

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:

(Refer to Third Reading, Blue Bill)

Strike everything after the enacting clause and insert:

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) (a) The parties to a dissolution or legal separation may request entry of a decree of dissolution or legal separation without a hearing by filing joint or individual affidavits 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 the parties have reached a voluntary resolution of all matters related to the dissolution or legal separation and consent to entry of the decree by affidavit in lieu of a

1 hearing; and

2 (ii) it appears to the court that:

3 (A) the jurisdictional requirements of 40-4-104 exist;

4 (B) the parties have complied with the financial disclosure provisions of 40-4-252 through 40-4-254 or
5 40-4-257;

6 (C) a separation agreement, as provided for in 40-4-201(1), containing provisions for disposition of any
7 property owned by either or both parties, distribution of any debts owed by either or both parties, maintenance
8 of either party, and support, parenting, and parental contact with any minor children of the parties has been filed
9 with the court prior to or concurrently with the affidavit;

10 (D) the affidavit includes a proposed decree; and

11 (E) the party filing the affidavit waives the right to appear personally in court to present testimony as to
12 any matters and requests the court to enter a decree without a hearing.

13 (c) Regardless of compliance with the affidavit requirements of subsection (4)(b), the court may require
14 a hearing for any reason the court considers necessary.

15 (d) If all parties in the action have submitted affidavits for dissolution of marriage or legal separation
16 without a hearing and the court determines that entry of a decree is appropriate, the court may enter the decree
17 without a hearing.

18 (4)(5) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order the
19 wife's maiden name or a former name restored."

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

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