

2018 Regular Session

HOUSE BILL NO. 125

BY REPRESENTATIVE JEFFERSON

(On Recommendation of the Louisiana State Law Institute)

DIVORCE: Provides relative to divorce and spousal support

1 AN ACT

2 To amend and reenact Civil Code Articles 103(4) and (5), 112, 113, 114, and 115, and to
3 repeal Civil Code Article 118, relative to marriage; to provide for grounds for
4 divorce; to provide for interim spousal support; to provide for final periodic support;
5 to provide for modification of support; to provide for extinguishment of support; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Civil Code Articles 103(4) and (5), 112, 113, 114, and 115 are hereby
9 amended and reenacted to read as follows:

10 Art. 103. Judgment of divorce; other grounds

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

13 * * *

14 (4) ~~During the marriage, the~~ The other spouse physically or sexually abused
15 the spouse seeking divorce or a child of one of the spouses, regardless of whether the
16 other spouse was prosecuted for the act of abuse.

17 (5) After a contradictory hearing or consent decree, a protective order or an
18 injunction was issued during the marriage, ~~in accordance with law,~~ against the other
19 spouse to protect the spouse seeking the divorce or a child of one of the spouses from
20 abuse.

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Revision Comments - 2018

The protective order referenced in Subparagraph (5) of this Article may be either a criminal or civil protective order. See, e.g., R.S. 14:40.2, R.S. 46:2136, and Children's Code Articles 618 and 1570.

* * *

Art. 112. Determination of final periodic support

A. When a spouse has not been at fault prior to the filing of a petition for divorce and is in need of support, based on the needs of that party and the ability of the other party to pay, that spouse may be awarded final periodic support in accordance with Paragraph ~~C~~ B of this Article.

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

~~C.~~ The court shall consider all relevant factors in determining the amount and duration of final support, including:

- (1) The income and means of the parties, including the liquidity of such means.
- (2) The financial obligations of the parties, including any interim allowance or final child support obligation.
- (3) The earning capacity of the parties.
- (4) The effect of custody of children upon a party's earning capacity.
- (5) The time necessary for the claimant to acquire appropriate education, training, or employment.
- (6) The health and age of the parties.
- (7) The duration of the marriage.
- (8) The tax consequences to either or both parties.
- (9) The existence, effect, and duration of any act of domestic abuse committed by the other spouse upon the claimant or a child of one of the spouses,

1 regardless of whether the other spouse was prosecuted for the act of domestic
2 violence.

3 C. When a spouse is awarded a judgment of divorce pursuant to Article
4 103(2), (3), (4), or (5), or when the court determines that a party or a child of one of
5 the spouses was the victim of domestic abuse committed by the other party during
6 the marriage, that spouse is presumed to be entitled to final periodic support.

7 D. The sum awarded under this Article shall not exceed one-third of the
8 obligor's net income; ~~however, where.~~ Nevertheless, when support is awarded
9 ~~pursuant to Paragraph B of this Article~~ after a judgment of divorce is rendered
10 pursuant to Article 103(4) or (5), or when the court determines that a party or a child
11 of one of the spouses was the victim of domestic abuse committed by the other party
12 during the marriage, the sum awarded may exceed one-third of the obligor's net
13 income and may be awarded as a lump sum.

14 Revision Comments - 2018

15 (a) The 2018 revision is intended to clarify the relevance of need, ability to
16 pay, and pre-filing fault to spousal support in the domestic violence and fault-based
17 divorce context. Victims of domestic violence and others who obtain fault-based
18 divorces benefit from a presumption of entitlement to final periodic support, but that
19 presumption may be overcome by evidence regarding need, ability to pay, or
20 pre-filing fault. Likewise, the court remains obligated to consider the factors set out
21 in Paragraph B of this Article in determining whether support is appropriate when
22 the claimant has obtained a fault-based divorce or is a victim of domestic violence.

23 (b) The burden shifting mechanism articulated in this Article was developed
24 by the Louisiana Supreme Court in *Lagars v. Lagars*, 491 So. 2d 5 (La. 1986), in the
25 adultery context. Here, it is explicitly made applicable when a judgment of divorce
26 is rendered on other fault-based grounds.

27 (c) The court is required to consider the existence, effect, and duration of
28 acts of domestic violence in making the spousal support evaluation under both
29 Paragraph B of this Article and R.S. 9:327 (regarding the effect of criminal
30 convictions for domestic violence). Further, the Louisiana jurisprudence has
31 indicated that in evaluating fault in the spousal support context, justifiable responsive
32 behavior may not rise to the level of fault that precludes a spouse from receiving
33 final periodic support. See, e.g., *Bourg v. Bourg*, 701 So. 2d 1378 (La. App. 1 Cir.
34 1997) (fault must be a proximate cause of the dissolution of the marriage, rather than
35 a "justifiable response to initial fault"). In the domestic violence context in
36 particular, the court should consider the potentially responsive nature of a victim's
37 actions.

