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SENATE BILL 5532

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State of Washington

54th Legislature

1995 Regular Session

By Senator Hochstatter

Read first time 01/26/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to written marriage contracts; amending RCW  
2 26.09.010 and 26.09.030; reenacting and amending RCW 26.09.020 and  
3 26.09.150; and adding new sections to chapter 26.09 RCW.

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

5 NEW SECTION. **Sec. 1.** Two persons of the opposite sex may, either  
6 prior to or after their marriage is lawfully and duly solemnized, enter  
7 into a written marriage contract providing that the marital  
8 relationship will not be dissolved except upon a showing by a  
9 preponderance of the evidence by one party of the fault of the other  
10 party that constitutes grounds for dissolution of the marriage, as  
11 specified in the marriage contract. If requirements for  
12 enforceability, as defined in section 2 of this act are met, the  
13 marriage contract shall be enforced by a court of competent  
14 jurisdiction and the marriage of the parties shall not be dissolved or  
15 modified except under the terms of the marriage contract. A party to  
16 the marriage who believes that the marriage contract has been violated  
17 and that the grounds specified in the contract exist for termination of  
18 the marriage may institute a legal proceeding to dissolve the marriage,

1 and if the grounds as specified in the contract are proven, that party  
2 shall be awarded a decree of dissolution of marriage.

3 NEW SECTION. **Sec. 2.** The written marriage contract, to be  
4 enforceable, must contain the following agreements between the parties:

5 (1) The written marriage contract contains the exclusive  
6 understanding and agreement between the parties regarding the terms of  
7 continuance of their legal marital relationship.

8 (2)(a) The marriage of the parties shall not be dissolved or  
9 otherwise modified except by mutual consent of the parties or upon a  
10 showing by a preponderance of the evidence of fault of the other party  
11 in a court of competent jurisdiction. Those acts that constitute fault  
12 must be set out in the marriage contract and must not be contrary to  
13 public policy in order to justify dissolution of the marriage of the  
14 parties.

15 (b) As used in this chapter, "fault" means:

16 (i) If the consent to the marriage of the party filing the petition  
17 for dissolution, legal separation, or declaration concerning validity  
18 was obtained by force, duress, or fraud of the other party and the  
19 petition is filed (A) within two years after the marriage is solemnized  
20 if the force or duress has ceased or (B) within two years after the  
21 party filing the petition has knowledge of the fraud. If a petition  
22 for declaration of validity is filed, the filing party must not have  
23 ratified the marriage by voluntarily cohabiting with the other party  
24 after the force or duress has ceased or having knowledge of the fraud;

25 (ii) If the party filing the petition for dissolution, legal  
26 separation, or declaration concerning validity was incapable of  
27 consenting to the marriage because of physical or mental incompetence  
28 and the petition is filed (A) within two years after the marriage is  
29 solemnized if the person filing the petition is still incapable or (B)  
30 within two years after the party filing the petition has become  
31 competent. If a petition for declaration of validity is filed, the  
32 filing party must not have ratified the marriage by voluntarily  
33 cohabiting with the other party after becoming competent;

34 (iii) If the party filing the petition for dissolution, legal  
35 separation, or declaration concerning validity was under the age of  
36 seventeen years at the time the marriage was solemnized and the  
37 petition is filed (A) within two years after the marriage is solemnized  
38 or (B) within two years after the party filing the petition reaches the

1 age of seventeen years. If a petition for declaration of validity is  
2 filed, the filing party must not have ratified the marriage by  
3 voluntarily cohabiting with the other party after reaching the age of  
4 seventeen years;

5 (iv) If a party commits adultery and the petition for dissolution  
6 or legal separation is filed within two years after the party filing  
7 the petition has knowledge of an act of adultery by the other party;

8 (v) If a party is impotent, the party filing the petition for  
9 dissolution or legal separation did not know at the time of marriage  
10 that the other party was or was likely to become impotent, and the  
11 petition is filed within two years after the party filing the petition  
12 has knowledge of the impotence of the other party;

13 (vi) If a party is infected with a sexually transmitted disease,  
14 including acquired immune deficiency syndrome (AIDS), syphilis,  
15 gonorrhea, herpes II, chancroid, and other venereal diseases, the party  
16 filing the petition for dissolution or legal separation did not know at  
17 the time of marriage that the other party was infected with a disease,  
18 the other party did not contract the disease from the filing party, or  
19 if the other party became infected with the disease after the marriage,  
20 the other party did not contract the disease from the filing party, and  
21 the petition is filed within two years after the party filing the  
22 petition has knowledge of the infection of the other party;

