

House BILL NO. 573

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INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING THE DISSOLUTION OF MARRIAGE; DEFINING "ADULTERY", "IRRETRIEVABLE BREAKDOWN", "BEST INTEREST OF THE CHILD", "FAULT", AND "SERIOUS MARITAL DISCORD"; REQUIRING THE BEST INTEREST OF THE CHILD TO BE THE PRIMARY CONSIDERATION IN PROCEEDINGS; REQUIRING FAULT TO BE CONSIDERED IN PROPERTY AND MAINTENANCE PROCEEDINGS; AND AMENDING SECTIONS 40-4-101, 40-4-104, 40-4-105, 40-4-107, 40-4-121, 40-4-202, 40-4-203, 40-4-204, AND 40-4-212, MCA."

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

**Section 1.** Section 40-4-101, MCA, is amended to read:

**"40-4-101. Purposes -- findings -- definitions.** (1) It is the policy of the state to recognize that the institution of marriage is the basic unit of societal stability. The institution of marriage is basic to morality and civilization and promotes loyalty, commitment, trust, mutual support, faithfulness, self-sacrifice, adherence to duty, hope, and love. The legislature finds that the family is the unit of self-government that is best able to teach and practice the virtues that benefit not only the members of the family, but also all citizens of this state and this country.

(2) This chapter shall must be liberally construed and applied to promote its underlying purposes, which are to:

(1)(a) strengthen and preserve the integrity of marriage and safeguard family relationships;

(2)(b) promote the amicable settlement of disputes that have arisen between parties to a marriage while recognizing the legal and moral duties owed to each other by the parties to the marriage;

(3)(c) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4)(d) make reasonable provision for spouse and minor children during and after litigation; and

(e) promote the interests of Montana citizens and families by reducing social and human costs generated by the breakdown of families; and

(5)(f) make the law of legal dissolution of marriage effective for dealing with the realities of

1 matrimonial experience by making irremediable breakdown of the marriage relationship the sole basis for  
2 its dissolution.

3 (3) As used in this chapter, the following definitions apply:

4 (a) "Adultery" means sexual intercourse between a married person and a person who is not the  
5 married person's spouse.

6 (b) (i) "Best interest of the child" means the highest concerns, advantages, and benefits necessary  
7 for a child's daily existence, well-being, and growth. The best interest of the child may consider monetary  
8 matters, but is primarily concerned with the moral welfare of the child.

9 (ii) The term does not include the mere prospect that the child may have a more luxurious life with  
10 one parent than with the other parent.

11 (c) "Fault" means:

12 (i) adultery subsequent to the date of marriage;

13 (ii) desertion, which may be established by incarceration;

14 (iii) spousal assault, child abuse, which does not include reasonable corporal punishment, or other  
15 physical abuse; or

16 (iv) habitual use or abuse of alcohol or a controlled substance.

17 (d) "Irremediable breakdown" means:

18 (i) a mutual agreement by the parties that there is no reasonable likelihood that the marriage can  
19 be preserved; or

20 (ii) the allegations of fault raised in the petition or response have been established.

21 (e) "Serious marital discord" means any allegation of fault."

22

23 **Section 2.** Section 40-4-104, MCA, is amended to read:

24 **"40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree  
25 of dissolution of marriage if:

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

29 (b) the court finds that the marriage is irremediably broken, which findings shall must be supported  
30 by clear and convincing evidence:

1 (i) that the parties have lived separate and apart by mutual agreement for a period of more than  
2 180 days next preceding the commencement of this proceeding; or

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

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

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

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

12  
13 **Section 3.** Section 40-4-105, MCA, is amended to read:

14 "**40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The  
15 verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the  
16 marriage is irretrievably broken and ~~shall~~ must set forth:

17 (a) the age, occupation, and residence of each party and ~~his~~ the length of each party's residence  
18 in this state;

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

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

22 (i) the parties have lived separate and apart pursuant to mutual agreement for a period of more than  
23 180 days ~~next~~ preceding the commencement of this proceeding; or

24 (ii) there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the  
25 parties ~~towards~~ toward the marriage, and there is no reasonable prospect of reconciliation;

26 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is  
27 pregnant;

28 (e) any arrangements as to support, custody, and visitation of the children and maintenance of a  
29 spouse; and

30 (f) the relief sought.

