

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Hills, Quezon City

TWENTIETH CONGRESS
First Regular Session

HOUSE BILL NO. 4781



Introduced by Honorable Representative
SARAH JANE I. ELAGO (Gabriela Women's Party)

AN ACT REINTRODUCING DIVORCE IN THE PHILIPPINES

EXPLANATORY NOTE

Underpinning this proposal is a commitment to the policy of the State to protect and strengthen marriage and family as basic social institutions, to value the dignity of every human person, to guarantee full respect for human rights, and to ensure fundamental equality before the law of women and men.

In Filipino culture, marriage is regarded as a sacred union, and the family founded on marriage is considered a fountain of love, protection, and care. Philippine society generally frowns upon and discourages marital break-ups and provides cultural and legal safeguards to preserve marital relations. Cultural prescriptions and religious norms keep many couples together despite the breakdown of the marriage. However, the cultural prescriptions for women and men differ. Women are traditionally regarded as primarily responsible for making the marriage work and are expected to sacrifice everything to preserve the marriage and the solidarity of the family. While wives demand absolute fidelity, men are granted sexual licenses to have affairs outside their marriage. Yet when the marriage fails, the woman is blamed for its failure.

Reality tells us that many failed, unhappy marriages are across all Filipino classes. Many couples, especially from the marginalized sectors, who have no access to the courts, simply end up separating without the benefit of legal processes. The number of petitions filed since 1988 for the declaration of the nullity of marriage under Article 36 of the Family Code shows that there are just too many couples who are desperate to get out of failed marriages.

Even when couples start well in their marriage, political, economic, and social realities take their toll on their relationship. Some are not prepared to handle the intricacies of married life. For many women, the inequalities and violence in marriage negate its ideals as the embodiment of love, care, and safety, and erode the bases upon which a marriage is founded. Marital relations facilitate the commission of violence and perpetuate their oppression. Official figures show that

14.4% of married women experience physical violence, and 23% experience emotional violence, from their husbands. According to the Philippine National Police, within the context of rising VAW incidence from 2004 to 2012, physical injuries account for 21%.

Since the ratification of the Philippine Constitution in 1987, many things beyond the control of spouses have happened to our society that put tremendous pressure on Filipino families' stability. Our government has intensified its labor export program, tearing hundreds of thousands of families apart and forcing couples to make do with long-distance relationships, aggravating their vulnerabilities to marital indiscretions and resulting in rising incidences of Overseas Filipino Workers seeking to annul or nullify their marriages. Moreover, as a result of one economic crisis after another, with endless increases in the prices of basic commodities and attended by the government's abandonment of the State's responsibility to provide essential social services, husbands and wives are both forced to work multiple odd jobs and do extra labor hours to augment their devalued income. This reduces the quality time necessary to nourish family relationships. The interconnectivity brought about by advances in modern transportation and information technology has also increased the number of mixed foreign marriages among Filipinos, exposing them to alien family cultures that often grate against their marriages.

These social forces constitute a veritable assault on the Filipino family, driving up the number of couples looking for an escape hatch from their troubled marriages other than those already provided by our marriage laws. According to the Department of Justice, petitions for nullity and annulment have significantly risen — more than doubled — in the last ten years, from 4,520 in 2001 to 10,528 in 2011. If the 2011 figure is to be broken down, this means 29.6 petitions a day. Interestingly, the figure refers only to annulment and declaration of nullity of cases invoking the grounds for psychological incapacity and inherent defects in the validity of the marriage. It does not include legal separation and annulment based on other grounds such as presumptive death (read: abandonment). It also does not include marital dissolution cases based on petitions for judicial recognition of divorce decrees obtained in foreign forums, which constitute 47% of the total marital dissolution cases handled by our courts, suggesting a growing number of aggrieved parties who are using foreign judicial systems to skirt around the absence of divorce law in the country.

Given these realities, couples must have the option to avail of remedies that will pave the way for attaining their full human development and self-fulfillment and protecting their human rights. Existing laws are not enough to guarantee and protect these rights. To quote the Women's Legal Bureau, Inc., a legal resource NGO for women:

'The present laws relating to separation of couples and termination of marriage are inadequate to respond to the myriad causes of failed marriages. Particularly, the remedies of declaration of nullity and annulment do not cover the problems that occur during the existence of marriage. Legal separation, on the other hand, while covering problems during marriage, does not put an end to marriage.'

'Though divorce and a declaration of nullity of marriage allow the spouses to remarry, the two remedies differ in concept and basis. A declaration of nullity presupposes that the marriage is void from the beginning, and the court declares

its non-existence... Beyond [the] grounds specified [in the law], declaration of nullity is not possible.'

'In an annulment, the marriage of the parties is declared defective from the beginning, albeit it is considered valid until annulled. The defect can be used to nullify the marriage within a specified period but the same may be ignored and the marriage becomes perfectly valid after the lapse of that period, or the defect may be cured through some act. The defect relates to the time of the celebration of the marriage and has nothing to do with circumstances occurring after the marriage is celebrated. In annulment, the marriage is legally cancelled, and the man and woman are restored to their single status.'

