

SENATE

S. B. No. 2134

13 DEC 13 P 1:39

Introduced By **Senator Ana Theresia "Risa" Hontiveros Baraquel**

REC.

AN ACT INSTITUTING ABSOLUTE DIVORCE IN THE PHILIPPINES

EXPLANATORY NOTE

The Philippines is the only country in the world, aside from the Vatican City, where divorce is not legal. Despite this, the number and proportion of Filipinos who are separate has been increasing over time -- demonstrating that the denial of legal remedies to those seeking to dissolve their union has largely been an ineffective way of upholding the policy of the State to keep families together.

It has been well-documented that the absence of a divorce law has had disproportionate effects on women who are more often the victims of abuse within marriages, and who are forced to remain in joyless and unhealthy unions because of the dearth of legal options. Studies have shown that breaking free from such unions and being given a fresh start result in improved health outcomes for women¹. Studies likewise show that it is not divorce that creates well-being issues for children, it is bearing witness to the troubled marriages of their parents².

While the State continues to recognize the sanctity of family life and endeavors to protect and strengthen the family as a basic autonomous social institution consistent with Article II, Section 12 of the 1987 Constitution, it is also dutybound to promote and protect the well-being of its citizens. It is a duty that should extend to circumstances whereby this well-being is being compromised by the inability to break free from irremediably broken marriages and start anew in healthier family and living arrangements.

In view of the foregoing, immediate passage of this bill is earnestly sought.

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¹ <https://www.liebertpub.com/doi/10.1089/jwh.2016.5925>

² <https://www.sciencedirect.com/science/article/abs/pii/S0890856709662948>

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Introduced By **Senator Ana Theresia "Risa" Hontiveros Baraquel**

AN ACT INSTITUTING ABSOLUTE DIVORCE IN THE PHILIPPINES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress Assembled:

1 **SECTION 1. Short Title.** - This Act shall be entitled as the "Divorce Act of 2018".

2 **SECTION 2. Declaration of Policy.** - While the State continues to recognize the
3 sanctity of family life and endeavors to protect and strengthen the family as a basic
4 autonomous social institution consistent with Article II, Section 12 of the 1987
5 Constitution, it is also dutybound to promote and protect the well-being of its citizens. It
6 is a duty that should extend to circumstances whereby this well-being is being
7 compromised by the inability to break free from irremediably broken marriages and
8 start anew in healthier family and living arrangements.

9 Likewise, it is the duty of the State to save children from the pain, stress and
10 agony of witnessing regular marital clashes with no end in sight. Finally, cognizant of
11 the economic vulnerability of women in de facto separation arrangements, it is
12 imperative to lay down clear rules for their support and protection.

13 **SECTION 3. Guiding principles.** - The following shall be the guiding principles of
14 the Act:

- 15
- 16 a. Gender equality, the protection of women from abuse and violence, and the
17 best interests of children are the fundamental guiding principles of this
18 legislation, and shall be read alongside the responsibility of the State to protect
19 and strengthen the family as an autonomous social institution.
- 20 b. Absolute divorce shall be judicially decreed after the fact of an irremediably
21 broken union or a marriage that is defective from the start.
- 22 c. The State shall assure that the court proceedings for the grant of absolute
23 divorce shall be affordable and inexpensive, particularly for court-assisted
24 litigants or petitioners.
- 25 d. In resolving issues of child custody, visitation and child support, issues of
26 sexual identity and orientation will not be made a factor in deciding the
27 award/s.
- 28

1 **SECTION 4. Divorce.** - Divorce is the legal termination of a marriage by a court in a
2 legal proceeding, requiring a petition or complaint for divorce by one party, which will
3 have the effect of returning both parties to the status of single for all legal intents and
4 purposes, including the right to contract a subsequent marriage. A divorce decree shall
5 include provisions for the care and custody of children, protection of their legitime,
6 termination and liquidation of the conjugal partnership of gains or the absolute
7 community and, when deemed proper by the court, alimony for the spouse deemed by
8 the court to be in need of the same.

