

CHAPTER 1266

DIVORCE AND MARRIAGE ANNULMENT

H. F. 1156

AN ACT relating to a revision of Iowa law governing divorce and marriage annulment and relating to support payments to welfare recipients under decree for dissolution of marriage.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Chapter five hundred ninety-eight (598), Code 1966,
2 is hereby repealed and sections two (2) through thirty-three (33)* of
3 this Act enacted in lieu thereof.

1 SEC. 2. **Definitions.** As used in this Act:

2 1. "Dissolution of marriage" means a termination of the marriage
3 relationship and shall be synonymous with the term "divorce".

4 2. "Support" or "support payments" means any amount which the
5 court may require either of the parties to pay under a temporary
6 order or a final judgment or decree, and may include alimony, child
7 support, maintenance, and any other term used to describe such
8 obligations.

9 3. "Minor child" means any person under legal age.

1 SEC. 3. **Jurisdiction.** The district court in the county where either
2 party resides has jurisdiction of the subject matter of this Act.

1 SEC. 4. **Kind of action—joinder.** An action for dissolution of mar-
2 riage shall be by equitable proceedings, and no cause of action, save
3 for alimony, shall be joined therewith.

1 SEC. 5. **Caption of petition for dissolution.** The petition for dissolu-
2 tion of marriage shall be captioned substantially as follows:

3	In the District Court of the State of Iowa	
4	In and For	County
5	In Re the Marriage of	and
6	Upon the Petition of	* Petition for Dissolution
7	* of Marriage
8	(Petitioner)	* Equity No.
9	and Concerning	*
10	*
11	(Respondent)	*

1 SEC. 6. **Contents of petition.** The petition for dissolution of mar-
2 riage shall:

- 3 1. State the name and address of the petitioner and his attorney.
- 4 2. State the place and date of marriage of the parties.
- 5 3. State the name and address, if known, of the respondent.
- 6 4. State the name and age of each minor child by date of birth
7 whose welfare may be affected by the controversy.
- 8 5. State whether or not a separate action for dissolution of marriage
9 has been commenced by the respondent and whether such action is
10 pending in any court in this state or elsewhere.

*See ch. 1267.

11 6. Allege that the petition has been filed in good faith and for the
12 purposes set forth therein.

13 7. Allege that there has been a breakdown of the marriage rela-
14 tionship to the extent that the legitimate objects of matrimony have
15 been destroyed and there remains no reasonable likelihood that the
16 marriage can be preserved.

17 8. Set forth any application for temporary support of the petitioner
18 and any children without enumerating the amounts thereof.

19 9. Set forth any application for permanent alimony or support, child
20 custody, or disposition of property, as well as attorneys' fees and
21 suit money, without enumerating the amounts thereof.

1 SEC. 7. **Additional contents.** Except where the respondent is a
2 resident of this state and is served by personal service, the petition
3 for dissolution of marriage, in addition to setting forth the informa-
4 tion required by section six (6) of this Act, must state that the peti-
5 tioner has been for the last year a resident of the state, specifying
6 the county in which the petitioner has resided, and the length of such
7 residence therein after deducting all absences from the state; and
8 that the maintenance of the residence has been in good faith and
9 not for the purpose of obtaining a marriage dissolution only.

1 SEC. 8. **Verification—evidence.** The petition must be verified by
2 the petitioner, and its allegations established by competent evidence.

1 SEC. 9. **Hearings.*** Hearings for dissolution of marriage shall be
2 heard in open court or a commissioner appointed by the court upon
3 the oral testimony of witnesses, or depositions taken as in other equita-
4 ble actions. However, the court may in its discretion close the hear-
5 ing. Hearings held for the purpose of determining child custody may
6 be limited in attendance by the court.

1 SEC. 10. **Residence—failure of proof.** If the averments as to resi-
2 dence are not fully proved, the hearing shall proceed no further, and
3 the action be dismissed by the court.

1 SEC. 11. **Corroboration of petitioner.** No dissolution of marriage
2 shall be decreed on the testimony of the petitioner alone.

