

HOUSE BILL No. 5168

October 9, 2001, Introduced by Reps. Voorhees, Vander Veen, Ehardt, Bradstreet, Kooiman, Hager, Birkholz, Kuipers, Gosselin, Pappageorge, DeWeese, Hummel and Jansen and referred to the Committee on Civil Law and the Judiciary.

A bill to amend 1846 RS 84, entitled
"Of divorce,"
by amending sections 6, 7, 13, and 19 (MCL 552.6, 552.7, 552.13,
and 552.19) and by adding sections 5, 5a, and 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 5. (1) A SWORN STATEMENT OF CONSENT TO DIVORCE OR A
2 COMPLAINT FOR DIVORCE UNDER SECTION 6 OR 7 SHALL ONLY BE FILED IN
3 1 OF THE FOLLOWING VENUES:

4 (A) THE COUNTY WHERE THE PARTIES TO THE MARRIAGE MOST
5 RECENTLY COHABITED.

6 (B) IF THE PLACE WHERE THE PARTIES MOST RECENTLY COHABITED
7 IS NOT LOCATED WITHIN THIS STATE, THE COUNTY WHERE EITHER PARTY
8 RESIDES FOR LONGER THAN 180 DAYS.

1 (C) IF BOTH PARTIES ARE A MINOR CHILD'S PARENTS, THE COUNTY
2 WHERE A PARTY TO THE MARRIAGE RESIDES WITH THE MINOR CHILD FOR
3 LONGER THAN 180 DAYS.

4 (D) IF THE FILING IS A COMPLAINT UNDER SECTION 7, THE COUNTY
5 WHERE EITHER PARTY RESIDES.

6 (2) IF A COMPLAINT IS NOT FILED AS REQUIRED BY SUBSECTION
7 (1), THE COURT SHALL NOT ISSUE A JUDGMENT OF DIVORCE UNLESS GOOD
8 CAUSE IS SHOWN ON THE RECORD FOR NOT COMPLYING WITH SUBSECTION
9 (1). THE REQUIREMENTS PRESCRIBED BY SUBSECTION (1) ARE IN ADDI-
10 TION TO AND NOT INSTEAD OF OTHER RESIDENCY REQUIREMENTS PRE-
11 SCRIBED BY THIS ACT OR OTHER LAW.

12 SEC. 5A. (1) WITHIN 28 DAYS AFTER SERVICE OF THE DEFENDANT
13 IN AN ACTION FOR DIVORCE, OR AN EXTENSION OF THAT TIME PERIOD
14 GRANTED BY THE COURT FOR GOOD CAUSE, EACH PARTY TO THE DIVORCE
15 ACTION SHALL FILE WITH THE COURT A SWORN STATEMENT THAT IDENTI-
16 FIES THE PARTY'S PLACE OF EMPLOYMENT AND OTHER SOURCES OF INCOME,
17 AND THAT LISTS THE ASSETS AND LIABILITIES OF THE PARTIES TO THE
18 MARRIAGE. THE COURT SHALL NOT RELEASE THE SWORN STATEMENTS
19 REQUIRED UNDER THIS SECTION UNTIL AFTER BOTH PARTIES HAVE FILED
20 THOSE SWORN STATEMENTS. THE COURT SHALL ATTEMPT TO RELEASE THE
21 SWORN STATEMENTS TO THE OPPOSITE PARTIES AT APPROXIMATELY THE
22 SAME TIME.

23 (2) A SWORN STATEMENT REQUIRED UNDER THIS SECTION SHALL LIST
24 AT LEAST ALL OF THE FOLLOWING ASSETS:

25 (A) REAL PROPERTY.

26 (B) CHECKING AND SAVINGS ACCOUNT BALANCES, REGARDLESS OF THE
27 FORM IN WHICH THE MONEY IS HELD.