*'Since August 3, 1988, couples have been given a way out of failed marriages through Article 36... The remedy provided under Article 36 is declaration of nullity of the marriage. The article voids a marriage where one party is 'psychologically incapacitated' to comply with the essentials of marital obligations. Consistent with the concept of void marriages (where the remedy is declaration of nullity), the law requires that the incapacity must have existed at the time of the celebration of the marriage...In practice, Article 36 has become a form of divorce, as valid marriages are declared void every day in the guise of 'psychological incapacity. The innumerable Article 36 cases brought to trial courts are an indication of the elasticity of Article 36 to accommodate the needs of many couples desiring to terminate their marriages. It is proof that divorce is needed in the Philippines. Article 36 provides a remedy only for spouses who can prove 'psychological incapacity. The concept certainly cannot accommodate all cases where divorce would be necessary. What we need is a divorce law that defines clearly and unequivocally the grounds and terms for terminating a marriage. That law will put an end to the creative efforts played daily in courtrooms across the country to accommodate a wide range of cases in order to prove 'psychological incapacity' (Women's Legal Bureau, *The Relevance of Divorce in the Philippines*, 1998).*

Thus, this bill seeks to introduce divorce as another option for couples in failed and irreparable marriages.

Historically, divorce had been part of our legal system. At the beginning of the 16th century, before the Spanish colonial rule, absolute divorce was widely practiced among ancestral tribes such as the *Tagbanwas* of Palawan, the *Gadangs* of Nueva Vizcaya, the *Sagadas* and *Igorots* of the Cordilleras, and the *Manobos*, *B'laans* and *Moslems* of the Visayas and Mindanao islands. Divorce was also available during the American period, starting from 1917 (under Act No. 2710 enacted by the Philippine Legislature), during the Japanese occupation (under Executive Order No. 141), and until 1950. Only on August 30, 1950, when the New Civil Code took effect, that divorce was disallowed under Philippine law. Only legal separation was available. The same rule was adopted by the Family Code of 1988, which replaced the provisions of the New Civil Code on marriage and the family. However, the Family Code introduced the concept of psychological incapacity as a basis for declaring the marriage void.

In recognition of the history of divorce in the Philippines, the framers of the 1987 Constitution left the wisdom of legalizing divorce to Congress. Thus, the 1987 Constitution does not prohibit the legalization of divorce.

Given the country's history, the bill seeks to restore divorce as a rights-based option for the majority of Filipinos, an option based on the recognition that the right to enter into a marriage contract has the corresponding spousal right to end such contract when it has reached the point of irreparability. The filing of this bill is anchored on a strong sense of confidence that it will be used responsibly by Filipino couples. This confidence stems from the experiences of Filipino families that show that separation is usually the last resort of many Filipino couples whose marriage has failed. Cases of battered women also support this. Battered women seek separation only after so many years of trying to make the marriage work; separation only becomes imperative for them when they realize it is necessary for their and their children's survival. Divorce could protect battered women and their children from further violence and abuse. With the predominance of the Catholic faith in the Philippines, the fear that divorce will erode personal values on marriage appears unfounded. The experiences of Italy, where the Vatican is located, and Spain, two predominantly Catholic countries which practice divorce, support this. Historically, those countries have a low rate of divorce. Italy has a divorce rate of 181 per 1000 married population, while the divorce rate in Spain has experienced a decline since 2007.

This bill is respectful of and sensitive to differing religious beliefs in the Philippines. It recognizes that the plurality of religious beliefs and cultural sensibilities in the Philippines demand that different remedies for failed marriages be made available. For this reason, the bill retains the existing remedies of legal separation, annulment, and declaration of nullity of the marriage, and only adds divorce as one more remedy. Couples may choose from these remedies depending on their situation, religious beliefs, cultural sensibilities, needs, and emotional state. While divorce under this proposed measure severs the bond of marriage, divorce as a remedy need not be for the purpose of remarriage; it may be resorted to by individuals to achieve peace of mind and facilitate their pursuit of full human development.

This bill also seeks to make Philippine law consistent with how it treats religious beliefs concerning the termination of marriage. Philippine law, through the Code of Muslim Personal Laws of the Philippines (Presidential Decree No. 1983 [1977]), allows divorce among Filipino Muslims, in deference to the Islamic faith that recognizes divorce. Non-Muslim Filipinos should have the same option under Philippine law, in accordance with their religious beliefs.

This bill, originally filed in 2005 during the 13th Congress, was crafted in consultation with women lawyers and informed by studies and contributions from various women's groups, pro-divorce advocates, many of whom organized through social media, and the lived experiences of spouses collected by GABRIELA and the Gabriela Women's Party from their chapters across the country. The bill was refiled in the 14th, 15th, 16th, 17th, 18th, and 19th Congresses.

In the 17th Congress, extensive deliberations on several proposed versions led to a consolidated bill, which was successfully passed on Third Reading in the House of Representatives but did not progress in the Senate. In the 18th Congress, the bill was approved on First Reading by the House Committee on Women and Gender Equality in August 2021. Most recently, during the 19th Congress, the bill again passed on Third Reading in the House of Representatives.

