

REPORT OF THE OSBA FAMILY LAW COMMITTEE

To the Council of Delegates:

The OSBA Family Law Committee has two proposals for statutory change for consideration by the OSBA Council of Delegates.

The first proposal, marked Exhibit A, would amend Section 3105.01 of the Revised Code—Grounds for Divorce. The second proposal, marked Exhibit B, would amend section 3105.17 of the Revised Code—Grounds for Alimony, Alimony Action Only.

Following each Exhibit is a summary which explains the rationale and necessity for the proposed statutory change.

Respectfully submitted,
Joel S. Moskowitz, Cincinnati
Chairman



EXHIBIT A Divorce

3105.01 Grounds for divorce	1
The court of common pleas may grant divorces for the following causes:	2
(A) Either party had a husband or wife living at the time of the marriage from which the divorce is sought;	3
(B) Willful absence of the adverse party for one year;	4
(B) (C) Adultery;	5
(C) (D) Impotency;	6
(D) (E) Extreme cruelty;	7
(F) Fraudulent contract;	8
(E) (G) Any gross neglect of duty;	9
(H) Habitual drunkenness;	10
(F) (I) Imprisonment of the adverse party in a state or federal penal institution under sentence thereto at the time of filing the petition;	11
(J) Procurement of a divorce outside this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while such obligations remain binding upon the other party;	12
(G) (K) On the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation.	13
(H) INCOMPATIBILITY, UNLESS DENIED BY A SPOUSE.	14
A plea of res judicata or of recrimination with respect to any provision of this section does not bar either party from obtaining a divorce on this ground.	15
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Summary (Exhibit A)

The Family Law Committee felt that Code Section 3105.01 was due for a modification in certain respects.

1. The most important modification was to provide in the section for a divorce to be granted on the grounds of incompatibility, when both parties are in agreement. While a number of the committee members would have included incompatibility even when there was not mutual agreement of the husband and wife, the majority of the committee felt that incompatibility, being a no-fault grounds, should only be available, when both parties were in agreement. In other words, the majority of the committee members still were not in favor of a pure no-fault grounds in the State of Ohio. However, it was well acknowledged that in a number of divorce cases, the parties have worked out the financial matters and custody and visitation in regard to the children, and then have agreed to proceed to a divorce. The present statute only allows a no-fault grounds when the parties have been living separate and apart for more than a year. In many of the cases, where the parties have come to a full agreement, after the filing of a Complaint for Divorce, both parties wish to proceed and conclude the divorce hearing, but are limited to a fault ground, when they have not been separated for a year. It was recognized by the committee, that in those cases, there should be a grounds available to allow the parties to proceed to a divorce, and not be required to use one of the fault grounds. The new section (H) will provide that grounds. It allows for a divorce to be granted on the grounds of "incompatibility" when both parties are in agreement. Thus, the words "unless denied by a spouse" will deny the grounds of incompatibility where there is objection, but will permit the use of incompatibility where both spouses consent thereto. It is the committee's position that by eliminating the necessity for fault grounds, when the parties are in agreement, this is a benefit not only to the parties themselves, but also to the children of the parties.

2. The present (B) "Willful Absence of the Adverse Party for One Year" is already covered in the present provision (K) dealing with the living separate and apart for one year. Thus, the "willful absence" provision is no longer needed.

3. There was quite a bit of argument for the elimination of (D) "Impotency" as a grounds for divorce. A number of the committee members felt that this was a physical situation, and should not be grounds for a divorce. However, the committee voted to leave that grounds in.

(4) Provision (F), "Fraudulent Contract," has been used, maybe one time, in the last 100 years. It was felt that this was a needless grounds.

5. Provision (H), "Habitual Drunkenness," was found by the committee not to be a situation which should give rise to grounds for divorce. Present day findings in this area have indicated that this is not an applicable grounds for divorce. If abuse of alcohol or any other substance is causing the marital structure to be affected, because of extreme cruelty or gross neglect of duty, the other provisions of the statute will take care of that situation. It was the committee's feeling that this provision should not be a ground in and of itself.

