

HB 472 INTRODUCED BY DARKO, ET AL.
REQUIRE MEDIATION BY COURT COMMISSIONER IN ACTION
FOR MARRIAGE DISSOLUTION AND LEGAL SEPARATION
BY REQUEST OF CHILD SUPPORT ADVISORY COUNCIL

1/26 INTRODUCED
1/26 REFERRED TO JUDICIARY
1/27 FISCAL NOTE REQUESTED
1/30 HEARING
1/30 FISCAL NOTE RECEIVED
2/18 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/20 2ND READING PASSED AS AMENDED 72 18
2/20 REREFERRED TO APPROPRIATIONS
3/05 HEARING
3/16 TABLED IN COMMITTEE

1 House BILL NO. 472
 2 INTRODUCED BY Marked J. Brown
 3 BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM
 6 OF COURT COMMISSIONERS TO ACT AS MEDIATORS IN PROCEEDINGS
 7 FOR MARRIAGE DISSOLUTION AND LEGAL SEPARATION; PROVIDING FOR
 8 MEDIATOR QUALIFICATIONS, SELECTION, AND SALARY; PROVIDING A
 9 PROCEDURE FOR MEDIATION; ALLOWING PRIVATE MEDIATION AS THE
 10 ALTERNATIVE TO MANDATORY MEDIATION REQUIRED IN A DISTRICT
 11 COURT PROCEEDING FOR DISSOLUTION OR LEGAL SEPARATION; AND
 12 AMENDING SECTION 40-4-104, MCA."
 13

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

15 NEW SECTION. Section 1. Financial disclosure
 16 statements -- child custody plan. (1) In a proceeding for
 17 dissolution of marriage or legal separation, the parties
 18 shall file the following verified financial disclosure
 19 statements, which the court shall keep confidential:

20 (a) If the parties join in filing a joint petition,
 21 each shall file with the petition a complete financial
 22 disclosure statement.

23 (b) If one party files the petition for dissolution,
 24 that party shall file with the petition a complete financial
 25 disclosure statement and a good faith estimate of the other

1 party's financial resources. The answering party shall file
 2 with the response a complete financial disclosure statement.
 3 (2) If child custody is an issue in a proceeding for
 4 dissolution or legal separation, the party filing the
 5 petition shall submit with the petition a plan for child
 6 custody that sets forth a plan for joint custody or the
 7 reasons why joint custody is not in the best interest of the
 8 child. If the parties join in filing a joint petition, they
 9 shall set forth with the petition a plan for implementation
 10 of a joint custody order or the reasons why joint custody is
 11 not in the best interest of the child.

12 NEW SECTION. Section 2. Mandatory mediation. In a
 13 proceeding for dissolution of marriage or legal separation
 14 the parties must mediate any issue of dispute between them
 15 under the procedure set forth in [sections 5 through 8].

16 NEW SECTION. Section 3. Court commissioners --
 17 mediation. (1) There is an office of court commissioner
 18 comprised of 10 court commissioners appointed by the supreme
 19 court.

20 (2) Court commissioners are assigned to the district
 21 court judicial districts by the supreme court to act as
 22 mediators in proceedings for dissolution and legal
 23 separation. A court commissioner shall assist the parties in
 24 negotiating the terms of a settlement by:

25 (a) facilitating an exchange between the parties;

1 (b) suggesting possible solutions to disputes between
2 the parties; and

3 (c) assisting the parties to voluntarily resolve their
4 disputes.

5 (3) A court commissioner is an officer of the district
6 court and works under the direction and supervision of the
7 district court of the judicial district in which the court
8 commissioner is sitting.

9 NEW SECTION. Section 4. Court commissioner
10 qualifications -- salary -- standards and procedures. (1) A
11 court commissioner must have:

12 (a) a master's degree in social work, family
13 counseling, or other field that qualifies the court
14 commissioner to act as a mediator;

15 (b) training in the processes of mediation and
16 conciliation; and

17 (c) other qualifications as required by the supreme
18 court.

19 (2) (a) The annual salary of a court commissioner is
20 \$35,000.

21 (b) A court commissioner may not engage in any other
22 employment for which a salary or fee is paid.