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

2 (3) If a proceeding is commenced by one of the parties, the other party must be served in the  
3 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service  
4 file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

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

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

9

10 **Section 4.** Section 40-4-107, MCA, is amended to read:

11 **"40-4-107. Irretrievable breakdown.** (1) If both of the parties by petition or otherwise have stated  
12 under oath or affirmation that the marriage is irretrievably broken ~~or one of the parties has so stated and~~  
13 ~~the other has not denied it,~~ the court, after hearing, shall make a finding as to whether the marriage is  
14 irretrievably broken.

15 (2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably  
16 broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the  
17 petition and the prospect of reconciliation, and shall:

18 (a) make a finding as to whether the marriage is irretrievably broken; or

19 (b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon  
20 thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they  
21 seek counseling. The court at the request of either party shall, or on its own motion may, order a  
22 conciliation conference. At the adjourned hearing, the court shall make a finding as to whether the marriage  
23 is irretrievably broken.

24 (3) A finding of irretrievable breakdown is a determination, supported by clear and convincing  
25 evidence, that there is no reasonable prospect of reconciliation. If a finding of irretrievable breakdown is  
26 based on fault, the acts of one party do not negate the acts of the other party, but the court may consider  
27 the acts of both parties in determining whether there is an irretrievable breakdown in the marriage. The  
28 court shall consider the best interest of the child of the marriage as the primary consideration in making a  
29 determination under this section.

30 (4) ~~Nothing in this~~ This section ~~shall~~ may not be interpreted to affect the provisions of chapter 3

1 of this title, known as the Montana Conciliation Law."

2

3 **Section 5.** Section 40-4-121, MCA, is amended to read:

4 **"40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of  
5 marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support  
6 following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse,  
7 either party may move for temporary maintenance or temporary support of a child of the marriage entitled  
8 to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion  
9 and the amounts requested.

10 (2) As a part of a motion for temporary maintenance or support or by independent motion  
11 accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the  
12 following relief:

13 (a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of  
14 any property, except in the usual course of business or for the necessities of life, and, if so restrained,  
15 requiring the person to notify the moving party of any proposed extraordinary expenditures made after the  
16 order is issued;

17 (b) enjoining a party from molesting or disturbing the peace of the other party or of any family  
18 member or from stalking, as defined in 45-5-220;

19 (c) excluding a party from the family home or from the home of the other party upon a showing  
20 that physical or emotional harm would otherwise result;

21 (d) enjoining a party from removing a child from the jurisdiction of the court;

22 (e) ordering a party to complete counseling, including alcohol or chemical dependency counseling  
23 or treatment;

24 (f) providing other injunctive relief proper in the circumstances; and

25 (g) providing additional relief available under Title 40, chapter 15.

26 (3) A person may seek the relief provided for in subsection (2) without filing a petition under this  
27 part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title  
28 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period  
29 of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and  
30 40-4-208, as appropriate.

1 (4) The court may issue a temporary restraining order for a period not to exceed 20 days without  
 2 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that  
 3 irreparable injury will result to the moving party if no order is issued until the time for responding has  
 4 elapsed.

5 (5) A response may be filed within 20 days after service of notice of motion or at the time specified  
 6 in the temporary restraining order.

7 (6) At the time of the hearing, the court shall determine whether good cause exists for the  
 8 injunction to continue for 1 year.

9 (7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court  
 10 may issue a temporary injunction and an order for temporary maintenance or support in amounts and on  
 11 terms just and proper in the circumstance. The court shall consider the best interest of the child of the  
 12 marriage as the primary consideration in making a determination under this section.

13 (8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

14 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or  
 15 modification of a final decree under 40-4-208;

16 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

17 (c) when issued under this section, must conspicuously bear the following: "Violation of this order  
 18 is a criminal offense under 45-5-220 or 45-5-626."

19 (9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence  
 20 must be withheld except by order of the court for good cause shown."

