

2017 Regular Session

HOUSE BILL NO. 123

BY REPRESENTATIVE WHITE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FAMILY LAW: Amends provisions of law regarding divorce

1 AN ACT

2 To amend and reenact Civil Code Articles 103(4) and (5), 112(B), and 2362.1(B) and R.S.
3 9:367 and to enact Civil Code Article 112(E) and Code of Civil Procedure Article
4 3941(C), relative to divorce proceedings; to provide relative to grounds for divorce;
5 to provide relative to attorney fees and other costs in certain proceedings; to provide
6 relative to spousal support in certain proceedings; to provide for the setting of certain
7 hearings; to provide definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Civil Code Articles 103(4) and (5), 112(B), and 2362.1(B) are hereby
10 amended and reenacted and Civil Code Article 112(E) is hereby enacted to read as follows:

11 Art. 103. Judgment of divorce; other grounds

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

14 * * *

15 (4) During the marriage, the other spouse physically or sexually abused the
16 spouse seeking divorce or a child of one of the spouses, regardless of whether the
17 other spouse was prosecuted for the act of abuse. For purposes of this Article:

18 (a) "Physical abuse" has the same meaning as "domestic abuse" as defined
19 in R.S. 46:2132(3).

20 (b) "Sexual abuse" has the same meaning as provided in R.S. 9:362(6).

1 (5) After a contradictory hearing or consent decree, a protective order or an
2 injunction was issued during the marriage, or, after a contradictory hearing, a
3 protective order or no communication order was issued as a condition of bail, in
4 accordance with law, against the other spouse to protect the spouse seeking the
5 divorce or a child of one of the spouses from abuse.

6 * * *

7 Art. 112. Determination of final periodic support

8 * * *

9 B. When a spouse has not been at fault prior to the filing of a petition for
10 divorce and the court determines that party was the victim of domestic abuse
11 committed during the marriage by the other party, that spouse shall be awarded final
12 periodic support ~~or a lump sum award, at the discretion of the court,~~ in accordance
13 with Paragraph C of this Article. At the discretion of the court, the final periodic
14 support may be awarded in a lump sum.

15 * * *

16 E. The fact that the abused spouse suffers from the effects of the domestic
17 abuse shall not constitute fault for the purpose of denying an abused spouse spousal
18 support.

19 * * *

20 Art. 2362.1. Obligation incurred in an action for divorce

21 * * *

22 B. Notwithstanding the provisions of Paragraph A of this Article, the court
23 ~~may shall~~ assess ~~attorney~~ fees and costs in an action for divorce granted pursuant to
24 Article 103(4) or (5) and in incidental actions thereafter against the perpetrator of
25 abuse, which shall be a separate obligation of the perpetrator. Fees and costs shall
26 include but not be limited to court costs, attorney fees, costs of enforcement and
27 modifications proceedings, costs of appeals, evaluation fees, expert witness fees, and
28 all costs of medical and psychological care for the abused adult, or for any of the
29 children, necessitated by the abuse.

1 Section 2. Code of Civil Procedure Article 3941(C) is hereby enacted to read as
2 follows:

3 Art. 3941. Court where action brought; nullity of judgment of court of improper
4 venue; timing of hearing; priority

5 * * *

6 C. Following compliance with all required procedures in ordinary
7 proceedings, and upon request of the petitioner, an action for divorce pursuant to
8 Civil Code Article 103(4) or (5) shall be set for hearing as expeditiously as possible.
9 If a petition for divorce upon other grounds is pending between the same parties, and
10 set for hearing at the same time, the Civil Code Article 103(4) or (5) divorce action
11 shall be heard first, regardless of when the other grounds for divorce were plead.

12 Section 3. R.S. 9:367 is hereby amended and reenacted to read as follows:

13 §367. Costs

14 In any family violence case, all court costs, costs of appeals, attorney fees,
15 evaluation fees, and expert witness fees incurred in furtherance of this Part shall be
16 paid by the perpetrator of the family violence, including all costs of medical and
17 psychological care for the abused spouse, or for any of the children, necessitated by
18 the family violence.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 123 Engrossed

2017 Regular Session

White

Abstract: Provides for spousal support, payment of costs, and priority in divorce proceedings based upon domestic abuse.

Present law provides grounds for divorce upon proof of physical or sexual abuse in the marriage as well as proof that a protective order or injunction was issued during the marriage, or if a protective order or no communication order was issued as a condition of bail, provided that a contradictory hearing was conducted.

Proposed law defines "physical abuse" and "sexual abuse" for purposes of present law.

Proposed law gives priority to divorces on grounds of physical abuse, sexual abuse, or in marriages in which a protective order or injunction has been issued over all other grounds for divorce, provided that the causes of action for divorce are set for hearing at the same time.

Proposed law requires that a petitioner not be assessed court costs or costs of service for a subpoena or the filing of a petition for divorce alleging sexual or physical abuse or when an injunction or protective order has been issued.

Present law allows a court discretion to assess attorney fees and costs in an action for divorce granted on the grounds of sexual or physical abuse or when an injunction or protective order has been issued.

Proposed law requires a court to assess fees and costs to the perpetrator in an action for divorce on the grounds of physical abuse, sexual abuse, or when an injunction or protective order has been issued.

Present law provides for costs and fees to be paid by the perpetrator in family violence cases.

Proposed law clarifies that costs of appeals are included in the costs and fees to be paid by the perpetrator in family violence cases.

(Amends C.C. Arts. 103(4) and (5), 112(B), and 2362.1(B) and R.S. 9:367; Adds C.C. Art. 112(E) and C.C.P. Art. 3941(C))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Add that in order for a divorce to be granted on the grounds that a protective order or no communication order was issued as a condition of bail, a contradictory hearing must have occurred.
2. Eliminate language which would have exempted a petitioner for divorce under Civil Code Article 103(4) or (5) from prepaying court costs or costs of service or subpoena for the filing of the petition for divorce.
3. Add that actions for divorce filed pursuant to Civil Code Article 103(4) or (5) be set for hearing as expeditiously as possible and be given priority over other actions for divorce if the petitions are between the same parties and have been set for hearing at the same time.