

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

Senate
Office of the Secretary

19 JUL -8 P 3:20

SENATE

S. No. 288

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Introduced by Senator **PIA S. CAYETANO**

**AN ACT
INSTITUTING ABSOLUTE DIVORCE AND DISSOLUTION OF MARRIAGE IN
THE PHILIPPINES**

EXPLANATORY NOTE

While Executive Order No. 209 or the Family Code of the Philippines provides for grounds for the termination of marriage, this process of annulment is extremely adversarial in nature, unnecessarily tedious, and very expensive. This does not only escalate the conflict between the spouses but also affect the well-being of their common children. Consequently, most couples despite their irreconcilable differences are forced to remain in their unhappy, difficult, or even dysfunctional marriages.

This bill, which passed on third reading in the House of Representatives but failed to pass in the Senate during the 17th Congress, intends to ease the access to legal processes to terminate a marriage while at the same time preserves the chance for a post-marriage scenario that allows a peaceful and productive co-existence between the former spouses which is beneficial to the family.

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


PIA S. CAYETANO

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

1 Section 1. *Short Title.* – This Act shall be known as the "Absolute Divorce Act of
2 2018."

3 Sec. 2. *Declaration of Policy.* – While the State continues to protect and
4 preserve marriage as a social institution and as the foundation of the family, it gives
5 the opportunity to spouses in irremediably failed marriages to secure an absolute
6 divorce decree under limited grounds and well-defined judicial procedures to terminate
7 a continuing dysfunction of a long broken marriage; save the children from the pain,
8 stress, and agony consequent to their parents' constant marital clashes; and grant the
9 divorced spouses the right to marry again for another chance to achieve marital bliss.

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

12 (a) Absolute divorce shall be judicially decreed after the fact of an
13 irremediably broken marital union or a marriage vitiated from the
14 start;

15 (b) The State shall assure that the court proceedings for the grant of
16 absolute divorce shall be affordable and inexpensive, particularly for
17 court assisted litigants or petitioners;

18 (c) 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 No. 209 otherwise known as the Family Code of the Philippines;

(d) 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;

(e) A six (6)-month cooling-off period is instituted after the filing of a petition for absolute divorce as a final attempt of reconciling the concerned spouses;

(f) A divorce decree shall include provisions for the care and custody of children, protection of their legitimate, termination, and liquidation of the conjugal partnership of gains or the absolute community, and alimony for the petitioner; and

(g) Even as absolute divorce is instituted, the State has the role of strengthening marriage and family life by undertaking relevant pre-nuptial and post-matrimonial programs and activities.

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

(a) *Abandonment* refers to the departure of a husband or wife from the conjugal home without justifiable cause and with a deliberate intention of creating a perpetual separation;

(b) *Absolute Divorce* refers to the separation between married couples that is total and final where the husband and wife return to their status of being single with the right to contract marriage again:

(c) *Alcoholism* refers to an abuse or a disease characterized by addiction to intoxicating alcohol drinks, often resulting in impaired social functioning and in damage to the liver, heart, and nervous system;

(d) *Alimony* refers to an allowance for support made under court order to a divorced person by the former spouse, usually the main financial provider during the marriage:

(e) *Bigamous Marriage* refers to the second marriage contracted with a willful knowledge by the offender that the first marriage is still

conduct of a disease or defect of the brain, a more or less permanent disease or disorder 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";

- 6 (p) *Irreconcilable Differences* refer to the existence of overriding conflicts
7 between a married couple that are so pronounced and beyond repair
8 as to make the marriage unworkable, and for which the law permits a
9 divorce;

10 (q) *Joint Petition* refers to the legal action filed by both spouses, before the
11 Family Court for the dissolution of their marriage based on any of the
12 grounds for absolute divorce provided for in this Act.

