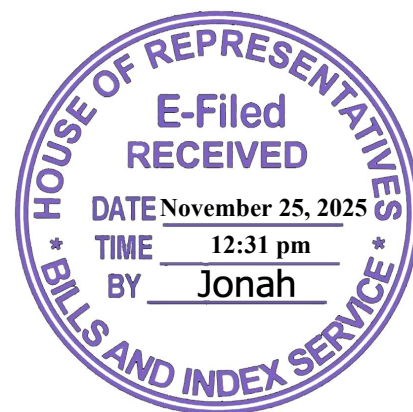


**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Hills, Quezon City**

**Twentieth Congress
First Regular Session**

House Bill No. 6352



**Introduced by Honorable Representatives
DADAH KIRAM ISMULA (Akbayan Partylist)
JOSE MANUEL TADEO "CHEL" I. DIOKNO (Akbayan Partylist)
PERCIVAL V. CENDAÑA (Akbayan Partylist)
KAKA BAG-AO (Dinagat Islands)**

**AN ACT EXPANDING THE GROUNDS FOR DISSOLUTION OF MARRIAGE,
INSTITUTING DIVORCE AND SETTING THE PROCEDURES THEREOF,
PROVIDING PROTECTIONS TO THE PARTIES TO THE MARRIAGE AND ITS
COMMON CHILDREN, AMENDING FOR THIS PURPOSE EXECUTIVE ORDER
NO. 209, OR THE FAMILY CODE OF THE PHILIPPINES**

EXPLANATORY NOTE

Article III, Section 1 of the 1987 Constitution states: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." This provision ensures that individuals in similar circumstances are treated equally under the law, regardless of religion, belief, or background.

At present, the Family Code provides limited legal remedies for ending a marriage, such as legal separation and annulment. However, these remedies fall short of offering a complete dissolution of marital ties. In contrast, Presidential Decree No. 1083, or the Code of Muslim Personal Laws, grants Muslim Filipinos the right to obtain an absolute divorce.

This unequal treatment creates a constitutional inequality. It grants one group who is in a similar situation with another group a legal remedy that is denied to another group, thereby, violating the constitutional guarantee of equal protection. According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly situated individuals in a similar manner.¹

¹ *Biraogo v. The Philippine Truth Commission*, G.R. No. 192935, 7 December 2010.

Thus, the enactment of the Divorce Bill is not merely a legislative reform but is a constitutional necessity. It seeks to correct a legal inequality by ensuring that all Filipinos, regardless of faith or cultural background, are afforded equal access to legal remedies for ending a marriage.

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



DADAH KIRAM ISMULA
Akbayan Representative



JOSE MANUEL TADEO
"CHEL" I. DIOKNO
Akbayan Representative



PERCIVAL V. CENDAÑA
Akbayan Representative



KAKA J. BAG-AO
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*Be it enacted by the Senate and the House of Representatives of the Philippines in
Congress assembled:*

1 **SECTION 1. *Section Title.*** - This Act shall be entitled as the "Divorce Act".

2
3 **SEC. 2. *Declaration of Policy.*** - While the State continues to recognize the sanctity
4 of family life and endeavors to protect and strengthen the family as a basic
5 autonomous social institution, it is also duty-bound to safeguard the dignity of every
6 human person, guarantee full respect for human rights, and ensure the fundamental
7 equality before the law of men and women.

8
9 The State vows to protect the equality of men and women in all matters relating
10 to marriage and family relations. This includes ensuring their right to enter into and
11 leave marriages without prejudice to personal or religious beliefs.

12
13 Recognizing that a person's well-being is a human rights concern, the State
14 commits to promote and protect the well-being of all persons. It is a commitment
15 that should extend to circumstances whereby this well-being is being compromised

1 by the inability to break free from irremediably broken marriages and start anew in
2 healthier family and living arrangements.

3
4 Finally, cognizant of its recognized policy to safeguard children from all forms
5 of abuse and neglect, the State shall likewise protect children from the pain, stress,
6 and agony of witnessing regular marital clashes with no end in sight. The best
7 interests of children shall be the paramount consideration in all matters concerning
8 them.

9 Towards this end, the State shall adopt a divorce policy in keeping with the
10 fundamental freedoms guaranteed under the Constitution, the rights guaranteed
11 under the Magna Carta for Women, the provisions of the Universal Declaration of
12 Human Rights, the International Convention of Civil and Political Rights, the
13 Convention on the Elimination of All Forms of Discrimination against Women,
14 Convention on the Rights of the Child, and other International Human Rights
15 Instruments of which the Philippines is a party.