This bill reflects the consolidated version with some additions, such as the recognition of a divorce decree obtained abroad and additional grounds for annulment, which can also be considered grounds for obtaining a divorce decree.

This bill proposes the following grounds for granting a judicial decree of divorce, premised on the irreparable breakdown of the marriage and the total non-performance of marital obligations:

1. The existing grounds for legal separation under Article 55 of the Family Code of the Philippines, modified to include, among others: *serious physical or sexual violence* to highlight not just the number of times the violence was inflicted, but the severity or gravity of violence committed; chronic gambling; and bisexuality;

2. When the spouses are legally separated by judicial decree for more than two (2) years;

3. Grounds for annulment of marriage under Article 45 of the Family Code of the Philippines, which are restated as follows:

1. That the party in whose behalf it is sought to have the marriage annulled was eighteen (18) years of age or over but below twenty-one (21), and the marriage was solemnized without the consent of the parents, guardian, or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one (21), such party freely cohabited with the other and both lived together as husband and wife;

2. That either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

3. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

4. That the consent of either party was obtained by force, intimidation, or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;

5. That either party was physically incapable of consummating the marriage with the other, and such incapacity continues or appears to be incurable;

6. Either party was afflicted with a sexually transmissible infection found to be serious or appears to be incurable;

Provided, That the grounds mentioned in numbers 2, 5, and 6 may either be existing at the time of the marriage or supervening after the marriage;

4. When the spouses have been separated in fact for at least five (5) years at the time the petition for absolute divorce is filed, and reconciliation is highly improbable;

5. When a foreign spouse disappears, and, despite efforts of the Filipino spouse, cannot be located or communicated with, for at least four (4) years.

6. Psychological incapacity of either spouse;
7. When one of the spouses undergoes gender reassignment surgery or transitions from one sex to another;
8. Irreconcilable marital differences and conflicts which have resulted in the total breakdown of the marriage beyond repair, despite earnest and repeated efforts at reconciliation;
9. When a decree of divorce has been validly obtained abroad; and
10. When there is a valid canonical church dissolution.

Not all circumstances and situations that cause the total breakdown of a marriage could be defined in this proposed measure. Thus, the bill also provides that divorce may be granted when the spouses suffer irreconcilable differences that have caused the irreparable breakdown of the marriage. Spouses living in a state of irreparable marital conflict or discord should be given the opportunity to present their marital contrarieties in court and have those differences adjudged as constituting a substantial ground to put an end to the marriage.

Under the proposed measure, a decree of divorce dissolves the absolute community or conjugal partnership of gains. The assets shall be equally divided between the spouses. However, this bill also proposes that in addition to his or her equal share in the assets, the spouse who is not gainfully employed shall be entitled to support until he or she finds adequate employment. Still, the right shall only be effective for not more than three (3) years, or until the spouse who is receiving spousal support remarries. This provision is meant to address the economic deprivation or poverty many women experience due to marital breakup.

The bill also proposes that the judicial court shall decide the custody of any minor child based on the child's best interests and their support provided in accordance with the Family Court provisions on support. Additionally, actual, moral, and exemplary damages shall be awarded to the aggrieved spouse when appropriate, in accordance with the provisions of the Civil Code of the Philippines on damages.

The Philippines is the only remaining country in the world without a divorce law. The sanctity of marriage is not based on the number of marriages existing but on the quality of marital relationships. When marriage is no longer viable, divorce should be an option. This bill is being introduced based on indications that the Philippine society is ready for the legalization of divorce.

In view of the foregoing, the passage of this bill is earnestly sought.



SARAH JANE I. ELAGO
Gabriela Women's Party

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Hills, Quezon City

TWENTIETH CONGRESS
First Regular Session

HOUSE BILL NO. 4731

Introduced by Honorable Representatives
SARAH JANE I. ELAGO (Gabriela Women's Party)

AN ACT REINTRODUCING DIVORCE IN THE PHILIPPINES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the “Absolute Divorce Act”.

SECTION 2. *Declaration of Policy.* – While the State continues to protect and preserve marriage as a social institution and as the foundation of the family, it shall also give the opportunity to spouses in irremediably failed marriages to secure an absolute divorce decree as an alternative mode for the dissolution of an irreparably broken or dysfunctional marriage under limited grounds and well-defined judicial procedures; save the children from the pain, stress, and agony consequent to their parents’ constant marital clashes or irreconcilable separation; and grant the divorced spouses the right to marry again for another chance to achieve marital bliss.

SECTION 3. *Guiding Principles.* – The following shall be the guiding principles of this Act:

1. Absolute divorce shall be judicially decreed after the fact of an irremediably broken marriage.
2. The State shall assure that the court proceedings for the grant of absolute divorce shall be affordable, expeditious, and inexpensive.
3. Concerned spouses have the option to file for absolute divorce under this Act or seek legal separation, annulment of marriage or nullification of marriage under the pertinent

provisions of Executive Order (EO) No. 209, otherwise known as the Family Code of the Philippines (the Family Code).

