

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 538

Session of
1977

INTRODUCED BY ZEARFOSS, FREIND, MEBUS, POLITE, CAPUTO, WAGNER,
BROWN, MOEHLMANN, KNEPPER, NOYE, RAPPAPORT, STAPLETON,
O'KEEFE, GLEESON, WEIDNER, HOPKINS AND HONAMAN, MARCH 7, 1977

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 7, 1977

AN ACT

1 Relating to the dissolution of marriage.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known as and may be cited as the "Divorce
6 Act."

7 Section 2. Purposes; rules of construction.

8 This act shall be liberally construed and applied to promote
9 its underlying purposes, which are to:

10 (1) strengthen and preserve the integrity of marriage
11 and safeguard family relationships;

12 (2) promote the amicable settlement of disputes that
13 have arisen between parties to a marriage; and

14 (3) make the law of legal dissolution of marriage
15 effective for dealing with the realities of matrimonial
16 experience by making irretrievable breakdown of the marriage
17 relationship the sole basis for its dissolution.

1 Section 3. Application of Rules of Civil Procedure to
2 proceedings under this act.

3 (a) The Rules of Civil Procedure apply to all proceedings
4 under this act, except as otherwise provided in this act.

5 (b) A proceeding for dissolution of marriage, legal
6 separation, or declaration of invalidity of marriage shall be
7 entitled "In re the Marriage of.....and
8" A custody or support proceeding shall be
9 entitled "In re the (Custody) (Support) of"

10 (c) The initial pleading in all proceedings under this act
11 shall be denominated a petition. A responsive pleading shall be
12 denominated a response. Other pleadings, and all pleadings in
13 other matters under this act, shall be denominated as provided
14 in the Rules of Civil Procedure.

15 (d) In this act, "decree" includes "judgment."

16 (e) A decree of dissolution or of legal separation, if made,
17 shall not be awarded to one of the parties, but shall provide
18 that it affects the status previously existing between the
19 parties in the manner decreed.

20 Section 4. Dissolution of marriage; legal separation.

21 (a) The court of common pleas shall enter a decree of
22 dissolution of marriage if:

23 (1) the court finds that one of the parties, at the time
24 the action was commenced, was domiciled in the Commonwealth,
25 or was stationed in the Commonwealth while a member of the
26 armed services, and that the domicil or military presence has
27 been maintained for 90 days next preceding the making of the
28 findings;

29 (2) the court finds that the marriage is irretrievably
30 broken, if the finding is supported by evidence that:

1 (i) the parties have lived separate and apart for a
2 period of more than 180 days next preceding the
3 commencement of the proceeding; or

4 (ii) there is serious marital discord adversely
5 affecting the attitude of one or both of the parties
6 toward the marriage;

7 (3) the court finds that the conciliation provisions of
8 section 7 either do not apply or have been met; and

9 (4) to the extent it has jurisdiction to do so, the
10 court has considered, approved, or provided for child
11 custody, the support of any child entitled to support, the
12 maintenance of either spouse, and the disposition of
13 property; or has provided for a separate later hearing to
14 complete these matters.

15 (b) If a party requests a decree of legal separation rather
16 than a decree of dissolution of marriage, the court shall grant
17 the decree in that form unless the other party objects.

18 Section 5. Procedure; commencement; pleadings; abolition of
19 existing defenses.

20 (a) All proceedings under this act shall be commenced as
21 provided by the Rules of Civil Procedure.

22 (b) The verified petition in a proceeding for dissolution of
23 marriage or legal separation shall allege that the marriage is
24 irretrievably broken and shall set forth:

25 (1) the age, occupation, and length of residence in the
26 Commonwealth of each party;

27 (2) the date of the marriage and the place at which it
28 was registered;

29 (3) that the jurisdictional requirements of section 4
30 exist and the marriage is irretrievably broken in that

1 either:

2 (i) the parties have lived separate and apart for a
3 period of more than 180 days next preceding the
4 commencement of the proceeding; or

5 (ii) there is serious marital discord adversely
6 affecting the attitude of one or both of the parties
7 toward the marriage, and there is no reasonable prospect
8 of reconciliation;

9 (4) the names, ages, and addresses of all living
10 children of the marriage and whether the wife is pregnant;

11 (5) any arrangements as to support, custody, and
12 visitation of the children and maintenance of a spouse; and

13 (6) the relief sought.

