

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on April 16, 1991, at 12: 15 p.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)

Members Excused: Senators Towe, Svrcek, and Doherty

Staff Present: John MacMaster (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON HOUSE BILL 752

Presentation and Opening Statement by Sponsor:

Representative Howard Toole, District 60, said HB 752 sets up a procedure for divorce without the assistance of an attorney. He advised the Committee that the bill is old news to the attorneys on the Committee, as it was also introduced in the 1989 Session.

Representative Toole stated that some people don't have a need for an attorney, and that the necessary information would be made available by the Office of the Attorney General to the Clerks of the District Court for people with simple, unprotested divorces. He said page 1 sets out jurisdiction requirements for a joint petition with certain limitations on assets, and requires that there must be no children born of the relationship. Representative Toole further stated that the limitations on unpaid obligations are addressed on page 2, lines 6-11.

Representative Toole provided copies of supporting testimony from Bruce Barrett, University of Montana Legal Services, as Mr. Barrett could not be present this date (Exhibit #1).

Representative Toole advised the Committee that the Clerks of the District Court did not like the bill, and were opposed to some of the responsibilities it would give them. He said the filing fee was changed to make it uniform with divorce law.

Proponents' Testimony:

Neil Haight, Helena attorney, said he has been practicing law in Montana since 1952, and has spent 20 years with Legal Services. He explained that he turns down two-thirds of the people who come to him for divorce counsel, because of their income, and that he supports HB 752 for this reason.

Diane Sands, Montana Women's Lobby, said she supports the bill as it affects young and/or poor people in a positive manner, and seems to be a reasonable process.

Opponents' Testimony:

Tom Harrison, Montana Association of Clerks of Court, said the immediate effective date needs to be changed to allow the Attorney General time to prepare and distribute the required pamphlet to the Clerks of the District Court. He further stated that he opposes the requirement that both parties need to be present, and the 30-day waiting period, as neither of these are required by current statute. Mr. Harrison suggested changing the 30-day period to 20 days.

Questions From Committee Members:

There were no questions from the Committee.

Closing by Sponsor:

Representative Toole advised the Committee that people are advertising in the Missoulian that they will handle divorces for \$35. He said he believes HB 752 is useful, and agreed to the changes requested by the Clerks of the District Court.

EXECUTIVE ACTION ON HOUSE BILL 752

Motion:

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

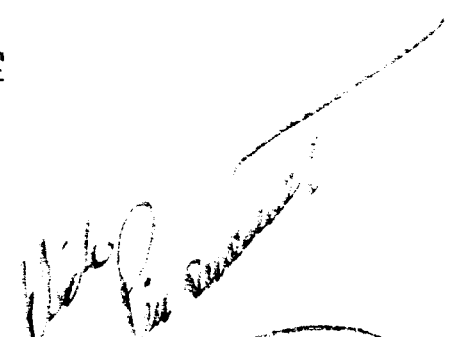
Senator Crippen made a motion that the effective date of the bill be delayed until October 1991, and that the waiting period be changed from 30 to 20 days. The motion carried unanimously.

Recommendation and Vote:

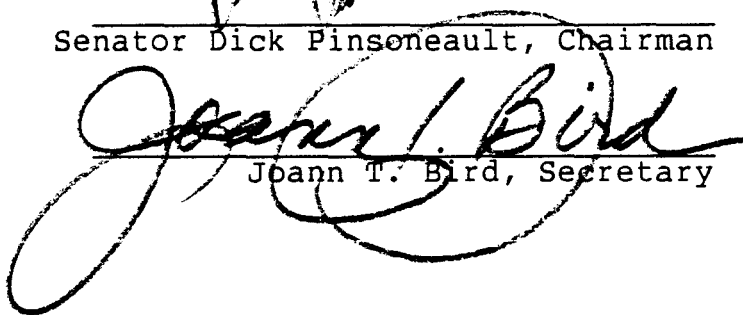
Senator Brown made a motion that HB 752 BE CONCURRED IN AS AMENDED, and the motion carried unanimously. Senator Doherty will be asked to carry the bill.

