

1 SENATE BILL NO. 16  
2 INTRODUCED BY HALLIGAN  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING MANDATORY DISCLOSURE BETWEEN PARTIES OF  
5 ALL ASSETS AND LIABILITIES SUBJECT TO EQUITABLE DIVISION OF THE MARITAL ESTATE IN CASES  
6 OF MARRIAGE DISSOLUTION OR NULLITY OR LEGAL SEPARATION; PROVIDING PENALTIES FOR FAILURE  
7 TO COMPLY; AMENDING SECTIONS 40-4-201 AND 40-4-208, MCA; AND PROVIDING AN EFFECTIVE  
8 DATE AND AN APPLICABILITY DATE."  
9

10 WHEREAS, it is the policy of the State of Montana to:

11 (1) marshal, preserve, and protect marital estate assets and liabilities that exist at the date of  
12 separation in order to avoid dissipations of the marital estate before distribution;

13 (2) ensure fair and sufficient child and spousal support awards; and

14 (3) achieve an equitable division of marital estate assets and liabilities on the dissolution or nullity  
15 of marriage or legal separation of the parties, as provided under Montana law; and

16 WHEREAS, sound public policy further favors the reduction of the adversarial nature of marital  
17 dissolution and the attendant costs by fostering full disclosure and cooperative discovery; and

18 WHEREAS, in order to promote this public policy, a full and accurate disclosure of all assets and  
19 liabilities in which one or both parties have or may have an interest must be made in the early stages of a  
20 proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization  
21 as joint or separate, together with a disclosure of all income and expenses of the parties; and

22 WHEREAS, each party has a continuing duty to update and augment material changes to that  
23 disclosure so that at the time that the parties enter into an agreement for the resolution of any of these  
24 issues or at the time of trial on these issues, each party will have as full and complete knowledge of the  
25 relevant underlying facts as is reasonably possible under the circumstances of the case without the need  
26 of formal discovery requests pursuant to the Montana Rules of Civil Procedure.

27 THEREFORE, the Legislature of the State of Montana finds it appropriate to enact the following  
28 provisions relating to disclosure of marital estate assets and liabilities.  
29

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

1           **NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 8], the following definitions  
2 apply:

3           (1) "Asset" includes but is not limited to any real or personal property of any nature however and  
4 whenever acquired, whether the property is tangible or intangible, whether the property is currently existing  
5 or contingent, and whether the title is in the name of the husband or wife, or both.

6           (2) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a  
7 marital settlement agreement.

8           (3) "Earnings and accumulations" includes income from any source.

9           (4) "Expenses" includes but is not limited to all personal living expenses, but does not include  
10 business-related expenses.

11           (5) "Liability" includes but is not limited to any debt or obligation, however and whenever acquired,  
12 whether the debt or obligation is currently existing or contingent or is in the name of the husband or wife,  
13 or both.

14           (6) "Marital estate" includes all assets and liabilities.

15

16           **NEW SECTION. Section 2. Preliminary declaration of disclosure -- penalty.** (1) Within 60 days  
17 of service of a petition for dissolution or nullity of marriage or for legal separation of the parties, each party  
18 shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury. The  
19 parties may, by written stipulation or by oral stipulation made in open court, agree to change the time for  
20 exchange of preliminary declarations of disclosure.

21           (2) The preliminary declaration of disclosure may not be filed with the court, except on the court's  
22 order.

23           (3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a  
24 person of reasonable and ordinary intelligence can ascertain, all of the following:

25           (a) the identity of all assets in which the declarant has or may have an interest and all liabilities for  
26 which the declarant is or may be liable, regardless of the characterization of an asset or liability; and

27           (b) the declarant's percentage of ownership in each asset and percentage of obligation for each  
28 liability when property is not solely owned by one or both of the parties. The preliminary declaration may  
29 also set forth the declarant's characterization of each asset or liability.

30           (4) A declarant may amend the declarant's preliminary declaration of disclosure without permission

1 of the court.

2 (5) Along with the preliminary declaration of disclosure, each party shall provide the other party  
3 with a completed income and expense declaration unless an income and expense declaration has already  
4 been provided and is current and valid.