21  
 22 **Section 6.** Section 40-4-202, MCA, is amended to read:

23 **"40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation,  
 24 or division of property following a decree of dissolution of marriage or legal separation by a court ~~which~~  
 25 that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the  
 26 court, ~~without regard to marital misconduct~~ taking into consideration the fault attributable to a party, shall,  
 27 and in a proceeding for legal separation may, finally equitably apportion between the parties the property  
 28 and assets belonging to either or both, however and whenever acquired and whether the title ~~thereto~~ to  
 29 the property and assets is in the name of the husband or wife or both. In making apportionment, the court  
 30 shall consider the duration of the marriage and prior marriage of either party; the age, health, station,

1 occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs  
2 of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to  
3 maintenance; the fault attributable to each party; and the opportunity of each for future acquisition of  
4 capital assets and income. The court shall also consider the contribution or dissipation of value of the  
5 respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing  
6 property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property  
7 acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift,  
8 bequest, devise, or descent; the increased value of property acquired prior to marriage; and property  
9 acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the  
10 other spouse to the marriage, including:

- 11 (a) the nonmonetary contribution of a homemaker;
- 12 (b) the extent to which such contributions have facilitated the maintenance of this property; and
- 13 (c) whether or not the property division serves as an alternative to maintenance arrangements.

14 (2) In a proceeding, the court may protect and promote the best interests of the children by setting  
15 aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the  
16 support, maintenance, education, and general welfare of any minor, dependent, or incompetent children  
17 of the parties.

18 (3) Each spouse is considered to have a common ownership in marital property that vests  
19 immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the  
20 vested interest must be determined and made final by the court pursuant to this section.

21 (4) The division and apportionment of marital property caused by or incident to a decree of  
22 dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or  
23 disposition of or dealing in property but is a division of the common ownership of the parties for purposes  
24 of:

- 25 (a) the property laws of this state;
  - 26 (b) the income tax laws of this state; and
  - 27 (c) the federal income tax laws.
- 28 (5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.

29 (6) If fault is only attributable to one party to the proceeding, the court shall reduce the share of  
30 the marital estate received by that party by an amount considered appropriate under the circumstances.

1 The reduction must be at least 20% of the marital estate."

2

3 **Section 7.** Section 40-4-203, MCA, is amended to read:

4 **"40-4-203. Maintenance.** (1) In a proceeding for dissolution of marriage or legal separation or a  
5 proceeding for maintenance following dissolution of the marriage by a court ~~which~~ that lacked personal  
6 jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it  
7 finds that the spouse seeking maintenance:

8 (a) lacks sufficient property to provide for ~~his~~ that spouse's reasonable needs; ~~and~~

9 (b) is unable to provide support ~~himself~~ through appropriate employment or is the custodian of a  
10 child whose condition or circumstances make it appropriate that the custodian not be required to seek  
11 employment outside the home; and

12 (c) was not at fault.

13 (2) The maintenance order ~~shall~~ must be in ~~such~~ amounts and for ~~such~~ periods of time as the court  
14 ~~deems~~ considers just, ~~without regard to marital misconduct, and~~ after considering all relevant facts,  
15 including:

16 (a) the financial resources of the party seeking maintenance, including marital property apportioned  
17 to ~~him~~ the party, and ~~his~~ the party's ability to meet ~~his~~ the party's needs independently, including the  
18 extent to which a provision for support of a child living with the party includes a sum for that party as  
19 custodian;

20 (b) the time necessary to acquire sufficient education or training to enable the party seeking  
21 maintenance to find appropriate employment;

22 (c) the standard of living established during the marriage;

23 (d) the duration of the marriage;

24 (e) the age and the physical and emotional condition of the spouse seeking maintenance; and

25 (f) the ability of the spouse from whom maintenance is sought to meet ~~his~~ that spouse's own  
26 needs while meeting those of the spouse seeking maintenance."

27

28 **Section 8.** Section 40-4-204, MCA, is amended to read:

29 **"40-4-204. Child support -- orders to address health insurance -- withholding of child support.** (1)

30 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall



1 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary  
2 for the child's support, ~~without regard to marital misconduct.~~

3 (2) The court shall consider all relevant factors, including:

4 (a) the financial resources of the child;

5 (b) the financial resources of the custodial parent;

6 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

7 (d) the physical and emotional condition of the child and the child's educational and medical needs;

8 (e) the financial resources and needs of the noncustodial parent;

9 (f) the age of the child;

10 (g) the cost of day care for the child;

11 (h) any custody arrangement that is ordered or decided upon; ~~and~~

12 (i) the needs of any person, other than the child, whom either parent is legally obligated to support;

13 (j) the best interest of the child; and

14 (k) any fault attributable to a parent.

