

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1348

03/02/2015 Authored by Lesch and Hausman

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to family law; establishing a cooperative private divorce program;
1.3 appropriating money; proposing coding for new law in Minnesota Statutes,
1.4 chapter 518.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[518.80] COOPERATIVE PRIVATE DIVORCE PROGRAM.**

1.7 Subdivision 1. **Commissioner.** For purposes of this section, "commissioner" means
1.8 the commissioner of Bureau of Mediation Services.

1.9 Subd. 2. **Establishment.** The commissioner shall establish a cooperative private
1.10 divorce program as provided in this section.

1.11 Subd. 3. **Requirements.** The cooperative private divorce program must, at a
1.12 minimum:

1.13 (1) be made available on the Bureau of Mediation Services Web site;

1.14 (2) make available the notices and instructions provided under subdivisions 9 and 10
1.15 to the participants of the program;

1.16 (3) allow participants of the program to electronically complete and submit to
1.17 the commissioner an intent to divorce and declaration of divorce as provided under
1.18 subdivision 11;

1.19 (4) require a separate unique login and password for each participant to access the
1.20 program;

1.21 (5) provide a notification system that automatically contacts one participant when
1.22 the other participant accesses the program;

1.23 (6) provide a list of supportive services and service providers that may be helpful
1.24 to participants;

2.1 (7) provide a method to authenticate the identities of the signatories of the forms
2.2 required under subdivision 11;

2.3 (8) employ security measures to protect the confidentiality and personal information
2.4 of the participants submitting information through the program; and

2.5 (9) encrypt all data sent and received through the program Web site.

2.6 Subd. 4. **Residency requirement.** Married participants seeking dissolution
2.7 under this section qualify for the cooperative private divorce program if the residency
2.8 requirements under section 518.07 have been met by the participants.

2.9 Subd. 5. **Procedure.** (a) Notwithstanding any law to the contrary, married
2.10 participants who meet the criteria under subdivision 4 may terminate their marital status
2.11 through the cooperative private divorce program made available on the Bureau of
2.12 Mediation Services Web site by:

2.13 (1) signing and submitting the intent to divorce under subdivision 11; and

2.14 (2) completing, signing, and submitting the declaration of divorce under subdivision
2.15 11 at least 90 days after, but not more than two years after, the intent to divorce was
2.16 signed by both participants.

2.17 (b) Upon receipt of the completed declaration of divorce, the commissioner shall
2.18 issue a certificate of marital termination at least 90 days after, but not more than two years
2.19 after, a completed intent to divorce form was submitted to the commissioner through the
2.20 online cooperative private divorce program.

2.21 (c) A certificate of marital termination issued under this section completely
2.22 terminates the marital status of the participants.

2.23 (d) Upon receipt of a declaration of divorce, the commissioner shall issue a
2.24 certificate of marital termination that is accessible to each participant through the online
2.25 cooperative private divorce program. The certificate of marital termination is conclusive
2.26 evidence of the divorce.

2.27 Subd. 6. **Certain agreements.** (a) Any agreement made by the participants as
2.28 part of the declaration of divorce that allocates expenses for their child or children is an
2.29 enforceable contract between the participants under section 518.1705.

2.30 (b) Agreements recorded in a declaration of divorce are a divorce or separation
2.31 instrument under section 71(b)(1)(A) of the Internal Revenue Code.

2.32 (c) Any issue that is not specifically addressed by the participants in the declaration
2.33 of divorce agreement is considered to be reserved for future agreement by the participants
2.34 or de novo review by the court.

2.35 (d) The commissioner may establish procedures for unmarried parents who have
2.36 executed a Recognition of Parentage, or who have been subject to an adjudication of

3.1 parentage, to have access to the cooperative private divorce program to record agreements
3.2 about their children.

3.3 Subd. 7. **Modification.** Any agreement made by the participants in their declaration
3.4 of divorce may be modified at any time after a declaration of divorce agreement is
3.5 submitted to the commissioner through the cooperative private divorce program, if both
3.6 participants agree to the amendment and submit an amended declaration of divorce.

3.7 Subd. 8. **Court involvement.** (a) At any time prior to the submission of a
3.8 declaration of divorce, participants in a cooperative private divorce may initiate an action
3.9 for marriage dissolution under this chapter in district court. Any action under this chapter
3.10 pending in district court must be resolved or dismissed before participants may submit
3.11 a declaration of divorce.

3.12 (b) Cooperative private divorce agreements contained in a declaration of divorce
3.13 may be enforced, modified, or vacated by the district court, or the court may address
3.14 issues that were reserved by the participants, according to the provisions of this chapter.
3.15 The court shall apply this chapter to a declaration of divorce as if it were a judgment and
3.16 decree. For application of section 518.145, the one-year time limit for relief begins the
3.17 date the certificate of marital termination was issued by the Bureau of Mediation Services.

