
HOUSE BILL 1711

State of Washington 54th Legislature 1995 Regular Session

By Representatives Padden, Backlund and McMahan

Read first time 02/06/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to written marriage contracts; amending RCW
2 26.09.030; reenacting and amending RCW 26.09.020 and 26.09.150; and
3 adding a new section to chapter 26.04 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.04 RCW
6 to read as follows:

7 (1) The marriage contract entered into pursuant to this chapter may
8 be a written marriage contract, entered either prior to or after the
9 marriage is duly and lawfully solemnized, which may provide that the
10 marital relationship of the husband and wife shall only be dissolved
11 upon a finding by the court, established by a preponderance of the
12 evidence, that reasonable grounds for dissolution of the marriage have
13 been proven. Reasonable grounds for dissolution of the marriage in
14 such contract may include the following:

15 (a) The commission of adultery by the other party;

16 (b) The other party was infected with a sexually transmitted
17 disease not known to the spouse filing the petition for dissolution of
18 marriage, at the time the marriage was solemnized, or which disease is

1 contracted by the other party after the marriage from other than the
2 spouse filing the petition for dissolution of marriage;

3 (c) The other party was infected at the time the marriage was
4 solemnized with a fatal disease not known to the spouse filing the
5 petition for dissolution of marriage;

6 (d) The spouse filing the petition for dissolution of marriage or
7 legal separation has been abandoned by the other spouse for one or more
8 years preceding the filing of the petition;

9 (e) The other party is habitually addicted to alcohol or drugs;

10 (f) Failure, neglect, or refusal of the other party to provide for
11 the party's family to the extent such agreement was set forth in the
12 written marriage contract;

13 (g) Imprisonment of the other party in a state, federal, or foreign
14 prison for two or more years, during which the petition for dissolution
15 of marriage or legal separation is filed;

16 (h) Treatment of the petitioning spouse, or a family member
17 residing in the home of the parties, by the other party, in a manner
18 which constitutes physical abuse, extreme mental cruelty, or sexual
19 abuse;

20 (i) Determination that the other party is legally insane; or

21 (j) Mutual consent of both parties, voluntarily, knowingly, and
22 freely given, to the entry of a decree of dissolution of marriage.

23 (2) Common law equitable principles, including, but not limited to
24 condonation, the clean hands doctrine, or other equitable principles
25 apply to dissolution actions based on allegations of grounds.
26 Affirmative defenses may be asserted as defenses to allegations of
27 grounds. A written marriage contract may provide remedies for violation
28 including damages, specific enforcement, dissolution of marriage, or
29 legal separation.

30 (3) The written marriage contract shall be interpreted according to
31 and pursuant to the laws of the state of Washington which shall apply
32 to all such contracts. The state of Washington shall retain
33 jurisdiction over all marriage contracts entered pursuant to the
34 authorization of this chapter. A decree or order of dissolution of
35 marriage, divorce, legal separation, or declaration concerning the
36 validity of the marriage, which does not conform to the marriage
37 contract and the laws of the state of Washington, shall have no force
38 nor effect.

1 (4) A marriage contract that limits the availability of a decree of
2 dissolution of marriage to only those reasonable grounds for
3 dissolution of marriage enumerated in the written marriage contract
4 shall contain an express waiver of the availability of all other
5 statutory or contractual bases for the award of a decree of dissolution
6 of marriage in a form substantially as follows:

7 WAIVER

8 I understand that, pursuant to the laws of the state of
9 Washington, married persons may obtain a dissolution of their
10 marriage only by claiming that the parties' marriage is
11 "irretrievably broken." I understand that most, if not all,
12 states in the United States may have similar laws permitting
13 divorce or dissolution of marriage without requiring the proof
14 of any reasonable grounds for divorce or dissolution of
15 marriage.

16 By signing this written marriage contract, I knowingly
17 and voluntarily waive any right to a divorce or dissolution of
18 my marriage by any and all other statutory rights and
19 provisions and specifically limit the availability of divorce
20 or dissolution of marriage to only those specific reasonable
21 grounds for divorce or dissolution of marriage which are herein
22 enumerated.

