

Regular Session, 2014

HOUSE BILL NO. 749

BY REPRESENTATIVE MORENO AND SENATOR MORRELL

DIVORCE: Provides relative to divorce proceedings

1 AN ACT

2 To amend and reenact Civil Code Articles 103, 103.1, 112, and 113 and to enact Civil Code
3 Article 118 and R.S. 9:327, relative to divorce proceedings; to provide grounds for
4 immediate divorce, interim support, and final support in certain instances involving
5 domestic abuse; to provide for a determination of domestic abuse for spousal
6 support; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Civil Code Articles 103, 103.1, 112, and 113 are hereby amended and
9 reenacted and Civil Code Article 118 is hereby enacted to read as follows:

10 Art. 103. Judgment of divorce; other grounds

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

13 (1) The spouses have been living separate and apart continuously for the
14 requisite period of time, in accordance with Article 103.1, or more on the date the
15 petition is filed;

16 (2) The other spouse has committed adultery; ~~or~~

17 (3) The other spouse has committed a felony and has been sentenced to death
18 or imprisonment at hard labor;

1 (4) The other spouse has physically or sexually abused the spouse seeking
2 divorce or a child of one of the spouses, regardless of whether the other spouse was
3 prosecuted for the act of abuse; or

4 (5) If, after a contradictory hearing or consent decree, a protective order or
5 an injunction has been issued, in accordance with law, against the other spouse to
6 protect the spouse seeking the divorce or a child of one of the spouses from abuse.

7 Art. 103.1. Judgment of divorce; time periods

8 The requisite periods of time, in accordance with Articles 102 and 103 shall
9 be as follows:

10 (1) One hundred eighty days: where there are no minor children of the
11 marriage.

12 ~~(a) Where there are no minor children of the marriage; or~~

13 ~~(b) Upon a finding by the court, pursuant to a rule to show cause, that the~~
14 ~~other spouse has physically or sexually abused the spouse seeking divorce or a child~~
15 ~~of one of the spouses; or~~

16 ~~(c) If, after a contradictory hearing or consent decree, a protective order or~~
17 ~~an injunction has been issued, in accordance with law, against the other spouse to~~
18 ~~protect the spouse seeking the divorce or a child of one of the spouses from abuse.~~

19 (2) Three hundred sixty-five days when there are minor children of the
20 marriage at the time the rule to show cause is filed in accordance with Article 102
21 or a petition is filed in accordance with Article 103.

22 * * *

23 Art. 112. Determination of final periodic support

24 A. When a spouse has not been at fault prior to the filing of a petition for
25 divorce and is in need of support, based on the needs of that party and the ability of
26 the other party to pay, that spouse may be awarded final periodic support in
27 accordance with Paragraph B C of this Article.

28 B. When a spouse has not been at fault prior to the filing of a petition for
29 divorce and the court determines that party was the victim of domestic abuse

1 committed during the marriage by the other party, that spouse shall be awarded final
2 periodic support or a lump sum award, at the discretion of the court, in accordance
3 with Paragraph C of this Article.

4 C. The court shall consider all relevant factors in determining the amount
5 and duration of final support. Those factors may include:

6 (1) The income and means of the parties, including the liquidity of such
7 means.

8 (2) The financial obligations of the parties.

9 (3) The earning capacity of the parties.

10 (4) The effect of custody of children upon a party's earning capacity.

11 (5) The time necessary for the claimant to acquire appropriate education,
12 training, or employment.

13 (6) The health and age of the parties.

14 (7) The duration of the marriage.

15 (8) The tax consequences to either or both parties.

16 (9) The existence, effect, and duration of any act of domestic abuse
17 committed by the other spouse upon the claimant, regardless of whether the other
18 spouse was prosecuted for the act of domestic abuse.

19 D. The sum awarded under this Article shall not exceed one-third of the
20 obligor's net income; however, where support is awarded pursuant to Paragraph B
21 of this Article, the sum awarded may exceed one-third of the obligor's net income.

