

HOUSE BILL NO. 1381, "DIVORCE
AND ANNULMENT"

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5819 Black Hawk Drive
Forest Heights, Md. 20745

May 9, 1983

The Honorable Harry Hughes
Governor of Maryland
State House
Annapolis, Maryland 21404

Dear Governor Hughes:

House Bill No. 1381, "Divorce and Annulment", which has been submitted to you, should be returned to the Legislature for further consideration, for two reasons.

FIRST: Section 25, lines 41 through 47, differentiates by sex between husband and wife as to property rights, and thus is in direct violation of Maryland's Equal Rights Amendment. It requires rewriting.

SECOND: Section 24, lines 15 through 17, reduces separation time for contested divorces from 3 to 2 years. The remainder of my letter discusses the dangers of this proposal.

When Governor Mandel signed a similiar bill into law in 1973, reducing separation time for contested divorces from 5 to 3 years, his action increased divorces in Maryland by about 1,800 couples per year over the expected rate. Signing the present bill into law will most surely have a like result.

A reduction in separation time from 3 to 2 years would encourage those individuals contemplating divorce against the wishes of their spouses, and would weaken the bargaining position of objecting spouses in obtaining acceptable out-of-court settlements. All told, the result would increase litigation in our already overburdened courts.

My analysis supporting the above conclusion is enclosed. I statistically correlated Maryland divorce rates with U.S. rates, and then projected Maryland rates based on this correlation in such a way as to separate out the effects of specific Maryland legislation.

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As you can see, the attached table shows Maryland rates prior to 1973 were averaging 0.24 points below their normal relationship to U.S. rates. After the reduction in required separation time, Maryland rates increased an to an average of 0.20 points above expected. This net change of 0.44 points when multiplied by Maryland population (in 1,000's) translates to 1,800 divorces per year.

The decline in Maryland faster than U.S. rates since 1978, I believe must be associated with the passage of the "Divorce and Annulment -- Disposition of Property Act".

Let us not do anything at this time to discourage the current favorable trend.

Respectfully yours,

Kenneth J. McCallister
Professor Emeritus
University of D.C.

DIVORCE TRENDS

1 IND. VARIABLES 23 OBSERVATIONS

INTERCEPT (A) = 0.1627

VARIABLE	MEAN	STANDARD DEVIATIONS	REGRESSION COEFFICIENTS	STD ERROR OF REG COEF.	MARGINAL R SQUARE	INDIVIDUAL F VALUES	DEGREES OF FREEDOM
U.S. (3)	3.7391	1.2105	0.7088	0.0315	0.9602	506.7999	1 OVER 21
DEPENDENT VARIABLE	MEAN	STANDARD DEVIATION		STD ERROR OF ESTIMATE	MULTIPLE R SQUARE	OVERALL F VALUES	DEGRESS OF FREEDOM
MD. (2)	2.8130	0.8756		0.1783	0.9602	506.7999	1 OVER 21

TABLE OF DIVORCES PER 1000 POPULATION

YEAR	MARYLAND	MD. EXPECTED	MD. LESS EXPECTED
60	1.70	1.72	-0.02
61	1.70	1.79	-0.09
62	1.90	1.72	0.18
63	1.90	1.79	0.11
64	1.90	1.86	0.04
65	2.00	1.93	0.07
66	2.00	1.93	0.07
67	2.00	2.01	-0.01
68	2.20	2.22	-0.02
69	2.30	2.43	-0.13
70	2.40	2.64	-0.24
71	2.50	2.79	-0.29
72	2.80	3.00	-0.20
73	3.40	3.21	0.19
74	3.60	3.42	0.18
75	3.70	3.56	0.14
76	3.90	3.71	0.19
77	4.00	3.71	0.29
78	3.90	3.78	0.12
79	4.00	3.92	0.08
80	3.80	3.85	-0.05
81	3.60	3.92	-0.32
82	3.50	3.78	-0.28

MD. EXPECTED IS MARYLAND DIVORCE RATE ADJUSTED FOR CHANGES IN U.S. DIVORCE RATE.

TO SHOW MARYLAND RATE INDEPENDENT OF LEGISLATION.



AVERAGE -0.24

CONTESTED DIVORCE, SEPERATION PERIOD REDUCED FROM 5 TO 3 YEARS. (JULY 1 '73) AVERAGE +0.20

PROPERTY DISPOSITION ACT (ENACTED MAY 29, '78) (EFFECTIVE JAN. 1, '79)

Introduced by Delegates Vallario, Chasnoff, Palumbo, Wynn, and Alexander

Read and Examined by Proofreader:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor,
for his approval this _____ day of _____
at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 ~~Grounds-for-Absolute-Divorce---Statutory-Separation~~
3 Divorce and Annulment

4 FOR the purpose of reducing the period of time during which the
5 parties must continuously live separate and apart without
6 cohabitation before filing an application for absolute
7 divorce on the grounds of statutory separation; repealing
8 certain grounds for divorce; providing that condonation and
9 recrimination do not bar divorce on certain grounds, but
10 that recrimination is a factor for the court to consider in
11 granting a divorce on a certain ground; conferring certain
12 powers on the court in granting a divorce a mensa et thoro;
13 providing that the court may issue certain orders if the
14 court finds that one of the parties to a divorce or
15 annulment is insane under certain circumstances; generally
16 relating to divorce and annulment; and providing for the
17 prospective effect of this Act.

