HLS 17RS-854 ENGROSSED

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

To amend and reenact Civil Code Articles 102, 103(1), 113, 114, and 115 and Code of Civil

Procedure Articles 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) and to repeal Civil Code Article 103.1, relative

to divorce; to provide for the time period for a no-fault divorce; to provide for

interim spousal support; to provide for the modification of spousal support; to

provide for the rule to show cause; to provide for the nullity of judgments; to provide

for notice of divorce; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

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

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	The motion shall be a rule to show cause filed after all such delays have
2	elapsed.
3	Revision Comments - 2017
4 5 6 7	The 2017 revision reverts to pre-2007 Louisiana law, providing a requisite 180-day period of separation for all no-fault divorces. This change is consistent with the national trend in divorce waiting periods, although Louisiana's 180-day period 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

1 spousal support award, the interim spousal support award shall thereafter terminate 2 no less than one hundred eighty days from the rendition of judgment of divorce. The 3 obligation to pay final spousal support shall not begin until after an interim spousal 4 support award has terminated. 5 **Revision Comments - 2017** 6 (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-7 8 fault divorce waiting period to 180 days for all couples, including those with minor 9 children, a longer period of interim support may be warranted. 10 (b) For judgments of divorce rendered on grounds of domestic violence, this 11 revision does not change the law. It continues to provide victims of domestic 12 violence interim spousal support for a period of 180 days after the judgment of 13 divorce. 14 (c) As the permissive language in the first sentence of Paragraph A indicates, 15 it is within the court's discretion whether to make an award of interim spousal 16 support under this Article, in accordance with the court's assessment of need, ability 17 to pay, and the other relevant factors detailed in the Article. If the court finds that those factors militate in favor of an award of interim support, however, the duration 18 19 of the award is not discretionary. 20 Art. 114. Modification or termination of award of periodic support 21 An award of interim spousal support or final periodic support may be 22 modified if the circumstances of either party materially change and shall be 23 terminated if it has become unnecessary. The subsequent remarriage of the obligor 24 spouse shall not constitute a change of circumstance. 25 Revision Comments - 2017 26 The 2017 revision makes clear that both interim and final support awards are 27 modifiable, in accordance with the modification standards provided by law. 28 Art. 115. Extinguishment of spousal support obligation 29 The obligation of spousal interim spousal support or final periodic support 30 is extinguished upon the remarriage of the obligee, the death of either party, or a 31 judicial determination that the obligee has cohabited with another person of either 32 sex in the manner of married persons. Revision Comments - 2017 33 34 The 2017 revision is not intended to change the law. This Article has always 35 been broad enough to cover both interim and final periodic support awards. This 36 revision simply makes the domain of the Article clearer.

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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

Section 2. Code of Civil Procedure Articles 3952, 3953(1) and (2), and 3956(5) are

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	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:
27	* * *
28	(6) Statements to the following effect:
29	* * *

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 Engrossed

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.

<u>Present law</u> (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.

<u>Proposed law</u> repeals <u>present law</u> 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 <u>present law</u> (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 <u>present law</u> (C.C. Art. 103).

<u>Present law</u> (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.

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

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

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

<u>Proposed law</u> changes <u>present law</u> (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)