

1 HOUSE BILL NO. 274

2 INTRODUCED BY F. GARNER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING EITHER PARTY TO A MARRIAGE TO RESTORE THE
5 PARTY'S NAME WHEN THE MARRIAGE IS DISSOLVED OR DECLARED INVALID; AMENDING SECTIONS
6 40-4-108 AND 40-4-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

11 **"40-4-108. Decree.** (1) A decree of dissolution of marriage or of legal separation is final when entered,
12 subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that
13 the marriage is irretrievably broken does not delay the finality of that provision of the decree that dissolves the
14 marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

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

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

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

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

23 (4) (a) The parties to a dissolution or legal separation may request entry of a decree of dissolution or
24 legal separation without a hearing by filing joint or individual affidavits with the court.

25 (b) The court may enter a decree of dissolution or legal separation without a hearing when:

26 (i) the affidavit sets forth a prima facie case that the parties have reached a voluntary resolution of all
27 matters related to the dissolution or legal separation and that the parties consent to entry of the decree by affidavit
28 in lieu of a hearing; and

29 (ii) it appears to the court that:

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

1 (B) the parties have complied with the financial disclosure provisions of 40-4-252 through 40-4-254 or
2 40-4-257;

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

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

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

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

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

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

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18 **Section 2.** Section 40-4-131, MCA, is amended to read:

19 **"40-4-131. Joint petition -- filing -- form -- contents.** (1) A proceeding for summary dissolution of
20 marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.

21 (2) The petition must:

22 (a) be signed under oath by both parties;

23 (b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been
24 met;

25 (c) state the mailing address of both parties; and

26 (d) state whether or not the wife a party elects to have the wife's party's maiden or birth or former name
27 restored and, if so, state the name to be restored."

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29 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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