

No. 1980-26

AN ACT

HB 640

Consolidating, revising and amending the divorce and annulment laws of the Commonwealth and making certain repeals.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1 PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Divorce Code."

Section 102. Legislative findings and intent.

(a) The family is the basic unit in society and the protection and preservation of the family is of paramount public concern. Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to:

(1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.

(2) Encourage and effect reconciliation and settlement of differences between spouses, especially where children are involved.

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

(5) Seek causes rather than symptoms of family disintegration and cooperate with and utilize the resources available to deal with family problems.

(6) Effectuate economic justice between parties who are divorced or separated and grant or withhold alimony according to the actual need and ability to pay of the parties and insure a fair and just determination and settlement of their property rights.

(b) The objectives set forth in subsection (a) shall be considered in construing provisions of this act and shall be regarded as expressing the legislative intent.

Section 103. Construction.

The provisions of this act, so far as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The provisions of this act shall apply to all cases, whether the cause for divorce or annulment arose prior or subsequent to enactment of this act. The provisions of this act shall not affect any suit or action pending, but the same may be proceeded with and concluded either under the laws in existence when such suit or action was instituted, notwithstanding the repeal of such laws by this act, or, upon application granted, under the provisions of this act. The provisions of this act shall not apply to any case in which a decree has been rendered prior to the effective date of the act. This act shall not affect any marital agreement executed prior to the effective date of this act or any amendment or modification thereto.

Section 104. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Act.” The Divorce Code.

“Alimony.” An order for support granted by this or any other state to a spouse or former spouse in conjunction with a decree granting a divorce or annulment.

“Alimony pendente lite.” An order for temporary support granted to a spouse during the pendency of a divorce or annulment proceeding.

“Court.” The court of common pleas.

“Divorce.” Divorce from the bonds of matrimony.

“Grounds for divorce.” The grounds enumerated in section 201.

“Irretrievable breakdown.” Estrangement due to marital difficulties with no reasonable prospect of reconciliation.

“Law.” Includes both statutory and common law.

“Qualified professionals.” Includes marriage counselors, psychologists, psychiatrists, social workers, ministers, priests, or rabbis, or other persons who, by virtue of their training and experience, are able to provide counseling.

“Separate and apart.” Complete cessation of any and all cohabitation.

CHAPTER 2
DISSOLUTION OF MARITAL STATUS

Section 201. Grounds for divorce.

(a) It shall be lawful for the court to grant a divorce to the innocent and injured spouse whenever it shall be judged that the other spouse shall have:

(1) Committed willful and malicious desertion, and absence from the habitation of the injured and innocent spouse, without a reasonable cause, for the period of one or more years.

(2) Committed adultery.

(3) By cruel and barbarous treatment, endangered the life or health of the injured and innocent spouse.

(4) Knowingly entered into a bigamous marriage while a former marriage still is subsisting.

(5) Been sentenced to imprisonment for a term of two or more years upon conviction of having committed a crime.

(6) Offered such indignities to the innocent and injured spouse as to render his or her condition intolerable and life burdensome.

(b) It shall be lawful for the court to grant a divorce upon the ground that insanity or serious mental disorder has resulted in confinement in a mental institution for at least three years immediately before the filing of the complaint, and where there is no reasonable prospect of the defendant spouse's being discharged from inpatient care during the next three years subsequent to the filing of the complaint. A presumption that no such prospect of discharge exists shall be established by a certificate of the superintendent of such institution to that effect and which includes a supporting statement of a treating physician.

(c) It shall be lawful for the court to grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and 90 days have elapsed from the date of filing of the complaint and an affidavit has been filed by each of the parties evidencing that each of the parties consents to the divorce.

(d) (1) It shall be lawful for the court to grant a divorce where a party has filed a complaint and an affidavit alleging that the parties have lived separate and apart for a period of at least three years, and that the marriage is irretrievably broken, and:

(i) the respondent does not deny the allegations set forth in the affidavit; or

(ii) the respondent denies one or more of the allegations set forth in the affidavit, but after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least three years and that the marriage is irretrievably broken.

(2) If a hearing has been held pursuant to paragraph (1)(ii), and the court determines that there is a reasonable prospect of reconcili-

ation, then the court shall continue the matter for a period not less than 90 days nor more than 120 days, unless the parties agree to a period in excess of 120 days. During such period, the court shall require counseling as provided in section 202. If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

Section 202. Counseling.

