

By Mr. Magnani of Framingham, petition of David P. Magnani that provision be made for the reconciliation of parties in divorce actions. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT PROVIDING FOR THE RECONCILIATION OF PARTIES IN DIVORCE ACTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 208 of the General Laws is hereby amended by inserting
2 after section 1B the following section: —

3 Section 1C. (a) In every action brought for divorce, the parties
4 to said action may resolve any said dispute and restore marital
5 relations by an agreement for reconciliation as described below.

6 (b) (1) Each and every agreement for reconciliation shall
7 contain the following compulsory provisions:

8 (A) That the parties mutually covenant and agree that
9 they shall commit no act nor intentionally cause another to
10 commit any act of abuse as defined in section one of chapter two
11 hundred and nine A against the other party or any relative of said
12 other party;

13 (B) That the parties mutually covenant and agree to
14 commit no act of adultery;

15 (C) That the parties mutually covenant and agree to
16 provide support for each other; insofar as the parties are
17 reasonably able to do so given the individual circumstances of the
18 parties;

19 (D) That the parties mutually covenant and agree not
20 to do any act nor cause another to do any act calculated to cause
21 the other party to suffer mental anguish, distress or abuse.

22 (E) That the parties mutually covenant and agree to
23 refrain from the use of any illegal drug and repeated acts of gross
24 intoxication.

25 (2) An agreement for reconciliation may contain discre-
26 tionary provisions relating to the following matters:

27 (A) The commencement or continuation of marital,
28 family, psychological, or psychiatric counseling for one or both
29 parties to the agreement for reconciliation;

30 (B) The custody of any children of the marriage, the
31 present or future domicile and residence of the individual parties,
32 rights of the parties as to visitation, and provisions for the support
33 of the parties, their children or both;

34 (C) The disposition of the individual estates of the
35 parties should either of the parties breach said agreement for
36 reconciliation;

37 (D) The payment of legal fees and costs heretofore
38 incurred;

39 (E) The use of mediation or arbitration for the
40 settlement of any future disputes;

41 (F) Any issue or matter the resolution or agreement of
42 which would aid, benefit or further the parties' continued
43 harmonious reconciliation or assist in the restoration of the family
44 relationship.

45 (c) Procedure

46 (1) Upon submission to the court of the agreement for
47 reconciliation, the parties shall, within a reasonable time, meet
48 with a Family Service Officer, Mediator or Probation Officer, as
49 the court may appoint. Said Family Service Officer, Mediator or
50 Probation Officer shall review said agreement and meet with the
51 parties together or individually and shall thereafter submit to the
52 court a recommendation as to the following matters:

53 (A) The feasibility of the agreement, given the
54 circumstances of the parties;

55 (B) The sincerity and good faith of the parties in
56 proposing and submitting the agreement;

57 (C) The likelihood of breach of the agreement within
58 the foreseeable future by one or both of the parties;

59 (D) Any other matter which would be necessary or

60 conducive in implementing the agreement, the protection of the
61 parties and their dependents or the harmonious resumption of the
62 marital relationship.

63 (2) After submission of the recommendation by the Family
64 Service officer, mediator or probation officer, and after notice and
65 a hearing, the court may approve the agreement for reconciliation
66 and said agreement shall merge and become incorporated into a
67 judgment of reconciliation. Should the court reject the agreement
68 for reconciliation proposed by the parties, the court shall make
69 findings of fact as to its reasons for rejecting the agreement. Upon
70 rejection of the agreement, the parties may resubmit a new
71 agreement for approval or resume their action for divorce.

72 (3) An agreement for reconciliation shall continue for no
73 less than six months nor longer than three years from the date
74 of the entry of a judgment of reconciliation. An agreement for
75 reconciliation may, according to its terms, provide for periodic
76 reviews by the court or a family service officer, mediator or
77 probation officer. An action instituted for divorce, in which a
78 judgment of reconciliation has been entered, shall be suspended.
79 Unless another proceeding is brought for modification or breach
80 of the agreement before the expiration of the agreement or three
81 years, whichever occurs first, the original action for divorce shall
82 be dismissed.

83 (d) (1) A proceeding may be brought in the court where a
84 judgment of reconciliation has been entered during the term of
85 the agreement to modify a judgment of reconciliation. Only
86 discretionary provisions under clause (b) of subsection (2) may
87 be modified. Modification may be allowed as justice requires,
88 upon a satisfactory demonstration by the petitioner or petitioners
89 of the following:

90 (A) (i) There has been a material change in the
91 circumstances of the parties; and

92 (ii) The agreement for reconciliation which was
93 merged and incorporated into a judgment of reconciliation does
94 not adequately provide for the present circumstances of the
95 parties;

96 (iii) A modification of the judgment for reconcil-
97 iation is reasonably necessary to effectuate the continuing

98 restoration of the marriage; or

99 (B) (i) The agreement for reconciliation which was
100 merged and incorporated into a judgment of reconciliation will
101 expire within the next three months; and

102 (ii) The petitioner or petitioners seek an extension
103 of the term of the agreement; and

104 (iii) A modification of the judgment is for
105 reconciliation is reasonably necessary to effectuate the continuing
106 restoration of the marriage.

107 (2) Any judgment for reconciliation which is modified so
108 as to extend the term of the original agreement for reconciliation
109 shall not be so extended beyond three years after the date of the
110 original entry of the judgment of reconciliation.

111 (e) (1) If during the term of the judgment for reconciliation,
112 either party breaches any mandatory provision described in clause
113 (b) of subsection (1) of this section, such breach shall be deemed
114 prima facie evidence of irretrievable breakdown of the marriage,
115 entitling the aggrieved party to a judgment of divorce nisi, as well
116 as a civil contempt.

117 (2) If during the term of the judgment for reconciliation,
118 either party knowingly or willfully breaches any discretionary
119 provision and the court determines that said breach substantially
120 impairs the likelihood of the restoration of the marriage, such
121 breach shall be deemed prima facie evidence of irretrievable
122 breakdown of the marriage, entitling the aggrieved party to a
123 judgment of divorce nisi, but such breach shall not be deemed a
124 civil contempt.

125 (3) Proceedings for breach shall be initiated in the same
126 manner as complaints for contempt, by service of a summons and
127 complaint upon the breaching party. Any action for breach
128 brought shall bear the same docket number as the original
129 complaint for divorce filed by the parties. No filing fee shall be
130 required for the initiation of an action for breach.

131 (4) Unless the parties have provided for the division of
132 marital assets, alimony, child support, custody if any and children
133 visitation in the agreement for reconciliation in the event of breach
134 by either party, the court shall determine these issues at the trial

135 of the action for breach. If the parties have made provisions
136 relative to the issues of the division of marital assets, alimony,
137 child support, custody of any children and visitation, then the
138 court at the time of trial, shall review the agreement for
139 reconciliation to determine whether such agreement is fair and
140 equitable and in the best of the children of the marriage given the
141 current circumstances of the parties. The court shall make findings
142 of fact and conclusions of law as to any action for breach tried
143 by the court.

144 (5) A clause calling for mediation or arbitration of disputes
145 contained in the agreement for reconciliation shall be enforceable
146 as to any alleged breach of a discretionary provision or
147 modification thereof. However, notwithstanding such clause, the
148 court shall have sole jurisdiction to hear actions for breach of any
149 mandatory provision contained in the agreement for
150 reconciliation.

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