

Regular Session, 2006

HOUSE BILL NO. 1379 (Substitute for House Bill No. 860 by Representative Alexander)

BY REPRESENTATIVES ALEXANDER, ANSARDI, BEARD, BRUCE, BURNS, CRANE, CROWE, DORSEY, ERDEY, FRITH, E. GUILLORY, KATZ, KENNEY, LABRUZZO, MONTGOMERY, MORRISH, PIERRE, T. POWELL, ROMERO, SCALISE, SMILEY, JANE SMITH, THOMPSON, AND WALSWORTH AND SENATORS BARHAM, CAIN, KOSTELKA, MICHOT, NEVERS, QUINN, SMITH, AND THEUNISSEN

AN ACT

To amend and reenact Civil Code Articles 102 and 103(1) and Code of Civil Procedure Articles 3952, 3953(introductory paragraph) and (1) and (2) and 3956(introductory paragraph) and (5) and R.S.13:3491(A)(introductory paragraph) and (5)(a) and (B) and 3492(A)(introductory paragraph) and (6)(b) and (B) and to enact Civil Code Article 103.1, relative to divorce; to provide for the granting of divorce when there are minor children of the marriage; to provide for nullity of judgments; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 102 and 103(1) are hereby amended and reenacted and Civil Code Article 103.1 is hereby enacted to read as follows:

Art. 102. Judgment of divorce; living separate and apart ~~one hundred eighty days~~ prior to rule

Except in the case of a covenant marriage, a divorce shall be granted upon motion of a spouse when either spouse has filed a petition for divorce and upon proof that ~~one hundred eighty days have~~ the requisite period of time, in accordance with Article 103.1, has elapsed from the service of the petition, or from the execution of written waiver of the service, and that the spouses have lived separate and apart continuously for at least ~~one hundred eighty days~~ the requisite period of time, in accordance with Article 103.1, prior to the filing of the rule to show cause.

The motion shall be a rule to show cause filed after all such delays have elapsed.

Art. 103. Judgment of divorce; other grounds

Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

(1) The spouses have been living separate and apart continuously for a ~~period of six months~~ the requisite period of time, in accordance with Article 103.1, or more on the date the petition is filed;

* * *

Art. 103.1. Judgment of divorce; time periods

The requisite periods of time, in accordance with Articles 102 and 103 shall be as follows:

(1) One hundred eighty days:

(a) Where there are no minor children of the marriage; or

(b) Upon a finding by the court, pursuant to a rule to show cause, that the other spouse has physically or sexually abused the spouse seeking divorce or a child of one of the spouses; or

(c) If, after a contradictory hearing, a protective order or an injunction has been issued, in accordance with law, against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse and is in effect at the time the petition for divorce is filed.

(2) Three hundred sixty-five days when there are minor children of the marriage.

Section 2. Code of Civil Procedure Articles 3952, 3953(introductory paragraph) and (1) and (2) and 3956(introductory paragraph) and (5) are hereby amended and reenacted to read as follows:

Art. 3952. Rule to show cause and affidavit

The rule to show cause provided ~~under~~ in Civil Code Article 102 shall allege proper service of the initial petition for divorce, that ~~one hundred eighty days~~ the requisite period of time, in accordance with Article 103.1, or more ~~have~~ has elapsed since that service, and that the spouses have lived separate and apart continuously for the ~~previous one hundred eighty days~~ requisite period of time, in accordance with

1 Article 103.1. The rule to show cause shall be verified by the affidavit of the mover
2 and ~~must~~ shall be served on the defendant, the defendant's attorney of record, or the
3 duly appointed curator for the defendant prior to the granting of the divorce, unless
4 service is waived by the defendant.

5 Art. 3953. Nullity of judgment

6 A judgment rendered ~~under~~ in accordance with Civil Code Article 102 shall
7 be an absolute nullity when:

8 (1) Less than ~~one hundred eighty days have~~ the requisite period of time, in
9 accordance with Article 103.1, has elapsed between service of the petition, or
10 between execution of written waiver of service of the petition, and filing of the rule
11 to show cause.

12 (2) Less than ~~one hundred eighty days have~~ the requisite period of time, in
13 accordance with Article 103.1, has elapsed between the date the parties commenced
14 living separate and apart and filing of the rule to show cause.

15 * * *

16 Art. 3956. Evidence of facts in divorce action

17 The facts entitling a moving party to a divorce ~~under~~ in accordance with Civil
18 Code Article 102 may be established by:

19 * * *

20 (5) The affidavit of the mover, executed after the filing of the rule, that the
21 parties have lived separate and apart continuously for at least ~~one hundred eighty~~
22 ~~days~~ the requisite period of time, in accordance with Article 103.1, prior to the filing
23 of the rule to show cause and are still living separate and apart and that the mover
24 desires to be divorced.

25 Section 3. R.S. 13:3491(A)(introductory paragraph) and (5)(a) and (B) and
26 3492(A)(introductory paragraph) and (6)(b) and (B) are hereby amended and reenacted to
27 read as follows:

28 §3491. Divorce under Civil Code Article 102; notice of suit

29 A. A notice in a divorce action ~~under~~ in accordance with Civil Code Article
30 102 ~~must~~ shall be signed by the clerk of the court or his deputy issuing it with an

1 expression of his official capacity and under the seal of his office; ~~must~~ shall be
2 accompanied by a certified copy of the petition, exclusive of exhibits, even if made
3 a part thereof; and ~~must~~ shall contain all of the following:

4 * * *

5 (5) Statements to the following effect:

6 (a) The person served is being sued for divorce by his spouse ~~under~~ in
7 accordance with Civil Code Article 102, and that one hundred eighty days or three
8 hundred sixty-five days, in accordance with Civil Code Article 103.1, after the
9 service occurs or after the parties commenced living separate and apart, whichever
10 is later, the suing spouse is entitled to file a motion for final divorce.