16
17 **SEC. 3. Guiding Principles.** - The following shall be the guiding principles of the
18 Act:

- 19 (a) Recognizing the family as the foundation of the nation, the State shall afford
20 the family necessary protection and assistance to ensure that it is an
21 environment conducive to the growth and well-being of all its individual
22 members so that it can fully assume its responsibilities within the community.
- 23 (b) The inherent dignity and the equal and inalienable rights of all members of the
24 family, the protection of all persons from abuse and violence, gender equality,
25 and the best interests of children are the fundamental guiding principles of this
26 legislation and shall be read alongside the responsibility of the State to protect
27 and strengthen the family as an autonomous social institution.
- 28 (c) Absolute divorce shall be judicially decreed based on grounds that existed after
29 the celebration of a valid marriage.
- 30 (d) The State shall assure that the court proceedings for the grant of absolute
31 divorce shall be affordable, expeditious, and inexpensive, particularly for
32 indigent litigants.
- 33 (e) A divorce decree shall include provisions for the care and custody of children,
34 termination, and liquidation of the conjugal partnership of gains or the absolute
35 community, and spousal support for the aggrieved spouse. In resolving issues
36 of child custody, visitation, and support, issues of sexual orientation, gender

1 identity or expression, and sexual characteristics will not be made a factor in
2 deciding the award/s.

- 3 (f) In the invocation of the grounds for absolute divorce, the provisions of this act
4 shall not be construed as permitting any form of discrimination on the basis of
5 age, racial or ethnic origin, religious belief or activity, political inclination or
6 conviction, social class, sex, gender, sexual orientation, gender identity and
7 expression, sexual characteristics, marital or relationship status, disability, HIV
8 status, health status or medical history, language, physical features, or other
9 status.

10
11 **SEC. 4. Definition of Terms.** – For the purpose of this Act, the following terms shall
12 mean:

- 13 (a) *Absolute divorce* refers to the legal termination of a marriage by a court in a
14 legal proceeding, requiring a petition or complaint for divorce by one party,
15 which will have the effect of returning both parties to the status of single for
16 all legal intents and purposes, including the right to contract a subsequent
17 marriage;

- 18 (b) *Child* refers to a common child of the spouses below eighteen (18) years of age
19 or eighteen (18) years and older but who is incapable of taking care of oneself
20 as defined under Republic Act No. 7610, as amended, and shall include an
21 offspring by legal adoption or one whose custody and care is judicially decreed
22 to be given to a guardian;

- 23 (c) *Child custody* refers to the parental authority and care of a child as decreed by
24 a proper court when the parents of the child are divorced;

- 25 (d) *Support* refers to the amount indispensable for sustenance, dwelling, clothing,
26 medical attendance, education, and transportation, in keeping with the financial
27 capacity of the family. The education of the person entitled to be supported
28 shall include his schooling or training for some profession, trade or vocation,
29 even beyond the age of majority. Transportation shall include expenses in going
30 to and from school, or to and from place of work;

- 31 (e) *Proper court* refers to the proper family court established under Republic Act
32 No. 8369 or the "Family Courts Act of 1997", which shall exercise jurisdiction
33 both over the absolute divorce proceeding and the persons of the petitioner
34 and respondent spouses;

- 1 (f) *Marital infidelity* refers to the extramarital sexual relations of a spouse;
2 (g) *Separation* refers to the absolute cessation of marital relations, duties, and
3 rights, with the intention of perpetual separation.
4

5 **SEC. 5. Grounds.** – The following are the grounds for a judicial decree of absolute
6 divorce:

- 7 (a) Five continuous years of separation, with or without a judicial decree of
8 separation; *Provided*, that when the spouses are legally separated by judicial
9 decree under Article 55 of the Family Code of the Philippines, a two (2) year-
10 period from the time of the issuance of the decree of legal separation will
11 suffice;
12 (b) The commission of the crime of rape by the respondent-spouse against the
13 petitioner-spouse, whether before or after the celebration of marriage;
14 (c) The grounds for legal separation under article 55 of the Family Code or any
15 other special law; *Provided*, that, physical violence or grossly abusive conduct
16 under article 55(1) need not be repeated; *Provided* further, that, lesbianism
17 and homosexuality per se under article 55(6) shall not be a ground, unless
18 either or both spouses commit marital infidelity;
19 (d) A final decree of absolute divorce validly obtained in a foreign jurisdiction;
20 (e) Irreconcilable marital differences or irreparable breakdown of the marriage,
21 despite earnest efforts at reconciliation.
22

