

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Fifteenth Congress
First Regular Session

HOUSE BILL NO. 4269

Introduced by HON. RENE LOPEZ RELAMPAGOS
1st District, Bohol

EXPLANATORY NOTE

This bill seeks to amend Article 26 of Executive Order No. 209 or The Family Code of the Philippines which was signed into law by President Corazon C. Aquino on July 6, 1987. The said Code took effect on August 3, 1988.

New values, ideas and paradigms have made their way in the lives of the Filipino people and also in our laws and jurisprudence since the enactment of the Family Code in 1987 particularly, among others, on issues about marriage.

These proposed legislative amendments, as enumerated hereunder, which are codifications based on jurisprudence, will **add to, expand or clarify** the various exceptions enumerated in the first paragraph of Article 26, namely: (a) Article 35(1) - void marriage contracted by any party below 18 years of age even with the consent of parents or guardians; (b) common-law marriages obtained abroad by Filipinos; (c) same sex marriage of Filipinos abroad; (d) marriage by way of jest when there is absolutely no genuine consent on the part of both contracting parties; and (e) marriage by proxy.

(a) **Article 35(1) - void marriage contracted by any party below 18 years of age even with the consent of parents or guardians** - If one is a Filipino and another an alien whose national laws capacitate persons below 18 years of age (for instance, 16 years of age) to marry, the **Family Code does not seem to give a precise solution to this situation**. It must be pointed out that Article 35(1), which is made an exception to the comity provision, provides that a marriage is void ab initio if "contracted by any party below eighteen years of age." The law is addressed "to any party." It does not distinguish whether one of the parties is a Philippine citizen or a foreigner. Hence, the law can be construed as a blanket exception that should apply likewise to a situation where the foreign spouse is below 18 years of age. The **only problem with this construction** is that it will lead to an absurdity if Article 26 and the exception under Article 35(1) are related to other provisions of the Family Code, specifically Article 21. It should be remembered that under Article 21, a foreigner can get married in the Philippines even if he is below 18 years of age if he obtains a certificate of legal capacity from his diplomatic mission in the Philippines stating that, in his country, persons even under 18 years of age can marry. Upon showing of this certificate, he can be given by the local civil registrar a valid marriage license which will allow him to be able to marry a Filipino in the Philippines. The absurdity lies in the circumstance that while such a marriage may be considered valid here, it will not be so if it were celebrated in the country of the foreigner. This should not be the case. With respect to legal capacity, our country follows the **nationality rule** and, hence, should accord respect to the laws of the country in so far as the legal capacity to marry of the foreigner is concerned. Hence, the **better rule** is that the **exception under Article 26 referring to Article 35(1)** should be construed as referring to a situation **where the marriage abroad is between a Filipino and a Filipina and not between a Filipino or Filipina and an alien married in the alien's state**

where he or she (the alien), though below 18 years of age, is capacitated to marry. (Melecio S. Sta. Maria, Jr., Persons and Family Relations Law [Fifth Edition, 2010], p. 164-165)

(b) **Common-law marriages obtained by Filipinos abroad** - Article 26 of the Family Code apparently does not specifically include common-law marriages contracted by Filipinos abroad as one of the exceptions to the general rule that marriages solemnized abroad is generally valid here in the Philippines if valid where they were solemnized.

However, **common-law marriages** obtained by Filipinos abroad should NOT be recognized here. Article 26 clearly uses the word "**solemnized**" and NOT "**contracted**" or "**performed**." "**Solemnization**," as used in marriage statutes, has a very technical and limited meaning. It means the performance of the formal act or ceremony by which a man and a woman contract marriage and assume the status of husband and wife (Ballantine Law Dictionary, 3rd edition).

"A marriage is **solemnized** when, in the presence of a judicial officer, priest or minister, the parties declare that they take each other as husband and wife; and the officer or minister who witnesses the ceremony is said to "**solemnize**" the marriage (Sharon v. Sharon, 7a5 Cal. 1, 16 P 345)."

