

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City

SEVENTEENTH CONGRESS  
First Regular Session

House Bill No. 116



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**Introduced by Rep. Edcel C. Lagman**

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### **EXPLANATORY NOTE**

Most marriages are supposed to be solemnized in heaven. But the reality is, many marriages plummet into hell – in irremediable breakdown, spousal abuse, marital infidelity and psychological incapacity, among others, which bedevil marriages.

It is because of the existence of failed marriages beyond redemption that all countries in the world, except the Philippines, have legislated the grant of divorce in varying liberality (Sweden) and stringency (Chile). In fact, it is said that the advent of divorce is contemporaneous with the institution of marriage.

The availability of absolute divorce in the Philippines dates back to the pre-Spanish times. Divorce was then institutionalized for several reasons such as infertility, infidelity, failure to fulfill familial obligations, among others. Should a marriage end in divorce and the wife was found to be at fault, her family was obliged to return the dowry (bride wealth). On the other hand, if it was the husband who was the erring spouse, he lost his rights to the dowry. The couple would get equal custody of their children. (Torralba-Titgemeyer, 1997)

Divorce has also been an accepted custom of indigenous Filipinos. In pre-colonial times, a number of Philippine tribes practiced absolute divorce. Among them were the Gaddang of Nueva Vizcaya, the Igorot and Sagada of the Cordilleras, the Manobos, Bila-ans and the Tagbanwas of Palawan.

Throughout colonial times, Spanish rulers in the Philippines adopted the *Siete Partidas* of the Spanish Civil Code first compiled during the reign of Alfonso X of Castile in the mid-1200s and implemented by Spain in its colonies. This law only allowed legal separation. Also governing laws on divorce during this period were the provisions of Canon Law and of the Council of Trent, which were implemented by the civil authorities of Spain in the Philippines. Under the foregoing statutes, relative divorce or mere legal separation, may be granted if one of the spouses wished to join a religious order with the permission of the other spouse; adultery by either the husband or wife; and if one of the spouses became a heretic. (Reyes, 1953)

During the American occupation, the Americans introduced a law legalizing absolute divorce which was enacted by the Philippine Legislature in 1917 under Act No. 2710, which allowed divorce on the grounds of adultery on the part of the wife and concubinage on the part of the husband, upon proof of prior conviction.

On 23 March 1943, pursuant to the authority conferred on him by the Commander-in-Chief of the Japanese Imperial Forces in the Philippines, the Chairman of the Philippine Executive Commission issued Executive Order No. 141 providing a new

A handwritten signature in dark ink, possibly reading "Edcel C. Lagman".

divorce law. E.O. 141 expanded the grounds for divorce to include, among others, attempt of one spouse against the life of the other; contagious diseases contracted by either spouse; incurable insanity; repeated bodily violence; and abandonment for three consecutive years.

In 1950, the Civil Code of the Philippines took effect and repealed all laws pertaining to absolute divorce. It provides only for legal separation or relative divorce, with the exception of Republic Act No. 394 which allowed absolute divorce among Muslims residing in non-Christian provinces for a period of 20 years from the date of its approval.

In deference to Islam which recognizes divorce, Presidential Decree No. 1083 on the "Code of Muslim Personal Laws" was enacted in 1977 giving Muslim Filipinos the right to obtain absolute divorce. The law allows divorce only if both parties are Muslim or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

But acceptance of divorce has not been confined to Islam, Judaism, Buddhism and the other faiths. Divorce has also been recognized by Christians and the issue of divorce has been discussed in the Bible. Consider the following biblical quotations and references:

- "Jesus said, and I say to you, whoever divorces his wife, **except for immorality**, and marries another woman commits adultery," (Matthew 19:9).
- "It has been said, 'Anyone who divorces his wife must give her a **certificate of divorce**.' But I tell you that anyone who divorces his wife, except for sexual immorality, makes her the victim of adultery, and anyone who marries a divorced woman commits adultery." (Matthew 5:31-32)
- "Some Pharisees came and tested him by asking, 'Is it lawful for a man to divorce his wife?' 'What did Moses command you?' he replied. They said, '**Moses permitted a man to write a certificate of divorce and send her away.**'" (Mark 10:2-4)
- The apostle Paul added to the teachings of Jesus what is called the "Pauline privilege". According to this concept, Paul taught that if an unbelieving spouse leaves a believer, **the believer is not bound to the marriage relationship, but is free to remarry** (1 Corinthians 7:15). And some people recognize such a thing as a "constructive desertion," which would be when a husband so brutalizes his wife that it is impossible to live with him any longer; or when a wife has so harassed, or brutalized her husband that it becomes impossible for him to stay with her. When that happens, whether or not the person actually moves out, **the situation is the equivalent of desertion, and divorce and remarriage are permissible.**