23 **SEC. 6. Procedure for obtaining absolute divorce.** - The established and
24 recognized procedures for securing legal separation, annulment of marriage and
25 voiding of a marriage under the Family Code of the Philippines, as far as practicable,
26 shall govern the process of obtaining a judicial decree of absolute divorce from the
27 proper family court which shall be commenced by the filing of a verified petition for
28 absolute divorce by the petitioner-spouse or petitioner-spouses. A petition for
29 absolute divorce may be filed separately or jointly by the spouses on the basis of
30 Section 5 of this Act. A joint petition filed by both spouses with common children
31 should be accompanied by a joint plan for parenthood which provides for the support,
32 parental authority, custody, and living arrangements of the common children. If the

1 court determines that the joint plan for parenthood is adequate to protect the rights
2 and interests of the common children, the court shall approve the joint plan for
3 parenthood together with the grant of a divorce decree if warranted.

4
5 All creditors of the absolute community or of the conjugal partnership of gains,
6 as well as the personal creditors of the spouses, shall be listed in the petition for
7 absolute divorce.

8
9 **SEC. 7. Indigent litigants.** - Upon application by the petitioner-spouse and
10 presentation of evidence of indigency, the court shall waive the payment of filing fees
11 and other costs of litigation and shall appoint a *counsel de oficio* and assign social
12 workers, psychologists, and psychiatrists, preferably from appropriate government
13 agencies, to assist the petitioner and the common children of the parties.

14
15 In evaluating evidence of indigency, the court may take into consideration the
16 petitioner's income, property, and capacity to afford the services of counsel after
17 considering his or her basic necessities for himself or herself and his or her family.
18 The court may also consider if the petitioner is from a marginalized group or entity
19 and is not financially able to afford the services of counsel under the circumstances,
20 such as in the case of farmers, indigenous peoples, victims of gender violence, and
21 other similar causes.

22
23 **SEC. 8. When a divorce is secured in any other country.** – Either or both
24 spouses shall seek judicial recognition or enforcement of the foreign decree
25 terminating a marriage in accordance with existing laws and rules; provided, that the
26 spouse who did not participate in the divorce proceedings may seek relief in the proper
27 court with respect to the incidents of the judgment.

28
29 **SEC. 9. Effects of absolute divorce.** - The decree of absolute divorce shall have
30 the following effects:

31 (a) The marriage bonds shall be dissolved and the divorced spouses shall have the
32 right to contract marriage again.

33 (b) The custody of the minor children, and the visitation rights of the spouse not
34 granted primary custody, shall be decided by the proper court in accordance
35 with the best interests of the children, subject to the provisions of Article 213
36 of the Family Code of the Philippines, taking into consideration that no child
37 under seven (7) shall be separated from the mother unless the proper court

1 finds compelling reasons to order otherwise. A child over the age of seven (7)
2 should be asked for his or her opinion regarding custody and visitation rights,
3 and this opinion should be given full consideration by the court in accordance
4 with the best interest of the child. In no case will child custody be given to the
5 offender-spouse when the ground/s for the divorce falls under Article 55,
6 paragraphs (1), as herein modified, (2), (3), (4), (5), (7), (8), (9), and (10) of
7 the Family Code of the Philippines.

8 (c) Unless otherwise agreed upon in a marriage settlement executed before the
9 celebration of the marriage, the conjugal partnership of gains or the absolute
10 community shall be dissolved and liquidated, and the assets shall be divided
11 between the spouses, excluding the paraphernal or exclusive properties of
12 either spouse, in accordance with the Family Code of the Philippines. The
13 partition and distribution of the properties of the spouses, upon the option of
14 the spouses, shall be recorded in the appropriate civil registry and registries of
15 property, otherwise the same shall not affect third persons.

16 (d) The liabilities of the spouses to creditors for family expenses shall remain
17 solidary.

18 (e) Donations by reason of marriage shall remain valid, except that if the donee is
19 an offender-spouse under article 55, paragraphs (1), as herein modified, (2),
20 (3), (4), (5), (7), (8), (9), and (10) of the Family Code of the Philippines, such
21 donations made to said donee are revoked by operation of law;

22 (f) Either spouse may revoke the designation of the other spouse as beneficiary in
23 any insurance policy, even if such designation be stipulated as irrevocable.

24 (g) With respect to testate and intestate succession, the divorced spouses shall no
25 longer be compulsory heirs to one another.

26 (h) The legitimate, legitimated, and adopted children of divorced parents shall
27 retain their legal status and legitimacy. Children conceived or born prior to the
28 finality of the divorce decree shall be considered legitimate.