5 (6) In addition to any other civil or criminal remedy available under law for the commission of  
6 perjury, the court may set aside the judgment, or part of the judgment, if the court discovers that a party  
7 has committed perjury in the preliminary declaration of disclosure.

8

9 **NEW SECTION. Section 3. Final declaration of disclosure -- failure to disclose current income and**

10 **expense declaration -- penalty.** (1) (a) Each party shall serve on the other party a final declaration of  
11 disclosure and a current income and expense declaration, executed under penalty of perjury:

12 (i) before or at the time that the parties enter into an agreement for the resolution of property or  
13 support issues, other than pendente lite support; or

14 (ii) in the event that the case goes to trial, no later than 45 days before the first assigned trial date.

15 (b) The parties may, by written stipulation or by oral stipulation made in open court, agree to  
16 change the time for exchange of final declarations of disclosure.

17 (2) The final declaration of disclosure must include all material facts and information regarding the:

18 (a) characterization of all assets and liabilities;

19 (b) valuation of all assets that are contended to be marital or for which it is contended that the  
20 marital estate has an interest;

21 (c) amounts of all obligations that are contended to be marital obligations or for which it is  
22 contended that the marital estate has liability; and

23 (d) expenses and earnings and accumulations of each party that have been set forth in the income  
24 and expense declaration.

25 (3) Along with the final declaration of disclosure, each party shall serve on the other party an  
26 updated income and expense declaration unless a current income and expense declaration is on file.

27 (4) The failure of a party to disclose an asset or liability on the final declaration of disclosure is  
28 presumed to be grounds for the court, without taking into account the equitable division of the marital  
29 estate, to award the undisclosed asset to the opposing party or the undisclosed liability to the  
30 noncomplying party.

1 (5) In addition to any other civil or criminal remedy available under law for the commission of  
2 perjury, the court may set aside the judgment, or part of the judgment, if the court discovers, within 5  
3 years from the date of entry of judgment, that a party has committed perjury in the final declaration of  
4 disclosure.

5  
6 **NEW SECTION. Section 4. Execution and service of final declaration of disclosure and current**  
7 **income and expense declaration.** Absent good cause, the court may not enter a judgment with respect to  
8 the parties' property rights unless each party has executed and served a copy of the final declaration of  
9 disclosure and current income and expense declaration. Each party shall execute and file with the court  
10 a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and  
11 current income and expense declaration was made on the other party.

12  
13 **NEW SECTION. Section 5. Noncomplying declarations -- requests to comply -- remedies.** (1) A  
14 party who has served on the other party a preliminary declaration of disclosure under [section 2] or a final  
15 declaration of disclosure under [section 3] and who has provided the information required in the declarations  
16 with sufficient particularity may, within a reasonable time, request from a noncomplying party preparation  
17 of the appropriate declaration of disclosure or further particularity in a declaration.

18 (2) If a noncomplying party fails to comply with a request under subsection (1), the complying  
19 party may file either or both of the following:

20 (a) a motion to compel a further response;

21 (b) a motion for an order preventing the noncomplying party from presenting evidence on issues  
22 that should have been covered in the declaration of disclosure.

23 (3) If a party fails to comply with any provision of [sections 1 through 8], the court shall, in  
24 addition to any other remedy provided by law, order the noncomplying party to pay to the complying party  
25 any reasonable attorney fees or costs incurred, or both, unless the court finds that the noncomplying party  
26 acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

27  
28 **NEW SECTION. Section 6. Liquidation -- transfer of marital estate assets to avoid encumbrance,**  
29 **devaluation, or market or investment risk -- authority of court.** (1) Except as provided in subsection (2),  
30 at any time during the proceedings, the court may, upon application of a party and for good cause and after

1 consideration of the relative nature, scope, and extent of the marital estate, order the liquidation or transfer  
2 of title of marital estate assets to avoid unreasonable encumbrance, devaluation, or market or investment  
3 risk.