23 (3) The supreme court may by rule establish:

24 (a) standards of practice that regulate the conduct of
25 court commissioners; and

1 (b) uniform procedures for:

2 (i) matters before a court commissioner; and

3 (ii) the filing of financial disclosure statements and
4 a child custody plan as provided in [section 1].

5 NEW SECTION. Section 5. Procedure before court
6 commissioner. (1) In a proceeding for dissolution of
7 marriage or legal separation, when the petition, financial
8 disclosure statements, and child custody plan provided for
9 in [section 1] are filed with the court, the clerk of court
10 shall set a time and place for the first mediation meeting
11 of the parties and the court commissioner.

12 (a) The clerk of court shall issue a summons and order
13 stating the time and place of the first meeting and
14 requiring the parties to appear. If one party has applied
15 for temporary child custody and support, the order must
16 notify the other party of the application.

17 (b) (i) The first meeting of the parties with the
18 court commissioner must be held within 10 business days of
19 the filing of the petition. Both parties must be present if
20 subject to the jurisdiction of the court.

21 (ii) At the first meeting the court commissioner shall
22 discuss conciliation, counseling, mental or physical
23 examinations or treatments, investigations, and any other
24 procedure that would assist the parties in negotiating the
25 terms of a dissolution or legal separation settlement.

1 (2) The court commissioner:
 2 (a) shall consider the questions of joint temporary
 3 physical child custody, temporary physical child custody,
 4 visitation, and temporary child support; and
 5 (b) may require the temporary payment between the
 6 parties of the costs of living of either party and the
 7 child.
 8 (3) The court commissioner shall inquire into all
 9 issues of the case. If there are issues the parties agree on
 10 without offending either party's legal rights, the
 11 commissioner shall make a memorandum of those issues and
 12 require the parties to sign it. The court commissioner shall
 13 also make a memorandum of any issues remaining unresolved.
 14 (4) If there are issues remaining unresolved after the
 15 first meeting, the court commissioner shall schedule:
 16 (a) a second meeting to be held within 30 calendar
 17 days of the first meeting; and
 18 (b) other meetings thereafter as the mediator
 19 considers appropriate to resolve any remaining issues.
 20 NEW SECTION. Section 6. Limitations on mediation
 21 proceedings. (1) Mediation proceedings are:
 22 (a) held in private;
 23 (b) held without a verbatim record; and
 24 (c) confidential.
 25 (2) Counsel are excluded from participation in the

1 mediation process.
 2 (3) A court commissioner may:
 3 (a) with the permission of the other party, meet
 4 privately with one party; and
 5 (b) consult and meet with witnesses, experts, and
 6 other persons involved in the proceeding.
 7 (4) All communications, verbal or written, from the
 8 parties to the court commissioner are considered made to
 9 such officer in official confidence. A court commissioner's
 10 files and records are closed to all but the parties and the
 11 court.
 12 (5) A party may not disqualify a court commissioner.
 13 NEW SECTION. Section 7. Court commissioner
 14 recommendations to district court. (1) If at the first
 15 meeting with the parties, or in the event of default 20 days
 16 after service of summons, it appears to the court
 17 commissioner that dissolution of the marriage or legal
 18 separation is warranted and there is no significant
 19 unresolved issue regarding child custody or support,
 20 visitation, maintenance, or property division, the court
 21 commissioner shall recommend dissolution or legal separation
 22 to the district court.
 23 (2) Upon completion of the mediation process, the
 24 court commissioner shall submit to the district court:
 25 (a) a written agreement reached by the parties through

1 mediation and signed by the parties and presented for
2 approval as a court order; and

3 (b) if any issue remains unresolved, a memorandum
4 detailing the contested issue or issues.

5 (3) If a mediated agreement breaks down before it is
6 incorporated into a court order because of the reservations
7 of either party, the district court may refer the parties to
8 the court commissioner for further mediation.

9 NEW SECTION. Section 8. Continued jurisdiction of
10 court commissioner. The court commissioner has continuing
11 jurisdiction in a proceeding for dissolution of marriage or
12 legal separation. The court commissioner shall supervise the
13 issues of child custody, visitation, and payment of child
14 support. If the district court determines that mediation of
15 any of these issues is appropriate, the court shall refer
16 the parties for further mediation.