- 1 (C) STOCKS AND BONDS.
- 2 (D) INCOME TAX REFUNDS DUE THE PARTIES.
- 3 (E) LIFE INSURANCE.
- 4 (F) LOANS HELD AS A CREDITOR OR MONEY OWED TO THE PARTIES IN
5 WHATEVER FORM.
- 6 (G) RETIREMENT FUNDS AND PENSION BENEFITS.
- 7 (H) PROFESSIONAL LICENSES.
- 8 (I) MOTOR VEHICLES, BOATS, MOBILE HOMES, OR ANY OTHER TYPE
9 OF VEHICLE INCLUDING UNTITLED VEHICLES.
- 10 (J) EXTRAORDINARY TOOLS OF A TRADE.
- 11 (K) CEMETERY LOTS.
- 12 (L) OTHER ASSETS IN WHATEVER FORM.
- 13 (3) A SWORN STATEMENT REQUIRED UNDER THIS SECTION SHALL LIST
14 AT LEAST ALL OF THE FOLLOWING LIABILITIES:
- 15 (A) SECURED AND UNSECURED CREDITS.
- 16 (B) TAXES.
- 17 (C) RENTS AND SECURITY DEPOSITS.
- 18 (D) ALL OTHER LIABILITIES IN WHATEVER FORM.
- 19 (4) IF THE LIST OF LIABILITIES REQUIRED BY SUBSECTION (3)
20 INCLUDES MAJOR DEBT FOR WHICH THE PARTIES ARE JOINTLY LIABLE,
21 SUCH AS A HOME MORTGAGE OR CREDIT CARD DEBT, THE PARTIES SHALL
22 FILE AN AGREED-UPON DEBT RETIREMENT PLAN, OR IF THE PARTIES
23 CANNOT AGREE ON A PLAN, EACH SHALL FILE A PROPOSED DEBT RETIRE-
24 MENT PLAN.
- 25 (5) EACH PARTY TO THE DIVORCE ACTION IS UNDER A CONTINUING
26 DUTY TO SUPPLEMENT HIS OR HER ASSETS AND LIABILITIES SWORN
27 STATEMENT IF THERE IS A NEWLY DISCOVERED ASSET OR LIABILITY. IF

1 A PARTY DISCOVERS AN ASSET THAT THE OTHER PARTY WAS AWARE OF AND
2 FAILED TO LIST, THE COURT SHALL AWARD ATTORNEY FEES AND OTHER
3 COSTS OR EXPENSES INCURRED BY THAT PARTY AS A RESULT OF THE
4 NONDISCLOSURE.

5 Sec. 6. (1) A complaint for divorce may be filed ~~in the~~
6 ~~circuit court upon the allegation that there has been a breakdown~~
7 ~~of the marriage relationship to the extent that the objects of~~
8 ~~matrimony have been destroyed and there remains no reasonable~~
9 ~~likelihood that the marriage can be preserved. In the complaint~~
10 ~~the plaintiff shall make no other explanation of the grounds for~~
11 ~~divorce than by the use of the statutory language. UNDER 1 OF~~
12 ~~THE ALTERNATIVES DESCRIBED IN SUBSECTION (2) OR (3).~~

13 ~~(2) The defendant, by answer, may either admit the grounds~~
14 ~~for divorce alleged or deny them without further explanation. An~~
15 ~~admission by the defendant of the grounds for divorce may be con-~~
16 ~~sidered by the court but is not binding on the court's~~
17 ~~determination.~~

18 ~~(3) The court shall enter a judgment dissolving the bonds of~~
19 ~~matrimony if evidence is presented in open court that there has~~
20 ~~been a breakdown in the marriage relationship to the extent that~~
21 ~~the objects of matrimony have been destroyed and there remains no~~
22 ~~reasonable likelihood that the marriage can be preserved.~~

