
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 409

Session of
1987

INTRODUCED BY GREENLEAF, REIBMAN, KELLEY AND AFFLERBACH,
FEBRUARY 23, 1987

REFERRED TO JUDICIARY, FEBRUARY 23, 1987

AN ACT

1 Amending the act of April 2, 1980 (P.L.63, No.26), entitled "An
2 act consolidating, revising and amending the divorce and
3 annulment laws of the Commonwealth and making certain
4 repeals," further providing for grounds for divorce,
5 procedure, jurisdiction, marital property, relief and
6 alimony; providing for agreements between parties; making
7 editorial changes; and making a repeal.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Sections 104, 201, 301 and 401 of the act of
11 April 2, 1980 (P.L.63, No.26), known as the Divorce Code, are
12 amended to read:

13 Section 104. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Act." The Divorce Code.

18 "Alimony." An order for support granted by this or any other
19 state to a spouse or former spouse in conjunction with a decree
20 granting a divorce or annulment.

1 "Alimony pendente lite." An order [for temporary support
2 granted to a spouse during the pendency] of financial assistance
3 to enable the dependent spouse to maintain or defend a divorce
4 or annulment proceeding.

5 "Court." The court of common pleas.

6 "Divorce." Divorce from the bonds of matrimony.

7 "Grounds for divorce." The grounds enumerated in section
8 201.

9 "Irretrievable breakdown." Estrangement due to marital
10 difficulties with no reasonable prospect of reconciliation.

11 "Law." Includes both statutory and common law.

12 "Qualified professionals." Includes marriage counselors,
13 psychologists, psychiatrists, social workers, ministers,
14 priests, or rabbis, or other persons who, by virtue of their
15 training and experience, are able to provide counseling.

16 "Separate and apart." Complete cessation of any and all
17 cohabitation.

18 Section 201. Grounds for divorce.

19 (a) It shall be lawful for the court to grant a divorce to
20 the innocent and injured spouse whenever it shall be judged that
21 the other spouse shall have:

22 (1) Committed willful and malicious desertion, and
23 absence from the habitation of the injured and innocent
24 spouse, without a reasonable cause, for the period of one or
25 more years.

26 (2) Committed adultery.

27 (3) By cruel and barbarous treatment, endangered the
28 life or health of the injured and innocent spouse.

29 (4) Knowingly entered into a bigamous marriage while a
30 former marriage still is subsisting.

1 (5) Been sentenced to imprisonment for a term of two or
2 more years upon conviction of having committed a crime.

3 (6) Offered such indignities to the innocent and injured
4 spouse as to render his or her condition intolerable and life
5 burdensome.

6 (b) It shall be lawful for the court to grant a divorce upon
7 the ground that insanity or serious mental disorder has resulted
8 in confinement in a mental institution for at least [three
9 years] 18 months immediately before the filing of the complaint,
10 and where there is no reasonable prospect of the defendant
11 spouse's being discharged from inpatient care during the next
12 [three years] 18 months subsequent to the filing of the
13 complaint. A presumption that no such prospect of discharge
14 exists shall be established by a certificate of the
15 superintendent of such institution to that effect and which
16 includes a supporting statement of a treating physician.

17 (c) It shall be lawful for the court to grant a divorce
18 where a complaint has been filed alleging that the marriage is
19 irretrievably broken and 90 days have elapsed from the date of
20 filing of the complaint and an affidavit has been filed by each
21 of the parties evidencing that each of the parties consents to
22 the divorce.

23 (d) (1) It shall be lawful for the court to grant a divorce
24 where a party has filed a complaint and an affidavit alleging
25 that the parties have lived separate and apart for a period
26 of at least [three years] one year, and that the marriage is
27 irretrievably broken, and:

28 (i) the respondent does not deny the allegations set
29 forth in the affidavit; or

30 (ii) the respondent denies one or more of the

1 allegations set forth in the affidavit, but after notice
2 and hearing, the court determines that the parties have
3 lived separate and apart for a period of at least [three
4 years] one year and that the marriage is irretrievably
5 broken.

6 (2) If a hearing has been held pursuant to paragraph
7 (1)(ii), and the court determines that there is a reasonable
8 prospect of reconciliation, then the court shall continue the
9 matter for a period not less than 90 days nor more than 120
10 days, unless the parties agree to a period in excess of 120
11 days. During such period, the court shall require counseling
12 as provided in section 202. If the parties have not
13 reconciled at the expiration of the time period and one party
14 states under oath that the marriage is irretrievably broken,
15 the court shall determine whether the marriage is
16 irretrievably broken. If the court determines that the
17 marriage is irretrievably broken, the court shall grant the
18 divorce. Otherwise, the court shall deny the divorce.

