HOUSE BILL NO. 760

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INTRODUCED BY NATHE, MERCER, COBB, THOMAS, CAMPBELL

IN THE HOUSE

February 9, 1985	Introduced and referred to Committee on Judiciary.
February 20, 1985	Committee recommend bill do not pass.
February 21, 1985	Objection to adverse committee report.
	Bill printed and placed on members' desks.
February 25, 1985	Second reading, do pass as amended.
	Correctly engrossed.
February 27, 1985	Third reading, passed.
	Transmitted to Senate.
IN THE	SENATE
March 5, 1985	Introduced and referred to Committee on Judiciary.
March 26, 1985	Committee recommend bill be concurred in. Report adopted.
March 29, 1985	Second reading, concurred in.
March 30, 1985	Third reading, concurred in. Ayes, 48; Noes, 1.
	Returned to House.

IN THE HOUSE

March 30, 1985

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Received from Senate. Sent to enrolling. Reported correctly enrolled. LC 1053/01

INTRODUCED BY NATH- Mere Coby Thomas co-plus 1 1 2 2 3 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A DECREE 4 5 OF MARRIAGE DISSOLUTION MAY NOT BE ENTERED UNTIL AT LEAST 45 5 6 DAYS AFTER SERVICE CA THE RESPONDENT; REQUIRING THE COURT, б 7 TO THE EXTENT OF ITS JURISDICTION, TO DISPOSE OF THE ISSUES 7 OF CHILD SUPPORT AND CUSTODY, MAINTENANCE, AND PROPERTY 8 8 9 DIVISION IN THE DISSOLUTION DECREE: AMENDING SECTIONS 9 40-4-104 AND 40-4-105, MCA." 10 10 11 11 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 13 Section 1. Section 40-4-104, MCA, is amended to read: 13 14 "40-4-104. Dissolution of marriage --legal 14 separation. (1) The district court shall enter a decree of 15 15 16 dissolution of marriage if: 16 (a) the court finds that one of the parties, at the 17 17 time the action was commenced, was domiciled in this state 18 18 19 or was stationed in this state while a member of the armed 19 services and that the domicile or military presence has been 20 20 21 maintained for 90 days next preceding the making of the 21 22 findings; 22 (b) the court finds that the marriage is irretrievably 23 23 24 broken, which findings shall be supported by evidence: 24 25 (i) that the parties have lived separate and apart for 25

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a period of more than 180 days next preceding the commencement of this proceeding; or

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

6 (c) the court finds that the conciliation provisions 7 of the Montana Conciliation Law and of 40-4-107 either do 8 not apply or have been met; and

9 (d) to the extent it has jurisdiction to do so, the 10 court has considered, approved, or made provision for child 11 custody, the support of any child entitled to support, the 12 maintenance of either spouse, and the disposition of 13 property or--provided-for-a--separate,--later-hearing-to

14 complete-these-matters; and

(e) at least 45 days have elapsed since the date when
 service of summons was made on the respondent or the first
 publication of summons was made.
 (2) If a party requests a decree of legal separation
 rather than a decree of dissolution of marriage, the court

0 shall grant the decree in that form unless the other party 1 objects."

Section 2. Section 40-4-105, MCA, is amended to read:
"40-4-105. Procedure -- commencement -- pleadings -abolition of existing defenses. (1) The verified petition in
a proceeding for dissolution of marriage or legal separation

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1 shall allege that the marriage is irretrievably broken and 2 shall set forth:

3 (a) the age, occupation, and residence of each party4 and his length of residence in this state;

5 (b) the date of the marriage and the place at which it6 was registered;

7 (c) that t.e jurisdictional requirements of 40-4-104 8 exist and that the marriage is irretrievably broken in that 9 either:

10 (i) the parties have lived separate and apart for a 11 period of more than 180 days next preceding the commencement 12 of this proceeding; or

13 (ii) there is serious marital discord which adversely 14 affects the attitude of one or both of the parties towards 15 the marriage, and there is no reasonable prospect of 16 reconciliation;

17 (d) the names, ages, and addresses of all living
18 children of the marriage and whether the wife is pregnant;
19 (e) any arrangements as to support, custody, and
20 visitation of the children and maintenance of a spouse; and
21 (f) the relief sought.

(2) Either or both parties to the marriage mayinitiate the proceeding.