13 (r) *Legitime* refers to the portion of a parent's estate of which they cannot
14 disinherit the children, without a legal cause;

15 (s) *Marital Infidelity* refers to the unfaithfulness of a spouse during the
16 marriage;

17 (t) *Overseas Filipino Worker* or OFW refers to a citizen of the Philippines
18 who is living and working in a foreign country, typically on a temporary
19 basis with a work contract;

20 (u) *Psychological Incapacity* refers to the condition provided for in Article
21 36 of the Family Code of the Philippines which warrants the nullification
22 of a marriage;

23 (v) *Sex Reassignment Surgery* refers to the procedure by which a person's
24 physical appearance and function of primary sex characteristics are
25 altered to resemble that of the identified or preferred gender;

26 (w) *Summary Judicial Proceedings* refer to an expeditious manner of
27 resolving a petition for divorce without regard to technical rules and
28 the petitioner is given the option to be assisted or not by a lawyer. The
29 competent court may allow presentation of evidence *ex parte* as
30 warranted by circumstances. The decision shall be immediately final
31 and executory;

32 (x) *Transgender* refers to those whose gender identity or expression differs

from what is typically associated with the sex assigned at birth;

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

Sec. 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 of the Philippines, 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 years, even if pardoned;

(5) Drug addiction or habitual alcoholism or chronic gambling of the respondent;

(6) Homosexuality of any of the spouse;

(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 their children under the custody of the petitioner by respondent without justifiable cause for more than one year;

1 When the spouses are legally separated by judicial decree for more than two
2 (2) years, either or both spouses, can petition the competent court for an absolute
3 divorce based on said judicial decree of legal separation.

4 (b) Grounds for annulment of marriage under Article 45 of the Family Code
5 of the Philippines, which are restated as follows:

- 6 (1) The party in whose behalf it is sought to have the marriage
7 annulled was eighteen (18) years of age or over but below
8 twenty-one (21), and the marriage was solemnized without the
9 consent of the parents, guardian or person having substitute
10 parental authority over the party, in that order, unless after
11 attaining the age of twenty-one (21), such party freely cohabited
12 with the other and both lived together as husband and wife;
- 13 (2) Either party was of unsound mind, unless such party after coming
14 to reason, freely cohabited with the other as husband and wife;
- 15 (3) The consent of either party was obtained by fraud, unless such
16 party afterwards, with full knowledge of the facts constituting the
17 fraud, freely cohabited with the other as husband and wife;
- 18 (4) The consent of either party was obtained by force, intimidation or
19 undue influence, unless the same having disappeared or ceased,
20 such party thereafter freely cohabited with the other as husband
21 and wife;
- 22 (5) Either party was physically incapable of consummating the
23 marriage with the other, and such incapacity continues or appears
24 to be incurable;
- 25 (6) Either party was afflicted with a sexually transmissible infection
26 found to be serious or appears to be incurable:

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

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

32 (d) Psychological incapacity of either spouse as provided for in Article 36 of

1 the Family Code of the Philippines, whether or not the incapacity was present at the
2 time of the celebration of the marriage or later.

3 When one of the spouses undergoes a gender reassignment surgery or
4 transitions from one sex to another, the other spouse is entitled to petition for
5 absolute divorce with the transgender or transsexual as respondent, or vice versa.
6 Irreconcilable marital differences and conflicts which have resulted in the total
7 breakdown of the marriage beyond repair, despite earnest and repeated efforts at
8 reconciliation, shall entitle either spouse or both spouses to petition for absolute
9 divorce.

10 Sec. 6. *Prescription of Action.* – A petition for absolute divorce and dissolution
11 of marriage shall be filed with the competent court by the interested party or parties
12 within five (5) years from the accrual of the cause of action.

13 Sec. 7. *Procedure for Obtaining Absolute Divorce.* – (a) The established and
14 recognized procedures for securing legal separation, annulment of marriage, and
15 voiding of a marriage under the Family Code of the Philippines, as far as practicable,
16 shall govern the process of obtaining a judicial decree of absolute divorce from the
17 proper family court which shall be commenced by the petitioner or joint petitioner
18 filing a verified petition for absolute divorce.

19 (b) The factors and grounds which militate against the grant of legal separation
20 and the annulment and nullification of marriages as provided for in the Family Code of
21 the Philippines shall likewise be assessed, based on competent and credible proof,
22 against the grant of absolute divorce.

23 (c) Upon application of a court-assisted petitioner or petitioners, the competent
24 court shall waive the payment of filing fees and other costs of litigation, and shall
25 appoint a *counsel de oficio* for the court assisted petitioner or petitioners and assign
26 social workers, psychologists, and psychiatrists, preferably from appropriate
27 government agencies, to assist the said petitioner and the court.

