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SENATE

S. No. 2443

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(In substitution of Senate Bill Nos. 147, 213, 237, 554, 555, 1198 and 2047)

Submitted by the Committee on Women, Children, Family Relations and Gender Equality with Senators Hontiveros, Tulfo, Padilla, Cayetano, P., and Marcos as authors thereof

**AN ACT
EXPANDING THE GROUNDS FOR DISSOLUTION OF MARRIAGE,
INSTITUTING DIVORCE AND SETTING THE PROCEDURES THEREOF,
PROVIDING PROTECTIONS TO THE PARTIES TO THE MARRIAGE AND ITS
COMMON CHILDREN, AMENDING FOR THIS PURPOSE EXECUTIVE ORDER
NO. 209, OR THE FAMILY CODE OF 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 “Dissolution of
2 Marriage Act”.

3 **Sec. 2. Declaration of Policy.** – While the State continues to recognize the
4 sanctity of family life and endeavors to protect and strengthen the family as a basic
5 autonomous social institution, it is also dutybound to safeguard the dignity of every
6 human person, guarantee full respect for human rights, uphold the fundamental
7 equality before the law of men and women and protect and ensure the best interest
8 of children as the paramount consideration in all matters concerning them.

9 Towards this end, the State shall adopt a divorce policy in keeping with the
10 fundamental freedoms guaranteed under the Constitution, the rights guaranteed
11 under the Universal Declaration of Human Rights, the International Convention of Civil
12 and Political Rights, the Convention on the Elimination of All Forms of Discrimination

1 against Women, Convention on the Rights of the Child, and other International Human
2 Rights Instruments of which the Philippines is a party.

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

5 A. Recognizing the family as the foundation of the nation, the State shall
6 afford the family necessary protection and assistance to ensure that it is
7 an environment conducive to the growth and well-being of all its
8 individual members so that it can fully assume its responsibilities within
9 the community.

10 B. The inherent dignity and the equal and inalienable rights of all members
11 of the family, the protection of all persons from abuse and violence,
12 gender equality, and the best interests of children are the fundamental
13 guiding principles of this legislation and shall be read alongside the
14 responsibility of the State to protect and strengthen the family as an
15 autonomous social institution.

16 C. Absolute divorce shall be judicially decreed based on grounds that
17 existed before or after the celebration of a valid marriage.

18 D. The State shall assure that the court proceedings for the grant of
19 absolute divorce shall be affordable, expeditious, and inexpensive,
20 particularly for indigent litigants.

21 E. A divorce decree shall include provisions for the care and custody of
22 children, termination, and liquidation of the conjugal partnership of gains
23 or the absolute community, and spousal support for the aggrieved
24 spouse. In resolving issues of child custody, visitation, and support,
25 issues of sexual orientation, gender identity or expression, and sexual
26 characteristics will not be made a factor in deciding the award/s.

27 F. In the invocation of the grounds for absolute divorce, the provisions of
28 this act shall not be construed as permitting any form of discrimination
29 on the basis of age, racial or ethnic origin, religious belief or activity,
30 cultural practices, political inclination or conviction, social class, sex,
31 gender, sexual orientation, gender identity and expression, sexual
32 characteristics, marital or relationship status, disability, migrant status,

1 HIV status, health status or medical history, language, physical features,
2 or other status.

3 **Sec. 4. Definition of Terms. -**

4 A. *Absolute divorce* refers to the legal termination of a marriage by a court
5 in a legal proceeding, requiring a petition or complaint for divorce by one
6 or both party/ies, which will have the effect of returning both parties to
7 the status of single for all legal intents and purposes, including the right
8 to contract a subsequent marriage;

9 B. *Best interest of the child* refers to the totality of the circumstances and
10 conditions most congenial to the survival, protection, and feelings of
11 security of the child, and most encouraging to their physical,
12 psychological, and emotional development. It also means the least
13 detrimental available alternative for safeguarding the growth and
14 development of the child;

15 C. *Child* refers to a common child of the spouses below eighteen (18) years
16 of age or eighteen (18) years and older but who is incapable of taking
17 care of oneself as defined under Republic Act No. 7610, as amended,
18 and shall include an offspring by legal adoption or one whose custody
19 and care is judicially decreed to be given to a guardian;