23 (vii) If a party is infected with another fatal disease or another  
24 contagious, infectious, or communicable disease, the party filing the  
25 petition for dissolution or legal separation did not know at the time  
26 of marriage that the other party was infected with such a disease, the  
27 other party did not contract the disease from the filing party and the  
28 petition is filed within two years after the party filing the petition  
29 has knowledge of the infection of the other party;

30 (viii) If a party has abandoned the relationship or has disappeared  
31 for one or more years at the time the party who has been abandoned or  
32 left alone files the petition for dissolution or legal separation;

33 (ix) If a party has an habitual and ongoing addiction to alcohol or  
34 drugs and the petition for dissolution or legal separation is filed  
35 within two years after the party filing the petition had knowledge of  
36 the addiction of the other party;

37 (x)(A) If the parties have specifically determined in the contract  
38 the proportionate share of responsibility for provision of the family  
39 and a party is continually neglecting or refusing to make the provision

1 and at the time the injured party files the petition for dissolution or  
2 legal separation there is no reasonable expectation that the neglect or  
3 refusal will cease, or (B) if the husband is continually neglecting or  
4 refusing to make reasonable provision for the basic needs of his family  
5 and at the time the wife files the petition for dissolution or legal  
6 separation there is no reasonable expectation that the neglect or  
7 refusal will cease;

8 (xi) If a party has been imprisoned in a state, federal, or foreign  
9 prison for two or more years at the time the petition for dissolution  
10 or legal separation is filed and the party filing the petition does so  
11 during the term of imprisonment of the other party;

12 (xii) If a party is continually treating the other party or a minor  
13 natural, adopted, step, or foster child residing in the home of a party  
14 with physical abuse or extreme mental cruelty, or a child with sexual  
15 abuse, and at the time the other party files the petition for  
16 dissolution or legal separation there is no reasonable expectation that  
17 the abuse or cruelty will cease; and

18 (xiii) If a party is determined to be legally insane and the  
19 petition for dissolution or legal separation is filed within two years  
20 after the party filing the petition had knowledge of the legal insanity  
21 of the other party.

22 (3) A legal proceeding involving the marriage contract shall be  
23 brought in a superior court in the state of Washington. The practice  
24 in civil actions in the state of Washington shall govern all  
25 proceedings. The state of Washington shall retain jurisdiction over  
26 all actions involving the marriage contract and the laws of the state  
27 of Washington shall apply. A dissolution of marriage, divorce, legal  
28 separation, or declaration concerning validity of the marriage that is  
29 not in conformance with the marriage contract and the laws of the state  
30 of Washington shall have no force or effect in the state of Washington.

31 (4) The parties must acknowledge that each recognizes that, in the  
32 absence of a written marriage contract, either party to a marriage may  
33 petition the court for dissolution of the marriage on the grounds that  
34 the marriage is irretrievably broken, and the petition shall be granted  
35 as provided in RCW 26.09.030. The parties must state in the written  
36 marriage contract that each, by executing the document, gives up that  
37 right and agrees to be bound solely by the terms of the written  
38 marriage contract to determine the grounds that will enable a party to  
39 successfully petition for dissolution of the marriage.

1 A marriage contract that contains a provision substantially in the  
2 following form shall satisfy the requirements of this subsection:

3 "I understand that a married person in the state of Washington  
4 may obtain a dissolution of his or her marriage by filing a  
5 petition in superior court claiming that the marriage is  
6 "irretrievably broken," and that no grounds for the dissolution  
7 of marriage must be proven nor must the fault of either party  
8 be shown. This is the meaning of the term "no-fault"  
9 dissolution of marriage. By signing this written marriage  
10 contract, I voluntarily give up the right to be awarded a  
11 dissolution of marriage without proof of grounds, and agree to  
12 be bound only by the terms of this written marriage contract.  
13 I understand that my marriage may be dissolved only if either  
14 my spouse or I commit one of the acts of fault specified in  
15 this contract, which will constitute a breach of this contract,  
16 or if we both agree to a dissolution of our marriage."

