UNIFORM MARRIAGE AND DIVORCE ACT *

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
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WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
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* The Conference changed the designation of the Marriage and Divorce Act (1973) from Uniform to Model as approved by the Executive Committee on July 16, 1996, at the Annual Meeting.

UNIFORM MARRIAGE AND DIVORCE ACT

Prefatory Note

When the National Conference of Commissioners on Uniform State Laws was formed in 1892, two of the major subjects named as appropriate for uniform laws were commercial paper and marriage and divorce. A law on the former was soon achieved; it was not until August 6, 1970, when the Conference first promulgated this Act, that agreement was reached on a measure combining the latter two subjects. In the intervening years, some dozen statutes were approved dealing with various aspects of one or the other. None of them received substantial acceptance by the states.

The activity resulting in the present draft started with the 1965 report of the Special Committee on Uniform Divorce and Marriage Laws, co-chaired by Leonard G. Brown and Bernard Hellring, recommending exploration of the possibility of non-fault divorce laws, the procurement of financial resources to finance research and the recruitment of advisors from all relevant areas of society. The Conference received this proposal with great favor. The next year was devoted to a search for funds and to other promotional work. The Conference continued its approval. Grants in aid were secured from the Ford Foundation and from the United States Department of Health, Education and Welfare. Professor Robert J. Levy of the University of Minnesota was engaged as reporter to supervise research and preliminary drafting. In 1967, Professor Herma H. Kay of the University of California was added as co-reporter. On the request of the Committee, in accordance with the established requirement of consultation with appropriate American Bar Association authorities, the Family Law Section of that Association appointed a Liaison Committee, consisting of Honorable Morris N. Hartman, Chairman, Clarence Kolwyck, Esq., later Chairman [while dissenting from the product, he made many valuable contributions], Honorable Florence M. Kelley, Professor Henry H. Foster, Jr., James P. Hart, Jr., Esq., Godfrey Munter, Esq. The Committee also had the assistance of a Board of Advisors and of a Board of Consultants who were chosen because of their special experience in areas of family law or because of their training in social and behavioral sciences having a particular relevance to the family. The draft was developed and approved by the Conference in light of the advice given by these qualified and experienced Advisors and Consultants, in 1970, and certain alterations were made in 1971, as the result of additional helpful suggestions from representatives of the Family Law Section of the American Bar Association.

A review of the legal and nonlegal literature on marriage and divorce suggests that, although the experts may be divided on other issues, there is virtual unanimity as to the urgent need for basic reform in both areas: not only of specific provisions but of the entire conceptual structure. The traditional conception of divorce based on fault has been singled out particularly, both as an ineffective barrier to marriage dissolution which is regularly overcome by perjury, thus promoting disrespect for the law and its processes, and as an unfortunate device which adds to the bitterness and hostility of divorce proceedings. In recent years, persistent demands for reform finally have been heeded. Statutory reform has been accomplished in countries so diverse as England and Italy and in a number of American states as well. Although less attention

has been given to the anachronisms of marriage law, the need for modernization of state regulatory patterns in the light of a new approach to divorce is undeniable.

Without undermining the state's interest in the stability of marriages, the Act greatly simplified pre-marital regulation. In addition, the list of "prohibited" marriages has been greatly reduced. Most important, the Act changes the traditional sanctions applied to such marriages. At present, most state regulatory statutes enforce marriage prohibitions by permitting one of the parties (or a parent, in case of youthful marriage) to a prohibited marriage to seek an annulment. It has long been recognized, however, that annulments often are sought for personal or family reasons typically having nothing to do with the purpose the marriage prohibition was designed to serve. The marriage prohibitions therefore serve mainly to provide a legal device alternative to divorce under appropriate conditions. But because annulled marriages are considered "void ab initio," annulments have retroactively deprived spouses of financial support and status. An even harsher sanction, the designation of some prohibited marriages as "void," often deprives innocent spouses of social insurance benefits, workmen's compensation claims, wrongful death recoveries, and the financial benefit of property passing as part of the deceased spouse's estate. This Act has eliminated completely the notion of "void" marriages; has minimized the number of prohibited marriages; and, while permitting a declaration of invalidity in circumscribed cases, has created a procedure which permits courts to refuse to make the decree retroactive. The Act's simplified marriage regulations and circumscribed annulment doctrines require most spouses who desire the termination of their marriage to proceed under the dissolution provisions of the Act rather than the invalidity provisions. This result is proper; if the complaint is that the marriage is no longer viable, termination rather than a declaration of invalidity is the appropriate remedy.

In its provisions on dissolution of marriage, the Act has totally eliminated the traditional concept that divorce is a remedy granted to an innocent spouse, based on the marital fault of the other spouse which has not been connived at, colluded in, or condoned by the innocent spouse. Consideration was given to alternative methods of creating a non-fault device for terminating marriages, including the ground of voluntary separation for a period of time, now recognized by many states. The Conference came finally to the conclusion, also reached in England, California and Iowa, (and, since the Act was promulgated, in a number of other states) that the legal dissolution of a marriage should be based solely on a finding that factually the marriage is irretrievably broken. This standard will redirect the law's attention from an unproductive assignment of blame to a search for the realities of the marital situation.

