

## **CHAPTER 14-07 HUSBAND AND WIFE**

**14-07-01. Mutual obligations.** Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

**14-07-02. Head of family.** Repealed by S.L. 1979, ch. 195, § 1.

**14-07-03. Duty to support.** The husband and wife have a mutual duty to support each other out of their individual property and labor.

**14-07-04. Separate property - Rights and privileges.** Except as otherwise provided by section 14-07-03, neither the husband nor the wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

**14-07-05. Rights and liabilities of married person.** Any person after marriage has with respect to property, contracts, and torts the same capacity and rights and is subject to the same liabilities as before marriage, including liability to suit by the person's spouse. In all actions by or against a married person, the married person shall sue and be sued in the person's own name.

**14-07-06. Contracts between husband and wife and third persons as to property.** Either husband or wife may enter into any engagement or transaction with the other or with other persons respecting property which either might enter into if unmarried.

**14-07-07. Contracts to alter marital relations.** A husband and wife cannot by any contract with each other alter their marital relations, except that they may agree in writing to an immediate separation and may make provision for the support of either of them and of their children during such separation. The mutual consent of the parties is a sufficient consideration for such a separation agreement.

**14-07-08. Separate and mutual rights and liabilities of husband and wife.** The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. The earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

**14-07-09. Curtesy and dower extinguished.** No estate is allowed the husband by curtesy upon the death of his wife and no estate in dower is allotted to the wife upon the death of her husband.

**14-07-10. Mutual liability for necessities.** The parties to a marriage are mutually liable to any person who in good faith supplied either party with articles necessary for their support. Such persons may recover the reasonable value from either party except in the cases when by law one party is not liable for the support of the other.

**14-07-11. Spouse liable for support - Exception.** An abandoned spouse is not liable for the support of the other spouse unless there is an offer to return on the part of the abandoning spouse or the abandonment is justified by misconduct. Neither party is liable for the support of the other when living separate by agreement unless the support is stipulated in the agreement.

**14-07-12. Transfer of property when abandoned or imprisoned.** In case the husband or wife abandons the other and removes from the state and is absent therefrom for one year without providing for the maintenance and support of that person's family, or is sentenced to imprisonment either in the county jail or penitentiary for the period of one year or more, the district court of the county where the husband or wife so abandoned or not in prison resides, on application by affidavit of such husband or wife fully setting forth the facts and supported by such other testimony as the court may deem necessary, may authorize that person to manage, control, sell, or encumber the property of the husband or wife for the support and maintenance of the family and for the purpose of paying debts contracted prior to such abandonment or imprisonment. Notice of such proceedings must be given to the opposite party and must be served as a summons is served in ordinary actions.

**14-07-13. Contracts made under power given by court binding on both parties.** All contracts, sales, or encumbrances made either by the husband or the wife by virtue of the power contemplated and granted by order of the court as provided in section 14-07-12 are binding on both, and during such absence or imprisonment, the person acting under such power may sue and be sued thereon. For all acts done, the property of both parties is liable, and execution may be levied or attachment issued thereon according to statute. No suit or proceedings may abate or in anywise be affected by the return or release of the person confined, but that person may be permitted to prosecute or defend jointly with the other.

**14-07-14. When order for transfer may be set aside.** The husband or wife affected by the proceedings contemplated in sections 14-07-12 and 14-07-13 may have the order or decree of the court set aside or annulled by affidavit of such party, setting forth fully the facts and supported by such other testimony as the court shall deem proper. Notice of proceedings to set aside and annul the order must be given the person in whose favor the same was granted and must be served as a summons is served in an ordinary action. The setting aside of the decree or order in no way affects any act done thereunder.