19 (e) If grounds for divorce are established under subsection
20 (a), (b) or (d), the court may grant a divorce without requiring
21 a hearing on a counterclaim.

22 Section 301. Jurisdiction.

23 (a) The courts of this Commonwealth as defined in section
24 104 shall have original jurisdiction in cases of divorce and for
25 the annulment of void or voidable marriages and, where they have
26 jurisdiction, shall determine in conjunction with any decree
27 granting a divorce or annulment the following matters, where
28 raised in the complaint or the answer and issue appropriate
29 decrees or orders with reference thereto and may retain
30 continuing jurisdiction thereof:

1 (1) The determination and disposition of property rights
2 and interests between spouses, including any rights created
3 by any antenuptial, postnuptial, or separation agreement and
4 including the partition of property held as tenants by the
5 entireties or otherwise and any accounting between them, and
6 the order of any spousal support, alimony, alimony pendente
7 lite, counsel fees, or costs authorized by law.

8 (2) The future care, custody and visitation rights as to
9 children of such marriage or purported marriage.

10 (3) Any support or assistance which shall be paid for
11 the benefit of any children of such marriage or purported
12 marriage.

13 (4) Any property settlement, involving any of the
14 matters set forth in paragraphs (1), (2) and (3) as submitted
15 by the parties.

16 (5) Any other matters pertaining to such marriage and
17 divorce or annulment authorized by law and which fairly and
18 expeditiously may be determined and disposed of in such
19 action.

20 (b) The said courts having power to grant divorces shall
21 have authority to do so notwithstanding the fact that the
22 marriage of the parties and the cause for divorce occurred
23 outside of this Commonwealth and that both parties were at the
24 time of such occurrence, domiciled [without] outside this
25 Commonwealth. Said courts shall also have power to annul void or
26 voidable marriages notwithstanding the fact such were celebrated
27 [without] outside this Commonwealth at a time when neither party
28 was domiciled within this Commonwealth.

29 (c) After the dissolution or annulment of a marriage in a
30 foreign forum where a matter under subsection (a) has not been

1 decided, a court of this Commonwealth shall have jurisdiction to
2 determine a matter under subsection (a) to the fullest extent
3 allowed under the Constitution of the United States.

4 Section 401. Decree of court.

5 (a) In all matrimonial causes, the court having jurisdiction
6 may either dismiss the complaint or enter a decree of divorce or
7 annulment of the marriage.

8 (b) Any decree granting a divorce or an annulment, shall
9 include after a full hearing, where these matters are raised in
10 the complaint, the answer or other petition, an order or orders
11 determining and disposing of existing property rights and
12 interests between the parties, custody and visitation rights,
13 child support, alimony and any other related matters including
14 the enforcement of separation agreements voluntarily entered
15 into between the parties. In the enforcement of the rights of
16 any party to any such matters, the court shall have all
17 necessary powers, including but not limited to, the power of
18 contempt and the power to attach wages. In the event that the
19 court is unable for any reason to determine and dispose of the
20 matters provided for in this subsection within 30 days after the
21 master's report has been filed, it may enter a decree of divorce
22 or annulment. [The] Upon the request of either party and after a
23 hearing, the court may order [alimony,] reasonable counsel fees
24 and expenses and may make a temporary order necessary to protect
25 the interests of the parties pending final disposition of the
26 matters [provided for] in this subsection [and upon]. Upon final
27 disposition, the court may award costs to the party in whose
28 favor the order or decree shall be entered, or may order that
29 each party shall pay his or her own costs, or may order that the
30 costs be divided equitably as it shall appear just and

1 reasonable.

2 (c) In all matrimonial causes, the court shall have full
3 equity power and jurisdiction and may issue injunctions or other
4 orders which are necessary to protect the interests of the
5 parties or to effectuate the purposes of this act, and may grant
6 such other relief or remedy as equity and justice require
7 against either party or against any third person over whom the
8 court has jurisdiction and who is involved in or concerned with
9 the disposition of the cause.

10 (d) In a proceeding for divorce or annulment, the court
11 shall, upon request of either party, equitably divide,
12 distribute or assign the marital property between the parties
13 without regard to marital misconduct in such proportions as the
14 court deems just after considering all relevant factors
15 including:

16 (1) The length of the marriage.

17 (2) Any prior marriage of either party.

18 (3) The age, health, station, amount and sources of
19 income, vocational skills, employability, estate, liabilities
20 and needs of each of the parties.

