
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: April 3, 2023

Subject: Senate Bill 36:
Family Law – Grounds for Divorce

Position: FAVORABLE AS AMENDED

The Maryland State Bar Association (MSBA) FJLSC **supports Senate Bill 36 – Family Law – Grounds for Divorce.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

Under current law, absent a comprehensive agreement (mutual consent set forth in Md. Fam Law §7-103(8)) except in the case of adultery (Md. Fam. Law §7-103(1)), cruelty of treatment (Md. Fam. Law §7-103(6)) and excessive vicious conduct (Md. Fam Law §7-103(7)), married persons residing together cannot obtain an absolute divorce. The grounds of 12-month separation (Md. Fam. Law §7-103(4) and desertion (Md. Fam Law §7-103(2)) require a 12 month physical separation. Similarly, except in very limited circumstances, married persons residing together cannot obtain a limited divorce.

Many Marylanders simple do not have the financial resources to establish two homes. Thus under current law too many Maryland citizens are forced to remain in marriages that are irretrievably broken. Many Maryland family law practitioners have shared stories of the harm to clients and their families as a result of the inability to access the Courts for much needed relief as

a result of the waiting period/physical separation requirement. This Bill offers welcome relief for Maryland families and family law practitioners. Senate Bill 36 would allow married persons to obtain an absolute divorce more expeditiously and with less financial repercussions. Proposed changes to §7-102 eliminate the rarely used and often confusing version of “limited” divorce and §7-103 authorizes an absolute divorce in the following circumstances:

1. after a 6-month separation if the parties have lived separate and apart for 6 months without interruption;
2. upon the allegation of one party that there are irreconcilable differences between the parties upon which the marriage should be terminated;
3. mutual consent if the parties have submitted a written agreement resolving all issues related to alimony, distribution of property, custody and child support for minor children

Only the first two grounds for divorce are new in this legislation. To further codify case law which has developed over the years to clarify the concept of living “separate and apart”, section (B) of SB 36 makes it clear that even parties living under the same roof can be deemed, by a Judge, to have pursued separate lives and met the requirement to live separate and apart related to the 6 month separation ground. The FJLSC supports the amendment made to SB 36 to remove the ground of legal incapacity, as the first two grounds will be sufficient grounds for those Marylanders who would have previously used the legal incapacity of their spouse as grounds for divorce.

These changes to the Divorce Grounds law will bring Maryland in line with many other states which allow for divorces based on irreconcilable differences or the irretrievable breakdown of a marriage as opposed to specific “fault” grounds such as adultery or cruelty of treatment. This will simply allow more persons in unhappy marriages immediate access to the court to begin the process of dissolving their marriages. In cases in which the facts regarding “fault” for the breakdown of the marriage bond are relevant to such claims as custody, alimony or monetary awards, those litigants will still be quite able to plead and argue those facts to the Court throughout the process.

SB 36 is a critical step toward streamlining the process by which Maryland citizens initiate divorce proceedings. For the reason(s) stated above, the MSBA FJLSC **supports Senate Bill 36 as amended and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith at 410-280-1700 or msmith@lawannapolis.com.