

AMENDED IN ASSEMBLY APRIL 11, 2005

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1236

Introduced by Assembly Member DeVore

February 22, 2005

An act to add Chapter 4 (commencing with Section 1630) to Part 5 of Division 4 of the Family Code, relating to marital contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1236, as amended, DeVore. Marriage Choice Act of 2005.

Existing law establishes the procedures by which parties to a marriage may seek a dissolution of marriage. Existing law also governs marital agreements between a husband and wife.

This bill would enact the Marriage Choice Act of 2005. The bill would establish procedures by which a couple may enter into a marital contract rejecting the right to a ~~“no-fault”~~ “no-fault” divorce, except in certain circumstances. The bill would require couples seeking to enter into this type of marital contract to undergo specified marital counseling and education before entering into that contract, and also *to undergo specified marital counseling* before divorcing. The bill would require county clerks to develop and make available to the public choice forms, as defined, in accordance with the act. The bill would also require a county clerk to file and keep completed choice forms within the county’s permanent records and to establish a directory of marriage education or skills training providers within its office, as specified. By placing additional duties on local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A primary purpose of government is to promote the general
- 4 welfare. Yet current divorce laws have created a situation that
- 5 does not further the general welfare, but rather degrades it.
- 6 (b) Children of divorce generally fare more poorly in school,
- 7 in the workforce, and in their own relationships relative to
- 8 children from intact homes.
- 9 (c) Divorced men smoke more, drink more, and have more
- 10 unhealthy diets than their married counterparts.
- 11 (d) The various cultural neuroses that are directly attributable
- 12 to divorce and its byproducts are a large part of why the
- 13 entitlements in our budget are growing at such a rapid rate.
- 14 (e) ~~No-fault~~ *No-fault* divorce has contributed to an increased
- 15 divorce rate, which in turn has caused many negative impacts on
- 16 society. For instance, because of the increased incidence in
- 17 divorce, more than one million children annually experience the
- 18 breakup of their parents' marriage.
- 19 (f) As one might expect, the dissolution of families negatively
- 20 affects children psychologically, economically, and socially.
- 21 Several studies of children in broken homes found they had
- 22 higher occurrences of psychiatric illness, substance abuse,
- 23 suicide attempts, and premarital sexual activity.
- 24 (g) Additionally, a child who repeats a grade is more likely to
- 25 come from a family shattered by divorce.

1 (h) Divorce impoverishes many women and children, and
2 research shows that families that were previously middle class
3 saw their incomes drop by half after divorce.

4 (i) Moreover, broken marriages often require the enforcement
5 of child support, since many noncustodial parents fail to pay for
6 their children's reasonable financial upkeep. In 2000, state and
7 federal governments spent \$4.5 billion to enforce child support
8 programs.

9 (j) All of these consequences produce tremendous public costs
10 and a self-perpetuating cycle. According to Rutgers University's
11 National Marriage Project, 18 to 34 year olds are marrying at
12 greatly reduced rates, largely because many are the products of
13 divorce. Certainly, all grew up in a culture of divorce. Many are
14 afraid that if they marry, they too will get divorced and if they
15 are the product of divorce, the odds are they will.

16 (k) Consequently, many couples live together out of wedlock,
17 which creates several other problems. Those who cohabit are 50
18 percent more likely to divorce when they do marry and have a
19 higher rate of pregnancy complications compared with those who
20 are legally wed. These two factors can also produce a significant
21 outlay of taxpayer funds.

22 (l) It is in the interest of government policymakers to reverse
23 these financially destructive and personally devastating trends.
24 One way of doing this would be to give couples the choice of
25 strengthening marriage. Studies show that if couples persevere
26 for five years from the onset of their marital problems, their
27 marriage will be stronger and happier than before. Conversely, a
28 significant number of those who divorce say they later wish they
29 had not.

30 (m) By giving couples time and incentive to stay married, we
31 will bring down the rate of divorce and the costs associated with
32 it that our society can increasingly ill afford to pay.

33 (n) Thus it is incumbent upon the state to find some way of
34 encouraging marriages to stay together. In a state that values
35 individual freedom to the extent that California does, giving
36 couples the option to freely ~~to~~ make it more difficult to dissolve
37 their marriages harms no one and actually helps society as a
38 whole.

39 SEC. 2. Chapter 4 (commencing with Section 1630) is added
40 to Part 5 of Division 4 of the Family Code, to read:

CHAPTER 4. MARRIAGE CHOICE ACT OF 2005

1
2
3 1630. This chapter shall be known and may be cited as the
4 “Marriage Choice Act of 2005.”