29
30 **SEC. 10. Support.** - The proper court shall provide for child support pursuant to the
31 pertinent provisions of the Family Code. The court shall give paramount consideration

1 to the best interest of the children in accordance with article 194 of the Family Code
2 of the Philippines.

3
4 The proper court shall provide for spousal support; provided, that, the spouse
5 who gave cause for divorce shall not be entitled to spousal support.

6
7 In considering the award of support, the proper court shall consider relevant
8 circumstances of the case and of the parties. On application of either party, the proper
9 court may decree an increase or decrease in the amount of support upon a showing
10 of a substantial and material change of circumstances.

11
12 In case the respondent-spouse is an OFW, a copy of the order to grant spousal
13 support, if any, and child support shall be furnished to the Philippine Overseas
14 Employment Administration (POEA) and the Department of Migrant Workers (DMW).

15
16 **SEC. 11. Custody and support pendente lite.** – During the pendency of the action
17 and in the absence of adequate provisions in a written agreement between the
18 spouses, the court, upon application of the proper party, shall provide for the support
19 of the spouses and the custody and support of their common children. The court shall
20 give paramount consideration to the best interest of the children, as well as their
21 choice of the parent with whom they wish to remain, in accordance with the Family
22 Code of the Philippines. It shall also provide the appropriate visitation rights of the
23 other parent.

24
25 **SEC. 12. Recognition of reconciliation.** – If the spouses have agreed to reconcile
26 during the pendency of the divorce proceedings or before the finality of judgment of
27 divorce, a corresponding joint manifestation under oath duly signed by them shall be
28 filed with the same court where the petition for absolute divorce was filed, with the
29 interests of the children duly protected. Upon filing of the joint manifestation of
30 reconciliation, the divorce proceedings shall thereby be terminated at whatever stage.

1 The court's order containing the foregoing shall be recorded in the proper civil
2 registries.

3
4 **SEC. 13. Penalties.** – Any person in default of providing court-ordered child support
5 and/or court-ordered spousal support, shall be punished by *prision mayor* and shall
6 be fined in the amount of one hundred thousand pesos (PhP 100,000.00) to not more
7 than three hundred thousand pesos (PhP 300,000.00) on top of unpaid child support
8 and/or spousal support with compounding legal interest computed from date of default
9 until full payment. Interest due on the principal amount accruing as of judicial demand
10 shall separately earn legal interest from the time of judicial demand until full payment.

11
12 Notwithstanding other laws to the contrary, the court shall order an appropriate
13 percentage of the income or salary of the respondent to be withheld regularly by the
14 respondent's employer for the same to be automatically remitted directly to the other
15 spouse. Failure to remit and/or withhold or any delay in the remittance of support to
16 the other spouse and/or their common children without justifiable cause shall render
17 the respondent or his or her employer liable for indirect contempt of court.

18
19 **SEC. 14. Appeals.** – A decree of divorce validly obtained is final and executory insofar
20 as the capacity to remarry is concerned. Orders for child support, child custody and
21 spousal support are immediately executory pending appeal. Either of the parties may
22 file at any time for a motion to review orders of child support, custody, and spousal
23 support, on the ground of a material change in the factual circumstances upon which
24 the orders of child support, custody and spousal support were predicated. The court
25 that granted the decree of divorce shall have jurisdiction over the motions for review.

26
27 **SEC. 15. Implementing rules and regulations.** – The Department of Justice
28 (DOJ) as lead agency, together with the Department of Social Welfare and
29 Development (DSWD), the Philippine Commission on Women (PCW), the National
30 Youth Commission (NYC), Children's Welfare Commission, the Office of the Solicitor
31 General, two representatives from women's organizations with proven track record in
32 women and gender rights advocacy to be identified by the PCW, two representatives

1 from children's organizations with proven track record in child rights advocacy to be
2 identified by the NYC, and two gender and family law experts from the UP Law Center
3 shall promulgate the Implementing Rules and Regulations within sixty (60) days after
4 the effectivity of this Act.

5
6 **SEC. 16. *Separability Clause.*** - If, for any reason, any part or provision of this Act
7 is held unconstitutional or invalid, the remaining parts or provisions not affected will
8 continue in full force and effect.

9
10 **SEC. 17. *Repealing Clause.*** - All laws, decrees, executive orders, proclamations,
11 rules and regulations, and other issuances, or parts thereof, inconsistent with the
12 provisions of this Act, are hereby repealed, amended, or modified accordingly.

13
14 **SEC. 18. *Effectivity.*** - This Act takes effect fifteen (15) days after its publication in
15 at least two (2) newspapers of general circulation.

16
17 Approved,