It is a **rule in statutory construction** that words and phrases having a special and technical meaning are to be considered as having been used in their technical sense (State v. Bolsinger, 21 NW 2d. page 480 as cited in Statutory Construction by Martin, 6th edition, page 85). Also, technical words and phrases which have acquired a peculiar and appropriate meaning in law are presumed to have been used by the legislature according to their legal meaning (City of St. Louis v. Triangle Fuel Co., 193 SW 2d 914 as cited in Statutory Construction by Martin). Hence, if words used in a statute have a meaning which those who are or should be learned in the law are supposed to understand, the courts must accept such construction (St. Charles Bldg. & Loans Association v. Hamil, 319 Pa. 1220)

Solemnization refers to or implies a ceremonial marriage and not one which was "**contracted**" or merely performed by way of a mere agreement of the parties, such as in cases of common-law marriage. Indeed, the formality, namely, the **solemnization**, inherent in a ceremonial marriage is what primarily distinguishes it from a common law marriage (Pratt v. Pratt, 157 Mass. 503, 32 NE 747).

Moreover, the terms "**solemnized**" and "**contracted**" are not entirely the same. The term **solemnization** has a narrower meaning, as stated previously. On the other hand, the term "**contracted**" is broader and may include as one of its modes the process of solemnization. This distinction has a practical and even legal significance. In fact, in marriage statutes in other jurisdiction having similarly worded comity provisions, it has been held that if the term used by the statute is "**solemnized**," the law precludes local recognition of common law marriages, which did not undergo the process of **solemnization**, contracted. The Supreme Court of Utah had occasion to interpret a similarly worded comity provision in the **Re Veta's case**, 110 Utah, 187, 170 P2d 183 (See also **Beddow v. Beddow**, 257 S.W 2d. 45 {Ky. 1952})

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The jurisprudence laid down in the aforequoted case may well be applicable here in the Philippines. The legislative history of the provision supports this view. The very first time a validation or comity provision existed in Philippine law history was when the United States introduced the same via Section 5 of General Order No. 68, which provides that:

"All marriages contracted without these Islands which would be valid by the law of the country in which the same were contracted, are valid in these Islands."

The above provision clearly uses the word **"contracted"** rather than **"performed"** or **"solemnized."** Thereafter, Section 19 of Act 3613, as amended, otherwise known as the Philippine Marriage Law of 1929, provided this comity-validation provision, to wit:

"Section 19. All marriages performed outside of the Philippine Islands in accordance with the laws in force in the country where they were performed and valid there as such, shall also be valid in the Islands."

The word **"contracted"** in General Order No. 68 was changed to **"performed."** Subsequently, the above provision was incorporated in the Philippine Civil Code of 1950 with substantial exceptions. Section 71 of the same provided that:

"Section 71. All marriages performed outside of the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law."

Finally, this validation provision was again re-enacted in the Family Code as the first paragraph of Article 26, with substantial modifications and amendments. The term **"performed"** under the Civil Code was changed to **"solemnized"** and the exceptions were amended to read, thus: "except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38." This change in the wording from **"performed"** to **"solemnized"** is very significant. The change appears to signify the intent of the framers to limit the scope of the provision so as not to include common-law marriages. Moreover, the non-recognition of common-law marriage appears to be consistent with the jurisprudence laid down in *Enriquez v. Enriquez* (8 Phil. 565) stating that the Philippines, even during the Spanish rule, has never recognized common-law marriages.

The second paragraph of Article 26 also uses the term **"celebrated."** Again, this connotes a ceremonial marriage where solemnization is inherently involved. This is clearly consistent with the term **"solemnized"** used in the main validation provision, which is the first paragraph of Article 26.