21 (4) The contribution by one party to the education,
22 training, or increased earning power of the other party.

23 (5) The opportunity of each party for future
24 acquisitions of capital assets and income.

25 (6) The sources of income of both parties, including but
26 not limited to medical, retirement, insurance or other
27 benefits.

28 (7) The contribution or dissipation of each party in the
29 acquisition, preservation, depreciation or appreciation of
30 the marital property, including the contribution of a party

1 as homemaker.

2 (8) The value of the property set apart to each party.

3 (9) The standard of living of the parties established
4 during the marriage.

5 (10) The economic circumstances of each party, including
6 tax ramifications, at the time the division of property is to
7 become effective.

8 (e) For purposes of this chapter only, "marital property"
9 means all property acquired by either party during the marriage
10 up to the date of final separation except:

11 (1) Property acquired [in exchange for property
12 acquired] prior to the marriage except for the increase in
13 value during the marriage up to the date of final separation.

14 (2) Property excluded by valid agreement of the parties
15 entered into before, during or after the marriage.

16 (3) Property acquired by gift, between spouses or
17 otherwise; bequest[,]; devise; or descent except for the
18 increase in value during the marriage.

19 (4) Property acquired, with nonmarital assets, after
20 separation until the date of divorce, provided however, if
21 the parties separate and reconcile, all property acquired
22 subsequent to the final separation until their divorce.

23 (5) Property which a party has sold, granted, conveyed
24 or otherwise disposed of in good faith and for value prior to
25 the time proceedings for the divorce are commenced.

26 (6) Veterans' benefits exempt from attachment, levy or
27 seizure pursuant to the act of September 2, 1958, Public Law
28 85-857, 72 Statute 1229, as amended, except for those
29 benefits received by a veteran where such veteran has waived
30 a portion of his military retirement pay in order to receive

1 Veteran's Compensation.

2 (7) Property to the extent to which such property has
3 been mortgaged or otherwise encumbered in good faith for
4 value, prior to the time proceedings for the divorce are
5 commenced.

6 (f) All property, whether real or personal, acquired by
7 either party during the marriage is presumed to be marital
8 property regardless of whether title is held individually or by
9 the parties in some form of co-ownership such as joint tenancy,
10 tenancy in common or tenancy by the entirety. The presumption of
11 marital property is overcome by a showing that the property was
12 acquired by a method listed in subsection (e).

13 (g) The court may impose a lien or charge upon the marital
14 property assigned to a party as security for the payment of
15 alimony or other award for the other party.

16 (h) The court may award to one, each, or both of the parties
17 the right to live in the family home for reasonable periods of
18 time.

19 (i) The court may [also] direct the continued maintenance
20 and beneficiary designations of existing policies insuring the
21 life of either party[. The court's power under this subsection
22 shall extend only to policies] which were originally purchased
23 during the marriage and owned by or within the effective control
24 of either party. Where it is absolutely essential to protect the
25 interests of a party, the court may also direct the purchase of,
26 and beneficiary designations on, a policy insuring the life of
27 either party.

28 (j) Whenever a decree or judgment is granted which nullifies
29 or absolutely terminates the bonds of matrimony, any and all
30 property rights which are dependent upon such marital relation,

1 save those which are vested rights, are terminated unless the
2 court otherwise expressly provides in its decree in accordance
3 with subsection (b). All duties, rights, and claims accruing to
4 either of said parties at any time heretofore in pursuance of
5 the said marriage, shall cease and the parties shall, severally,
6 be at liberty to marry again in like manner as if they had never
7 been married, except where otherwise provided by law.

8 Section 2. The act is amended by adding a section to read:

9 Section 401.1. Effect of agreement between parties.

10 (a) A party to an agreement regarding matters within the
11 jurisdiction of the court under this act, whether or not
12 approved by the court, may utilize a remedy or sanction set
13 forth in this act to enforce the agreement to the same extent as
14 though the agreement had been an order of the court.

15 (b) A provision of an agreement regarding child support,
16 visitation or custody shall be subject to modification by the
17 court upon a showing of changed circumstances.

18 (c) In the absence of a contrary intent appearing in the
19 agreement, a provision regarding the disposition of existing
20 property rights and interests between the parties, alimony,
21 alimony pendente lite, counsel fees or expenses shall not be
22 subject to modification by the court.

23 Section 3. Sections 403 and 501(a), (b) and (c) of the act
24 are amended to read:

25 Section 403. Injunction against disposition of property pending
26 suit and decree rendering fraudulent transfers
27 null and void.