5 1631. For purposes of this chapter, the following definitions
6 apply:

7 (a) “Choice form” means a form provided by the county
8 clerk’s office to a married couple, or a couple entering into a
9 marriage, which shall be completed by the couple and filed with
10 the county clerk as set forth in this part.

11 (b) “County clerk” means the clerk of the county in which the
12 parties have applied for a marriage license, or, if the parties are
13 already married, the county in which the married couple resides.

14 (c) “No-fault dissolution of marriage” means a dissolution of
15 marriage on the grounds of irreconcilable differences.

16 1632. (a) For married couples subject to this chapter, a
17 dissolution of marriage on grounds of irreconcilable differences
18 shall not be granted unless both parties have given consent, as
19 prescribed in Section 1634.

20 (b) This section applies to married couples who voluntarily
21 choose to have this chapter apply to their marriage by completing
22 and filing a choice form pursuant to Section 1634, including, but
23 not limited to, couples married outside this state, couples married
24 before the effective date of this chapter, and married couples
25 without children.

26 1633. A couple who voluntarily chooses to be subject to this
27 chapter, pursuant to subdivision (b) of Section 1632, shall do all
28 of the following:

29 (a) Receive premarital education or marriage education in
30 accordance with this chapter from any of the providers described
31 in Section 1635.

32 (b) Complete a choice form indicating their choice that a
33 no-fault dissolution of marriage will not be available and filing
34 that form with the county clerk after receiving marriage
35 education together from any of the providers described in Section
36 1635. A choice form shall not be valid unless it is signed by both
37 spouses, with each signature acknowledged or witnessed by a
38 notary public or the county clerk.

39 (c) The county clerk shall develop and make available to the
40 public choice forms in accordance with this section. The county

1 clerk shall also file and keep completed choice forms within the
2 permanent records of the county. The forms shall be in
3 substantially the following form:

4
5
6
7
8
9

MARRIAGE OF _____ *AND* _____

Marriage Choice Form

10 WAIVER (option 1): “We hereby choose that a no-fault dissolution of
11 marriage

12
13
14

_____ will be available to us.”
_____ will not be available to us.”

17

18 WAIVER (option 2): “We understand that, pursuant to the laws of the State
19 of California, married persons may obtain dissolution of their marriage only
20 by claiming that the parties’ marriage is “irretrievably broken.” We
21 understand that most, if not all, states in the United States may have similar
22 laws permitting dissolution of marriage without requiring the proof of any
23 reasonable grounds for dissolution of marriage.

24

25 By signing this written marriage contract, we knowingly and voluntarily
26 waive any right to a dissolution of ~~my~~ *our* marriage by any and all other
27 statutory rights and provisions and specifically limit the availability of
28 dissolution of marriage to only those specific reasonable grounds for
29 dissolution of marriage which are herein enumerated.”

30

31 Signature of both married parties: _____

32

33 Dated: _____

34

35 Acknowledgment by notary public or county clerk:

36 NOTICE: This form is not valid unless signed by both spouses, with each
37 signature acknowledged before, or witnessed by, a notary public or county
38 clerk.

39

1 (d) A written agreement executed before or during marriage,
2 in any other state or country, may specify whether, and under
3 what conditions, “no-fault” grounds may be grounds for
4 dissolution of marriage when the parties have children and do not
5 both consent to a dissolution of marriage. The agreement may
6 also specify a waiting period for a dissolution of marriage when
7 the parties do not both consent to the dissolution. For these
8 purposes only, any form provided by a court for the purpose of
9 making a choice, in any state or country, if signed by both
10 spouses and retained by the court or other governmental agency
11 or religious institution in its records, shall be presumed to be a
12 valid agreement. “No-fault” grounds include such grounds as
13 living apart, legal, judicial, or de facto separation, irretrievable
14 breakdown, incompatibility, or irreconcilable differences, as are
15 variously provided in the laws of various states and countries.

16 (e) For those who reject recourse to no-fault dissolution of
17 marriage, dissolution of marriage *prior to the expiration of the*
18 *counseling and consideration period set forth in subdivision (e)*
19 *of Section 1634* is restricted to the following grounds:

20 (1) Adultery.

21 (2) Infection with a sexually transmitted disease when the
22 spouse seeking the dissolution of marriage did not know at the
23 time of marriage that the other spouse was infected, or the other
24 spouse acquired the disease after marriage from someone other
25 than the spouse petitioning for dissolution of marriage.