11 * * *

12 B. The statements required to appear in the notice shall provide substantially
13 as ~~follows~~ applicable:

14 ATTENTION

15 YOU ARE BEING SUED FOR DIVORCE BY YOUR SPOUSE. ONE
16 HUNDRED EIGHTY DAYS AFTER YOU RECEIVE THIS NOTICE OR ONE
17 HUNDRED EIGHTY DAYS AFTER YOU AND YOUR SPOUSE PHYSICALLY
18 SEPARATED, WHICHEVER OCCURRED LAST, YOUR SPOUSE MAY FILE
19 FOR AND OBTAIN A FINAL DIVORCE.

20 (or)

21 YOU ARE BEING SUED FOR DIVORCE BY YOUR SPOUSE. THREE
22 HUNDRED SIXTY-FIVE DAYS AFTER YOU RECEIVE THIS NOTICE OR
23 THREE HUNDRED SIXTY-FIVE DAYS AFTER YOU AND YOUR SPOUSE
24 PHYSICALLY SEPARATED, WHICHEVER OCCURRED LAST, YOUR
25 SPOUSE MAY FILE FOR AND OBTAIN A FINAL DIVORCE.

26 (and)

27 YOU MAY FILE FOR A FINAL DIVORCE YOURSELF, AND YOU MAY
28 SEEK CUSTODY OF CHILDREN, AND MONEY FOR THEIR SUPPORT AND
29 YOUR SUPPORT, AS WELL AS OTHER RELIEF TO PROTECT YOU.

1 IF YOUR SPOUSE FAILS TO FILE FOR A FINAL DIVORCE IN TWO
 2 YEARS, HE MAY NOT DO SO WITHOUT FILING NEW PAPERS AND
 3 WAITING ANOTHER ONE HUNDRED EIGHTY DAYS.

4 (or)

5 IF YOUR SPOUSE FAILS TO FILE FOR A FINAL DIVORCE IN TWO
 6 YEARS, HE MAY NOT DO SO WITHOUT FILING NEW PAPERS AND
 7 WAITING ANOTHER THREE HUNDRED SIXTY-FIVE DAYS.

8 (and)

9 IF YOU ARE UNSURE OF WHAT TO DO AS A RESULT OF THIS
 10 NOTICE, YOU SHOULD TALK IMMEDIATELY WITH AN ATTORNEY
 11 ABOUT IT.

12 §3492. Divorce under Civil Code Article 102; notice of rule to show cause

13 A. A notice of a rule to show cause ~~under~~ in accordance with Civil Code
 14 Article 102 ~~must~~ shall be signed by the clerk of the court or his deputy issuing it with
 15 an expression of his official capacity and under the seal of his office; ~~must~~ shall be
 16 accompanied by a certified copy of the motion, order and rule to show cause; and
 17 ~~must~~ shall contain all of the following:

18 * * *

19 (6) Statements to the following effect:

20 * * *

21 (b) The necessity for the lapse of one hundred eighty days or three hundred
 22 sixty-five days, in accordance with Civil Code Article 103.1, from service of the
 23 petition of divorce upon the person or from the date the parties commenced living
 24 separate and apart, whichever is later.

25 * * *

26 B. The statements required to appear in the notice shall provide substantially
 27 as ~~follows~~ applicable:

28 ATTENTION

29 YOU ARE BEING SUED FOR FINAL DIVORCE. A JUDGMENT OF
 30 DIVORCE MAY BE RENDERED AGAINST YOU ON THE DATE SPECIFIED

1 IN THE ATTACHED RULE TO SHOW CAUSE UNLESS YOU APPEAR AND
2 OPPOSE THE RULE.

3 ONE HUNDRED EIGHTY DAYS MUST HAVE PASSED SINCE YOU
4 OR YOUR SPOUSE RECEIVED THE FIRST NOTICE OF THE DIVORCE
5 ACTION OR ONE HUNDRED EIGHTY DAYS AFTER YOU AND YOUR
6 SPOUSE PHYSICALLY SEPARATED, WHICHEVER OCCURRED LAST.

7 (or)

8 THREE HUNDRED SIXTY-FIVE DAYS MUST HAVE PASSED SINCE
9 YOU OR YOUR SPOUSE RECEIVED THE FIRST NOTICE OF THE DIVORCE
10 ACTION OR THREE HUNDRED SIXTY-FIVE DAYS AFTER YOU AND YOUR
11 SPOUSE PHYSICALLY SEPARATED, WHICHEVER OCCURRED LAST.

12 (and)

13 YOU MAY SEEK CUSTODY OF CHILDREN, AND MONEY FOR THEIR
14 SUPPORT AND YOUR SUPPORT, AS WELL AS OTHER RELIEF TO
15 PROTECT YOU.

16 IF YOU ARE UNSURE WHAT TO DO, YOU SHOULD IMMEDIATELY
17 TALK WITH AN ATTORNEY ABOUT IT.

18 Section 4. The provisions of this Act shall become effective on January 1, 2007.

19 Section 5. The provisions of this Act shall apply only to actions filed on and after its
20 effective date. Actions pending before the effective date of this Act shall be governed by
21 prior law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____