Canonical divorce or declaration of nullity of a marriage allowed by the Catholic Church today mirrors the tradition of divorce in the Bible. This declaration of nullity states that the marriage has been thoroughly investigated by a tribunal of three judges two of who are clerics, and found to be lacking in the essential characteristics of a Christian sacramental union from the time of consent.



The late Jaime Cardinal Sin succinctly explains why the Catholic Church issues declarations of nullity for some marriages: "While the Catholic Church teaches and believes in the permanence of the marriage bond and strives to promote stable and faithful marriage, she also recognizes that some unions do not survive because they were lacking from the very beginning some essential ingredients without which there could not be a valid marriage. When such a lack of essential element can be proven through demonstrable evidence in Church court, the nullity of that marriage can be declared."

In irremediably broken marriages, there is nothing more to put asunder or separate. The marriage ties have been previously severed. Absolute divorce is granted after the fact of a marital breakdown. To paraphrase the Supreme Court in *Te vs. Te* (G.R. No. 161793, February 13, 2009), what is done is giving a decent burial to a cadaver of a marriage.

Divorce has been with us as long as marriage has. Marriages fail and some couples, despite their best intentions and best efforts, will be unable to save their marriages. A failed marriage is not a modern tragedy. But divorce is not always the harrowing tragedy it is portrayed to be; what is ultimately more tragic is staying in a horrific marriage for reasons ranging from "saving face" to the usual "for the sake of the children".

Politicians playing to the gallery are wont to declare that they are against divorce primarily because of the negative effects it will have on children. But more current research indicates the negative effects of divorce on children have been greatly exaggerated. We have all been conditioned to believe that children of divorced parents suffered from depression, dropped out of school, and became delinquents who got in trouble with the law. However, studies in the United States now show that children with depression and conduct disorders demonstrated these problems **pre-divorce** because of parental conflict and an unstable, even violent home life, of a failed marriage. Scholars are now postulating that marital conflict, rather than the divorce itself, is the single most critical determining factor in children's post-divorce adjustment.

The American Psychological Association in its article entitled "An Overview of the Psychological Literature on the Effects of Divorce on Children" concludes that "the long-term consequence for most children of divorce is resiliency rather than dysfunction" and "research indicates that marital conflict rather than divorce or post-divorce conflict is a more important predictor of child adjustment."

In Canada, children of divorced parents, now adults and with their own families, enumerate what they believe are the benefits they gained from the divorce of their parents: (1) they became more resilient and adaptable; (2) they grew more self-sufficient; (3) they developed an increased sense of empathy towards others; (4) they did not take their own marriages for granted; and (5) they got to know both their parents better because of more quality time spent together.

Finally, the institution of absolute divorce is a pro-woman legislation for the following reasons:

1. Traditionally, in a marriage relation, the husband is more ascendant than the wife. It is the woman who is usually brutalized and it is the man who philanders and gets away with it.



2. Under these foreboding and unequal circumstances, a wife needs an absolute divorce more than the husband.

3. In divorce proceedings, the wife as the innocent spouse, needs a court-decreed alimony and support for the child or children under her custody with corresponding fines and contempt of court for delinquency in providing financial support.

4. Absolute divorce is not only a women's issue. It is a poor women's issue. Poor women cannot afford the exorbitant expense for legal separation and/or annulment of marriage.

5. An absolute divorce is a merciful liberation of the hapless wife from a long-dead marriage.

Verily, in view of the foregoing, the enactment of this bill is earnestly and urgently recommended.



**EDCEL C. LAGMAN**



Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
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SEVENTEENTH CONGRESS  
Frist Regular Session

House Bill No. 116

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**AN ACT  
INSTITUTING ABSOLUTE DIVORCE IN THE PHILIPPINES  
AND FOR OTHER PURPOSES**

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

SECTION 1. *Title.* – This Act shall be known as “The Absolute Divorce Act of 2016”.