(a) Whenever section 201(a)(6) is the ground for divorce, the court shall require up to a maximum of three counseling sessions where either of the parties requests it.

(b) Whenever section 201(c) is the ground for divorce, the court shall require up to a maximum of three counseling sessions within the 90 days following the filing of the complaint where either of the parties requests it.

(c) Whenever the court orders a continuation period as provided in section 201(d)(2), the court shall require up to a maximum of three counseling sessions within the time period where either of the parties requests it or may require such counseling where the parties have at least one child under 16 years of age.

(d) Whenever section 201(a)(6), (c) or (d) is the ground for divorce, the court shall upon filing of the complaint, notify both parties of the availability of counseling and upon request, provide both parties a list of qualified professionals who provide such services.

(e) The choice of a qualified professional shall be at the option of the parties and such professional need not be selected from the list provided by the court.

(f) Where the court requires counseling, a report shall be made by the qualified professional stating that the parties did or did not attend.

Section 203. Annulment of void and voidable marriages.

In all cases where a supposed or alleged marriage shall have been contracted which is void or voidable under this act or under applicable law, either party to such supposed or alleged marriage may bring an action in annulment to have it declared null and void in accordance with the procedures provided for under this act and the Rules of Civil Procedure.

Section 204. Annulment or invalidity of void marriages.

(a) Where there has been no confirmation by cohabitation following the removal of an impediment, the supposed or alleged marriage of any person shall be deemed void in the following cases:

(1) Where either party at the time of such marriage had an existing spouse and the former marriage had not been annulled nor had there been a divorce, except where such person had obtained a decree of presumed death of the former spouse.

(2) Where the parties to such marriage are related within the prohibited degrees of consanguinity, which degrees are as follows:

A man may not marry his mother.

A man may not marry his father's sister.

A man may not marry his mother's sister.

A man may not marry his sister.

A man may not marry his daughter.

A man may not marry the daughter of his son or daughter.

A woman may not marry her father.

A woman may not marry her father's brother.

A woman may not marry her mother's brother.

A woman may not marry her brother.

A woman may not marry her son.

A woman may not marry the son of her son or daughter.

(3) Where either party to such marriage was incapable of consenting by reason of insanity or serious mental disorder, or otherwise lacked capacity to consent or did not intend to assent to such marriage.

(b) In all such cases of marriages which are void, the marriage may be annulled as set forth in section 203, or its invalidity may be declared in any collateral proceeding.

Section 205. Grounds for annulment of voidable marriages.

(a) The marriage of any person shall be deemed voidable and subject to annulment in the following cases:

(1) Where either party to such marriage was under 16 years of age, unless such marriage was expressly authorized by a judge of the court.

(2) Where either party was 16 or 17 years of age and lacked the consent of parent or guardian or express authorization of the court and has not subsequently ratified such marriage upon reaching the age of 18 and such proceeding for annulment is commenced within 60 days after the marriage ceremony.

(3) Where either party to such marriage was under the influence of intoxicating liquor or drugs and a proceeding for annulment has been filed within 60 days after the marriage ceremony.

(4) Where either party to such marriage still is and was naturally and incurably impotent at the time of such marriage, unless the condition was known to the other party prior to the marriage.

(5) Where one party was induced to enter into such marriage due to the fraud, duress, coercion, or force attributable to the other party, and there has been no subsequent voluntary cohabitation after knowledge of such fraud or release from the effects of fraud, duress, coercion, or forces.

(b) In all such cases of marriages which are voidable, either party thereto may seek and obtain an annulment of such marriage, but unless and until such decree is obtained from a court of competent

jurisdiction, such marriage shall be valid and subsisting. The validity of such a voidable marriage shall not be subject to attack or question by any person if it is subsequently confirmed by the parties thereto or if either party has died.

Section 206. Proceedings to determine marital status.

When the validity of any marriage shall be denied or doubted, either or both of the parties to the marriage may bring an action for a declaratory judgment seeking a declaration of the validity or invalidity of the marriage, and, upon due proof of the validity or invalidity thereof, it shall be declared valid or invalid by decree of such court, and, unless reversed upon appeal, such declaration shall be conclusive upon all persons concerned.

