

NO FAULT DIVORCE



New York State ASSEMBLY

Sheldon Silver - Speaker

Thursday, September 9, 2010

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A09753 Summary:

BILL NO A09753A

SAME AS Same as S 3890-A

SPONSOR Bing (MS)

COSPNSR Lavine, Galef, Lancman, Titone, Cymbrowitz, Koon, Powell, Schimel, Zebrowski, Benedetto, Kellner, Rivera J, Espaillat, Kavanagh, Dinowitz, Spano, Fields, Ortiz, Boyland, Castro, Weprin D, Jaffee

MLTSPNSR Alfano, Cahill, Calhoun, Conte, Cook, DenDekker, Duprey, Finch, Gabryszak, Gianaris, Gottfried, Gunther, Hevesi, Hooper, Jeffries, Jordan, Lifton, Lupardo, Magee, Maisel, Markey, Mayersohn,

McDonough,

McKevitt, Meng, Miller M, Millman, Perry, Pretlow, Quinn, Rivera P, Robinson, Sayward, Scarborough, Scozzafava, Skartados, Sweeney, Thiele, Towns, Townsend

Amd S170, Dom Rel L

Provides that spouses may be granted a judgment of divorce in a timely fashion provided they meet certain conditions.

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A09753 Actions:

BILL NO A09753A

01/21/2010 referred to judiciary
06/03/2010 amend and recommit to judiciary
06/03/2010 print number 9753a
06/28/2010 reported referred to rules
07/01/2010 reported
07/01/2010 rules report cal.523
07/01/2010 substituted by s3890a
S03890 AMEND=A HASSELL-THOMPSON

04/02/2009 REFERRED TO JUDICIARY
05/19/2009 1ST REPORT CAL.358
05/20/2009 2ND REPORT CAL.
05/26/2009 ADVANCED TO THIRD READING
07/16/2009 COMMITTED TO RULES
01/06/2010 REFERRED TO JUDICIARY
05/03/2010 NOTICE OF COMMITTEE CONSIDERATION - REQUESTED
05/18/2010 1ST REPORT CAL.570
05/24/2010 2ND REPORT CAL.
05/25/2010 ADVANCED TO THIRD READING
06/01/2010 AMENDED ON THIRD READING 3890A
06/15/2010 PASSED SENATE
06/15/2010 DELIVERED TO ASSEMBLY
06/15/2010 referred to judiciary
07/01/2010 substituted for a9753a
07/01/2010 ordered to third reading rules cal.523
07/01/2010 passed assembly
07/01/2010 returned to senate
08/03/2010 DELIVERED TO GOVERNOR
08/13/2010 SIGNED CHAP.384

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A09753 Votes:

There are no votes for this bill in the current legislative session.

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A09753 Memo:

BILL NUMBER:A9753A

REVISED 7/26/10

TITLE OF BILL: An act to amend the domestic relations law, in relation to no fault divorce

PURPOSE OR GENERAL IDEA OF THE BILL: This bill would allow a judgment of divorce to be granted to either party to a divorce action without assigning fault to the other party. However, a divorce could only be granted after the major ancillary issues have been resolved.

SUMMARY OF SPECIFIC PROVISIONS: Section 1. Section 170 of the Domestic Relations Law is amended by adding subdivision 7 allowing divorce when a marriage is irretrievably broken, for a period of at least six months, provided that one party has so stated under oath.

This judgment can only be granted after the following ancillary issues have been resolved: the equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and expert fees and expenses, and custody and visitation with the infant children of the marriage.

A judgment of divorce under this subdivision could not be issued until all these issues are resolved.

Section 2 establishes that this act shall take effect on the sixtieth day after it shall have become law.

JUSTIFICATION: New York is the only state that does not have a no-fault divorce provision.

Currently, a divorce can only be procured by alleging fault such as cruel and inhuman treatment, adultery, abandonment or confinement of the defendant in prison (in addition to the parties living apart pursuant to a separation agreement or judicial decree for more than one year). Yet many people divorce for valid reasons that do not fall under these classifications. They are forced to invent false justifications to legally dissolve their marriages. False accusations and the necessity to hold one partner at fault often result in conflict within the family. The conflict is harmful to the partners and destructive to the emotional well-being of children. Prolonging the divorce process adds additional stress to an already difficult situation.

A study cited at the 2007 Forum on the Need for No-Fault Divorce presented by the NYS Office of Court Administration's Office of Matrimonial and Family Law Study and Reform showed a large decline in domestic violence in states with no-fault divorce. The 27 states studied that have adopted no-fault divorce statutes have seen female suicide rates decline approximately 20 while reports of domestic violence committed by husbands against wives were reduced by more than one-third.

