

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 18-14—sHB 5211

Judiciary Committee

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

SUMMARY: This act sets conditions under which the court may waive the 90-day waiting period in certain dissolution of marriage or civil union and legal separation cases when the defendant fails to appear in court (see BACKGROUND).

Specifically, the act:

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, jointly owned properties or jointly held 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 act 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

BLANK APPEARANCE FORM

The act 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.

MOTION TO WAIVE WAITING PERIOD

Grounds for Waiver

If the defendant does not appear, the act 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).

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Plaintiff's Affidavit

Under the act, the plaintiff's motion for the court to waive 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., at 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.

Attestations when Service of Process is made by Abode

If process was served at the defendant's place of residence, the act requires that the plaintiff's affidavit state (1) that the address at which service was made is the defendant's usual place of abode, (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.

HEARING

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

1. the plaintiff properly served the defendant, either personally or by abode, and, if by abode, 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 filed a completed financial affidavit with the court.

Decree Without Hearing

The act also allows the court, without a hearing, to enter only (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.

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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 act, 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 generally must wait 90 days before the court may issue an order, but a longer period may apply if a party requests conciliation, fails to attend a requested conciliation, or files a cross or amended complaint.

Existing law, unchanged by the act, 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.