20 D. *Child custody* refers to the parental authority and care of a child as
21 decreed by a proper court when the parents of the child are divorced;

22 E. *Indigent litigant* refers to one whose gross income, including that of the
23 spouse, if married, does not exceed an amount double the monthly
24 minimum wage of an employee;

25 F. *Marriage annulment or dissolution* refers to a marriage duly solemnized
26 by a priest, imam, rabbi, or presiding elder of a church or religious entity,
27 or duly solemnized or performed by an elder or leader of an indigenous
28 cultural community (ICC) or indigenous people (IP) in the Philippines,
29 which is subsequently annulled, dissolved, declared a nullity, or
30 terminated in a final judgment or pronouncement in accordance with the
31 canons or precepts of such church, religious entity, or customs and
32 practices of ICCs or IPs;

1 G. Migrant worker refers to a person who is to be engaged, is engaged, or
2 has been engaged in remunerated activity in a state of which he or she
3 is not a citizen or on board a vessel navigating the foreign seas other
4 than a government ship used for military or non-commercial purposes
5 or on an installation located offshore or on the high seas; to be used
6 interchangeably with overseas Filipino worker;

7 H. Mixed Marriage refers to a marriage between a Filipino citizen and a
8 foreigner that is validly celebrated abroad or in the Philippines;

9 I. *Support* refers to the amount indispensable for sustenance, dwelling,
10 clothing, medical attendance, education and transportation, in keeping
11 with the financial capacity of the family. The education of the person
12 entitled to be supported shall include his schooling or training for some
13 profession, trade or vocation, even beyond the age of majority.
14 Transportation shall include expenses in going to and from school, or to
15 and from place of work;

16 J. *Proper court* refers to the proper family court established under Republic
17 Act No. 8369 or the "Family Courts Act of 1997", which shall exercise
18 jurisdiction both over the absolute divorce proceeding and the persons
19 of the petitioner and respondent spouses;

20 K. *Separation* refers to the absolute cessation of marital relations, duties,
21 and rights.

22 **Sec. 5. Grounds.** – Either or both spouses may seek a judicial decree of
23 absolute divorce based on the following grounds:

24 A. Five years of separation, whether continuous or broken, without a
25 judicial decree of separation; *Provided*, that when the spouses are legally
26 separated by judicial decree under Article 55 of the Family Code of the
27 Philippines, a two (2) year period from the time of the issuance of the
28 decree of legal separation will suffice;

29 B. The commission of the crime of rape by the respondent-spouse against
30 the petitioner-spouse, whether before or after the celebration of their
31 marriage;

- 1 C. The grounds for legal separation under article 55 of the Family Code or
2 any other special law; *Provided*, that, physical violence or grossly
3 abusive conduct under article 55(1) need not be repeated; *Provided*
4 further, that, lesbianism and homosexuality per se under article 55(6)
5 shall not be a ground, unless either or both spouses commit marital
6 infidelity;
- 7 D. A final decree of absolute divorce validly obtained in a foreign jurisdiction
8 by any Filipino citizen, regardless of who they married;
- 9 E. Irreconcilable marital differences or irreparable breakdown of the
10 marriage, despite earnest efforts at reconciliation, subject to a cooling-
11 off period of sixty (60) days pursuant to Section 8 of this Act;
- 12 F. A marriage annulment or dissolution, duly authorized by a church or
13 religious entity, or a marriage termination duly authorized by customs
14 and practices traditionally recognized, accepted and observed by an ICC
15 or IP to which the parties belong, having the same effect as a decree of
16 divorce, annulment, dissolution or declaration of nullity issued by a
17 competent court.

18 **Sec. 6. Procedure for obtaining absolute divorce.** – The established and
19 recognized procedures for securing legal separation, annulment of marriage and
20 voiding of a marriage under the Family Code of the Philippines shall, as far as
21 practicable, govern the process of obtaining a judicial decree of absolute divorce from
22 the proper family court which shall be commenced by the filing of a verified petition
23 for absolute divorce by the petitioner-spouse or petitioner-spouses. A petition for
24 absolute divorce may be filed separately or jointly by the spouses on the basis of
25 Section 5 of this Act. A joint petition filed by both spouses with common children
26 should be accompanied by a joint plan for parenthood which provides for the support,
27 custody, and living arrangements of the common children. If the court determines
28 that the joint plan for parenthood is adequate to protect the rights and interests of
29 the common children, the court shall approve the joint plan for parenthood together
30 with the grant of a divorce decree if warranted.