17 NEW SECTION. Section 9. Private mediation --
18 alternative to mandatory mediation. (1) If the parties do
19 not wish to take part in the mandatory mediation procedure
20 provided by the district court, they shall initiate
21 voluntary private mediation, subject to review by the court
22 commissioner and district court.

23 (2) The mediator to whom the parties refer the
24 contested issues of the dissolution of the marriage or legal
25 separation must have substantially the same education,

1 training, and experience qualifications as a court
2 commissioner.

3 (3) Following the mediation process, the private
4 mediator shall submit to the district court the agreement,
5 memorandum, or both as provided for in [section 7].

6 (4) The parties shall pay the costs of private
7 mediation.

8 Section 10. Section 40-4-104, MCA, is amended to read:
9 "40-4-104. Dissolution of marriage -- legal
10 separation. (1) The district court shall enter a decree of
11 dissolution of marriage if:

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

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

20 (i) that the parties have lived separate and apart for
21 a period of more than 180 days next preceding the
22 commencement of this proceeding; or

23 (ii) that there is serious marital discord which
24 adversely affects the attitude of one or both of the parties
25 towards the marriage;

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

4 (d) to the extent it has jurisdiction to do so, the
5 court has considered, approved, or made provision for child
6 custody, the support of any child entitled to support, the
7 maintenance of either spouse, and the disposition of
8 property.

9 (2) The district court may not enter a decree of
10 dissolution or legal separation until the parties have
11 mediated any issue of dispute between them as required by
12 [section 2].

13 ~~†2†~~(3) If a party requests a decree of legal
14 separation rather than a decree of dissolution of marriage,
15 the court shall grant the decree in that form unless the
16 other party objects."

17 NEW SECTION. Section 11. Codification instruction.
18 Sections 1 and 2 are intended to be codified as an integral
19 part of Title 40, chapter 4, part 1, and the provisions of
20 Title 40, chapter 4, part 1, apply to sections 1 and 2.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB472, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a system of court commissioners to act as mediators in proceedings for marriage dissolution and legal separation; providing for mediator qualifications, selection, and salary; providing a procedure for mediation; allowing private mediation as the alternative to mandatory mediation required in a district court proceeding for dissolution or legal separation; and amending Section 40-4-104, MCA.

ASSUMPTIONS:

1. Effective date October 1, 1987.
2. 10 court commissioners will be hired.
3. Supported by general fund.

FISCAL IMPACT:

	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
General Fund Expenditures:						
Personal Services & Benefits	\$ 0	\$ 312,135	\$ 312,135	\$ 0	\$ 421,950	\$ 421,950
Operating Cost	0	63,750	63,750	0	85,000	85,000
TOTAL	\$ 0	\$ 375,885	\$ 375,885	\$ 0	\$ 506,950	\$ 506,950

David L. Hunter DATE 1/30/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

Paula Darko DATE 2/1/87
 PAULA DARKO, PRIMARY SPONSOR

Fiscal Note for HB472, as introduced.

HB 472

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 472

2 INTRODUCED BY DARKO, J. BROWN

3 BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM
6 OF COURT COMMISSIONERS TO ACT AS MEDIATORS IN PROCEEDINGS
7 FOR MARRIAGE DISSOLUTION AND LEGAL SEPARATION; PROVIDING FOR
8 MEDIATOR QUALIFICATIONS, SELECTION, AND SALARY; PROVIDING A
9 PROCEDURE FOR MEDIATION; ALLOWING PRIVATE MEDIATION AS THE
10 ALTERNATIVE TO MANDATORY MEDIATION REQUIRED IN A DISTRICT
11 COURT PROCEEDING FOR DISSOLUTION OR LEGAL SEPARATION;
12 PROVIDING A FUNDING MECHANISM FOR THE MEDIATOR PROGRAM; AND
13 AMENDING SECTION SECTIONS 17-7-502 AND 40-4-104, MCA."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. Section 1. Financial disclosure
17 statements -- child custody plan. (1) In a proceeding for
18 dissolution of marriage or legal separation, the parties
19 shall file the following verified financial disclosure
20 statements, which the court shall keep confidential:

21 (a) If the parties join in filing a joint petition,
22 each shall file with the petition a complete financial
23 disclosure statement.