15 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall  
16 determine the child support obligation by applying the standards in this section and the uniform child  
17 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.  
18 The guidelines must be used in all cases, including cases in which the order is entered upon the default of  
19 a party and those in which the parties have entered into an agreement regarding the support amount. A  
20 verified representation of the defaulting parent's income, based on the best information available, may be  
21 used when a parent fails to provide financial information for use in applying the guidelines. The amount  
22 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the  
23 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust  
24 to the child or to any of the parties or is inappropriate in that particular case.

25 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall  
26 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have  
27 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the  
28 guideline amount must include a statement of the amount of support that would have ordinarily been  
29 ordered under the guidelines.

30 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for

1 the child's support, the court shall state its reasons for not ordering child support.

2 (4) Each temporary or final district court judgment, decree, or order establishing a child support  
3 obligation under this title and each modification of a final order for child support must include a medical  
4 support order as provided for in Title 40, chapter 5, part 8.

5 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception  
6 is included in the support order, a support obligation established by judgment, decree, or order under this  
7 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208  
8 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part  
9 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides  
10 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the  
11 payment of support without need for an amendment to the support order or for any further action by the  
12 court.

13 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order  
14 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's  
15 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to  
16 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

17 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,  
18 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's  
19 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this  
20 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's  
21 monthly support obligation if the excess support is a result of annualized withholding.

22 (6) For the purposes of income withholding under subsection (5), each district court judgment,  
23 decree, or order that establishes or modifies a child support obligation must include a provision requiring  
24 the parent obligated to pay support to inform the court and, if the department of public health and human  
25 services is providing services under Title IV-D of the Social Security Act for the enforcement of the  
26 judgment, decree, or order, the department, of the following:

27 (a) the name and address of the parent's current employer;

28 (b) whether the parent has access to health insurance through an employer or other group; and

29 (c) if insurance coverage is available, the health insurance policy information.

30 (7) Each district court judgment, decree, or order establishing a final child support obligation under

1 this part and each modification of a final order for child support must contain a statement that the order  
2 is subject to review and modification by the department of public health and human services upon the  
3 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing  
4 services under Title IV-D of the Social Security Act for the enforcement of the order.

5 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support  
6 obligation must include a provision requiring the child support to be paid to:

7 (i) the legal custodian of the minor child;

8 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child  
9 under a legal assignment of rights; or

10 (B) the court for the benefit of the minor child;

11 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal  
12 custodian; or

13 (iv) any assignee or other person, organization, or agency authorized to receive or collect child  
14 support.

15 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject  
16 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order  
17 or for any further action by the court."

18

19 **Section 9.** Section 40-4-212, MCA, is amended to read:

20 **"40-4-212. Best interest of child.** (1) The court shall determine custody in accordance with the  
21 best interest of the child. The court shall consider all relevant factors, including but not limited to:

22 (a) the wishes of the child's parent or parents as to custody;

23 (b) the wishes of the child as to a custodian;

24 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings  
25 and with any other person who may significantly affect the child's best interest;

26 (d) the child's adjustment to home, school, and community;

27 (e) the mental and physical health of all individuals involved;

28 (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

29 and

30 (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

1 and

2 (h) any fault of a parent.

3 (2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the  
4 child's parent or parents to prove the factors set forth in 40-4-219.

5 (3) The following are rebuttable presumptions and apply unless contrary to the best interest of the  
6 child:

7 (a) Custody should be granted to the parent who has provided most of the primary care during the  
8 child's life.

9 (b) A custody action brought by a parent within 6 months after a child support action against that  
10 parent is vexatious.

11 (4) The following are rebuttable presumptions:

12 (a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best  
13 interest of the child.

14 (b) Failure to pay child support that the person is able to pay is not in the best interest of a child  
15 in need of the child support."

16

17 NEW SECTION. Section 10. Saving clause. [This act] does not affect rights and duties that  
18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
19 act].

20

-END-

1 HOUSE BILL NO. 573

2 INTRODUCED BY JORE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING THE DISSOLUTION OF  
5 MARRIAGE; DEFINING "ADULTERY", "IRRETRIEVABLE BREAKDOWN", "BEST INTEREST OF THE CHILD",  
6 "FAULT", AND "SERIOUS MARITAL DISCORD"; REQUIRING THE BEST INTEREST OF THE CHILD TO BE  
7 THE PRIMARY CONSIDERATION IN PROCEEDINGS; REQUIRING FAULT TO BE CONSIDERED IN PROPERTY  
8 AND MAINTENANCE PROCEEDINGS; AND AMENDING SECTIONS 40-4-101, 40-4-104, 40-4-105,  
9 40-4-107, 40-4-121, 40-4-202, 40-4-203, 40-4-204, AND 40-4-212, MCA."