1 For the recognition of customs and practices of ICC or IP having the same
2 effect as a decree of divorce, annulment, dissolution or declaration of nullity, any
3 independently-verifiable proof of such customs or practices, and of the membership
4 of the spouses in an ICC or IP, will be admissible in evidence.

5 The conduct of online filing and hearings may be available to OFWs, subject to
6 issuances of the Court.

7 All creditors of the absolute community or of the conjugal partnership of gains,
8 as well as the personal creditors of the spouses, shall be listed in the petition for
9 absolute divorce.

10 **Sec. 7. Indigent litigants.** – Upon application by the petitioner-spouse and
11 presentation of evidence of indigency, the court shall waive the payment of filing fees
12 and other costs of litigation, and shall appoint a counsel de *oficio* and assign social
13 workers, psychologists, and psychiatrists, preferably from appropriate government
14 agencies, to assist the petitioner and the common children of the parties.

15 In evaluating evidence of indigency, the court may take into consideration the
16 petitioner’s independent source of income, property, and capacity to afford the
17 services of counsel after considering his or her basic necessities for himself or herself
18 and his or her family. The court may also consider if the petitioner is from a
19 marginalized group or entity and is not financially able to afford the services of counsel
20 under the circumstances, such as in the case of farmers, indigenous peoples, victims
21 of gender violence, and other similar causes.

22 Evidence of indigency shall include but is not limited to the following:

- 23 a. An affidavit of indigency stating no income or insufficiency of income;
- 24 b. The latest income tax return or pay slip;
- 25 c. Certificate of indigency from the Public Attorney’s Office;
- 26 d. Certificate of Indigency from the Department of Social Welfare and
27 Development (DSWD) having jurisdiction over the residence of the
28 litigant;
- 29 e. Certificate of Indigency and/or no income from the Office of the Punong
30 Barangay/ Barangay Chairperson having jurisdiction over the residence
31 of the litigant;
- 32 f. Other proofs of net income.

1 **Sec. 8. Mandatory Cooling-Off Period.** - An action for absolute divorce shall
2 in no case be tried before sixty (60) days from the filing of the petition on the ground
3 of irreconcilable differences.

4 **Sec. 9. When a divorce is secured in any other country.** – In a marriage
5 where one or more of the parties is a foreign national, either or both spouses may
6 seek judicial recognition or enforcement of the foreign decree dissolving a marriage in
7 accordance with existing laws and rules, *provided*, that the spouse who did not
8 participate in the divorce proceedings may seek relief in the proper court with respect
9 to the incidents of the judgment.

10 **Sec. 10. Effects of absolute divorce.** – The decree of absolute divorce shall
11 have the following effects:

- 12 A. The marriage bonds shall be dissolved and the divorced spouses shall
13 have the right to contract marriage again.
- 14 B. The custody of the minor children, and the visitation rights of the spouse
15 not granted primary custody, shall be decided by the proper court in
16 accordance with the best interests of the children upon the
17 recommendation of a registered social worker. In no case will child
18 custody be given to the offender-spouse when the ground/s for the
19 divorce falls under Article 55, paragraphs (1), as herein modified, (2),
20 (3), (4), (5), (7), (8), (9), and (10) of the Family Code of the Philippines.
- 21 C. Unless otherwise agreed upon in a marriage settlement executed before
22 the celebration of the marriage, the conjugal partnership of gains or the
23 absolute community shall be dissolved and liquidated, and the assets
24 shall be divided between the spouses.
- 25 D. The liabilities of the spouses to creditors for family expenses shall remain
26 solidary.
- 27 E. Donations by reason of marriage shall remain valid, except that if the
28 donee is an offender-spouse under article 55, paragraphs (1), as herein
29 modified, (2), (3), (4), (5), (7), (8), (9), and (10) of the Family Code of
30 the Philippines, such donations made to said donee are revoked by
31 operation of law;

1 F. Either spouse may revoke the designation of the other spouse as
2 beneficiary in any insurance policy, even if such designation be
3 stipulated as irrevocable.