ADJOURNMENT

Adjournment At: 12:30 p.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1998

Date 16 April

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	1		
Sen. Yellowtail	1		
Sen. Brown	1		
Sen. Crippen	1		
Sen. Doherty			1
Sen. Grosfield	1		
Sen. Halligan	1		
Sen. Harp	1		
Sen. Mazurek	1		
Sen. Rye	1		
Sen. Svrcek			1
Sen. Towe			1

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 16, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 752 (third reading copy -- blue), respectfully report that House Bill No. 752 be amended and as so amended be concurred in:

1. Title, lines 5 and 6.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 4, line 12.

Strike: "30"

Insert: "20"

3. Page 7, lines 13 and 14.

Strike: section 9 in its entirety

Signed: _____
Richard Pinsoneault, Chairman

MA 7-16-91
Add. Coord.

SE 11-11-91 11-5
Sec. of Senate

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HB 752

HOUSE BILL 752

From: Bruce B. Barrett, Attorney

TESTIMONY IN SUPPORT OF SUMMARY DIVORCE BILL

I submit this testimony in support of the Summary Divorce Bill. If passed this Bill would allow Montana to join a growing number of states who are allowing a simple and expedited process for couples seeking divorce in non-complex situations. In drafting this bill, similar laws in Washington, Oregon, and California were examined.

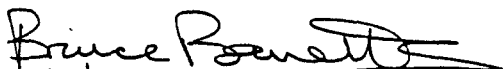
The highlights of the bill are as follows:

1. The bill would allow a limited number of persons to apply for, and obtain a divorce without a Court hearing. This would only be allowed for couples with no children, and limited debts and property. All other couples must seek divorce through the traditional Court-hearing means.
2. Both husband and wife must seek to utilize this process. Unless both consent, the traditional process must be used.
3. The non-Court process provided in this Bill establishes a 90-day "waiting" period. During this period either party can "revoke" their participation before a Decree of Dissolution is entered. This acts as an additional safeguard to protect the parties.
4. Two years ago the Attorney General's Office determined that the costs involved in printing and distributing the forms called for in this bill would be inconsequential. The filing fee for parties seeking Summary Divorce is nearly as high as for those seeking traditional divorces, even though the Court involvement is much less. An earlier version of the bill required a \$50.00 fee. The Clerks of Court objected to the loss of revenue.
5. This bill would help reduce Courtroom backlog. Many divorces involve no debts, no children, and no property of consequence. Judges have little choice but to "rubber stamp" documents prepared by attorneys and charged to the clients. Parties with simple divorces are constantly seeking to go to Court on their own. Their efforts are often awkward and very time consuming for the legal system. In seeking to help persons avoid costly legal fees, workshops and form packets are appearing to help people try to 'do-it-themselves' as they try to negotiate a simple problem through a complex legal system. This bill would assist those persons who truly do not need an attorney, reduce incidents of unauthorized practice of law by workshop sponsors and form distributors, and relieve some of the burden on a clogged legal system.

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HB 752

Page 2, Testimony of Bruce Barrett, Attorney

None of what I have said so far addresses the moral issue. Some argue that divorce is already too easy, and that anything which simplifies the process assaults the sanctity of marriage. This bill is limited in scope, and will affect only a small percentage of persons seeking dissolution of marriage. The marriages where stakes are high must still be examined by a Judge. As to the cases where summary divorce is available, the extended waiting period actually gives the parties longer to reconsider, seek counseling, etc. It must be remembered that persons utilizing this new summary divorce must both agree to use the process. Under the process as it stands today, when both parties agree to a dissolution they can seek a joint dissolution with the help of an attorney. In the case of a joint dissolution, no service is required, only the signing of a Petition and a short Court appearance. Frankly, today a couple with the means to hire a fast acting attorney can have a divorce in as little as 1 day if the Court hearing can be arranged that quickly, which it often can. The expensive and cumbersome process available today hardly is a guarantor of the sanctity of marriage. This Bill should be passed to assist responsible couples who make their own joint determination that their marriage must end. The limits on assets and children, combined with the waiting period, are good assurances that justice will be done. I urge passage of the Bill.


