

FILE COPY

Am. H.B. 233
(As passed by House)

DO NOT REMOVE FROM FILE

Reps. Norris - Roberto - Galbraith - Pease - Cruze - L. Hughes - Smart - Malott -
I. Thompson - Feighan

- Allows divorces to be granted after complete and uninterrupted separation of two years.
- Provides for the dissolution of a marriage by the court if both spouses agree on all separation terms.
- Details conciliation procedures, premarriage counseling for minors, guidelines for determining child custody and child support and alimony payments.
- Does away with the defenses to a divorce petition of condonation, collusion, and recrimination.

CONTENT AND OPERATION

Under the bill, if the spouses have been separated without cohabitation and without interruption for a period of two years, either party may apply for divorce. This is a new ground for divorce, and provides a nonadversary situation in contrast to the existing ground of willful absence of an adverse party for one year.

The second major change in the grounds for divorce under the bill, is in providing for a nonadversary dissolution of a marriage. A petition for dissolution must be signed by both spouses and must include a separation agreement, a division of property, custody provisions, alimony, and child support provisions. Both spouses must appear in court and swear that they agree completely on the terms, or the petition must be dismissed. The parties may agree on amendments to the agreement.

In any action for divorce, annulment, or alimony, the court may order the parties to undergo conciliation procedures for not more than ninety days at their own cost.

In determining property rights and alimony, any agreement made by the parties must be approved by the court. If real estate is granted to one party by an alimony decree, dower is eliminated for the other party. The bill also provides that a plea of condonation, recrimination, or collusion is not a bar to a divorce.

In deciding the alimony to be allowed, the court must consider: the earning ability of each party along with age and condition, both physically and mentally; retirement and inheritance rights; how long the marriage has endured; the possible restrictions on job opportunities caused by caring for a child; the standard of living during the marriage; and the education, assets, liabilities, and property of the parties.

The bill provides that the court may order a change in custody of children when it is in the children's best interest. This is to be determined on the basis of all relevant factors, including parents' wishes, the child's relations with the whole family and adjustment to the environment, and the mental and physical health of all concerned. The court could not modify a custody decree unless it finds a change in the circumstances of the child or custodian so that it is in the best interests of the child to make a change. This finding must be based on new facts or facts unknown at the time of the decree, not merely on a new conclusion about the same facts. The child's physical health or emotional development must be endangered more by maintaining existing custody than by the effects of a change. If this is not true then the present custodian must consent to the change or have acquiesced in an accomplished change.

Support of children by either or both parents may be ordered without regard to marital misconduct and must consider the child's financial status, physical and emotional condition, and living standards had the marriage continued, plus the custodian's finances. The custodian's finances must be considered, but the needs of the noncustodial party must be taken into account also, not merely financial matters.

COMMENT

Various changes may be required to conform procedures to the Rules of Civil Procedure and the Juvenile Rules.

* * *

HISTORY

| <u>ACTION</u> | <u>DATE</u> | <u>JOURNAL ENTRY</u> |
|-----------------------------|-------------|----------------------|
| Introduced | 2-15-73 | p. 6 |
| Reported by House Judiciary | 7-27-73 | p. 93 |
| Passed House | 1-10-74 | p. 1771 |