26 (3) Infection with a fatal disease when the spouse seeking the
27 dissolution of marriage did not know at the time of marriage that
28 the other spouse was infected with the disease.

29 (4) Abandonment by the other spouse for one or more years
30 preceding filing.

31 (5) Habitual addiction to alcohol or drugs.

32 (6) Failure to financially provide for the family.

33 (7) Imprisonment for two or more years.

34 (8) Physical abuse, extreme mental cruelty, or sexual abuse of
35 a spouse or child.

36 (9) Legal insanity.

37 (10) Mutual consent of both parties.

38 (f) Common law equitable principles may be raised as
39 defenses to the action. The contract may provide for remedies for
40 violation of the contract, including damages, dissolution of

1 marriage, or separation. A decree of dissolution that does not
2 conform to the marriage contract is null and void. A marriage
3 contract that limits the availability of dissolution of marriage to
4 only those reasonable grounds specified above shall contain an
5 express waiver of the right to obtain a dissolution of marriage
6 because of “irreconcilable differences” or because the marriage is
7 “irretrievably broken.” When obtaining a dissolution of marriage,
8 the petitioner shall allege the grounds pursuant to the contract. A
9 dissolution of marriage shall be granted if the other party does
10 not deny the alleged grounds or if the court finds that the alleged
11 grounds exist. The restrictions also apply to legal separations.

12 1634. (a) Consent to dissolution of marriage shall be either:
13 (1) unconditional, or (2) part of a written agreement, such as a
14 separation agreement, marital agreement, or premarital
15 agreement that is enforceable in its entirety.

16 (b) Consent shall be in writing unless it is given in open court.
17 Asking a court for a dissolution of marriage on any ground
18 constitutes consent.

19 (c) Consent may be given at any time before the judge signs a
20 final judgment for dissolution of marriage. Consent is not
21 effective if given only when the other spouse is not proposing or
22 seeking a dissolution of marriage, except when given in an
23 agreement as described in subdivision (b).

24 (d) Whenever consent has been given by both parties, and no
25 other grounds have been proven satisfactorily, the court may
26 grant a dissolution of marriage on grounds of mutual consent.

27 (e) A party who has filed a choice waiver rejecting the option
28 of a no-fault dissolution of marriage shall not ask a court for a
29 dissolution of marriage until after the counseling and
30 consideration period set forth in subdivision (f) has elapsed. *After*
31 *this time period has elapsed, the party may obtain a dissolution*
32 *of marriage even if the other spouse refuses consent.*

33 (f) The counseling and consideration period is two years, less
34 six months for each of the following circumstances:

35 (1) The parties have never had children.

36 (2) The parties have a written agreement for dissolution of
37 marriage and the agreement covers all relevant issues.

38 (3) After the period begins, the parties obtain marriage
39 education.

1 (g) The counseling and consideration period pursuant to
2 subdivision (f) begins when one spouse delivers a marriage help
3 request notice, as set forth in subdivision (h), to the other spouse.
4 The counseling and consideration period shall not require the
5 couple to live in separate residences and in abstinence from
6 marital relations. This period may begin with a formal
7 declaration of intent by the parties, which would initiate a
8 probationary period for attempting to save and reevaluate the
9 marriage. During this period, and after filing for dissolution of
10 marriage, the parties shall not be penalized for trying to reconcile
11 with each other. Marital counseling provided during this period
12 shall address the issue of how minor children fare as a result of a
13 dissolution of marriage and what parents can do to ease the
14 effects of dissolution of marriage on minor children. Parents who
15 agree to a dissolution of marriage shall submit detailed parenting
16 plans covering all aspects of child-rearing, including, but not
17 limited to, visitation, discipline, and education.

18 (h) The marriage help request notice shall be in substantially
19 the following form:

MARRIAGE OF _____ AND _____

Marriage Help Request Notice

TO: _____

FROM: _____

I am giving you this notice because I think our marriage has serious problems that may lead to separation or dissolution of marriage.

Information about marriage education and counseling resources is available from the superior courts in the State of California, and from www.smartmarriages.com.

Delivering this document makes dissolution of marriage legally possible after the counseling and consideration period expires.