318191 243-6213

I. WHAT IS THIS BOOKLET ABOUT?

4-16-91

HB 752

This booklet describes a way to end a marriage through a kind of divorce called **Summary Dissolution**.

The official word for divorce in California is **dissolution**. There are two ways of getting a divorce, or dissolution, in California. The usual way is called a **Regular Dissolution**. A shorter and easier way—what this booklet is about—is called **Summary Dissolution**.

The new method is shorter and easier. But not everybody can use it.

Briefly, a Summary Dissolution is possible for couples

- (1) who have no children together,
- (2) who have been married for only a short time,
- (3) who don't own very much,
- (4) who don't owe very much, and
- (5) who have no disagreements about how their belongings and their debts are going to be divided up once they are no longer married to each other.

With this procedure you won't have to appear in court. You may not need a lawyer, but it is in your best interest to see a lawyer about the ending of your marriage. See page 22 for more details about how a lawyer can help you.

The procedure is carried out by preparing and filing a **Joint Petition for Summary Dissolution**, together with a **Property Settlement Agreement**, with the County Clerk in your county. After a six-month waiting period—during which either of you can stop the process if you change your mind—you apply for and receive a final divorce.

This booklet will tell you:

- (1) where to turn for help if you want to save your marriage;
- (2) who can use the Summary Dissolution procedure;
- (3) what steps you have to go through to get a Summary Dissolution;
- (4) when it would help to see a lawyer; and
- (5) what risks you take when you use this procedure rather than the Regular Dissolution procedure.

If you wish to use the Summary Dissolution procedure, you must, at the time you file the Joint Petition, sign a statement which says that you have read and understood this booklet. It's important for you to read the **whole booklet** very carefully.

Save this booklet for at least six months if you decide to start a summary dissolution. It will tell you how to complete the procedure.

If you fail to complete the procedure, either by revoking it or obtaining a final divorce, the court may dismiss the action to clear its records.

SPECIAL WARNING

If you are an alien who became a lawful permanent resident on the basis of your marriage to a U.S. citizen or a lawful permanent resident, obtaining a dissolution within two years might lead to your deportation. You should consult a lawyer before obtaining a divorce.

IV. WHO CAN USE THE SUMMARY DISSOLUTION PROCEDURE?

HB 752

4-16-91

You can get a divorce through the Summary Dissolution procedure only if **ALL** of the following statements are true about you at the time you file the Joint Petition for Summary Dissolution. Check this list very carefully. If even one of these statements is not true for you, you **CANNOT** use this way of getting a divorce.

- ☐ 1. We have both read this booklet, and we both understand it.
- ☐ 2. We have been married no longer than five years.
- ☐ 3. No children were born to us before or during our marriage.
- ☐ 4. We have no adopted children under 18 years of age.
- ☐ 5. The wife is not now pregnant.
- ☐ 6. Neither of us owns any part of any land or buildings.
- ☐ 7. Our community property is not worth more than \$10,000.00.*
- ☐ 8. Neither of us has separate property worth more than \$10,000.00.*
- ☐ 9. Our community obligations are less than \$3,000.00.*

For deciding on statements 7, 8, and 9, use the guide given on pages 7 to 13.

- ☐ 10. At least one of us has lived in California for the past six months or longer, and in the county where we are filing for Dissolution for the past three months or longer.
- ☐ 11. We have prepared and signed an agreement which states how we want our possessions and our debts to be divided between us. (Or which states that we have no community property or community obligations.)
- ☐ 12. We have both signed the Joint Petition and all other papers needed to carry out this agreement.
- ☐ 13. We both want to end the marriage because of serious permanent differences.
- ☐ 14. We have both agreed to use the Summary Dissolution procedure rather than the Regular Dissolution procedure.
- ☐ 15. We are both aware of the following facts:
 - (a) that there is a six-month waiting period, and that either of us can stop the divorce at any time during this period;
 - (b) that our marriage will be completely ended only if, after the waiting period, one of us files with the County Clerk a Request for Final Judgment;
 - (c) that after the Dissolution becomes final, neither of us has any right to expect money or support from the other, except for what is included in the Property Settlement Agreement; and
 - (d) that by choosing the Summary Dissolution procedure we give up certain legal rights that we would have if we had used the Regular Dissolution procedure. (These are explained on page 6.)

