

HOUSE BILL NO. 268

INTRODUCED BY S. GREEF, C. KEOGH

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA CONCILIATION LAW; PROVIDING FOR
5 THE STAYING OF DISSOLUTION, LEGAL SEPARATION, OR ANNULMENT PROCEEDINGS TO ALLOW THE
6 PARTIES TO EXPLORE RECONCILIATION; AMENDING SECTIONS 40-3-102, 40-4-104, 40-4-107, AND
7 40-4-136, MCA; ~~AND~~ REPEALING SECTIONS 40-3-103, 40-3-104, 40-3-111, 40-3-112, 40-3-113, 40-3-114,
8 40-3-115, 40-3-116, 40-3-121, 40-3-122, 40-3-123, 40-3-124, 40-3-125, 40-3-126, AND 40-3-127, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 NEW SECTION. Section 1. Filing of stipulation. At any time after the filing of an action for dissolution,
14 legal separation, or annulment, the parties may stipulate to stay the proceedings to allow the parties to explore
15 a reconciliation of the marriage.

16
17 NEW SECTION. Section 2. Stipulation form and contents. A stipulation filed pursuant to this chapter
18 must be signed by both parties and their counsel of record, if any, and include:

- 19 (1) a statement that both parties desire to stay the proceedings to allow the parties to pursue
20 reconciliation;
- 21 (2) any agreements for support, parenting, or other matter related to the pending litigation that should
22 continue in effect during the stay; and
- 23 (3) any other information the district court may by local rule require.

24
25 NEW SECTION. Section 3. No fees. No fee may be charged for filing the stipulation.

26
27 NEW SECTION. Section 4. Stay. ~~The (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE~~ district court shall
28 order the matter stayed and vacate any scheduling order without a hearing on the basis of the stipulation and may
29 set a reasonable time and place for a hearing on the stipulation if the district court determines a hearing is
30 necessary.

1 (2) EXCEPT WHEN GOOD CAUSE EXISTS, THE DISTRICT COURT MAY NOT GRANT A STAY IF THE COURT HAS
 2 REASON TO SUSPECT THAT ONE OF THE PARTIES OR A CHILD OF A PARTY HAS BEEN PHYSICALLY, SEXUALLY, OR
 3 EMOTIONALLY ABUSED BY THE OTHER PARTY.

4
 5 **NEW SECTION. Section 5. Orders.** (1) The district court shall stay the proceedings for as long as both
 6 parties consent to the stay.

7 (2) The district court shall issue an order adopting any interim agreement reduced to writing by the
 8 parties and filed with the district court or make any order regarding the conduct of the spouses, the parenting or
 9 support of minor children or spouses, and maintenance of the marital estate as the district court determines
 10 necessary and appropriate during the period of the stay.

11 (3) The parties shall file a status report with the district court not less than every 6 months. If the parties
 12 fail to file a status report with the district court for a period of 1 year or more, the district court may dismiss without
 13 prejudice the petition for dissolution, legal separation, or annulment.

14 (4) If either party files a request to dismiss the stay, the district court shall dismiss the stay and proceed
 15 with the dissolution of marriage, legal separation, or annulment proceeding.

16
 17 **Section 6.** Section 40-3-102, MCA, is amended to read:

18 **"40-3-102. Purposes.** The purposes of this chapter are to protect the rights of children and to promote
 19 the public welfare by preserving, promoting, and protecting family life and the institution of matrimony and to
 20 provide means for the reconciliation of spouses ~~and the amicable settlement of domestic and family controversies~~
 21 without the deadlines associated with pending litigation."

