criminal conversation will have the practical effect of legalizing adultery. While fornication and adultery remain criminal offenses under our commonly referred to cohabitation statute,⁴ such criminal actions against third parties are rarely prosecuted. In September 2006, a Superior Court Judge in Pender County attempted to strike down North Carolina’s fornication and adultery law and enjoin enforcement of the statute statewide.⁵ Despite the fact that the judge was overreaching in his attempt to apply his decision beyond the bounds of his superior court district, his ruling does affect Pender County. Because North Carolina’s fornication and adultery law is rarely enforced, abolishing criminal conversation will have the practical effect of legalizing adultery.

(OVER)

3) Abolishing these torts would leave aggrieved spouses with no other legal remedy. It has been suggested that the tort action of “intentional infliction of emotional distress” would be available in the absence of the tort of alienation of affection. This is not the case. These two torts require proof of different elements. The N.C. Court of Appeals found that adultery, “does not evidence the extreme and outrageous conduct which is essential to this cause of action [intentional infliction of emotional distress].”⁶ Furthermore, legal encyclopedias have surveyed case law across the nation and report that in states that have abolished alienation of affection and criminal conversation, no other action resembling these torts may be substituted, because it violates the intent of the legislature when they abolished these laws.⁷ In addition, the N.C. Court of Appeals clarified that commercial contract law does not apply to marriage; therefore, actions regarding “interference with a contract” cannot be sought as a remedy in place of alienation of affection.⁸

4) These laws have stood the test of time. Some argue that because these torts find their origin in Elizabethan law and were put into place when women were treated as chattel, or property, that they are antiquated and do not reflect current societal standards. This argument is invalid. These laws play an important role in establishing a protective barrier around marriages in present-day society—regardless of gender. Women and men have equal standing to bring these actions, and an equal number of women and men do. In fact, in most cases, a woman would bring one of these actions against another woman, and a man would bring the action against another man.

5) If the third party has done nothing wrong, the threat of these actions is meaningless. Because alienation of affection is so difficult to prove, an innocent party has little to fear from the threat of such action. If it cannot be proven that love and affection existed at the time the third party interfered, then the plaintiff has no case. If it cannot be proven that the defendant’s wrongful and malicious acts resulted in the loss of that spouse’s love and affection, the plaintiff has no case. As for criminal conversation, if the defendant did not have sexual intercourse with someone else’s husband or wife, then he or she has nothing to fear.

6) Arguments that these torts are susceptible to abuse are designed to protect the guilty. It has been argued that these torts are susceptible to abuse—that they offer a disproportionate settlement value for “unscrupulous plaintiffs;” they are costly to defend; wealthy people are the targets of these actions; there is no good way to measure damages; and they are brought to apply leverage in alimony, child support, and child custody decisions during divorce settlements. If such abuse exists, the appropriate remedy is not to abolish the tort actions, but to discipline the lawyers. Civil Procedure Rule 11 holds lawyers liable for lawsuits that are not well grounded. The argument that these torts are used as leverage in alimony, child support, etc., would only apply if the third party and the wrongdoing spouse continue in a relationship after the marriage has been destroyed, because only in this circumstance could threatening an action against the third party have any influence over the spouse. In this case, the relationship between the spouse and the third party provides even greater evidence that the marriage was destroyed by the interference of the third party. Other arguments to abolish these torts are simply an attempt to protect the guilty from responsibility for their actions. If the defendant has done no wrong, he or she has nothing to fear.

ACTION NEEDED: Support Marriage

Vote “NO” on House Bill 681 and Senate Bill 1503 – Abolish Alienation of Affection and Criminal Conversation.

¹ *McCutchen v. McCutchen*, 360 N.C. 280; 624 S.E.2d 620; 2006 N.C. LEXIS 2, citing, *Litchfield v. Cox*, 266 N.C. 622, 623, 146 S.E.2d 641, 641 (1966).

² *Cannon v. Miller*, 71 N.C. App. 460, 465 (1984).

³ Susan L. Sitze, Committee Council, House Bill 1047 Bill Analysis, N.C. House Judiciary 1 Committee, April 24, 2003.

⁴ North Carolina General Statute § 14-184.

⁵ *Hobbs v. Smith*, File No. 05 CVS 267, North Carolina Superior Court, Pender County, September 12, 2006.

⁶ *Poston v. Poston*, 112 N.C. App. 849 (1993).

⁷ *American Jurisprudence*, 41 Am Jur 2d § 271; *American Law Reports Digest: Husband and Wife* §§ 138-145.

⁸ *Poston v. Poston*, 112 N.C. App. 849 (1993).