

HOUSE BILL NO. 438

INTRODUCED BY T. MCGILLVRAY, HUTTON, C. SMITH, TAYLOR, HOWARD, G. BENNETT,
WARBURTON, REGIER, ARNTZEN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARTIES TO UNDERGO AT LEAST 10 HOURS OF MARRIAGE COUNSELING BEFORE A COURT MAY ORDER THE DISSOLUTION OF A MARRIAGE OR A LEGAL SEPARATION WITH REGARD TO A MARRIAGE IN WHICH THERE ARE MINOR CHILDREN; PROVIDING EXCEPTIONS; AND AMENDING SECTION 40-4-107, MCA."

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

Section 1. Section 40-4-107, MCA, is amended to read:

"40-4-107. Irretrievable breakdown -- counseling required for parties with minor children. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding as to whether the marriage is irretrievably broken. A finding under this subsection may not be entered regarding parties with minor children until the counseling required by subsection (5)(a) has been completed by the parties. However, the finding may be entered if the parties have undertaken counseling within the previous 12 months that otherwise satisfies the requirements of this section.

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

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

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

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