1 SEC. 12. **Temporary orders.** The court may order either party to
2 pay the clerk a sum of money for the separate support and mainte-
3 nance of the other party and the children and to enable such party to
4 prosecute or defend the action.

5 The court may make such an order when a claim for temporary sup-
6 port is made by the petitioner in the petition, or upon application of
7 either party, after service of the original notice and when no applica-
8 tion is made in the petition; however, no such order shall be entered
9 until at least five days' notice of hearing, and opportunity to be heard,
10 is given the other party. Appearance by an attorney or the respondent
11 for such hearing shall be deemed a special appearance for the purpose
12 of such hearing only and not a general appearance.

1 SEC. 13. **Attorney for minor child.** The court may appoint an at-
2 torney to represent the interests of the minor child or children of the

*See ch. 1267.

3 parties. Such attorney shall be empowered to make independent in-
4 vestigations and to cause witnesses to appear and testify before the
5 court on matters pertinent to the interests of the children. The court
6 shall enter an order in favor of such attorney for fees and disburse-
7 ments, which amount shall be charged against the party responsible
8 for court costs unless the court determines that the party responsible
9 for costs is indigent in which event the fees shall be borne by the
10 county.

1 **SEC. 14. Financial statements filed.** All applications for temporary
2 or permanent support of a party or minor children shall be accom-
3 panied by the financial statement of the applicant. The respondent
4 shall file a financial statement whenever the respondent desires to
5 resist any application for support by the petitioner, or when the court
6 so orders.

7 Financial statements shall be set forth by affidavit and shall be
8 contained in two divisions. Division one shall contain the affiant's
9 income from salary, wages or other source, personal expenses, and
10 necessary payments on debts, and also the best estimates of such in-
11 come, personal expenses, and necessary payments on debts of the
12 other party, as well as all family living expenses. Such financial in-
13 formation shall be calculated on either a weekly or monthly basis, and
14 shall not contain debts to be paid subsequent to the anticipated pend-
15 ency of the action. Division two shall contain all other joint or
16 separate assets and liabilities of the parties, including ownership of
17 realty and tangible or intangible personalty and all debts to be paid
18 subsequent to the anticipated pendency of the action.

1 **SEC. 15. How temporary order made—changes.** In making tem-
2 porary orders, the court shall take into consideration the age and sex
3 of the applicant, the physical and pecuniary condition of the parties,
4 and such other matters as are pertinent, which may be shown by
5 affidavits, as the court may direct; however, the hearing on the applica-
6 tion shall be limited to matters set forth in such application, the
7 affidavits of the parties, and the required statements of income. The
8 court shall not hear any other matter relating to the petition, respon-
9 dent's answer, or any pleadings connected therewith.

10 After notice and hearing subsequent changes in temporary orders
11 may be made by the court on application of either party demonstrating
12 a substantial change in the circumstances occurring subsequent to the
13 issuance of such order. If the order is not so modified it shall con-
14 tinue in force and effect until the action is dismissed or a decree is
15 entered dissolving the marriage.

1 **SEC. 16. Attachment.** The petition may be presented to the court
2 for the allowance of an order of attachment, which, by endorsement
3 thereon, may direct such attachment and fix the amount for which
4 it may issue, and the amount of the bond, if any, that shall be given.
5 Any property taken by virtue thereof shall be held to satisfy the
6 judgment or decree of the court, but may be discharged or released
7 as in other cases.

1 **SEC. 17. Conciliation.** A majority of the judges in any judicial
2 district, with the cooperation of any county board of social welfare

3 in such district, may establish a domestic relations division of the
4 district court of the county where such board is located. Said division
5 shall offer counseling and related services to persons before such
6 court.

7 The court shall require such parties to undergo conciliation for a
8 period of at least ninety days from the issuance of an order setting
9 forth the conciliation procedure and the conciliator. Such concilia-
10 tion procedures may include, but shall not be limited to, referrals to
11 the domestic relations division of the court, if established, public or
12 private marriage counselors, family service agencies, community
13 mental health centers, physicians and clergymen. Conciliation may be
14 waived by the court upon a showing of good cause; provided, however,
15 that it shall not be waived if either party or the attorney appointed
16 pursuant to section thirteen (13) of this Act objects.

