

1 HOUSE BILL NO. 237
2 INTRODUCED BY B. PHALEN, B. LER
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE
5 DISSOLUTION OF MARRIAGE IN CASES OF PHYSICAL ABUSE OR ADULTERY; ALLOWING AN AWARD
6 OF ATTORNEY FEES AND COSTS WHEN PHYSICAL ABUSE OR ADULTERY SUBSTANTIALLY
7 CONTRIBUTED TO THE IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE; REQUIRING THE COURT
8 TO CONSIDER PHYSICAL ABUSE OR ADULTERY THAT SUBSTANTIALLY CONTRIBUTED TO THE
9 IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE WHEN APPORTIONING PROPERTY OR AWARDING
10 MAINTENANCE; PROVIDING DEFINITIONS; AMENDING SECTIONS 40-4-110, 40-4-202, AND 40-4-203,
11 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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15 **Section 1.** Section 40-4-110, MCA, is amended to read:

16 **"40-4-110. Costs -- professional fees.** (1) The court from time to time, after considering the financial
17 resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of
18 maintaining or defending any proceeding under chapters 1 and 4 and for professional fees, including sums for
19 legal and professional services rendered and costs incurred prior to the commencement of the proceeding or
20 after entry of judgment. The court may order that the amount be paid directly to the professional, who may
21 enforce the order in the professional's name.

22 (2) The purpose of ~~this section~~ subsection (1) is to ensure that both parties have timely and
23 equitable access to marital financial resources for costs incurred before, during, and after a proceeding under
24 chapters 1 and 4.

25 (3) In a case in which the court finds physical abuse or adultery substantially contributed to the
26 irretrievable breakdown of the marriage, the court may order the offending party to pay a reasonable amount for
27 the cost to the other party of maintaining and defending any proceeding under this chapter and for professional
28 fees, including sums for legal and professional services rendered and costs incurred prior to the

1 apportioned to that party, and the party's ability to meet the party's needs independently, including the extent to
2 which a provision for support of a child living with the party includes a sum for that party as custodian;

3 (b) the time necessary to acquire sufficient education or training to enable the party seeking
4 maintenance to find appropriate employment;

5 (c) the standard of living established during the marriage;

6 (d) the duration of the marriage;

7 (e) physical abuse or adultery that substantially contributed to the irretrievable breakdown of the
8 marriage;

9 ~~(e)~~(f) the age and the physical and emotional condition of the spouse seeking maintenance; and

10 (f)(g) the ability of the spouse from whom maintenance is sought to meet the spouse's own needs
11 while meeting those of the spouse seeking maintenance.

12 (3) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the
13 Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan
14 administrator of the plan for which benefits are being distributed by the order, the child support enforcement
15 division, the parties, and each party's counsel of record."

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17 **NEW SECTION. Section 4. Definitions.** As used in this chapter, the following definitions apply:

18 (1) "Adultery" means voluntary sexual intercourse by a married person with a person other than the
19 married person's spouse.

20 (2) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in
21 substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures,
22 extreme pain, permanent or temporary disfigurement, or impairment of a bodily organ or function.

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24 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect proceedings that were begun
25 before [the effective date of this act] in which the court has held a substantive hearing on the division of
26 property or maintenance before [the effective date of this act] or in which the court has entered a final order
27 dividing property or awarding maintenance before [the effective date of this act] without a hearing.

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1 NEW SECTION. Section 6. Codification instruction. [Section 4] is intended to be codified as an
2 integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to [section 4].

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4 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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6 NEW SECTION. Section 8. Retroactive applicability. [This act] applies retroactively, within the
7 meaning of 1-2-109, to all actions that were filed before [the effective date of this act] but in which the court has
8 not held a substantive hearing on the division of property or maintenance or in which the court has not issued a
9 final order dividing property or awarding maintenance without a hearing.

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