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

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13 **Section 1.** Section 40-4-101, MCA, is amended to read:

14 **"40-4-101. Purposes -- findings -- definitions.** (1) It is the policy of the state to recognize that  
15 the institution of marriage is the basic unit of societal stability. The institution of marriage is basic to  
16 morality and civilization and promotes loyalty, commitment, trust, mutual support, faithfulness,  
17 self-sacrifice, adherence to duty, hope, and love. The legislature finds that the family is the unit of  
18 self-government that is best able to teach and practice the virtues that benefit not only the members of the  
19 family, but also all citizens of this state and this country.

20 (2) This chapter shall must be liberally construed and applied to promote its underlying purposes,  
21 which are to:

22 (1)(a) strengthen and preserve the integrity of marriage and safeguard family relationships;

23 (2)(b) promote the amicable settlement of disputes that have arisen between parties to a marriage  
24 while recognizing the legal and moral duties owed to each other by the parties to the marriage;

25 (3)(c) mitigate the potential harm to the spouses and their children caused by the process of legal  
26 dissolution of marriage;

27 (4)(d) make reasonable provision for spouse and minor children during and after litigation; and

28 (e) promote the interests of Montana citizens and families by reducing social and human costs  
29 generated by the breakdown of families; and

30 (5)(f) make the law of legal dissolution of marriage effective for dealing with the realities of

1 matrimonial experience by making irremediable breakdown of the marriage relationship the sole basis for  
2 its dissolution.

3 (3) As used in this chapter, the following definitions apply:

4 (a) "Adultery" means sexual intercourse between a married person and a person who is not the  
5 married person's spouse.

6 (b) (i) "Best interest of the child" means the highest concerns, advantages, and benefits necessary  
7 for a child's daily existence, well-being, and growth. The best interest of the child may consider monetary  
8 matters, but is primarily concerned with AND the moral welfare of the child.

9 (ii) The term does not include the mere prospect that the child may have a more luxurious life with  
10 one parent than with the other parent.

11 (c) "Fault" means:

12 (i) adultery subsequent to the date of marriage;

13 (ii) desertion, which may be established by incarceration;

14 (iii) spousal assault, EITHER PHYSICAL OR EMOTIONAL, OTHER PHYSICAL ABUSE, OR child abuse,  
15 which does not include reasonable corporal punishment, or other physical abuse; or

16 (iv) habitual use or abuse of alcohol or a controlled substance.

17 (d) "Irremediable breakdown" means:

18 (i) a mutual agreement by the parties that there is no reasonable likelihood that the marriage can  
19 be preserved; or

20 (ii) the allegations of fault raised in the petition or response have been established.

21 (e) "Serious marital discord" means any allegation of fault."

22

23 **Section 2.** Section 40-4-104, MCA, is amended to read:

24 **"40-4-104. Dissolution of marriage -- legal separation.** (1) The district court shall enter a decree  
25 of dissolution of marriage if:

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

29 (b) the court finds that the marriage is irremediably broken, which findings ~~shall~~ **must** be supported  
30 by ~~clear and convincing~~ evidence:

1 (i) that the parties have lived separate and apart by mutual agreement for a period of more than  
2 180 days next preceding the commencement of this proceeding; or

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

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

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

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

12

13 **Section 3.** Section 40-4-105, MCA, is amended to read:

14 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The  
15 verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ must allege that the  
16 marriage is irretrievably broken and ~~shall~~ must set forth:

17 (a) the age, occupation, and residence of each party and ~~his~~ the length of each party's residence  
18 in this state;

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

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

22 (i) the parties have lived separate and apart pursuant to mutual agreement for a period of more than  
23 180 days ~~next~~ preceding the commencement of this proceeding; or

24 (ii) there is serious marital discord ~~which~~ that adversely affects the attitude of one or both of the  
25 parties ~~towards~~ toward the marriage, and there is no reasonable prospect of reconciliation;

26 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is  
27 pregnant;

28 (e) any arrangements as to support, custody, and visitation of the children and maintenance of a  
29 spouse; and

30 (f) the relief sought.

