

Divorce

BACKGROUND

In Michigan, marriages may be ended deliberately in two ways—annulment or divorce. Annulment, which happens only infrequently, occurs when a court puts aside a marriage as though it never happened; strict legal criteria apply. An annulment may be granted in cases of

- fraud—e.g., one party failed to disclose certain information to the other before the marriage occurred, such as s/he already was married, had a criminal record or an infectious disease, or cannot or does not wish to have children;
- a blood relationship between the parties that is too close—e.g., they are first cousins or siblings; or
- one party was underage and did not have parental consent to marry.

GLOSSARY

Annulment

A declaration stating that a marriage never was valid.

Divorce

Legal dissolution of a marriage.

Ground

The condition prompting an action.

No-fault divorce

Divorce in which no blame is assigned to either party.

Divorce occurs when a court order dissolves a marriage. According to the Office of the State Registrar, in Michigan in 1996 there were approximately 68,600 marriages (14 per 1,000 adult residents) and roughly 38,000 divorces (8 per 1,000 adult residents). Although it is difficult to calculate precisely the percentage of Michigan marriages that end in divorce (some who married in Michigan may divorce elsewhere and vice versa), divorces as a percentage of new marriages currently are 56 percent; this figure has climbed steadily since the late 1960s, when it was approximately 25 percent. Nationally, about half of all marriages (one-third of first-time marriages) end in divorce.

No-Fault Divorce

Since 1973 Michigan has been one of 14 “pure no-fault” states, meaning the parties need give no reason for seeking a divorce other than that one of them no longer wishes to remain married to the other and claims “irretrievable breakdown of the marriage, causing objects of matrimony to be destroyed such that there remains no reasonable likelihood that the marriage can be preserved.” (Fault still can be an issue in property division, child custody, and spousal support, however.) A no-fault divorce decree may be issued six months after proceedings begin, if all issues—i.e., property division and child custody—are resolved. The party who did not initiate the proceeding has no legal ground from which to contest the divorce. Most of the other 36 states have a system through which no-fault divorces are available for couples in which both parties agree to divorce, but if one contests the action, the other must prove that s/he has grounds for the action; permissible grounds vary from state to state.

DIVORCE

Proposed Changes in Michigan Divorce Law

House Bill 5217 proposes a three-tier divorce system: consent, non-consent, and legal separation. Despite its having gained national interest, the bill remains in committee.

Consent

When both parties agree to divorce, a no-fault standard would remain. If there are minor children, both parties would have to participate in a pre-divorce education program. If the following conditions are met, a divorce would be granted, without a hearing, six months after both parties fill out a standardized court form alleging the no-fault ground for divorce and certifying that the following requirements have been met:

- There are no minor children
- The couple's assets total less than \$5,000
- The couple's combined annual income is under \$25,000

Non-Consent

If the second party does not consent to divorce, the person initiating the action must prove that there are grounds for the divorce. Grounds would include imprisonment, extramarital sexual activity, desertion, substance abuse, and mental or physical spousal or child abuse. The party not filing for divorce may admit the ground(s) alleged, deny it without further explanation, or counterclaim a ground. If an allegation is proven by a preponderance of evidence, and the parties comply with the other requirements, the court will enter a divorce judgement. If an allegation is not so proven, the court shall deny the divorce. Participation in a pre-divorce education program would be left to the court's discretion or the wishes of one or both of the parties.

Legal Separation

If the second party does not consent to divorce, the person initiating the action may file for legal separation; after four years, the initiator may file for a no-fault divorce.

DISCUSSION

Opponents to current legislation have several arguments against altering Michigan's no-fault divorce system.

- Making divorce harder will not save marriages. Most couples separate before filing for divorce; delaying divorce will not keep unhappy spouses from moving out, but it will postpone the time when dependents receive court-ordered support.
- A pure no-fault divorce law is not causing more divorces in Michigan than elsewhere: Michigan's divorce rate is believed to be only a little higher than the nation's, and almost three-quarters of the states have divorce laws more restrictive than Michigan's.
- Such changes restrict individual freedom; government should not reach into family life and cannot legislate morality.
- Making divorce more difficult may cause harm to those trying to escape an abusive relationship; in such cases, an abusive spouse can contest the divorce, prolonging proceedings and aggravating the problem.
- Legal fees will escalate because proceedings will be prolonged.
- Having to prove grounds will lead some people to perjure themselves in regard to actions they attribute to their spouses.

Supporters of HB 5217 present many arguments in favor of limiting Michigan's no-fault divorce system.

- Michigan's divorce rate has almost doubled since the no-fault divorce system was instituted. Making divorce easier has led to some taking their vows less seriously: "If it doesn't work out, we can get divorced."
- Most other states and countries have a system that allows for fault and no-fault divorces and legal separation. In comparison to the average of the 36 states that have such a system, Michigan's divorce rate is higher.

- Children who come from broken homes are more likely to drop out of school, become pregnant, and seek divorce in their own marriages.
- No-fault divorce reform advocate and author of *Fatherless America*, David Blankenhorn, suggests that 20–25 percent of divorces are attributable to easier, no-fault laws.

See also Child and Family Services; Domestic Violence.

FOR ADDITIONAL INFORMATION

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