28 (d) A petition for absolute divorce may be filed jointly by the spouses on the
29 grounds of *de facto* separation for five (5) years, legally separated by judicial
30 declaration for at least two (2) years, or irreconcilable differences or other grounds for
31 absolute divorce provided for in this Act.

32 A joint petition filed by both spouses with common children should be

1 accompanied by a joint plan for parenthood which provides for the support, parental
2 authority, custody, and living arrangements of the common children.

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

6 The court shall ensure the enforcement of the joint plan for parenthood and
7 may require the spouses to submit periodic reports on its implementation subject to
8 the validation of court's social worker or by the local social welfare officer.

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

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

15 (g) The Office of the Public Prosecutor in provinces, cities and capital towns is
16 authorized and obliged to conduct investigations to find out whether or not there is
17 collusion between the spouses in a petition for absolute divorce and shall report its
18 findings to the competent court within six (6) months from the filing of the petition.

19 (h) Parties with pending cases in court for annulment of marriage under Article
20 45 or legal separation under Article 55 or nullification of marriage under Article 36 of
21 the Family Code of the Philippines shall be allowed to amend and convert their
22 respective petitions to one for absolute divorce or dissolution of marriage.

23 Sec. 8. *Overseas Filipino Workers (OFWs)*. – Petitioners who are OFWs shall be
24 given preference by the competent court with respect to the hearing of their petitions
25 and the court shall set the reception of evidence, upon the availability of the
26 petitioners, for not more than two (2) consecutive days.

27 Sec. 9. *Summary Judicial Proceedings*. – The following grounds for absolute
28 divorce may be subject to summary judicial proceeding as defined above:

29 (a) When the spouses have been separated *de facto* for at least five (5) years;
30 (b) When one of the spouses has contracted a bigamous marriage;
31 (c) When the spouses have been legally separated by judicial decree for two (2)
32 years or more;

- 1 (d) When one of the spouses has been sentenced to imprisonment for six (6)
2 years, even if subsequently pardoned;
3 (e) When one of the spouses has undergone a sex reassignment surgery or has
4 transitioned into another sex; and
5 (f) When both spouses have filed a joint petition for the dissolution of their
6 marriage before the competent court based on any of the grounds provided
7 for in this Act.

8 Sec. 10. *Mandatory Cooling-Off Period.* – Except for grounds under summary
9 judicial proceedings, the competent court shall not start the trial of a petition for
10 absolute divorce before the expiration of a six-month cooling-off period after the filing
11 of the petition during which the court shall exercise all efforts to reunite and reconcile
12 the parties.

13 The requirement of a cooling off period shall not apply in cases which
14 involve acts of violence against women and their children under Republic Act No. 9262
15 or attempt against the life of the other spouse or a common child or a child of the
16 petitioner.

17 Sec. 11. *Effects of Absolute Divorce.* – The decree of absolute divorce shall
18 have the following effects.

- 19 (a) The marriage bonds shall be severed and the divorced spouses shall
20 have the right to contract marriage again, either by civil or religious
21 ceremony.
22 (b) The custody of the minor children shall be decided by the competent
23 court in accordance with the best interests of the children, subject to the
24 provisions of Article 213 of the Family Code of the Philippines taking into
25 primary consideration that no child under seven (7) years of age shall be
26 separated from the mother, unless the competent court finds compelling
27 reasons to order otherwise.
28 (c) The conjugal partnership of gains or the absolute community shall be
29 dissolved and liquidated and the assets shall be equally divided between
30 the spouses. The recognition and delivery of the presumptive legitime of
31 the common children shall be at the option of both spouses. The
32 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 upon the option of the spouses shall be recorded in the appropriate civil registry and registries of property, otherwise the same shall not affect third persons.

- (d) In addition to the equal share in the assets of the absolute community or conjugal partnership, the petitioner who is not gainfully employed shall be entitled to support 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; *Provided, Further*, That the right to support shall be subject to the provisions of Article 201 of the Family Code of the Philippines where the amount of support shall be in proportion to the resources or means of the giver and to the necessities of the recipient.
- (e) The competent 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 impose contempt of court against the defaulting parties. The petitioner may opt for a one-time or periodic alimony. The necessity of alimony and the amount shall be determined by the court taking into consideration all relevant factors.
- (f) The petitioner 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 for 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.
- (g) 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

1 become final.

