

SENATE BILL NO. 375

INTRODUCED BY S. SALES

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING MARRIAGE LICENSE LAWS; PROVIDING A CONTRACT OF MARRIAGE MEMORIALIZED IN A DECLARATION OF MARRIAGE MAY BE FILED BY TWO PARTIES WISHING TO BE MARRIED; PROVIDING A FEE FOR FILING A DECLARATION OF MARRIAGE; AMENDING SECTIONS 4-5-615, 7-4-2516, 7-4-2619, 25-1-201, 25-10-404, 25-10-405, 40-1-101, 40-1-103, 40-1-213, 40-1-311, 40-1-402, 40-1-403, 40-4-105, 45-8-206, 50-15-121, AND 50-15-122, MCA; REPEALING SECTIONS 40-1-107, 40-1-201, 40-1-202, 40-1-203, 40-1-204, 40-1-205, 40-1-206, 40-1-207, 40-1-208, 40-1-209, 40-1-210, 40-1-212, 40-1-301, 40-1-321, 40-1-322, 40-1-323, 40-1-324, AND 50-15-301, MCA."

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

~~Section 1. Section 1-5-615, MCA, is amended to read:~~

~~"1-5-615. Notification regarding performance of notarial act on electronic record -- selection of technology. (1) (a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records.~~

~~(b) A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.~~

~~(2) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall:~~

~~(a) notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records; and~~

~~(b) identify the technology the notary public intends to use. If the secretary of state has established by rule the standards for the technology used by the notary public, the technology must comply with the standards. If the technology complies with the standards, the secretary of state shall approve the use of the technology.~~

~~(3) A notary public in this state may perform acknowledgments or verifications on oath or affirmation by means of a real-time, two-way audio-video communication, according to the rules and standards established by the secretary of state, if:~~

- 1 ~~_____ (a) the signer is personally known to the notary or identified by a credible witness and, except for a~~
 2 ~~transaction described in subsection (3)(b)(iv), is a legal resident of this state; and~~
 3 ~~_____ (b) the transaction:~~
 4 ~~_____ (i) involves real property located in this state;~~
 5 ~~_____ (ii) involves personal property titled in this state; or~~
 6 ~~_____ (iii) is under the jurisdiction of any court in this state; or~~
 7 ~~_____ (iv) is pursuant to a proxy marriage under 40-1-213 or 40-1-301."~~

8

9 **Section 1.** Section 7-4-2516, MCA, is amended to read:

10 **"7-4-2516. Fees not required in certain cases.** No fees must be charged the state, any county, or any
 11 subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services
 12 rendered, and all such services must be performed without the payment of fees, except the fees under
 13 25-1-201(1)(d) and ~~(1)(r)~~ (1)(q)."

14

15 **Section 2.** Section 7-4-2619, MCA, is amended to read:

16 **"7-4-2619. Indexes to recorded documents.** Every county clerk, as ex officio recorder, must keep:

17 (1) an index of deeds, grants, and transfers and contracts to sell or convey real estate and notices of
 18 buyer's interest in real property labeled "Grantors", with each page divided into four columns headed,
 19 respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, contracts, or notices",
 20 and "Where recorded";

21 (2) an index of deeds and notices of buyer's interest in real property labeled "Grantees", with each page
 22 divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds,
 23 grants, transfers, contracts, or notices", and "Where recorded";

24 (3) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns
 25 headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded",
 26 "When filed", and "When canceled";

27 (4) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns
 28 headed, respectively: "Names of mortgagees", "Names of mortgagors", "Dates of mortgages", "Where recorded",
 29 "When filed", and "When canceled";

30 (5) an index of mortgages labeled "Releases of mortgages of real property--Mortgagees", with each page

1 divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date
2 of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

3 (6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns
4 headed, respectively: "Names of parties executing powers", "To whom powers are executed", "Date of powers",
5 "Date of recording", and "Where powers are recorded";

6 (7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively:
7 "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

8 (8) an index of leases labeled "Lessees", with each page divided into four columns headed, respectively:
9 "Names of lessees", "Names of lessors", "Date of leases", and "When and where recorded";

10 ~~(9) an index of marriage certificates labeled "Marriage certificates--Men", with each page divided into
11 six columns headed, respectively: "Men married", "To whom married", "When married", "By whom married",
12 "Where married", and "Where certificates are recorded";~~

