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SENATE BILL 5707

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators Craswell, Rasmussen, L. Smith and Stratton.

Read first time February 15, 1991. 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.**            (1) Two persons of the opposite sex may,  
6 either prior to or after their marriage is lawfully and duly  
7 solemnized, enter into a written marriage contract providing that the  
8 marital 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 which constitutes grounds for dissolution of the marriage, as  
11 specified in the marriage contract. If requirements for enforceability  
12 as defined in section 2 of this act are met, the marriage contract  
13 shall be enforced by a court of competent jurisdiction and the marriage  
14 of the parties shall not be dissolved or modified except under the  
15 terms of the marriage contract. A party to the marriage who believes

1 that the marriage contract has been violated and that the grounds  
2 specified in the contract exist for termination of the marriage may  
3 institute a legal proceeding to dissolve the marriage, and if the  
4 grounds as specified in the contract are proven, that party shall be  
5 awarded a decree of dissolution of marriage.

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

8 (1) The written marriage contract contains the exclusive  
9 understanding and agreement between the parties regarding the terms of  
10 continuance of their legal marital relationship;

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

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

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

28 (ii) If the party filing the petition for dissolution, legal  
29 separation, or declaration concerning validity was incapable of

1 consenting to the marriage because of physical or mental incompetence  
2 and the petition is filed (A) within two years after the marriage is  
3 solemnized if the person filing the petition is still incapable or (B)  
4 within two years after the party filing the petition has become  
5 competent. If a petition for declaration of validity is filed, the  
6 filing party must not have ratified the marriage by voluntarily  
7 cohabiting with the other party after becoming competent;

8 (iii) If the party filing the petition for dissolution, legal  
9 separation, or declaration concerning validity was under the age of  
10 seventeen years at the time the marriage was solemnized and the  
11 petition is filed (A) within two years after the marriage is solemnized  
12 or (B) within two years after the party filing the petition reaches the  
13 age of seventeen years. If a petition for declaration of validity is  
14 filed, the filing party must not have ratified the marriage by  
15 voluntarily cohabiting with the other party after reaching the age of  
16 seventeen years;

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

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

25 (vi) If a party is infected with a sexually transmitted disease,  
26 including acquired immune deficiency syndrome (AIDS), syphilis,  
27 gonorrhea, herpes II, chancroid, and other venereal diseases, the party  
28 filing the petition for dissolution or legal separation did not know at  
29 the time of marriage that the other party was infected with a disease,  
30 the other party did not contract the disease from the filing party, or

1 if the other party became infected with the disease after the marriage,  
2 the other party did not contract the disease from the filing party, and  
3 the petition is filed within two years after the party filing the  
4 petition has knowledge of the infection of the other party;

5 (vii) If a party is infected with another fatal disease, another  
6 contagious, infectious, or communicable disease, or with another  
7 disease specifically named in chapters 248-100 and 248-101 WAC, the  
8 party filing the petition for dissolution or legal separation did not  
9 know at the time of marriage that the other party was infected with  
10 such a disease, the other party did not contract the disease from the  
11 filing party and the petition is filed within two years after the party  
12 filing the petition has knowledge of the infection of the other party;

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

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

20 (x)(A) If the parties have specifically determined in the contract  
21 the proportionate share of responsibility for provision of the family  
22 and a party is continually neglecting or refusing to make the provision  
23 and at the time the injured party files the petition for dissolution or  
24 legal separation there is no reasonable expectation that the neglect or  
25 refusal will cease, or (B) if the husband is continually neglecting or  
26 refusing to make reasonable provision for the basic needs of his family  
27 and at the time the wife files the petition for dissolution or legal  
28 separation there is no reasonable expectation that the neglect or  
29 refusal will cease;

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

5 (xii) If a party is continually treating the other party or a minor  
6 natural, adopted, step or foster child residing in the home of a party  
7 with physical abuse or extreme mental cruelty, or a child with sexual  
8 abuse, and at the time the other party files the petition for  
9 dissolution or legal separation there is no reasonable expectation that  
10 the abuse or cruelty will cease; and

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

15 (3) A legal proceeding involving the marriage contract shall be  
16 brought in a superior court in the state of Washington. The practice in  
17 civil actions in the state of Washington shall govern all proceedings.  
18 The state of Washington shall retain jurisdiction over all actions  
19 involving the marriage contract and the laws of the state of Washington  
20 shall apply. A dissolution of marriage, divorce, legal separation, or  
21 declaration concerning validity of the marriage which is not in  
22 conformance with the marriage contract and the laws of the state of  
23 Washington shall have no force or effect in the state of Washington.

24 (4) The parties must acknowledge that each recognizes that, in the  
25 absence of a written marriage contract, either party to a marriage may  
26 petition the court for dissolution of the marriage on the grounds that  
27 the marriage is irretrievably broken, and the petition shall be granted  
28 as provided in RCW 26.09.030. The parties must state in the written  
29 marriage contract that each, by executing the document, gives up that  
30 right and agrees to be bound solely by the terms of the written

1 marriage contract to determine the grounds which will enable a party to  
2 successfully petition for dissolution of the marriage.

3 A marriage contract which contains a provision substantially in the  
4 following form shall satisfy the requirements of this subsection:

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

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

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

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

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

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

9        (2) A proceeding for dissolution of marriage, legal separation or  
10 a declaration concerning the validity of a marriage shall be entitled  
11 "In re the marriage of ..... and ....." Such proceeding may  
12 be filed in the superior court of the county where the petitioner  
13 resides.

14        (3) In cases where there has been no prior proceeding in this state  
15 involving the marital status of the parties or support obligations for  
16 a minor child, a separate parenting and support proceeding between the  
17 parents shall be entitled "In re the parenting and support of  
18 ....."

19        (4) The initial pleading in all proceedings under this chapter  
20 shall be denominated a petition. A responsive pleading shall be  
21 denominated a response. Other pleadings, and all pleadings in other  
22 matters under this chapter shall be denominated as provided in the  
23 civil rules for superior court.

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

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

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

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

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

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

8       (c) If the parties are separated the date on which the separation  
9 occurred;

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

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

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

17       (g) The relief sought((~~-~~));

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

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

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

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

28       When a party who is a resident of this state or who is a member of  
29 the armed forces and is stationed in this state, petitions for a



1 dissolution of marriage, and alleges that the marriage is irretrievably  
2 broken or that the terms of the written marriage contract have been  
3 violated, and when ninety days have elapsed since the petition was  
4 filed and from the date when service of summons was made upon the  
5 respondent or the first publication of summons was made, the court  
6 shall proceed as follows:

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

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

14 (3) If the other party denies that the marriage is irretrievably  
15 broken or that the written marriage contract was violated the court  
16 shall consider all relevant factors, including the circumstances that  
17 gave rise to the filing of the petition (~~(and)~~), the prospects for  
18 reconciliation, and the written marriage contract between the parties  
19 if one was executed, and shall:

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

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

28 (i) Find that the parties have agreed to reconciliation and dismiss  
29 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.

1 No earlier than six months after entry of a decree of legal  
2 separation, on motion of either party, the court shall convert the  
3 decree of legal separation to a decree of dissolution of marriage. The  
4 clerk of court shall complete the certificate as provided for in RCW  
5 70.58.200 on the form provided by the department of health. On or  
6 before the tenth day of each month, the clerk of the court shall  
7 forward to the state registrar of vital statistics the certificate of  
8 each decree of divorce, dissolution of marriage, annulment, or separate  
9 maintenance granted during the preceding month.

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

13 NEW SECTION. **Sec. 9.** If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.