24 (b) If one party files the petition for dissolution,
25 that party shall file with the petition a complete financial

1 disclosure statement and a good faith estimate of the other
2 party's financial resources. The answering party shall file
3 with the response a complete financial disclosure statement.

4 (2) If child custody is an issue in a proceeding for
5 dissolution or legal separation, the party filing the
6 petition shall submit with the petition a plan for child
7 custody that sets forth a plan for joint custody or the
8 reasons why joint custody is not in the best interest of the
9 child. If the parties join in filing a joint petition, they
10 shall set forth with the petition a plan for implementation
11 of a joint custody order or the reasons why joint custody is
12 not in the best interest of the child.

13 NEW SECTION. Section 2. Mandatory mediation. In a
14 proceeding for dissolution of marriage or legal separation
15 the parties must mediate any issue of dispute between them
16 under the procedure set forth in [sections 5 6 through 8 9].

17 NEW SECTION. SECTION 3. MEDIATION FEE -- DISPOSITION
18 OF FEE. (1) EACH PARTY UNDERGOING MEDIATION OF A MARRIAGE
19 DISSOLUTION OR LEGAL SEPARATION BEFORE A COURT COMMISSIONER
20 MUST PAY A \$50 MEDIATION FEE TO THE CLERK OF THE DISTRICT
21 COURT.

22 (2) THERE IS AN ACCOUNT IN THE STATE SPECIAL REVENUE
23 FUND. FEES PAID TO A CLERK OF THE DISTRICT COURT UNDER
24 SUBSECTION (1) MUST BE DEPOSITED IN THE ACCOUNT. THE MONEY
25 IN THE ACCOUNT IS STATUTORILY APPROPRIATED, AS PROVIDED IN

1 17-7-502, TO THE SUPREME COURT TO BE USED TO OPERATE THE
 2 OFFICE OF COURT COMMISSIONER CREATED IN [SECTION 4],
 3 INCLUDING THE SALARIES OF THE COURT COMMISSIONERS AND THEIR
 4 ASSISTANTS AND ALL OTHER OPERATIONAL EXPENSES AND COSTS OF
 5 THE COURT COMMISSIONERS AND THE COMMISSIONERS' MARRIAGE
 6 DISSOLUTION AND LEGAL SEPARATION MEDIATION PROGRAM.

7 NEW SECTION. Section 4. Court commissioners --
 8 mediation. (1) There is an office of court commissioner
 9 comprised of 10 court commissioners appointed by the supreme
 10 court.

11 (2) Court commissioners are assigned to the district
 12 court judicial districts by the supreme court to act as
 13 mediators in proceedings for dissolution and legal
 14 separation. A court commissioner shall assist the parties in
 15 negotiating the terms of a settlement by:

- 16 (a) facilitating an exchange between the parties;
- 17 (b) suggesting possible solutions to disputes between
- 18 the parties; and
- 19 (c) assisting the parties to voluntarily resolve their
- 20 disputes.

21 (3) A court commissioner is an officer of the district
 22 court and works under the direction and supervision of the
 23 district court of the judicial district in which the court
 24 commissioner is sitting.

25 NEW SECTION. Section 5. Court commissioner

1 qualifications -- salary -- standards and procedures. (1) A
 2 court commissioner must have:

- 3 (a) a master's degree in social work, family
- 4 counseling, or other field that qualifies the court
- 5 commissioner to act as a mediator;
- 6 (b) training in the processes of mediation and
- 7 conciliation; and
- 8 (c) other qualifications as required by the supreme
- 9 court.

10 (2) (a) The annual salary of a court commissioner is
 11 \$35,000.

12 (b) A court commissioner may not engage in any other
 13 employment for which a salary or fee is paid.

- 14 (3) The supreme court may by rule establish:
- 15 (a) standards of practice that regulate the conduct of
- 16 court commissioners; and
- 17 (b) uniform procedures for:
- 18 (i) matters before a court commissioner; and
- 19 (ii) the filing of financial disclosure statements and
- 20 a child custody plan as provided in [section 1].

21 NEW SECTION. Section 6. Procedure before court
 22 commissioner. (1) In a proceeding for dissolution of
 23 marriage or legal separation, when the petition, financial
 24 disclosure statements, and child custody plan provided for
 25 in [section 1] are filed with the court, the clerk of court

1 shall set a time and place for the first mediation meeting
2 of the parties and the court commissioner.

