

2017 Regular Session

HOUSE BILL NO. 136

BY REPRESENTATIVE JEFFERSON

(On Recommendation of the Louisiana State Law Institute)

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

DIVORCE: Provides for the time periods for no-fault divorce and interim spousal support

1 AN ACT

2 To amend and reenact Civil Code Articles 102, 103(1), 113, 114, and 115 and Code of Civil
3 Procedure Articles 3952, 3953(1) and (2), and 3956(5), and R.S. 13:3491(A)(5)(a)
4 and (B) and 3492(A)(6)(b) and (B) and to repeal Civil Code Article 103.1, relative
5 to divorce; to provide for the time period for a no-fault divorce; to provide for
6 interim spousal support; to provide for the modification of spousal support; to
7 provide for the rule to show cause; to provide for the nullity of judgments; to provide
8 for notice of divorce; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Articles 102, 103(1), 113, 114, and 115 are hereby amended
11 and reenacted to read as follows:

12 Art. 102. Judgment of divorce; living separate and apart prior to rule

13 Except in the case of a covenant marriage, a divorce shall be granted upon
14 motion of a spouse when either spouse has filed a petition for divorce and upon proof
15 that ~~the requisite period of time, in accordance with Article 103.1, has~~ one hundred
16 eighty days have elapsed from the service of the petition, or from the execution of
17 written waiver of the service, and that the spouses have lived separate and apart
18 continuously without reconciliation for at least ~~the requisite period of time, in~~
19 ~~accordance with Article 103.1,~~ one hundred eighty days prior to the filing of the rule
20 to show cause.

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

3 Art. 3952. Rule to show cause and affidavit

4 The rule to show cause provided in Civil Code Article 102 shall allege proper
5 service of the initial petition for divorce, that ~~the requisite period of time, in~~
6 ~~accordance with Article 103.1,~~ one hundred eighty days or more ~~has~~ have elapsed
7 since that service, and that the spouses have lived separate and apart continuously for
8 the ~~requisite period of time, in accordance with Article 103.1~~ previous one hundred
9 eighty days. The rule to show cause shall be verified by the affidavit of the mover
10 and shall be served on the defendant, the defendant's attorney of record, or the duly
11 appointed curator for the defendant prior to the granting of the divorce, unless
12 service is waived by the defendant.

13 Art. 3953. Nullity of Judgment

14 A judgment rendered in accordance with Civil Code Article 102 shall be an
15 absolute nullity when:

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

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

23 * * *

24 Art. 3956. Evidence of facts in divorce action

25 The facts entitling a moving party to a divorce in accordance with Civil Code
26 Article 102 may be established by:

27 * * *

28 (5) The affidavit of the mover, executed after the filing of the rule, that the
29 parties have lived separate and apart continuously for at least ~~the requisite period of~~

1 ~~time, in accordance with Civil Code Article 103.1, one hundred eighty days prior to~~
2 the filing of the rule to show cause and are still living separate and apart and that the
3 mover desires to be divorced.

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

6 §3491. Divorce under Civil Code Article 102; notice of suit

7 A. A notice in a divorce action in accordance with Civil Code Article 102
8 shall be signed by the clerk of the court or his deputy issuing it with an expression
9 of his official capacity and under the seal of his office; shall be accompanied by a
10 certified copy of the petition, exclusive of exhibits, even if made a part thereof; and
11 shall contain all of the following:

12 * * *

13 (5) Statements to the following effect:

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

19 * * *

20 B. The statements required to appear in the notice shall provide substantially
21 as applicable:

22 ATTENTION

23 YOU ARE BEING SUED FOR DIVORCE BY YOUR SPOUSE. ONE
24 HUNDRED EIGHTY DAYS AFTER YOU RECEIVE THIS NOTICE OR ONE
25 HUNDRED EIGHTY DAYS AFTER YOU AND YOUR SPOUSE PHYSICALLY
26 SEPARATED, WHICHEVER OCCURRED LAST, YOUR SPOUSE MAY FILE
27 FOR AND OBTAIN A FINAL DIVORCE.

28 (or)

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

5 * * *

6 B. The statements required to appear in the notice shall provide substantially
7 as applicable:

8 ATTENTION

9 YOU ARE BEING SUED FOR FINAL DIVORCE. A JUDGMENT OF
10 DIVORCE MAY BE RENDERED AGAINST YOU ON THE DATE SPECIFIED
11 IN THE ATTACHED RULE TO SHOW CAUSE UNLESS YOU APPEAR AND
12 OPPOSE THE RULE.

13 ONE HUNDRED EIGHTY DAYS MUST HAVE PASSED SINCE YOU
14 OR YOUR SPOUSE RECEIVED THE FIRST NOTICE OF THE DIVORCE
15 ACTION OR ONE HUNDRED EIGHTY DAYS AFTER YOU AND YOUR
16 SPOUSE PHYSICALLY SEPARATED, WHICHEVER OCCURRED LAST.

17 ~~(or)~~

18 ~~THREE HUNDRED SIXTY-FIVE DAYS MUST HAVE PASSED SINCE~~
19 ~~YOU OR YOUR SPOUSE RECEIVED THE FIRST NOTICE OF THE DIVORCE~~
20 ~~ACTION OR THREE HUNDRED SIXTY-FIVE DAYS AFTER YOU AND YOUR~~
21 ~~SPOUSE PHYSICALLY SEPARATED, WHICHEVER OCCURRED LAST.~~

22 ~~(and)~~

23 YOU MAY SEEK CUSTODY OF CHILDREN, AND MONEY FOR THEIR
24 SUPPORT AND YOUR SUPPORT, AS WELL AS OTHER RELIEF TO
25 PROTECT YOU.

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

28 Section 4. Civil Code Article 103.1 is hereby repealed in its entirety.

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 136 Original

2017 Regular Session

Jefferson

Abstract: Provides for a 180-day waiting period to obtain a divorce and provides for the award of interim spousal support.

Present law (C.C. Art. 103.1) provides that when there are minor children of the marriage, spouses must live separate and apart for 365 days, with some exceptions, prior to obtaining a divorce.

Proposed law repeals present law and provides that all married couples, regardless of whether there are children of the marriage, must live separate and apart for 180 days prior to the rule to show cause to obtain a no-fault divorce in accordance with present law (C.C. Art. 102), or may live separate and apart for 180 days prior to the filing of the petition for a no-fault divorce pursuant to present law (C.C. Art. 103).

Present law (C.C. Art. 113) provides for the termination of interim spousal support upon the judgment of divorce or upon a judgment awarding final spousal support.

Proposed law changes present law and provides for the termination of interim spousal support 180 days after the judgment of divorce.

Present law (C.C. Arts. 114 and 115) provide for the modification and extinguishment of spousal support.

Proposed law maintains present law and clarifies that both interim spousal support and final periodic support may be modified and will extinguish in certain circumstances.

Proposed law changes present law (C.C.P. Arts. 3952, 3953, and 3956 and R.S. 13:3491 and 3492) to delete references to the 365-day waiting period to obtain a divorce when there are children of the marriage.

(Amends C.C. Arts. 102, 103(1), 113, 114, and 115 and C.C.P. Arts. 3952, 3953(1) and (2), and 3956(5) and R.S. 13:3491(A)(5)(a) and (B) and 3492(A)(6)(b) and (B); Repeals C.C. Art. 103.1)