4 G. With respect to testate and intestate succession, the divorced spouses
5 shall no longer be compulsory heirs to one another.

6 H. The legitimate, legitimated, and adopted children of divorced parents
7 shall retain their legal status and legitimacy. Children conceived or born
8 prior to the finality of the divorce decree shall be considered legitimate.

9 **Sec. 11. Support.** – The court shall provide for child support pursuant to the
10 pertinent provisions of the Family Code.

11 The court shall provide for spousal support; provided, that, the spouse who
12 gave cause for divorce shall not be entitled to spousal support.

13 In considering the award of support, the court shall consider relevant
14 circumstances of the case and of the parties. On application of either party, the
15 court may decree an increase or decrease in the amount of support upon a showing
16 of a substantial and material change of circumstances.

17 In case the respondent-spouse is an OFW, a copy of the order to grant spousal
18 support, if any, and child support shall be furnished to the Overseas Workers Welfare
19 Administration (OWWA) and the Department of Migrant Workers (DMW).

20 **Sec. 12. Custody and support pendente lite.** – During the pendency of the
21 action and in the absence of adequate provisions in a written agreement between the
22 spouses, the court, upon application of the proper party, shall provide for the support
23 of the spouses and the custody and support of their common children. It shall also
24 provide the appropriate visitation rights of the other parent.

25 **Sec. 13. Recognition of reconciliation.** – If the spouses have agreed to
26 reconcile at any time, the procedure under Articles 64, 65 and 66 of the Family Code
27 of the Philippines shall apply.

28 **Sec. 14. Penalties.** – Any person who fails to provide court-ordered child
29 support and/or court-ordered spousal support, shall be punished by *prision mayor* and
30 shall be fined in the amount of one hundred thousand pesos (php 100,000.00) to not
31 more than three hundred thousand pesos (php 300,000.00) on top of unpaid child
32 support and/or spousal support with compounding legal interest computed from date

1 of default until full payment. Interest due on the principal amount accruing as of
2 judicial demand shall separately earn legal interest accruing from date of demand until
3 full payment.

4 Notwithstanding other laws to the contrary, the court shall order an appropriate
5 percentage of the income or salary of the respondent to be withheld regularly by the
6 respondent's employer for the same to be automatically remitted directly to the other
7 spouse. Failure to remit and/or withhold or any delay in the remittance of support to
8 the other spouse and/or their common children without justifiable cause shall render
9 the respondent and/or their employer liable for indirect contempt of court.

10 **Sec. 15. Appeals.** – A decree of divorce validly obtained is final and executory
11 insofar as the capacity to remarry is concerned. Orders for child support, child custody
12 and spousal support are immediately executory pending appeal. Either of the parties
13 may file at any time for a motion to review orders of child support, custody, and
14 spousal support, on the ground of a material change in the factual circumstances upon
15 which the orders of child support, custody and spousal support were predicated. The
16 court that granted the decree of divorce shall have jurisdiction over the motions for
17 review.

18 **Sec. 16. Implementing Rules and Regulations.** – The Department of
19 Justice (DOJ) as lead agency, together with the Department of Social Welfare and
20 Development (DSWD), the Philippine Commission on Women (PCW), the Department
21 of Foreign Affairs (DFA), the Department of Interior and Local Government (DILG),
22 the Council for the Welfare of Children, the Office of the Solicitor General (OSG), one
23 representative from a women's organization with proven track record in women and
24 gender rights advocacy identified by the PCW, one representative from a children's
25 organization with proven track record in child rights advocacy to be identified by the
26 CWC, and two gender and family law experts from the UP Law Center shall
27 promulgate the Implementing Rules and Regulations (IRR) within sixty (60) days after
28 the effectivity of this Act.

29 **Sec. 17. Repealing Clause.** – All other laws, decrees, executive orders,
30 issuances, rules and regulations, or part thereof inconsistent with this Act are hereby
31 likewise repealed or amended accordingly.

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

4 **Sec. 19. *Effectivity Clause.*** – This Act shall take effect after fifteen (15) days
5 upon publication in at least two (2) newspapers of general circulation.