*Do not count cars or car loans in this total.

X

XII. WHAT YOU SHOULD KNOW ABOUT REVOCATION

4-16-91
HB 752

It is important to realize that the **Notice of Revocation** (Form 1295.30) is NOT just another form you are supposed to fill out and turn in.

DO NOT FILL IT OUT, AND DO NOT BRING IT TO THE COUNTY CLERK UNLESS YOU WANT TO STOP THE DIVORCE!!!

What is the Notice of Revocation form for?

This is the form you need if you want to stop the divorce. This is called **revoking** the agreement—cancelling or stopping it.

What reasons are there for revoking?

There are three reasons you might have for wanting to stop the **Summary Dissolution**:

- (1) you have decided to return to your spouse and continue the marriage;
- (2) you may want to change over to the **Regular Dissolution** as a better way of getting your divorce; or
- (3) the wife discovers she is pregnant.

Why might you want to change over to the Regular Dissolution?

You may come to believe that you will get a better settlement if you go to court than the agreement you originally made with your spouse. (Maybe, after thinking it over, you feel you aren't receiving a fair share of the community property.)

How do you do it?

At the time you picked up the Joint Petition forms, you and your spouse also received three copies of Form 1295.30, **Notice of Revocation of Summary Dissolution Petition**. Fill out all three copies of that form, sign them, and bring them to the County Clerk's office. **YOU CAN DO THIS ALONE. THIS FORM DOES NOT NEED YOUR SPOUSE'S SIGNATURE.**

If you do this at any time during the six-month waiting period, you will automatically stop the divorce proceeding.

Can the Dissolution be stopped once the waiting period is over?

If your spouse has not yet filed a **Request for Final Judgment**, you can still revoke the Dissolution by filing the Revocation form.

What happens to the part of the waiting period that got used up?

You can apply the amount of time you waited on the **Summary Dissolution** to the **Regular Dissolution**. For example, if four months went by before you decided to revoke the **Summary Dissolution**, the waiting period for the **Regular Dissolution** will be shortened by four months.

However, you can save this time **only** if you file for a **Regular Dissolution** within 90 days of revoking the **Summary Dissolution**.

X



HB 752
4-16-91

GLACIER COUNTY

CUT BANK, MONTANA

MARY PHIPPEN
CLERK OF DISTRICT COURT
GLACIER COUNTY COURTHOUSE
512 EAST MAIN STREET
CUT BANK, MT 59427
(406) 873-5063 EXT. 36

February 19, 1991

Richard J. Pinsoneault
Judiciary Committee
State Capitol
Helena, MT 59620

RE: House Bill 752 - An act to establish
a procedure for summary dissolution of marriage

Dear Mr. Pinsoneault:

Please be advised that I am opposed to House Bill 752,
an act to establish a procedure for summary dissolution of
marriage. Your efforts to defeat HB 752 are appreciated.

Very truly yours,

Mary Phippen,
Clerk of District Court
Glacier County

MP/ind

FD 63
4-16-91

Amendments to House Bill No. 752
Third Reading Copy

Requested by Sen. Crippen
For the Committee on the Judiciary

Prepared by John MacMaster
April 16, 1991

1. Title, lines 5 and 6.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 4, line 12.

Strike: "30"

Insert: "20"

3. Page 7, lines 13 and 14.

Strike: section 9 in its entirety

DATE 7-16-91

COMMITTEE ON

VISITORS' REGISTER

HB 752

[illegible]

(Please leave prepared statement with Secretary)