14 (c) Either or both parties to the marriage may initiate the
15 proceeding.

16 (d) If a proceeding is commenced by one of the parties, the
17 other party shall be served in the manner provided by the Rules
18 of Civil Procedure and within 20 days after the date of service
19 may file a verified response.

20 (e) Previously existing defenses to divorce and legal
21 separation, including but not limited to condonation,
22 connivance, collusion, recrimination, insanity, and lapse of
23 time, are abolished.

24 (f) The court may join additional parties proper for the
25 exercise of its authority to implement this act.

26 Section 6. Temporary order or temporary injunction.

27 (a) In a proceeding for dissolution of marriage or for legal
28 separation, or in a proceeding for disposition of property or
29 for maintenance or support following dissolution of the marriage
30 by a court which lacked personal jurisdiction over the absent

1 spouse, either party may move for temporary maintenance or
2 temporary support of a child of the marriage entitled to
3 support. The motion shall be accompanied by an affidavit setting
4 forth the factual basis for the motion and the amounts
5 requested.

6 (b) As a part of a motion for temporary maintenance or
7 support or by independent motion accompanied by affidavit,
8 either party may request the court to issue a temporary
9 injunction for any of the following relief:

10 (1) restraining any person from transferring,
11 encumbering, concealing, or otherwise disposing of any
12 property except in the usual course of business or for the
13 necessities of life, and, if so restrained, requiring him to
14 notify the moving party of any proposed extraordinary
15 expenditures made after the order is issued;

16 (2) enjoining a party from molesting or disturbing the
17 peace of the other party or of any child;

18 (3) excluding a party from the family home or from the
19 home of the other party upon a showing that physical or
20 emotional harm would otherwise result;

21 (4) enjoining a party from removing a child from the
22 jurisdiction of the court; and

23 (5) providing other injunctive relief proper in the
24 circumstances.

25 (c) The court may issue a temporary restraining order
26 without requiring notice to the other party only if it finds on
27 the basis of the moving affidavit or other evidence that
28 irreparable injury will result to the moving party if no order
29 is issued until the time for responding has elapsed.

30 (d) A response may be filed within 20 days after service of

1 notice of motion or at the time specified in the temporary
2 restraining order.

3 (e) On the basis of the showing made and in conformity with
4 sections 10 and 11, the court may issue a temporary injunction
5 and an order for temporary maintenance or support in amounts and
6 on terms just and proper in the circumstance.

7 (f) A temporary order or temporary injunction:

8 (1) does not prejudice the rights of the parties or the
9 child which are to be adjudicated at subsequent hearings in
10 the proceeding;

11 (2) may be revoked or modified before final decree on a
12 showing by affidavit of the facts necessary to revocation or
13 modification of a final decree under section 16; and

14 (3) terminates when the final decree is entered or when
15 the petition for dissolution or legal separation is
16 voluntarily dismissed.

17 Section 7. Irretrievable breakdown.

18 (a) If both of the parties by petition or otherwise have
19 stated under oath or affirmation that the marriage is
20 irretrievably broken, or one of the parties has so stated and
21 the other has not denied it, the court, after hearing, shall
22 make a finding whether the marriage is irretrievably broken.

23 (b) If one of the parties has denied under oath or
24 affirmation that the marriage is irretrievably broken, the court
25 shall consider all relevant factors, including the circumstances
26 that gave rise to filing the petition and the prospect of
27 reconciliation, and shall:

28 (1) make a finding whether the marriage is irretrievably
29 broken; or

30 (2) continue the matter for further hearing not fewer

1 than 30 nor more than 60 days later, or as soon thereafter as
2 the matter may be reached on the court's calendar, and may
3 suggest to the parties that they seek counseling. The court,
4 at the request of either party shall, or on its own motion
5 may, order a conciliation conference. At the adjourned
6 hearing the court shall make a finding whether the marriage
7 is irretrievably broken.

8 (c) A finding of irretrievable breakdown is a determination
9 that there is no reasonable prospect of reconciliation.

10 Section 8. Separation agreement.

11 (a) To promote amicable settlement of disputes between
12 parties to a marriage attendant upon their separation or the
13 dissolution of their marriage, the parties may enter into a
14 written separation agreement containing provisions for
15 disposition of any property owned by either of them, maintenance
16 of either of them, and support, custody, and visitation of their
17 children.