SEC. 2. *Declaration of Policy.* – While the State continues to protect and preserve marriage as a social institution, it gives the opportunity to spouses in irremediably failed marriages to secure an absolute divorce decree under limited grounds and well-defined procedures to avoid abuse, save the children from the pain and stress of their parents’ marital clashes, and grant the divorced spouses the right to marry again for another chance to achieve marital bliss.

The State shall assure that the petition and proceedings for the grant of absolute divorce shall be inexpensive and affordable. Upon application by the petitioner, the proper court may waive the payment of filing fees and other costs of litigation.

SEC. 3. *Definition of Terms.* – For purposes of this Act, the following terms shall be defined as follows:

a) *Abandonment* – The departure of a husband or wife from the conjugal home without just cause and with a deliberate intention of creating a perpetual separation. The desertion amounts to an absolute cessation of marital relations and rights and duties. (***De la Cruz vs. De la Cruz***, G.R. No. L-19565, January 30, 1968).

b) *Absolute Divorce* – A divorce that is total and final where the husband and wife return to being single and have the right to contract marriage again.

c) *Adultery* – Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

d) *Alcohol abuse* – A disease characterized by addiction to alcoholic beverages, often resulting in impaired social functioning and in damage to the liver, heart and nervous system.

e) *Alimony* – An allowance for support made under court order to a divorced person by the former spouse, usually the chief provider during the marriage.



- f) *Alternating Custody* – The division of custody of a child or children between the divorced parents as decreed by the competent court.
- g) *Bigamous marriage* – The offense of willfully and knowingly contracting a second marriage while the first marriage, to the knowledge of the offender, is still subsisting and undissolved.
- h) *Canonical divorce* – The declaration of nullity of a marriage by an ecclesiastical tribunal of the Roman Catholic Church.
- i) *Child* – A male or female descendant of the first degree.
- j) *Child custody* – Parental authority and care of a child as decreed by the competent court when the parents of the child are divorced.
- k) *Child support* – A method of compensating a parent needing monies for raising and sheltering a child by the other parent who has the means to manage the expenses associated with child support. A court of law usually determines the payments, based on the income level of the other parent and the needs of the child. Stiff fines and even contempt of court can be imposed against a defaulting parent.
- l) *Competent court* – The proper Family Court established under Republic Act 8369 which shall exercise jurisdiction both over the divorce proceeding and the persons of the petitioner and respondent spouses.
- m) *Divided custody* – This term applies when a divorced couple shares the custody of any child or children as declared by the competent court.
- n) *Domestic/Marital abuse* – violent or aggressive behavior within the home, typically involving the violent abuse of a spouse by the other. It may be committed in the form of (a) physical violence; (b) psychological and emotional violence; (c) sexual violence; or (d) economic abuse.
- o) *Drug addiction* – Habitual dependence on a prohibited drug or drugs.
- p) *Foreign divorce* – A divorce obtained in a foreign country by one of the spouses and is valid in the foreign forum.
- q) *Homosexual* – This term applies to a person who is attracted to persons of the same sex.
- r) *Impotency* – The incapacity for copulation or propagating the species.
- s) *Insanity* – a condition which is "a manifestation in language or conduct of disease or defect of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or disordered function of the sensory or of the intellectual faculties, or by impaired or disordered volition" (Sec. 1039, Revised Administrative Code).
- t) *Irreconcilable differences* – The existence of overriding conflicts between a married couple that are so pronounced and beyond resolution as to make the marriage unworkable, and for which the law permits a divorce.
- u) *Legitime* – The portion of a parent's estate of which he cannot disinherit

his children, without a legal cause.

- v) *Lesbianism* – Romantic love, sexual activity or attraction between women.
- w) *Marital infidelity* – Sexual unfaithfulness on the part of a spouse.
- x) *Psychological incapacity* – The condition provided for in Article 36 of the Family Code of the Philippines which warrants the voiding of a marriage.
- y) *Relative Divorce – Mensa et thoro* or "divorce from bed-and-board" is a legal process by which a married couple may formalize a *de facto* separation while remaining legally married.
- z) *Sex reassignment surgery* – is the surgical procedure (or procedures) by which a transgender person's physical appearance and function of sexual characteristics are altered to resemble that of the identified or preferred gender.
- aa) *Sexually transmitted infections* – infections that are commonly spread by sex, especially vaginal intercourse, anal sex and oral sex.
- bb) *Transgender* – An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms - including *transgender*.
- cc) *Transsexual* – a person who emotionally and psychologically feels belonging to the opposite sex. Often, transsexuals are people who transition from one sex to another through the use of hormones and/or surgical procedures.