18 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken from the bill by
amendment or deleted from the law by amendment.

Article 16 - Chancery
 Section 24, 25, 26, and 26A
 Annotated Code of Maryland
 (1981 Replacement Volume and 1932 Supplement)

BY adding to

Article 16 - Chancery
 Section 26A
 Annotated Code of Maryland
 (1981 Replacement Volume and 1982 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 16 Chancery

24.

Upon a hearing of any bill for a divorce, the court may decree a divorce a vinculo matrimonii for the following causes, to wit: first, the impotence of either party at the time of the marriage; secondly, for any cause which by the laws of this State, render a marriage null and void ab initio; thirdly, for adultery; fourthly, when the court shall be satisfied by competent testimony that the party complained against has abandoned the party complaining, and that such abandonment has continued uninterruptedly for at least twelve months, and is deliberate and final, and the separation of the parties beyond any reasonable expectation of reconciliation; fifthly, when the husband and wife shall have voluntarily lived separate and apart, without cohabitation, for twelve consecutive months prior to the filing of the bill of complaint, and such separation is beyond any reasonable expectation of reconciliation; sixthly, when the party complained against has been convicted of a felony or misdemeanor under the laws of this State or of any other state in the United States, or the United States and has been sentenced to serve at least three years or an indeterminate sentence in any penitentiary or penal institution 12 months of which sentence has been served; seventhly, on the application of either party when the husband and wife have lived separate and apart without cohabitation and without interruption for 12 months. A plea of recrimination is not a bar to either party obtaining a divorce on the fifth ground, and a plea of res adjudicata or of recrimination with respect to any other provisions of this section is not a bar to either party obtaining a divorce on the seventh ground.

Upon a hearing of any bill for a divorce, the court may decree a divorce a vinculo matrimonii for the following causes, to wit: first, [the impotence of either party at the time of the marriage; secondly, for any cause which by the laws of this State, render a marriage null and void ab initio; thirdly,] for adultery; [fourthly] SECONDLY, when the court shall be satisfied by competent testimony that the party complained against has

1 abandoned the party complaining, and that such abandonment has
2 continued uninterruptedly for at least twelve months, and is
3 deliberate and final, and the separation of the parties beyond
4 any reasonable expectation of reconciliation; [fifthly] THIRDLY,
5 when the husband and wife shall have voluntarily lived separate
6 and apart, without any cohabitation, for twelve consecutive
7 months prior to the filing of the bill of complaint, and such
8 separation is beyond any reasonable expectation of
9 reconciliation; [sixthly] FOURTHLY, when the party complained
10 against has been convicted of a felony or a misdemeanor under the
11 laws of this State or of any other state in the United States, or
12 the United States and has been sentenced to serve at least three
13 years or an indeterminate sentence in any penitentiary or penal
14 institution 12 months of which sentence has been served;
15 [seventhly] FIFTHLY, on the application of either party when the
16 husband and wife have lived separate and apart without any
17 cohabitation and without interruption for [three] 2 years. A
18 plea of recrimination is not a bar to either party obtaining a
19 divorce on the [fifth] FIRST, SECOND, THIRD, OR FOURTH ground BUT
20 IS A FACTOR TO BE CONSIDERED BY THE COURT IN A CASE INVOLVING THE
21 FIRST GROUND; and a plea of res adjudicata or of recrimination
22 with respect to any other provisions of this section is not a bar
23 to either party obtaining a divorce on the [seventh] FIFTH
24 ground. CONDONATION IS NOT AN ABSOLUTE BAR TO AN AWARD OF DIVORCE
25 ON THE GROUND OF ADULTERY, BUT IS A FACTOR FOR THE COURT TO
26 CONSIDER IN DETERMINING WHETHER A DIVORCE SHOULD BE GRANTED.

27 25.