18 (b) In a proceeding for dissolution of marriage or for legal
19 separation, the terms of the separation agreement, except those
20 providing for the support, custody, and visitation of children,
21 are binding upon the court unless it finds, after considering
22 the economic circumstances of the parties and any other relevant
23 evidence produced by the parties, on their own motion or on
24 request of the court, that the separation agreement is
25 unconscionable.

26 (c) If the court finds the separation agreement
27 unconscionable, it may request the parties to submit a revised
28 separation agreement or may make orders for the disposition of
29 property, maintenance, and support.

30 (d) If the court finds that the separation agreement is not

1 unconscionable as to disposition of property or maintenance, and
2 not unsatisfactory as to support:

3 (1) unless the separation agreement provides to the
4 contrary, its term shall be set forth in the decree of
5 dissolution or legal separation and the parties shall be
6 ordered to perform them; or

7 (2) if the separation agreement provides that its terms
8 shall not be set forth in the decree, the decree shall
9 identify the separation agreement and state that the court
10 has found the terms not unconscionable.

11 (e) Terms of the agreement set forth in the decree are
12 enforceable by all remedies available for enforcement of a
13 judgment, including contempt, and are enforceable as contract
14 terms.

15 (f) Except for terms concerning the support, custody, or
16 visitation of children, the decree may expressly preclude or
17 limit modification of terms set forth in the decree if the
18 separation agreement so provides. Otherwise, terms of a
19 separation agreement set forth in the decree are automatically
20 modified by modification of the decree.

21 Section 9. Disposition of property.

22 (a) In a proceeding for dissolution of a marriage, legal
23 separation, or disposition of property following a decree of
24 dissolution of marriage or legal separation by a court which
25 lacked personal jurisdiction over the absent spouse or lacked
26 jurisdiction to dispose of the property, the court, without
27 regard to marital misconduct, shall, and in a proceeding for
28 legal separation may, finally equitably apportion between the
29 parties the property and assets belonging to either or both
30 however and whenever acquired, and whether the title thereto is

1 in the name of the husband or wife or both. In making
2 apportionment the court shall consider the duration of the
3 marriage, any prior marriage of either party, any antenuptial
4 agreement of the parties, the age, health, station, occupation,
5 amount and sources of income, vocational skills, employability,
6 estate, liabilities, and needs of each of the parties, custodial
7 provisions, whether the apportionment is in lieu of or in
8 addition to maintenance, and the opportunity of each for future
9 acquisition of capital assets and income. The court shall also
10 consider the contribution or dissipation of each party in the
11 acquisition, preservation, depreciation, or appreciation in
12 value of the respective estates, and as the contribution of a
13 spouse as a homemaker or to the family unit.

14 (b) In the proceeding, the court may protect and promote the
15 best interests of the children by setting aside a portion of the
16 jointly and separately held estates of the parties in a separate
17 fund or trust for the support, maintenance, education, and
18 general welfare of any minor, dependent, or incompetent children
19 of the parties.

20 Section 10. Maintenance.

21 (a) In a proceeding for dissolution of marriage, legal
22 separation, or maintenance following a decree of dissolution of
23 the marriage by a court which lacked personal jurisdiction over
24 the absent spouse, the court may grant a maintenance order for
25 either spouse, only if it finds that the spouse seeking
26 maintenance:

27 (1) lacks sufficient property to provide for his
28 reasonable needs; and

29 (2) is unable to support himself through appropriate
30 employment or is the custodian of a child whose condition or

1 circumstances make it appropriate that the custodian not be
2 required to seek employment outside the home.

3 (b) The maintenance order shall be in amounts and for
4 periods of time the court deems just, without regard to marital
5 misconduct, and after considering all relevant factors
6 including:

7 (1) the financial resources of the party seeking
8 maintenance, including marital property apportioned to him,
9 his ability to meet his needs independently, and the extent
10 to which a provision for support of a child living with the
11 party includes a sum for that party as custodian;

12 (2) the time necessary to acquire sufficient education
13 or training to enable the party seeking maintenance to find
14 appropriate employment;

15 (3) the standard of living established during the
16 marriage;

17 (4) the duration of the marriage;

18 (5) the age and the physical and emotional condition of
19 the spouse seeking maintenance; and

20 (6) the ability of the spouse from whom maintenance is
21 sought to meet his needs while meeting those of the spouse
22 seeking maintenance.