Steps that must be taken to repair the marriage:

Date delivered to my spouse _____

Method of delivery _____

Address of delivery _____

Signature of spouse
who delivered this notice: _____

1635. (a) Marriage education or skills training required by this chapter may be provided by any of the following:

- (1) An official representative of a religious institution, or any clergy person authorized to perform marriages, or his or her designee, including mentor couples or other lay volunteers, if working in a clergy-supervised program.

- 1 (2) Marriage education providers or programs listed, funded,
- 2 or authorized by any of the following:
- 3 (A) The United States Department of Health and Human
- 4 Services.
- 5 (B) The United States Department of Agriculture Cooperative
- 6 Extension Service.
- 7 (C) The United States Department of Defense and the
- 8 individual military services of the United States.
- 9 (D) Any other federal, state, or local government agency or
- 10 court.
- 11 (E) ~~Smart Marriages~~ / ~~The Marriages~~ / ~~The~~ *Marriages* / *The* Coalition for
- 12 Marriage, Family and Couples Education, which maintains a
- 13 Web site available at <http://www.smartmarriages.com>, or any of
- 14 its component programs.
- 15 (3) Any marriage education provider or program approved by
- 16 the person who has solemnized or is solemnizing the marriage.
- 17 (4) Marriage education or skills training providers listed in any
- 18 other online or printed directories whose use has been authorized
- 19 by the Clerk of the Supreme Court.
- 20 (5) Marriage education or skills training providers listed in
- 21 directories that shall be maintained by the county clerk’s office.
- 22 Each directory shall consist of a binder in which the county clerk
- 23 may place the names of local providers and materials sent by
- 24 them, copies or Web site addresses of other lists or directories
- 25 authorized by this chapter, printouts of local sections of Internet
- 26 online directories, and other materials or lists that the clerk
- 27 deems suitable.
- 28 (b) Proof of completion of marriage education or skills
- 29 training, or marriage counseling, for all purposes for which it
- 30 may be required by this chapter shall be submitted as follows:
- 31 (1) Proof of completion of training should be signed by a
- 32 provider, on the stationery, or other form or certificate, that is
- 33 used by the provider, program or sponsoring institution, but it
- 34 need not be notarized.
- 35 (2) If the provider is not yet in the county clerk’s directory and
- 36 appears to the county clerk to be qualified as a marriage educator
- 37 under the terms of this section, the county clerk may add the
- 38 provider or the program to the directory, regardless of whether
- 39 the provider or program is already in another online or printed
- 40 directory or is clergy.

1 (c) ~~(1)~~ If a person who desires to reject recourse to no-fault
2 dissolution of marriage applies to the county clerk for a marriage
3 license, the county clerk shall ask if the couple has received or
4 are receiving marriage skills training, and from whom. If that
5 couple has not, or if the answer is vague, the clerk or deputy shall
6 inform that person that training may be available from clergy,
7 from programs offered by religious institutions, and that both
8 nonreligious and religious marriage educators are available from
9 the providers and directories that are authorized by subdivision
10 (a).

11 (d) Whenever marriage skills training is available in a
12 geographic area, information describing what marriage skills
13 training is, where it is available, and the purpose for marriage
14 training, shall be made available to the public. This information
15 may be provided to the public by the Internet, and also may be
16 provided to the public in any of the following circumstances:

- 17 (1) Upon application for a marriage license.
- 18 (2) Within offices of civil marriage celebrants.
- 19 (3) Within governmental offices that offer family services or
20 counseling, including any that provide services to single or
21 married parents or to newly released former prison inmates.
- 22 (4) Court-~~clerk's~~ *clerks'* offices that deal with domestic
23 relations or juvenile delinquency cases.
- 24 (5) Providers of court-referred or government-referred
25 dissolution of marriage education, parenting education, or
26 custody education programs.
- 27 (6) When taking marriage preparation classes, the couple shall
28 undergo the training together. If required by law or court
29 procedures as a prerequisite to dissolution of marriage, the
30 individual parties may undergo it separately and need not both
31 choose the same program or provider.

32 1636. (a) Except for evidence of living apart, a minor child
33 of either of the parties to a proceeding for dissolution of marriage
34 shall not give evidence of grounds for dissolution of marriage
35 and any statement of a child, by hearsay or otherwise, shall not
36 be used as evidence of grounds for dissolution of marriage.

37 (b) Except for evidence of living apart, imprisonment, or
38 conviction of a crime, evidence of grounds of dissolution of
39 marriage shall not be heard in open court, but instead shall be
40 heard in closed proceedings of the court.

