

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA CIVIL UNION ACT; PROVIDING FOR
5 THE INDIVIDUALS WHO MAY ENTER CIVIL UNIONS; PROVIDING PROCEDURES FOR ESTABLISHING A
6 CIVIL UNION; PROVIDING FOR LICENSING AND RECORDING A CIVIL UNION; PROVIDING FOR THE
7 EFFECTS OF A CIVIL UNION; PROVIDING FOR THE DISSOLUTION OF A CIVIL UNION; PROVIDING
8 PENALTIES; AND AMENDING SECTION 40-1-401, MCA."

9
10 WHEREAS, the Preamble of the Montana Constitution embodies the goals of the delegates of the
11 Constitutional Convention to "improve the quality of life, equality of opportunity and to secure the blessings of
12 liberty for this and future generations"; and

13 WHEREAS, the Montana Constitution declares that the dignity of the human being is inviolable and that
14 "no person shall be denied the equal protection of the laws"; and

15 WHEREAS, the Montana Constitution states that all persons have certain inalienable rights that include
16 the rights of "pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring,
17 possessing, and protecting property, and seeking their safety, health and happiness in all lawful ways"; and

18 WHEREAS, the Montana Constitution declares that the right of individual privacy is "essential to the
19 well-being of a free society and shall not be infringed without a showing of a compelling state interest"; and

20 WHEREAS, the Montana Constitution declares that the state "shall make no law respecting an
21 establishment of religion or prohibiting the free exercise thereof"; and

22 WHEREAS, the Montana Constitution defines marriage as between one man and one woman; and

23 WHEREAS, the Montana Constitution prohibits the state from denying to same-sex couples in committed
24 relationships those fundamental property rights that marriage accords to opposite-sex couples; and

25 WHEREAS, the fundamental rights granted by the Montana Constitution and the duty of the state to
26 uphold the equal protection of the law for all of its citizens prohibits the state from denying to same-sex couples
27 in committed relationships access to the status, benefits, and responsibilities that marriage accords to
28 opposite-sex couples; and

29 WHEREAS, the State of Montana prides itself in protecting the privacy of its citizens and in shielding its
30 citizens from undue governmental intrusion in matters affecting citizens' personal and intimate choices and



1 fundamental rights; and

2 WHEREAS, the U.S. Supreme Court and the Montana Supreme Court have determined that the integrity
3 of the family unit has fundamental protection under the due process clauses of the U.S. Constitution and Montana
4 Constitution; and

5 WHEREAS, the establishment of civil unions does not affect the guarantee of freedom of religion, in
6 particular, the freedom of members of religious groups to hold and declare their religious beliefs and to refuse
7 to join others in civil unions; and

8 WHEREAS, the establishment of civil unions does not affect the constitutionally protected definition of
9 marriage; and

10 WHEREAS, family law as it currently exists in the State of Montana does not allow same-sex committed
11 couples to enjoy the status, legally mandated benefits, essential rights of the family unit, and responsibilities that
12 marriage accords to opposite-sex couples.

13

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

15

16 NEW SECTION. **Section 1. Short title.** [Sections 1 through 21] may be cited as the "Montana Civil
17 Union Act".

18

19 NEW SECTION. **Section 2. Purpose -- construction.** [Sections 1 through 21] must be liberally
20 construed and applied to promote the underlying purposes of:

21 (1) providing adequate procedures for the certification or declaration of a civil union;

22 (2) strengthening the integrity of consensual, committed relationships; and

23 (3) safeguarding family relationships.

24

25 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 21], unless the context requires
26 otherwise, the following definitions apply:

27 (1) "Certificate of civil union" means a document that certifies that the individuals named on the certificate
28 have established a civil union in this state in compliance with [sections 1 through 21].

29 (2) "Civil union" means that two eligible individuals have established a relationship pursuant to [sections
30 1 through 21] and may receive the benefits and protections and be subject to the responsibilities of spouses.

1 (3) "Department" means the department of public health and human services provided for in 2-15-2201.

2 (4) "Marriage" has the meaning provided in Article XIII, section 7, of the Montana constitution.

3 (5) "Party to a civil union" means an individual who has established a civil union pursuant to [sections
4 1 through 21].

5
6 **NEW SECTION. Section 4. Requisites for valid civil union -- recognition of foreign civil unions.**

7 (1) For a civil union to be established in Montana, the parties to a civil union may not be parties to another civil
8 union or a marriage and must meet the criteria and obligations set forth in [sections 10 through 16] or [section
9 21].

10 (2) Civil unions, domestic partnerships, or same-sex marriages validated by the laws of the place in
11 which they were contracted or by the domicile of the parties are valid in this state as a civil union.

12
13 **NEW SECTION. Section 5. Individual not to enter civil union with relative.** (1) An individual may
14 not enter a civil union with the individual's parent, grandparent, child, grandchild, sibling, aunt, uncle, niece, or
15 nephew.

