SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2/6/09
BILL NO. SB 311

SB 311 – REVISE MARRIAGE LICENSE LAWS

TESTIMONY

FOR: SENATE JUDICIARY COMMITTEE

PREPARED BY MARY "MARTY" PHIPPEN, LOBBYIST

MONTANA ASSOCIATION OF CLERKS OF DISTRICT COURT

DATE: FEBRUARY 6, 2009

Mr. Chair, Members of the committee, for the record, my name is Mary Phippen, that is P H I P P E N. I represent the Montana Association of Clerks of District Court. As you have heard from previous testimony, this Bill was brought forth to prevent any violation under HIPA for attaching the Medical Certificate to the Declaration of Marriage which is a public record. By removing the language in 40-1-311 that the certificate must be firmly attached to the Declaration and allowing it to be filed instead with the Clerk, the potential for HIPA violation is removed. The Bill further clarifies that the Waiver pursuant to 40-1-203 must be filed by the Clerk of District Court. The Waiver is filed in lieu of the Medical Certificate. The statute regarding Declaration of Marriage is not clear as to what must be done with the Waiver. This Bill would clarify that the Waiver must be filed with the Clerk of District Court and it would prevent any HIPA violation.

Your support of SB 311 is greatly appreciated. Thank you.

40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 shall, prior to executing the declaration, secure the medical certificate required by this chapter, which must be firmly attached to the declaration and must be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is $53 and must be paid to the clerk at time of filing.

History: En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R.C.M. 1921; Cal. Civ. C. Sec. 75; re-en. Sec. 5724, R.C.M. 1935; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975; R.C.M. 1947, 48-130; amd. Sec. 2, Ch. 33, L. 1979; amd. Sec. 2, Ch. 12, L. 1983; amd. Sec. 11, Ch. 493, L. 2005.

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40-1-203. Proof of age and medical certificate -- waiver of medical certificate requirement. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant for a license shall provide a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of public health and human services or as provided in subsection (2), shall file with the license issuer a medical certificate from a physician who is licensed to practice medicine and surgery in any state or United States territory or from any other person authorized by rule of the department to issue a medical certificate. The certificate must state that the applicant has been given a blood test for rubella immunity, that the report of the test results has been shown to the applicant tested, and that the other party to the proposed marriage contract has examined the report.

(2) In lieu of a medical certificate, applicants for a marriage license may file an informed consent form acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity testing. Filing of an informed consent form will effect a waiver of the requirement for a blood test for rubella immunity. Informed consent must be recorded on a form provided by the department and must be signed by both applicants. The informed consent form must include:

(a) the reasons for undergoing a blood test for rubella immunity;

(b) the information that the results would provide about the woman's rubella antibody status;

(c) the risks associated with remaining uninformed of the rubella antibody status, including the potential risks posed to a fetus, particularly in the first trimester of pregnancy; and

(d) contact information indicating where applicants may obtain additional information regarding rubella and rubella immunity testing.

(3) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations, tests, or waivers required or allowed by this section. In submitting the blood specimen to the laboratory, the physician or other person authorized to issue a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979; amd. Sec. 1, Ch. 228, L. 1981; amd. Sec. 1, Ch. 154, L. 1983; amd. Sec. 1, Ch. 186, L. 1989; amd. Sec. 73, Ch. 418, L. 1995; amd. Sec. 113, Ch. 546, L. 1995; amd. Sec. 2, Ch. 294, L. 2007.

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