23 (2) IF BOTH PARTIES TO A MARRIAGE VOLUNTARILY CONSENT THAT
24 THERE HAS BEEN A BREAKDOWN OF THE MARRIAGE RELATIONSHIP TO THE
25 EXTENT THAT THE OBJECTS OF MATRIMONY HAVE BEEN DESTROYED AND
26 THERE REMAINS NO LIKELIHOOD THAT THE MARRIAGE CAN BE PRESERVED,
27 THE PARTIES SHALL FILE A SWORN STATEMENT OF CONSENT TO DIVORCE

1 STATING THAT BOTH PARTIES VOLUNTARILY CONSENT TO THE DIVORCE. IN
2 THE SWORN STATEMENT, THE PARTIES SHALL MAKE NO OTHER EXPLANATION
3 OF THE GROUNDS FOR DIVORCE THAN BY THE USE OF THE STATUTORY
4 LANGUAGE. THE COURT SHALL ENTER A JUDGMENT OF DIVORCE IF THE
5 COURT FINDS THAT BOTH PARTIES TO THE MARRIAGE VOLUNTARILY CONSENT
6 TO THE DIVORCE AND HAVE COMPLIED WITH THE OTHER PROVISIONS OF
7 THIS ACT.

8 (3) IF EITHER PARTY TO A MARRIAGE DOES NOT CONSENT TO A
9 DIVORCE, A PARTY TO THE MARRIAGE FILING A COMPLAINT FOR DIVORCE
10 SHALL FILE AS PLAINTIFF. THE COURT SHALL ENTER A JUDGMENT OF
11 DIVORCE UPON THE OCCURRENCE OF 1 OR MORE OF THE FOLLOWING:

12 (A) THE COURT FINDS THAT A PREPONDERANCE OF THE EVIDENCE
13 SHOWS THAT THE CONDUCT OF THE DEFENDANT HAS LED TO A BREAKDOWN IN
14 THE MARRIAGE RELATIONSHIP TO THE EXTENT THAT THE OBJECTS OF MAT-
15 RIMONY HAVE BEEN DESTROYED AND THERE REMAINS NO REASONABLE LIKE-
16 LIHOOD THAT THE MARRIAGE CAN BE PRESERVED. IN MAKING THIS DETER-
17 MINATION, THE COURT SHALL CONSIDER THE AMOUNT OF TIME THAT HAS
18 PASSED SINCE THE OCCURRENCE OF THE CONDUCT UPON WHICH THE COM-
19 PLAINT FOR DIVORCE IS BASED.

20 (B) THE COURT FINDS THAT THERE IS A BREAKDOWN IN THE MAR-
21 RIAGE RELATIONSHIP TO THE EXTENT THAT THE OBJECTS OF MATRIMONY
22 HAVE BEEN DESTROYED, THAT THERE REMAINS NO REASONABLE LIKELIHOOD
23 THAT THE MARRIAGE CAN BE PRESERVED, AND THAT NOT GRANTING A
24 DIVORCE WOULD LIKELY CAUSE HARM TO A MINOR CHILD WHO RESIDES IN
25 THE HOME OF 1 OF THE PARTIES. FOR PURPOSES OF DETERMINING HARM
26 UNDER THIS SUBSECTION, THE COURT SHALL CONSIDER, EVALUATE, AND
27 DETERMINE THE SUM TOTAL OF THE FOLLOWING FACTORS:

1 (i) THE LIKELY EMOTIONAL, MENTAL, AND PHYSICAL HEALTH OF THE
2 CHILD.

3 (ii) THE LIKELY IMPACT ON THE FINANCIAL STATUS OF THE
4 CHILD.

5 (iii) THE LIKELY EDUCATIONAL ATTAINMENT OF THE CHILD.

6 (iv) THE CAPACITY AND DISPOSITION OF THE PARENTS TO PROVIDE
7 LOVE, AFFECTION, GUIDANCE, AND CONTINUATION OF THE EDUCATING AND
8 RAISING OF THE CHILD IN HIS OR HER RELIGION OR CREED, IF ANY.

