

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

3                   Revision Comments - 2017

4                   The 2017 revision reverts to pre-2007 Louisiana law, providing a requisite  
5                   180-day period of separation for all no-fault divorces. This change is consistent with  
6                   the national trend in divorce waiting periods, although Louisiana's 180-day period  
7                   remains among the lengthiest nationwide.

8                   Art. 103. Judgment of divorce; other grounds

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

11                  (1) The spouses have been living separate and apart continuously without  
12                  reconciliation for the requisite period of time, in accordance with Article 103.1, a  
13                  period of one hundred eighty days or more on the date the petition is filed.

14   \*           \*           \*

15                  Art. 113. Interim spousal support ~~allowance pending final spousal support award~~

16                  A. Upon motion of a party ~~or when a demand for final spousal support is~~  
17                  ~~pending, the court may award a party an interim spousal support allowance based on~~  
18                  ~~the needs of that party, the ability of the other party to pay, any interim allowance~~  
19                  ~~or final child support obligation, and the standard of living of the parties during the~~  
20                  ~~marriage, which. An award of interim spousal support allowance shall terminate~~  
21                  ~~upon one hundred eighty days after the rendition of a judgment of divorce.~~

22                  B. If a claim for final spousal support is pending at the time of the rendition  
23                  of the judgment of divorce, the interim spousal support award shall thereafter  
24                  terminate upon rendition of a judgment awarding or denying final spousal support  
25                  or one hundred eighty days from the rendition of judgment of divorce, whichever  
26                  occurs first. The obligation to pay interim spousal support may extend beyond one  
27                  hundred eighty days from the rendition of judgment of divorce, but only for good  
28                  cause shown.

29                  C. Notwithstanding Paragraph B of this Article, if a claim for final spousal  
30                  support is pending at the time of the rendition of a judgment of divorce pursuant to  
31                  Article 103(4) or (5) and the final spousal support award does not exceed the interim

spousal support award, the interim spousal support award shall thereafter terminate no less than one hundred eighty days from the rendition of judgment of divorce. The obligation to pay final spousal support shall not begin until after an interim spousal support award has terminated.

## Revision Comments - 2017

(a) The 2017 revision ties the duration of interim spousal support awards solely to the judgment of divorce. It recognizes that with the shortening of the no-fault divorce waiting period to 180 days for all couples, including those with minor children, a longer period of interim support may be warranted.

#### Art. 114. Modification or termination of award of periodic support

An award of interim spousal support or final periodic support may be modified if the circumstances of either party materially change and shall be terminated if it has become unnecessary. The subsequent remarriage of the obligor spouse shall not constitute a change of circumstance.

## Revision Comments - 2017

The 2017 revision makes clear that both interim and final support awards are modifiable, in accordance with the modification standards provided by law.

## Art. 115. Extinguishment of spousal support obligation

The obligation of spousal interim spousal support or final periodic support is extinguished upon the remarriage of the obligee, the death of either party, or a judicial determination that the obligee has cohabited with another person of either sex in the manner of married persons.

## Revision Comments - 2017

The 2017 revision is not intended to change the law. This Article has always been broad enough to cover both interim and final periodic support awards. This revision simply makes the domain of the Article clearer.

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

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

## 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 \* \* \*

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

time, in accordance with Civil Code Article 103.1, one hundred eighty days prior to the filing of the rule to show cause and are still living separate and apart and that the 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 \* \* \*

\* \* \*

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 (cont)

1 YOU ARE BEING SUED FOR DIVORCE BY YOUR SPOUSE. THREE  
2 HUNDRED SIXTY-FIVE DAYS AFTER YOU RECEIVE THIS NOTICE OR  
3 THREE HUNDRED SIXTY-FIVE DAYS AFTER YOU AND YOUR SPOUSE  
4 PHYSICALLY SEPARATED, WHICHEVER OCCURRED LAST, YOUR  
5 SPOUSE MAY FILE FOR AND OBTAIN A FINAL DIVORCE.

6 (and)

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

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

13 (or)

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

17 (and)

18 IF YOU ARE UNSURE OF WHAT TO DO AS A RESULT OF THIS  
19 NOTICE, YOU SHOULD TALK IMMEDIATELY WITH AN ATTORNEY  
20 ABOUT IT.

21       §3492. Divorce under Civil Code Article 102; notice of rule to show cause

22                   A. A notice of a rule to show cause in accordance with Civil Code Article  
23                   102 shall be signed by the clerk of the court or his deputy issuing it with an  
24                   expression of his official capacity and under the seal of his office; shall be  
25                   accompanied by a certified copy of the motion, order and rule to show cause; and  
26                   shall contain all of the following:

\* \* \*

28 (6) Statements to the following effect:

\* \* \*

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

\* \* \*

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

ATTENTION

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

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**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)]

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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)