

1 HOUSE BILL NO. 438

2 INTRODUCED BY T. MCGILLVRAY

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

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

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11 **Section 1.** Section 40-4-107, MCA, is amended to read:
12 **"40-4-107. Irretrievable breakdown -- counseling required for parties with minor children.** (1) If
13 both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably
14 broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a
15 finding as to whether the marriage is irretrievably broken. A finding under this subsection may not be entered
16 regarding parties with minor children until the counseling required by subsection (5)(a) has been completed by
17 the parties. However, the finding may be entered if the parties have undertaken counseling within the previous
18 12 months that otherwise satisfies the requirements of this section.

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

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

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

30 (4) ~~Nothing in this~~ This section shall may not be interpreted to affect the provisions of Title 40, chapter

1 ~~3, of this title~~, known as the Montana Conciliation Law.

2 (5) (a) Except as provided in subsection (5)(b), before the court may issue a decree of dissolution of
3 marriage or legal separation of parties with minor children, the court shall order the parties to complete at least
4 10 hours of counseling in not less than 8 weeks consisting of at least 3 hours of individual counseling of each
5 party and 4 hours of joint counseling of the parties. Counseling must include but is not limited to conciliation
6 strategies and the effect of divorce on minor children. Counseling must be paid for by the parties, and costs may
7 be allocated between the parties by the court. Counseling must be provided by:

8 (i) a marriage mentor appointed by a member of the clergy;

9 (ii) a licensed marriage or family counselor;

10 (iii) a licensed psychiatrist or a licensed psychologist;

11 (iv) a licensed professional clinical mental health counselor;

12 (v) a licensed independent social worker; or

13 (vi) an official representative of a religious institution.

14 (b) The requirements of subsection (5)(a) do not apply if there has been a claim of physical abuse of one
15 of the parties by the other. Corroboration is not required for a claim of physical abuse for the purposes of this
16 subsection (5)(b)."

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18 NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured,
19 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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