

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 2376** Session of  
1976

INTRODUCED BY ZEARFOSS, MEBUS AND O'DONNELL, MAY 13, 1976

REFERRED TO COMMITTEE ON JUDICIARY, MAY 17, 1976

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

6 Section 2. Purposes; Rules of Construction.--This act shall  
7 be liberally construed and applied to promote its underlying  
8 purposes, which are to:

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

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

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

17 Section 3. Application of Rules of Civil Procedure to  
18 Proceedings under this Act.--(a) The Rules of Civil Procedure

1 apply to all proceedings under this act, except as otherwise  
2 provided in this act.

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

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

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

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

18 Section 4. Dissolution of Marriage; Legal Separation.--(a)  
19 The court of common pleas shall enter a decree of dissolution of  
20 marriage if:

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

27 (2) the court finds that the marriage is irretrievably  
28 broken, if the finding is supported by evidence that (i) the  
29 parties have lived separate and apart for a period of more than  
30 180 days next preceding the commencement of the proceeding, or

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

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

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

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

Section 5. Procedure; Commencement; Pleadings; Abolition of Existing Defenses.--(a) All proceedings under this act shall be commenced as provided by the Rules of Civil Procedure.

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

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

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

(3) that the jurisdictional requirements of section 4 exist and the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) the names, ages, and addresses of all living children of

1 the marriage and whether the wife is pregnant;

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

4 (6) the relief sought.

5 (c) Either or both parties to the marriage may initiate the  
6 proceeding.

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

11 (e) Previously existing defenses to divorce and legal  
12 separation, including but not limited to condonation,  
13 connivance, collusion, recrimination, insanity, and lapse of  
14 time, are abolished.

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

17 Section 6. Temporary Order or Temporary Injunction.--(a) In  
18 a proceeding for dissolution of marriage or for legal  
19 separation, or in a proceeding for disposition of property or  
20 for maintenance or support following dissolution of the marriage  
21 by a court which lacked personal jurisdiction over the absent  
22 spouse, either party may move for temporary maintenance or  
23 temporary support of a child of the marriage entitled to  
24 support. The motion shall be accompanied by an affidavit setting  
25 forth the factual basis for the motion and the amounts  
26 requested.

27 (b) As a part of a motion for temporary maintenance or  
28 support or by independent motion accompanied by affidavit,  
29 either party may request the court to issue a temporary  
30 injunction for any of the following relief:

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

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

9 (3) excluding a party from the family home or from the home  
10 of the other party upon a showing that physical or emotional  
11 harm would otherwise result;

12 (4) enjoining a party from removing a child from the  
13 jurisdiction of the court; and

14 (5) providing other injunctive relief proper in the  
15 circumstances.

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

21 (d) A response may be filed within 20 days after service of  
22 notice of motion or at the time specified in the temporary  
23 restraining order.

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

28 (f) A temporary order or temporary injunction:

29 (1) does not prejudice the rights of the parties or the child  
30 which are to be adjudicated at subsequent hearings in the

1 proceeding;

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

5 (3) terminates when the final decree is entered or when the  
6 petition for dissolution or legal separation is voluntarily  
7 dismissed.

8 Section 7. Irretrievable Breakdown.--(a) If both of the  
9 parties by petition or otherwise have stated under oath or  
10 affirmation that the marriage is irretrievably broken, or one of  
11 the parties has so stated and the other has not denied it, the  
12 court, after hearing, shall make a finding whether the marriage  
13 is irretrievably broken.

14 (b) If one of the parties has denied under oath or  
15 affirmation that the marriage is irretrievably broken, the court  
16 shall consider all relevant factors, including the circumstances  
17 that gave rise to filing the petition and the prospect of  
18 reconciliation, and shall:

19 (1) make a finding whether the marriage is irretrievably  
20 broken; or

21 (2) continue the matter for further hearing not fewer than  
22 30 nor more than 60 days later, or as soon thereafter as the  
23 matter may be reached on the court's calendar, and may suggest  
24 to the parties that they seek counseling. The court, at the  
25 request of either party shall, or on its own motion may, order a  
26 conciliation conference. At the adjourned hearing the court  
27 shall make a finding whether the marriage is irretrievably  
28 broken.

