

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 commencement of the proceedings or after entry of judgment. The court may order that the amount be paid  
2 directly to the professional, who may enforce the order in the professional's name."

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4 **Section 2.** Section 40-4-202, MCA, is amended to read:

5 **"40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation, or  
6 division of property following a decree of dissolution of marriage or legal separation by a court that lacked  
7 personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, ~~without~~  
8 ~~regard to marital misconduct,~~ shall, and in a proceeding for legal separation may, finally equitably apportion  
9 between the parties the property and assets belonging to either or both, however and whenever acquired and  
10 whether the title to the property and assets is in the name of the husband or wife or both. In making  
11 apportionment, the court shall consider the duration of the marriage and prior marriage of either party, the age,  
12 health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities,  
13 and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to  
14 maintenance, physical abuse or adultery that substantially contributed to the irretrievable breakdown of the  
15 marriage, and the opportunity of each for future acquisition of capital assets and income. Physical abuse or  
16 adultery alone may justify disproportionate apportionment. The court shall also consider the contribution or  
17 dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family  
18 unit. In dividing property acquired prior to the marriage, property acquired by gift, bequest, devise, or descent,  
19 property acquired in exchange for property acquired before the marriage or in exchange for property acquired  
20 by gift, bequest, devise, or descent, the increased value of property acquired prior to marriage, and property  
21 acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other  
22 spouse to the marriage, including:

- 23 (a) the nonmonetary contribution of a homemaker;
- 24 (b) the extent to which the contributions have facilitated the maintenance of the property; and
- 25 (c) whether or not the property division serves as an alternative to maintenance arrangements.
- 26 (2) In a proceeding, the court may protect and promote the best interests of the children by setting  
27 aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the  
28 support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the

1 parties.

2 (3) Each spouse is considered to have a common ownership in marital property that vests  
3 immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested  
4 interest must be determined and made final by the court pursuant to this section.

5 (4) The division and apportionment of marital property caused by or incident to a decree of  
6 dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or  
7 disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

- 8 (a) the property laws of this state;
- 9 (b) the income tax laws of this state; and
- 10 (c) the federal income tax laws.

11 (5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.

12 (6) 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 **Section 3.** Section 40-4-203, MCA, is amended to read:

18 **"40-4-203. Maintenance.** (1) In a proceeding for dissolution of marriage or legal separation or a  
19 proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction  
20 over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the  
21 spouse seeking maintenance:

- 22 (a) lacks sufficient property to provide for the spouse's reasonable needs; and
- 23 (b) is unable to be self-supporting through appropriate employment or is the custodian of a child  
24 whose condition or circumstances make it appropriate that the custodian not be required to seek employment  
25 outside the home.

26 (2) The maintenance order must be in amounts and for periods of time that the court considers  
27 just, ~~without regard to marital misconduct~~, and after considering all relevant facts, including:

- 28 (a) the financial resources of the party seeking maintenance, including marital property

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.

10            - END -