4. The option of absolute divorce is a pro-woman legislation because in most cases, it is the wife who is entitled to a divorce as a liberation from an abusive relationship and to help her regain dignity and self-esteem.

5. A sixty-day cooling-off period is instituted after the filing of a petition for absolute divorce as a final attempt for reconciliation of concerned spouses.

6. A divorce decree shall include provisions for the care and custody of children, protection of their legitimes, termination and liquidation of the conjugal partnership of gains or the absolute community, and alimony for the aggrieved or innocent spouse.

7. Even as absolute divorce is reinstituted, the State has the mandate of strengthening marriage and family life by undertaking, among others, relevant prenuptial and post-matrimonial programs and activities adequately funded by the government.

SECTION 4. *Definition of Terms.* – As used in this Act:

a) *Abandonment* refers to the act of a spouse of leaving the conjugal home without justifiable cause and with a deliberate intention of creating a perpetual separation. The desertion amounts to an absolute cessation of marital relations, rights and duties. The abandonment may also be physical estrangement, or financial desertion;

b) *Absolute divorce* refers to the judicial dissolution of a marriage or the termination of the bond of matrimony where the spouses return to their status of being single with the right to contract marriage again;

c) *Alcoholism* refers to excessive consumption of alcoholic beverages at a level that interferes with physical or mental health, and social, family, or occupational responsibilities;

d) *Alimony* refers to spousal support made under court order to a divorced person by the former spouse;

e) *Bigamous marriage* refers to a second or subsequent marriage contracted before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings;

f) *Child* refers to a common child of the spouses below eighteen (18) years of age or older but is incapable of taking care of or protecting oneself from abuse, neglect, cruelty, exploitation, and/or discrimination because of physical infirmity or mental disability, and shall include an offspring by legal adoption or one whose custody and care is judicially decreed to be given to a guardian. In proper cases, a child also refers to an offspring of one of the spouses;

g) *Child custody* refers to the parental authority and care of a child as decreed by a competent court when the parents of the child are divorced;

h) *Child support* refers to a method of compensating a parent needing financial support for raising and sheltering a child or children by the other parent who has the means to pay for the expenses associated with child support. The proper Family Court shall determine the amount of support, based on the financial capacity of the parent giving support and the needs of the child or children requiring support pursuant to the Provisions of the Family Code;

i) *Chronic gambling* refers to an impulse control disorder in which a person makes habitual wagering in games of chance which compromise, disrupt or damage family, work and social relations, and vocational pursuits;

j) *Competent court* refers to the proper Family Court established under Republic Act (R.A.) No. 8369 or the "Family Courts Act of 1997", which shall exercise jurisdiction both over the absolute divorce proceeding and the persons of the petitioner and respondent spouses;

k) *Court-assisted petitioner* refers to a petitioner-spouse who has personal and real properties collectively not exceeding two million five hundred thousand pesos (PhP2,500,000.00);

l) *Domestic or marital abuse* refers to violence or aggressive behavior within the home, typically involving the violent abuse of a spouse by the other which may be committed through:

- (a) physical violence,
- (b) psychological and emotional violence,
- (c) sexual violence, or
- (d) economic abuse;

m) *Drug addiction* refers to habitual dependence on at least one or more prohibited drug;

n) *Insanity* refers to a neurologic or psychiatric condition characterized by the existence of a recognizable, clinically-significant disturbance in an individual's cognition, emotional regulation, or behavior that reflects a genetic or acquired dysfunction in the neurological, psychosocial, or developmental process underlying mental functioning;

o) *Irreconcilable differences* refer to the substantial incompatibility of the spouses due to their intransigence or fault by holding on to divergent and divisive behavior resulting to the total breakdown of their marriage which could not be repaired despite earnest efforts to reconcile;

p) *Joint petition* refers to the legal action filed by both spouses based on the grounds subject to summary judicial proceedings under Section 11 of this Act;

q) *Legitime* refers to the portion of a parent's estate from which they cannot disinherit the children, without sufficient legal cause;

r) *Marital infidelity* refers to the extramarital sexual relations of a spouse, which shall include having or bearing a child with a third party;

s) *Offended spouse* refers to the spouse who is aggrieved or innocent as found by the proper Family Court;

t) *Offending spouse* refers to the spouse found by the Family Court to have given the cause or reason for the divorce;

u) *Overseas Filipinos* refer to Filipino migrant workers, other Filipino nationals and their dependents abroad or as defined under Section 3 of Republic Act (RA) No. 8042, as amended, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995";

v) *Psychological incapacity* refers to the condition provided for in Article 36 of the Family Code which warrants the nullity of a marriage;

w) *Separation* refers to the absolute cessation of marital relations, duties, and rights, with the intention of perpetually living apart;

x) *Sex reassignment surgery* refers to the procedure by which a person's physical appearance and function of primary sex characteristics are altered to resemble that of the identified or preferred gender;

y) *Summary judicial proceedings* refer to an expeditious manner of resolving a petition for absolute divorce without regard to technical rules and the petitioner is given the option to be assisted or not by a lawyer. The proper court may allow presentation of evidence *ex parte* as warranted by circumstances. The decision shall be immediately final and executory;

z) *Support* refers to the amount indispensable for sustenance, shelter, clothing, medical care, education, and other allied needs, consistent with the financial capacity and social standing of the family;

aa) *Transgender* refers to a person whose gender identity or expression differs from what is typically associated with the sex at birth;

bb) *Transsexual* refers to a person who emotionally and psychologically feels that one belongs to the opposite sex, and who opts for a transition from one sex to another through the use or through the use of hormones or surgical procedure.