SEC. 4. *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 of the Philippines, which are restated as follows:
  - 1) Repeated 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 years, even if pardoned;
  - 5) Drug addiction or habitual alcoholism of the respondent;
  - 6) Lesbianism or homosexuality of the respondent;
  - 7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
  - 8) Sexual infidelity or perversion;
  - 9) Attempt by the respondent against the life of the petitioner;
  - 10) Abandonment of petitioner by respondent without justifiable cause for more than one year.
- b) 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 years of age or over but below twenty-one, 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, 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 and appears to be incurable; or
- 6) That either party was afflicted with a sexually transmissible disease found to be serious and appears to be incurable.

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

c) Psychological incapacity of either spouse as provided for in Article 36 of the Family Code of the Philippines, whether or not the incapacity was present at the time of the celebration of the marriage or later.

d) A divorce secured by one of the spouses in a foreign country that is established to be valid shall entitle the other spouse to petition for absolute divorce as a consequence of the said foreign divorce.

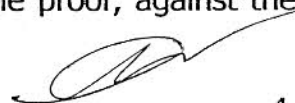
e) A canonical divorce or declaration of nullity of marriage issued by an ecclesiastical tribunal of the Roman Catholic Church, which was or is secured by one of the spouses, shall entitle the other to petition for absolute divorce based on the said canonical decree.

f) When one of the spouses undergoes a gender reassignment surgery, the other spouse is entitled to petition for absolute divorce with the transgender or transsexual as respondent or vice versa.

g) Irreconcilable marital differences and conflicts which have resulted in the breakdown of the marriage beyond repair, despite earnest and repeated efforts at reconciliation, shall entitle either spouse to petition for absolute divorce.

SEC. 5. *Procedure for obtaining absolute divorce.* – The established and recognized procedures for securing legal separation, annulment of marriage and voiding of a marriage under the Family Code of the Philippines shall govern the process of obtaining a judicial decree of absolute divorce from the proper Family Court.

The factors and grounds which militate against the grant of legal separation and the annulment and voiding of marriages as provided for in the Family Code of the Philippines shall likewise be assessed, upon competent and credible proof, against the





grant of absolute divorce.

SEC. 6. *Effects of Absolute Divorce.* – The following shall be the legal effects of a decree granting absolute divorce upon its finality:

- a) The divorced spouses shall have the right to contract marriage again.
- b) The conjugal partnership of gains or the absolute community shall be dissolved and liquidated with the legitime of the children recognized and preserved pursuant to the pertinent provisions of the Family Code of the Philippines.
- c) The proper court shall have the discretion to grant alimony, child support and child custody pursuant to the pertinent provisions of the Family Code of the Philippines and award damages under the Civil Code of the Philippines, and impose fines and contempt of court against the defaulting parties.
- d) 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 of the Philippines and jurisprudence will be observed.
- e) The legitimate and adopted children of the divorced parents shall retain their legal status.

SEC. 7. *Retroactivity.* – The petitioner spouse may invoke retroactively any of the grounds for absolute divorce, unless the same has been barred by condonation, pardon and/or voluntary and continuous cohabitation.

SEC. 8. *Prescription.* – Except for lack of parental consent and vitiated consent, the grounds for absolute divorce shall prescribe within ten (10) years from their occurrence and/or from the time of petitioner's knowledge of such cause.

SEC. 9. *Options and remedies.* – The concerned spouse shall have the option to avail as remedy the filing for absolute divorce, legal separation, annulment of marriage or voiding of marriage in the proper cases.

SEC. 10. *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.

SEC. 11. *Repealing Clause.* – The provisions of any law, Executive Order, Presidential Decree or any other issuance inconsistent with this Act are hereby repealed, modified or amended accordingly.

SEC 12. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation. The publication shall be made within seven (7) days from the approval of this Act.

Approved.