Section 207. Defenses.

(a) Existing common law defenses are retained as to the grounds enumerated in section 201(a) and (b). The defenses of condonation, connivance, collusion, recrimination and provocation are abolished as to the grounds enumerated in section 201(c) and (d).

(b) In any action or suit for divorce for the cause of adultery, if the defendant shall allege and prove, or it shall appear in the evidence, that the plaintiff has been guilty of the like offense, or has admitted the defendant into conjugal society or embraces after he or she knew of the fact, or that the said plaintiff allowed the defendant's prostitution, or received hire from it, or exposed the defendant to lewd company whereby he or she became ensnared to the offense after said, it shall be a good defense and a perpetual bar against the same.

Section 208. Jurisdiction where defendant is insane or suffering from serious mental disorder.

In cases where a spouse is insane or suffering from serious mental disorder the court shall have jurisdiction to receive a complaint for divorce in which such person is made the defendant upon any ground set forth in section 201, and for annulment.

CHAPTER 3 PROCEDURE

Section 301. Jurisdiction.

(a) The courts of this Commonwealth as defined in section 104 shall have original jurisdiction in cases of divorce and for the annulment of void or voidable marriages and, where they have jurisdiction, shall determine in conjunction with any decree granting a divorce or annulment the following matters, where raised in the complaint or the answer and issue appropriate decrees or orders with reference thereto and may retain continuing jurisdiction thereof:

(1) The determination and disposition of property rights and interests between spouses, including any rights created by any antenuptial, postnuptial, or separation agreement and including the partition of property held as tenants by the entireties or otherwise

and any accounting between them, and the order of any alimony, alimony pendente lite, counsel fees, or costs authorized by law.

(2) The future care, custody and visitation rights as to children of such marriage or purported marriage.

(3) Any support or assistance which shall be paid for the benefit of any children of such marriage or purported marriage.

(4) Any property settlement, involving any of the matters set forth in paragraphs (1), (2) and (3) as submitted by the parties.

(5) Any other matters pertaining to such marriage and divorce or annulment authorized by law and which fairly and expeditiously may be determined and disposed of in such action.

(b) The said courts having power to grant divorces shall have authority to do so notwithstanding the fact that the marriage of the parties and the cause for divorce occurred outside of this Commonwealth and that both parties were at the time of such occurrence, domiciled without this Commonwealth. Said courts shall also have power to annul void or voidable marriages notwithstanding the fact such were celebrated without this Commonwealth at a time when neither party was domiciled within this Commonwealth.

Section 302. Residence and domicile of parties.

No spouse shall be entitled to commence proceeding for divorce or annulment by virtue of this act, unless at least one of the parties has been a bona fide resident in this Commonwealth for at least six months immediately previous to the filing of the complaint. Both parties shall be competent witnesses to prove his or her residence and proof of actual residence within the Commonwealth for six months shall create a presumption of domicile within the Commonwealth.

Section 303. General appearance and collusion.

The entry of a general appearance by, or in behalf of, a defendant shall not be deemed collusion. Collusion shall be found to exist only where the parties conspired to fabricate grounds for divorce or annulment, agreed to and did commit perjury, or perpetrated fraud on the court. Negotiation and discussion of terms of property settlement and other matters arising by reason of contemplated divorce or annulment shall not be deemed to constitute collusion.

Section 304. Hearing by master.

A master may be appointed by the court to hear testimony on all or some issues, except issues of custody and paternity and return the record and a transcript of the testimony together with his report and recommendation as provided by the Rules of Civil Procedure, or a judge of the court in chambers may appoint a master to take testimony and return the same to the court.

Section 305. Jury trial.

(a) After service of the complaint in divorce or annulment on the defendant in the manner provided by the Rules of Civil Procedure, or entry of a general appearance for the defendant, if either of the

parties shall desire any matter of fact that is affirmed by one and denied by the other to be tried by a jury, he or she may take a rule upon the opposite party, to be allowed by a judge of the court, to show cause why the issues of fact set forth in such rule shall not be tried by a jury, which rule shall be served upon the opposite party or his or her counsel.

(b) Upon the return of such rule, after hearing, the court may discharge it, or make it absolute, or frame issues itself, and only the issues so ordered by the court shall be tried accordingly, but such rule shall not be made absolute when, in the opinion of the court, a trial by jury cannot be had without prejudice to the public morals.

