

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 120

(Senator Zirkin)

Judicial Proceedings

Judiciary

Family Law - Divorce on Grounds of Mutual Consent - Parties With Minor Children

This bill repeals a restriction that limits absolute divorces on the ground of mutual consent to parties without minor children in common. The bill requires that a written settlement agreement submitted to the court, as required for an absolute divorce on the ground of mutual consent, must also resolve all issues relating to the care, custody, access, and support of minor or dependent children. The parties must attach to the settlement agreement a completed child support guidelines worksheet, if applicable. The bill also establishes that as a condition to granting an absolute divorce on the ground of mutual consent, a court must be satisfied that any terms of the settlement agreement relating to minor or dependent children are in the best interests of those children.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary. The Judiciary can make necessary form revisions with existing budgeted resources.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Current Law:

Divorce

A court may grant an absolute divorce on the following grounds:

- adultery;
- desertion, if the desertion is deliberate and final, has continued for 12 months without interruption, and there is no reasonable expectation of reconciliation;
- conviction of a felony or misdemeanor in any state or federal court, if the defendant has been sentenced to serve at least three years, or an indeterminate sentence, and has served 12 months of the sentence;
- 12-month separation, when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the divorce application;
- insanity, as specified; or
- cruelty of treatment or excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

A court may grant an absolute divorce on the ground of mutual consent if:

- the parties do not have any minor children in common;
- the parties execute and submit to the court a written settlement agreement signed by both parties that resolves all issues relating to (1) alimony and (2) the distribution of property, including a transfer of ownership of an interest in marital property, monetary awards, and/or an award of possession and use of the family home and family use personal property;
- neither party files a pleading to set aside the settlement agreement prior to the divorce hearing required under the Maryland Rules; and
- both parties appear before the court at the absolute divorce hearing.

If the court decrees an absolute divorce on the ground of mutual consent, the court may merge or incorporate the settlement agreement into the divorce decree and modify or enforce the settlement agreement as authorized by statutory provisions.

Agreements between Spouses

Spouses may make a valid and enforceable deed, agreement, or settlement that relates to alimony, support, property rights, or personal rights. The court may modify any provision of a deed, agreement, or settlement with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child. The courts may generally modify any provision of a deed, agreement, or settlement with respect to alimony or spousal support unless there is an express waiver of alimony or spousal support or a provision specifically stating that the provisions with respect to alimony or spousal support are not subject to any court modification. The court may enforce by power of contempt the provisions of a deed, agreement, or settlement that are

merged into a divorce decree. The court may enforce by power of contempt or, as an independent contract not superseded by the divorce decree, the provisions of a deed, agreement, or settlement that contain language that the deed, agreement, or settlement is incorporated but not merged into a divorce decree.

Additional Information

Prior Introductions: SB 358 of 2016, a substantially similar bill, passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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