

Regular Session, 2003

SENATE BILL NO. 319

BY SENATOR SMITH

DIVORCE. Provides relative to divorce and certain effects thereof.

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AN ACT

To amend and reenact Chapter 1 of Title V of Book I of the Civil Code, formerly comprising Civil Code Arts. 102 through 105, to comprise Arts. 102 through 108, Civil Code Art. 111, Code of Civil Procedure Arts. 10(A)(7) and (B), 969, 1701(B), 1702(E), 3941, 3942, and 3944, R.S. 9:291 and 373(A), R.S. 13:1401(A)(7), the introductory paragraph of R.S. 46:2135(A), and (B), and to repeal Chapter 2 of Title IV of Book VII of the Code of Civil Procedure comprising Code of Civil Procedure Arts. 3951 through 3958, R.S. 9:302 through 309 and R.S. 13:3491, all relative to termination of marriage and divorce and certain incidental effects thereof; to provide for the cause of action for separation from bed and board and divorce based on fault; to provide procedures for obtaining judgments pursuant to these provisions; to require marital counseling prior to obtaining a judgement of divorce; to repeal certain duplicate provisions relative to divorce in a covenant

1 marriage; to provide for hearings for certain protective orders; to  
 2 eliminate provisions authorizing hearings in chambers in divorce  
 3 proceedings; to provide an effective date and transitional provisions;  
 4 and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Chapter 1 of Title V of Book I of the Civil Code, formerly  
 7 comprising Civil Code Arts. 102 through 105, to comprise Civil Code Arts.  
 8 102 through 108 are hereby amended and reenacted to read as follows:

9 TITLE V. OF SEPARATION FROM BED AND  
 10 BOARD AND DIVORCE

11 **Title V is all proposed new law.**

12 CHAPTER 1. ACTION FOR SEPARATION FROM BED AND  
 13 BOARD AND DIVORCE

14 **Chapter 1 is all proposed new law.**

15 Art. 102. Divorce; counseling required

16 **Article 102 is all proposed new law.**

17 A. In a proceeding for divorce, the court shall order the parties  
 18 to attend and complete court approved marital counseling conducted by  
 19 a psychiatrist, psychologist, or professional counselor licensed under  
 20 state law.

21 B. The court shall adopt rules to accomplish the goals of  
 22 Subsection A of this Section, which rules shall include:

- 23 (1) Criteria for evaluating a marital counseling provider.
- 24 (2) Criteria to assure that any fee structure shall accommodate  
 25 the cost of services to indigents.
- 26 (3) The amount of time the parties must attend the counseling.
- 27 (4) The amount of time within which the parties must complete

1 the counseling.

2 Art. 103. Divorce or separation from bed and board; exclusive grounds

3 **Article 103 is all proposed new law.**

4 Notwithstanding any other law to the contrary and subsequent  
5 to the parties obtaining counseling, a spouse may obtain a judgment of  
6 divorce only upon proof of any of the following:

7 (1) The other spouse has committed adultery.

8 (2) The other spouse has committed a felony and has been  
9 sentenced to death or imprisonment at hard labor.

10 (3) The other spouse has abandoned the matrimonial domicile  
11 for a period of one year and constantly refuses to return.

12 (4) The other spouse has physically or sexually abused the  
13 spouse seeking the divorce or a child of one of the spouses.

14 (5) The spouses have been living separate and apart  
15 continuously without reconciliation for a period of two years.

16 (6)(a) The spouses have been living separate and apart  
17 continuously without reconciliation for a period of one year from the  
18 date the judgment of separation from bed and board was signed.

19 (b) If there is a minor child or children of the marriage, the  
20 spouses have been living separate and apart continuously without  
21 reconciliation for a period of one year and six months from the date the  
22 judgment of separation from bed and board was signed; however, if  
23 abuse of a child of the marriage or a child of one of the spouses is the  
24 basis for which the judgment of separation from bed and board was  
25 obtained, then a judgment of divorce may be obtained if the spouses  
26 have been living separate and apart continuously without reconciliation  
27 for a period of one year from the date the judgment of separation from

1 bed and board was signed.

2 Art. 103.1. Immediate divorce; grounds

3 **Article 103.1 is all proposed new law.**

4 Notwithstanding the provisions of Civil Code Article 103, an  
5 immediate divorce may be claimed reciprocally upon the conviction of  
6 the other spouse of a felony and his sentence to death or imprisonment  
7 at hard labor.

8 Art. 104. Separation from bed and board; grounds

9 **Article 104 is all proposed new law.**

10 A spouse may obtain a judgment of separation from bed and  
11 board only upon proof of any of the following:

12 (1) The other spouse has committed adultery.

13 (2) The other spouse has committed a felony and has been  
14 sentenced to death or imprisonment at hard labor.