3 (a) The clerk of court shall issue a summons and order
4 stating the time and place of the first meeting and
5 requiring the parties to appear. If one party has applied
6 for temporary child custody and support, the order must
7 notify the other party of the application.

8 (b) (i) The first meeting of the parties with the
9 court commissioner must be held within 10 business days of
10 the filing of the petition. Both parties must be present if
11 subject to the jurisdiction of the court.

12 (ii) At the first meeting the court commissioner shall
13 discuss conciliation, counseling, mental or physical
14 examinations or treatments, investigations, and any other
15 procedure that would assist the parties in negotiating the
16 terms of a dissolution or legal separation settlement.

17 (2) The court commissioner:

18 (a) shall consider the questions of joint temporary
19 physical child custody, temporary physical child custody,
20 visitation, and temporary child support; and

21 (b) may require the temporary payment between the
22 parties of the costs of living of either party and the
23 child.

24 (3) The court commissioner shall inquire into all
25 issues of the case. If there are issues the parties agree on

1 without offending either party's legal rights, the
2 commissioner shall make a memorandum of those issues and
3 require the parties to sign it. The court commissioner shall
4 also make a memorandum of any issues remaining unresolved.

5 (4) If there are issues remaining unresolved after the
6 first meeting, the court commissioner shall schedule:

7 (a) a second meeting to be held within 30 calendar
8 days of the first meeting; and

9 (b) other meetings thereafter as the mediator
10 considers appropriate to resolve any remaining issues.

11 NEW SECTION. Section 7. Limitations on mediation
12 proceedings. (1) Mediation proceedings are:

13 (a) held in private;

14 (b) held without a verbatim record; and

15 (c) confidential.

16 (2) Counsel are excluded from participation in the
17 mediation process.

18 (3) A court commissioner may:

19 (a) with the permission of the other party, meet
20 privately with one party; and

21 (b) consult and meet with witnesses, experts, and
22 other persons involved in the proceeding.

23 (4) All communications, verbal or written, from the
24 parties to the court commissioner are considered made to
25 such officer in official confidence. A court commissioner's

1 files and records are closed to all but the parties and the
2 court.

3 (5) A party may not disqualify a court commissioner.

4 NEW SECTION. Section 8. Court commissioner
5 recommendations to district court. (1) If at the first
6 meeting with the parties, or in the event of default 20 days
7 after service of summons, it appears to the court
8 commissioner that dissolution of the marriage or legal
9 separation is warranted and there is no significant
10 unresolved issue regarding child custody or support,
11 visitation, maintenance, or property division, the court
12 commissioner shall recommend dissolution or legal separation
13 to the district court.

14 (2) Upon completion of the mediation process, the
15 court commissioner shall submit to the district court:

16 (a) a written agreement reached by the parties through
17 mediation and signed by the parties and presented for
18 approval as a court order; and

19 (b) if any issue remains unresolved, a memorandum
20 detailing the contested issue or issues.

21 (3) If a mediated agreement breaks down before it is
22 incorporated into a court order because of the reservations
23 of either party, the district court may refer the parties to
24 the court commissioner for further mediation.

25 NEW SECTION. Section 9. Continued jurisdiction of

1 court commissioner. The court commissioner has continuing
2 jurisdiction in a proceeding for dissolution of marriage or
3 legal separation. The court commissioner shall supervise the
4 issues of child custody, visitation, and payment of child
5 support. If the district court determines that mediation of
6 any of these issues is appropriate, the court shall refer
7 the parties for further mediation.

8 NEW SECTION. Section 10. Private mediation --
9 alternative to mandatory mediation. (1) If the parties do
10 not wish to take part in the mandatory mediation procedure
11 provided by the district court, they shall initiate
12 voluntary private mediation, subject to review by the court
13 commissioner and district court.

14 (2) The mediator to whom the parties refer the
15 contested issues of the dissolution of the marriage or legal
16 separation must have substantially the same education,
17 training, and experience qualifications as a court
18 commissioner.

19 (3) Following the mediation process, the private
20 mediator shall submit to the district court the agreement,
21 memorandum, or both as provided for in [section 7 8].