3.18 (c) For purposes of complying with a federal or state law that requires an order or
3.19 judgment and decree of a court, the district court shall issue an order confirming the
3.20 declaration of divorce and certificate of marital termination upon petition by a participant
3.21 of the cooperative private divorce program.

3.22 (d) By submitting a declaration of divorce to the court, each participant consents to
3.23 the continuing personal jurisdiction of the Minnesota courts as to all matters related to
3.24 the declaration of divorce.

3.25 (e) A participant in a cooperative private divorce may initiate an action to enforce,
3.26 modify, vacate, or obtain judicial confirmation of the declaration of divorce in district
3.27 court, or ask the court to address issues that were reserved by the participants, by making
3.28 personal service of a petition on the other participant. The action to enforce, modify,
3.29 vacate, address reserved issues, or confirm the declaration of divorce may be venued in a
3.30 Minnesota county where either participant resided at the time the certificate of marital
3.31 termination was issued. After an initial action to enforce, modify, vacate, address reserved
3.32 issues, or obtain judicial confirmation of a declaration of divorce initiated by personal
3.33 service of a petition, further court action may be initiated by motion in the initial court case.

3.34 (f) If the participants in a cooperative private divorce expressly state that their
3.35 agreement about spousal support is final and may not be modified by a court, then courts
3.36 thereafter lack jurisdiction to modify the agreement for changed circumstances. Section

4.1 518.145, relating to reopening awards for mistake or misconduct, applies to agreements
4.2 about spousal maintenance if there is a subsequent court action to modify or vacate
4.3 a declaration of divorce.

4.4 Subd. 9. Notices; introduction to private divorce; form.

4.5 **NOTICE: Introduction to Cooperative Private Divorce**

4.6 You are considering obtaining a Cooperative Private Divorce rather than going to
4.7 court to get divorced. Cooperative Private Divorce is a simplified procedure for couples
4.8 who want to avoid the expense, emotional strain, and arbitrary time frames that often
4.9 accompany adversarial court proceedings. To obtain a Cooperative Private Divorce you
4.10 will need to reach an agreement with your spouse about the issues in your divorce. Many
4.11 public and private services are available to help you.

4.12 The Cooperative Private Divorce process is based on the assumption that most
4.13 people have the capacity to divorce with respect and fairness if they are supported in that
4.14 direction. To that end, a Cooperative Private Divorce differs in two important ways from a
4.15 court divorce. First, the two of you have total control over your divorce and no one will
4.16 oversee or scrutinize the decisions you make. Second, it is a completely private process.

4.17 This leaves you with a great deal of flexibility. After you have educated yourself,
4.18 you can choose how detailed or simple to make your divorce decisions, and whether to
4.19 postpone some decisions to a later time. You can also create your own understanding
4.20 of fairness unique to your own situation.

4.21 These special features of a Cooperative Private Divorce, eliminating the anxiety
4.22 of someone else having control over your family, and lessening the pressure to resolve
4.23 everything all at once during a very stressful time, are intended to replace conflict with
4.24 your spouse by creating a healthy transition for you and your family. You are encouraged
4.25 to view each other as partners in creating the best solution for you and your family in
4.26 parenting and financial matters.

4.27 **Basic Principles**

4.28 Cooperative Private Divorce is not for everyone. Because of the need to create a fair
4.29 and healthy plan without coercion or oversight, it is intended for couples who can work
4.30 together in good faith for the best interests of everyone in the family.

4.31 Here are the five principles underlying Cooperative Private Divorce. If you and
4.32 your spouse believe you can fashion your divorce according to these principles, then a
4.33 Cooperative Private Divorce may be the best procedure for you.

4.34 1. The healthy relationships principle: If you have children, your parenting plan
4.35 promotes safe, nurturing, and stable relationships among the children and with both
4.36 of their parents.

5.1 2. The maximum parent involvement principle: Your parenting plan promotes high
5.2 levels of involvement of both parents with the children when that is feasible and
5.3 consistent with the needs of the children.

5.4 3. The equity principle: Your financial plan promotes equitable and sustainable
5.5 lifestyles for all family members in light of the unique circumstances of your
5.6 marriage and family.

5.7 4. The flexibility principle: Your divorce agreements take into account both
5.8 the value of having stable arrangements and the likelihood that the needs and
5.9 circumstances of your family will change over time.

5.10 5. The optimal timing principle: You create partial or comprehensive agreements
5.11 with the timing and sequence that work best for you and your family.

