



House of Representatives

General Assembly

File No. 491

February Session, 2018

Substitute House Bill No. 5211

House of Representatives, April 16, 2018

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-45 of the 2018 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2018*):

4 (a) A proceeding for an annulment, a dissolution of [a] marriage or
5 civil union or a legal separation shall be commenced by the service and
6 filing of a complaint as in all other civil actions in the Superior Court
7 for the judicial district in which one of the parties resides. The plaintiff
8 shall cause to be served with the complaint a blank appearance form,
9 in such form as the Chief Court Administrator prescribes. The
10 complaint may also be made by the Attorney General in a proceeding
11 for annulment of a void marriage. The complaint shall be served on the
12 other party.

13 (b) Any person entitled to service of process of a summons and
14 complaint that commences an action for an annulment, a dissolution of
15 marriage, a dissolution of civil union or a legal separation may waive
16 such service by (1) executing a written waiver of service on a form
17 prescribed by the Office of the Chief Court Administrator, and (2)
18 filing an appearance with the court. Upon filing of both the waiver of
19 service and the appearance of the person waiving such service, the
20 action shall proceed as consistent with the provisions of this chapter.

21 (c) If any party is an inmate who is (1) committed to the custody of
22 the Commissioner of Correction, and (2) a patient in a hospital for
23 psychiatric disabilities, a copy of the complaint shall be served on the
24 Commissioner of Administrative Services personally or by registered
25 or certified mail. If any party is confined in an institution in any other
26 state, a copy shall be so served on the superintendent of the institution
27 in which the party is confined.

28 Sec. 2. Section 46b-67 of the general statutes is repealed and the
29 following is substituted in lieu thereof (*Effective October 1, 2018*):

30 (a) Following the expiration of ninety days after the day on which a
31 complaint for dissolution or legal separation is made returnable, or
32 after the expiration of six months, where proceedings have been stayed
33 under section 46b-53, the court may proceed on the complaint, or
34 whenever dissolution is claimed under cross complaint, amended
35 complaint or amended cross complaint, the case may be heard and a
36 decree granted thereon after the expiration of the ninety days and
37 twenty days after the cross complaint, amended complaint or
38 amended cross complaint has been filed with the court, provided the
39 requirement of the twenty-day delay shall not apply (1) whenever
40 opposing counsel, having appeared, consents to the cross complaint,
41 amended complaint or amended cross complaint, or (2) where the
42 defendant has not appeared and the amendment does not set forth
43 either a cause of action or a claim for relief not in the original
44 complaint. Nothing in this section shall prevent any interlocutory
45 proceedings within the ninety-day period.

46 (b) If the parties attest, under oath, that they have an agreement as
47 to all terms of the dissolution of marriage or civil union or of the legal
48 separation and wish the court to enter a decree of dissolution of
49 marriage or civil union or of legal separation prior to the expiration of
50 the time periods set forth in subsection (a) of this section, and file a
51 motion seeking the waiver of said time periods, the court may waive
52 the provisions of subsection (a) of this section.

53 (c) (1) If the defendant has not appeared, the plaintiff may file a
54 motion, no sooner than thirty days after the day on which the
55 complaint for dissolution of marriage or civil union or for legal
56 separation is made returnable, seeking a waiver of the time periods set
57 forth in subsection (a) of this section. The plaintiff shall file such
58 motion on a form prescribed by the Chief Court Administrator. Such
59 motion shall include an affidavit in which the plaintiff shall attest,
60 under oath (A) the manner in which service was made on the
61 defendant, pursuant to section 46b-45, as amended by this act, and, if
62 such service was abode service, (i) that the address at which service
63 was made is the usual place of abode of the defendant, (ii) that the
64 defendant was not known by the plaintiff to be residing, whether
65 permanently or temporarily, at any other address at the time service
66 was made, and (iii) the most recent date on which the plaintiff had
67 personal knowledge that the defendant resided at the address at which
68 service was made; (B) whether there were children born to or adopted
69 by the parties prior to, or during, the marriage or civil union, and
70 whether either party is pregnant; (C) whether there exists a restraining
71 order, issued pursuant to section 46b-15, or a protective order, issued
72 pursuant to section 46b-38c, between the parties that is in effect; (D)
73 whether the plaintiff is requesting alimony or spousal support; and (E)
74 whether the parties have any jointly owned property or jointly held
75 debt.