(c) **Same sex marriage of Filipinos abroad - Public policy in the Philippines mandates that only a man and a woman can marry each other.** This clear public policy consideration is enunciated in Article 1 of the Family Code, stating that marriage is a special contract of permanent union between a man and a woman. Article 2(1) also states that the contracting parties must be a male and a female. In fact, the Family Code is replete with terms and articles clearly indicating that **marriage is a heterosexual relationship.** It is based on the distinction between a man and woman. Hence, words like "husband and wife," "father and mother" and "man and woman" are used. **Same sex marriage, therefore, is not allowed in the Philippines.** If a Filipino contracts a marriage abroad with a person of the same sex, whether such person is another Filipino or a foreigner, such a marriage shall not be recognized here. Article 15 of the Civil Code provides that "laws relating to family rights and duties, or to status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad." **In the Philippines, a person has legal capacity to marry only a person of the opposite sex.** As stated previously, this public policy consideration can be clearly seen as one of the objects or bases of the Family Code. Hence, this limitation will follow the Filipino anywhere in the world. Moreover, the **third paragraph of Article 17 of the Civil Code** provides that "prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country." The Family Code mandates that only a male and female can marry each other. This is, therefore, a public policy matter which cannot be rendered ineffective by any

foreign law. (Melencio S. Sta. Maria, Jr., Persons and Family Relations Law [Fifth Edition, 2010] pp. 164 – 167; 169 – 171)

(d) **Marriage by way of a jest when there is absolutely no genuine consent on the part of both contracting parties** - In *McClurg v. Terry*, 21 N.J. Eq. 225, the Court of Chancery of New Jersey had occasion to rule on a marriage by **jest as null and void**. The case is as follows:

THE CHANCELLOR. The complaint seeks to have the ceremony of marriage between herself and the defendant, in November 1869, declared to be a nullity. The **ground** on which she asks this decree is that, although the ceremony was actually performed, and by a justice of the peace of the county, **it was only in jest, not intended to be a contract of marriage**, and that it was so understood at the time by both parties, and the other persons present; and that both parties have never since so considered and treated it, and have never lived together, or acted towards each other as man and wife. The bill and answer both state these as facts of the case, and that **neither party intended it as a marriage, or was willing to take the other as husband and wife**. These statements are corroborated by the witnesses present. The complainant is an infant of nineteen years, who had returned late in the evening to Jersey City, from an excursion with the defendant and a number of young friends, among whom was a justice of the peace. All being in good spirits and excited by the excursion, she in **jest** challenged the defendant to be married to her on the spot. He in the same spirit accepted the challenge, and the justice, at their request, performed the ceremony with them making the proper responses. The ceremony was in the usual and proper form, the justice doubting whether it was in earnest or in jest. The defendant escorted the complainant to her home, and left her there as usual on occasions of such excursions; **both acted and treated the matter as if no ceremony had taken place**. After some time, the friends of the complainant having heard of the ceremony, and that it had been formally and properly performed before the proper magistrate, raised the question and entertained doubts whether it was not a legal marriage; and the justice mediated and returning a certificate of the marriage to be recorded before the proper officer. The bill seeks to have the marriage declared a nullity, and to restrain the justice from certifying it for record.

Mere words, without any intention corresponding to them, will not make a marriage or any other civil contract. **But the words are the evidence of such intention, and if once exchanged, it must be clearly shown that both parties intended and understood that they were not to have effect.** In this case, the evidence is clear that no marriage was intended by either party; that it was a mere **jest** got up in the exuberance of spirits to amuse the company and themselves. If this is so, there was no marriage. x x x
(Melencio S. Sta. Maria, Jr., Persons and Family Relations Law, supra. p. 129-130)

(e) **Marriage by proxy** - Marriage by proxy solemnized here in the Philippines is **likewise void because of the absence of the essential requisite that consent freely given must be made** in the presence of the solemnizing officer and the absence of the formal requisite that the contracting parties must personally declare before the solemnizing officer that they take each other as husband and wife. (Melencio S. Sta. Maria, Jr., Persons and Family Relations Law, supra. p. 130)

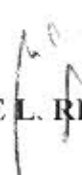
The **second paragraph of Article 26 of the Family Code** provides the recognition in the Philippines of a particular absolute divorce obtained in another country which will allow the divorced Filipino to remarry. Hence, where a valid marriage is celebrated, either in the Philippines or abroad, between a **Filipino citizen and a foreigner** and, subsequently, the

foreigner spouse obtains a valid divorce abroad capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. The second paragraph of said Article is a codification of the jurisprudence laid down in the 1985 case of *Van Dorn v. Romillo* (*supra*, see *San Luis vs. San Luis*, G.R. No. 133743, February 6, 2007). (Melecio S. Sta. Maria, Jr., Persons and Family Relations Law, *supra*, p. 174)