5.12 Two Cautions

5.13 First, if you feel pressured or intimidated by your spouse to use this process or to
5.14 agree to specific matters in your divorce, or if you have doubts generally about your
5.15 spouse's willingness to reach agreements that are best for everyone in your family,
5.16 consider getting professional assistance before going further.

5.17 Second, the flexibility of a Cooperative Private Divorce also leaves you with an
5.18 important responsibility. Some couples have relatively simple issues to address in their
5.19 divorce. But some couples have more complex financial and parenting matters to resolve.
5.20 If you do not consider such matters carefully, you may face problems such as having
5.21 agreements that do not work over time or that are not enforceable. You are responsible to
5.22 educate yourself about the issues in your divorce and to obtain professional assistance
5.23 if you need it.

5.24 Professional and Community Resources

5.25 To begin with, recognize that going ahead with a divorce is a big decision, especially
5.26 if you have children. Many research studies have shown that divorce can have an adverse
5.27 effect on children. If you want help to make sure you are making the right decision for
5.28 you and your family, you can make use of services available in local communities.

5.29 If you have made the decision to go ahead with the divorce, you may choose to work
5.30 with an advocate or with a facilitator who can guide you and your spouse in cooperative
5.31 processes that focus on your interests and needs and what will work for your family. You
5.32 may want to consult with an advisor on parenting or financial issues. From private sources
5.33 you can obtain sample agreements that may help you frame all of the issues you will
5.34 likely encounter. Although divorce can seem complex and difficult, these resources and
5.35 professional services can help make it easier for you and your spouse to reach an agreement.

6.1 The Bureau of Mediation Services serves as a clearinghouse for information about
6.2 the types of resources available. It also can provide information about services that are
6.3 offered for free or on a sliding fee.

6.4 Subd. 10. **Instructions; form.**

6.5 **Instructions for Cooperative Private Divorce**

6.6 1. Both spouses obtain unique identifiers from the Bureau of Mediation Services.

6.7 2. Both spouses sign and submit the INTENT TO DIVORCE form with their unique
6.8 identifiers to register with the Bureau of Mediation Services.

6.9 3. At any time at least 90 days after but not more than two years after submitting the
6.10 INTENT TO DIVORCE form, submit the Declaration of Divorce form signed by both
6.11 spouses.

6.12 4. Upon submitting the Declaration of Divorce form, both spouses will receive a
6.13 certification that your marriage is terminated.

6.14 5. Most complete divorce agreements address the issues set forth in the Declaration of
6.15 Divorce form. It is up to you whether you want to record agreements in all or any of these
6.16 areas. But recognize that if your agreements are vague or incomplete or if you do not record
6.17 your agreements, it may be difficult for you to recall them, live up to your obligations,
6.18 or later ask a court to enforce an agreement. Use attachments if you want to record
6.19 agreements that are longer than space here permits. No one will review or approve the
6.20 agreements you set forth here before your divorce is certified; they are for your use only.

6.21 6. At any time, either spouse can retrieve the Declaration of Divorce form containing your
6.22 agreements by providing your unique identifier. No one except you and your spouse will
6.23 have access to this form.

6.24 7. At any time, you and your former spouse can retrieve the Declaration of Divorce form,
6.25 make additions or modifications that you both agree to, and resubmit it.

6.26 8. If you want to modify your previous agreements but you and your former spouse cannot
6.27 agree on the modifications, or if you want to seek enforcement of a previous agreement,
6.28 you are encouraged to seek assistance from professionals in the community who specialize
6.29 in helping former spouses reach fair agreements. You also have the option of going to
6.30 court where you would submit your Declaration of Divorce form.

6.31 9. Remember that by creating a smooth family transition now and working on issues that
6.32 may arise in the future, developing a trustworthy working relationship with your spouse
6.33 will be just as helpful as written agreements.

6.34 Subd. 11. **Intent to divorce; declaration of divorce; form.**

Intent to Divorce

We hereby declare that we are legally married, have both been residents of Minnesota for at least six months, and intend to divorce. We understand that our divorce will be certified if we submit the Declaration of Divorce form signed by both spouses at least 90 days after, but not more than two years after, the date this INTENT TO DIVORCE form is submitted.

Date and place of marriage:

Signature, date:

E-mail address:

Signature, date:

E-mail address:

Declaration of Divorce

Facts

1. We agree that the following is a list of all our assets and their approximate value:

2. We agree that the following is a list of all our debts:

3. Spouse A name and yearly income, including any bonuses:

4. Spouse B name and yearly income, including any bonuses:

5. The names, dates of birth, and Social Security numbers of our minor children covered by this agreement are:

Agreements

1. We agree to the following plan for parenting our child or children together after the divorce. If our plan is temporary, we agree to the following process for updating it. (A comprehensive plan would include: (a) how you will make important decisions like those about school, health care, and religion; (b) how you will allocate your time with the children during the school year, the summer, holidays, and vacations to provide a nurturing environment and rich relationships with both of you; and (c) how you will communicate with each other and work out differences of opinion.)

