

**SENATE**

'19 JUL 11 P1:13

S. No. 356

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**INTRODUCED BY SENATOR RISA HONTIVEROS**

**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 women<sup>1</sup>. 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 parents<sup>2</sup>.

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.

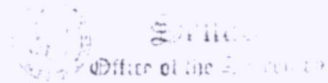
<sup>1</sup> <https://www.liebertpub.com/doi/10.1089/jwh.2016.5925>

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

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

*Risa Montiveros*  
**RISA HONTIVEROS**

**Senator**



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**AN ACT  
INSTITUTING ABSOLUTE DIVORCE IN THE PHILIPPINES**

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

1           Sec. 1. *Short Title.* – This Act shall be entitled as the “Divorce Act of 2019”.

2           Sec. 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  
6 citizens. It is a duty that should extend to circumstances whereby this well-being is  
7 being compromised by the inability to break free from irremediably broken marriages  
8 and 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 agony  
10 of witnessing regular marital clashes with no end in sight. Finally, cognizant of the  
11 economic vulnerability of women in de facto separation arrangements, it is  
12 imperative to lay down clear rules for their support and protection.

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

15           a) Gender equality, the protection of women from abuse and violence,  
16           and the best interests of children are the fundamental guiding  
17           principles of this legislation, and shall be read alongside the  
18           responsibility of the State to protect and strengthen the family as an  
19           autonomous social institution.

20           b) Absolute divorce shall be judicially decreed after the fact of an  
21           irremediably broken union or a marriage that is defective from the  
22           start.

1 c) The State shall assure that the court proceedings for the grant of  
2 absolute divorce shall be affordable and inexpensive, particularly for  
3 court-assisted litigants or petitioners.

4 d) In resolving issues of child custody, visitation and child support, issues  
5 of sexual identity and orientation will not be made a factor in deciding  
6 the award/s.

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

15 Sec. 5. *Grounds.* – The following are the grounds for a judicial decree of  
16 absolute divorce:

17 a) The grounds for legal separation under Article 55 of the Family Code  
18 of the Philippines, *provided* that physical violence and grossly abusive  
19 conduct under Article 55(1) need not be repeated offenses to be  
20 considered as ground;

21 b) The grounds for annulment of marriage under Article 45 of the Family  
22 Code of the Philippines, *provided* that the grounds cited in numbers  
23 2, 5, 6 of Article 45 may either have existed at the time of the  
24 marriage, or supervening after the marriage;

25 c) Psychological incapacity of either spouse as provided for in Article 36  
26 of the Family Code of the Philippines, whether or not the incapacity  
27 was present at the time of the celebration of the marriage or later;

28 d) All acts mentioned under Section 5 of Republic Act No. 9262, or the  
29 Anti-Violence Against Women and their Children Act of 2004;

30 e) The commission of the crime of rape by the respondent-spouse  
31 against the petitioner-spouse before the celebration of marriage;

32 f) When one of the spouses has been sentenced by final judgment  
33 under Republic Act No. 9262, or a permanent protection order has  
34 been issued in favor of the petitioner spouse against the other spouse  
35 under the said Act; Republic Act No. 9995, and Republic Act No.  
36 9775, whether or not the complainants in the criminal cases filed

1 under the mentioned Acts is the petitioner-spouse or their common  
2 children;

3 g) When the spouses are legally separated by judicial decree under  
4 Article 55 of the Family Code of the Philippines for at least two (2)  
5 years;

6 h) When the spouses have been separated in fact for at least five (5)  
7 years at the time the petition for absolute divorce is filed, and  
8 reconciliation is highly improbable;

9 i) Irreconcilable marital differences or irreparable breakdown of the  
10 marriage, despite earnest efforts at reconciliation.

