

SENATE BILL NO. 283
INTRODUCED BY M. WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO TERMINATION OF MARRIAGE, CHILD CUSTODY, AND SUPPORT; REQUIRING MONTANA RESIDENCE FOR 90 DAYS PRECEDING THE FILING OF AN ACTION FOR DISSOLUTION OF MARRIAGE; PROVIDING THAT MEDIATORS IN FAMILY LAW DISPUTES CANNOT EXCLUDE THE PARTIES' ATTORNEYS FROM MEDIATION SESSIONS; ALLOWING MEDIATION AGREEMENTS TO BE ADMISSIBLE AS EVIDENCE IF AFFIRMED BY THE PARTIES; REVISING THE VENUE PROVISIONS FOR TERMINATION OF MARRIAGE, CHILD CUSTODY, AND SUPPORT CASES; AND AMENDING SECTIONS 25-2-118, 40-4-104, 40-4-302, AND 40-4-305, MCA."

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

Section 1. Section 25-2-118, MCA, is amended to read:

"25-2-118. Residence of defendant. (1) Except as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them reside at the commencement of the action.

(2) If none of the defendants reside in the state, the proper place of trial for a contract action is as provided in 25-2-121(1)(b) or (2) and the proper place of trial for a tort action is as provided in 25-2-122(2) or (3).

(3) The proper place of trial for to file an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action."

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

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

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, as provided in 25-2-118, or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days preceding the ~~making of the findings~~ filing of the action;

(b) the court finds that the marriage is irretrievably broken, which findings must be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days preceding the

commencement of this proceeding; or

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

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

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

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

Section 3. Section 40-4-302, MCA, is amended to read:

"40-4-302. Mediation proceeding -- tolling of statute of limitations. (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the parenting, child support, parental contact with the child, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to 40-4-301(1), ~~the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement.~~

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator."

Section 4. Section 40-4-305, MCA, is amended to read:

"40-4-305. Mediation agreement. An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, ~~and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement before the agreement is finalized. An agreement reached in mediation is not admissible as evidence in any action~~

unless the agreement has been affirmed by the parties in a signed, written agreement. The signed, written agreement is governed by 40-4-201."

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