17 The costs of any such conciliation procedures shall be paid by the
18 parties; however, if the court determines that such parties will be
19 unable to pay the costs without prejudicing their financial ability to
20 provide themselves and any minor children with economic necessities,
21 such costs may be paid from the court expense fund.

1 **SEC. 18. Dissolution of marriage—evidence.** A decree dissolving
2 the marriage may be entered when the court is satisfied from the evi-
3 dence presented that there has been a breakdown of the marriage
4 relationship to the extent that the legitimate objects of matrimony
5 have been destroyed and there remains no reasonable likelihood that
6 the marriage can be preserved.

7 The court shall, based upon competent and relevant evidence, in such
8 decree provide for the division of the assets of the parties and reason-
9 able support or maintenance of any dependent children or either
10 spouse.

11 No marriage dissolution granted due to the mental illness of one
12 of the spouses shall relieve the other spouse of any obligation imposed
13 by law as a result of the marriage for the support of the mentally ill
14 spouse, and the court may make an order for such support.

1 **SEC. 19. Recrimination not a bar to dissolution of marriage.** If,
2 upon the trial of an action for dissolution of marriage, both of the
3 parties are found to have committed an act or acts which would
4 support or justify a decree of dissolution of marriage, such dissolution
5 may be decreed, and the acts of one party shall not negate the acts
6 of the other, nor serve to bar the dissolution decree in any way.

1 **SEC. 20. Waiting period before decree.** No decree dissolving a
2 marriage shall be granted in any proceeding before ninety days shall
3 have elapsed from the day the original notice is served, or from the
4 last day of publication of notice, or from the date that waiver or
5 acceptance of original notice is filed or until after conciliation is com-
6 pleted, whichever period shall be longer. However, the court may
7 in its discretion, on written motion supported by affidavit setting
8 forth grounds of emergency or necessity and facts which satisfy the
9 court that immediate action is warranted or required to protect the
10 substantive rights or interests of any party or person who might be
11 affected by the decree, hold a hearing and grant a decree dissolving
12 the marriage prior to the expiration of the applicable period, pro-

13 vided that requirements of notice have been complied with. In such
14 case the grounds of emergency or necessity and the facts with respect
15 thereto shall be recited in the decree unless otherwise ordered by the
16 court.

1 **SEC. 21. Forfeiture of marital rights.** When a dissolution of mar-
2 riage is decreed the parties shall forfeit all rights acquired by mar-
3 riage which are not specifically preserved in the decree. This provision
4 shall not obviate any of the provisions of section twenty-two (22)
5 of this Act.

1 **SEC. 22. Alimony—custody of children—changes.** When a disso-
2 lution of marriage is decreed, the court may make such order in rela-
3 tion to the children, property, parties, and the maintenance of the
4 parties as shall be justified.

5 Subsequent changes may be made by the court in these respects
6 when circumstances render them expedient.

1 **SEC. 23. Support payments—clerk of court—defaults.*** All orders
2 or judgments providing for temporary or permanent support payments
3 shall direct the payment of such sums to the clerk of the court for
4 the use of the person for whom the same have been awarded. An
5 order or judgment entered by the court for temporary or permanent
6 support shall be filed with the court clerk. Such orders shall have the
7 same force and effect as judgments when entered. The clerk shall
8 disburse the payments received pursuant to such orders or judgments.
9 All moneys received or disbursed under this section shall be entered
10 in a record book kept by the clerk, which shall be open to inspection
11 by the parties to the action and their attorneys.

12 If the sums ordered to be paid are not paid to the clerk at the time
13 provided in said order or judgment, the clerk shall certify a default
14 to the court which may, on its own motion, proceed as provided in
15 section twenty-four (24) of this Act.

16 Prompt payment of sums required to be paid under sections twelve
17 (12) and twenty-two (22) of this Act shall be the essence of such
18 orders or judgments and the court may act pursuant to section twenty-
19 four (24) of this Act regardless of whether the amounts in default
20 are paid prior to the contempt hearing.