22 (4) The parties shall pay the costs of private
23 mediation.

24 Section 11. Section 40-4-104, MCA, is amended to read:
25 "40-4-104. Dissolution of marriage -- legal

1 separation. (1) The district court shall enter a decree of
 2 dissolution of marriage if:

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

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

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

14 (ii) that there is serious marital discord which
 15 adversely affects the attitude of one or both of the parties
 16 towards the marriage;

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

20 (d) to the extent it has jurisdiction to do so, the
 21 court has considered, approved, or made provision for child
 22 custody, the support of any child entitled to support, the
 23 maintenance of either spouse, and the disposition of
 24 property.

25 (2) The district court may not enter a decree of

1 dissolution or legal separation until the parties have
 2 mediated any issue of dispute between them as required by
 3 [section 2].

4 ~~(2)~~(3) If a party requests a decree of legal
 5 separation rather than a decree of dissolution of marriage,
 6 the court shall grant the decree in that form unless the
 7 other party objects."

8 NEW SECTION. SECTION 12. ADDITION TO MANDATORY LIST
 9 OF CODE SECTIONS CONTAINING STATUTORY APPROPRIATIONS.
 10 SECTION 17-7-502 IS AMENDED TO ADD THE SECTION NUMBER OF
 11 [SECTION 3] TO THE LIST OF SECTIONS CONTAINED IN
 12 17-7-502(3). THE CODE COMMISSIONER SHALL CODIFY THE
 13 AMENDMENT MADE BY THIS SECTION.

14 NEW SECTION. Section 13. Codification instruction.
 15 Sections 1 and-2 THROUGH 3 are intended to be codified as an
 16 integral part of Title 40, chapter 4, part 1, and the
 17 provisions of Title 40, chapter 4, part 1, apply to sections
 18 1 and-2 THROUGH 3.

-End-

HOUSE BILL NO. 472

INTRODUCED BY DARKO, J. BROWN

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM OF COURT COMMISSIONERS TO ACT AS MEDIATORS IN PROCEEDINGS FOR MARRIAGE DISSOLUTION AND LEGAL SEPARATION; PROVIDING FOR MEDIATOR QUALIFICATIONS, SELECTION, AND SALARY; PROVIDING A PROCEDURE FOR MEDIATION; ALLOWING PRIVATE MEDIATION AS THE ALTERNATIVE TO MANDATORY MEDIATION REQUIRED IN A DISTRICT COURT PROCEEDING FOR DISSOLUTION OR LEGAL SEPARATION; PROVIDING A FUNDING MECHANISM FOR THE MEDIATOR PROGRAM; AND AMENDING SECTION SECTIONS 17-7-502 AND 40-4-104, MCA."

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

NEW SECTION. Section 1. Financial disclosure statements -- child custody plan. (1) In a proceeding for dissolution of marriage or legal separation, the parties shall file the following verified financial disclosure statements, which the court shall keep confidential:

(a) If the parties join in filing a joint petition, each shall file with the petition a complete financial disclosure statement.

(b) If one party files the petition for dissolution, that party shall file with the petition a complete financial

disclosure statement and a good faith estimate of the other party's financial resources. The answering party shall file with the response a complete financial disclosure statement.

(2) If child custody is an issue in a proceeding for dissolution or legal separation, the party filing the petition shall submit with the petition a plan for child custody that sets forth a plan for joint custody or the reasons why joint custody is not in the best interest of the child. If the parties join in filing a joint petition, they shall set forth with the petition a plan for implementation of a joint custody order or the reasons why joint custody is not in the best interest of the child.

NEW SECTION. Section 2. Mandatory mediation. In a proceeding for dissolution of marriage or legal separation the parties must mediate any issue of dispute between them under the procedure set forth in [sections 5 6 through 8 9].

NEW SECTION. SECTION 3. MEDIATION FEE -- DISPOSITION OF FEE. (1) EACH PARTY UNDERGOING MEDIATION OF A MARRIAGE DISSOLUTION OR LEGAL SEPARATION BEFORE A COURT COMMISSIONER MUST PAY A \$50 \$75 MEDIATION FEE TO THE CLERK OF THE DISTRICT COURT.

