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DOMESTIC RELATIONS

Divorce: Require Certain Divorcing Parents to Participate in Certain Education Classes That Focus on the Effect of Divorce and Separation on Children; Provide for Legislative Findings; Provide for the Types of Persons Who Can Provide the Education; Provide for Exceptions to the Education Classes; Change Certain Provisions Relating to the Time Limit for Granting a Divorce on the Ground That the Marriage Is Irretrievably Broken; Provide for a Different Time Frame for Granting Divorce Based on Certain Circumstances; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes

BILL NUMBER:

SB 25

SUMMARY:

The bill would have required certain divorcing parents with dependent children under 18 years of age to participate in education classes and provided the different types of professionals who could conduct the classes. The bill also would have enacted a waiting period changing the time a court could grant a divorce to 120 days from the date of the parties' separation when the parties have children 18 years of age or younger. The bill provided a waiting period waiver when a party obtained a protective order or when either party submitted allegations to the court of specific facts establishing probable cause that family violence had occurred. The parties also could obtain a waiver of the waiting period if they presented a settlement agreement to the court indicating they utilized principles of collaborative practice.

History

“[D]ivorced women are more than five times as likely to live in poverty, [and] children of divorce are more than seven times as likely to live in poverty”¹ Senator Mitch Seabaugh of the 28th district introduced SB 25 because he has introduced legislation for families in the past, and the Georgia Family Council provided him with statistics informing him about the effects of divorce on society and the state.² States that have a waiting period for divorce show a reduction in the divorce rate of 25%.³ In 2003, couples in Georgia obtained just over 35,000 divorces.⁴ The United States Census Bureau reported that the divorce rate in Georgia in 2001 was 3.8 per 1,000 citizens.⁵ Due to the high incidence of divorce in Georgia, the purpose of SB 25 was to “slow people down . . . to make them think about what they’re doing”⁶

Bill Tracking of SB 25

Consideration by the Senate

Senators Mitch Seabaugh, Seth Harp, Nancy Schaefer, Judson Hill, Chip Pearson, and Joseph Carter of the 28th, 29th, 50th, 32nd, 51st, and 13th districts, respectively, sponsored SB 25.⁷ The Senate first read the bill on January 12, 2005, and the Senate Judiciary Committee favorably reported the bill, by substitute, on February 22, 2005.⁸

The current law in Georgia does not mandate couples seeking a divorce to attend any specific educational or counseling program

1. Audio Recording of Senate Proceedings, Mar. 3, 2005 (remarks by Sen. Mitch Seabaugh), http://www.georgia.gov/00/article/0,2086,4802_6107103_33091490,00.html [hereinafter Senate Audio].

2. See Telephone Interview with Sen. Mitch Seabaugh, Senate District No. 28 (Apr. 8, 2005) [hereinafter Seabaugh Interview].

3. See Senate Audio, *supra* note 1 (remarks by Sen. Mitch Seabaugh).

4. Martha L. Munson & Paul D. Sutton, *Births, Marriages, Divorces, and Deaths: Provisional Data for 2003*, 52 NAT’L VITAL STATISTICS REP., June 10, 2004, at 6, available at http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_22.pdf.

5. See UNITED STATES CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2002 88 (2002), <http://www.census.gov/prod/2003pubs/02statab/vitstat.pdf>.

6. See Senate Audio, *supra* note 1 (remarks by Sen. Seth Harp).

7. See SB 25, as introduced, 2005 Ga. Gen. Assem.

8. See State of Georgia Final Composite Status Sheet, SB 25, Jan. 12, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 25, Feb. 22, 2005 (May 11, 2005).

prior to obtaining their divorce.⁹ SB 25, as introduced, would have required couples with children under “18 years of age or in which the wife is pregnant . . . seeking legal separation or divorce to participate in education classes of their choice, focusing substantially on the potential impact of separation or divorce on children.”¹⁰

Furthermore, Georgia’s current law requires courts to wait 30 days from service on the respondent before granting couples a divorce on grounds the marriage is “irretrievably broken.”¹¹ As introduced, SB 25 increased the waiting period for couples seeking a divorce on grounds the marriage is irretrievably broken as follows:

[A] court shall grant a divorce only after 120 days from the date of service on the respondent where the parties do not have children who are 18 years of age or younger [A] court shall grant a divorce only after 180 days from the date of service on the respondent where the parties have children who are younger than 18 years of age The waiting periods provided by this Code section shall be waived where either party has obtained a protective order pursuant to Article 1 of Chapter 13 of this title or where either party alleges in a verified petition or verified answer or verified responsive pleading specific facts establishing probable cause that family violence as defined by Code section 19-13-1 has occurred in the past.¹²

