

HOUSE BILL NO. 760

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 concurrent in. Report adopted.
March 29, 1985	Second reading, concurrent in.
March 30, 1985	Third reading, concurrent in. Ayes, 48; Noes, 1.
	Returned to House.

IN THE HOUSE

March 30, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 760  
2 INTRODUCED BY NATHAN Meese Cobb, Thomas Langley

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A DECREE  
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."

11  
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 irretrievably  
24 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--separate--later--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  
20 shall grant the decree in that form unless the other party  
21 objects."

22 Section 2. Section 40-4-105, MCA, is amended to read:  
23 "40-4-105. Procedure -- commencement -- pleadings --  
24 abolition of existing defenses. (1) The verified petition in  
25 a proceeding for dissolution of marriage or legal separation

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

3 (a) the age, occupation, and residence of each party  
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 (c) that the 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.

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

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

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

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-

LC 1053/01  
COMMITTEE  
ON JUDICIARY  
RECOMMEND DO NOT PASS  
OBJECTION RAISED TO  
ADVERSE COMMITTEE REPORT

1                    HOUSE BILL NO. 760  
2 INTRODUCED BY NATHAN MACE COB THOMAS BOGERT

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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  
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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 irretrievably  
24 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--separate,--later--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  
20 shall grant the decree in that form unless the other party  
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4 and his length of residence in this state;

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6 was registered;

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8 exist and that the marriage is irretrievably broken in that  
9 either:

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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

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23 initiate the proceeding.

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25 parties, the other party must be served in the manner

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

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22 findings;

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24 broken, which findings shall be supported by evidence:

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

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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 ~~(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  
20 shall grant the decree in that form unless the other party  
21 objects."

22 Section 2. Section 40-4-105, MCA, 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

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

3 (a)--the--age,--occupation,--and--residence--of--each--party  
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 (c)--that--the--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;

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

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

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

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-



HOUSE BILL NO. 760

INTRODUCED BY NATHE, MERCER, COBB, THOMAS, CAMPBELL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING-THAT-A-DECREE OF-MARRIAGE-DISSOLUTION-MAY-NOT-BE-ENTERED-UNTIL-AT-LEAST-45 DAYS-AFTER-SERVICE-ON-THE-RESPONDENT; REQUIRING THE COURT, TO THE EXTENT OF ITS JURISDICTION, TO DISPOSE OF THE ISSUES OF CHILD SUPPORT AND CUSTODY, MAINTENANCE, AND PROPERTY DIVISION IN THE DISSOLUTION DECREE; AMENDING SECTIONS SECTIONS 40-4-104 AND ~~40-4-105~~, MCA."

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

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

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

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

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

~~(e)--at-least-45-days-have-elapsd-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 shall grant the decree in that form unless the other party 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~~



1 separation--shall--allege--that--the--marriage--is--irretrievably  
 2 broken--and--shall--set--forth:  
 3 (a)--the--age,--occupation,--and--residence--of--each--party  
 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;  
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