(2) THERE IS AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND. FEES PAID TO A CLERK OF THE DISTRICT COURT UNDER SUBSECTION (1) MUST BE DEPOSITED IN THE ACCOUNT. THE MONEY IN THE ACCOUNT IS STATUTORILY APPROPRIATED, AS PROVIDED IN



17-7-502, TO THE SUPREME COURT TO BE USED TO OPERATE THE OFFICE OF COURT COMMISSIONER CREATED IN [SECTION 4], INCLUDING THE SALARIES OF THE COURT COMMISSIONERS AND THEIR ASSISTANTS AND ALL OTHER OPERATIONAL EXPENSES AND COSTS OF THE COURT COMMISSIONERS AND THE COMMISSIONERS' MARRIAGE DISSOLUTION AND LEGAL SEPARATION MEDIATION PROGRAM.

NEW SECTION. Section 4. Court commissioners -- mediation. (1) There is an office of court commissioner comprised of 10 court commissioners appointed by the supreme court.

(2) Court commissioners are assigned to the district court judicial districts by the supreme court to act as mediators in proceedings for dissolution and legal separation. A court commissioner shall assist the parties in negotiating the terms of a settlement by:

(a) facilitating an exchange between the parties;

(b) suggesting possible solutions to disputes between the parties; and

(c) assisting the parties to voluntarily resolve their disputes.

(3) A court commissioner is an officer of the district court and works under the direction and supervision of the district court of the judicial district in which the court commissioner is sitting.

NEW SECTION. Section 5. Court commissioner

qualifications -- salary -- standards and procedures. (1) A court commissioner must have:

(a) a master's degree in social work, family counseling, or other field that qualifies the court commissioner to act as a mediator;

(b) training in the processes of mediation and conciliation; and

(c) other qualifications as required by the supreme court.

(2) (a) The annual salary of a court commissioner is \$35,000.

(b) A court commissioner may not engage in any other employment for which a salary or fee is paid.

(3) The supreme court may by rule establish:

(a) standards of practice that regulate the conduct of court commissioners; and

(b) uniform procedures for:

(i) matters before a court commissioner; and

(ii) the filing of financial disclosure statements and a child custody plan as provided in [section 1].

NEW SECTION. Section 6. Procedure before court commissioner. (1) In a proceeding for dissolution of marriage or legal separation, when the petition, financial disclosure statements, and child custody plan provided for in [section 1] are filed with the court, the clerk of court

1 shall set a time and place for the first mediation meeting
 2 of the parties and the court commissioner.

3 (a) The clerk of court shall issue a summons and order
 4 stating the time and place of the first meeting and
 5 requiring the parties to appear. If one party has applied
 6 for temporary child custody and support, the order must
 7 notify the other party of the application.

8 (b) (i) The first meeting of the parties with the
 9 court commissioner must be held within 10 business days of
 10 the filing of the petition. Both parties must be present if
 11 subject to the jurisdiction of the court.

12 (ii) At the first meeting the court commissioner shall
 13 discuss conciliation, counseling, mental or physical
 14 examinations or treatments, investigations, and any other
 15 procedure that would assist the parties in negotiating the
 16 terms of a dissolution or legal separation settlement.

17 (2) The court commissioner:

18 (a) shall consider the questions of joint temporary
 19 physical child custody, temporary physical child custody,
 20 visitation, and temporary child support; and

21 (b) may require the temporary payment between the
 22 parties of the costs of living of either party and the
 23 child.

24 (3) The court commissioner shall inquire into all
 25 issues of the case. If there are issues the parties agree on

1 without offending either party's legal rights, the
 2 commissioner shall make a memorandum of those issues and
 3 require the parties to sign it. The court commissioner shall
 4 also make a memorandum of any issues remaining unresolved.

5 (4) If there are issues remaining unresolved after the
 6 first meeting, the court commissioner shall schedule:

7 (a) a second meeting to be held within 30 calendar
 8 days of the first meeting; and

9 (b) other meetings thereafter as the mediator
 10 considers appropriate to resolve any remaining issues.

11 NEW SECTION. Section 7. Limitations on mediation
 12 proceedings. (1) Mediation proceedings are:

13 (a) held in private;

14 (b) held without a verbatim record; and

15 (c) confidential.