CHAPTER 4

DECREE OF COURT; PROPERTY RIGHTS AND COSTS

Section 401. Decree of court.

(a) In all matrimonial causes, the court having jurisdiction may either dismiss the complaint or enter a decree of divorce or annulment of the marriage.

(b) Any decree granting a divorce or an annulment, shall include after a full hearing, where these matters are raised in the complaint, the answer or other petition, an order or orders determining and disposing of existing property rights and interests between the parties, custody and visitation rights, child support, alimony and any other related matters including the enforcement of separation agreements voluntarily entered into between the parties. In the enforcement of the rights of any party to any such matters, the court shall have all necessary powers, including but not limited to, the power of contempt and the power to attach wages. In the event that the court is unable for any reason to determine and dispose of the matters provided for in this subsection within 30 days after the master's report has been filed, it may enter a decree of divorce or annulment. The court may order alimony, reasonable counsel fees and expenses pending final disposition of the matters provided for in this subsection and upon final disposition, the court may award costs to the party in whose favor the order or decree shall be entered, or may order that each party shall pay his or her own costs, or may order that costs be divided equitably as it shall appear just and reasonable.

(c) In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this act, and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

(d) In a proceeding for divorce or annulment, the court shall, upon request of either party, equitably divide, distribute or assign the

marital property between the parties without regard to marital misconduct in such proportions as the court deems just after considering all relevant factors including:

- (1) The length of the marriage.
 - (2) Any prior marriage of either party.
 - (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
 - (4) The contribution by one party to the education, training, or increased earning power of the other party.
 - (5) The opportunity of each party for future acquisitions of capital assets and income.
 - (6) The sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits.
 - (7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
 - (8) The value of the property set apart to each party.
 - (9) The standard of living of the parties established during the marriage.
 - (10) The economic circumstances of each party at the time the division of property is to become effective.
- (e) For purposes of this chapter only, "marital property" means all property acquired by either party during the marriage except:
- (1) Property acquired in exchange for property acquired prior to the marriage except for the increase in value during the marriage.
 - (2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.
 - (3) Property acquired by gift, bequest, devise or descent except for the increase in value during the marriage.
 - (4) Property acquired after separation until the date of divorce, provided however, if the parties separate and reconcile, all property acquired subsequent to the final separation until their divorce.
 - (5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the time proceedings for the divorce are commenced.
 - (6) Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958, Public Law 85-857, 72 Statute 1229, as amended, except for those benefits received by a veteran where such veteran has waived a portion of his military retirement pay in order to receive Veteran's Compensation.
 - (7) Property to the extent to which such property has been mortgaged or otherwise encumbered in good faith for value, prior to the time proceedings for the divorce are commenced.
- (f) All property, whether real or personal, acquired by either party during the marriage is presumed to be marital property regardless of

whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (e).

(g) The court may impose a lien or charge upon the marital property assigned to a party as security for the payment of alimony or other award for the other party.

(h) The court may award to one, each, or both of the parties the right to live in the family home for reasonable periods of time.

(i) The court may also direct the continued maintenance and beneficiary designations of existing policies insuring the life of either party. The court's power under this subsection shall extend only to policies originally purchased during the marriage and owned by or within the effective control of either party.

(j) Whenever a decree or judgment is granted which nullifies or absolutely terminates the bonds of matrimony, any and all property rights which are dependent upon such marital relation, save those which are vested rights, are terminated unless the court otherwise expressly provides in its decree in accordance with subsection (b). All duties, rights, and claims accruing to either of said parties at any time heretofore in pursuance of the said marriage, shall cease and the parties shall, severally, be at liberty to marry again in like manner as if they had never been married, except where otherwise provided by law.

Section 402. Disposition of realty and personalty after termination of marriage.

Unless otherwise provided by the court, whenever a decree of annulment or divorce is decreed by a court of competent jurisdiction, both parties whose marriage is so terminated or affected, shall have complete freedom of disposition as to their separate property and may mortgage, sell, grant, convey, or otherwise encumber or dispose of such realty or personalty, whether such separate property was acquired before, during, or after coverture, and neither need join in, consent to, or acknowledge any deed, mortgage, or instrument of the other.