17 NEW SECTION. **Sec. 3.** (1) If violation of a written marriage  
18 contract is alleged and the responding party contests the petition or  
19 denies the allegation of fault, the court shall submit the issue of  
20 whether the marriage contract has been violated to a jury at the  
21 request of either party.

22 (2) If the jury finds that a violation of the written marriage  
23 contract has occurred, the court shall enter a decree of dissolution of  
24 marriage. The court shall determine issues of property division, child  
25 custody, child visitation, and maintenance requests by either party  
26 without submission of those items to the jury.

27 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act are each  
28 added to chapter 26.09 RCW.

29 **Sec. 5.** RCW 26.09.010 and 1989 c 375 s 1 are each amended to read  
30 as follows:

31 (1) Except as otherwise specifically provided herein, the practice  
32 in civil action shall govern all proceedings under this chapter, except  
33 that trial by jury is dispensed with in all proceedings other than  
34 those in which a violation of a written marriage contract is alleged.

35 (2) A proceeding for dissolution of marriage, legal separation or  
36 a declaration concerning the validity of a marriage shall be entitled

1 "In re the marriage of . . . . . and . . . . . ." Such proceeding  
2 may be filed in the superior court of the county where the petitioner  
3 resides.

4 (3) In cases where there has been no prior proceeding in this state  
5 involving the marital status of the parties or support obligations for  
6 a minor child, a separate parenting and support proceeding between the  
7 parents shall be entitled "In re the parenting and support of  
8 . . . . ."

9 (4) The initial pleading in all proceedings under this chapter  
10 shall be denominated a petition. A responsive pleading shall be  
11 denominated a response. Other pleadings, and all pleadings in other  
12 matters under this chapter shall be denominated as provided in the  
13 civil rules for superior court.

14 (5) In this chapter, "decree" includes "judgment".

15 (6) A decree of dissolution, of legal separation, or a declaration  
16 concerning the validity of a marriage shall not be awarded to one of  
17 the parties, but shall provide that it affects the status previously  
18 existing between the parties in the manner decreed.

19 **Sec. 6.** RCW 26.09.020 and 1989 1st ex.s. c 9 s 204 and 1989 c 375  
20 s 3 are each reenacted and amended to read as follows:

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

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

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

26 (c) If the parties are separated the date on which the separation  
27 occurred;

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

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

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

35 (g) The relief sought;

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

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

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

6 **Sec. 7.** RCW 26.09.030 and 1973 1st ex.s. c 157 s 3 are each  
7 amended to read as follows:

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

16 (1) If the other party joins in the petition ~~((or))~~, does not deny  
17 that the marriage is irretrievably broken, or in cases involving a  
18 written marriage contract, does not deny the alleged fault has  
19 occurred, the court shall enter a decree of dissolution.

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

23 (3) If the other party denies that the marriage is irretrievably  
24 broken or that the written marriage contract was violated the court  
25 shall consider all relevant factors, including the circumstances that  
26 gave rise to the filing of the petition ~~((and))~~, the prospects for  
27 reconciliation, and the written marriage contract between the parties  
28 if one was executed, and shall:

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

31 (b) At the request of either party or on its own motion, transfer  
32 the cause to the family court, refer them to another counseling service  
33 of their choice, and request a report back from the counseling service  
34 within sixty days, or continue the matter for not more than sixty days  
35 for hearing. If the cause is returned from the family court or at the  
36 adjourned hearing, the court shall:

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

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

6 (4) When violation of a written marriage contract is alleged and  
7 the responding party contests the petition or denies the allegation of  
8 fault, the court shall submit the issue of whether the marriage  
9 contract has been violated to a jury at the request of either party.  
10 If the jury finds that a violation of the written marriage contract has  
11 occurred, the court shall enter a decree of dissolution of marriage.  
12 The court shall determine issues of property division, child custody,  
13 child visitation, and maintenance requests by either party without  
14 submission of those issues to the jury.

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

20 **Sec. 8.** RCW 26.09.150 and 1989 1st ex.s. c 9 s 205 and 1989 c 375  
21 s 30 are each reenacted and amended to read as follows:

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

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

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

4       NEW SECTION.   **Sec. 9.**   If any provision of this act or its  
5       application to any person or circumstance is held invalid, the  
6       remainder of the act or the application of the provision to other  
7       persons or circumstances is not affected.

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