The Committee substitute significantly modified one aspect of the original bill.¹³ The Committee substitute also permitted waiver of the waiting period when “either party submits a confidential affidavit to the court for in camera inspection . . . which alleges specific facts establishing probable cause that family violence as defined by Code Section 19-13-1 has occurred in the past.”¹⁴ With the Committee substitute, Georgia would be the only state to have this “in camera

9. See 1995 Ga. Laws 1292, § 13, at 1301 (codified at O.C.G.A. § 19-5-1 (2004)).

10. See SB 25, as introduced, 2005 Ga. Gen. Assem.

11. See 1977 Ga. Laws 1253, § 3, at 1255 (codified at O.C.G.A. § 19-5-3 (2004)).

12. See SB 25, as introduced, 2005 Ga. Gen. Assem.

13. Compare SB 25 (SCS), 2005 Ga. Gen. Assem., with SB 25, as introduced, 2005 Ga. Gen. Assem.

14. SB 25 (SCS), 2005 Ga. Gen. Assem.

inspection exception” for domestic violence in uncontested divorces.¹⁵

Floor Debate and Amendments

At the beginning of the floor debate, Senator Seabaugh offered an amendment to the Committee substitute that defined an effective date for the bill of July 1, 2005.¹⁶ The floor debate did not concern the amendment, and the Senate adopted the amendment by a vote of 29 to 1.¹⁷

During the floor debate, senators spoke in favor and in opposition to the bill.¹⁸ Senator Seabaugh talked about statistical evidence, and his concerns related to the effects divorce has on families and individuals.¹⁹ Senator Seth Harp of the 29th district rose to speak as a representative of the legal community, specifically the family law community, in support of the bill.²⁰ He pointed out that most uncontested divorces take 90 to 120 days to finalize, so the bill’s impact on families obtaining divorces would be small—it would simply ensure people considered their decision prior to the court finalizing the divorce.²¹ Senator Judson Hill of the 32nd district advocated for the bill for fiscal and personal reasons.²² He stated that every divorce in Georgia costs \$35,000, so every divorce that is prevented by the waiting period will save taxpayers money.²³ Senator Hill also expressed concern for the children who go through divorce because it effects their lives forever, regardless of how old the children are when the divorce occurs.²⁴

Senator Steen Miles of the 43rd district spoke in opposition to the bill.²⁵ She expressed concern about the bill because it was opposed to

15. See Senate Audio, *supra* note 1 (remarks by Sen. Mitch Seabaugh); Seabaugh Interview, *supra* note 2.

16. See SB 25 (SCSFA), 2005 Ga. Gen. Assem.; Senate Audio, *supra* note 1 (remarks by Sen. Mitch Seabaugh).

17. See Senate Audio, *supra* note 1.

18. See *id.*

19. See *id.* (remarks by Sen. Mitch Seabaugh).

20. See *id.* (remarks by Sen. Seth Harp).

21. See *id.*

22. See *id.* (remarks by Sen. Judson Hill).

23. See Senate Audio, *supra* note 1 (remarks by Sen. Judson Hill).

24. See *id.*

25. See *id.* (remarks by Sen. Steen Miles).

the Governor's stated policy for Georgia to stay out of people's lives and not be a "busybody government."²⁶ She also stated that legislators could help Georgia families by providing additional funding for education and programs such as PeachCare.²⁷ Senator Regina Thomas of the 2nd district voted "no" for the bill and spoke of concerns that divorce might force women to live in poverty during the period before the divorce is finalized, and the fee participants would have to pay for the education classes.²⁸

The Senate adopted the Committee substitute, as amended, and passed SB 25 by a vote of 36 to 17.²⁹

Consideration by the House

The House first read SB 25 on March 4, 2005, and the House Judiciary Committee favorably reported the bill, by substitute, on March 29, 2005.³⁰ The bill did not make it any further before the end of the session on March 31, 2005.³¹

The House Judiciary Committee significantly changed SB 25 from the version the Senate passed.³² First, the House Committee substitute eliminated the extension of the waiting period for couples without children.³³ Further, the Committee substitute reduced the waiting period for couples with children from the Senate's 180 days to 120 days.³⁴

Additionally, the House Judiciary Committee significantly changed the beginning of the waiting period from the date of service on the respondent to the date of the parties' separation.³⁵ This change

26. *See id.*

27. *See id.*

28. *See id.* (remarks by Sen. Regina Thomas)

29. Georgia Senate Voting Record, SB 25 (Mar. 3, 2005).

30. *See* State of Georgia Final Composite Status Sheet, SB 25, Mar. 4, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, SB 25, Mar. 29, 2005 (May 11, 2005). The Committee tabled the bill a few days prior to its passing favorably, but Senator Seabaugh reportedly convinced the Committee to debate and vote on the bill again. *See* Sonji Jacobs & Bill Rankin, *Divorce Proposal Revived in House: Bill Extends Wait Time for Parents*, ATLANTA J. CONST., Mar. 30, 2005, at B3.

