

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1605
Judiciary

(Delegate Bates, *et al.*)

Divorce - Mutual Consent Required

This bill prohibits a court from granting a decree of limited divorce on the grounds of voluntary separation, or absolute divorce on the grounds of voluntary separation or a two-year separation, if (1) there is a minor child • born of the parties; • born of either party and adopted by the other party; or • adopted by both parties; *or* one party is pregnant; and (2) either party files a written objection to the divorce. A written objection that is filed with the court may be withdrawn at any time during the divorce proceedings.

Fiscal Summary

State Effect: Potentially significant increase in State general fund expenditures, depending on the number of divorce cases subject to the bill's provisions.

Local Effect: Potentially significant increase in local expenditures, depending on the number of divorce cases subject to the bill's provisions.

Small Business Effect: None.

Analysis

Current Law: A court may decree a limited divorce on the following grounds:

- cruelty of treatment of the complaining party or a minor child of the complaining party;
- excessively vicious conduct to the complaining party or to a minor child of the complaining party;

- desertion; or
- voluntary separation if the parties are living apart without cohabitation and there is no reasonable expectation of reconciliation.

Before granting a limited divorce, the court may require the parties to participate in efforts to achieve reconciliation as prescribed by the court and assess the costs of any efforts to achieve the prescribed reconciliation. A divorce may be decreed by the court for a limited or an indefinite time. A court that grants a decree of limited divorce may revoke it at any time on joint application of the parties. If the parties request an absolute divorce and the evidence is sufficient to grant only a limited divorce, the court may decree a limited divorce.

A court may decree an absolute divorce on the following grounds:

- adultery;
- desertion, as specified;
- voluntary separation, as specified;
- conviction of a felony or misdemeanor in any State or federal court, if the defendant has been sentenced to serve at least three years, or an indeterminate sentence, and has served 12 months of the sentence;
- two-year separation, when the parties have lived separate and apart without cohabitation for two years before the filing of the divorce application;
- insanity, as specified;
- cruelty of treatment toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation; or
- excessively vicious conduct toward the complaining party, or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

Recrimination is not a bar to either party obtaining an absolute divorce on the grounds of ● insanity; ● adultery; ● desertion; ● voluntary separation; ● conviction of a felony or misdemeanor; ● cruelty of treatment toward the complaining party or a minor child of the complaining party; ● excessively vicious conduct toward a complaining child or a minor child of the complaining party; or ● two-year separation without cohabitation. However, recrimination is a factor to be considered in a case based on the ground of adultery.

Recrimination is generally defined as a rule or doctrine which precludes one spouse from obtaining a divorce from the other, where the spouse seeking a divorce has himself or herself been guilty of conduct which would entitle the opposite spouse to a divorce.

A spouse may currently file for an absolute divorce on the basis of constructive desertion. However, the spouse must wait 12 months before filing for the absolute divorce. A court may decree an absolute divorce even if the party has obtained a limited divorce.

Background: The effect of a limited divorce is only to give the injured spouse the right to live separate and apart from the spouse at fault. Divorcing spouses have the benefit of property division under the Marital Property Act only in cases of absolute divorce.

State and Local Fiscal Effect: Potentially significant increase in State general fund expenditures and local expenditures, depending on the number of divorce cases subject to the bill's provisions. The number of cases that could be subject to the bill cannot be reliably estimated.

The bill could significantly increase the length of trials in divorce cases. The Administrative Office of the Courts advises that first, there would be an increase in the number of two-year voluntary separation divorce cases where the voluntary nature of the separation would be contested, resulting in more testimony, evidence, and lengthier proceedings. Secondly, there would be an increase in divorce filings on all grounds other than separation. To the extent that adultery, vicious conduct, cruelty, constructive desertion, or desertion are alleged, additional pleadings, testimony, and evidence would be submitted to the court and lengthier proceedings would be required. Also, a portion of those persons who would have filed based on a two-year voluntary separation would anticipate that the spouse would not consent and would seek divorce on other, more contentious grounds. For example, testimony regarding a two-year voluntary separation as grounds for divorce may take 30 minutes. A divorce case based on cruelty or adultery may require hours or even days of testimony so that each party can support his or her position.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 18, 2008
mll/hlb

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