SECTION 5. *Grounds for Absolute Divorce.* – The following are the grounds for a judicial decree of absolute divorce:

a) The grounds for legal separation under Article 55 of the Family Code, modified or amended, as follows:

- (1) Physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;
- (2) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;
- (3) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;
- (4) Final judgment sentencing the respondent to imprisonment of more than six (6) years, even if pardoned;
- (5) Drug addiction or habitual alcoholism or chronic gambling of the respondent;
- (6) Homosexuality or bisexuality of the respondent;
- (7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
- (8) Marital infidelity or perversion or having a child with another person other than one's spouse during the marriage, except when upon the mutual agreement of the spouses, a child is born to them by *in vitro* or a similar procedure, or when the wife bears a child after being a victim of rape;
- (9) Attempt by the respondent against the life of the petitioner, a common child or a child of the petitioner;
- (10) Abandonment of petitioner by respondent without justifiable cause for more than one (1) year;

When the spouses are legally separated by judicial decree for more than two (2) years, either spouse can petition the proper Family Court for an absolute divorce based on said judicial decree of legal separation.

b) Grounds for annulment of marriage under Article 45 of the Family Code, restated as follows:

- (1) The party in whose behalf it is sought to have the marriage annulled was eighteen (18) years of age or over but below twenty-one (21), and the marriage was solemnized without the consent of the parents, guardian or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one (21), such party freely cohabited with the other and both lived together as husband and wife;
- (2) Either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;
- (3) The consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;
- (4) The consent of either party was obtained by force, intimidation or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife;

- (5) Either party was physically incapable of consummating the marriage with the other, and such incapacity continues or appears to be incurable;
- (6) Either party was afflicted with a sexually transmissible infection found to be serious or appears to be incurable:

Provided, That the grounds mentioned under b) (2), (5) and (6) existed either at the time of the marriage or supervenes after the marriage;

c) When the spouses have been separated in fact for at least five (5) years at the time the petition for absolute divorce is filed, and reconciliation is highly improbable;

d) Psychological incapacity of either spouse as provided for in Article 36 of the Family Code, whether or not the incapacity existed at the time of the marriage or supervenes after the marriage;

e) When one of the spouses undergoes reassignment surgery or transitions from one sex to another, the other spouse is entitled to petition for absolute divorce with the transgender or transsexual as respondent, or vice versa;

f) Irreconcilable marital differences as defined under Section 4(o);

g) Other forms of domestic or marital abuse as defined under Section 4(i).

The grant of absolute divorce based on domestic or marital abuse or violation of RA No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004", shall be without prejudice to the prosecution of the errant spouse under the said Act.

h) When the spouses are legally separated by judicial decree for more than two (2) years, either spouse can petition the proper court for an absolute divorce based on said judicial decree of legal separation; and

i) When a foreign spouse disappears, and, despite efforts of the Filipino spouse, cannot be located or communicated with, for at least four (4) years.

SECTION 6. *Civil Recognition of a Valid Foreign Divorce.* – A valid foreign divorce secured by either the alien or Filipino spouse has the effect of a divorce under this Act without going through the judicial process. Said foreign divorce must be authenticated by the Philippine Consul in or proximate to the foreign country where it was secured, and subsequently registered with the proper Civil Registry Office in the Philippines or the Office of the Philippine Consul abroad where the Filipino spouse is residing.

SECTION 7. *Valid Canonical or Church Dissolution, or Declaration of Nullity of Marriage.* - A marriage which is nullified or dissolved by the proper matrimonial tribunal of the Roman Catholic Church or any other recognized religious sect or denomination which may have

their own ecclesiastical tribunal, shall be granted civil recognition as if a divorce had been granted in accordance with the provisions of this Act, without going through the judicial process when it is authenticated by the proper authorities of the Roman Catholic Church or any other recognized religious sect or denomination, and registered with the proper Civil Registry Office in the Philippines.

SECTION 8. *Prescription of Action.* - A petition for absolute divorce shall be filed with the proper Family Court by the petitioner or joint petitioners within ten (10) years from the occurrence or discovery of the cause of divorce or from the effectivity of the Absolute Divorce Act, whichever comes later.

SECTION 9. *Procedure for Obtaining Absolute Divorce.* - (a) The established and recognized procedures for securing legal separation, annulment and declaration of nullity of marriage under the Family Code, as far as practicable, and not in conflict with this Act, shall govern the process of obtaining a judicial decree of absolute divorce from the proper Family Court which shall commence by the filing of a verified petition for absolute divorce by the petitioner-spouse or joint petitioner-spouses.

