

5543

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. TITUS, BENEDETTO, O'DONNELL, FIELDS, LAVINE,
POWELL, GALEF, CAHILL, CLARK, CARROZZA, PERALTA -- Multi-Sponsored by
-- M. of A. BENJAMIN, BOYLAND, MARKEY, MILLMAN, PHEFFER, ROBINSON,
SWEENEY, TOWNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to grounds for
an action for divorce and for an action for separation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,
DO ENACT AS FOLLOWS:

1 Section 1. Section 170 of the domestic relations law is amended by
2 adding a new subdivision 7 to read as follows:
3 (7) (A) IRRECONCILABLE DIFFERENCES WHICH HAVE CAUSED THE IRREMEDIAL-
4 BREAKDOWN OF THE MARRIAGE, IRRESPECTIVE OF THE FAULT OF EITHER PARTY,
5 AND FURTHER ATTEMPTS AT RECONCILIATION ARE IMPRACTICAL OR FUTILE AND NOT
6 IN THE BEST INTEREST OF THE PARTIES OR FAMILY. IRRESPECTIVE OF THIS
7 SUBDIVISION, ALLEGATIONS OR EVIDENCE OF SPECIFIC ACTS OR MISCONDUCT
8 SHALL BE PROPER AND ADMISSIBLE AS A FACTOR WHEN DETERMINING MAINTENANCE
9 AND PROPERTY DIVISION.
10 (B) IF BOTH OF THE PARTIES BY PETITION OR OTHERWISE STATE UNDER OATH
11 OR AFFIRMATION IRRECONCILABLE DIFFERENCES WITHIN THE MARRIAGE OR IF ONE
12 OF THE PARTIES SO STATES AND THE OTHER DOES NOT DENY SUCH STATEMENT, THE
13 COURT SHALL MAKE A FINDING AS TO WHETHER OR NOT THE MARRIAGE IS IRREMEDI-
14 ABLY BROKEN. IRRECONCILABLE DIFFERENCES ARE THOSE GROUNDS WHICH ARE
15 DETERMINED BY THE COURT WHICH HAVE CAUSED THE IRREMEDIAL BREAKDOWN OF
16 THE MARRIAGE AND FURTHER ATTEMPTS AT RECONCILIATION ARE IMPRACTICAL OR
17 FUTILE AND NOT IN THE BEST INTEREST OF THE PARTIES OR FAMILY.
18 (1) IF ONE OF THE PARTIES HAS DENIED UNDER OATH OR AFFIRMATION THAT
19 THE MARRIAGE IS IRREMEDIALY BROKEN, THE COURT SHALL CONSIDER ALL RELE-
20 VANT FACTORS, INCLUDING THE CIRCUMSTANCES THAT GAVE RISE TO THE FILING
21 OF THE PETITION AND THE PROSPECT OF RECONCILIATION, AND SHALL: (I) MAKE
22 A FINDING WHETHER THE MARRIAGE IS IRREMEDIALY BROKEN; OR (II) CONTINUE
23 THE MATTER FOR FURTHER HEARING AND MAY SUGGEST TO THE PARTIES THAT THEY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 SEEK COUNSELING. THE COURT SHALL THEN MAKE A FINDING WHETHER THE
2 MARRIAGE IS IRREDEMIABLY BROKEN.

3 (2) IF ONE OF THE PARTIES STATES THAT THE MARRIAGE IS IRREDEMIABLY
4 BROKEN AND THE OTHER HAS NOT DENIED SUCH STATEMENT, THERE IS A PRESUMP-
5 TION THAT THE MARRIAGE IS IRREDEMIABLY BROKEN, UNLESS CONTROVERTED BY
6 THE EVIDENCE, THE COURT SHALL, AFTER A HEARING, MAKE A FINDING THAT THE
7 MARRIAGE IS IRREDEMIABLY BROKEN. THE COURT, IN ITS DISCRETION, MAY WAIVE
8 A HEARING ON AN UNCONTESTED DIVORCE COMPLAINT AND ADMIT PROOF BY AFFIDA-
9 VIT.

10 (3) APPEAL FROM THE DECREE OF DISSOLUTION THAT DOES NOT CHALLENGE THE
11 FINDING THAT THE MARRIAGE IS IRREDEMIABLY BROKEN DOES NOT DELAY THE
12 FINALITY OF THAT PROVISION OF THE DECREE WHICH DISSOLVED THE MARRIAGE. A
13 PARTY MAY REMARRY BEFORE THE TIME FOR APPEAL HAS RUN IF IT IS NOT
14 CONTESTED THAT THE MARRIAGE IS IRREDEMIABLY BROKEN OR IF A STIPULATION
15 THAT THE MARRIAGE IS IRREDEMIABLY BROKEN IS INCORPORATED IN THE DECREE
16 FOR DISSOLUTION.

17 S 2. Section 200 of the domestic relations law is amended by adding a
18 new subdivision 6 to read as follows:

19 6. IRRECONCILABLE DIFFERENCES BETWEEN THE PARTIES HAVE CAUSED A TEMPO-
20 RARY OR IRREDEMIABLE BREAKDOWN OF THE MARRIAGE.

21 S 3. Subparagraph 13 of paragraph d of subdivision 5 of part B of
22 section 236 of the domestic relations law, as renumbered by chapter 884
23 of the laws of 1986, is renumbered subparagraph 14 and a new subpara-
24 graph 13 is added to read as follows:

25 (13) THE FAULT OF EITHER PARTY;

26 S 4. Subparagraph 11 of paragraph a of subdivision 6 of part B of
27 section 236 of the domestic relations law is renumbered subparagraph 12
28 and a new subparagraph 11 is added to read as follows:

29 (11) THE FAULT OF EITHER PARTY;

30 S 5. This act shall take effect immediately and shall apply to actions
31 filed prior to and pending on the effective date of this act, and to
32 actions filed on or after such effective date.