4 (2) The court may not grant an application under subsection (1) unless the appropriate declaration  
5 of disclosure has been served on the opposing party by the moving party as provided in [sections 2 through  
6 4].

7

8 **NEW SECTION. Section 7. Default judgments -- disclosures.** In the case of a default judgment,  
9 a petitioner may waive the final disclosure requirements of [sections 3 and 4]. However, the petitioner shall  
10 comply with the preliminary declaration of disclosure requirements of [section 2].

11

12 **NEW SECTION. Section 8. Attorney work product privilege -- protective orders -- Montana Rules**  
13 **of Civil Procedure.** A disclosure required by [sections 2 through 4] does not abrogate the attorney work  
14 product privilege or the formal discovery procedures provided by the Montana Rules of Civil Procedure or  
15 does not impede the power of the court to issue protective orders.

16

17 **Section 9.** Section 40-4-201, MCA, is amended to read:

18 **"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties  
19 to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into  
20 a written separation agreement containing provisions for disposition of any property owned by either of  
21 them, maintenance of either of them, and support, custody, and visitation of their children.

22 (2) ~~It is~~ **Subject to subsection (7),** in a proceeding for dissolution of marriage or for legal separation,  
23 the terms of the separation agreement, except those providing for the support, custody, and visitation of  
24 children, are binding upon the court unless it finds, after considering the economic circumstances of the  
25 parties and any other relevant evidence produced by the parties, on their own motion or on request of the  
26 court, that the separation agreement is unconscionable.

27 (3) If the court finds the separation agreement unconscionable, it may request the parties to submit  
28 a revised separation agreement or may make orders for the disposition of property, maintenance, and  
29 support.

30 (4) If the court finds that the separation agreement is not unconscionable as to disposition of

1 property or maintenance and not unsatisfactory as to support:

2 (a) unless the separation agreement provides to the contrary, its terms ~~shall~~ must be set forth in  
3 the decree of dissolution or legal separation and the parties ~~shall~~ must be ordered to perform them; or

4 (b) if the separation agreement provides that its terms ~~shall~~ may not be set forth in the decree, the  
5 decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not  
6 unconscionable.

7 (5) Terms of the agreement set forth in the decree are enforceable by all remedies available for  
8 enforcement of a judgment, including contempt, and are enforceable as contract terms.

9 (6) Except as provided in subsection (7) and except for terms concerning the support, custody, or  
10 visitation of children, the decree may expressly preclude or limit modification of terms set forth in the  
11 decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in  
12 the decree are automatically modified by modification of the decree.

13 (7) The decree may be modified, as provided in [sections 1 through 8], for failure to disclose assets  
14 and liabilities."

15

16 **Section 10.** Section 40-4-208, MCA, is amended to read:

17 **"40-4-208. Modification and termination of provisions for maintenance, support, and property**  
18 **disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to  
19 maintenance or support only as to installments accruing subsequent to actual notice to the parties of the  
20 motion for modification.

21 (2) (a) ~~Whenever~~ Except as provided in [sections 1 through 8], whenever the decree proposed for  
22 modification does not contain provisions relating to maintenance or support, modification under subsection  
23 (1) may only be made within 2 years of the date of the decree.

24 (b) ~~Whenever~~ Except as provided in [sections 1 through 8], whenever the decree proposed for  
25 modification contains provisions relating to maintenance or support, modification under subsection (1) may  
26 only be made:

27 (i) upon a showing of changed circumstances so substantial and continuing as to make the terms  
28 unconscionable;

29 (ii) upon written consent of the parties; or

30 (iii) upon application by the department of public health and human services, whenever the

1 department of public health and human services is providing services under Title IV-D of the federal Social  
 2 Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines  
 3 promulgated under 40-5-209. A Except as provided in [sections 1 through 8], a modification under this  
 4 subsection may not be made within 12 months after the establishment of the order or the most recent  
 5 modification.

6 (c) The nonexistence of a medical support order, as defined in 40-5-804, or a violation of a medical  
 7 support order justifies an immediate modification of child support in order to:

8 (i) provide for the actual or anticipated costs of the child's medical care;

9 (ii) provide or maintain a health benefit plan or individual health insurance coverage for the child;

10 or

11 (iii) eliminate any credit for a medical support obligation when it has been permitted or used as a  
 12 credit in the determination of the child support obligation.