(b) The factors and grounds which militate against the grant of legal separation and the annulment and nullity of marriage as provided for in the Family Code shall likewise be assessed, based on competent and credible proof, against the grant of absolute divorce.

(c) When the application as a court-assisted petitioner is approved, the proper Family Court shall waive the payment of filing fees and other costs of litigation, and shall appoint a *counsel de officio* for the court-assisted petitioner and assign such number of social workers, psychologists, and psychiatrists, as may be necessary from a pool of accredited social workers and practitioners recognized by the Department of Social Welfare and Development (DSWD), and the Department of Justice (DOJ), to assist the petitioner/s, and children of the parties, free of charge.

(d) All creditors of the absolute community or of the conjugal partnership of gains, as well as the personal creditors of the spouses, shall be listed in the petition for absolute divorce and notified of the filing thereof. The court shall take measures to protect the creditors and other persons with pecuniary interest.

(e) No decree of absolute divorce shall be based upon a stipulation of facts or a confession of judgment.

(f) Public prosecutors in provinces, cities and capital towns are mandated to conduct investigations to find out whether or not there is collusion between the spouses in a petition for absolute divorce or a spouse coerced the other file the petition and shall report their findings to the proper Family Court within sixty (60) days from the filing of the petition.

(g) The procedure for obtaining absolute divorce shall not exceed 1 (one) year from the date of filing of the verified petition.

SECTION 10. *Overseas Filipinos.* – Petitioners who are Overseas Filipinos shall be given priority by the proper court with respect to the hearing of their petitions and the court shall set the reception of evidence, upon the availability of the petitioners, for not more than two (2) consecutive days.

SECTION 11. *Summary Judicial Proceedings.* – The following grounds for absolute divorce may be subject to summary judicial proceedings as defined in Section 4(y):

- (a) When the spouses have been separated *de facto* for at least five (5) years;
- (b) When one of the spouses has contracted a bigamous marriage;
- (c) When the spouses have been legally separated by judicial decree for at least two (2) years;
- (d) When one of the spouses has been sentenced to imprisonment for six (6) years, even if subsequently pardoned; and
- (e) When one of the spouses has undergone a sex reassignment surgery or has transitioned into another sex.

A petition under this section may be filed individually or jointly by the concerned spouses.

SECTION 12. *Mandatory Sixty-Day Cooling-Off Period.* – Except for grounds under summary judicial proceedings, the proper Family Court shall exercise all efforts to reunite and reconcile the concerned spouses during the sixty-day cooling-off period after the filing of the petition. Upon expiration of the cooling-off period without the parties having reconciled, the court shall immediately commence trial and is mandated to decide the petition within one (1) year after the lapse of the sixty-day cooling-off period.

The requirement of a cooling-off period shall not apply in cases which involve acts of violence against women and their children under R.A. No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004”, or attempt against the life of the other spouse, a common child, or a child of the petitioner. The cooling-off period is not required for petitions under summary judicial proceedings.

SECTION 13. *Waiver of Expert Testimony.* – Expert testimony shall be dispensed with unless the court decides that such testimony is indispensable in deciding the petition for absolute divorce.

SECTION 14. *Effects of Absolute Divorce.* – The decree of absolute divorce shall have the following effects:

- a) The marriage bond shall be severed and the divorced spouses shall have the right to contract marriage again;

b) The custody of the minor children, and the visitation rights of the spouse not granted primary custody, shall be decided by the proper Family Court in accordance with the best interests of the children, subject to the provisions of Article 213 of the Family Code, taking into primary consideration that no child under seven (7) years of age shall be separated from the mother, unless the proper court finds compelling reasons to order otherwise. When the child is over the age of seven (7), the court may ask the child's preference with respect to parental custody and visitation, unless such preference will not be for the best interest of the child. In no case shall child custody be given to the offending spouse when the grounds for divorce fall under Section 5 (a) (1), (2), (4), (5), (7), (8), (9), and (10) of this Act;

Provided, That in a subsequent divorce of a previously divorced spouse, the custody of children may be granted to the spouse with lesser number of children, subject to the discretion of the Family Court;

c) Unless otherwise agreed upon in a marriage settlement executed before the celebration of the marriage, the conjugal partnership of gains or the absolute community shall be dissolved and liquidated and the assets shall be equally divided between the spouses, excluding the paraphernal or exclusive properties of either spouse. The recognition and delivery of the presumptive legitime to the common children shall be ordered by the court, taking into consideration the interests of the children and the protection of their legitime from dissipation. The presumptive legitime shall be computed as of the date of the finality of the decree of absolute divorce. The partition and distribution of the properties of the spouses and the delivery of the children's presumptive legitime shall be recorded in the appropriate civil registry and registry of deeds, otherwise the same shall not affect third persons;

d) During the pendency of the divorce proceedings, the liabilities of the spouses to creditors for family expenses shall remain solidary;

e) In addition to the equal share in the net assets of the absolute community or conjugal partnership, the offended spouse who is not gainfully employed shall be entitled to spousal support or alimony from the respondent until the petitioner finds adequate employment: *Provided,* That the support shall not exceed three (3) years from the finality of the decree of absolute divorce, or shall cease upon the petitioner's remarriage; *Provided, further,* That the right to support shall be subject to the provisions of Article 201 of the Family Code where the amount of support shall be in proportion to the resources or means of the obligor and to the necessities of the obligee;

