

HOUSE BILL REPORT

HB 1403

*As Reported By House Committee on:
Judiciary*

Title: An act relating to written marriage contracts.

Brief Description: Creating a written marriage contract that allows dissolution only on a showing of fault by one party.

Sponsor(s): Representatives Padden, Hochstatter, Hargrove, D. Sommers and Morton.

Brief History:

Reported by House Committee on:
Judiciary, March 5, 1991, DP.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass.* Signed by 10 members: Representatives Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; Mielke; Scott; D. Sommers; Tate; and Vance.

Minority Report: *Do not pass.* Signed by 7 members: Representatives Appelwick, Chair; Belcher; Inslee; Locke; R. Meyers; H. Myers; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: In 1973, Washington adopted the Uniform Marriage and Divorce Act and became a "no-fault" divorce state. Either spouse may obtain a divorce by alleging that the marriage is "irretrievably broken."

The court must dispose of the parties' property without regard to marital misconduct.

Prior to the adoption of the uniform act, Washington was a "fault" divorce state. Divorce could only be granted for one of several reasons: (1) consent to the marriage was obtained by fraud or force and no voluntary cohabitation followed the discovery of the fraud; (2) a party was incapable of consent due to insufficient age or mental incapacity; (3) adultery and the action was filed within one year of learning about the adultery; (4) impotency; (5) abandonment for one year; (6) cruel treatment of either

party by the other, or personal indignities rendering life burdensome; (7) habitual drunkenness of either party; (8) neglect or refusal of the husband to make suitable provision for his family; (9) imprisonment; (10) living separate and apart for five consecutive years without regard to fault in the separation; or (11) insanity for a period of two years before filing for divorce.

Currently, the parties do not have a right to trial by jury in a dissolution action.

Summary of Bill: Parties to a marriage, either before or after the marriage, may enter into a written marriage contract providing that the marriage may not be dissolved except by mutual consent or by the fault of one of the parties. The party must prove the fault of the other party by a preponderance of the evidence. What constitutes "fault" must be specified in the marriage contract and must not be contrary to public policy. The marriage contract must be the exclusive agreement between the parties governing the terms of the marriage contract. If the parties do not contract for a "fault" divorce, the current law governing "no-fault" divorce will govern.

The petitioner may petition for dissolution of the marriage due to the fault of the other party if, in general, the petitioner files the petition within two years of the discovery of the fault and the petitioner does not ratify the marriage by continuing to live with the party at fault. The petitioner may file when the party at fault:

- (1) Obtained consent to the marriage by force, duress, or fraud;
- (2) Married the petitioner when the petitioner was incapable of consenting to the marriage because of physical or mental incompetence;
- (3) Married the petitioner when the petitioner was under age 17 and the petitioner did not live with the party at fault after turning 17;
- (4) Commits adultery;
- (5) Is impotent;
- (6) Is infected with a sexually transmitted disease and the petitioner did not transmit the disease to the party at fault;
- (7) Is infected with another fatal disease, another contagious, infectious, or communicable disease named in chapters 248-100 and 248-101 WAC;

(8) Has abandoned the relationship or disappeared for one or more years;

(9) Has a habitual and ongoing addiction to alcohol or drugs;

(10) Continuously neglects or refuses to support the family in the proportionate share of responsibility for the family as determined in the contract or, if the party at fault is the husband, if the husband continuously neglects or refuses to make reasonable provision for the basic needs of his family, and no reasonable expectation exists that the neglect or refusal will cease. The two-year limitation does not apply to this provision;

(11) Has been imprisoned for two or more years and is still imprisoned when the petition is filed;

(12) Continuously treats the petitioner or a minor child residing in the home with physical abuse or extreme mental cruelty, or a child with sexual abuse, and there is no reasonable expectation that the abuse will cease. The two-year limitation does not apply to this provision; or

(13) Is legally insane.

The parties to the contract must acknowledge that in the absence of a written contract to the contrary either party may obtain a divorce on the grounds that the marriage is irretrievably broken. The contract must state that the parties give up that right and agree to be bound solely by the terms of the contract. A statutory format for the acknowledgement and agreement is provided.

The parties have a right to a jury trial if the responding party contests the petition and denies the allegations of fault.

Following a jury determination that the marriage should be dissolved the court must determine issues of property division, child custody, child visitation, and maintenance without submission of those issues to the jury.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The incident of divorce has reached crisis proportions. The negative consequences of divorce, especially for children, are profound and long-lasting. "No-fault" divorce contributes to the divorce rate because

obtaining a divorce is so easy. This bill will help curb the divorce rate by allowing couples to agree to remain married unless certain specific problems arise and persist of sufficient concern to warrant divorce.

Testimony Against: No-fault divorce is not the cause of the high divorce rate nor the negative consequences of divorce. Restoring "fault" divorce will not curb the divorce rate nor cure the societal problems resulting from divorce. Rather, it will aggravate the divorce process by the parties' efforts to prove fault, which will increase the animosity between the parties and lead to increased litigation costs. Rather than focus on making it more difficult to end a bad marriage, efforts should be directed at requiring parties to prepare for marriage before they get married.

Witnesses: Representative Padden, prime sponsor; Bryce Christensen, The Rockford Institute (pro); Scott Staley, Council for Responsible Government (pro); Judge Michael Donahue, Superior Court Judges Association (con); Bob Hoyden, Parents Opposed to Punitive Support (pro because parties get to choose); Lonnie Johns Brown, National Organization of Women (con); Anne Simons, Washington Women United (con); Conrad Green, citizen/lawyer (pro); Father John Pinette, Washington State Catholic Conference (pro); Paula Crane, Washington State Bar Association, Family Law Section (con); and Kim Prochnau, Washington State Bar Association, Family Law Section (con).