13 (3) The provisions as to property disposition may not be revoked or modified by a court, except:

14 (a) upon written consent of the parties; or

15 (b) if the court finds the existence of conditions that justify the reopening of a judgment under the  
 16 laws of this state.

17 (4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay  
 18 future maintenance is terminated upon the death of either party or the remarriage of the party receiving  
 19 maintenance.

20 (5) Provisions for the support of a child are terminated by emancipation of the child or the child's  
 21 graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event  
 22 later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written  
 23 agreement or by an express provision of the decree. Provisions for the support of a child do not terminate  
 24 upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the  
 25 amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and  
 26 appropriate in the circumstances.

27 (6) The decree may be modified, as provided in [sections 1 through 8], for failure to disclose assets  
 28 and liabilities."

29

30 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 8] are intended to be

1 codified as an integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to  
2 [sections 1 through 8].

3  
4 NEW SECTION. **Section 12. Applicability.** [This act] applies to proceedings commenced on or after  
5 July 1, 1997.

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7 NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 1997.

8 -END-



APPROVED BY COM  
ON JUDICIARY

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**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.**



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10 WHEREAS, it is the policy of the State of Montana to:

11 (1) marshal, preserve, and protect marital estate assets and liabilities that exist at the date of  
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16 WHEREAS, sound public policy further favors the reduction of the adversarial nature of marital  
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22 WHEREAS, each party has a continuing duty to update and augment material changes to that  
23 disclosure so that at the time that the parties enter into an agreement for the resolution of any of these  
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27 THEREFORE, the Legislature of the State of Montana finds it appropriate to enact the following  
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22 order.

23           (3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a  
24 person of reasonable and ordinary intelligence can ascertain, all of the following:

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28 liability when property is not solely owned by one or both of the parties. The preliminary declaration may  
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30           (4) A declarant may amend the declarant's preliminary declaration of disclosure without permission

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17 (2) The final declaration of disclosure must include all material facts and information regarding the:

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19 (b) valuation of all assets that are contended to be marital or for which it is contended that the  
20 marital estate has an interest;

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22 contended that the marital estate has liability; and

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24 and expense declaration.

25 (3) Along with the final declaration of disclosure, each party shall serve on the other party an  
26 updated income and expense declaration unless a current income and expense declaration is on file.

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28 presumed to be grounds for the court, without taking into account the equitable division of the marital  
29 estate, to award the undisclosed asset to the opposing party or the undisclosed liability to the  
30 noncomplying party.

1 (5) In addition to any other civil or criminal remedy available under law for the commission of  
2 perjury, the court may set aside the judgment, or part of the judgment, if the court discovers, within 5  
3 years from the date of entry of judgment, that a party has committed perjury in the final declaration of  
4 disclosure.

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6 **NEW SECTION. Section 4. Execution and service of final declaration of disclosure and current**  
7 **income and expense declaration.** Absent good cause, the court may not enter a judgment with respect to  
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11 current income and expense declaration was made on the other party.

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13 **NEW SECTION. Section 5. Noncomplying declarations -- requests to comply -- remedies.** (1) A  
14 party who has served on the other party a preliminary declaration of disclosure under [section 2] or a final  
15 declaration of disclosure under [section 3] and who has provided the information required in the declarations  
16 with sufficient particularity may, within a reasonable time, request from a noncomplying party preparation  
17 of the appropriate declaration of disclosure or further particularity in a declaration.

18 (2) If a noncomplying party fails to comply with a request under subsection (1), the complying  
19 party may file either or both of the following:

20 (a) a motion to compel a further response;

21 (b) a motion for an order preventing the noncomplying party from presenting evidence on issues  
22 that should have been covered in the declaration of disclosure.