**14-07-15. Abandonment or nonsupport of child - Penalty.**

1. Every parent or other person legally responsible for the care or support of a child who wholly abandons the child or willfully fails to furnish food, shelter, clothing, and medical attention reasonably necessary and sufficient to meet the child's needs is guilty of a class C felony.
2. Any food, shelter, clothing, or medical attention furnished by or through a welfare or charitable program of any governmental agency, civic or religious organization, or a combination thereof, or any intervening third party, on the basis of need, does not avoid, excuse, relieve, or discharge either parent or person legally responsible for care and support of a child from the criminal penalty for the willful failure or neglect to provide such support.
3. A parent is not relieved, excused, or discharged from the responsibility and criminal penalty provided in this section if the other parent is providing the child with care and support unless the parents reside together.
4. The fact, if it is a fact, that either parent may have secured a divorce awarding the custody of the child, in no manner relieves either parent from the requirements and penalty of this section, except that compliance with the terms of a child support order by a parent is an affirmative defense to a charge under this section made against that parent.

5. If the parent or other person legally responsible for the care or support of a child, while in another state and while the minor child is in this state, wholly abandons the child or willfully fails to furnish food, clothing, shelter, and medical attention reasonably necessary and sufficient to meet the child's needs, the failure must be construed to have been committed in this state and all of the laws of this state with reference to punishment apply with the same force and effect as if the abandonment and failure to support had occurred in this state.
6. For purposes of this section, "willfully" has the meaning provided in section 12.1-02-02.

**14-07-16. Abandonment or nonsupport of spouse - Penalty.** Every husband or wife who, without lawful excuse, deserts that person's spouse with intent wholly to abandon that spouse or who willfully fails to furnish such food, shelter, clothing, and medical attention as is reasonably necessary and sufficient to keep the life of the spouse from danger and discomfort and the spouse's health from injury, is guilty of a class C felony.

If a husband or wife while in another state and having left that person's spouse in this state, willfully and intentionally and without lawful excuse deserts that person's spouse and abandons the spouse, or while in such other state, willfully and intentionally fails to furnish such food, shelter, clothing, and medical attention as is reasonably necessary, as herein provided, while that person's spouse is in this state, such abandonment and failure to support must be construed to have been committed in this state and all of the laws of this state with reference to punishment apply with the same force and effect as if such abandonment and failure to support had occurred in this state and the abandoning spouse is subject to the penalty as in this section provided.

**14-07-17. Presumption of intent to abandon.** Desertion or a failure to support a child or pregnant wife for a period of three months is presumptive evidence of intention wholly to abandon.

**14-07-18. Penalty for abandonment and nonsupport.** Repealed by S.L. 1975, ch. 106, § 673.

**14-07-19. Bond may be given in lieu of punishment.** In a prosecution for desertion or for nonsupport, before the trial and with the consent of the defendant, or at the trial, on the entry of a plea of guilty, or after conviction, instead of imposing the penalty, or in addition to the penalty, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, may make an order accepting the bond of the defendant to the state, in such amount and with such sureties as the court shall prescribe and approve. If there has been a plea of guilty or a conviction, judgment must be suspended until some condition of the bond is violated.

**14-07-20. Conditions of bond.** The bond given in lieu of or in addition to the punishment for abandonment or nonsupport must provide that the defendant shall furnish a spouse or child with proper food, shelter, clothing, and medical attention for such a period, not exceeding five years, as the court may order. The bond, in the discretion of the court, may be conditioned upon the payment of a specified sum of money at stated intervals.

**14-07-21. Violation of conditions of bond - Who may sue on breach.** Upon the filing of an affidavit showing the violation of the conditions of a bond given in lieu of or in addition to the punishment for nonsupport or desertion, the accused shall be heard upon an order to show cause. If the charges are sustained, the court may proceed with the trial of the defendant on the original charge, or may pronounce sentence under the original conviction, or may enforce the suspended sentence, as the case may be. The spouse or child, and any person furnishing necessary food, shelter, clothing, or medical attention to either, may sue upon the bond for a breach of any condition.

**14-07-22. Evidence required to prove relationship.** In any prosecution for desertion or failure to support a wife, husband, or child, no other or greater evidence is required to prove the relationship of the defendant to such wife, husband, or child than is or shall be required to prove such relationship in a civil action.