Section 403. Injunction against disposition of property pending suit and decree rendering fraudulent transfers null and void.

(a) Where it appears to the court that a party is about to remove himself or herself or his or her property from the jurisdiction of the court or is about to dispose of, alienate, or encumber property in order to defeat alimony pendente lite, alimony, child and spousal support, or similar award, an injunction may issue to prevent such removal or disposition and such property may be attached as provided by the Rules of Civil Procedure. The court may also issue a writ of ne exeat to preclude such removal.

(b) Both parties shall submit to the court an inventory and appraisal of all property owned or possessed at the time action was commenced.

(c) If any party deliberately or negligently fails to disclose information required by subsection (b) and in consequence thereof any asset or assets with a fair market value of \$500 or more is omitted from the final distribution of property, the party aggrieved by such nondisclosure may at any time petition the court granting the annulment or divorce to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, said trust to include such terms and conditions as the court may determine. The court shall grant the petition upon a finding of a failure to disclose such assets as required under subsection (b).

(d) Any encumbrance or disposition of property to third persons who had notice of the pendency of the matrimonial action or who paid wholly inadequate consideration for such property may be deemed fraudulent and declared null and void.

Section 404. Statement of reasons for distribution.

In an order made under this chapter for the distribution of property the court shall set forth the reason or reasons for the distribution ordered.

CHAPTER 5 ALIMONY AND SUPPORT

Section 501. Alimony.

(a) The court may allow alimony, as it deems reasonable, to either party, only if it finds that the party seeking alimony:

(1) lacks sufficient property, including but not limited to any property distributed pursuant to Chapter 4, to provide for his or her reasonable needs; and

(2) is unable to support himself or herself through appropriate employment.

(b) In determining whether alimony is necessary, and in determining the nature, amount, duration, and manner of payment of alimony, the court shall consider all relevant factors including:

(1) The relative earnings and earning capacities of the parties.

(2) The ages, and the physical, mental and emotional conditions of the parties.

(3) The sources of income of both parties including but not limited to medical, retirement, insurance or other benefits.

(4) The expectancies and inheritances of the parties.

(5) The duration of the marriage.

(6) The contribution by one party to the education, training or increased earning power of the other party.

(7) The extent to which it would be inappropriate for a party, because said party will be custodian of a minor child, to seek employment outside the home.

(8) The standard of living of the parties established during the marriage.

(9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.

(10) The relative assets and liabilities of the parties.

(11) The property brought to the marriage by either party.

(12) The contribution of a spouse as homemaker.

(13) The relative needs of the parties.

(14) The marital misconduct of either of the parties during the marriage; however, the marital misconduct of either of the parties during separation subsequent to the filing of a divorce complaint shall not be considered by the court in its determinations relative to alimony.

(c) Unless the ability of the party seeking the alimony to provide for his or her reasonable needs through employment is substantially diminished by reason of age, physical, mental or emotional condition, custody of minor children, or other compelling impediment to gainful employment, the court in ordering alimony shall limit the duration of the order to a period of time which is reasonable for the purpose of allowing the party seeking alimony to meet his or her reasonable needs by:

(1) obtaining appropriate employment; or

(2) developing an appropriate employable skill.

(d) In an order made under this section the court shall set forth the reason or reasons for its denial or award of alimony and the amount thereof.

(e) Any order entered pursuant to this section is subject to further order of the court upon changed circumstances of either party of a substantial and continuing nature whereupon such order may be modified, suspended, terminated, reinstated, or a new order made. Any such further order shall apply only to payment accruing subsequent to the petition for the requested relief. Remarriage of the party receiving alimony shall terminate the award of alimony.

(f) Whenever the court shall approve an agreement for the payment of alimony voluntarily entered into between the parties, such agreement shall be deemed the order of the court and may be enforced as provided in section 503.

Section 502. Alimony pendente lite, counsel fees and expenses.

The court may, upon petition, in proper cases, allow a spouse reasonable alimony pendente lite and reasonable counsel fees and expenses.

Section 503. Enforcement of arrearages.