23 (3) If a party fails to comply with any provision of [sections 1 through 8], the court shall, in  
24 addition to any other remedy provided by law, order the noncomplying party to pay to the complying party  
25 any reasonable attorney fees or costs incurred, or both, unless the court finds that the noncomplying party  
26 acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

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28 **NEW SECTION. Section 6. Liquidation -- transfer of marital estate assets to avoid encumbrance,**  
29 **devaluation, or market or investment risk -- authority of court.** (1) Except as provided in subsection (2),  
30 at any time during the proceedings, the court may, upon application of a party and for good cause and after

1 consideration of the relative nature, scope, and extent of the marital estate, order the liquidation or transfer  
2 of title of marital estate assets to avoid unreasonable encumbrance, devaluation, or market or investment  
3 risk.

4 (2) The court may not grant an application under subsection (1) unless the appropriate declaration  
5 of disclosure has been served on the opposing party by the moving party as provided in [sections 2 through  
6 4].

7

8 **NEW SECTION. Section 7. Default judgments -- disclosures.** In the case of a default judgment,  
9 a petitioner may waive the final disclosure requirements of [sections 3 and 4]. However, the petitioner shall  
10 comply with the preliminary declaration of disclosure requirements of [section 2].

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12 **NEW SECTION. Section 8. Attorney work product privilege -- protective orders -- Montana Rules**  
13 **of Civil Procedure.** A disclosure required by [sections 2 through 4] does not abrogate the attorney work  
14 product privilege or the formal discovery procedures provided by the Montana Rules of Civil Procedure or  
15 does not impede the power of the court to issue protective orders.

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1 property or maintenance and not unsatisfactory as to support:

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3 the decree of dissolution or legal separation and the parties ~~shall~~ must be ordered to perform them; or

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5 decree ~~shall~~ must identify the separation agreement and state that the court has found the terms not  
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11 decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in  
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14 and liabilities."

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23 (1) may only be made within 2 years of the date of the decree.

24 (b) ~~Whenever~~ Except as provided in [sections 1 through 8], whenever the decree proposed for  
25 modification contains provisions relating to maintenance or support, modification under subsection (1) may  
26 only be made:

27 (i) upon a showing of changed circumstances so substantial and continuing as to make the terms  
28 unconscionable;

29 (ii) upon written consent of the parties; or

30 (iii) upon application by the department of public health and human services, whenever the

1 department of public health and human services is providing services under Title IV-D of the federal Social  
 2 Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines  
 3 promulgated under 40-5-209. A Except as provided in [sections 1 through 8], a modification under this  
 4 subsection may not be made within 12 months after the establishment of the order or the most recent  
 5 modification.

6 (c) The nonexistence of a medical support order, as defined in 40-5-804, or a violation of a medical  
 7 support order justifies an immediate modification of child support in order to:

8 (i) provide for the actual or anticipated costs of the child's medical care;

9 (ii) provide or maintain a health benefit plan or individual health insurance coverage for the child;

10 or

11 (iii) eliminate any credit for a medical support obligation when it has been permitted or used as a  
 12 credit in the determination of the child support obligation.

13 (3) The provisions as to property disposition may not be revoked or modified by a court, except:

14 (a) upon written consent of the parties; or

15 (b) if the court finds the existence of conditions that justify the reopening of a judgment under the  
 16 laws of this state.

17 (4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay  
 18 future maintenance is terminated upon the death of either party or the remarriage of the party receiving  
 19 maintenance.

20 (5) Provisions for the support of a child are terminated by emancipation of the child or the child's  
 21 graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event  
 22 later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written  
 23 agreement or by an express provision of the decree. Provisions for the support of a child do not terminate  
 24 upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the  
 25 amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and  
 26 appropriate in the circumstances.

27 (6) The decree may be modified, as provided in [sections 1 through 8], for failure to disclose assets  
 28 and liabilities."

29

30 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 8] are intended to be

1 codified as an integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to  
2 [sections 1 through 8].

3

4 NEW SECTION. **Section 12. Applicability.** [This act] applies to proceedings commenced on or after  
5 ~~July~~ OCTOBER 1, 1997.

6

7 ~~NEW SECTION. Section 13. Effective date.~~ [This act] is effective July 1, 1997.

8

-END-