

HOUSE BILL NO. 12

INTRODUCED BY E. HILL

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A DECREE OF DISSOLUTION WITHOUT A HEARING WHEN THE DISSOLUTION IS UNCONTESTED; AMENDING SECTION 40-4-108, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 40-4-108, MCA, is amended to read:

"40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree that dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of dissolution in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of dissolution in the appropriate record.

~~(4) In an uncontested dissolution, either party may request entry of a decree of dissolution without a hearing. The nonrequesting party has 30 days to object to entry of the decree of dissolution. If no objection is filed within 30 days, the court shall enter the decree of dissolution.~~

(4) (A) EITHER PARTY TO A DISSOLUTION OR LEGAL SEPARATION MAY REQUEST ENTRY OF A DECREE OF DISSOLUTION OR LEGAL SEPARATION WITHOUT A HEARING BY FILING AN AFFIDAVIT WITH THE COURT.

(B) THE COURT MAY ENTER A DECREE OF DISSOLUTION OR LEGAL SEPARATION WITHOUT A HEARING WHEN:

(I) THE AFFIDAVIT SETS FORTH A PRIMA FACIE CASE THAT:



1 (A) THE PARTIES HAVE REACHED A VOLUNTARY RESOLUTION OF ALL MATTERS RELATED TO THE DISSOLUTION OR
2 LEGAL SEPARATION;

3 (B) THE PARTIES STIPULATE TO ENTRY OF THE DECREE BY AFFIDAVIT IN LIEU OF A HEARING; OR

4 (C) A PARTY IS FOUND BY THE COURT TO BE IN DEFAULT; AND

5 (II) IT APPEARS TO THE COURT THAT:

6 (A) THE JURISDICTIONAL REQUIREMENTS OF 40-4-104 EXIST;

7 (B) THE PARTIES HAVE COMPLIED WITH THE FINANCIAL DISCLOSURE PROVISIONS OF 40-4-252 THROUGH
8 40-4-254 OR 40-4-257;

9 (C) (I) A SEPARATION AGREEMENT, AS PROVIDED FOR IN 40-4-201(1), CONTAINING PROVISIONS FOR DISPOSITION
10 OF ANY PROPERTY OWNED BY EITHER OR BOTH PARTIES, DISTRIBUTION OF ANY DEBTS OWED BY EITHER OR BOTH PARTIES,
11 MAINTENANCE OF EITHER PARTY, AND SUPPORT, PARENTING, AND PARENTAL CONTACT WITH ANY MINOR CHILDREN OF THE
12 PARTIES HAS BEEN FILED WITH THE COURT PRIOR TO OR CONCURRENTLY WITH THE AFFIDAVIT; OR

13 (II) IN THE CASE OF DEFAULT, THE PROPOSED DECREE CONTAINS IDENTICAL RELIEF SOUGHT IN THE PETITION FOR
14 DISSOLUTION OR LEGAL SEPARATION;

15 (D) THE PARTY FILING THE AFFIDAVIT WAIVES THE RIGHT TO APPEAR PERSONALLY IN COURT TO PRESENT
16 TESTIMONY AS TO ANY MATTERS AND REQUESTS THE COURT TO ENTER A DECREE WITHOUT A HEARING OR THE NECESSITY
17 OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW;

18 (E) THE AFFIDAVIT INCLUDES A PROPOSED DECREE FORM; AND

19 (F) THE AFFIDAVIT INCLUDES THE FOLLOWING STATEMENT: "FAILURE TO OBJECT TO THE PROPOSED DECREE OF
20 DISSOLUTION OR LEGAL SEPARATION WITHIN 14 DAYS OF SERVICE SHALL BE PRESUMED TO BE CONSENT TO THE
21 PROPOSED FORM OF THE DECREE, AND THE COURT MAY PROCEED TO ENTER THE DECREE AS PROPOSED BY AFFIANT
22 UNLESS, WITHIN 14 DAYS OF SERVICE, YOU FILE AN OBJECTION WITH THE COURT AND SERVE YOUR OBJECTION ON ALL
23 PARTIES ENTITLED TO SERVICE IN THIS ACTION."

24 (C) REGARDLESS OF COMPLIANCE WITH THE AFFIDAVIT REQUIREMENTS OF SUBSECTION (4)(B), THE COURT MAY
25 REQUIRE THE PERSONAL APPEARANCE OF A PARTY OR INTERESTED PERSON FOR ANY REASON THE COURT CONSIDERS
26 NECESSARY.

27 (D) UNLESS ALL PARTIES IN THE ACTION HAVE SUBMITTED AFFIDAVITS FOR DISSOLUTION OF MARRIAGE OR LEGAL
28 SEPARATION WITHOUT A HEARING, TO ENSURE ALL PARTIES ARE APPRISED OF THE REQUEST FOR ENTRY OF THE DECREE
29 OF DISSOLUTION OR SEPARATION WITHOUT A HEARING AND HAVE AN OPPORTUNITY TO RAISE AN OBJECTION TO THE ENTRY
30 OF THE DECREE, THE PARTY WHO FILED THE AFFIDAVIT SHALL SERVE THE AFFIDAVIT AND THE PROPOSED DECREE ON ALL

1 PARTIES TO THE ACTION.

2 (E) THE NONREQUESTING PARTY HAS 14 DAYS FROM THE DATE OF SERVICE OF THE AFFIDAVIT TO OBJECT TO
3 ENTRY OF THE DECREE OF DISSOLUTION OR LEGAL SEPARATION WITHOUT A HEARING. IF NO OBJECTION IS FILED WITHIN
4 14 DAYS, THE COURT MAY PROCEED TO ENTER THE DECREE AS PROPOSED BY THE REQUESTING PARTY.

5 (F) IF ALL PARTIES IN THE ACTION HAVE SUBMITTED AFFIDAVITS FOR DISSOLUTION OF MARRIAGE OR LEGAL
6 SEPARATION WITHOUT A HEARING AND THE COURT DETERMINES THAT ENTRY OF A DECREE IS APPROPRIATE, THE COURT
7 MAY ENTER THE DECREE WITHOUT A HEARING OR WAITING FOR THE 14-DAY OBJECTION PERIOD TO PASS.

8 ~~(4)~~(5) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order the
9 wife's maiden name or a former name restored."

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11 NEW SECTION. Section 2. Applicability. [This act] applies to dissolution cases filed on or after
12 October 1, 2015.

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