24 (3) If a proceeding is commenced by one of the25 parties, the other party must be served in the manner

provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. No-decree-may-be-entered-until-20-days--after--the date-of-service:

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5 (4) Previously existing defenses to divorce and legal 6 separation, including but not limited to condonation, 7 connivance, collusion, recrimination, insanity, and lapse of 8 time, are abolished.

9 (5) The court may join additional parties proper for
10 the exercise of its authority to implement this chapter."

-End-

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49th Legislature

LC 1053/01 Committee On Judiciary Recommend do Not Pass Objection Raised to Adverse committee Report

INTRODUCED BY NATHE Merce Cob Thomas Co. All 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A DECREE 4

5 OF MARRIAGE DISSOLUTION MAY NOT BE ENTERED UNTIL AT LEAST 45 6 DAYS AFTER SERVICE ON THE RESPONDENT; REQUIRING THE COURT, 7 TO THE EXTENT OF ITS JURISDICTION, TO DISPOSE OF THE ISSUES 8 OF CHILD SUPPORT AND CUSTODY, MAINTENANCE, AND PROPERTY 9 DIVISION IN THE DISSOLUTION DECREE; AMENDING SECTIONS 10 40-4-104 AND 40-4-105, MCA."

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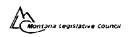
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 40-4-104, MCA, is amended to read: 14 "40-4-104. Dissolution of marriage -- legal 15 separation. (1) The district court shall enter a decree of 16 dissolution of marriage if:

17 (a) the court finds that one of the parties, at the 18 time the action was commenced, was domiciled in this state 19 or was stationed in this state while a member of the armed 20 services and that the domicile or military presence has been 21 maintained for 90 days next preceding the making of the 22 findings;

23 (b) the court finds that the marriage is irretrievably24 broken, which findings shall be supported by evidence:

25 (i) that the parties have lived separate and apart for



1 a period of more than 180 days next preceding the 2 commencement of this proceeding; or

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

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

9 (d) to the extent it has jurisdiction to do so, the 10 court has considered, approved, or made provision for child 11 custody, the support of any child entitled to support, the 12 maintenance of either spouse, and the disposition of 13 property or--provided--for--a--separater--hearing-to

14 complete-these-matters; and

15 (e) at least 45 days have elapsed since the date when
16 service of summons was made on the respondent or the first
17 publication of summons was made.
18 (2) If a party requests a decree of legal separation
19 rather than a decree of dissolution of marriage, the court

19 rather than a decree of dissolution of marriage, the court 20 shall grant the decree in that form unless the other party 21 objects."

Section 2. Section 40-4-105, MCA, is amended to read:
"40-4-105. Procedure -- commencement -- pleadings -abolition of existing defenses. (1) The verified petition in
a proceeding for dissolution of marriage or legal separation

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shall allege that the marriage is irretrievably broken and 1 shall set forth: 2

3 (a) the age, occupation, and residence of each party and his length of residence in this state; 4

5 (b) the date of the marriage and the place at which it б was registered;

(c) that the jurisdictional requirements of 40-4-104 7 exist and that the marriage is irretrievably broken in that 8 9 either:

10 (i) the parties have lived separate and apart for a 11 period of more than 180 days next preceding the commencement of this proceeding; or 12

(ii) there is serious marital discord which adversely 13 14 affects the attitude of one or both of the parties towards 15 the marriage, and there is no reasonable prospect of reconciliation; 16

(d) the names, ages, and addresses of all living 17 children of the marriage and whether the wife is pregnant; 18 (e) any arrangements as to support, custody, and 19 20 visitation of the children and maintenance of a spouse; and

21

(f) the relief sought.

22 (2) Either or both parties to the marriage may initiate the proceeding. 23

(3) If a proceeding is commenced by one of the 24 25 parties, the other party must be served in the manner

-3-

provided by the Montana Rules of Civil Procedure and may 1 within 20 days after the date of service file a verified 2 response. No-decree-may-be-entered-until-20-days--after--the 3 4 date-of-service:

(4) Previously existing defenses to divorce and legal 5 separation, including but not limited to condonation, б connivance, collusion, recrimination, insanity, and lapse of 7 8 time, are abolished.

(5) The court may join additional parties proper for 9

10 the exercise of its authority to implement this chapter."