The Act's elimination of fault notions extends to its treatment of maintenance and property division. The distribution of property upon the termination of a marriage should be treated, as nearly as possible, like the distribution of assets incident to the dissolution of a partnership. The Act authorizes the division of the property belonging to either spouse, or to both spouses, as the primary means of providing for the future financial needs of the spouses, as well as of doing justice between them. Where the property is insufficient for the first purpose, the Act provides that an award of maintenance may be made to either spouse under appropriate circumstances to supplement the available property. But, because of its property division

provisions, the Act does not continue the traditional reliance upon maintenance as the primary means of support for divorced spouses. Standards are set up to guide the court in apportioning property and in awarding maintenance.

The custody and support provisions of the Act emphasize the interest of children rather than the wishes of their parents. Fault notions, which occasionally have decided both custody and financial issues, were deliberately and expressly excised. The custody provisions of the Act restate and clarify existing law, both substantive and procedural, and seek to discourage continuing litigation involving children. Provision is made, under appropriate circumstances, for the appointment of an attorney to represent the child's interest in litigation affecting him directly.

Throughout the Act an effort has been made to reduce the adversary trapping of marital litigation. Thus procedural modifications have been introduced affecting the title of the proceedings and the form of the pleadings; the parties are permitted to file a joint petition for dissolution and the basis chosen for dissolution does not lend itself to recriminatory disputes; and the parties are encouraged to make amicable settlements of their financial affairs and voluntary provisions for the custody of their children.

Although the Conference itself decided not to provide, as part of the Act, a uniform system of obtaining statistical information, consideration of the Act should provide the occasion for each state to make a fresh examination of the legislation, recommended by the Bureau of Vital Statistics, which would permit the gathering of uniform national statistics on marriage and divorce. See U.S. Department H.E.W., Marriage Statistics Analysis 35 (Statistical Series 21, No. 16, 1968); Jacobson, American Marriage and Divorce 16 (1959).

The Uniform Marriage and Divorce Act is promulgated as one interlocking and interdependent piece of legislation. Because of the terms upon which resources were granted, and, still more, because of the interrelationships involved, the draft presents a unified proposal for a code of marriage and divorce. However, it is realized that local statutory structure, or varied views as to policy may lead some legislatures to prefer to deal with the two subjects in separate bills. The structure of the Act in separable parts facilitates such a separation. Thus a state which desired to enact the marriage portion separately could change the short title (§ 101) to "Uniform Marriage Act." In § 102 (b), it could use only purposes (1) and (2). The state then would enact Part V (§§ 501-505) as are appropriate. Likewise, if enactment of the dissolution provisions alone were desired, the appropriate short title would be the "Uniform Divorce Act," and in § 102 (b) the purpose clauses (3), (4) and (5) of § 102 (b) would be used. The parts to be adopted would be III, IV, and so much of V as would be appropriate.

It should be kept in mind that the by-lines preceding each section are bracketed, since many states' legislative rules do not permit the incorporation of such material in bills that are presented for introduction. Each draftsman will have to follow the rule prevailing in his own state.

This section additionally emphasizes the legal concept of marriage as a civil contractual status, in distinction from any religious significance also attached thereto. In prescribing that a "marriage may be contracted, maintained, invalidated or dissolved only as provided by law," it does not preclude giving effect to the statutes and decisions of jurisdictions other than the enacting state.

§ 202. [Marriage License and Marriage Certificate]

(a) The [Secretary of State, Commissioner of Public Health] shall prescribe the form for an application for a marriage license, which shall include the following information:

(1) name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage;

(2) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) name and address of the parents or guardian of each party; and

(4) whether the parties are related to each other and, if so, their relationship.

(5) the name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(b) The [Secretary of State, Commissioner of Public Health] shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

COMMENT

The Act assumes that each state will adapt its existing marriage licensing statute so that it conforms to the substantive regulatory provisions of the Act. Such statutes vary substantially from state to state; and there is no special interest in obtaining uniformity as to the form utilized for marriage licenses and registrations. This section permits the state to forego legislative

regulation by leaving the elaboration of forms to an appropriate state official. States unwilling to break completely with past legislative patterns nonetheless may want to review, modernize, and simplify legislation delineating license and registration forms. The inclusion of social security numbers will facilitate the enforcement of duties of support, if this later becomes necessary. The information regarding prior marriages and their termination similarly will prove helpful in a variety of situations making investigation appropriate. Information as to occupation may be useful to a determination of whether an underage marriage should be approved (Section 205), or in passing on issues as to maintenance, support, property division, or child custody. The name of a party who has been married previously of course should be that which he or she bore during that marriage.

§ 203. [License to Marry]

When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the [marriage license] clerk and paid the marriage license fee of [$_____], the [marriage license] clerk shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective, or will have attained the age of 16 years and has either the consent to the marriage of both parents or his guardian, or judicial approval; [or, if under the age of 16 years, has both the consent of both parents or his guardian and judicial approval;] and

(2) satisfactory proof that the marriage is not prohibited; [and]

[(3) a certificate of the results of any medical examination required by the laws of this State].

COMMENT

To avoid inconvenience when one of the parties to the prospective marriage is residing, temporarily or permanently, outside the state, the Act requires that only one of the parties appear personally before the clerk to provide the information required by this section. Both parties must