If at any time a party is in arrears in the payment of alimony or alimony pendente lite as provided for in sections 501 and 502, after hearing, the court may, in order to effect payment of the arrearages:

- (1) Enter judgment.
- (2) Authorize the taking and seizure of the goods and chattels and collection of the rents and profits of the real estate of the party.
- (3) Attach no more than 50% of the wages of the party.
- (4) Award interest on unpaid installments.
- (5) Require security to insure future payments.
- (6) Issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court at such time as the court may direct. If the court finds, after hearing, that the said person willfully failed to comply with the court order, it may deem said person in civil contempt of court and in its discretion make an appropriate order including, but not limited to, commitment of said person to the county jail for a period not to exceed six months.

Section 504. Payment of support, alimony and alimony pendente lite.

When so ordered by the court, all payments of child and spousal support, alimony or alimony pendente lite, shall be made to the domestic relations section of the court which issued the order or such section of the court at the residence of the party entitled to receive such an award. The domestic relations section shall keep an accurate record of all such payments and shall notify the court immediately whenever any person subject to a payment order is 30 days in arrears in such payment so that appropriate action may be taken to enforce the order of the court. It shall be the duty of the domestic relations section to distribute such payments to the person entitled thereto as soon as possible after receipt.

Section 505. Alimony where a foreign ex parte divorce or annulment.

Whenever a person who was a resident of this Commonwealth at the time such person was a defendant or respondent in a foreign ex parte action for annulment or divorce petitions a court of this Commonwealth for alimony and establishes the need therefor, such court, if it has jurisdiction over the person or property of the other party, may order that such alimony be paid in the same manner and under the same conditions and limitations which pertain when alimony is sought as provided in this chapter. In the event that the other party from whom such alimony is sought cannot be located within this Commonwealth, the court may attach such of the tangible or intangible property of said party as is within the jurisdiction of the court in the manner provided by the Rules of Civil Procedure, except

that no exemption shall apply. Such property shall thereupon be subject to the payment of alimony in the same manner as provided by law in actions for nonsupport.

Section 506. Enforcement of foreign decrees.

Whenever a person subject to a valid decree of a sister state or territory for the payment of alimony, temporary alimony, or alimony pendente lite, or his or her property is found within this Commonwealth, the obligee of such a decree may petition the court, where the obligor or his or her property is found, to register, adopt as its own, and to enforce the said decree as a duly issued and authenticated decree of a sister state or territory. Upon registration and adoption, such relief and process for enforcement as is provided for at law, in equity, or by court rule, in similar cases originally commenced in this Commonwealth, shall be available, and a copy of the decree and order shall be forwarded to the court of the state or territory which issued the original decree. The obligor, in such actions to register, adopt, and enforce, shall have such defenses and relief as are available to him in the state or territory which issued the original decree and may question the jurisdiction of that court if not otherwise barred. Interest may be awarded on unpaid installments and security may be required to insure future payments as in such cases originally commenced in this Commonwealth. Where property of the obligor, but not his person, is found within this Commonwealth, there shall be jurisdiction quasi in rem and, upon registration and adoption of the decree of the sister state or territory, such relief and enforcement of the decree shall be available as in other proceedings which are quasi in rem.

Section 507. Bar to any alimony.

No petitioner shall be entitled to receive any award of alimony where such petitioner has entered into cohabitation with a person of the opposite sex who is not a member of the petitioner's immediate family within the degrees of consanguinity subsequent to the divorce pursuant to which alimony is being sought.

CHAPTER 6 APPEALS AND ATTACKS UPON DECREES

Section 601. Limitations on attacks upon decrees.

The validity of any decree of divorce or annulment issued by a court shall not be questioned, except by appeal, in any court or place in this Commonwealth after the death of either party to such proceeding and if it is shown that a party who subsequently attempts to question the validity of such a decree had full knowledge of the facts and circumstances later complained of, at the time of issuance of said decree, or failed to take any action, despite such knowledge, within two years after the date of such decree, said party shall be barred from questioning such decree and it shall be deemed valid in all courts and places within this Commonwealth.

Section 602. Opening or vacating divorce decrees.

A motion to open a decree of divorce or annulment may be made only within 30 days after entry of the decree and not thereafter. Such motion may lie where it is alleged that the decree was procured by intrinsic fraud or that there is new evidence relating to the cause of action which will sustain the attack upon its validity. A motion to vacate a decree or strike a judgment alleged to be void because of extrinsic fraud, lack of jurisdiction over the subject matter or because of a fatal defect apparent upon the face of the record, must be made within five years after entry of the final decree. Intrinsic fraud is such as relates to a matter adjudicated by the judgment, including perjury and false testimony, whereas extrinsic fraud relates to matters collateral to the judgment which have the consequence of precluding a fair hearing or presentation of one side of the case.

