

TWENTIETH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

*Introduced by Representative Rufus B. Rodriguez and
Representative Maximo B. Rodriguez, Jr.*

House Bill No. 6178

EXPLANATORY NOTE

In the case of Garcia-Recio vs. Recio (G.R. No. 138322, October 2, 2001), the Supreme Court ruled that, “a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. However, the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence”. Further, it ruled that, “the certificate mentioned in Article 21 of the Family Code would have been sufficient to establish the legal capacity of respondent, had he duly presented it in court. A duly authenticated and admitted certificate is prima facie evidence of legal capacity to marry on the part of the alien applicant for a marriage license.”

This ruling made it a requirement that a foreign divorce decree be recognized before it can be enforced by the court in the Philippines, thereby putting to naught the concept of equity for the Philippine spouse

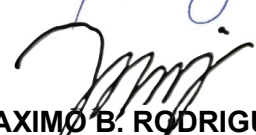
However, in Republic v. Manalo (G.R. No. 221029, April 24, 2018), the Supreme Court ruled that even if it was the Filipino spouse who initiated and obtained the divorce decree, the same may be recognized in the Philippines.

Then, in Racho vs Tanaka (G.R. No. 199515, June 25, 2018), the Supreme Court ruled that, “Thus, Article 26 should be interpreted to mean that it is irrelevant for courts to determine if it is the foreign spouse that procures the divorce abroad. Once a divorce decree is issued, the divorce becomes “validly obtained” and capacitates the foreign spouse to marry. The same status should be given to the Filipino spouse.” “It would be inherently unjust for a Filipino woman to be prohibited by her own national laws from something that a foreign law may allow. Parenthetically, the prohibition on Filipinos from participating in divorce proceedings will not be protecting our own nationals.” And that, “Recent jurisprudence, therefore, holds that a foreign divorce may be recognized in this jurisdiction as long as it is validly obtained, regardless of who among the spouses initiated the divorce proceedings”.

In view of the recent rulings of the Supreme Court, it is apt that the Family Code be amended to reflect said rulings and to ensure that the Filipino spouse is not be placed at a disadvantage considering that the foreign spouse is already free to remarry.

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


RUFUS B. RODRIGUEZ


MAXIMO B. RODRIGUEZ, JR.

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AN ACT

RECOGNIZING THE CAPACITY OF THE FILIPINO SPOUSE TO REMARRY WHEN
EITHER SPOUSE HAS OBTAINED A FOREIGN JUDICIAL DECREE OF ABSOLUTE
DIVORCE, AMENDING FOR THE PURPOSE EXECUTIVE ORDER NO. 209, OTHERWISE
KNOWN AS THE FAMILY CODE OF THE PHILIPPINES

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

SECTION 1. Article 13 of Executive Order No. 209, otherwise known as the Family Code of
the Philippines, is hereby amended to read as follows:

"Art. 13. In case either of the contracting parties has been
previously married, the applicant shall be required to furnish, instead of the
birth or baptismal certificate required in the last preceding article, the death
certificate of the deceased spouse or the judicial decree of the absolute
divorce **OBTAINED BY THE EITHER SPOUSE DULY AUTHENTICATED
BY THE PHILIPPINE CONSUL IN THE COUNTRY WHERE THE
DECREE WAS OBTAINED**, or the judicial decree of annulment or
declaration of nullity of his or her previous marriage.

**"THE FILIPINO SPOUSE NEED NOT SEEK JUDICIAL
RECOGNITION OR ENFORCEMENT OF THE FOREIGN JUDICIAL
DECREE OF ABSOLUTE DIVORCE AND ITS REGISTRATION BY THE
CIVIL REGISTRAR SHALL BE SUFFICIENT FOR THE ISSUANCE OF A
MARRIAGE LICENSE."**

"In case the death certificate cannot be secured, the party shall
make an affidavit setting forth this circumstance and his or her actual civil
status and the name and date of death of the deceased spouse."

SEC. 2. Article 26 of Executive Order No. 209, otherwise known as the Family Code of the
Philippines, is likewise amended to read as follows:

"Art. 26. 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 this country,
except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

"Where a marriage between a Filipino citizen and a foreigner is
validly celebrated and a JUDICIAL DECREE OF ABSOLUTE divorce is
thereafter validly obtained abroad by [the alien] **EITHER** spouse
[capacitating him or her to remarry], the Filipino spouse shall **THEREUPON
ACQUIRE THE** [likewise have] capacity to remarry under Philippine law."

SEC. 3. If any provision of this Act is declared unconstitutional or invalid, the other provisions not affected by such declaration shall remain in full force and effect.

SEC. 4. All laws, decrees, executive orders, issuances, letters of instruction, rules and regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 5. This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,