28 (a) Where it appears to the court that a party is about to
29 remove himself or herself or his or her property from the
30 jurisdiction of the court or is about to dispose of, alienate,

1 or encumber property in order to defeat alimony pendente lite,
2 alimony, child and spousal support, or similar award, an
3 injunction may issue to prevent such removal or disposition and
4 such property may be attached as provided by the Rules of Civil
5 Procedure. The court may also issue a writ of ne exeat to
6 preclude such removal.

7 (b) Both parties shall submit to the court an inventory and
8 appraisalment [of all property owned or possessed at the time
9 action was commenced.], which shall contain all of the
10 following:

11 (1) A list of the property owned or possessed by either
12 or both of them as of the:

13 (i) date of separation;

14 (ii) date the action was commenced; and

15 (iii) date of trial on equitable distribution.

16 (2) A list of the value of the property owned or
17 possessed by either or both of them as of the:

18 (i) date of acquisition;

19 (ii) date of separation;

20 (iii) date the action was commenced; and

21 (iv) date of trial on equitable distribution.

22 (3) A list of the liabilities of either or both of them
23 as of the date of trial on equitable distribution, whether or
24 not the liabilities are related to the property set forth in
25 the inventory and appraisalment.

26 (c) If any party deliberately or negligently fails to
27 disclose information required by subsection (b) and in
28 consequence thereof any asset or assets with a fair market value
29 of \$500 or more is omitted from the final distribution of
30 property, the party aggrieved by such nondisclosure may at any

1 time petition the court granting the annulment or divorce to
2 declare the creation of a constructive trust as to all
3 undisclosed assets, for the benefit of the parties and their
4 minor or dependent children, if any, with the party in whose
5 name the assets are held declared the constructive trustee, said
6 trust to include such terms and conditions as the court may
7 determine. The court shall grant the petition upon a finding of
8 a failure to disclose such assets as required under subsection
9 (b).

10 (d) Any encumbrance or disposition of property to third
11 persons who had notice of the pendency of the matrimonial action
12 or who paid wholly inadequate consideration for such property
13 may be deemed fraudulent and declared null and void.

14 Section 501. Alimony.

15 (a) [The] Where a divorce decree has been entered, the court
16 may allow alimony, as it deems reasonable, to either party, only
17 if it finds that the party seeking alimony:

18 (1) lacks sufficient property, including but not limited
19 to any property distributed pursuant to Chapter 4, to provide
20 for his or her reasonable needs; and

21 (2) is unable to support himself or herself through
22 appropriate employment.

23 (b) In determining whether alimony is necessary, and in
24 determining the nature, amount, duration, and manner of payment
25 of alimony, the court shall consider all relevant factors
26 including:

27 (1) The relative earnings and earning capacities of the
28 parties.

29 (2) The ages, and the physical, mental and emotional
30 conditions of the parties.

1 (3) The sources of income of both parties including but
2 not limited to medical, retirement, insurance or other
3 benefits.

4 (4) The expectancies and inheritances of the parties.

5 (5) The duration of the marriage.

6 (6) The contribution by one party to the education,
7 training or increased earning power of the other party.

8 (7) The extent to which it would be inappropriate for a
9 party, because said party will be custodian of a minor child,
10 to seek employment outside the home.

11 (8) The standard of living of the parties established
12 during the marriage.

13 (9) The relative education of the parties and the time
14 necessary to acquire sufficient education or training to
15 enable the party seeking alimony to find appropriate
16 employment.

17 (10) The relative assets and liabilities of the parties.

18 (11) The property brought to the marriage by either
19 party.

20 (12) The contribution of a spouse as homemaker.

21 (13) The relative needs of the parties.

22 (14) The marital misconduct of either of the parties
23 during the marriage; however, the marital misconduct of
24 either of the parties [during] from the date of final
25 separation [subsequent to the filing of a divorce complaint]
26 shall not be considered by the court in its determinations
27 relative to alimony.

28 (15) The tax ramifications of the alimony award.

29 (c) Unless the ability of the party seeking the alimony to
30 provide for his or her reasonable needs through employment is

1 substantially diminished by reason of age, physical, mental or
2 emotional condition, custody of minor children, or other
3 compelling impediment to gainful employment, the court in
4 ordering alimony shall [limit] determine the duration of the
5 order [to a], which may be for a definite or an indefinite
6 period of time which is reasonable for the purpose of allowing
7 the party seeking alimony to meet his or her reasonable needs
8 by:

9 (1) obtaining appropriate employment; or

10 (2) developing an appropriate employable skill.

11 * * *

12 Section 4. Section 505 of the act is repealed.

13 Section 5. This act shall take effect in 60 days.