9 (v) ANY OTHER FACTOR FOUND BY THE COURT TO BE RELEVANT TO
10 THE DISSOLUTION OF THE MARRIAGE AND THE WELL-BEING OF THE CHILD.

11 (C) THE PLAINTIFF REQUESTS THE COURT TO GRANT A DIVORCE THAT
12 IS LABELED A "NONCONSENSUAL DIVORCE GRANTED WITHOUT GOOD CAUSE".

13 (4) IF A COMPLAINT IS FILED UNDER SUBSECTION (3), THE
14 DEFENDANT IN THE RESPONSIVE PLEADING MAY ADMIT ALLEGED CONDUCT,
15 DENY CONDUCT WITHOUT FURTHER EXPLANATION, OR COUNTERCLAIM BASED
16 ON CONDUCT OF THE PLAINTIFF. A DEFENDANT'S ADMISSION OF ALLEGED
17 CONDUCT IS AN ADMISSION OF DESTROYING THE OBJECTS OF MATRIMONY
18 AND IS NOT A VOLUNTARY CONSENT TO THE DIVORCE. THE COURT MAY
19 CONSIDER AN ADMISSION BY THE DEFENDANT AS PROOF OF THE PARTICULAR
20 CONDUCT ADMITTED TO, BUT IS NOT BOUND BY IT.

21 (5) IF THE COURT MAKES A FINDING UNDER SUBSECTION (3) OR
22 GRANTS A DIVORCE UNDER SUBSECTION (4), THE COURT SHALL CONSIDER
23 THE FINDING OR GRANT OF THE DIVORCE IN ORDERING SPOUSAL SUPPORT
24 AS PROVIDED IN SECTION 13 AND IN THE DIVISION OF PROPERTY AS PRO-
25 VIDED IN SECTION 19.

26 Sec. 7. (1) ~~An~~ EITHER PARTY TO A MARRIAGE MAY FILE AN
27 action for separate maintenance ~~may be filed~~ in the circuit

1 court in the COUNTY WHERE EITHER PARTY RESIDES. ~~same manner and~~
2 ~~on the same grounds as an action for divorce. In the complaint~~
3 ~~the plaintiff shall make no other explanation of the grounds for~~
4 ~~separate maintenance than by use of the statutory language.~~

5 ~~(2) The defendant, by answer, may either admit the grounds~~
6 ~~for separate maintenance alleged or deny them without further~~
7 ~~explanation. An admission by the defendant of the grounds for~~
8 ~~separate maintenance may be considered by the court but is not~~
9 ~~binding on the court's determination. The defendant may also~~
10 ~~file a counterclaim for divorce.~~

11 ~~(3) If the defendant files a counterclaim for divorce, the~~
12 ~~allegation contained in the plaintiff's complaint as to the~~
13 ~~grounds for separate maintenance may be considered by the court~~
14 ~~but is not binding on the court's determination.~~

15 ~~(4) If evidence is presented in open court that there has~~
16 ~~been a breakdown in the marriage relationship to the extent that~~
17 ~~the objects of matrimony have been destroyed and there remains no~~
18 ~~reasonable likelihood that the marriage can be preserved, the~~
19 ~~court shall enter:~~

20 ~~(a) A judgment of separate maintenance if a counterclaim for~~
21 ~~divorce has not been filed.~~

22 ~~(b) A judgment dissolving the bonds of matrimony if a coun-~~
23 ~~terclaim for divorce has been filed.~~

24 (2) UPON THE FILING OF AN ACTION UNDER SUBSECTION (1), THE
25 COURT SHALL ENTER A JUDGMENT OF SEPARATE MAINTENANCE. THE JUDG-
26 MENT SHALL INCLUDE A NOTICE STATING THAT, IF THE JUDGMENT REMAINS
27 IN EFFECT FOR LONGER THAN 3 YEARS, EITHER PARTY, WITHOUT THE

1 CONSENT OF THE OTHER PARTY, MAY FILE A COMPLAINT FOR DIVORCE, AND
2 THE DIVORCE WILL BE GRANTED WITHOUT AN ALLEGATION OR PROOF OF
3 CONDUCT DESCRIBED IN SECTION 6.