16 (2) A civil union between individuals prohibited from entering a civil union under subsection (1) is void.

17
18 **NEW SECTION. Section 6. Benefits, protections, and responsibilities of parties to civil union.** (1)

19 Parties to a civil union have all the same benefits, protections, and responsibilities under law, whether derived
20 from statute, administrative rule, court rule, policy, common law, or any other source of civil law, that are granted
21 to spouses in a marriage.

22 (2) For the purposes of subsection (1), a party to a civil union must be included in any definition or use
23 of the terms "spouse", "family", "immediate family", "dependent", and "next of kin", and other terms that denote
24 the spousal relationship as those terms are used throughout Montana law.

25 (3) Parties to a civil union are responsible for the support of one another to the same degree and in the
26 same manner as prescribed in Title 40, chapter 2, parts 1 and 2, for married persons.

27 (4) The laws governing domestic relations, including annulment, separation and dissolution, parenting
28 and child support, and property division and maintenance, apply to parties to a civil union.

29 (5) The following is a nonexclusive list of legal benefits, protections, and responsibilities of spouses,
30 which apply in the same manner to parties to a civil union:

- 1 (a) laws relating to title, tenure, descent and distribution, intestate succession, waiver of will, survivorship,
2 or other incidents of the acquisition, ownership, or transfer, inter vivos or at death, of real or personal property,
3 including eligibility to hold real and personal property as tenants by the entirety. The parties to a civil union are
4 determined to meet the common law unity of person qualification for purposes of a tenancy by the entirety.
- 5 (b) causes of action related to or dependent upon spousal status, including an action for wrongful death,
6 emotional distress, loss of consortium, or torts or actions under contracts reciting, related to, or dependent upon
7 spousal status;
- 8 (c) probate law and procedure, including nonprobate transfers;
- 9 (d) adoption law and procedure;
- 10 (e) group insurance for state employees under Title 2, chapter 18, parts 7 and 8;
- 11 (f) domestic violence and partner or family member assault programs;
- 12 (g) prohibitions against discrimination based upon marital status;
- 13 (h) victims compensation rights;
- 14 (i) workers' compensation benefits;
- 15 (j) laws relating to emergency and nonemergency medical care and treatment, hospital visitation, and
16 notification, including the rights of a resident of a long-term care facility under 50-5-1104;
- 17 (k) terminal care documents under Title 50, chapter 9, and durable power of attorney for health care
18 execution and revocation under 72-31-304;
- 19 (l) parental leave benefits under 2-18-606;
- 20 (m) public assistance benefits under state law;
- 21 (n) laws relating to taxes imposed by the state or a local government;
- 22 (o) laws relating to immunity from compelled testimony and the spousal communication privilege under
23 26-1-802;
- 24 (p) the rights of a surviving spouse under Title 72, chapter 2;
- 25 (q) laws relating to making, revoking, and objecting to anatomical gifts by others under 72-17-214;
- 26 (r) legal requirements for assignment of wages under 31-1-306.
- 27 (6) The rights and responsibilities of parties to a civil union with respect to a child of whom either
28 becomes the natural parent during the term of the civil union are the same as those of a married couple with
29 respect to a child of whom either spouse becomes the natural parent during the marriage.
- 30

1 NEW SECTION. **Section 7. Modification of civil union terms.** Parties to a civil union may modify the
2 terms, conditions, or effects of their civil union in the same manner and to the same extent as married persons
3 who execute a premarital agreement or other agreement that is recognized and enforceable under the law setting
4 forth particular understandings with respect to their union.

5
6 NEW SECTION. **Section 8. Dissolution of civil unions.** The district court has jurisdiction over all
7 proceedings relating to the dissolution of civil unions. The dissolution of civil unions must follow the same
8 procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of
9 marriage in accordance with Title 40, chapter 4, including residency requirements.

10
11 NEW SECTION. **Section 9. Department duties.** (1) The department shall provide forms for civil union
12 licenses and certificates of civil union to all clerks of district court.

13 (2) The department shall keep a record of all civil unions in the same manner that records of marriage
14 certificates are kept under 50-15-301.

15
16 NEW SECTION. **Section 10. Issuance of civil union license -- certification -- return of certificate**
17 **of civil union.** (1) Upon application in a form prescribed by the department and payment of the fees applicable
18 to a marriage license, a clerk of the district court shall issue a civil union license in the form prescribed by the
19 department and shall enter on the license the names of the parties to the proposed civil union, fill out the license
20 as far as practicable, and retain a copy in the clerk's office. At least one party to the proposed civil union shall sign
21 the application attesting to the accuracy of the facts stated. The license must be issued by the clerk of district
22 court for the county where either party resides. If both parties are nonresidents of the state, the license may be
23 obtained from any clerk of the district court.