11 *Sec. 6. Procedure For Obtaining Absolute Divorce.* – The established and  
12 recognized procedures for securing legal separation, annulment of marriage and  
13 voiding of a marriage under the Family Code of the Philippines, as far as practicable,  
14 shall govern the process of obtaining a judicial decree of absolute divorce from the  
15 proper family court which shall be commenced by the filing of a verified petition for  
16 absolute divorce by the petitioner-spouse or petitioner-spouses.

17 A petition for absolute divorce may be filed jointly by the spouses on the basis of  
18 grounds g, h and i of Section 5 of this Act. A joint petition filed by both spouses with  
19 common children should be accompanied by a joint plan for parenthood which  
20 provides for the support, parental authority, custody and living arrangements of the  
21 common children. If the court determines that the joint plan for parenthood is  
22 adequate to protect the rights and interests of the common children, the court shall  
23 approve the joint plan for parenthood together with the grant of a divorce decree if  
24 warranted.

25 All creditors of the absolute community or of the conjugal partnership of gains, as  
26 well as the personal creditors of the spouses, shall be listed in the petition for  
27 absolute divorce.

28 *Sec. 7. Indigent litigants.* – Upon application by the petitioner-spouse and  
29 presentation of evidence of indigency, the court shall waive the payment of filing fees  
30 and other costs of litigation, and shall appoint a counsel de oficio and assign social  
31 workers, psychologists and psychiatrists, preferably from appropriate government  
32 agencies, to assist the petitioner and the common children of the parties. The  
33 quantum of evidence required to prove indigency shall not be unduly cumbersome.

34 *Sec. 8. Mandatory Cooling-Off Period.* – If a petition for absolute divorce is  
35 filed jointly by the spouses under Section 5(i) of this Act, the proper court shall not  
36 begin to hear the petition before the expiration of a six-month cooling-off period

1 reckoned from the date of the filing of the petition, during which time, all efforts to  
2 reunite and reconcile the parties will be explored and exercised.

3       Sec. 9. *Summary judicial proceedings.* – If the grounds invoked by the party or  
4 parties fall under Section 5 paragraphs f, g and h of this Act, the court may opt to  
5 resolve the petition via summary judicial proceedings. If the petition invokes  
6 paragraph i of Section 5 of this Act, summary judicial proceedings may likewise be  
7 resorted to if the petition is jointly signed by the parties.

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

15       Sec. 10. *Overseas Filipino Workers.* – Petitioners who are OFWs shall be given  
16 priority by the proper court with respect to the hearing of their petitions and the  
17 court shall set the reception of evidence, upon the availability of the petitioners, for  
18 not more than two (2) consecutive days.

19       Sec. 11. *Marriage Between A Filipino Citizen And A Foreign National.* – Where  
20 a marriage between a Filipino citizen and a foreign national is validly celebrated and  
21 a divorce is thereafter validly obtained abroad by either the Filipino citizen or the  
22 foreign national, the divorce shall be valid in the Philippines. This provision shall  
23 likewise be applicable in a situation where two Filipino citizens marry, and  
24 subsequent to the celebration of marriage, one of the spouses becomes the  
25 naturalized citizen of another country.

26       Sec. 12. *Effects Of Absolute Divorce.* – The decree of absolute divorce shall  
27 have the following effects:

28           a) The marriage bonds shall be severed and the divorced spouses shall  
29           have the right to contract marriage again.

30           b) The custody of the minor children, and the visitation rights of the  
31           spouse not granted primary custody, shall be decided by the proper  
32           court in accordance with the best interests of the children, subject to  
33           the provisions of Article 213 of the Family Code of the Philippines,  
34           taking into consideration that no child under seven (7) shall be  
35           separated from the mother unless the proper court finds compelling  
36           reasons to order otherwise. A child over the age of 14 should be

1 asked for his or her opinion regarding custody and visitation rights,  
2 and this opinion should be given full consideration by the court. In no  
3 case will child custody be given to the respondent-spouse when the  
4 ground/s for the divorce fall under paragraphs d, e and f of Section 5.