15 (3) The other spouse has abandoned the matrimonial domicile  
16 for a period of one year and constantly refuses to return.

17 (4) The other spouse has physically or sexually abused the  
18 spouse seeking the divorce or a child of one of the spouses.

19 (5) The spouses have been living separate and apart  
20 continuously without reconciliation for a period of two years.

21 (6) On account of habitual intemperance of the other spouse, or  
22 excesses, cruel treatment, or outrages of the other spouse, if such  
23 habitual intemperance, or such ill-treatment is of such a nature as to  
24 render their living together insupportable.

25 Art. 105. Reconciliation

26 **Article 105 is all proposed new law.**

27 The cause of action for separation from bed and board and for

1 divorce is extinguished by the reconciliation of the parties.

2 Art. 106. Separation from bed and board; suit against spouse

3 **Article 106 is all proposed new law.**

4 Unless judicially separated, spouses may not sue each other  
5 except for causes of action pertaining to contracts or arising out of the  
6 provisions of Book III, Title VI of the Civil Code; for restitution of  
7 separate property; for separation from bed and board, for divorce, or for  
8 declaration of nullity of the marriage; and for causes of action  
9 pertaining to spousal support or the support or custody of a child while  
10 the spouses are living separate and apart, although not judicially  
11 separated.

12 Art. 107. Separation; determination of incidental matters

13 **Article 107 is all proposed new law.**

14 In a proceeding for a separation from bed and board or  
15 thereafter, a court may award a spouse all incidental relief afforded in  
16 a proceeding for divorce, including but not limited to spousal support,  
17 claims for contributions to education, child custody, visitation rights,  
18 child support, injunctive relief and possession and use of a family  
19 residence or community movables or immovables.

20 Art. 108. Separation from bed and board; effects

21 **Article 108 is all proposed new law.**

22 A.(1) Separation from bed and board does not dissolve the bond  
23 of matrimony, since the separated husband and wife are not at liberty  
24 to marry again; but it puts an end to their conjugal cohabitation, and to  
25 the common concerns, which existed between them.

26 (2) Spouses who are judicially separated from bed and board  
27 shall retain that status until either reconciliation or divorce.



1 prior to the filing of a proceeding to terminate the marriage, based on  
2 the needs of that party and the ability of the other party to pay, in  
3 accordance with the following Articles.

4 Section 2. Code of Civil Procedure Arts. 10(A)(7) and (B), 969,  
5 1701(B), 1702(E), 3941, 3942, and 3944 are hereby amended and reenacted  
6 to read as follows:

7 Art. 10. Jurisdiction over status

8 A. A court which is otherwise competent under the laws of this  
9 state has jurisdiction of the following actions or proceedings only under  
10 the following conditions:

11 \* \* \*

12 (7) An action of divorce, ~~if, at the time of filing, one or both of~~  
13 ~~the spouses are domiciled in this state~~ **or of separation from bed and**  
14 **board, if one or both of the spouses are domiciled in this state, and,**  
15 **except as otherwise provided by law, the grounds therefore were**  
16 **committed or occurred in this state, or while the matrimonial**  
17 **domicile was in this state.**

18 \* \* \*

19 B. For purposes of Subparagraphs (6) and (7) of Paragraph A of  
20 this Article, if a spouse has established and maintained a residence in  
21 a parish of this state for a period of ~~six~~ **twelve** months, there shall be a  
22 rebuttable presumption that he has a domicile in this state in the parish  
23 of such residence.

24 \* \* \*

25 Art. 969. Judgment on pleadings and summary judgment not permitted  
26 in certain cases; exception

27 ~~A.~~ Judgments on the pleadings and summary judgments shall

1 not be granted in any action for divorce, separation from bed and  
 2 board, or annulment of marriage, nor in any case where the  
 3 community, paraphernal, or dotal rights may be involved in an action  
 4 between husband and wife.

5 ~~B.(1) Notwithstanding the provisions of Paragraph A,~~  
 6 ~~judgments on the pleadings and summary judgments may be granted~~  
 7 ~~without hearing in any action for divorce under Civil Code Article~~  
 8 ~~103(1) under the following conditions:~~

9 ~~(a) All parties are represented by counsel;~~

10 ~~(b) Counsel for each party, after answer is filed, file a written joint~~  
 11 ~~stipulation of facts, request for judgment, and sworn verification by~~  
 12 ~~each party; and~~

13 ~~(c) Counsel for each party file a proposed judgment containing~~  
 14 ~~a certification that counsel and each party agree to the terms thereof.~~

15 ~~(2) The court may render and sign such judgments in chambers~~  
 16 ~~without a hearing and without the taking of testimony.~~