This legislation enables parties to legally end a marriage which is, in reality, already over and cannot be salvaged. Its intent is to lessen

the disputes that often arise between the parties and to mitigate the potential harm to them and their children caused by the current process. Because a resolution of all the major issues must be reached before a divorce judgment is granted, this legislation safeguards the parties' rights and economic interests.

It is the intent of this legislation to grant full recognition and respect to valid marriages of same-sex couples to obtain relief under New York State laws and in New York's courts. While the Domestic Relations Law uses the terms "husband and wife" in some places and "plaintiff and defendant" in others, in using the terms "husband and wife", it is not the intent of this legislation to preclude access to relief under the Domestic Relations Law by same-sex couples with valid marriages performed outside the state. Current New York law, written to apply to "husband and wife," has been properly interpreted by New York courts to allow relief for same-sex couples with valid marriages. It is not the intent of this legislation to alter the interpretations of this case law including *Martinez v. County of Monroe*, 50 A.D.3d 189, 850 N.Y.S.2d 740 (4th Dep't 2008), *Beth R. V. Donna M.*, 19 Misc. 3d 724, (Sup. Ct., N.Y. County 2008), and *C.M. v. C.C.*, 867 N.Y.S.2d 884, (Sup. Ct., N.Y. County 2008), nor is it the intent of this legislation to alter New York State's policy to recognize out-of-state same-sex marriages.

PRIOR LEGISLATIVE HISTORY: A9398A of 2007-2008.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect on the sixtieth day after it shall have become law.

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A09753 Text:

S T A T E O F N E W Y O R K

9753--A

I N A S S E M B L Y

January 21, 2010

Introduced by M. of A. BING, LAVINE, GALEF, LANCMAN, TITONE,
CYMBROWITZ,
KON, POWELL, SCHIMEL, ZEBROWSKI, BENEDETTO, KELLNER, J.
RIVERA,
ESPAILLAT, KAVANAGH, DINOWITZ, SPANO, FIELDS, ORTIZ, BOYLAND,
CASTRO,
HYER-SPENCER -- Multi-Sponsored by -- M. of A. ALFANO,
BURLING,
CAHILL, CALHOUN, CONTE, COOK, CROUCH, DenDEKKER, DUPREY,
ERRIGO,
FINCH, GABRYSZAK, GIANARIS, GIGLIO, GOTTFRIED, GUNTHER, HEVESI,
HOOP-
ER, JEFFRIES, JORDAN, LIFTON, LUPARDO, MAGEE, MAISEL, MARKEY,
MAYER-
SOHN, McDONOUGH, McKEVITT, MENG, M. MILLER, MILLMAN, MONTESANO,
PERRY,
PRETLOW, QUINN, REILICH, P. RIVERA, ROBINSON, SAYWARD,
SCARBOROUGH,
SCOZZAFAVA, SKARTADOS, SWEENEY, THIELE, TOWNS, TOWNSEND -- read
once
and referred to the Committee on Judiciary -- committee
discharged,
bill amended, ordered reprinted as amended and recommitted to
said
committee

AN ACT to amend the domestic relations law, in relation to no
fault
divorce

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND
ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 170 of the domestic relations law is amended
by
2 adding a new subdivision 7 to read as follows:
3 (7) THE RELATIONSHIP BETWEEN HUSBAND AND WIFE HAS BROKEN DOWN
IRRE-
4 TRIEVABLY FOR A PERIOD OF AT LEAST SIX MONTHS, PROVIDED THAT ONE
PARTY
5 HAS SO STATED UNDER OATH. NO JUDGMENT OF DIVORCE SHALL BE GRANTED
UNDER
6 THIS SUBDIVISION UNLESS AND UNTIL THE ECONOMIC ISSUES OF
EQUITABLE

7 DISTRIBUTION OF MARITAL PROPERTY, THE PAYMENT OR WAIVER OF
SPOUSAL
8 SUPPORT, THE PAYMENT OF CHILD SUPPORT, THE PAYMENT OF COUNSEL
AND
9 EXPERTS' FEES AND EXPENSES AS WELL AS THE CUSTODY AND VISITATION
WITH
10 THE INFANT CHILDREN OF THE MARRIAGE HAVE BEEN RESOLVED BY THE
PARTIES,
11 OR DETERMINED BY THE COURT AND INCORPORATED INTO THE JUDGMENT
OF
12 DIVORCE.
13 S 2. This act shall take effect on the sixtieth day after it
shall
14 have become a law and shall apply to matrimonial actions
commenced
15 on or after such effective date.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in
brackets

[] is old law to be omitted.

LBD03530-04-

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