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

1       Section 8. Separation Agreement.--(a) To promote amicable  
2 settlement of disputes between parties to a marriage attendant  
3 upon their separation or the dissolution of their marriage, the  
4 parties may enter into a written separation agreement containing  
5 provisions for disposition of any property owned by either of  
6 them, maintenance of either of them, and support, custody, and  
7 visitation of their children.

8       (b) In a proceeding for dissolution of marriage or for legal  
9 separation, the terms of the separation agreement, except those  
10 providing for the support, custody, and visitation of children,  
11 are binding upon the court unless it finds, after considering  
12 the economic circumstances of the parties and any other relevant  
13 evidence produced by the parties, on their own motion or on  
14 request of the court, that the separation agreement is  
15 unconscionable.

16       (c) If the court finds the separation agreement  
17 unconscionable, it may request the parties to submit a revised  
18 separation agreement or may make orders for the disposition of  
19 property, maintenance, and support.

20       (d) If the court finds that the separation agreement is not  
21 unconscionable as to disposition of property or maintenance, and  
22 not unsatisfactory as to support:

23       (1) unless the separation agreement provides to the  
24 contrary, its term shall be set forth in the decree of  
25 dissolution or legal separation and the parties shall be ordered  
26 to perform them, or

27       (2) if the separation agreement provides that its terms  
28 shall not be set forth in the decree, the decree shall identify  
29 the separation agreement and state that the court has found the  
30 terms not unconscionable.

1 (e) Terms of the agreement set forth in the decree are  
2 enforceable by all remedies available for enforcement of a  
3 judgment, including contempt, and are enforceable as contract  
4 terms.

5 (f) Except for terms concerning the support, custody, or  
6 visitation of children, the decree may expressly preclude or  
7 limit modification of terms set forth in the decree if the  
8 separation agreement so provides. Otherwise, terms of a  
9 separation agreement set forth in the decree are automatically  
10 modified by modification of the decree.

11 Section 9. Disposition of Property.--(a) In a proceeding for  
12 dissolution of a marriage, legal separation, or disposition of  
13 property following a decree of dissolution of marriage or legal  
14 separation by a court which lacked personal jurisdiction over  
15 the absent spouse or lacked jurisdiction to dispose of the  
16 property, the court, without regard to marital misconduct,  
17 shall, and in a proceeding for legal separation may, finally  
18 equitably apportion between the parties the property and assets  
19 belonging to either or both however and whenever acquired, and  
20 whether the title thereto is in the name of the husband or wife  
21 or both. In making apportionment the court shall consider the  
22 duration of the marriage, any prior marriage of either party,  
23 any antenuptial agreement of the parties, the age, health,  
24 station, occupation, amount and sources of income, vocational  
25 skills, employability, estate, liabilities, and needs of each of  
26 the parties, custodial provisions, whether the apportionment is  
27 in lieu of or in addition to maintenance, and the opportunity of  
28 each for future acquisition of capital assets and income. The  
29 court shall also consider the contribution or dissipation of  
30 each party in the acquisition, preservation, depreciation, or

1 appreciation in value of the respective estates, and as the  
2 contribution of a spouse as a homemaker or to the family unit.

3 (b) In the proceeding, the court may protect and promote the  
4 best interests of the children by setting aside a portion of the  
5 jointly and separately held estates of the parties in a separate  
6 fund or trust for the support, maintenance, education, and  
7 general welfare of any minor, dependent, or incompetent children  
8 of the parties.

9 Section 10. Maintenance.--(a) In a proceeding for  
10 dissolution of marriage, legal separation, or maintenance  
11 following a decree of dissolution of the marriage by a court  
12 which lacked personal jurisdiction over the absent spouse, the  
13 court may grant a maintenance order for either spouse, only if  
14 it finds that the spouse seeking maintenance:

15 (1) lacks sufficient property to provide for his reasonable  
16 needs; and

17 (2) is unable to support himself through appropriate  
18 employment or is the custodian of a child whose condition or  
19 circumstances make it appropriate that the custodian not be  
20 required to seek employment outside the home.