16 (2) Counsel are excluded from participation in the
 17 mediation process.

18 (3) A court commissioner may:

19 (a) with the permission of the other party, meet
 20 privately with one party; and

21 (b) consult and meet with witnesses, experts, and
 22 other persons involved in the proceeding.

23 (4) All communications, verbal or written, from the
 24 parties to the court commissioner are considered made to
 25 such officer in official confidence. A court commissioner's

1 files and records are closed to all but the parties and the
2 court.

3 (5) A party may not disqualify a court commissioner.

4 NEW SECTION. Section 8. Court commissioner
5 recommendations to district court. (1) If at the first
6 meeting with the parties, or in the event of default 20 days
7 after service of summons, it appears to the court
8 commissioner that dissolution of the marriage or legal
9 separation is warranted and there is no significant
10 unresolved issue regarding child custody or support,
11 visitation, maintenance, or property division, the court
12 commissioner shall recommend dissolution or legal separation
13 to the district court.

14 (2) Upon completion of the mediation process, the
15 court commissioner shall submit to the district court:

16 (a) a written agreement reached by the parties through
17 mediation and signed by the parties and presented for
18 approval as a court order; and

19 (b) if any issue remains unresolved, a memorandum
20 detailing the contested issue or issues.

21 (3) If a mediated agreement breaks down before it is
22 incorporated into a court order because of the reservations
23 of either party, the district court may refer the parties to
24 the court commissioner for further mediation.

25 NEW SECTION. Section 9. Continued jurisdiction of

1 court commissioner. The court commissioner has continuing
2 jurisdiction in a proceeding for dissolution of marriage or
3 legal separation. The court commissioner shall supervise the
4 issues of child custody, visitation, and payment of child
5 support. If the district court determines that mediation of
6 any of these issues is appropriate, the court shall refer
7 the parties for further mediation.

8 NEW SECTION. Section 10. Private mediation --
9 alternative to mandatory mediation. (1) If the parties do
10 not wish to take part in the mandatory mediation procedure
11 provided by the district court, they shall initiate
12 voluntary private mediation, subject to review by the court
13 commissioner and district court.

14 (2) The mediator to whom the parties refer the
15 contested issues of the dissolution of the marriage or legal
16 separation must have substantially the same education,
17 training, and experience qualifications as a court
18 commissioner.

19 (3) Following the mediation process, the private
20 mediator shall submit to the district court the agreement,
21 memorandum, or both as provided for in [section 7 8].

22 (4) The parties shall pay the costs of private
23 mediation.

24 Section 11. Section 40-4-104, MCA, is amended to read:
25 "40-4-104. Dissolution of marriage -- legal

1 separation. (1) The district court shall enter a decree of
2 dissolution of marriage if:

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

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

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

14 (ii) that there is serious marital discord which
15 adversely affects the attitude of one or both of the parties
16 towards the marriage;

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

20 (d) to the extent it has jurisdiction to do so, the
21 court has considered, approved, or made provision for child
22 custody, the support of any child entitled to support, the
23 maintenance of either spouse, and the disposition of
24 property.

25 (2) The district court may not enter a decree of

1 dissolution or legal separation until the parties have
2 mediated any issue of dispute between them as required by
3 [section 2].

4 (2)(3) If a party requests a decree of legal
5 separation rather than a decree of dissolution of marriage,
6 the court shall grant the decree in that form unless the
7 other party objects."

8 NEW SECTION. SECTION 12. ADDITION TO MANDATORY LIST
9 OF CODE SECTIONS CONTAINING STATUTORY APPROPRIATIONS.
10 SECTION 17-7-502 IS AMENDED TO ADD THE SECTION NUMBER OF
11 [SECTION 3] TO THE LIST OF SECTIONS CONTAINED IN
12 17-7-502(3). THE CODE COMMISSIONER SHALL CODIFY THE
13 AMENDMENT MADE BY THIS SECTION.

14 NEW SECTION. Section 13. Codification instruction.
15 Sections 1 and-2 THROUGH 3 are intended to be codified as an
16 integral part of Title 40, chapter 4, part 1, and the
17 provisions of Title 40, chapter 4, part 1, apply to sections
18 1 and-2 THROUGH 3.

-End-