23 Section 11. Child support.

24 In a proceeding for dissolution of marriage, legal
25 separation, maintenance, or child support, the court may order
26 either or both parents owing a duty of support to a child to pay
27 an amount reasonable or necessary for his support, without
28 regard to marital misconduct, after considering all relevant
29 factors including:

30 (1) the financial resources of the child;

- 1 (2) the financial resources of the custodial parent;
- 2 (3) the standard of living the child would have enjoyed
- 3 had the marriage not been dissolved;
- 4 (4) the physical and emotional condition of the child
- 5 and his educational needs; and
- 6 (5) the financial resources and needs of the
- 7 noncustodial parent.

8 Section 12. Representation of child.

9 The court may appoint an attorney to represent the interests
10 of a minor or dependent child with respect to his support,
11 custody, and visitation. The court shall enter an order for
12 costs, fees, and disbursements in favor of the child's attorney.
13 The order shall be made against either or both parents, except
14 that, if the responsible party is indigent, the costs, fees, and
15 disbursements shall be borne by the county.

16 Section 13. Attorney's fees.

17 The court from time to time after considering the financial
18 resources of both parties may order a party to pay a reasonable
19 amount for the cost to the other party of maintaining or
20 defending any proceeding under this act and for attorney's fees,
21 including sums for legal services rendered and costs incurred
22 prior to the commencement of the proceeding or after entry of
23 judgment. The court may order that the amount be paid directly
24 to the attorney, who may enforce the order in his name.

25 Section 14. Decree.

26 (a) A decree of dissolution of marriage or of legal
27 separation is final when entered, subject to the right of
28 appeal. An appeal from the decree of dissolution that does not
29 challenge the finding that the marriage is irretrievably broken
30 does not delay the finality of that provision of the decree

1 which dissolves the marriage beyond the time for appealing from
2 that provision, and either of the parties may remarry pending
3 appeal.

4 (b) No earlier than six months after entry of a decree of
5 legal separation, the court on motion of either party shall
6 convert the decree to a decree of dissolution of marriage.

7 (c) The prothonotary shall give notice of the entry of a
8 decree of dissolution or legal separation:

9 (1) if the marriage is registered in this Commonwealth
10 to the clerk of orphans' court of the county where the
11 marriage is registered who shall enter the fact of
12 dissolution or separation in the Marriage License Docket; or

13 (2) if the marriage is registered in another
14 jurisdiction, to the appropriate official of that
15 jurisdiction, with the request that he enter the fact of
16 dissolution in the appropriate record.

17 (d) Upon request by a wife whose marriage is dissolved or
18 declared invalid, the court may, and if there are no children of
19 the parties shall, order her maiden name or a former name
20 restored.

21 Section 15. Independence of provisions of decree or temporary
22 order.

23 If a party fails to comply with a provision of a decree or
24 temporary order or injunction, the obligation of the other party
25 to make payments for support or maintenance or to permit
26 visitation is not suspended; but he may move the court to grant
27 an appropriate order.

28 Section 16. Modification and termination of provisions for
29 maintenance, support and property disposition.

30 (a) Except as otherwise provided in section 8(f), the

1 provisions of any decree respecting maintenance or support may
2 be modified only as to installments accruing subsequent to the
3 motion for modification and only upon a showing of changed
4 circumstances so substantial and continuing as to make the terms
5 unconscionable. The provisions as to property disposition may
6 not be revoked or modified, unless the court finds the existence
7 of conditions that justify the reopening of a judgment under the
8 laws of this Commonwealth.

9 (b) Unless otherwise agreed in writing or expressly provided
10 in the decree, the obligation to pay future maintenance is
11 terminated upon the death of either party or the remarriage of
12 the party receiving maintenance.

13 (c) Unless otherwise agreed in writing or expressly provided
14 in the decree, provisions for the support of a child are
15 terminated by emancipation of the child but not by the death of
16 a parent obligated to support the child. When a parent obligated
17 to pay support dies, the amount of support may be modified,
18 revoked, or commuted to a lump sum payment, to the extent just
19 and appropriate in the circumstances.

20 Section 17. Effective date.

21 This act shall take effect January 1, 1978.