4 (3) AT ANY TIME AFTER THE ENTRY OF A JUDGMENT OF SEPARATE
5 MAINTENANCE, THE PARTIES TO THE MARRIAGE MAY FILE A SWORN STATE-
6 MENT STATING THAT BOTH PARTIES TO THE MARRIAGE WISH THE COURT TO
7 VOID THE JUDGMENT OF SEPARATE MAINTENANCE. UPON THE FILING OF
8 THE SWORN STATEMENT, THE COURT SHALL VOID THE JUDGMENT OF SEPA-
9 RATE MAINTENANCE, AND THE JUDGMENT AND ORDERS BASED UPON THAT
10 JUDGMENT ARE NO LONGER IN EFFECT.

11 (4) A PARTY TO A MARRIAGE MAY FILE A COMPLAINT FOR DIVORCE
12 IF THE PARTIES TO THE MARRIAGE ARE SUBJECT TO A JUDGMENT OF SEPA-
13 RATE MAINTENANCE THAT IS IN EFFECT AND THAT WAS ENTERED LONGER
14 THAN 3 YEARS BEFORE THE FILING. THE COURT SHALL ENTER A JUDGMENT
15 OF DIVORCE IF THE COURT FINDS THAT THE MARRIAGE IS SUBJECT TO A
16 JUDGMENT OF SEPARATE MAINTENANCE THAT WAS ENTERED LONGER THAN 3
17 YEARS BEFORE THE FILING OF THE COMPLAINT FOR DIVORCE.

18 SEC. 8. (1) IN AN ACTION UNDER THIS ACT, THE COURT SHALL
19 NOT ISSUE AN EX PARTE ORDER UNLESS THE ORDER RELATES TO 1 OR MORE
20 OF THE FOLLOWING:

21 (A) PHYSICAL ABUSE OF A PARTY OR OF A CHILD INVOLVED IN THE
22 ACTION.

23 (B) DISPOSAL OR ALTERATION OF AN ASSET INVOLVED IN THE
24 ACTION.

25 (C) A PERSONAL PROTECTION ORDER AS PROVIDED IN SECTION 2950
26 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL
27 600.2950.

1 (2) A PARTY TO AN ACTION FOR DIVORCE SHALL NOT DISPOSE OF OR
 2 ALTER AN ASSET SUBJECT TO THE JURISDICTION OF THE COURT IN THE
 3 DIVORCE ACTION UNLESS PERMITTED BY AN ORDER OF THE COURT OR BY
 4 THE WRITTEN, VOLUNTARY CONSENT OF THE OTHER PARTY.

5 Sec. 13. (1) In every action brought ~~—~~, either for a
 6 divorce or for ~~a separation~~ SEPARATE MAINTENANCE, AND SUBJECT
 7 TO SUBSECTION (3), the court may require either party to pay
 8 ~~alimony~~ SPOUSAL SUPPORT for the suitable maintenance of the
 9 adverse party, to pay ~~such sums as shall be deemed~~ THE AMOUNT
 10 CONSIDERED proper and necessary to conserve ~~any~~ real or per-
 11 sonal property owned by ~~the parties or either of them~~ PARTY,
 12 and to pay ~~any sums~~ THE AMOUNT necessary to enable the adverse
 13 party to carry on or defend the action, during its pendency.
 14 ~~It~~ THE COURT may award costs against either party and award
 15 execution for the ~~same~~ COSTS, or it may direct ~~such~~ THE costs
 16 to be paid out of any property sequestered, ~~or~~ in the power of
 17 the court, or in the hands of a receiver.

