

HOUSE BILL NO. 284

INTRODUCED BY FOSTER, J. RICE, WHALEN, TOOLE, MERCER

IN THE HOUSE

JANUARY 19, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

JANUARY 21, 1991                   FIRST READING.

FEBRUARY 19, 1991                  COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991                  PRINTING REPORT.

FEBRUARY 23, 1991                  SECOND READING, DO PASS.

FEBRUARY 25, 1991                  ENGROSSING REPORT.

FEBRUARY 26, 1991                  THIRD READING, PASSED.  
AYES, 85; NOES, 14.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 27, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FIRST READING.

MARCH 13, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 15, 1991                    SECOND READING, CONCURRED IN.

MARCH 16, 1991                    THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 21, 1991                    RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 23, 1991                    THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *284*  
 2 INTRODUCED BY *Foster, Gloria Whalen, Mercer*  
 3 *Mercer*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT CHILD  
 5 SUPPORT IS TERMINATED BY A CHILD'S EMANCIPATION OR  
 6 GRADUATION FROM HIGH SCHOOL, WHICHEVER OCCURS LATER;  
 7 AMENDING SECTION 40-4-208, MCA; AND PROVIDING AN IMMEDIATE  
 8 EFFECTIVE DATE AND AN APPLICABILITY DATE."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 40-4-208, MCA, is amended to read:

12 **"40-4-208. Modification and termination of provisions**  
 13 **for maintenance, support, and property disposition.** (1)  
 14 Except as otherwise provided in 40-4-201(6), a decree may be  
 15 modified by a court as to maintenance or support only as to  
 16 installments accruing subsequent to actual notice to the  
 17 parties of the motion for modification.

18 (2) (a) Whenever the decree proposed for modification  
 19 does not contain provisions relating to maintenance or  
 20 support, modification under subsection (1) may only be made  
 21 within 2 years of the date of the decree.

22 (b) Whenever the decree proposed for modification  
 23 contains provisions relating to maintenance or support,  
 24 modification under subsection (1) may only be made:

25 (i) upon a showing of changed circumstances so

1 substantial and continuing as to make the terms  
 2 unconscionable;

3 (ii) upon written consent of the parties; or

4 (iii) upon application by the department of social and  
 5 rehabilitation services, whenever the department of social  
 6 and rehabilitation services is providing services under  
 7 Title IV-D of the federal Social Security Act. The support  
 8 obligation must be modified, as appropriate, in accordance  
 9 with the guidelines promulgated under 40-5-209. A  
 10 modification under this subsection may not be made within 12  
 11 months after the establishment of the order or the most  
 12 recent modification.

13 (3) The provisions as to property disposition may not  
 14 be revoked or modified by a court, except:

15 (a) upon written consent of the parties; or

16 (b) if the court finds the existence of conditions that  
 17 justify the reopening of a judgment under the laws of this  
 18 state.

19 (4) Unless otherwise agreed in writing or expressly  
 20 provided in the decree, the obligation to pay future  
 21 maintenance is terminated upon the death of either party or  
 22 the remarriage of the party receiving maintenance.

23 (5) Unless otherwise agreed in writing or expressly  
 24 provided in the decree, provisions for the support of a  
 25 child are terminated by emancipation of the child or the



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1 child's graduation from high school, whichever occurs later,  
2 but not by the death of a parent obligated to support the  
3 child. When a parent obligated to pay support dies, the  
4 amount of support may be modified, revoked, or commuted to a  
5 lump-sum payment, to the extent just and appropriate in the  
6 circumstances."

7 NEW SECTION. Section 2. Applicability. [Section 1]  
8 applies to all decrees containing provisions for child  
9 support issued on or after [the effective date of this act].

10 NEW SECTION. Section 3. Effective date. [This act] is  
11 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 284

INTRODUCED BY FOSTER, J. RICE, WHALEN, TOOLE, MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT CHILD SUPPORT IS TERMINATED BY A CHILD'S EMANCIPATION OR GRADUATION FROM HIGH SCHOOL, WHICHEVER OCCURS LATER, BUT IN NO EVENT LATER THAN THE CHILD'S 19TH BIRTHDAY; AMENDING SECTION 40-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS NOT REQUIRED FOR THIS BILL BECAUSE IT DOES NOT GRANT RULEMAKING AUTHORITY. HOWEVER, A COMMITTEE MAY BY A TWO-THIRDS VOTE AGREE TO ATTACH A STATEMENT OF INTENT TO A BILL NOT REQUIRING ONE. THE LEGISLATURE FINDS THAT IT WOULD BE UNCONSCIONABLE TO HAVE CHILD SUPPORT TERMINATE PRIOR TO THE GRADUATION OF A CHILD FROM HIGH SCHOOL IF THE CHILD IS STILL LIVING AT HOME WITH THE OTHER PARENT, IS STILL IN NEED OF SUPPORT, AND THERE HAS BEEN NO CHANGE IN LIVING CIRCUMSTANCES PRIOR TO HIGH SCHOOL GRADUATION.

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**Section 1.** Section 40-4-208, MCA, is amended to read:

**"40-4-208. Modification and termination of provisions**

for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of social and rehabilitation services, whenever the department of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

**SECOND READING**  
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1 (3) The provisions as to property disposition may not  
2 be revoked or modified by a court, except:

- 3 (a) upon written consent of the parties; or
- 4 (b) if the court finds the existence of conditions that
- 5 justify the reopening of a judgment under the laws of this
- 6 state.

7 (4) Unless otherwise agreed in writing or expressly  
8 provided in the decree, the obligation to pay future  
9 maintenance is terminated upon the death of either party or  
10 the remarriage of the party receiving maintenance.

11 (5) Unless otherwise agreed in writing or expressly  
12 provided in the decree, provisions for the support of a  
13 child are terminated by emancipation of the child or the  
14 child's graduation from high school, whichever occurs later,  
15 but-not-by BUT IN NO EVENT LATER THAN THE CHILD'S 19TH  
16 BIRTHDAY. WHENEVER NECESSARY, PROOF OF ENROLLMENT IN HIGH  
17 SCHOOL MUST BE PROVIDED. PROVISIONS FOR THE SUPPORT OF A  
18 CHILD DO NOT TERMINATE UPON the death of a parent obligated  
19 to support the child. When a parent obligated to pay support  
20 dies, the amount of support may be modified, revoked, or  
21 commuted to a lump-sum payment, to the extent just and  
22 appropriate in the circumstances."

23 NEW SECTION. Section 2. Applicability. [Section 1]  
24 applies to all decrees containing provisions for child  
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1 NEW SECTION. Section 3. Effective date. [This act] is  
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**THIRD READING**

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24 applies to all decrees containing provisions for child  
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 13, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 284 (third reading copy -- blue), respectfully report that House Bill No. 284 be amended and as so amended be concurred in:

1. Page 3, lines 11 and 12.

Following: "(5)" on line 11

Strike: remainder of line 11 through "provisions" on line 12

Insert: "Provisions"

2. Page 3, line 14.

Following: "school"

Insert: "if the child is enrolled in high school"

3. Page 3, line 16.

Following: "BIRTHDAY"


Insert: ", unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree"


4. Page 3, lines 16 and 17.

Following: "." on line 16

Strike: remainder of line 16 through "PROVADED." on line 17

Signed:   
Richard Pinsoneault, Chairman

 3-13-91  
And. Coord.

 3-13-91  
Sec. of Senate

SENATE  
HB 284

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