

SENATE BILL 10

Introduced by Halligan

1/02	Introduced
1/02	Referred to Judiciary
1/12	Hearing
1/16	Fiscal Note Requested
1/23	Fiscal Note Received
1/23	Fiscal Note Printed
	Died in Committee

1                    SENATE   BILL NO. 10  
2   INTRODUCED BY   HALLIGAN  
3  
4   A BILL FOR AN ACT ENTITLED:   "AN ACT TO ESTABLISH A  
5   PROCEDURE FOR SUMMARY DISSOLUTION OF MARRIAGE; AND PROVIDING  
6   AN IMMEDIATE EFFECTIVE DATE."  
7  
8   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9  
10        **Section 1. Summary dissolution -- conditions necessary**  
11   at commencement of proceedings. A marriage may be dissolved  
12   by the summary dissolution procedure specified in [this act]  
13   if all of the following conditions exist on the date the  
14   proceeding is commenced:  
15        (1) Each party has met the requirements of 40-4-104  
16   with regard to dissolution of marriage.  
17        (2) Irreconcilable differences have caused the  
18   irretrievable breakdown of the marriage, and both parties  
19   agree that the marriage should be dissolved.  
20        (3) There are no children from the relationship born  
21   before or during the marriage or adopted by the parties  
22   during the marriage, and the wife, to her knowledge, is not  
23   pregnant.  
24        (4) (a) Except as provided in subsection (4)(b),  
25   neither party has any interest in real property.  
26        (b) The limitation of subsection (4)(a) does not apply

1   to the lease of a residence occupied by either party if the  
2   lease does not include an option to purchase and if it  
3   terminates within 1 year from the date of the filing of the  
4   petition.  
5        (5) There are no unpaid obligations in excess of  
6   \$4,000 incurred by either or both of the parties after the  
7   date of their marriage, excluding the amount of any unpaid  
8   obligation with respect to an automobile.  
9        (6) The total fair market value of property assets,  
10   excluding all encumbrances and automobiles, is less than  
11   \$13,000, and neither party has separate property assets,  
12   excluding all encumbrances and automobiles, in excess of  
13   \$13,000.  
14        (7) The parties have executed an agreement setting  
15   forth the division of assets and the assumption of  
16   liabilities and have duly executed any documents, title  
17   certificates, bills of sale, or other evidence of transfer  
18   necessary to effectuate the agreement.  
19        (8) The parties waive any rights to maintenance.  
20        (9) The parties, upon entry of final judgment of  
21   dissolution of marriage, irrevocably waive their respective  
22   rights to appeal the terms of the dissolution and their  
23   rights to move for a new trial on the dissolution.  
24        (10) The parties have read and state that they  
25   understand the contents of the summary dissolution brochure

1 provided for in [section 7].

2 (11) The parties desire that the court dissolve the  
3 marriage.

4 **Section 2. Joint petition -- filing -- form --**  
5 **contents.** (1) A proceeding for summary dissolution of  
6 marriage is commenced by filing in the district court a  
7 joint petition in the form prescribed by the court.

8 (2) The petition must:

9 (a) be signed under oath by both parties;

10 (b) state that, as of the date of the filing of the  
11 joint petition, each condition set forth in [section 1] has  
12 been met;

13 (c) state the mailing address of both parties; and

14 (d) state whether or not the wife elects to have her  
15 maiden or former name restored and, if so, state the name to  
16 be restored.

17 **Section 3. Revocation of joint petition -- termination**  
18 **of proceeding -- notice -- copy to other party.** (1) At any  
19 time prior to the entry of final judgment, either party to  
20 the marriage may revoke the joint petition and thereby  
21 terminate the summary dissolution proceeding filed pursuant  
22 to [this act].

23 (2) The revocation is effected by filing with the  
24 clerk of the court in which the proceeding was commenced a  
25 notice of revocation in the form and content prescribed by

1 the district court.

2 (3) The revoking party shall send a copy of the notice  
3 of revocation to the last-known address of the other party  
4 by first-class mail, postage prepaid.

5 **Section 4. Final judgment -- entry -- effect --**  
6 **notice.** After 90 days from the date of the filing of the  
7 joint petition for summary dissolution, the district court  
8 shall enter the final judgment dissolving the marriage.  
9 Entry of final judgment restores each party to the status of  
10 a single person and permits either to marry. The clerk  
11 shall send a notice of entry of final judgment to the  
12 last-known address of each party.