31. *See* State of Georgia Final Composite Status Sheet, SB 25, Mar. 29, 2005 (May 11, 2005).

32. *Compare* SB 25 (HCS), 2005 Ga. Gen. Assem., *with* SB 25 (SCSFA), 2005 Ga. Gen. Assem.

33. *See* SB 25 (HCS), 2005 Ga. Gen. Assem.

34. *Compare* SB 25 (HCS), 2005 Ga. Gen. Assem., *with* SB 25 (SCSFA), 2005 Ga. Gen. Assem.

35. *Compare* SB 25 (HCS), 2005 Ga. Gen. Assem., *with* SB 25 (SCSFA), 2005 Ga. Gen. Assem.

could effectively eliminate the waiting period for couples who separate long before they actually file for divorce.³⁶

The House Judiciary Committee made another considerable change that waived the waiting period for parties who “present a settlement agreement that satisfies the court that principles of collaborative practice have been utilized.”³⁷ The Committee substitute further defined collaborative practice as when the parties agree to resolve their divorce through good faith effort without resorting to judicial intervention, other than having the court approve the parties’ settlement agreement.³⁸ Incorporating this exception for collaborative practice resolved one of the unintended consequences the Senate failed to consider when passing the bill, and the bill’s sponsors supported this change.³⁹ Collaborative practice includes counseling and professional involvement (when necessary) to assist families with the impact of divorce on the family unit, making it redundant for people who participate in collaborative practice to also attend state-mandated education classes.⁴⁰

Senator Seabaugh expressed that although he would have liked to see the Senate version come out of the House Judiciary Committee, he understood the necessity of utilizing input from the entire General Assembly.⁴¹ Because the House Committee did not kill the bill, SB 25 will return for the next legislative session, and its sponsors hope it will pass in 2006.⁴²

Analysis

Many states have statutory waiting periods for couples seeking divorce, but only a handful have a waiting period greater than 90 days.⁴³ Although states with longer waiting periods have a lower

36. See Seabaugh Interview, *supra* note 2.

37. See SB 25 (HCS), 2005 Ga. Gen. Assem.

38. See *id.*

39. See Seabaugh Interview, *supra* note 2; Telephone Interview with Sen. Seth Harp, Senate District No. 28 (Apr. 5, 2005) [hereinafter Harp Interview].

40. See Harp Interview, *supra* note 39; *The Collaborative Law Institute of Georgia—Family Law*, <http://www.collaborativelawga.com/family.html> (last visited Oct. 14, 2005).

41. See Seabaugh Interview, *supra* note 2.

42. See *id.*; Harp Interview, *supra* note 39.

43. See, e.g., WIS. STAT. ANN. § 767.083 (West Supp. 2004) (requiring couples wait 120 days); VA. CODE ANN. § 20-91 (2004) (requiring couples be separated six months); N.J. STAT. ANN. § 2A:34-2

divorce rate, the lower rate is not statistically significant.⁴⁴ Opponents of SB 25 fear the bill will unintentionally increase the acrimony, the destructive nature of divorce, and possibly the violence associated with divorce without significantly lowering Georgia's divorce rate.⁴⁵ Also, some opponents argue the perceived cause and effect is mislabeled with this bill, and legislators should look toward changing marriage requirements because a waiting period will have little to no effect on the whether people divorce.⁴⁶

In addition to the desire to improve families, proponents desire the possible fiscal savings from a reduction in the number of divorces and express concern with Georgia's reputation as a "quickie" divorce state.⁴⁷ Despite the strong opposition to the addition of a waiting period for uncontested divorces in Georgia, the bill's strong support in the Senate and House should enable its passage during the 2006 Georgia General Assembly.⁴⁸

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(West 2000) (permitting divorce under specific circumstances, including when a couple is separated for at least 18 months).

44. See Interview with Warren Davis, Chief Magistrate Judge, Gwinnett County Magistrate Court, in Lawrenceville, Ga. (Apr. 18, 2005) [hereinafter Davis Interview].

45. See *id.*; Senate Audio, *supra* note 1 (remarks by Sen. Steen Miles).

46. See Davis Interview, *supra* note 44; Michael Owen, *Not a Matter for Legislation*, LEDGER-ENQUIRER (Columbus, Ga.), Mar. 30, 2005, <http://www.ledger-enquirer.com/mld/ledgerenquirer/news/opinion/11262525.htm>.

47. See Senate Audio, *supra* note 1; Seabaugh Interview, *supra* note 2; Harp Interview, *supra* note 39.

48. See Seabaugh Interview, *supra* note 2; Harp Interview, *supra* note 39.