22 Art. 113. Interim spousal support allowance pending final spousal support award

23 A. Upon motion of a party or when a demand for final spousal support is
24 pending, the court may award a party an interim spousal support allowance based on
25 the needs of that party, the ability of the other party to pay, and the standard of living
26 of the parties during the marriage, which award of interim spousal support allowance
27 shall terminate upon the rendition of a judgment of divorce.

28 B. If a claim for final spousal support is pending at the time of the rendition
29 of the judgment of divorce, the interim spousal support award shall thereafter

1 terminate upon rendition of a judgment awarding or denying final spousal support
2 or one hundred eighty days from the rendition of judgment of divorce, whichever
3 occurs first. The obligation to pay interim spousal support may extend beyond one
4 hundred eighty days from the rendition of judgment of divorce, but only for good
5 cause shown.

6 C. If a claim for final spousal support is pending at the time of the rendition
7 of a judgment of divorce pursuant to Article 103, the interim spousal support award
8 shall thereafter terminate no less than one hundred eighty days from the rendition of
9 a judgment of divorce unless the final spousal award exceeds the interim spousal
10 support award.

11 * * *

12 Art. 118. Other remedies affected

13 Failure to bring an action for divorce pursuant to Article 103(4) or (5) or final
14 spousal support pursuant to Article 112(B) shall in no way affect the rights of the
15 party to seek other remedies provided by law.

16 Section 2. R.S. 9:327 is hereby enacted to read as follows:

17 §327. Determination of domestic abuse for spousal support

18 A. In awarding final spousal support pursuant to Civil Code Article 112(B),
19 the court shall consider any criminal conviction of the obligor spouse for an offense
20 committed against the claimant spouse during the course of the marriage.

21 B. In the absence of a criminal conviction, the court shall order an evaluation
22 of both parties to determine the existence and nature of the alleged domestic abuse.
23 The evaluation shall be conducted by an independent court-appointed mental health
24 professional who is an expert in the field of domestic abuse. The mental health
25 professional shall have no family, financial, or prior medical relationship with either
26 party or their attorneys of record. The mental health professional shall provide the
27 court and the parties with a written report of his findings.

28 Section 3. The provisions of this Act shall become effective on August 1, 2014 and
29 shall apply to all matters pending on that date or filed thereafter.

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)]

Moreno

HB No. 749

Abstract: Provides grounds for immediate divorce, interim support, and final support in certain instances involving domestic abuse.

Present law (C.C. Art. 103) provides grounds for immediate divorce.

Proposed law adds the following as grounds for immediate divorce:

- (1) When a spouse or child has been physically or sexually abused by the other spouse.
- (2) When a protective order or injunction has been issued against the other spouse.

Present law (C.C. Art. 103.1) provides required time delays for certain grounds of divorce.

Proposed law deletes the following as grounds for divorce after 180 days have passed:

- (1) When a spouse or child has been physically or sexually abused by the other spouse.
- (2) When a protective order or injunction has been issued against the other spouse.

Present law (C.C. Art. 112) authorizes the court to award final spousal support and provides a list of considerations for the court in determining the amount of the final award. Further limits a final award to an amount not greater than one-third of the obligor's net income.

Proposed law retains present law and requires the court to consider the existence, effect, and duration of domestic abuse during the marriage in determining a final award amount.

Proposed law requires the court to award final spousal support when the court finds that the spouse seeking divorce was the victim of domestic abuse committed by the other spouse during the marriage. Further authorizes the court to award a final award in an amount greater than one-third of the obligor's net income when the final award is made pursuant to C.C. Art. 112(B).

Proposed law (R.S. 9:327) requires the court to consider all criminal convictions of the obligor spouse committed against the obligee spouse during the course of the marriage in determining whether the obligee was the victim of acts of domestic abuse of the obligor. Further requires the court to appoint an independent mental health professional who is an expert in domestic abuse when there are no criminal convictions to evaluate the parties and requires the mental health professional to submit a report to the court for consideration in determining whether the obligee was the victim of acts of domestic abuse of the obligor.

(Amends C.C. Arts. 103, 103.1, 112, and 113; Adds C.C. Art. 118 and R.S. 9:327)