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

2 (3) If a proceeding is commenced by one of the parties, the other party must be served in the  
3 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service  
4 file a verified response. ~~No~~ A decree may not be entered until 20 days after the date of service.

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

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

10

11 **Section 4.** Section 40-4-107, MCA, is amended to read:

12 **"40-4-107. Irretrievable breakdown.** (1) If both of the parties by petition or otherwise have stated  
13 under oath or affirmation that the marriage is irretrievably broken ~~or one of the parties has so stated and~~  
14 ~~the other has not denied it,~~ the court, after hearing, shall make a finding as to whether the marriage is  
15 irretrievably broken.

16 (2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably  
17 broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the  
18 petition and the prospect of reconciliation, and shall:

19 (a) make a finding as to whether the marriage is irretrievably broken; or

20 (b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon  
21 thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they  
22 seek counseling. The court at the request of either party shall, or on its own motion may, order a  
23 conciliation conference. At the adjourned hearing, the court shall make a finding as to whether the marriage  
24 is irretrievably broken.

25 (3) A finding of irretrievable breakdown is a determination, ~~supported by clear and convincing~~  
26 ~~evidence,~~ that there is no reasonable prospect of reconciliation. If a finding of irretrievable breakdown is  
27 based on fault, the acts of one party do not negate the acts of the other party, but the court may consider  
28 the acts of both parties in determining whether there is an irretrievable breakdown in the marriage. The  
29 court shall consider the best interest of the child of the marriage as the primary consideration in making a  
30 determination under this section.



1           (4) ~~Nothing in this~~ This section ~~shall~~ may not be interpreted to affect the provisions of chapter 3  
2 of this title, known as the Montana Conciliation Law."

3  
4           **Section 5.** Section 40-4-121, MCA, is amended to read:

5           **"40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of  
6 marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support  
7 following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse,  
8 either party may move for temporary maintenance or temporary support of a child of the marriage entitled  
9 to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion  
10 and the amounts requested.

11           (2) As a part of a motion for temporary maintenance or support or by independent motion  
12 accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the  
13 following relief:

14           (a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of  
15 any property, except in the usual course of business or for the necessities of life, and, if so restrained,  
16 requiring the person to notify the moving party of any proposed extraordinary expenditures made after the  
17 order is issued;

18           (b) enjoining a party from molesting or disturbing the peace of the other party or of any family  
19 member or from stalking, as defined in 45-5-220;

20           (c) excluding a party from the family home or from the home of the other party upon a showing  
21 that physical or emotional harm would otherwise result;

22           (d) enjoining a party from removing a child from the jurisdiction of the court;

23           (e) ordering a party to complete counseling, including alcohol or chemical dependency counseling  
24 or treatment;

25           (f) providing other injunctive relief proper in the circumstances; and

26           (g) providing additional relief available under Title 40, chapter 15.

27           (3) A person may seek the relief provided for in subsection (2) without filing a petition under this  
28 part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title  
29 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period  
30 of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and

1 40-4-208, as appropriate.

2 (4) The court may issue a temporary restraining order for a period not to exceed 20 days without  
3 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that  
4 irreparable injury will result to the moving party if no order is issued until the time for responding has  
5 elapsed.

6 (5) A response may be filed within 20 days after service of notice of motion or at the time specified  
7 in the temporary restraining order.

8 (6) At the time of the hearing, the court shall determine whether good cause exists for the  
9 injunction to continue for 1 year.

10 (7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court  
11 may issue a temporary injunction and an order for temporary maintenance or support in amounts and on  
12 terms just and proper in the circumstance. The court shall consider the best interest of the child of the  
13 marriage as the primary consideration in making a determination under this section.

14 (8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

15 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or  
16 modification of a final decree under 40-4-208;

17 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

18 (c) when issued under this section, must conspicuously bear the following: "Violation of this order  
19 is a criminal offense under 45-5-220 or 45-5-626."

20 (9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence  
21 must be withheld except by order of the court for good cause shown."

