



## CONNECTICUT CHAPTER

RE: H.B. 7003 AN ACT CONCERNING THE VALIDITY OF MARRIAGES. (JUD)

Recommended Action: Pass the Bill

The Connecticut Chapter of the American Immigration Lawyers Association [CT AILA] is a nonpartisan, nonprofit organization comprised of immigration attorneys and law professors who are members of the national organization American Immigration Lawyers Association [AILA]. AILA was founded in 1946 to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.

The Connecticut Chapter has approximately 170 members who represent U.S. families seeking permanent residence for close family members, as well as U.S. businesses seeking talent from the global marketplace. CT AILA Members also represent foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis.

CT AILA supports H.B. 7003.

The purpose of this bill is to ensure federal agencies recognize legally valid marriages in the State of Connecticut.

This bill is necessary in cases where a Connecticut resident marries an individual who is not a U.S. citizen or lawful permanent resident in Connecticut. Either the Connecticut resident or the spouse had previously been married. The prior marriage was terminated through a divorce in a foreign country. Neither party to the foreign divorce was physically present but did comply with all of the jurisdictional and legal requirements of the foreign jurisdiction. The Connecticut resident files for an immigration benefit for the spouse and/or step-child. U.S. Citizenship and Immigration Services [USCIS] finds that this divorce does not comply with Connecticut law and therefore, holds that the subsequent Connecticut

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marriage is invalid. USCIS denies the immigration benefit because there is no legal marriage to the Connecticut resident. USCIS bases its decision on an erroneous reading of Connecticut law. USCIS states that the Supreme Court of Connecticut has held that the domicile of at least one of the spouses in the foreign country is essential to give a foreign court jurisdiction to grant a divorce. USCIS cites to *Litvaitis v. Litvaitis*, 162 Conn. 540, 295 A2d 519 (1972). However, a careful reading of *Litvaitis* shows that this is not accurate. *Litvaitis* holds that “ordinarily, our courts will not recognize a divorce obtained in a foreign country if neither spouse had a domicile in that country... the courts of this country will not generally recognize a judgment of divorce rendered by the courts of a foreign nation as valid to terminate the existence of a marriage unless, by the standards of the jurisdiction in which recognition is sought, at least one of the spouses was a good faith domiciliary in the foreign nation at the time the decree was rendered.” *Litvaitis*, at 545-546. (emphasis added) Domicile by at least one party is not a requirement for recognition under Connecticut law. Subsequent case law in Connecticut makes clear that the court’s priority is due process and public policy and when these elements are satisfied, Connecticut courts will recognize foreign divorces and separation agreements notwithstanding a lack of domicile by either party. See *Baker v. Baker*, 39 Conn Supp 66 (1983) and *Bruneau v. Bruneau*, 3 Conn App 453 (1985).

The effect of USCIS’s error is that it improperly denies immigrant petitions. This has a terrible adverse effect on the residents of Connecticut: their spouses and step-children are denied legal status in the U.S. USCIS’s suggestion to couples with this problem is for them to get a divorce from their prior spouse in Connecticut and then remarry the current spouse. Some judges in Connecticut have refused to do this because the prior marriage was already terminated. Furthermore, this recommendation can have a devastating effect on step-children because they may age-out of the immigration benefit altogether.

This bill fixes the problem because it mandates a rebuttable presumption that a Connecticut marriage is valid despite a prior foreign divorce which may not have complied with Connecticut’s jurisdictional requirements. It takes the discretion out of USCIS’s hands as to whether or not to consider the subsequent Connecticut marriage valid, while still allowing parties to the divorce to contest its validity in the Connecticut courts. This bill does not impact the rights of individuals to recover alimony and child support or dispute a property allocation from a previous marriage.

This bill will provide certainty for Connecticut residents who marry after a prior divorce in another state or country that their marriage will not be declared invalid by USCIS due to a difference in jurisdictional requirements in the prior divorce proceedings.