2. We agree to the following plan for sharing the expenses of raising our child or children. (You may choose to follow the Minnesota Child Support guidelines available at the Bureau of Mediation Services, or you may choose your own plan. If you agree to a deviation from the guideline amounts, provide the reasons for the deviation. If either parent is receiving public assistance, the county attorney will have to approve this agreement or it will not be enforceable.)

3. We agree to the following plan for providing health insurance for our children.

8.1 4. We agree to the following plan for paying off our debts. (This agreement will not
8.2 change your obligations to any creditor; it is simply an agreement between the two of you
8.3 about who will be paying a debt.)

8.4 5. We agree to the following plan for dividing our property and assets. (If an allocation of
8.5 assets or debts, or an allocation of both, deviates from a nearly equal division, provide
8.6 the reasons for the allocation. Educate yourself about the difference between marital
8.7 and nonmarital property.)

8.8 a. Real estate (Include who will pay any mortgages, agreements to refinance a
8.9 mortgage, and make provisions for recording necessary documents with the county
8.10 recorder.)

8.11 b. Personal property, such as household furnishings, vehicles, and other objects
8.12 you own.

8.13 c. Financial assets, such as retirements, investments, stock, bank accounts, and
8.14 business interests. A division of some retirement accounts require a qualified
8.15 domestic relations order signed by a court.

8.16 6. We agree to the following schedule of payments for spousal support (alimony). (If there
8.17 is a large difference in your incomes and you agree to a minimal amount or no amount
8.18 of spousal support, provide the reasons for the spousal support agreement. For purposes
8.19 of federal tax deductibility, this agreement is a divorce or separation instrument. If you
8.20 expressly state that your agreement about spousal support is final and may not be modified
8.21 by a court, then courts thereafter lack jurisdiction to modify the agreement for changed
8.22 circumstances. However, section 518.145, subdivision 2, relating to reopening awards for
8.23 mistake or misconduct, applies to agreements about your spousal maintenance agreement
8.24 if there is a subsequent court action to modify or vacate your Declaration of Divorce.)

8.25 7. We agree to the following plan to maintain health insurance coverage for both spouses.
8.26 (If one spouse is interested in continuing health insurance coverage under the other
8.27 spouse's employer-provided policy, certain laws apply, including a requirement that an
8.28 election must be made within 60 days of your divorce.)

8.29 8. We agree to the following plan for paying any past joint tax liability or future tax
8.30 liability, or both, and we agree to the following plan for who will claim the dependency
8.31 exemption for our child or children.

8.32 9. We have reached the following additional agreements which we wish to record:

8.33 **Name Change**

8.34 One or both of our names should hereby be changed:

8.35 From To

9.1 From From

9.2 **Dissolution**

9.3 We hereby agree to the termination of our marriage according to the preceding
9.4 terms. We hereby warrant that we have made complete disclosure to each other of all
9.5 information and documents that are important to these agreements, and that the list of
9.6 assets and debts contained in paragraph (1) are complete and accurate and there are no
9.7 open court cases involving these issues.

9.8 Signature, date:

9.9 Signature, date:

9.10 Subd. 12. **Fee.** The commissioner shall charge the participants of the cooperative
9.11 private divorce program a fee of \$..... The fees are appropriated to the commissioner to
9.12 administer and manage the online program under this section.

9.13 Subd. 13. **Data.** Data collected under this section is classified as private data on
9.14 individuals, as defined in section 13.02, subdivision 12.

9.15 **Sec. 2. REPORT.**

9.16 The commissioner of the Bureau of Mediation Services shall conduct an evaluation
9.17 of the cooperative private divorce program after the first and second years of operation.
9.18 The areas of evaluation shall include, but not be limited to:

9.19 (1) number of users of the cooperative private divorce program, both initially and
9.20 transferring to and from a court divorce;

9.21 (2) costs of the cooperative private divorce program to government and families
9.22 in comparison to court divorces;

9.23 (3) user satisfaction with the cooperative private divorce program process and with
9.24 their agreements; and

9.25 (4) any correlation between use of the cooperative private divorce program system
9.26 and subsequent use of court services for the same case or related cases.

9.27 **Sec. 3. APPROPRIATION; BUREAU OF MEDIATION SERVICES.**

9.28 \$..... is appropriated from the general fund in fiscal year 2016 to the commissioner
9.29 of the Bureau of Mediation Services to develop and implement the online cooperative
9.30 private divorce program under section 1. The cooperative private divorce program must
9.31 be made available on the Bureau of Mediation Services Web site by January 1, 2016.