18 (2) ~~An award of alimony may be terminated by the court as~~
 19 ~~of the date the party receiving alimony remarries~~ A PARTY
 20 REQUIRED TO PAY SPOUSAL SUPPORT MAY PETITION THE COURT FOR MODI-
 21 FICATION OR TERMINATION OF THAT OBLIGATION IF THE PARTY RECEIVING
 22 THE SUPPORT REMARRIES OR COHABITS WITH AN INDIVIDUAL OF THE OPPO-
 23 SITE SEX TO WHOM THAT PARTY IS NOT RELATED. THE COURT MAY GRANT
 24 MODIFICATION OR TERMINATION UNDER EITHER OF THESE CIRCUMSTANCES
 25 unless a contrary agreement is specifically stated in the judg-
 26 ment of divorce. Termination of an award under this subsection

1 ~~shall~~ DOES not affect ~~alimony~~ SPOUSAL SUPPORT payments ~~which~~
2 ~~have accrued prior to~~ THAT ACCRUE BEFORE that termination.

3 (3) IN ORDERING SPOUSAL SUPPORT, THE COURT SHALL CONSIDER A
4 FINDING OF CONDUCT DESCRIBED IN SECTION 6 IN AN ACTION FOR
5 DIVORCE AS WEIGHING SUBSTANTIALLY IN FAVOR OF A PARTY TO THE
6 ACTION WHO IS NOT FOUND TO HAVE ENGAGED IN CONDUCT DESCRIBED IN
7 SECTION 6.

8 Sec. 19. (1) Upon the annulment of a marriage, a divorce
9 from the bonds of matrimony, or a judgment of separate mainte-
10 nance, the court may make a further judgment for restoring to
11 either party the whole, or ~~such~~ THE parts ~~as it shall deem~~
12 THE COURT CONSIDERS just and reasonable, of the real and personal
13 estate that ~~shall have~~ HAS come to either party by reason of
14 the marriage, or for awarding to either party the value ~~thereof~~
15 OF THAT PROPERTY, to be paid by either party in money.

16 (2) IF A JUDGMENT OF DIVORCE IS BASED UPON PROOF OF CONDUCT
17 DESCRIBED IN SECTION 6, FOR A PROPERTY AWARD UNDER THIS SECTION,
18 THE COURT SHALL CONSIDER THE FINDING TO WEIGH SUBSTANTIALLY IN
19 FAVOR OF A PARTY TO THE JUDGMENT OF DIVORCE WHO IS NOT FOUND TO
20 HAVE ENGAGED IN CONDUCT DESCRIBED IN SECTION 6. A DIVISION OF
21 PROPERTY UNDER THIS SECTION THAT GRANTS AN OTHERWISE DISPROPOR-
22 TIONATE PORTION OF THE PROPERTY OR ITS VALUE TO THE PARTY WHO IS
23 NOT FOUND TO HAVE ENGAGED IN CONDUCT DESCRIBED IN SECTION 6 IS A
24 JUST AND REASONABLE DIVISION UNLESS THE COURT FINDS ON THE RECORD
25 THAT THE FACTS OF THE PARTICULAR CASE MAKE SUCH AN AWARD UNFAIR.

26 (3) THE COURT SHALL CONSIDER THE GRANTING OF A NONCONSENSUAL
27 DIVORCE GRANTED WITHOUT GOOD CAUSE UNDER SECTION 6 TO WEIGH

1 SUBSTANTIALLY IN FAVOR OF THE DEFENDANT WHEN MAKING A PROPERTY
2 SETTLEMENT. A DIVISION OF PROPERTY IN A NONCONSENSUAL DIVORCE
3 GRANTED WITHOUT GOOD CAUSE THAT GRANTS AN OTHERWISE DISPROPOR-
4 TIONATE PORTION OF THE PROPERTY OR ITS VALUE TO THE DEFENDANT IS
5 A JUST AND REASONABLE DIVISION UNLESS THE COURT FINDS ON THE
6 RECORD THAT THE FACTS OF THE PARTICULAR CASE MAKE THE AWARD
7 UNFAIR.