22
 23 **Section 7.** Section 40-4-104, MCA, is amended to read:

24 **"40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree of
 25 dissolution of marriage if:

26 (a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this
 27 state, as provided in 25-2-118, or was stationed in this state while a member of the armed services and that the
 28 domicile or military presence has been maintained for 90 days preceding the filing of the action;

29 (b) the court finds that the marriage is irretrievably broken, which findings must be supported by
 30 evidence:

1 (i) that the parties have lived separate and apart for a period of more than 180 days preceding the
2 commencement of this proceeding; or

3 (ii) that there is serious marital discord that adversely affects the attitude of one or both of the parties
4 towards the marriage; and

5 ~~(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either~~
6 ~~do not apply or have been met; and~~

7 ~~(d)(c)~~ to the extent it has jurisdiction to do so, the court has considered, approved, or made provision
8 for parenting, the support of any child entitled to support, the maintenance of either spouse, and the disposition
9 of property.

10 (2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the
11 court shall grant the decree in that form unless the other party objects."

12

13 **Section 8.** Section 40-4-107, MCA, is amended to read:

14 **"40-4-107. Irretrievable breakdown.** (1) If both of the parties by petition or otherwise have stated under
15 oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has
16 not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

17 (2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the
18 court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the
19 prospect of reconciliation, and shall:

20 (a) make a finding whether the marriage is irretrievably broken; or

21 (b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon
22 thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek
23 counseling. ~~The court at the request of either party shall, or on its own motion may, order a conciliation~~
24 ~~conference.~~ At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

25 (3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of
26 reconciliation.

27 ~~(4) Nothing in this section shall be interpreted to affect the provisions of chapter 3 of this title, known as~~
28 ~~the Montana Conciliation Law."~~

29

30 **Section 9.** Section 40-4-136, MCA, is amended to read:

1 **"40-4-136. Brochure to describe proceedings -- availability -- distribution -- contents and form.**

2 (1) Each district court shall make available a brochure, prepared and distributed by the attorney general,
3 describing the requirements, nature, and effect of proceedings under 40-4-130 through 40-4-136.

4 (2) (a) In nontechnical language, the brochure must:

5 (i) state that it is in the best interests of the parties to consult an attorney regarding the dissolution of their
6 marriage. The services of an attorney may be obtained through lawyer referral services, group or prepaid legal
7 services, or legal aid organizations.

8 (ii) state that the brochure is not intended as a guide for self-representation in proceedings under
9 40-4-130 through 40-4-136 and should not be relied upon exclusively by the parties;

10 (iii) provide a concise summary of the provisions of 40-4-104 and 40-4-130 through 40-4-136;

11 ~~(iv) describe the nature of services of the conciliation court, if available;~~

12 ~~(v)~~(iv) state that under the provisions of 40-4-130 through 40-4-136, neither party to the marriage may
13 obtain maintenance from the other;

14 ~~(vi)~~(v) state in boldface type that, upon entry of final judgment, the parties' rights and obligations with
15 respect to the marriage, including property and maintenance rights, are permanently adjudicated without right
16 of appeal but that neither party is barred from instituting an action to set aside the final judgment for fraud, duress,
17 accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to the Montana
18 Rules of Civil Procedure; and

19 ~~(vii)~~(vi) state that until final judgment is entered, the parties retain the status of married persons and
20 cannot remarry.

21 (b) The brochure may include other matters that the attorney general considers appropriate."
22

23 **NEW SECTION. Section 10. Repealer.** The following sections of the Montana Code Annotated are
24 repealed:

25 40-3-103. Use of shall and may.

26 40-3-104. Application.

27 40-3-111. Conciliation court -- jurisdiction.

28 40-3-112. Selection of judges.

29 40-3-113. Transfer of cases.

30 40-3-114. Budget.

- 1 40-3-115. Probation officers' duties.
2 40-3-116. Privacy of hearings.
3 40-3-121. Filing of petition.
4 40-3-122. Petition form and contents.
5 40-3-123. No fees.
6 40-3-124. Manner of conciliation.
7 40-3-125. Hearings.
8 40-3-126. Orders -- reconciliation agreement.
9 40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding -- effect.

10
11 NEW SECTION. Section 11. Codification instruction. [Sections 1 through 5] are intended to be
12 codified as an integral part of Title 40, chapter 3, part 1, and the provisions of Title 40, chapter 3, part 1, apply
13 to [sections 1 through 5].

14
15 NEW SECTION. SECTION 12. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

16 - END -