~~6. Provision (I) dealing with "Procurement of a divorce outside the state..." was felt to be of such limited use as to be unnecessary to be in the statute itself. Again, to my understanding, this grounds is only found to be applicable to one case in the State of Ohio over the years. The other provisions will more than take care of this situation.~~

In conclusion, the committee voted to remove the present (B), (F), (H), (J), and to add to the grounds for divorce, the new "incompatibility" which would now become a new provision (H).

EXHIBIT B

~~Alimony—LEGAL SEPARATION~~

~~3105.17 Grounds for ~~alimony~~ LEGAL SEPARATION; action for ~~alimony~~ LEGAL SEPARATION only~~

~~Either party to the marriage may file a complaint for divorce, or for ~~alimony~~ LEGAL SEPARATION, and when filed the other may file a counterclaim for divorce or for ~~alimony~~ LEGAL SEPARATION. The court of common pleas may grant ~~alimony~~ A LEGAL SEPARATION on a complaint or counterclaim, regardless of whether the parties are living separately at the time the complaint or counterclaim is filed, for the following causes:~~

~~(A) Adultery;~~

~~(B) Any gross neglect of duty;~~

~~(C) Abandonment without good cause;~~

~~(D) Ill-treatment by the adverse party;~~

~~(E) ~~Habitual drunkenness.~~~~

~~(E) ~~(F)~~ Imprisonment of the adverse party in a state or federal penal institution under sentence thereto at the time of filing the ~~peti-~~ tion COMPLAINT.~~

Summary (Exhibit B)

The changes made to 3105.17 are very little in substance.

The main change is to terminate the title of these proceedings as being "alimony" and to use the new title of "legal separation" for these type proceedings. There is no intention of changing the substantive law in regard to these proceedings.

The committee members in their practice, have found over and over again, that the general public does not know what a "alimony proceeding" is. However, time and time again, the public has used the term "legal separation" in talking to their attorney, in describing such a proceeding. The term "legal separation" appears to be quite universally known, while the term "alimony proceeding" is almost unknown. It is to be clearly understood, that this statute is only dealing with the situation, where legal rights of the parties are to be determined, but no divorce is to be granted. Thus, the committee voted that Section 3105.17 should henceforth be designated as legal separation, and all references therein should be designated as legal separation, and the use of the word "alimony" to denote a specific proceeding in the State of Ohio would be extinguished. The term "alimony" would still have full significance as to meaning a periodic payment of maintenance or sustenance for a spouse, and, until a new property division statute is passed, to applying to property division in the State of Ohio. (It is recognized that there may be other statutes, wherein the word "alimony" relates to this type of proceeding, and these statutes will need replacement of that term by "legal separation" as well.

H. B. 129

H. B. 129 addresses the area of domestic relations law. The bill adds "incompatibility, unless denied by a spouse" as a ground for divorce. It also eliminates "impotency" as a ground for divorce.

The incompatibility feature of the legislation is designed to address two situations. First, there are many instances where subsequent to the filing of the divorce complaint, the parties come to agreement on property division, custody issues, alimony, etc., and wish the divorce to proceed. H. B. 129 would permit the resolution of this case without the divisiveness of proving a fault ground such as gross neglect of duty, extreme cruelty, etc. In many ways, the case would be handled as if it were a dissolution.

Secondly, the bill addresses the situation where the parties are in complete agreement that the marriage should end, but cannot settle the attendant issues such as child custody, support and division of property. H. B. 129 would permit the divorce to proceed and enable the court to resolve these ancillary issues.

This legislation was developed by the Family Law Committee of the Ohio State Bar Association. That Committee was unwilling to recommend that Ohio become a pure no-fault divorce state, and therefore drafted this ground to apply only when the spouses agree. The statutory change is intended to benefit not only the parties themselves, but also the children of the parties.

Eliminating "impotency" as a ground for divorce was a policy decision made in the House Judiciary Committee. The Committee's rationale was that impotency is a physical condition, is seldom if ever used as a divorce ground, and should no longer appear in the divorce statute. The Senate Judiciary Committee concurred in that policy determination.

I encourage your support of the measure.