9
10 **SECTION 5. Grounds.** - The following are the grounds for a judicial decree of
11 absolute divorce:

- 12
13 a. The grounds for legal separation under Article 55 of the Family Code of the
14 Philippines, *provided* that physical violence and grossly abusive conduct under
15 Article 55(1) need not be repeated offenses to be considered as ground;
16
17 b. The grounds for annulment of marriage under Article 45 of the Family Code of
18 the Philippines, *provided* that the grounds cited in numbers 2, 5, 6 of Article 45
19 may either have existed at the time of the marriage, or supervening after the
20 marriage;
21
22 c. Psychological incapacity of either spouse as provided for in Article 36 of the
23 Family Code of the Philippines, whether or not the incapacity was present at the
24 time of the celebration of the marriage or later;
25
26 d. All acts mentioned under Section 5 of Republic Act No. 9262, or the Anti-
27 Violence Against Women and their Children Act of 2004;
28
29 e. The commission of the crime of rape by the respondent-spouse against the
30 petitioner-spouse before the celebration of marriage;
31
32 f. When one of the spouses has been sentenced by final judgment under Republic
33 Act No. 9262, or a permanent protection order has been issued in favor of the
34 petitioner spouse against the other spouse under the said Act; Republic Act No.
35 9995, and Republic Act No. 9775, whether or not the complainants in the
36 criminal cases filed under the mentioned Acts is the petitioner-spouse or their
37 common children;
38
39 g. When the spouses are legally separated by judicial decree under Article 55 of the
40 Family Code of the Philippines for at least two (2) years;
41
42 h. When the spouses have been separated in fact for at least five (5) years at the
43 time the petition for absolute divorce is filed, and reconciliation is highly
44 improbable;
45
46 i. Irreconcilable marital differences or irreparable breakdown of the marriage,
47 despite earnest efforts at reconciliation.
48
49

1 **SECTION 6. Procedure For Obtaining Absolute Divorce.** - The established and
2 recognized procedures for securing legal separation, annulment of marriage and voiding
3 of a marriage under the Family Code of the Philippines, as far as practicable, shall
4 govern the process of obtaining a judicial decree of absolute divorce from the proper
5 family court which shall be commenced by the filing of a verified petition for absolute
6 divorce by the petitioner-spouse or petitioner-spouses.
7

8 A petition for absolute divorce may be filed jointly by the spouses on the basis of
9 grounds g, h and i of Section 5 of this Act. A joint petition filed by both spouses with
10 common children should be accompanied by a joint plan for parenthood which provides
11 for the support, parental authority, custody and living arrangements of the common
12 children. If the court determines that the joint plan for parenthood is adequate to
13 protect the rights and interests of the common children, the court shall approve the joint
14 plan for parenthood together with the grant of a divorce decree if warranted.
15

16 All creditors of the absolute community or of the conjugal partnership of gains, as
17 well as the personal creditors of the spouses, shall be listed in the petition for absolute
18 divorce.
19

20 **SECTION 7. Indigent litigants.** - Upon application by the petitioner-spouse and
21 presentation of evidence of indigency, the court shall waive the payment of filing fees
22 and other costs of litigation, and shall appoint a counsel de officio and assign social
23 workers, psychologists and psychiatrists, preferably from appropriate government
24 agencies, to assist the petitioner and the common children of the parties. The quantum
25 of evidence required to prove indigency shall not be unduly cumbersome.
26

27 **SECTION 8. Mandatory Cooling-Off Period.** - If a petition for absolute divorce is
28 filed jointly by the spouses under Section 5(i) of this Act, the proper court shall not
29 begin to hear the petition before the expiration of a six-month cooling-off period
30 reckoned from the date of the filing of the petition, during which time, all efforts to
31 reunite and reconcile the parties will be explored and exercised.
32

33 **SECTION 9. Summary judicial proceedings.** - If the grounds invoked by the
34 party or parties fall under Section 5 paragraphs f, g and h of this Act, the court may opt
35 to resolve the petition via summary judicial proceedings. If the petition invokes
36 paragraph i of Section 5 of this Act, summary judicial proceedings may likewise be
37 resorted to if the petition is jointly signed by the parties.
38