Section 603. Plaintiff a competent witness.

In all proceedings for divorce, the plaintiff shall be fully competent to prove all the facts, as long as the defendant has been served as provided by the Rules of Civil Procedure.

Section 604. Rules of court.

The court is hereby authorized to make and adopt such rules and practices as may be necessary to carry this act into effect which are consistent with the Rules of Civil Procedure, and to regulate proceedings before masters, and to fix their fees.

Section 605. Res judicata and estoppel.

The validity of any divorce or annulment decree granted by a court having jurisdiction over the subject matter may not be questioned by any party who was subject to the personal jurisdiction of such court except by such direct appeal as is provided by law. A party who sought and obtained such decree, financed or agreed to its procurement, or accepted a property settlement, alimony pendente lite or alimony pursuant to the terms of such decree, or who remarries after such decree, or is guilty of laches, is barred from making a collateral attack upon the validity of such decree unless by clear and convincing evidence it is established that fraud by the other party prevented him from making a timely appeal from such divorce or annulment decree.

CHAPTER 7 MISCELLANEOUS PROVISIONS

Section 701. Marriage upon false rumor of spouse's death.

(a) The remarriage of a spouse who has obtained a license to marry and a decree of presumed death of the former spouse shall be valid for all intents and purposes as though the former marriage had been terminated by divorce, and any and all property of the presumed decedent shall be administered and disposed of as provided by Title 20 of the Pennsylvania Consolidated Statutes (relating to decedents, estates and fiduciaries).

(b) Where a remarriage has occurred upon false rumor of the death of a former spouse, in appearance well founded, but there has been no decree of presumed death, the remarriage shall be deemed void and subject to annulment by either party to such remarriage as provided by section 204 and the returning spouse shall have cause for divorce as provided in section 201.

(c) Where the remarriage was entered into in good faith, neither party to such remarriage shall be subject to criminal prosecution therefore.

(d) If the former spouse dies or procures a divorce the parties to the remarriage shall be deemed to be lawfully married from the date of such death or decree.

Section 702. Resumption of prior name.

It shall be lawful for any person who has heretofore been or shall hereafter be divorced, or whose marriage is annulled, to retake and thereafter use his or her prior name. Every such person who elects to resume his or her prior name shall file a written notice avowing such intention in the office of the prothonotary of the court in which such decree of divorce or annulment was entered, showing the caption and number and term of the proceeding in divorce or annulment, and duly acknowledged before a notary public. Where a person has a decree of divorce or annulment granted to him or her, or his or her spouse, in a foreign jurisdiction, a certified copy of such foreign divorce or annulment decree shall be filed with the prothonotary where the affiant resides, and thereafter such person desiring to resume his or her prior name may file a written notice to do so by making full reference therein to the filing of the foreign divorce or annulment decree with the prothonotary of the county where the affiant resides. A copy of the written notice in either case, so filed, duly certified by the prothonotary, shall be competent evidence for all purposes of right and duty of such person to use such prior name thereafter.

Section 703. Privileged communications.

Communications of a confidential character made by a spouse to an attorney, or a qualified professional, shall be privileged and inadmissible in evidence in any matrimonial cause unless the party concerned waives such immunity.

CHAPTER 8 REPEALS AND EFFECTIVE DATE

Section 801. Repeals.

(a) The following acts and parts of acts and all amendments thereto are repealed to the extent specified:

Sections V, VI and IX, act of March 13, 1815 (P.L.150, Ch. 109), entitled "An act concerning divorces," insofar as supplied by this act.

The act of May 2, 1929 (P.L.1237, No.430), known as "The Divorce Law," absolutely.

Clause (h) of section 5, act of August 22, 1953 (P.L.1344, No.383), known as "The Marriage Law."

(b) All other acts and parts of acts, general, local and special, are repealed insofar as they are inconsistent herewith.

Section 802. Effective date.

This act shall take effect in 90 days.

APPROVED—The 2nd day of April, A. D. 1980.

DICK THORNBURGH