24 (2) A civil union license must be delivered to the individual who shall certify the civil union by one of the
25 parties to the proposed civil union. The license is valid for 180 days from the date of issuance. If the proposed
26 civil union is not certified within 180 days from the date of issuance, the license is void. After an individual has
27 certified the civil union, that individual shall fill out that part of the civil union license form provided for certification,
28 sign the form, and certify the civil union. After certification, the document is known as a certificate of civil union.

29 (3) Within 10 days of the certification, the individual performing the certification shall return the certificate
30 of civil union to the office of the clerk of the district court from which the license was issued. The clerk shall file

1 the original according to 50-15-109.

2 (4) A clerk of the district court who knowingly issues a civil union license upon application of an individual
3 residing in another county in the state or a clerk who issues a license without first requiring the applicant to fill
4 out, sign, and make an oath to the declaration contained in the license, as provided in subsection (1), shall be
5 fined not more than \$50 or less than \$20.

6 (5) An individual applying to a clerk of the district court for a civil union license who makes a material
7 misrepresentation in the application is subject to prosecution under the provisions of Title 45, chapter 7, part 2.

8 (6) A clerk of the district court shall provide an individual who applies for a civil union license with
9 information prepared by the secretary of state that advises the individual of the benefits, protections, and
10 responsibilities of a civil union and of the fact that Montana residency may be required for dissolution of a civil
11 union in Montana.

12

13 **NEW SECTION. Section 11. Issuance of license.** A clerk of the district court shall issue a civil union
14 license to all applicants who have complied with the provisions of [section 10] and who are otherwise qualified
15 under the laws of the state to apply for a civil union license.

16

17 **NEW SECTION. Section 12. Proof of legal qualifications of parties to civil union -- penalty.** (1)
18 Before issuing a civil union license to an applicant, the clerk of the district court must be confident, through
19 presentation of affidavits or other proof, that each party to the proposed civil union meets the statutory criteria to
20 enter into a civil union.

21 (2) Affidavits must be in a form prescribed by the department and must be attached to and filed with the
22 certificate of civil union in the office of the clerk of the district court where the license was issued.

23 (3) A clerk of the district court who fails to comply with the provisions of this section or who issues a civil
24 union license with knowledge that either or both of the parties to a civil union have failed to comply with the
25 requirements of the laws of this state or an individual who, having authority and having knowledge that the
26 requirements have not been complied with, certifies a civil union shall be fined not more than \$100.

27

28 **NEW SECTION. Section 13. Restrictions on minors and incompetent persons.** (1) A clerk of the
29 district court may not issue a civil union license when either party to the intended civil union:

30 (a) is under 18 years of age and has not obtained judicial approval as provided in [section 14];

1 (b) lacks the capacity to consent because of mental incapacity or infirmity; or

2 (c) is under guardianship unless written consent is received from the guardian.

3 (2) A clerk of district court who knowingly violates subsection (1) shall be fined not more than \$20. An
4 individual who aids in procuring a civil union license by falsely pretending to be the guardian having authority to
5 give consent to the civil union shall be fined not more than \$500.

6
7 **NEW SECTION. Section 14. Judicial approval.** A clerk of the district court may issue a civil union
8 license to a party who is 16 or 17 years of age if:

9 (1) the party has no parent capable of consenting to the party's civil union or the party obtains the
10 consent of both parents, of the parent having the actual care of, parenting authority for, and control over the party,
11 or of the party's legal guardian;

12 (2) the district court finds that the party is capable of assuming the responsibilities of a civil union and
13 that the civil union will serve the party's best interests; and

14 (3) the parties to the civil union participate in a period of counseling with a designated counselor involving
15 at least two separate counseling sessions that are not less than 10 days apart.

16
17 **NEW SECTION. Section 15. Persons authorized to certify civil unions.** A mayor, district court judge,
18 city court judge, justice of the peace, or tribal judge may certify a civil union.

19
20 **NEW SECTION. Section 16. Civil union license required for certification -- failure to return.** (1)
21 Individuals authorized by [section 15] to certify civil unions shall require a civil union license from the parties
22 before certifying the civil union.

23 (2) An individual who certifies a civil union shall be fined not less than \$10 if the individual:

24 (a) certifies a civil union without first obtaining the license; or

25 (b) fails to properly fill out the license and, within 10 days from the date of the certification, return the
26 license and certificate of civil union to the office of the clerk of the district court from which it was issued.

27
28 **NEW SECTION. Section 17. Certification by unauthorized individual -- penalty -- validity of civil**
29 **unions.** (1) An unauthorized individual who knowingly undertakes to join others in a civil union is guilty of a
30 misdemeanor and upon conviction shall be imprisoned for not more than 6 months, fined not more than \$500 or

1 less than \$100, or both.

