

SENATE BILL NO. 374

INTRODUCED BY VAN VALKENBURG

IN THE SENATE

February 5, 1979	Introduced and referred to Committee on Judiciary.
February 12, 1979	Committee recommend bill do pass as amended. Report adopted.
February 13, 1979	Printed and placed on members' desks.
February 14, 1979	Motion pass consideration.
February 15, 1979	Second reading, do pass.
February 16, 1979	Considered correctly engrossed.
February 17, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading concurred in as amended.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in as amended.
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March 26, 1979

Second reading, pass consideration until March 28, 1979.

March 28, 1979

Second reading, amendments adopted.

March 29, 1979

Third reading, amendments adopted. Sent to enrolling.
Reported correctly enrolled.

1 *Sen. Valtubery* BILL NO. 374
 2 INTRODUCED BY *Sen. Valtubery*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT A
 5 DIVORCE DECREE MAY BE MODIFIED TO ALLOW MAINTENANCE OR
 6 SUPPORT EVEN THOUGH IT WAS NOT ALLOWED IN THE ORIGINAL
 7 DECREE; AMENDING SECTION 40-4-208, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 40-4-208, MCA, is amended to read:
 11 "40-4-208. Modification and termination of provisions
 12 for maintenance, support, and property disposition. (1)
 13 Except as otherwise provided in 40-4-201(b), ~~the provisions~~
 14 ~~of any a decree respecting maintenance or support~~ may be
 15 modified by a court as to maintenance or support only as to
 16 installments accruing subsequent to the motion for
 17 modification and either:

18 (a) upon a showing of changed circumstances so
 19 substantial and continuing as to make the terms
 20 unconscionable; or

21 (b) upon written consent of the parties.

22 ~~(2) A decree that does not award support or~~
 23 ~~maintenance may be modified under subsection (1) to provide~~
 24 ~~for such maintenance or support.~~

25 (3) The provisions as to property disposition may not

1 be revoked or modified by a court, except:
 2 ~~†††(a)~~ upon written consent of the parties; or
 3 ~~†††(b)~~ if the court finds the existence of conditions
 4 that justify the reopening of a judgment under the laws of
 5 this state.
 6 ~~†††(4)~~ Unless otherwise agreed in writing or expressly
 7 provided in the decree, the obligation to pay future
 8 maintenance is terminated upon the death of either party or
 9 the remarriage of the party receiving maintenance.
 10 ~~†††(5)~~ Unless otherwise agreed in writing or expressly
 11 provided in the decree, provisions for the support of a
 12 child are terminated by emancipation of the child but not by
 13 the death of a parent obligated to support the child. When
 14 a parent obligated to pay support dies, the amount of
 15 support may be modified, revoked, or commuted to a lump-sum
 16 payment, to the extent just and appropriate in the
 17 circumstances."

-End-

SB 374
 -2- INTRODUCED BILL

Approved by Committee
on Judiciary

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2 INTRODUCED BY VAN VALKENBURG

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

11 "40-4-208. Modification and termination of provisions
12 for maintenance, support, and property disposition. (1)
13 Except as otherwise provided in 40-4-201(6), ~~the~~ provisions
14 of ~~any~~ a decree respecting ~~maintenance or support~~ may be
15 modified by a court as to maintenance or support only as to
16 installments accruing subsequent to the motion for
17 modification and either:

18 (a) upon a showing of changed circumstances so
19 substantial and continuing as to make the terms
20 unconscionable; or

21 (b) upon written consent of the parties.

22 ~~(2) A decree that does not award support or~~
23 ~~maintenance may be modified WITHIN 2 YEARS OF THE DATE OF~~
24 ~~THE DECREE under subsection (1) to provide for such~~
25 ~~maintenance or support.~~

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

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

4 (2) if the court finds the existence of conditions
5 that justify the reopening of a judgment under the laws of
6 this 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 but not by
14 the death of a parent obligated to support the child. When
15 a parent obligated to pay support dies, the amount of
16 support may be modified, revoked, or commuted to a lump-sum
17 payment, to the extent just and appropriate in the
18 circumstances."

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

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), the provisions of any a decree respecting maintenance or support may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification, and either:

(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:

(a) upon a showing of changed circumstances so

substantial and continuing as to make the terms unconscionable; or

(b) upon written consent of the parties.

~~(2) A decree that does not award support or maintenance may be modified WITHIN 2 YEARS OF THE DATE OF THE DECREE under subsection (1) to provide for such maintenance or support.~~

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

(a) upon written consent of the parties; or

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

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

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

-End-

-2-

March 19, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to Senate Bill 374, 3rd Reading
Copy, as follows:

1. Page 1, line 17.
Following: "modification"
Strike: "and either:"
Insert: "."

2. Page 1, line 18.
Following: line 17
Insert: "(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:"

3. Page 1, line 18.
Following: line 17
Strike: "(a)"
Insert: "(i)"

4. Page 1, line 21.
Following: line 20
Strike: "(b)"
Insert: "(ii)"

5. Page 1, lines 22 through 25.
Strike: lines 22 through 25 in their entirety.

AND AS AMENDED,
BE CONCURRED IN