The **proposed amendments to the second paragraph** of the same Article 26 (which is also Executive Order No. 227, July 17, 1987) will apply to a situation where originally, at the time of the marriage ceremony, both parties were Filipinos, but at the time of the absolute divorce, one of the said parties was already a citizen of a foreign country that allows absolute divorce. It will be a lamentable and disadvantageous position for the Filipino spouse who did not procure divorce if he or she will not also have capacity to remarry under Philippine law after being divorced by his spouse who is already a citizen of a foreign country that allows absolute divorce. Thus, the proposed amendment to the said second paragraph of Article 26 will provide a remedy to the Filipino spouse to move on with his or her life without fear of being accused of a criminal offense in case he or she will have sexual relationship with other person after the said divorce.

Some commentators (with the exception of other schools of thought) of the Family Code - with the full concurrence of this representation - doubt whether the **present** second paragraph of Article 26 of the Code as now worded will also apply to a situation where at the time of the marriage ceremony, **both parties were Filipinos**, but one of them subsequently obtains an absolute divorce abroad after he or she has been naturalized as a citizen of a foreign country where absolute divorce is recognized. This is so because the present second paragraph of Article 26 clearly speaks of a specific situation of a **"marriage between a Filipino citizen and a foreigner"** and does NOT cover a situation where a **"marriage is between two Filipinos"** and one of them obtains an absolute divorce abroad after he or she has been naturalized as a citizen of a foreign country where absolute divorce is recognized. In fact, the Supreme Court in the case of *Republic vs. Orbecido III* (472 SCRA 114 [October, 2005]) spelled out as one of the twin elements for the applicability of the second paragraph of Article 26 that **"there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner."** Therefore, there is a need to remove all doubts whether a "valid marriage has been celebrated between Filipinos" is also covered by the present second paragraph of Article 26 by clarifying it through this proposed amendment. Moreover, in order to relieve the Filipino spouse who did not procure a divorce from an obvious disadvantageous and unfair position, the present second paragraph of Article 26 of the Family Code **should be amended** to apply to a situation where if the marriage is between two Filipinos and later one of them obtains an absolute divorce abroad after he has been naturalized as a citizen of a foreign country where absolute divorce is recognized, the Filipino spouse who did not procure a divorce shall also be granted capacity to remarry under Philippine law.

In the light of the foregoing, approval of this bill is earnestly sought.


RENE L. RELAMPAGOS

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HOUSE BILL NO. 4269

Introduced by HON. RENE LOPEZ RELAMPAGOS
1st District, Bohol

AN ACT
AMENDING ARTICLE 26 OF EXECUTIVE ORDER 209 OR THE FAMILY
CODE OF THE PHILIPPINES AND FOR OTHER PURPOSES

SECTION 1. Article 26 is hereby amended to read as follows:

All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in the country, except those prohibited under Articles 35(1), (4), (5), (6), and 36, 37 and 38.

IN ADDITION, THE FOLLOWING MARRIAGES SHALL BE
CONSIDERED EXCEPTIONS TO THIS ARTICLE:

(1) COMMON-LAW MARRIAGES OBTAINED OR CONTRACTED BY
FILIPINOS ABROAD;

(2) SAME SEX MARRIAGES OF FILIPINOS ABROAD;

(3) MARRIAGES BY WAY OF A JEST NOT INTENDED TO BE A
CONTRACT OF MARRIAGE. HOWEVER, IT MUST BE CLEARLY SHOWN
BY WAY OF A FINAL AND EXECUTORY DECISION OF THE COURT OF
COMPETENT JURISDICTION THAT DECIDED THE CASE FILED BY
EITHER PARTY DECLARING THEIR MARRIAGE A NULLITY
CONSIDERING THAT BOTH PARTIES FULLY UNDERSTOOD THAT THEIR
EXCHANGE OF MARITAL VOWS WERE PURELY IN JEST AND NOT TO
HAVE EFFECT AND HENCE, NO MARRIAGE WAS INTENDED BY EITHER
PARTY; AND

(4) MARRIAGES BY PROXY.