13 **Section 5. Final judgment as final adjudication of**  
14 **rights and obligations.** Except as provided in [section 6],  
15 entry of final judgment constitutes a final adjudication of  
16 the rights and obligations of the parties with respect to  
17 the status of the marriage and property rights and  
18 constitutes a waiver of their respective rights to  
19 maintenance, rights to appeal the terms of the dissolution,  
20 and rights to a new trial.

21 **Section 6. Actions to set aside final judgment.** (1) A  
22 final judgment made pursuant to [section 4] does not  
23 prejudice or bar the rights of either party to institute an  
24 action to set aside the final judgment for fraud, duress,  
25 accident, mistake, or other grounds recognized at law or in

1 equity or to make a motion pursuant to the Montana Rules of  
2 Civil Procedure.

3 (2) The district court shall set aside a final  
4 judgment made pursuant to [section 4] regarding all matters  
5 except the status of the marriage upon proof that the  
6 parties did not meet the requirements of [section 1] on the  
7 date the petition was filed.

8 **Section 7. Brochure to describe proceedings --**  
9 **availability -- distribution -- contents and form.** (1) Each  
10 district court shall make available a brochure, printed and  
11 distributed by the attorney general, describing the  
12 requirements, nature, and effect of proceedings under [this  
13 act].

14 (2) (a) In nontechnical language, the brochure must:

15 (i) state that it is in the best interests of the  
16 parties to consult an attorney regarding the dissolution of  
17 their marriage. The services of an attorney may be obtained  
18 through lawyer referral services, group or prepaid legal  
19 services, or legal aid organizations.

20 (ii) state that the brochure is not intended as a guide  
21 for self-representation in proceedings under [this act] and  
22 should not be relied upon exclusively by the parties;

23 (iii) provide a concise summary of the provisions of  
24 [this act] and 40-4-104;

25 (iv) describe the nature of services of the

1 conciliation court, if available;

2 (v) state that under the provisions of [this act],  
3 neither party to the marriage may obtain maintenance from  
4 the other;

5 (vi) state in boldface type that, upon entry of final  
6 judgment, the parties' rights and obligations with respect  
7 to the marriage, including property and maintenance rights,  
8 are permanently adjudicated without right of appeal but that  
9 neither party is barred from instituting an action to set  
10 aside the final judgment for fraud, duress, accident,  
11 mistake, or other grounds recognized at law or in equity or  
12 to make a motion pursuant to the Montana Rules of Civil  
13 Procedure; and

14 (vii) state that until final judgment is entered, the  
15 parties retain the status of married persons and cannot  
16 remarry.

17 (b) The brochure may include other matters the  
18 attorney general considers appropriate.

19 **Section 8. Fee.** A \$50 filing fee must be paid to the  
20 clerk of the district court when the joint petition is  
21 filed. This fee includes costs for the filing of the joint  
22 petition and entry of the final decree.

23 **Section 9. Codification instruction.** [Sections 1  
24 through 8] are intended to be codified as an integral part  
25 of Title 40, chapter 4, part 1, and the provisions of Title

LC 0010/01

- 1 40, chapter 4, part 1, apply to [sections 1 through 8].
- 2 **Section 10. Effective date.** [This act] is effective on
- 3 passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB010, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to establish a procedure for summary dissolution of marriage; and providing an immediate effective date.

ASSUMPTIONS:

1. There were 3,687 divorces in 1988 for an eleven month period, January through November.
2. The filing fee for summary dissolution of marriage would be \$50.

FISCAL IMPACT:

Impossible to determine the fiscal impact. It is not known how many of the dissolution of marriages filed each year would meet the criteria of SB010. There would be a decrease in revenues because of the filing fee reduction from \$100 to \$50.

TECHNICAL NOTES:

Section 25-1-201, MCA, sets the filing fee for dissolution of marriage at \$100 and distributes the revenue as follows:

\$75 State General Fund  
\$ 5 Children's Trust Fund Account  
\$20 County General Fund

*Ray Shackelford*

*1/21/89*

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE

*Mike Halligan*

*7-23-89*

MIKE HALLIGAN, PRIMARY SPONSOR

DATE

Fiscal Note for SB010, as introduced

**SB 10**