1 **SEC. 24. Contempt proceedings—alternative to jail sentence.** If any
2 party against whom any temporary order or final decree has been
3 entered shall willfully disobey the same, or secrete his property, he
4 may be cited and punished by the court for contempt and be com-
5 mitted to the county jail for a period of time not to exceed thirty
6 days for each offense.

7 The court may, as an alternative to punishment for contempt, make
8 an order directing the defaulting party to assign a sufficient amount
9 in salary or wages due, or to become due in the future, from an em-
10 ployer or successor employers, to the clerk of the court where the
11 order or judgment was granted for the purpose of paying the sums
12 in default as well as those to be made in the future. The assignment
13 order shall not be binding upon the employer, but the court shall
14 send a copy of the order, signed by the employee, to the employer

*See ch. 1267.

15 and request his cooperation in deducting support payments. For each
16 payment deducted in compliance with such request, the employer shall
17 receive one dollar to cover the expense created by the deduction, which
18 amount shall be deducted from the money due the employee. Compli-
19 ance by an employer with the court's request shall operate as a dis-
20 charge of his liability to the employee as to the affected portion of the
21 employee's wages.

22 Any employer who dismisses an employee due to the entry of an
23 assignment order commits a public offense and upon conviction shall
24 be fined not more than one hundred dollars.

1 **SEC. 25. Contempt proceedings initiated by interested party—**
2 **costs taxable to party in default.** Nothing in this Act shall prohibit
3 the party entitled to support payments, or an interested party from
4 initiating contempt proceedings on his own motion. If the defaulting
5 party is found to be in contempt, the costs of such proceedings, in-
6 cluding attorney's fees for the party initiating the proceedings in an
7 amount deemed reasonable by the court, shall be taxed against such
8 party.

1 **SEC. 26. Termination of jurisdiction of court granting marriage**
2 **dissolution decree.** Whenever a proceeding is initiated in a court for
3 adoption involving the children of parents or guardians whose mar-
4 riage has been dissolved, or for modification of a judgment of alimony,
5 child support, or custody granted in an action for dissolution of
6 marriage, the following requirements must be met if such proceedings
7 are initiated in a court other than the court which granted the dissolu-
8 tion decree.

9 1. The party initiating such proceedings must present to the court
10 the names and addresses of the parties to the dissolution decree if
11 known, as well as the name and place of the court which granted the
12 dissolution decree.

13 2. The court in which the proceedings are initiated shall, if possible,
14 cause notice of such proceedings to be served upon the parties to the
15 original action.

16 Such court, or either of the parties to the dissolution decree, may
17 request that a copy of the transcript of the proceedings of the court
18 which granted the dissolution decree be made available for considera-
19 tion in the new proceedings.

1 **SEC. 27. Record—impounding.*** The record and evidence in all cases
2 where a marriage dissolution is sought shall be closed to all but the
3 court and its officers, and access thereto shall be refused until a decree
4 of dissolution has been entered. The clerk shall maintain a separate
5 docket for dissolution of marriage actions. No officer or other person
6 shall permit a copy of any of the testimony, or pleading, or the
7 substance thereof, to be made available to any person other than a
8 party or attorney to the action. Violation of the provisions of this
9 section shall be a public offense, punishable by a fine of not more than
10 one hundred dollars, or imprisonment in the county jail not more than
11 thirty days, or by both such fine and imprisonment.

*See ch. 1267.

1 **SEC. 28. Remarriage.** In every case in which a marriage dissolu-
2 tion is decreed, neither party shall marry again within a year from
3 the date of the filing of said decree unless permission to do so is
4 granted by the court. Nothing herein contained shall prevent the per-
5 sons whose marriage has been dissolved from remarrying each other.
6 Any person marrying contrary to the provisions of this section shall
7 be deemed guilty of a misdemeanor and upon conviction shall be
8 punished accordingly.

1 **SEC. 29.** A petition shall be filed in separate maintenance and an-
2 nulment actions as in actions for dissolution of marriage, and all appli-
3 cable provisions of this Act in relation thereto shall apply to separate
4 maintenance and annulment actions.