17 Art. 1701. Judgment by default

18 \* \* \*

19 B. When a defendant in an action for separation from bed and  
 20 board or divorce ~~under Civil Code Article 103(1)~~, by sworn affidavit,  
 21 acknowledges receipt of a certified copy of the petition and waives  
 22 formal citation, service of process, all legal delays, notice of trial, and  
 23 appearance at trial, a judgment of default may be entered against the  
 24 defendant the day on which the affidavit is filed. The affidavit of the  
 25 defendant may be prepared or notarized by any notary public. The  
 26 judgment may be obtained by oral motion in open court or by written  
 27 motion mailed to the court, either of which shall be entered in the

1 minutes of the court, but the judgment shall consist merely of an entry  
2 in the minutes.

3 Art. 1702. Confirmation of default judgment

4 \* \* \*

5 E. Notwithstanding any other provisions of law to the contrary,  
6 when the demand is for **separation from bed and board** or divorce  
7 ~~under Civil Code Article 103(1)~~, whether or not the demand contains  
8 a claim for relief incidental or ancillary thereto, a hearing in open court  
9 shall not be required unless the judge, in his discretion, directs that a  
10 hearing be held. The plaintiff shall submit to the court an affidavit  
11 specifically attesting to and testifying as to the truth of all of the factual  
12 allegations contained in the petition, and shall submit the original and  
13 not less than one copy of the proposed final judgment. If no answer or  
14 other pleading has been filed by the defendant, the judge shall, after  
15 two days, exclusive of holidays, of entry of a preliminary default,  
16 render and sign the judgment or direct that a hearing be held. The  
17 minutes shall reflect rendition and signing of the judgment.

18 \* \* \*

19 Art. 3941. Court where action brought; nullity of judgment of court of  
20 improper venue

21 A. An action for an annulment of marriage, **separation from**  
22 **bed and board**, or for a divorce shall be brought in a parish where  
23 either party is domiciled, or in the parish of the last matrimonial  
24 domicile.

25 B. The venue provided in this Article may not be waived, and  
26 a judgment rendered in ~~either~~ **any** of these actions by a court of  
27 improper venue is an absolute nullity.

1 Art. 3942. Appeal from judgment granting or refusing annulment,  
2 separation or divorce

3 A. An appeal from a judgment granting or refusing an  
4 annulment of marriage, a separation from bed and board, or a  
5 divorce can be taken only within thirty days from the applicable date  
6 provided in Article 2087(A)(1)-(3).

7 B. Such an appeal shall suspend the execution of the judgment  
8 insofar as the judgment relates to the annulment, separation, divorce,  
9 or any partition of community property or settlement of claims arising  
10 from the matrimonial regime.

11 \* \* \*

12 Art. 3944. Injunctive relief in divorce actions; bond not required in  
13 certain cases

14 Either party to an action for separation from bed and board or  
15 divorce may obtain injunctive relief as provided in Part V of Chapter  
16 1 of Code Title V of Code Book I of Title 9 (R.S. 9:371 et seq.) of the  
17 Revised Statutes without bond.

18 Section 3. R.S. 9:291 and 373(A) are hereby amended and reenacted  
19 to read as follows:

20 §291. Suits between spouses

21 Spouses may not sue each other except for causes of action  
22 pertaining to contracts or arising out of the provisions of Book III, Title  
23 VI of the Civil Code; for restitution of separate property; for divorce,  
24 separation from bed and board or declaration of nullity of the  
25 marriage; and for causes of action pertaining to spousal support or the  
26 support or custody of a child while the spouses are living separate and  
27 apart.

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373. Removal of personal property

A. In a proceeding for **separation from bed and board or for** divorce, a court may grant an ex parte order requiring the sheriff or appropriate law enforcement officer to accompany a spouse to the family residence or another location designated by the court so that personal property specified in the order may be obtained by that spouse.

\* \* \*

Section 4. R.S. 13:1401(A)(7) is hereby amended and reenacted to read as follows:

§1401. Family court for the parish of East Baton Rouge; establishment; jurisdiction

A. There is hereby established the family court for the parish of East Baton Rouge, which shall be a court of record with exclusive jurisdiction in the following proceedings:

(1) All actions for **separation from bed and board**, divorce, annulment of marriages, claims for contributions made by one spouse to the education or training of the other spouse, establishment or disavowal of the paternity of children, spousal and child support, and custody and visitation of children, as well as of all matters incidental to any of the foregoing proceedings, including but not restricted to the issuance of conservatory writs for the protection of community property, the awarding of attorney fees in judgments of divorce, the cumulation of and rendering executory of spousal and child support, the issuance of writs of fieri facias and garnishment under judgments of the court for spousal and child support and attorney fees, jurisdiction of which was vested in the Nineteenth Judicial District Court for the

1 parish of East Baton Rouge prior to the establishment of the family  
2 court for the parish of East Baton Rouge.