39 Summary judicial proceedings refer to an expeditious manner of resolving a
40 petition for divorce with minimal regard for technical rules, provided however that a
41 full-blown hearing may be required at the discretion of the court to resolve issues of
42 child custody, child support and alimony; if there is reason to suspect that a petition for
43 divorce was made to defraud creditors, or that conformity by one of the parties to a joint
44 petition for divorce and/or joint plan for parenthood was obtained through force, fraud
45 or intimidation.
46

47 **SECTION 10. Overseas Filipino Workers.** - Petitioners who are OFWs shall be
48 given priority by the proper court with respect to the hearing of their petitions and the
49 court shall set the reception of evidence, upon the availability of the petitioners, for not
50 more than two (2) consecutive days.

1
2 **SECTION 11. *Marriage Between A Filipino Citizen And A Foreign National.***

3 -Where a marriage between a Filipino citizen and a foreign national is validly celebrated
4 and a divorce is thereafter validly obtained abroad by either the Filipino citizen or the
5 foreign national, the divorce shall be valid in the Philippines. This provision shall
6 likewise be applicable in a situation where two Filipino citizens marry, and subsequent
7 to the celebration of marriage, one of the spouses becomes the naturalized citizen of
8 another country.

9
10 **SECTION 12. *Effects Of Absolute Divorce.*** - The decree of absolute divorce shall
11 have the following effects:

- 12
- 13 a. The marriage bonds shall be severed and the divorced spouses shall have the
14 right to contract marriage again.
 - 15
 - 16 b. The custody of the minor children, and the visitation rights of the spouse not
17 granted primary custody, shall be decided by the proper court in accordance
18 with the best interests of the children, subject to the provisions of Article 213 of
19 the Family Code of the Philippines, taking into consideration that no child
20 under seven (7) shall be separated from the mother unless the proper court
21 finds compelling reasons to order otherwise. A child over the age of 14 should
22 be asked for his or her opinion regarding custody and visitation rights, and this
23 opinion should be given full consideration by the court. In no case will child
24 custody be given to the respondent-spouse when the ground/s for the divorce
25 fall under paragraphs d, e and f of Section 5.
 - 26
 - 27 c. Unless otherwise agreed upon in a marriage settlement executed before the
28 celebration of the marriage, the conjugal partnership of gains or the absolute
29 community shall be dissolved and liquidated and the assets shall be equally
30 divided between the spouses, excluding the paraphernal or exclusive properties
31 of either spouse. The recognition and delivery of the presumptive legitime of the
32 common children shall be at the option of both spouses. The presumptive
33 legitime shall be computed as of the date of the finality of the decree of absolute
34 divorce. The partition and distribution of the properties of the spouses and the
35 delivery of the children's presumptive legitime upon the option of the spouses
36 shall be recorded in the appropriate civil registry and registries of property,
37 otherwise the same shall not affect third persons.
 - 38
 - 39 d. The proper court shall have the discretion to grant alimony and child support,
40 pursuant to the pertinent provisions of the Family Code. In seeking alimony, the
41 court may take into account the length of the marriage, the income disparities
42 between the parties, and the number of years devoted to reproductive labor or
43 care work by the party seeking alimony. Child support shall be granted by the
44 court to the parent to whom primary custody is awarded, and shall be governed
45 by Articles 194, 201, 202 and 203 of the Family Code. Support pendente lite
46 may likewise be claimed during the pendency of divorce proceedings. In case
47 the respondent is an OFW, a copy of the order to grant alimony and child
48 support shall be furnished to the Philippine Overseas Employment
49 Administration.
 - 50