1 (c) The court may nonetheless consider any evidence that it
2 finds to be relevant to matters before it. The sufficiency,
3 credibility, weight, role and use of admissions by the parties,
4 shall be the same in dissolution of marriage actions pursuant to
5 this chapter as in other actions in equity or at law.

6 (d) The court shall, on a case-by-case basis, determine the
7 assets and liabilities of the parties and equally divide the assets
8 unless the court finds upon good cause shown that the interests of
9 justice require an unequal division of the assets or liabilities.

10 (e) *The court shall apply existing law regarding child support,*
11 *spousal support, visitation, and custody matters for proceedings*
12 *subject to this chapter.*

13 (f) This section only applies to dissolution of marriage
14 proceedings for marriages subject to this chapter.

15 1637. (a) If a couple was married in another state or country
16 whose law at the time allowed a couple to make a choice of
17 dissolution of marriage rules at the time of the marriage or later
18 during the marriage, or if a couple made such a choice in another
19 state at some time during the marriage pursuant to legislation,
20 and if that couple has not completed a choice form in this state,
21 then the grounds for dissolution of marriage and other
22 substantive requirements chosen by the couple at the time of the
23 marriage or later, as provided by the law of the state where they
24 did so, shall apply instead of the dissolution of marriage grounds
25 and other substantive requirements provided by this state's law.

26 (b) If the place of last marital cohabitation was a state, district,
27 territory, province, or country that adjoins this state, and one
28 party to the marriage still remains in that place, then this state
29 shall not exercise any jurisdiction that it has to grant a dissolution
30 of marriage unless the out-of-state party consents to a dissolution
31 of marriage, and to the proceedings for dissolution of marriage
32 being heard in this state's courts.

33 (c) Regardless of where the couple entered into marriage, if
34 they have been married less than five years, they shall either
35 show proof of having completed or shall complete premarital
36 education courses through providers listed in Section 1635. If the
37 couple has been married for five years or more, they may
38 dispense with the premarital education requirement.

39 1638. In any dissolution of marriage proceeding commenced
40 on or after the effective date of this act, if there is a choice form,

1 agreement, or an out-of-state marriage of the kind described in
2 Section 1637, which may affect whether Section 1632 applies to
3 the marriage, then any petition for dissolution of marriage shall
4 refer to the choice form or other agreement. Failure to do so shall
5 not affect the validity or timeliness of the pleading, and later
6 written or oral amendment or stipulation shall be ~~allowed~~
7 permitted up to the time of the hearing on grounds for dissolution
8 of marriage.

9 1639. Any marriage ~~counseling~~ or education required before
10 dissolution of marriage may be provided by any of the providers
11 ~~listed in Section 1635, or by licensed behavioral health~~
12 ~~professionals, psychologists, social workers, marriage and family~~
13 ~~therapists, psychiatrists, pastoral counselors, certified family life~~
14 ~~educators, or professional counselors, but not by a therapist who~~
15 ~~is treating or has treated one of the spouses separately. The~~
16 ~~individual parties may undergo it separately and need not both~~
17 ~~choose the same program or provider. listed in Section 1635.~~
18 *However, any marriage counseling required before dissolution of*
19 *marriage shall only be provided by one or more of the following:*

20 (a) *A psychiatrist who meets the criteria of subdivision (a) of*
21 *Section 1010 of the Evidence Code.*

22 (b) *A psychologist who meets the criteria of subdivision (b) of*
23 *Section 1010 of the Evidence Code.*

24 (c) *A licensed clinical social worker who meets the criteria of*
25 *subdivision (c) of Section 1010 of the Evidence Code.*

26 (d) *A licensed marriage and family therapist who meets the*
27 *criteria of subdivision (e) of Section 1010 of the Evidence Code.*

28 (e) *A priest, rabbi, or minister of the gospel of any religious*
29 *denomination when performing counseling services as part of his*
30 *or her pastoral or professional duties.*

31 (f) *A person who is licensed to practice law in California,*
32 *when providing counseling services as part of his or her*
33 *professional practice.*

34 (g) *A person who is licensed to practice medicine in*
35 *California, when providing counseling services as part of his or*
36 *her professional practice.*

37 (h) *A person who is employed to provide marriage counseling*
38 *by a governmental entity, school, college, university, or an*
39 *institution, both nonprofit and charitable, if the person performs*
40 *the counseling under the supervision of the organization and the*

1 *person was employed to perform the counseling as part of his or*
2 *her employment with the organization.*

3 SEC. 3. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

O