-End-

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1 HOUSE BILL NO. 760 2 INTRODUCED BY NATHE, MERCER, COBB, THOMAS, CAMPBELL 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING-THAT-A-BECREE 5 OF-MARRIAGE-DISSOLUTION-MAY-NOT-BE-ENTERED-UNTIL-AT-LEAST-45 6 BAYS-AFTER-SERVICE-ON-THE-RESPONDENT; REQUIRING THE COURT. 7 TO THE EXTENT OF ITS JURISDICTION, TO DISPOSE OF THE ISSUES OF CHILD SUPPORT AND CUSTODY, MAINTENANCE, AND PROPERTY 8 DIVISION IN THE DISSOLUTION DECREE; AMENDING SECTIONS 9 10 SECTIONS 40-4-104 ANB-40-4-105, MCA." 11 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: Section 1. Section 40-4-104, MCA, is amended to read: 13 14 *40-4-104. Dissolution of marriage legal separation. (1) The district court shall enter a decree of 15 dissolution of marriage if: 16 (a) the court finds that one of the parties, at the 17 time the action was commenced, was domiciled in this state 18 or was stationed in this state while a member of the armed 19 services and that the domicile or military presence has been 20 21 maintained for 90 days next preceding the making of the 22 findings:

23 (b) the court finds that the marriage is irretrievably24 broken, which findings shall be supported by evidence:

25

(i) that the parties have lived separate and apart for

. Mcana Legislative Council

a period of more than 180 days next preceding the
 commencement of this proceeding; or

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

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

9 (d) to the extent it has jurisdiction to do so, the 10 court has considered, approved, or made provision for child 11 custody, the support of any child entitled to support, the 12 maintenance of either spouse, and the disposition of 13 property or--provided--for--a--separate,--later--hearing-to 14 complete-these-matters;-and.

 15
 fel-at-least-45-days-have-elapsed-since-the-date--when

 16
 service--of--summons-was-made-on-the-respondent-or-the-first

 17
 publication-of-summons-was-made

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

 22
 Section-2:--Section--40-4-1057-NCA7-is-amended-to-read;

 23
 #40-4-105;--Procedure----commencement-----pleadings---

 24
 abolition--of--existing-defenses:--(1)-The-verified-petition

 25
 in--a--proceeding--for--dissolution--of--marriage--or--legal

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THIRD READING

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1	separationshallallege-that-the-marriage-is-irretrievably
2	broken-and-shall-set-forth;
3	<pre>tatthe-age;-occupation;-and-residence-ofeachparty</pre>
4	and-his-length-of-residence-in-this-state;
5	<pre>(b)the-date-of-the-matriage-and-the-place-at-which-it</pre>
6	was-registered;
7	fc}thatthejurisdictional-requirements-of-40-4-104
8	exist-and-that-the-marriage-is-irretrievably-broken-inthat
9	either:
10	(i)thepartieshavelived-separate-and-apart-for-a
11	period-of-more-than-180-days-next-preceding-the-commencement
12	of-this-proceeding;-or
13	<pre>fii}-there-is-serious-marital-discordwhichadversely</pre>
14	affectstheattitude-of-one-or-both-of-the-parties-towards
15	themarriage;andthereisnoreasonableprospectof
16	reconciliation;
17	(d)thenames;ages;andaddressesofall-living
18	children-of-the-marriage-and-whether-the-wifeispregnant;
19	te)anyarrangementsastosupport;custody;and
20	visitation-of-the-children-and-maintenance-of-a-spouse;and
21	(f)the-relief-sought,
22	{2}Bitherorbothpartiestothemarriagemay
23	initiate-the-proceeding.
24	(3)Ifgproceedingiscommencedbyoneofthe
25	parties,theotherpartymustbeservedin-the-manner
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1	provided-by-the-Montana-Rules-ofCivilProcedureandmay
2	within20daysafterthe-date-of-service-file-a-verified
3	responseNo-decree-may-be-entered-until-20-daysafterthe
4	date-of-service.
5	(4) Previouslyexisting-defenses-to-divorce-and-legal
6	separationincludingbutnotlimitedtocondonation;
7	connivence;-collusion;-recrimination;-insanity;-and-lapse-of
8	time,-are-abolished.
9	<pre>{5}Thecourtmay-join-additional-parties-proper-for</pre>
10	-be-exercise-of-its-authority-to-implement-this-chapter-"