1 **SEC. 30. Annulling illegal marriage—causes.** Marriage may be
2 annulled for the following causes:

- 3 1. Where the marriage between the parties is prohibited by law.
- 4 2. Where either party was impotent at the time of marriage.
- 5 3. Where either party had a husband or wife living at the time
6 of the marriage, provided they have not, with a knowledge of such
7 fact, lived and cohabited together after the death or marriage disso-
8 lution of the former spouse of such party.
- 9 4. Where either party was mentally ill or a mental retardate at the
10 time of the marriage.

1 **SEC. 31. Validity determined.** When the validity of a marriage is
2 doubted, either party may file a petition, and the court shall decree
3 it annulled or affirmed according to the proof.

1 **SEC. 32. Children—legitimacy.*** Children born to the parties, or
2 to the wife, in a marriage relationship which may be terminated or
3 annulled pursuant to the provisions of this Act shall be legitimate.

1 **SEC. 33. Alimony.** In case either party entered into the contract of
2 marriage in good faith, supposing the other to be capable of contract-
3 ing, and the marriage is declared a nullity, such fact shall be entered
4 in the decree, and the court may decree such innocent party compen-
5 sation as in case of dissolution of marriage.

1 **SEC. 34.** Any cause of action pending upon the effective date of
2 this Act, which may be affected by this Act, may be decided pursuant
3 to the provisions of this Act if both parties to the action so agree.

1 **SEC. 35.** The county board of social welfare in any county is au-
2 thorized to enter into the following agreement with the court, which
3 may ratify such agreement by a majority vote of the district judges
4 assigned to the judicial district where such board is located:

5 Any person entitled to periodic support payments pursuant to an
6 order or judgment entered in an action for dissolution of marriage,
7 who is also a welfare recipient, shall assign his rights to such pay-
8 ments to the county board of social welfare granting such assistance.
9 The clerk of court shall forward support payments received pursuant
10 to section twenty-three (23) of this Act to such board. Such sums
11 may serve to reduce the amount of the welfare payments granted such

*See ch. 1267.

12 recipient. The board of social welfare shall have the right to secure
 13 support payments in default through proceedings provided for in
 14 chapter two hundred fifty-two A (252A) of the Code or section
 15 twenty-five (25) of this Act.

16 The clerk shall furnish such welfare agency with copies of all
 17 orders or decrees awarding support to parties having custody of minor
 18 children when such parties are receiving welfare assistance.

Approved March 20, 1970.

CHAPTER 1267

DISSOLUTION OF MARRIAGE

S. F. 1315

AN ACT relating to dissolution of marriage, separate maintenance, and annulment.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. House File one thousand one hundred fifty-six (1156),*
 2 Acts of the Sixty-third General Assembly, Second Session, is amended
 3 as follows:

4 1. Section twenty-three (23) is amended by adding at the end of
 5 the third sentence after the word "entered" the words "in the judg-
 6 ment docket and lien index and shall be a record open to the public".

7 2. Section twenty-seven (27) is amended by inserting after the first
 8 sentence a new sentence as follows:

9 "If the action is dismissed judgment for costs shall be entered in
 10 the judgment docket and lien index."

11 3. Section twenty-seven (27) is further amended by inserting after
 12 the third sentence the following sentence:

13 "Nothing in this section shall be construed to prohibit publication
 14 of the original notice as provided by the rules of civil procedure."

15 4. Section thirty-two (32) is amended by striking the period at
 16 the end thereof and inserting in lieu thereof the following: "as to
 17 both parties, unless the court shall decree otherwise according to the
 18 proof."

19 5. Section one (1) is amended by striking therefrom the word and
 20 number "thirty-three (33)" and inserting in lieu thereof the word and
 21 number "thirty-five (35)".

22 6. Section nine (9) is amended by striking the first sentence and
 23 inserting in lieu thereof the following new sentence:

24 "Hearings for dissolution of marriage shall be held in open court
 25 upon the oral testimony of witnesses, or upon the depositions of such
 26 witnesses taken as in other equitable actions or taken by a commis-
 27 sioner appointed by the court."

Approved May 5, 1970.

*Chapter 1266.