22

23 **Section 6.** Section 40-4-202, MCA, is amended to read:

24 **"40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation,  
25 or division of property following a decree of dissolution of marriage or legal separation by a court ~~which~~  
26 that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the  
27 court, without regard to marital misconduct taking into consideration the fault attributable to a party, shall,  
28 and in a proceeding for legal separation may, finally equitably apportion between the parties the property  
29 and assets belonging to either or both, however and whenever acquired and whether the title ~~thereto~~ to  
30 the property and assets is in the name of the husband or wife or both. In making apportionment, the court

1 shall consider the duration of the marriage and prior marriage of either party; the age, health, station,  
2 occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs  
3 of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to  
4 maintenance; the fault attributable to each party; and the opportunity of each for future acquisition of  
5 capital assets and income. The court shall also consider the contribution or dissipation of value of the  
6 respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing  
7 property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property  
8 acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift,  
9 bequest, devise, or descent; the increased value of property acquired prior to marriage; and property  
10 acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the  
11 other spouse to the marriage, including:

- 12 (a) the nonmonetary contribution of a homemaker;  
13 (b) the extent to which such contributions have facilitated the maintenance of this property; and  
14 (c) whether or not the property division serves as an alternative to maintenance arrangements.

15 (2) In a proceeding, the court may protect and promote the best interests of the children by setting  
16 aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the  
17 support, maintenance, education, and general welfare of any minor, dependent, or incompetent children  
18 of the parties.

19 (3) Each spouse is considered to have a common ownership in marital property that vests  
20 immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the  
21 vested interest must be determined and made final by the court pursuant to this section.

22 (4) The division and apportionment of marital property caused by or incident to a decree of  
23 dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or  
24 disposition of or dealing in property but is a division of the common ownership of the parties for purposes  
25 of:

- 26 (a) the property laws of this state;  
27 (b) the income tax laws of this state; and  
28 (c) the federal income tax laws.  
29 (5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.  
30 (6) If fault is only attributable to one party to the proceeding, the court shall reduce the share of

1 the marital estate received by that party by an amount considered appropriate under the circumstances.  
 2 The reduction must be at least 20% of the marital estate."

3

4 **Section 7.** Section 40-4-203, MCA, is amended to read:

5 "40-4-203. **Maintenance.** (1) In a proceeding for dissolution of marriage or legal separation or a  
 6 proceeding for maintenance following dissolution of the marriage by a court ~~which~~ that lacked personal  
 7 jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it  
 8 finds that the spouse seeking maintenance:

9 (a) lacks sufficient property to provide for ~~his~~ that spouse's reasonable needs; ~~and~~

10 (b) is unable to provide support ~~himself~~ through appropriate employment or is the custodian of a  
 11 child whose condition or circumstances make it appropriate that the custodian not be required to seek  
 12 employment outside the home; and

13 (c) was not at fault.

14 (2) The maintenance order ~~shall~~ must be in ~~such~~ amounts and for ~~such~~ periods of time as the court  
 15 ~~deems~~ considers just, ~~without regard to marital misconduct, and~~ after considering all relevant facts,  
 16 including:

17 (a) the financial resources of the party seeking maintenance, including marital property apportioned  
 18 to ~~him~~ the party, and ~~his~~ the party's ability to meet ~~his~~ the party's needs independently, including the  
 19 extent to which a provision for support of a child living with the party includes a sum for that party as  
 20 custodian;

21 (b) the time necessary to acquire sufficient education or training to enable the party seeking  
 22 maintenance to find appropriate employment;

23 (c) the standard of living established during the marriage;

24 (d) the duration of the marriage;

25 (e) the age and the physical and emotional condition of the spouse seeking maintenance; and

26 (f) the ability of the spouse from whom maintenance is sought to meet ~~his~~ that spouse's own  
 27 needs while meeting those of the spouse seeking maintenance."

28

29 **Section 8.** Section 40-4-204, MCA, is amended to read:

30 "40-4-204. **Child support -- orders to address health insurance -- withholding of child support.** (1)

1 In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall  
2 order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary  
3 for the child's support, ~~without regard to marital misconduct.~~

4 (2) The court shall consider all relevant factors, including:

5 (a) the financial resources of the child;

6 (b) the financial resources of the custodial parent;

7 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

8 (d) the physical and emotional condition of the child and the child's educational and medical needs;

9 (e) the financial resources and needs of the noncustodial parent;

10 (f) the age of the child;

11 (g) the cost of day care for the child;

12 (h) any custody arrangement that is ordered or decided upon; ~~and~~

13 (i) the needs of any person, other than the child, whom either parent is legally obligated to support;

14 AND

15 (j) the best interest of the child; and

16 ~~(k) any fault attributable to a parent.~~

17 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall  
18 determine the child support obligation by applying the standards in this section and the uniform child  
19 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.  
20 The guidelines must be used in all cases, including cases in which the order is entered upon the default of  
21 a party and those in which the parties have entered into an agreement regarding the support amount. A  
22 verified representation of the defaulting parent's income, based on the best information available, may be  
23 used when a parent fails to provide financial information for use in applying the guidelines. The amount  
24 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the  
25 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust  
26 to the child or to any of the parties or is inappropriate in that particular case.