23 **Sec. 2.** RCW 26.09.020 and 1989 1st ex.s. c 9 s 204 and 1989 c 375
24 s 3 are each reenacted and amended to read as follows:

25 (1) A petition in a proceeding for dissolution of marriage, legal
26 separation, or for a declaration concerning the validity of a marriage,
27 shall allege the following:

28 (a) The last known residence of each party;

29 (b) The date and place of the marriage;

30 (c) If the parties are separated the date on which the separation
31 occurred;

32 (d) The names, ages, and addresses of any child dependent upon
33 either or both spouses and whether the wife is pregnant;

34 (e) Any arrangements as to the residential schedule of, decision
35 making for, dispute resolution for, and support of the children and the
36 maintenance of a spouse;

1 (f) A statement specifying whether there is community or separate
2 property owned by the parties to be disposed of;

3 (g) The relief sought;

4 (h) The grounds for dissolution of the marriage, if a written
5 marriage contract was executed in accordance with section 1 of this
6 act.

7 (2) Either or both parties to the marriage may initiate the
8 proceeding.

9 (3) The petitioner shall complete and file with the petition a
10 certificate ((~~under RCW 70.58.200~~)) on the form provided by the
11 department of health.

12 **Sec. 3.** RCW 26.09.030 and 1973 1st ex.s. c 157 s 3 are each
13 amended to read as follows:

14 When a party who is a resident of this state or who is a member of
15 the armed forces and is stationed in this state, petitions for a
16 dissolution of marriage, and alleges that the marriage is irretrievably
17 broken or that the terms of the written marriage contract have been
18 violated, and when ninety days have elapsed since the petition was
19 filed and from the date when service of summons was made upon the
20 respondent or the first publication of summons was made, the court
21 shall proceed as follows:

22 (1) If the other party joins in the petition ((~~or~~)), does not deny
23 that the marriage is irretrievably broken, or in a case involving a
24 written marriage contract, does not deny the alleged grounds have
25 occurred, the court shall enter a decree of dissolution.

26 (2) If the other party alleges that the petitioner was induced to
27 file the petition by fraud, or coercion, the court shall make a finding
28 as to that allegation and, if it so finds shall dismiss the petition.

29 (3) If the other party denies that the marriage is irretrievably
30 broken or that the written marriage contract was violated, the court
31 shall consider all relevant factors, including the circumstances that
32 gave rise to the filing of the petition ((~~and~~)), the prospects for
33 reconciliation, and the written marriage contract between the parties
34 if one was executed, and shall:

35 (a) Make a finding that the marriage is irretrievably broken and
36 enter a decree of dissolution of the marriage; or

37 (b) At the request of either party or on its own motion, transfer
38 the cause to the family court, refer them to another counseling service

1 of their choice, and request a report back from the counseling service
2 within sixty days, or continue the matter for not more than sixty days
3 for hearing. If the cause is returned from the family court or at the
4 adjourned hearing, the court shall:

5 (i) Find that the parties have agreed to reconciliation and dismiss
6 the petition; or

7 (ii) Find that the parties have not been reconciled, and that
8 either party continues to allege that the marriage is irretrievably
9 broken. When such facts are found, the court shall enter a decree of
10 dissolution of the marriage unless the entry of such a decree is
11 contrary to the written marriage contract.

12 (4) If the petitioner requests the court to decree legal separation
13 in lieu of dissolution, the court shall enter the decree in that form
14 unless the other party objects and petitions for a decree of
15 dissolution or declaration of invalidity or unless the grounds are not
16 established as required by the terms of the written marriage contract.

17 **Sec. 4.** RCW 26.09.150 and 1989 1st ex.s. c 9 s 205 and 1989 c 375
18 s 30 are each reenacted and amended to read as follows:

19 A decree of dissolution of marriage, legal separation, or
20 declaration of invalidity is final when entered, subject to the right
21 of appeal. An appeal which does not challenge the finding that the
22 marriage is irretrievably broken ~~((or))~~, was invalid, or that grounds
23 delineated in the written marriage contract were proven does not delay
24 the finality of the dissolution or declaration of invalidity and either
25 party may remarry pending such an appeal.

26 No earlier than six months after entry of a decree of legal
27 separation, on motion of either party, the court shall convert the
28 decree of legal separation to a decree of dissolution of marriage. The
29 clerk of court shall complete the certificate ~~((as provided for in RCW~~
30 ~~70.58.200))~~ on the form provided by the department of health. On or
31 before the tenth day of each month, the clerk of the court shall
32 forward to the state registrar of vital statistics the certificate of
33 each decree of divorce, dissolution of marriage, annulment, or separate
34 maintenance granted during the preceding month.

35 Upon request of a party whose marriage is dissolved or declared
36 invalid, the court shall order a former name restored or the court may,
37 in its discretion, order a change to another name.

1 NEW SECTION. **Sec. 5.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

--- END ---