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## OLR Bill Analysis

### sHB 5211

#### ***AN ACT CONCERNING JUDICIAL PROCEDURES RELATING TO INITIATION OF AN ACTION FOR DISSOLUTION OF MARRIAGE, DISSOLUTION OF CIVIL UNION OR LEGAL SEPARATION.***

#### **SUMMARY**

This bill expands the conditions under which the court may waive the 90-day waiting period in certain dissolution of marriage or civil union and legal separation cases (see BACKGROUND). It does so by generally allowing the court to grant the waiver when the defendant in such a case does not appear in court.

Specifically, the bill:

1. requires the plaintiff to serve the defendant a blank appearance form with the complaint;
2. allows the plaintiff to file a motion to waive the waiting period if the defendant does not appear;
3. requires the plaintiff to include an affidavit making specific attestations under oath, such as (a) how process was served and (b) whether the parties have children, joint assets and debts, or a restraining or protective order between them;
4. gives the court discretion to (a) grant the motion to waive the waiting period if specific conditions are met and (b) enter a decree of dissolution or legal separation, without a hearing; and
5. requires the court to reinstate the case to the docket if there is material misrepresentation in the plaintiff's affidavit.

The bill requires the chief court administrator to prescribe the appearance and the motion for waiver forms.

It also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2018

### **APPEARANCE FORM**

The bill requires a plaintiff, in cases involving annulment, dissolution, or legal separation, to serve a blank appearance form with the complaint that under existing law he or she must serve and file to initiate the action.

The bill requires the chief court administrator to prescribe the appearance form.

### **MOTION TO WAIVE WAITING PERIOD**

#### ***Grounds for Waiver***

If the defendant does not appear, the bill allows the plaintiff to file a motion seeking a waiver of the waiting period for such actions at least 30 days after the complaint's return date (i.e., date by which action is required).

The bill requires the chief court administrator to prescribe the form to be used to file such a motion.

#### ***Plaintiff's Affidavit***

Under the bill, the motion seeking a waiver of the waiting period must include an affidavit in which the plaintiff must attest, under oath:

1. the manner in which service was made on the defendant, and, if by abode (i.e., the defendant's residence), the additional attestations described below;
2. whether there were children born to or adopted by the parties prior to, or during, the marriage or civil union, and whether either party is pregnant;
3. whether there is a restraining or protective order in effect between the parties;
4. whether the plaintiff is requesting alimony or spousal support;

and

5. whether the parties have any jointly owned property or jointly held debt.

***Service of Process by Abode***

If process was served at the defendant's place of residence, the plaintiff's affidavit must state (1) that the address at which service was made is the usual place of abode of the defendant, (2) that the plaintiff is unaware of the defendant residing elsewhere at the time service was made, and (3) the most recent date on which the plaintiff had personal knowledge that the defendant resided at the address where service was made.

**HEARING**

Under the bill, except as described below, the court must put the plaintiff's motion on the docket for a hearing. At the hearing, if all other applicable requirements are met the court may grant the motion for a waiver of the waiting period and may also enter a decree of dissolution or legal separation.

**COURTS DISCRETION TO GRANT MOTION AND ENTER DECREE**

***Motion Granted Without a Hearing***

The bill allows the court to grant the motion to waive the waiting period without a hearing, if it finds that:

1. the plaintiff has properly served the defendant, either personally or by abode, and, if by abode, has made the attestations described above;
2. the parties have no children and neither party is pregnant;
3. there is no restraining order or protective order in effect between the parties;
4. the plaintiff is not requesting alimony or spousal support; and
5. the parties do not have any jointly owned property or jointly

held debt and the plaintiff has filed a completed financial affidavit with the court.

### ***Decree Without Hearing***

The bill also allows the court, without a hearing, to enter (1) a decree of dissolution of marriage or civil union or legal separation and (2) if the plaintiff requests, an order restoring his or her birth name or former name.

The court must place the matter on the docket for a hearing if it determines that any of the conditions above have not been met.

### ***Case Reinstatement***

Under the bill, if there is a showing that the plaintiff's affidavit contained material misrepresentation, any judgment rendered or decree passed in an action for dissolution or legal separation in which the waiting period was waived may be set aside at any time and the case reinstated to the docket.

## **BACKGROUND**

### ***90-Day Waiting Period***

By law, parties to dissolution of marriage or civil union or legal separation actions must wait 90 days before the court may issue an order, but a longer period may apply if a party requests conciliation, a party fails to attend a requested conciliation, or a cross or amended complaint is filed.

Existing law, unchanged by the bill, allows the court, on request and under certain circumstances, to waive the waiting periods for parties who (1) file a motion requesting such a waiver; (2) attest, under oath, that they have an agreement on the terms of the divorce or legal separation; and (3) wish the court to enter a divorce decree or legal separation before the waiting periods expire.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 39 Nay 0 (03/28/2018)