5 c) Unless otherwise agreed upon in a marriage settlement executed  
6 before the celebration of the marriage, the conjugal partnership of  
7 gains or the absolute community shall be dissolved and liquidated and  
8 the assets shall be equally divided between the spouses, excluding  
9 the paraphernal or exclusive properties of either spouse. The  
10 recognition and delivery of the presumptive legitime of the common  
11 children shall be at the option of both spouses. The presumptive  
12 legitime shall be computed as of the date of the finality of the degree  
13 of absolute divorce. The partition and distribution of the properties of  
14 the spouses and the delivery of the children's presumptive legitime  
15 upon the option of the spouses shall be recorded in the appropriate  
16 civil registry and registries of property, otherwise the same shall not  
17 affect third persons.

18 d) The proper court shall have the discretion to grant alimony and child  
19 support, pursuant to the pertinent provisions of the Family Code. In  
20 seeking alimony, the court may take into account the length of the  
21 marriage, the income disparities between the parties, and the number  
22 of years devoted to reproductive labor or care work by the party  
23 seeking alimony. Child support shall be granted by the court to the  
24 parent to whom primary custody is awarded, and shall be governed  
25 by Articles 194, 201, 202 and 203 of the Family Code. Support  
26 pendente lite may likewise be claimed during the pendency of divorce  
27 proceedings. In case the respondent is an OFW, a copy of the order  
28 to grant alimony and child support shall be furnished to the Philippine  
29 Overseas Employment Administration.

30 e) The petitioner may revoke the donations made in favor of the  
31 respondent, as well as the designation of the latter as a beneficiary in  
32 any insurance policy, even if such designation be stipulated as  
33 irrevocable, provided that insurance policies with investment  
34 component such as a variable life insurance may be considered by the  
35 court as part of the absolute community or conjugal partnership of  
36 gains. The revocation of the donations shall be recorded in the

1 registries of properties in the places where the properties are located.  
2 Alienations, liens and encumbrances registered in good faith before  
3 the recording of the complaint for revocation in the registry of  
4 property shall be respected. The revocation of or a change in the  
5 designation of the insurance beneficiary shall take effect upon written  
6 notification thereof to the insured.

7 f) The effects on the divorced spouses with respect to intestate  
8 succession, testamentary dispositions, donations and insurance  
9 provision on beneficiaries in accordance with the Family Code of the  
10 Philippines and jurisprudence will be observed.

11 g) The legitimate, legitimated and adopted children of divorced parents  
12 shall retain their legal status and legitimacy. A child conceived or born  
13 within 300 days after the filing of a petition for absolute divorce shall  
14 be considered legitimate, unless the ground for divorce is the marital  
15 infidelity of the wife.

16 Sec. 13. *Recognition of Reconciliation.* – If the petitioners have agreed to  
17 reconcile, a corresponding joint manifestation under oath duly signed by them shall  
18 be filed with the same court where the petition for absolute divorce was filed, with  
19 the interests of the children duly protected. The joint manifestation of reconciliation  
20 shall terminate the proceedings for absolute divorce, at whatever stage.

21 Sec. 14. *Penalties.* – A spouse who is a party to a petition for absolute divorce  
22 who is found by the court to have used force, fraud or intimidation to compel the  
23 other spouse to file the petition shall be punished with imprisonment of five (5) years  
24 and a fine of two hundred thousand pesos (PhP 200,000.00).

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

30 Sec. 15. *Options and Remedies.* – The concerned spouse or spouses shall  
31 have the option to file a petition for absolute divorce under this Act or avail of legal  
32 separation, annulment or nullification of marriage as provided for in the Family Code.  
33 Petitions for legal separation, annulment or nullification of marriage that are pending  
34 before the courts upon passage of this Act may, by motion of any of the parties, be  
35 converted into proceedings for absolute divorce. The court shall ensure the



1 protection of the best interests of the children at all times and may order the  
2 provision of psycho-social support to the same, or to any of the spouses.

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

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

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

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

*Approved,*