

2015 Regular Session

HOUSE BILL NO. 539

BY REPRESENTATIVE JAMES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DOMESTIC ABUSE: Provides relative to civil remedies for domestic abuse

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AN ACT

To amend and reenact Civil Code Articles 103(4) and (5) and 2362.1, Code of Civil Procedure Article 1702(E), and R.S. 9:368, relative to domestic abuse; to provide with respect to grounds for divorce in cases of domestic abuse; to provide for the confirmation of a default judgment; to provide for the obligation to pay court costs and attorney fees; to provide for default judgment procedures; to provide for legislative intent; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 103(4) and (5) and 2362.1 are hereby amended and reenacted to read as follows:

Art. 103. Judgment of divorce; other grounds

Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

* * *

(4) ~~The~~ During the marriage, the other spouse ~~has~~ physically or sexually abused the spouse seeking divorce or a child of one of the spouses, regardless of whether the other spouse was prosecuted for the act of abuse.

(5) After a contradictory hearing or consent decree, a protective order or an injunction ~~has been~~ was issued during the marriage, in accordance with law, against

1 the other spouse to protect the spouse seeking the divorce or a child of one of the
2 spouses from abuse.

3 * * *

4 Art. 2362.1. Obligation incurred in an action for divorce

5 A. An obligation incurred before the date of a judgment of divorce for
6 attorney fees and costs in an action for divorce and in incidental actions is deemed
7 to be a community obligation.

8 B. Notwithstanding the provisions of Paragraph A of this Article, the court
9 may assess attorney fees and costs in an action for divorce granted pursuant to
10 Article 103(4) or (5) and in incidental actions thereafter against the perpetrator of
11 abuse, which shall be a separate obligation of the perpetrator.

12 Section 2. Code of Civil Procedure Article 1702(E) is hereby amended and reenacted
13 to read as follows:

14 Art. 1702. Confirmation of default judgment

15 * * *

16 E. Notwithstanding any other provisions of law to the contrary, when the
17 demand is for divorce under Civil Code Article 103(1) or (5), whether or not the
18 demand contains a claim for relief incidental or ancillary thereto, a hearing in open
19 court shall not be required unless the judge, in his discretion, directs that a hearing
20 be held. The plaintiff shall submit to the court an affidavit specifically attesting to
21 and testifying as to the truth of all of the factual allegations contained in the petition,
22 the original and not less than one copy of the proposed final judgment, and a
23 certification which shall indicate the type of service made on the defendant, the date
24 of service, the date a preliminary default was entered, and a certification by the clerk
25 that the record was examined by the clerk, including the date of the examination, and
26 a statement that no answer or other opposition has been filed. If no answer or other
27 pleading has been filed by the defendant, the judge shall, after two days, exclusive
28 of holidays, of entry of a preliminary default, review the affidavit, proposed final

1 judgment, and certification, render and sign the judgment, or direct that a hearing be
2 held. The minutes shall reflect rendition and signing of the judgment.

3 Section 3. R.S. 9:368 is hereby amended and reenacted to read as follows:

4 §368. Other remedies not affected

5 This Part shall in no way affect the remedies set forth in R.S. 46:2131
6 through 2142, the Criminal Code, the Children's Code, the Civil Code, or elsewhere;
7 however, the court, in any case brought under R.S. 46:2131 et seq., may impose the
8 remedies provided herein.

9 Section 4. It is the intent of this legislature in amending Civil Code Article 103 in
10 this Act to provide that the act of abuse or the issuance of a protective order issued after a
11 contradictory hearing constitutes grounds for an immediate divorce as provided in Civil
12 Code Article 103(4) or (5) if the petition for divorce was filed on or after August 1, 2014,
13 and the act of abuse or the issuance of a protective order occurred at any time during the
14 marriage. This provision has no application to protective orders or injunctions issued
15 pursuant to a consent decree prior to August 1, 2014.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 539 Engrossed

2015 Regular Session

James

Abstract: Provides for changes to the law relative to domestic abuse committed during the marriage.

Present law grounds for immediate divorce include:

- (1) Living separate and apart for a specific period of time provided by present law.
- (2) Adultery.
- (3) The commission of a felony and a sentence of death or imprisonment at hard labor.
- (4) Physical or sexual abuse of the spouse seeking divorce or a child of one of the spouses.
- (5) After a contradictory hearing or consent decree, a protective order or an injunction was issued against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse.

Proposed law retains present law except that it specifies that the abuse occurred during the marriage or when a protective order was issued during the marriage.

Proposed law provides for legislative intent with respect to the grounds for an immediate divorce involving abuse or the issuance of a protective order.

Present law provides, in general, that attorney fees and costs in a divorce action are community obligations.

Proposed law provides that notwithstanding present law, the court may assess attorney fees and costs against the perpetrator of abuse in an action for divorce and in incidental actions thereafter, which shall be a separate obligation of the perpetrator, when an immediate divorce is granted in the following two cases:

- (1) Physical or sexual abuse of the spouse seeking divorce or a child of one of the spouses.
- (2) The issuance of a protective order or an injunction against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse.

Present law provides that a hearing is not required when there is a demand for divorce upon the grounds that the spouses have been living separate and apart for the applicable time periods required by present law.

Proposed law extends present law to a demand for divorce when there was a protective order or injunction issued to protect one spouse or child from abuse.

(Amends C.C. Arts. 103(4) and (5) and 2362.1, C.C.P. Art. 1702(E), and R.S. 9:368)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Reinstates existing law providing that an immediate divorce is available if a protective order or injunction is granted after a consent decree during the marriage, but provides for legislative intent with respect to those consent decrees entered into prior to Aug. 1, 2014.
2. Provide that attorneys fees and court costs awarded for an immediate divorce granted pursuant to Civil Code Article 103(4) or (5) shall be a separate obligation of the perpetrator of abuse.
3. Provide that the legislative intent language applies to proposed law changes to Civil Code Article 103.