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

2 A. Upon motion of a party ~~or when a demand for final spousal support is~~
3 ~~pending~~, the court may award a party ~~an interim spousal support allowance~~ based on
4 the needs of that party, the ability of the other party to pay, any interim ~~allowance~~
5 or final child support obligation, and the standard of living of the parties during the
6 marriage, ~~which~~. An award of interim spousal support ~~allowance~~ shall terminate
7 ~~upon one hundred eighty days from~~ the rendition of a judgment of divorce, ~~except~~
8 that the award may extend beyond one hundred eighty days but only for good cause
9 shown.

10 B. ~~If a claim for final spousal support is pending at the time of the rendition~~
11 ~~of the judgment of divorce, the interim spousal support award shall thereafter~~
12 ~~terminate upon rendition of a judgment awarding or denying final spousal support~~
13 ~~or one hundred eighty days from the rendition of judgment of divorce, whichever~~
14 ~~occurs first. The obligation to pay interim spousal support may extend beyond one~~
15 ~~hundred eighty days from the rendition of judgment of divorce, but only for good~~
16 ~~cause shown.~~

17 ~~C. Notwithstanding Paragraph B of this Article, if a claim for final spousal~~
18 ~~support is pending at the time of the rendition of a judgment of divorce pursuant to~~
19 ~~Article 103(4) or (5) and the final spousal support award does not exceed the interim~~
20 ~~spousal support award, the interim spousal support award shall thereafter terminate~~
21 ~~no less than one hundred eighty days from the rendition of judgment of divorce. The~~
22 An obligation to pay final spousal periodic support shall not begin until after an
23 interim spousal support award has terminated.

24 Revision Comments - 2018

25 (a) The 2018 revision modifies the duration of interim spousal support
26 awards to tie them solely to the judgment of divorce rather than to the date on which
27 a demand for final periodic support is made.

28 (b) For judgments of divorce rendered on grounds of domestic violence, this
29 revision does not change the law. It continues to provide victims of domestic
30 violence interim spousal support for a period of one hundred eighty days.

31 (c) The court has the discretion to determine whether to make an award of
32 spousal support under this Article. See also Article 111. If the court finds that the

1 factors listed in Paragraph A of this Article militate in favor of an award of interim
2 spousal support, however, the duration of the award is not discretionary.

3 Art. 114. Modification or termination of award of ~~periodic~~ support

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

8 Revision Comments - 2018

9 The 2018 revision makes it clear that awards of both interim spousal support
10 and final periodic support are modifiable in accordance with the modification
11 standards provided by law.

12 Art. 115. Extinguishment of ~~spousal~~ support obligation

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

17 Revision Comments - 2018

18 The 2018 revision is not intended to change the law. The language of this
19 Article has always been broad enough to cover awards of both interim spousal
20 support and final periodic support. This revision simply makes the domain of the
21 Article more clear.

22 Section 2. Civil Code Article 118 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 125 Original

2018 Regular Session

Jefferson

Abstract: Provides for the grounds for divorce and time periods for spousal support.

Present law (C.C. Art. 103) provides for the grounds for divorce.

Proposed law retains present law but deletes the requirement that abuse occur during the marriage for a divorce under Article 103(4).

Present law (C.C. Art. 112) provides for the determination of final periodic support when a spouse is not at fault and is in need of support.

Proposed law retains present law and adds a presumption of entitlement to support if the divorce is granted on fault-based grounds or the court finds that a party or a child of one of the spouses is a victim of domestic abuse.

Present law (C.C. Art. 113) provides for an award of interim spousal support and provides for termination six months after the judgment of divorce if a party is a victim of domestic abuse.

Proposed law changes present law to provide for the termination of interim spousal support six months after the judgment of divorce in all cases.

Present law (C.C. Art. 114) provides for the modification and termination of an award of support.

Proposed law retains present law and clarifies that both interim and final support awards may be modified and terminated.

Present law (C.C. Art. 115) provides for the extinguishment of the obligation of spousal support upon remarriage, death, or cohabitation.

Proposed law retains present law and clarifies that both interim and final support awards may be extinguished for those reasons.

Present law (C.C. Art. 118) provides that the failure to bring an action for divorce or support under domestic abuse grounds does not affect the rights of parties to seek other remedies provided by law.

Proposed law repeals present law.

(Amends C.C. Arts. 103(4) and (5), 112, 113, 114, and 115; Repeals C.C. Art. 118)