Provided, finally, That the three (3)-year support period may be extended to a reasonable period of time by the Family Court when the offended spouse entitled to support is a senior citizen, a person with disability, or has limited educational attainment;

f) The proper Family Court shall have the discretion to grant spousal support or alimony, child support, and child custody pursuant to the pertinent provisions of the Family Code, and impose contempt of court against the defaulting parties. The necessity of alimony and the amount shall be determined by the court taking into consideration all relevant factors;

g) The offended spouse may revoke the donations made in favor of the respondent, as well as the designation of the latter as a beneficiary in any insurance policy, even if such designation be stipulated as irrevocable.

The revocation of the donations shall be recorded in the registries of properties in the places where the properties are located. Alienations, liens and encumbrances registered in good faith before the recording of the complaint of revocation in the registry of property shall be respected. The revocation of or a change in the designation of the insurance beneficiary shall take effect upon written notification thereof to the insured.

The action to revoke the donation under this provision must be brought within five (5) years from the time the decree of absolute divorce has become final;

h) The effects on the divorced spouses with respect to intestate succession, testamentary dispositions, donations and insurance provisions on beneficiaries in accordance with the Family Code and jurisprudence will be observed;

i) The legitimate and adopted children of divorced parents shall retain their legal status and legitimacy; a child conceived or born within three hundred (300) days after the filing of a petition for absolute divorce shall be considered legitimate, unless the ground for divorce is the marital infidelity of the wife; and

j) After the filing of the petition for divorce, the spouses shall be entitled to live separately. The court shall appoint a competent third party as administrator to manage the absolute community or conjugal partnership property during the pendency of the divorce proceedings in order to prevent dissipation of the common properties. Prior to the discharge of the administrator's functions and duties, the administrator shall post a surety bond approved by the proper Family Court. The administrator shall have the same powers and duties as those of a guardian under the Rules of Court.

SECTION 15. *Support for children.* – The proper Family Court shall provide for child support pursuant to the pertinent provisions of the Family Code. The court shall give the paramount consideration to the best interest of the children in accordance with Article 194 of the Family Code.

In considering the award of support, the proper Family Court shall consider relevant circumstances of the case, and of the parties. On application of either party, the proper Family Court may order an increase or decrease in the amount of support upon showing of a substantial and material change of circumstances.

In case the offending spouse is an overseas Filipino, a copy of the order to grant spousal and child support shall be furnished to the Department of Migrant Workers and the overseas Filipino's employer for compliance.

SECTION 16. *Custody and Support Pendente Lite.* – During the pendency of the petition and in the absence of adequate provisions in a written agreement between the spouses, the court,

upon application of the proper party, shall provide for spousal support, and the custody and support of their common children. The court shall give the paramount consideration to the best interest of the children, as well as their choice of the parent with whom they wish to remain, in accordance with the Family Code. It shall also provide the appropriate visitation rights of the other parent.

SECTION 17. *Award for Damages.* – The proper Family Court may, as warranted by evidence, award actual, moral, and exemplary damages as provided for under the New Civil Code to the innocent spouse against the offending spouse.

SECTION 18. *Conversion of Pending Petitions.* - Parties who have pending petitions under Articles 36, 45, and 55 of the Family Code may convert their petitions to an action for absolute divorce under this Act without paying filing fees.

SECTION 19. *Recognition of Reconciliation.* - If the spouses have agreed to reconcile at any stage of the proceedings but before finality of judgment, a corresponding joint manifestation under oath duly signed by them shall be filed with the same court where the petition for absolute divorce was filed with the interests of the children duly protected. Upon hearing of the joint manifestation and the court finds it in order, the petition for divorce shall be dismissed.

SECTION 20. *Guidelines and Parameters for Reconciliation.* - The following shall be the guidelines or parameters for reconciliation:

a) Any reconciliation during the pendency of the divorce proceedings or after the finality of the divorce decree shall protect the interests of the concerned children;

b) The proper Family Court shall exercise due discretion as warranted by evidence which must protect the offended spouse of the children from future or recurrence of violence from the offending spouse whether or not to grant the joint manifestation of reconciliation in the following:

- (1) Cases which involve the acts of violence against women and their children under RA No. 9262, otherwise known as the “Anti-Violence Against Women and Their Children Act of 2004”, and
- (2) Cases of attempt against the life of the other spouse, a common child, or a child of the petitioner.

c) When the decree of absolute divorce is nullified upon reconciliation of the parties, the separation of property or any forfeiture of the share of the offending spouse already effected shall subsist, unless the spouses agree to revive their former property regime;

d) The reconciling spouses shall also submit a plan of reconciliation under oath which shall include the following:

- (1) The properties to be contributed anew to the restored regime;
- (2) The properties to be retained as separate properties of each spouse;
- (3) The names of all their known creditors, their addresses, and the amounts owing to each;
- (4) The joint manifestation and verified plan of reconciliation shall be furnished to the creditors named therein;
- (5) After due hearing, the court shall issue include the protection of the interest of creditors;
- (6) The order shall be registered in the proper registry of deeds; and
- (7) The recording of the order in the proper registry of deeds shall not prejudice any creditor not listed or notified.