THE EXCEPTION REFERRED TO IN ARTICLE 35(1) SHALL BE
CONSTRUED TO REFER ONLY TO A SITUATION WHERE THE MARRIAGE
SOLEMNIZED ABROAD IS BETWEEN FILIPINO CITIZENS AND NOT
BETWEEN A FILIPINO CITIZEN AND A FOREIGNER MARRIED IN THE
FOREIGNER'S STATE WHERE THE LATTER, THOUGH BELOW EIGHTEEN
(18) YEARS OF AGE, IS CAPACITATED TO MARRY.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated
and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or

her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

IT IS UNDERSTOOD THAT IF THE MARRIAGE IS BETWEEN TWO FILIPINOS AND ONE OF THEM THEREAFTER OBTAINS AN ABSOLUTE DIVORCE AFTER HE OR SHE HAS BEEN NATURALIZED AS A CITIZEN OF A FOREIGN COUNTRY WHERE ABSOLUTE DIVORCE IS RECOGNIZED, THE FILIPINO SPOUSE WHO DID NOT PROCURE ABSOLUTE DIVORCE SHALL LIKEWISE IPSO FACTO HAVE CAPACITY TO REMARRY UNDER PHILIPPINE LAW. CONSEQUENTLY, THE NATURALIZED SPOUSE AS A CITIZEN OF A FOREIGN COUNTRY WHERE ABSOLUTE DIVORCE IS RECOGNIZED SHALL HAVE NO CLAIM OR INTEREST IN THE PROPERTY ACQUIRED BY THE FILIPINO SPOUSE AFTER THE DIVORCE. HE OR SHE SHALL BE CONSIDERED A DIVORCED PERSON AND THEREFORE SHALL NOT HAVE ANY LEGAL STANDING TO FILE ANY CRIMINAL CASE AGAINST THE FILIPINO SPOUSE IN CASE THE LATTER COHABITS OR HAS SEXUAL KNOWLEDGE WITH ANOTHER PERSON AFTER THE SAID DIVORCE AND ALSO, IN PROCEEDINGS FOR CUSTODY OF THE CHILDREN BORN, IF ANY, DURING THE EXISTENCE OF THE PREVIOUS MARRIAGE WITH HIS OR HER FILIPINO SPOUSE.

IF THE NATURALIZED SPOUSE DECIDES TO RETURN TO THE PHILIPPINES AND REACQUIRES PHILIPPINE CITIZENSHIP, THE DIVORCE DECREE THAT HE OR SHE OBTAINED IN A FOREIGN COUNTRY MAY BE RECOGNIZED IN THIS COUNTRY AND HE OR SHE MAY VALIDLY REMARRY THEREIN: PROVIDED, HOWEVER, THAT THE FOREIGN MARITAL LAW THAT VALIDLY GRANTED THE DIVORCE TO SUCH NATURALIZED SPOUSE AS WELL AS THE FOREIGN DIVORCE DECREE ISSUED IN ACCORDANCE WITH THE SAID FOREIGN MARITAL LAW DULY AUTHENTICATED BY THE FOREIGN COURT ISSUING SAID DECREE MUST BE PROVEN AS A FACT AND CANNOT BE TAKEN JUDICIAL NOTICE OF.

SEC. 2. Repealing clause. - All laws, decrees, executive orders, rules and regulations inconsistent with the provisions of this Act, is hereby repealed, modified or amended accordingly.

SEC. 3. Separability clause. - If for any reason, any section or provision of this Act is held to be unconstitutional or invalid, the other sections or provisions hereof shall not be effected and thereby remain to be in force and effect.

SEC. 4. Effectivity clause. - This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

Approved,