-End-

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HOUSE BILL NO. 760 1 period of more than 180 days next preceding the 1 2 INTRODUCED BY NATHE, MERCER, COBB, THOMAS, CAMPBELL 2 commencement of this proceeding; or 3 (ii) that there is serious marital discord 3 which 4 adversely affects the attitude of one or both of the parties A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING-THAT-A-BEEREE 4 5 towards the marriage: OP-MARRIAGE-DISSOLUTION-MAY-NOT-BE-ENTERED-UNTIL-AT-LEAST-45 5 (c) the court finds that the conciliation provisions DAYS-AFTER-SERVICE-ON-THE-RESPONDENT; REQUIRING THE COURT, 6 of the Montana Conciliation Law and of 40-4-107 either do TO THE EXTENT OF ITS JURISDICTION, TO DISPOSE OF THE ISSUES 7 7 8 not apply or have been met; and AND OF CHILD SUPPORT AND CUSTODY, MAINTENANCE, AND PROPERTY (d) to the extent it has jurisdiction to do so, the DIVISION IN THE DISSOLUTION DECREE; AMENDING SECTIONS 9 9 court has considered, approved, or made provision for child SECTIONS 40-4-104 ANB-40-4-105, MCA." 10 10 custody, the support of any child entitled to support, the 11 11 maintenance of either spouse, and the disposition of 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 property or--provided--for--a--separatey--later--hearing-to 13 Section 1. Section 40-4-104, MCA, is amended to read: 13 "40-4-104. Dissolution of marriage 14 complete-these-matters;-and. 14 -- legal fe}--at-least-45-days-have-elapsed-since-the-date--when separation. (1) The district court shall enter a decree of 15 15 16 service--of--summons-was-made-on-the-respondent-or-the-first 16 dissolution of marriage if: 17 (a) the court finds that one of the parties, at the publication-of-summons-was-made-17 (2) If a party requests a decree of legal separation time the action was commenced, was domiciled in this state 18 18 rather than a decree of dissolution of marriage, the court 19 or was stationed in this state while a member of the armed 19 shall grant the decree in that form unless the other party services and that the domicile or military presence has been 20 20 21 maintained for 90 days next preceding the making of the 21 objects." 22 Section-2---Section--40-4-1057-MCA7-is-amended-to-read+ 22 findings; "40-4-105:---Procedure----commencement-----pleadings----(b) the court finds that the marriage is irretrievably 23 23 broken, which findings shall be supported by evidence: 24 24 in--a--proceeding--for--dissolution--of--marrisge--or--legal (i) that the parties have lived separate and apart for 25 25

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1	
	separationshallallege-thet-the-marriage-is-irretrievably
2	broken-and-shall-set-forth:
3	<pre>{a}the-age;-occupation;-and-residence-ofeachparty</pre>
4	and-his-length-of-residence-in-this-state;
5	{b}the-date-of-the-marriage-and-the-place-at-which-it
6	was-registered;
7	<pre>{c}thatthejurisdictional-requirements-of-40-4-104</pre>
8	exist-and-that-the-marriage-is-irretrievably-broken-inthat
9	either:
10	(i)thepartieshavelived-separate-and-apart-for-a
11	period-of-more-than-180-days-next-preceding-the-commencement
12	of-this-proceeding;-or
13	(ii)-there-is-serious-marital-discordwhichadversely
14	affectstheattitude-of-one-or-both-of-the-parties-towards
15	themarriage;andthereisnoreasonableprospectof
16	reconciliation;
1 7	fd)thenames;ages;andaddresses-ofall-living
18	children-of-the-marriage-and-whether-the-wifeispregnant;
19	(e)anyarrangementsastosupport;custody;and
20	visitation-of-the-children-and-maintenance-of-a-spouse;and
21	(f)the-relief-sought,
22	(2)Eitherorbothpartiestothemarriagemay
23	initiate-the-proceeding-
24	{3}Ifaproceedingiscommencedbyoneofthe
25	parties;theotherpartymustbeservedin-the-manner
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1	provided-by-the-Montana-Rules-ofCivilProcedureandmay
2	within20daysafterthe-date-of-service-file-a-verified
3	responser-No-decree-may-be-entered-until-20-daysafterthe
4	date-of-service.
5	<pre>(4)Previouslyexisting-defenses-to-divorce-and-legal</pre>
6	separation,includingbutnotlimitedtocondonation,
7	connivance;-collusion;-recrimination;-insanity;-and-lapse-of
8	time;-are-abolished;
9	<pre>{5}Thecourtmay-join-additional-parties-proper-for</pre>
10	the-exercise-of-its-authority-to-implement-this-chapter-"

-End-

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