2 (2) A civil union certified before an individual falsely professing to be authorized to certify a civil union
3 under [section 15] is valid if the civil union is in other respects lawful and if either of the parties to a civil union
4 believed that the party was lawfully joined in a civil union.

5
6 **NEW SECTION. Section 18. Evidence of civil union.** A copy of the record of the civil union received
7 from the clerk of the district court or the department is presumptive evidence of the civil union in all courts.

8
9 **NEW SECTION. Section 19. Correction of certificate.** (1) Within 6 months after a civil union is
10 certified, the clerk of the district court may correct or complete a certificate of civil union upon application by a
11 party to a civil union or by the individual who certified the civil union. The clerk of the district court shall certify that
12 the correction or completion was made pursuant to this section and note the date. The clerk of the district court
13 may refuse an application for correction or completion. Upon refusal, the applicant may petition the district court
14 for the correction or completion.

15 (2) After 6 months from the date a civil union is certified, a certificate of civil union may be corrected or
16 amended only pursuant to decree of the district court in the district where the original certificate is filed.

17 (3) The district court shall set a time for a hearing. After a hearing, the court shall make findings with
18 respect to the correction of the certificate of civil union that are supported by the evidence. The court shall issue
19 a decree setting forth the facts as found and shall transmit a certified copy of the decree to the department for
20 inclusion in the system of vital records under Title 50, chapter 15. The department shall transmit the copy to the
21 appropriate clerk of the district court to amend the original or issue a new certificate. The words "court amended"
22 must be typed, written, or stamped at the top of the new or amended certificate with the date of the decree and
23 the name of the issuing court.

24
25 **NEW SECTION. Section 20. Delayed certificates.** (1) Individuals who were parties to a certified civil
26 union ceremony in this state for whom a certificate of civil union was not filed, as required by law, may petition
27 the district court of the district in which the civil union license was obtained to determine the facts and to order
28 the issuance of a delayed certificate of civil union.

29 (2) The district court shall set a time for hearing on the petition. After hearing proper and relevant
30 evidence as may be presented, the court shall make findings with respect to the civil union that are supported

1 by the evidence.

2 (3) The district court shall issue a decree setting forth the facts as found and shall transmit a certified
3 copy of the facts to the department.

4 (4) When a delayed certificate of civil union is to be issued, the department shall prepare a delayed
5 certificate and shall transmit it, with the decree, to the clerk of the district court where the civil union license was
6 issued. This delayed certificate must have the word "delayed" printed at the top and must certify that the
7 certificate was ordered by a court pursuant to this section, with the date of the decree. The clerk of the district
8 court shall file the delayed certificate in accordance with the provisions of 50-15-109.

9 (5) A clerk of the district court receiving new certificates in accordance with this section shall file and
10 index them in the most recent book of civil unions and shall also index them with civil unions occurring at the
11 same time.

12

13 **NEW SECTION. Section 21. Declaration of civil union without certification.** (1) Parties may enter
14 a civil union by written declaration in this state without obtaining a civil union license and a certificate of civil union.

15 (2) A declaration of a civil union must contain substantially the following:

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

17 (b) the name and address of the father and maiden name and address of the mother of both parties; and

18 (c) an acknowledgment of the civil union and a statement that both parties are legally competent to enter
19 into the civil union.

20 (3) The declaration must be signed by the parties and attested by at least two witnesses and
21 acknowledged before the clerk of the district court where the declaration was executed.

22 (4) The written declaration serves as an official record of the civil union of the parties and must be filed
23 by the clerk of the district court in the county where the written declaration was executed. The fee for filing a
24 declaration of civil union is the same as a fee for filing a declaration of marriage without solemnization under
25 40-1-311 and must be paid to the clerk of the district court at the time of filing.

26

27 **Section 22.** Section 40-1-401, MCA, is amended to read:

28 **"40-1-401. Prohibited marriages -- contracts.** (1) The following marriages are prohibited:

29 (a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

30 (b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the

1 relationship is by the half or the whole blood, or between first cousins;

2 (c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship
3 is by the half or the whole blood;

4 (d) a marriage between persons of the same sex.

5 (2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are
6 lawfully married as of the date of the removal of the impediment.

7 (3) Children born of a prohibited marriage are legitimate.

8 (4) ~~A~~ Except as provided in [sections 1 through 21], a contractual relationship entered into for the
9 purpose of achieving a civil relationship that is prohibited under subsection (1) is void as against public policy."
10

11 NEW SECTION. Section 23. Severability. If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
13 the part remains in effect in all valid applications that are severable from the invalid applications.
14

15 NEW SECTION. Section 24. Codification instruction. [Sections 1 through 21] are intended to be
16 codified as an integral part of Title 40 and the provisions of Title 40 apply to [sections 1 through 21].
17

- END -