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

25 (1) the financial resources of the party seeking  
26 maintenance, including marital property apportioned to him, his  
27 ability to meet his needs independently, and the extent to which  
28 a provision for support of a child living with the party  
29 includes a sum for that party as custodian;

30 (2) the time necessary to acquire sufficient education or

1 training to enable the party seeking maintenance to find  
2 appropriate employment;  
3 (3) the standard of living established during the marriage;  
4 (4) the duration of the marriage;  
5 (5) the age and the physical and emotional condition of the  
6 spouse seeking maintenance; and  
7 (6) the ability of the spouse from whom maintenance is  
8 sought to meet his needs while meeting those of the spouse  
9 seeking maintenance.

10 Section 11. Child Support.--In a proceeding for dissolution  
11 of marriage, legal separation, maintenance, or child support,  
12 the court may order either or both parents owing a duty of  
13 support to a child to pay an amount reasonable or necessary for  
14 his support, without regard to marital misconduct, after  
15 considering all relevant factors including:

16 (1) the financial resources of the child;  
17 (2) the financial resources of the custodial parent;  
18 (3) the standard of living the child would have enjoyed had  
19 the marriage not been dissolved;  
20 (4) the physical and emotional condition of the child and  
21 his educational needs; and  
22 (5) the financial resources and needs of the noncustodial  
23 parent.

24 Section 12. Representation of Child.--The court may appoint  
25 an attorney to represent the interests of a minor or dependent  
26 child with respect to his support, custody, and visitation. The  
27 court shall enter an order for costs, fees, and disbursements in  
28 favor of the child's attorney. The order shall be made against  
29 either or both parents, except that, if the responsible party is  
30 indigent, the costs, fees, and disbursements shall be borne by

1 the county.

2 Section 13. Attorney's Fees.--The court from time to time  
3 after considering the financial resources of both parties may  
4 order a party to pay a reasonable amount for the cost to the  
5 other party of maintaining or defending any proceeding under  
6 this act and for attorney's fees, including sums for legal  
7 services rendered and costs incurred prior to the commencement  
8 of the proceeding or after entry of judgment. The court may  
9 order that the amount be paid directly to the attorney, who may  
10 enforce the order in his name.

11 Section 14. Decree.--(a) A decree of dissolution of marriage  
12 or of legal separation is final when entered, subject to the  
13 right of appeal. An appeal from the decree of dissolution that  
14 does not challenge the finding that the marriage is  
15 irretrievably broken does not delay the finality of that  
16 provision of the decree which dissolves the marriage beyond the  
17 time for appealing from that provision, and either of the  
18 parties may remarry pending appeal.

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

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

24 (1) if the marriage is registered in this Commonwealth to  
25 the clerk of orphans' court of the county where the marriage is  
26 registered who shall enter the fact of dissolution or separation  
27 in the Marriage License Docket; or

28 (2) if the marriage is registered in another jurisdiction,  
29 to the appropriate official of that jurisdiction, with the  
30 request that he enter the fact of dissolution in the appropriate

1 record.

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

6 Section 15. Independence of Provisions of Decree or  
7 Temporary Order.--If a party fails to comply with a provision of  
8 a decree or temporary order or injunction, the obligation of the  
9 other party to make payments for support or maintenance or to  
10 permit visitation is not suspended; but he may move the court to  
11 grant an appropriate order.

12 Section 16. Modification and Termination of Provisions for  
13 Maintenance, Support and Property Disposition.--(a) Except as  
14 otherwise provided in section 8 (f), the provisions of any  
15 decree respecting maintenance or support may be modified only as  
16 to installments accruing subsequent to the motion for  
17 modification and only upon a showing of changed circumstances so  
18 substantial and continuing as to make the terms unconscionable.  
19 The provisions as to property disposition may not be revoked or  
20 modified, unless the court finds the existence of conditions  
21 that justify the reopening of a judgment under the laws of this  
22 Commonwealth.

23 (b) Unless otherwise agreed in writing or expressly provided  
24 in the decree, the obligation to pay future maintenance is  
25 terminated upon the death of either party or the remarriage of  
26 the party receiving maintenance.

27 (c) Unless otherwise agreed in writing or expressly provided  
28 in the decree, provisions for the support of a child are  
29 terminated by emancipation of the child but not by the death of  
30 a parent obligated to support the child. When a parent obligated

1 to pay support dies, the amount of support may be modified,  
2 revoked, or commuted to a lump sum payment, to the extent just  
3 and appropriate in the circumstances.

4 Section 17. Effective Date.--This act shall take effect  
5 January 1, 1977.