- 1 e. The petitioner may revoke the donations made in favor of the respondent, as
2 well as the designation of the latter as a beneficiary in any insurance policy,
3 even if such designation be stipulated as irrevocable, provided that insurance
4 policies with investment component such as a variable life insurance may be
5 considered by the court as part of the absolute community or conjugal
6 partnership of gains. The revocation of the donations shall be recorded in the
7 registries of properties in the places where the properties are located.
8 Alienations, liens and encumbrances registered in good faith before the
9 recording of the complaint for revocation in the registry of property shall be
10 respected. The revocation of or a change in the designation of the insurance
11 beneficiary shall take effect upon written notification thereof to the insured.
12
- 13 f. The effects on the divorced spouses with respect to intestate succession,
14 testamentary dispositions, donations and insurance provision on beneficiaries
15 in accordance with the Family Code of the Philippines and jurisprudence will be
16 observed.
17
- 18 g. The legitimate, legitimated and adopted children of divorced parents shall
19 retain their legal status and legitimacy. A child conceived or born within 300
20 days after the filing of a petition for absolute divorce shall be considered
21 legitimate, unless the ground for divorce is the marital infidelity of the wife.
22
23

24 **SECTION 13. Recognition of Reconciliation.** - If the petitioners have agreed to
25 reconcile, a corresponding joint manifestation under oath duly signed by them shall be
26 filed with the same court where the petition for absolute divorce was filed, with the
27 interests of the children duly protected. The joint manifestation of reconciliation shall
28 terminate the proceedings for absolute divorce, at whatever stage.
29

30 **SECTION 14. Penalties.** - A spouse who is a party to a petition for absolute divorce
31 who is found by the court to have used force, fraud or intimidation to compel the other
32 spouse to file the petition shall be punished with imprisonment of five (5) years and a
33 fine of two hundred thousand pesos (PhP 200,000.00).
34

35 Any parent in default of providing court-ordered child support, or any spouse in
36 default of paying court-ordered alimony, shall be punished by prison mayor and shall
37 be fined in the amount of one hundred thousand pesos (PhP 100,000.00) to not more
38 than three hundred thousand pesos (PhP 300,000.00) on top of unpaid child support
39 and/or alimony.
40

41 **SECTION 15. Options and Remedies.** - The concerned spouse or spouses shall have
42 the option to file a petition for absolute divorce under this Act or avail of legal
43 separation, annulment or nullification of marriage as provided for in the Family Code.
44 Petitions for legal separation, annulment or nullification of marriage that are pending
45 before the courts upon passage of this Act may, by motion of any of the parties, be
46 converted into proceedings for absolute divorce. The court shall ensure the protection of
47 the best interests of the children at all times, and may order the provision of psycho-
48 social support to the same, or to any of the spouses.
49

1 **SECTION 16. Appeals.** - A decree of divorce is final and executory insofar as the
2 capacity to remarry is concerned. Orders for child support, child custody and alimony
3 are immediately executory pending appeal. Either of the parties may file at any time for
4 a motion to review orders of child support, custody and alimony, on the ground of a
5 material change in the factual circumstances upon which the orders of child support,
6 custody and alimony were predicated. The court that granted the decree of divorce shall
7 have jurisdiction over the motions for review.

8
9 **SECTION 17. Implementing Rules and Regulations.** - The Department of
10 Justice (DOJ) as lead agency, together with the Department of Social Welfare and
11 Development (DSWD), the Philippine Commission on Women (PCW), the National
12 Youth Commission (NYC), CHILDREN'S WELFARE COMMISSION, at least two
13 representatives from women's organizations and two representatives from children's
14 organizations to be identified by the PCW and the NYC respectively, shall promulgate
15 the Implementing Rules and Regulations (IRR) within sixty (60) days after the
16 effectivity of this Act.

17
18 **SECTION 18. Repealing Clause.** - All other laws, decrees, executive orders,
19 issuances, rules and regulations, or part thereof inconsistent with this Act are hereby
20 likewise repealed or amended accordingly.

21
22 **SECTION 19. Separability Clause.** - If, for any reason, any section or provisions
23 of this Act is declared unconstitutional or invalid, the other sections or provisions not
24 affected thereby shall remain in full force and effect.

25
26 **SECTION 20. Effectivity Clause.** - This Act shall take effect after fifteen (15) days
27 upon publication in at least two (2) newspapers of general circulation.

28
29
30 **Approved,**