27 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall  
28 state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have  
29 agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the  
30 guideline amount must include a statement of the amount of support that would have ordinarily been

1 ordered under the guidelines.

2 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for  
3 the child's support, the court shall state its reasons for not ordering child support.

4 (4) Each temporary or final district court judgment, decree, or order establishing a child support  
5 obligation under this title and each modification of a final order for child support must include a medical  
6 support order as provided for in Title 40, chapter 5, part 8.

7 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception  
8 is included in the support order, a support obligation established by judgment, decree, or order under this  
9 section, whether temporary or final, and each modification of an existing support obligation under 40-4-208  
10 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part  
11 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides  
12 for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the  
13 payment of support without need for an amendment to the support order or for any further action by the  
14 court.

15 (b) If an obligor is exempt from immediate income withholding, the district court judgment or order  
16 must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's  
17 income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to  
18 include a warning statement in a judgment or order does not preclude the use of withholding procedures.

19 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,  
20 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's  
21 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this  
22 section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's  
23 monthly support obligation if the excess support is a result of annualized withholding.

24 (6) For the purposes of income withholding under subsection (5), each district court judgment,  
25 decree, or order that establishes or modifies a child support obligation must include a provision requiring  
26 the parent obligated to pay support to inform the court and, if the department of public health and human  
27 services is providing services under Title IV-D of the Social Security Act for the enforcement of the  
28 judgment, decree, or order, the department, of the following:

29 (a) the name and address of the parent's current employer;

30 (b) whether the parent has access to health insurance through an employer or other group; and

1 (c) if insurance coverage is available, the health insurance policy information.

2 (7) Each district court judgment, decree, or order establishing a final child support obligation under  
3 this part and each modification of a final order for child support must contain a statement that the order  
4 is subject to review and modification by the department of public health and human services upon the  
5 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing  
6 services under Title IV-D of the Social Security Act for the enforcement of the order.

7 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support  
8 obligation must include a provision requiring the child support to be paid to:

9 (i) the legal custodian of the minor child;

10 (ii) (A) any other person, organization, or agency having legal physical custody of the minor child  
11 under a legal assignment of rights; or

12 (B) the court for the benefit of the minor child;

13 (iii) any other person or agency designated as caretaker of the minor child by agreement of the legal  
14 custodian; or

15 (iv) any assignee or other person, organization, or agency authorized to receive or collect child  
16 support.

17 (b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject  
18 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order  
19 or for any further action by the court."  
20

21 **Section 9.** Section 40-4-212, MCA, is amended to read:

22 **"40-4-212. Best interest of child.** (1) The court shall determine custody in accordance with the  
23 best interest of the child. The court shall consider all relevant factors, including but not limited to:

24 (a) the wishes of the child's parent or parents as to custody;

25 (b) the wishes of the child as to a custodian;

26 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings  
27 and with any other person who may significantly affect the child's best interest;

28 (d) the child's adjustment to home, school, and community;

29 (e) the mental and physical health of all individuals involved;

30 (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

1 ~~and~~

2 (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

3 and

4 (h) any fault of a parent.

5 (2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the  
6 child's parent or parents to prove the factors set forth in 40-4-219.

7 (3) The following are rebuttable presumptions and apply unless contrary to the best interest of the  
8 child:

9 (a) Custody should be granted to the parent who has provided most of the primary care during the  
10 child's life.

11 (b) A custody action brought by a parent within 6 months after a child support action against that  
12 parent is vexatious.

13 (4) The following are rebuttable presumptions:

14 (a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best  
15 interest of the child.

16 (b) Failure to pay child support that the person is able to pay is not in the best interest of a child  
17 in need of the child support."

18

19 NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that  
20 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
21 act].

22

-END-