3 \* \* \*

4 Section 5. R.S. 46:2135(A)(introductory paragraph), and (B) are hereby  
5 amended and reenacted to read as follows:

6 §2135. Temporary restraining order

7 A. Upon good cause shown ~~in an ex parte proceeding,~~ **and after**  
8 **notice and hearing,** the court may enter a temporary restraining order,  
9 without bond, as it deems necessary to protect from abuse the  
10 petitioner, any minor children, or any person alleged to be an  
11 incompetent. Any person who shows immediate and present danger of  
12 abuse shall constitute good cause for purposes of this Subsection. The  
13 order may include, but is not limited to, the following:

14 \* \* \*

15 B. If a temporary restraining order is granted ~~without notice,~~ the  
16 matter shall be set within twenty days for a rule to show cause why the  
17 protective order should not be issued, at which time the petitioner must  
18 prove the allegations of abuse by a preponderance of the evidence. The  
19 defendant shall be given notice of ~~the temporary restraining order and~~  
20 the hearing on the rule to show cause by service of process as required  
21 by law ~~within twenty-four hours of the issuance of the order.~~

22 Section 6. Chapter 2 of Title IV of Book VII of the Code of Civil  
23 Procedure comprising Code of Civil Procedure Arts. 3951 through 3958, R.S.  
24 9:302, 307, 308 and 309, and R.S. 13:3491 are hereby repealed.

25 Section 7. The provisions of this Act shall become effective January  
26 1, 2004 and shall apply to actions for separation from bed and board or divorce  
27 or actions for incidental relief commenced after January 1, 2004.

1           Section 8. Any person who files a petition for divorce prior to January  
2           1, 2004, but who has not obtained a judgment of divorce on the effective date  
3           of this Act, may obtain a judgment of divorce in accordance with the law in  
4           effect prior to January 1, 2004.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Yolanda Johnson Dixon.

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#### DIGEST

Present law provides for a judgment of divorce, except in the case of a covenant marriage, to be granted on motion of a spouse upon proof that 180 days have elapsed from service of the petition or from the execution of written waiver of service and that the spouses have lived separate and apart continuously for at least 180 days prior to the filing of the rule to show cause. Additionally, provides for divorce when the spouses have lived separate and apart for six months or more on the date the petition is filed, when the other spouse has committed adultery, or when the other spouse has committed a felony and sentenced to death or imprisonment at hard labor.

Present law provides that in a divorce, a judgment on the pleadings and a summary judgment without hearing may be granted upon specified conditions. Additionally provides for the procedure to be used in connection with obtaining the judgment of divorce and authorizes the court to hear proceedings related to divorce in chambers.

Proposed law requires marital counseling in a proceeding for a judgment for divorce and reinstates the cause of action for separation from bed and board and divorce based on fault and the incidental relief and effects related to reinstatement of the action for separation. Proposed law deletes procedures used in Article 102 divorce proceedings to effectuate the divorce and deletes authority to use summary judgments and judgment on the pleadings in a divorce proceeding.

Proposed law reestablishes jurisdiction and venue for separation from bed and board actions and provides for judgment and confirmation of judgment by default in such actions.

Proposed law deletes provisions authorizing a court to hold divorce proceedings in chambers.

Present law provides the grounds for separation from bed and board and divorce related to a covenant marriage.

Proposed law deletes these provisions.

Present law provides, relative to the issuance of temporary restraining orders

and protective orders, that the court, for good cause, in an ex parte proceeding may enter a temporary restraining order to protect a petitioner, minor children or an incompetent from abuse. Provides that a temporary restraining order may be granted without notice and provides for notice of the order at the hearing of the rule to show cause.

Proposed law eliminates the authority of the court to issue temporary restraining orders in an ex parte proceeding without notice. Requires notice and that a hearing be held before a temporary restraining order can be issued.

Effective Jan.1, 2004. Provides that proposed law shall apply to actions for separation from bed and board or divorce commenced after Jan. 1, 2004. Provides that persons who file for divorce prior to Jan. 1, 2004, but who do not obtain a judgment on the effective date of proposed law may obtain a judgment in accordance with the prior law.

(Amends C.C. Arts. 102-105, C.C. Art.111, C.C.P. Arts. 10(A)(7) and (B), 969, 1701(B), 1702(E), 3941, 3942, and 3944, R.S. 9:291 and 373(A), R.S. 13:1401(A)(7), R.S. 46:2135(intro para), (A) and (B); adds C.C. Arts 106 - 108; repeals C.C.P. Arts. 3951-3958, R.S. 9:302 through 309 and R.S. 13:3491)