- 2 (h) The effects on the divorced spouses with respect to intestate succession,
3 testamentary dispositions, donations and insurance provisions on
4 beneficiaries in accordance with the Family Code of the Philippines and
5 jurisprudence will be observed.
- 6 (i) The legitimate and adopted children of divorced parents shall retain their
7 legal status and legitimacy; a child conceived or born within 300 days
8 after the filing of a petition for absolute divorce shall be considered
9 legitimate, unless the ground for divorce is the marital infidelity of the
10 wife.

11 Sec. 12. *Recognition of Reconciliation* - (a) If the petitioners have agreed to
12 reconcile, a corresponding joint manifestation under oath duly signed by them shall be
13 filed with the same court where the petition for absolute divorce was filed with the
14 interests of the children duly protected.

- 15 (b) The plan to reconcile shall have the following consequences:
- 16 (1) The absolute divorce proceedings, if still pending, shall be
17 terminated at whatever stage, and
- 18 (2) The final decree of absolute divorce shall be set aside, but the
19 separation of property and any forfeiture of the share of the respondent
20 already effected shall subsist, unless the spouses agree to revive their
21 former property regime.

22 The court order containing the foregoing shall be recorded in the proper civil
23 registries.

- 24 (c) The agreement to revive the former property regime referred to in this
25 Act shall be executed under oath and shall specify:
- 26 (1) the properties to be contributed anew to the restored regime;
27 (2) those to be retained as separate properties of each spouse; and
28 (3) the names of all their known creditors, their addresses and the
29 amounts owing to each.

30 The agreement of revival and the motion for its approval shall be filed with the
31 court in the same proceeding for absolute divorce, with copies of both furnished to the
32 creditors named therein. After due hearing, the court shall issue an order to protect

1 the interest of creditors and such order shall be recorded in the proper registries of
2 properties.

3 The recording of the order in the registries of properties shall not prejudice any
4 creditor not listed or not notified.

5 Sec. 13. *Finality of Decision or Decree.* – Except for decisions or decrees in
6 summary proceedings which shall be immediately executory, all other decisions or
7 decrees on absolute divorce or dissolution of marriage shall be final and executory
8 after fifteen (15) days from the receipt by the concerned party or parties of the
9 principal decision or decree or the resolution denying a motion of reconsideration
10 which is filed within the fifteen (15)-day reglementary period, except when an appeal
11 to the Court of Appeals is filed before the decision or decree becomes final.

12 Sec. 14. *Penalty.* – A spouse who is a party to a petition for absolute divorce
13 who is found by the court to have used threats or coercion to compel the other spouse
14 in filing the petition, and spouses who are guilty of collusion, shall be punished with
15 imprisonment of five (5) years and a fine of Two hundred thousand pesos
16 (PhP200,000.00).

17 Sec. 15. *Options and remedies.* – The concerned spouse or spouses shall have
18 the option to file a petition for absolute divorce a under this Act or avail of legal
19 separation, annulment or nullification of marriage as provided for in the Family Code
20 of the Philippines, the pertinent provisions of which have not been repealed.

21 Sec. 16. *Implementing Rules and Regulations (IRR).* – The Department of
22 Justice (DOJ) as lead agency, together with the Department of Social Welfare and
23 Development (DSWD), the Philippine Commission on Women (PCW), the National
24 Youth Commission (NYC), and at least two (2) representatives from women's
25 organizations to be appointed by the PCW in consultation with civil society and
26 women's organizations, shall promulgate the Implementing Rules and Regulations
27 (IRR) within sixty (60) days after the effectivity of this Act.

28 Sec. 17. *Separability Clause.* – If any part or provision of this Act is held invalid
29 or unconstitutional, the other provisions not affected thereby shall remain in force and
30 effect.

31 Sec. 18. *Repealing Clause.* – All laws, executive orders, issuances, decrees,
32 rules and regulations inconsistent with or contrary to the provisions of this Act are

1 deemed amended, modified or repealed accordingly.

2 Sec. 19. *Effectivity.* – This Act shall take effect fifteen (15) days after its
3 publication in the *Official Gazette* or in any newspaper of general circulation.

4 Approved,