28 Divorces a mensa et thoro may be decreed for the following
29 causes, to wit: First, cruelty of treatment; secondly,
30 excessively vicious conduct; thirdly, abandonment and desertion;
31 fourthly, the voluntary living separate and apart of husband and
32 wife, without cohabitation, when such separation is beyond any
33 reasonable expectation of reconciliation; and the court may
34 decree such divorces forever, or for a limited time; and in all
35 cases where divorce a mensa et thoro is decreed it may be revoked
36 at any time thereafter by the court granting the same, upon the
37 joint application of the parties to be discharged from the
38 operation of the decree; and the court may decree a divorce a
39 mensa et thoro in cases where a divorce a vinculo matrimonii is
40 prayed, if the causes proved be sufficient to entitle the party
41 to the same; and in all cases where a divorce is decreed, the
42 court passing the same shall have full power to award to the wife
43 such property or estate as she had when married, or the value of
44 the same, or of such part thereof as may have been sold or
45 converted by the husband, having regard to the circumstances of
46 the husband at the time of the divorce, or such part of any such
47 property as the court may deem reasonable; and shall also have
48 power in all cases in which the care and custody of the children
49 of parties forms part of the relief prayed whether a divorce is
50 decreed or denied to order and direct who shall have the
51 guardianship and custody of the children pendente lite or
52 permanently, and be charged with their support and maintenance
53 and may at any time thereafter annul, vary or modify such order
54 in relation to the children. AS A CONDITION PRECEDENT TO ISSUING

1 A DIVORCE A MENSA ET THORO, THE COURT MAY REQUIRE THE PARTIES TO
2 PARTICIPATE IN GOOD FAITH IN SUCH EFFORTS TO ACHIEVE
3 RECONCILIATION AS THE COURT MAY PRESCRIBE AND ASSESS THE COSTS OF
4 ANY PRESCRIBED EFFORTS TO ACHIEVE RECONCILIATION.

5 26.

6 A divorce a vinculo matrimonii may be granted when either
7 husband or wife has become permanently and incurably insane,
8 provided that no divorce shall be granted under this section
9 unless such permanently incurable insane person shall have been
10 confined in an insane asylum, hospital or other similar
11 institution for a period of not less than three years prior to
12 the filing of the bill of complaint, nor unless the court shall
13 find from the testimony of two or more physicians competent in
14 psychiatry that such insanity is permanently incurable with no
15 hope of recovery, and provided further, that no such suit shall
16 be maintained unless one of the parties is an actual resident of
17 this State and shall have resided therein for at least two years
18 immediately prior to the institution of the proceedings.

19 [In cases arising under this section, the court shall
20 possess all powers which courts of equity now have, or which may
21 hereafter be conferred upon them, relative to alimony and to the
22 custody, control and support of infant children of the parties.
23 Where the plaintiff is the husband, the court may, when necessity
24 and circumstances warrant, require the plaintiff to pay alimony
25 support or maintenance for the benefit of said defendant, or it
26 may require the plaintiff to pay a sum of money as a whole, based
27 on the expectancy of life of said defendant and the plaintiff's
28 financial condition, together with reasonable expense for the
29 burial of said defendant, or it may require the plaintiff to give
30 bond to the State of Maryland conditioned upon the payment by the
31 plaintiff for the care and maintenance of said defendant during
32 the remainder of her natural life, and necessary funeral
33 expenses. The court may modify or revoke any orders or decrees
34 relating to the custody of infant children, and their support,
35 and the support and maintenance of the defendant.]

36 26A.

37 WHEN GRANTING A DIVORCE A MENSA ET THORO, A DIVORCE A
38 VINCULO MATRIMONII, OR AN ANNULMENT, IF THE COURT FINDS FROM THE
39 TESTIMONY OF 2 OR MORE PHYSICIANS COMPETENT IN PSYCHIATRY THAT 1
40 OF THE PARTIES IS PERMANENTLY AND INCURABLY INSANE WITH NO HOPE
41 OF RECOVERY, THEN, NOTWITHSTANDING THE PROVISIONS OF ANY
42 AGREEMENT BETWEEN THE PARTIES, THE COURT MAY REQUIRE A PARTY:

43 (1) TO PAY ALIMONY OR SUPPORT FOR THE BENEFIT OF THE
44 INSANE PARTY;

45 (2) TO PAY A LUMP SUM BASED ON THE LIFE EXPECTANCY OF
46 THE INSANE PARTY AND THE FINANCIAL CONDITION OF THE OTHER PARTY
47 TOGETHER WITH REASONABLE FUNERAL EXPENSES; OR

48 (3) TO GIVE BOND TO THIS STATE CONDITIONED ON THE
49 PAYMENT FOR:

1 (I) THE CARE AND MAINTENANCE OF THE INSANE
2 PARTY DURING THE REMAINDER OF HIS OR HER NATURAL LIFE; AND

3 (II) REASONABLE FUNERAL EXPENSES.

4 [26A.] 26B.

5 In all actions for divorce an offer of reconciliation or an
6 attempt to reconcile by one spouse without the concurrence of the
7 other spouse shall not be available as a defense to a divorce nor
8 in and of itself be a bar to a divorce; nor shall the refusal of
9 a spouse to accept an offer of reconciliation made by the other
10 spouse or the rejection by a spouse of any attempt at
11 reconciliation made by the other spouse be available as a defense
12 to a divorce nor in and of itself be a bar to a ground for a
13 divorce.

14 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions
15 of this Act shall apply only to cases filed after the effective
16 date of this Act.

17 SECTION 2 3. AND BE IT FURTHER ENACTED, That this Act shall
18 take effect July 1, 1983.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.