SECTION 21. *Penalty.* – A spouse who is a party to a petition for absolute divorce who is found by the court to have used threats or coercion to compel the other spouse in filing the petition, and spouses who are guilty of collusion, shall be punished with imprisonment of five (5) years and a fine of three hundred thousand pesos (PhP300,000.00).

Any offending spouse in default of providing the required child support or spousal support or alimony under this Act shall be charged be charged in contempt of court and shall be imposed a fine of:

- (a) Fifty thousand pesos (PhP50,000.00) for the first default,
- (b) One hundred thousand pesos (PhP100,000.00) for the second default, and
- (c) Two hundred thousand pesos (PhP200,000.00) each for the third and the succeeding defaults.

The offending spouse found guilty of indirect contempt of court shall be punished with imprisonment thereupon until the obligation for spousal and/or child support has been paid.

SECTION 22. *Options and Remedies.* – The concerned spouse shall have the option to file a petition for dissolution of marriage, annulment of marriage, or legal separation under Articles 36, 45, and 55, respectively, of the Family Code or a petition or joint petition of absolute divorce under this Act.

SECTION 23. *Appeals.* – Within fifteen (15) calendar days from the receipt of the decree of absolute divorce, any of the spouses may file an appeal with the Court of Appeals under the pertinent provisions of the Rules of Court.

SECTION 24. *Community-based Pre-nuptial and Post-matrimonial Programs and Activities.* - The National Government, through the DSWD, shall fund the implementation of community-based pre-nuptial, reconciliatory phase or cooling-off counseling, and post-matrimonial programs and activities aimed at strengthening the marital and family life of Filipinos.

These social welfare interventions, which will protect the stability of Filipino Families, which will protect the stability of Filipino Families, will be instituted by DSWD, in provinces, cities, and clusters of municipalities in the entire country, while observing the local cultures and customs that are prevalent in each locality.

SECTION 25. *Community-Based Women's Desk.* - The frontline desk in every barangay established under R.A. No. 9710, or the "Magna Carta of Women," shall be readily available and easily accessible to provide support and assistance to victims, especially women, of all forms of abuse and acts of violence identified under this Act and those provided under R.A. No. 9262.

SECTION 26. *Attorney's Fees.* - Subject to the plenary authority of the Supreme Court to regulate the practice of law, in petitions with no court-assisted petitioner, the attorney's fees, inclusive of acceptance fee, appearance fees, and success fee, shall not exceed Fifty thousand pesos (PhP50,000) for the entire proceedings. However, the petitioner and counsel can mutually agree on a higher rate of attorney's fees, taking into consideration the petitioner's financial capacity.

SECTION 27. *Creation of More Positions of Public Attorneys and Family Courts.* - The Department of Justice is authorized to create the necessary additional positions for public attorneys under the Public Attorney's Office to advocate for court-assisted petitioners.

SECTION 28. *Congressional Oversight Committee on the Absolute Divorce Act.* - There is hereby created a Congressional Oversight Committee (COC) composed of five (5) members each from the Senate and the House of Representatives. The members from the Senate and the House of Representatives shall be appointed by the Senate President and the Speaker, respectively, with at least one (1) member representing the Minority.

The COC shall be headed by the respective Chairs of the Committee on Health and Demography of the Senate and the Committee on Population and Family Relations of the House of Representatives. The Secretariat of the COC shall come from the existing Secretariat personnel of the Senate and the House of Representatives committees concerned.

The COC shall monitor and ensure the effective implementation of this Act, recommend the necessary remedial legislation or administrative measures, and shall conduct a review of this Act every five (5) years from its effectivity. The COC shall perform such other duties and functions as may be necessary to attain the objectives of this Act.

SECTION 29. *Appropriations.* The amount necessary for the initial implementation of this Act shall be charged against the current year's appropriations of the DSWD and the DOJ.

Thereafter, such sums as may be necessary for the implementation of this Act shall be included in the annual General Appropriations Act.

SECTION 30. *Implementing Rules and Regulations.* – The DSWD as the lead agency, together with the DOJ, the Philippine Commission on Women (PCW), the National Youth Commission (NYC), and at least two (2) representatives from women’s organizations with proven track record in women and gender rights advocacy, and two (2) representatives from children’s organizations with proven track record in child rights advocacy, shall promulgate the Implementing Rules and Regulations (IRR) within sixty (60) days after the effectivity of this Act.

SECTION 31. *Separability Clause.* – If any part or provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain in force and effect.

SECTION 32. *Repealing Clause.* – All laws, executive orders, issuances, decrees, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SECTION 33. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,