76 (2) Except as provided in subdivision (3) of this subsection, the
77 motion by the plaintiff filed pursuant to subdivision (1) of this
78 subsection shall be docketed for a hearing. At such hearing, the court,
79 in its discretion, may grant the motion to waive the time periods set

80 forth in subsection (a) of this section and may further enter a decree of
81 dissolution of marriage or civil union or of legal separation at such
82 hearing, provided all other applicable requirements of this chapter are
83 met.

84 (3) If the court finds that (A) the plaintiff has properly effectuated
85 service upon the defendant, either personally or by abode, and, if by
86 abode, has attested (i) that the address at which the defendant was
87 served is the usual place of abode of the defendant, (ii) that the
88 defendant was not known by the plaintiff to be residing, whether
89 permanently or temporarily, at any other address at the time service
90 was made, and (iii) to the most recent date on which the plaintiff had
91 personal knowledge that the defendant resided at the address at which
92 service was made; (B) there were no children born to or adopted by the
93 parties prior to, or during, the marriage or civil union, and that neither
94 party is pregnant; (C) there does not exist a restraining order, issued
95 pursuant to section 46b-15, or a protective order, issued pursuant to
96 section 46b-38c, between the parties that is in effect; (D) the plaintiff is
97 not requesting alimony or spousal support; and (E) the parties do not
98 have any jointly owned property or jointly held debt, and the plaintiff
99 has filed with the clerk of the court a completed financial affidavit, the
100 court may, in its discretion, grant the motion to waive the time periods
101 set forth in subsection (a) of this section without a hearing. The court
102 may further enter a decree of dissolution of marriage or civil union or
103 of legal separation without a hearing, provided the court shall not
104 enter any order other than a dissolution of marriage or civil union or a
105 legal separation, and, if the plaintiff requests, an order restoring his or
106 her birth name or former name, without a hearing. If the court
107 determines that any of the conditions of this subdivision have not been
108 met, the matter shall be docketed for a hearing pursuant to subdivision
109 (2) of this subsection.

110 [(c)] (d) A decree of annulment or dissolution shall give the parties
111 the status of unmarried persons and they may marry again. A decree
112 of legal separation shall have the effect of a decree dissolving the
113 marriage except that neither party shall be free to marry. Neither the

114 ninety-day period specified in this section nor the six-month period
115 referred to in section 46b-53 shall apply in actions for annulment and
116 the court may proceed on any cause of action for annulment in the
117 manner generally applicable in civil actions.

118 Sec. 3. Section 52-212 of the general statutes is repealed and the
119 following is substituted in lieu thereof (*Effective October 1, 2018*):

120 (a) Any judgment rendered or decree passed upon a default or
121 nonsuit in the Superior Court may be set aside, within four months
122 following the date on which it was rendered or passed, and the case
123 reinstated on the docket, on such terms in respect to costs as the court
124 deems reasonable, upon the complaint or written motion of any party
125 or person prejudiced thereby, showing reasonable cause, or that a
126 good cause of action or defense in whole or in part existed at the time
127 of the rendition of the judgment or the passage of the decree, and that
128 the plaintiff or defendant was prevented by mistake, accident or other
129 reasonable cause from prosecuting the action or making the defense.

130 (b) In addition to the provisions of subsection (a) of this section, any
131 judgment rendered or decree passed in an action for dissolution of
132 marriage or civil union or for legal separation in which the waiting
133 period was waived pursuant to subsection (c) of section 46b-67, as
134 amended by this act, may be set aside at any time and the case
135 reinstated to the docket upon a showing of material misrepresentation
136 in the affidavit of the plaintiff filed pursuant to said subsection.

137 [(b)] (c) The complaint or written motion shall be verified by the
138 oath of the complainant or his attorney, shall state in general terms the
139 nature of the claim or defense and shall particularly set forth the
140 reason why the plaintiff or defendant failed to appear.

141 [(c)] (d) The court shall order reasonable notice of the pendency of
142 the complaint or written motion to be given to the adverse party, and
143 may enjoin him against enforcing the judgment or decree until the
144 decision upon the complaint or written motion.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2018	46b-45
Sec. 2	October 1, 2018	46b-67
Sec. 3	October 1, 2018	52-212

Statement of Legislative Commissioners:

In Section 2(b), the "a" before "civil union" was deleted and the "a" before "legal separation" was changed to "of the" for internal consistency in the subsection.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes changes to private party hearings and does not result in a fiscal impact to the state or municipalities.

The Out Years

State Impact: None

Municipal Impact: None

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)