13 ~~————(10) an index of marriage certificates labeled "Marriage certificates--Women", with each page divided into
14 six columns headed, respectively: "Women married" (and under this head placing the family names of the
15 women), "To whom married", "When married", "By whom married", "Where married", and "Where certificates are
16 recorded";~~

17 (9) AN INDEX OF DECLARATIONS OF MARRIAGE, INCLUDING THE FULL NAMES OF THE PARTIES, THE DATE THE
18 DECLARATION WAS ENTERED, WHERE THE DECLARATION WAS SIGNED, AND, IF THE MARRIAGE WAS SOLEMNIZED, WHO
19 PERFORMED THE SOLEMNIZATION;

20 ~~(11)(9)(10)~~ an index of assignments of mortgages and leases labeled "Assignments of mortgages and
21 leases--Assignors", with each page divided into five columns headed, respectively: "Assignors", "Assignees",
22 "Instruments assigned", "Date of assignment", and "When and where recorded";

23 ~~(12)(10)(11)~~ an index of assignments of mortgages and leases labeled "Assignments of mortgages and
24 leases--Assignees", with each page divided into five columns headed, respectively: "Assignees", "Assignors",
25 "Instruments", "Date of assignment", and "When and where recorded";

26 ~~(13)(11)(12)~~ an index of wills labeled "Wills", with each page divided into four columns headed,
27 respectively: "Names of testators", "Date of will", "Date of probate", and "When and where recorded";

28 ~~(14)(12)(13)~~ an index of official bonds labeled "Official bonds", with each page divided into five columns
29 headed, respectively: "Names of officers", "Names of offices", "Date of bond", "Amount of bond", and "When and
30 where recorded";

1 ~~(15)~~~~(13)~~(14) an index of notices of construction liens labeled "Construction liens", with each page divided
2 into three columns headed, respectively: "Parties claiming liens", "Against whom claimed", and "Notices, when
3 filed";

4 ~~(16)~~~~(14)~~(15) an index to transcripts of judgments labeled "Transcripts of judgments", with each page
5 divided into seven columns headed, respectively: "Judgment debtors", "Judgment creditors", "Amount of
6 judgment", "Where recovered", "When recovered", "When transcript filed", and "When judgment satisfied";

7 ~~(17)~~~~(15)~~(16) an index of attachments labeled "Attachments", with each page divided into columns headed,
8 respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of
9 attachments", "When filed", and "When attachments discharged";

10 ~~(18)~~~~(16)~~(17) an index of notices of the pendency of actions labeled "Notices of actions", with each page
11 divided into three columns headed, respectively: "Parties to actions", "Notices, when recorded", and "When filed";

12 ~~(19)~~~~(17)~~(18) an index of certificates of sale of real estate sold under execution or under orders made in
13 any judicial proceedings labeled "Certificates of sale", with each page divided into four columns headed,
14 respectively: "Plaintiff", "Defendant", "Purchaser at sale", and "Date of sale";

15 ~~(20)~~~~(18)~~(19) an index of the individual property of married persons labeled "Individual property of married
16 persons", with each page divided into five columns headed, respectively: "Names of married persons", "Names
17 of their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

18 ~~(21)~~~~(19)~~(20) an index to affidavits for annual work done on mining claims labeled "Annual work on mining
19 claims", with each page divided into four columns headed, respectively: "Name of the affiant", "Name of the
20 claim", "Where situated", and "Year when the work was done";

21 ~~(22)~~~~(20)~~(21) an index of mining claims and declaratory statements labeled "Notices of location of mining
22 claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators",
23 "Name of claim", "Notice, when filed", and "Where recorded";

24 ~~(23)~~~~(21)~~(22) an index to the register of births and deaths;

25 ~~(24)~~~~(22)~~(23) an index to notices and declarations of water rights;

26 ~~(25)~~~~(23)~~(24) an index to the "estray and lost property book";

27 ~~(26)~~~~(24)~~(25) an index to the record of assignments for the benefit of creditors, containing names of
28 assignor and assignee, date and where recorded, and inventory, when filed;

29 ~~(27)~~~~(25)~~(26) an index to financing statements as provided in Part 4 of the Uniform Commercial
30 Code--Secured Transactions;

1 ~~(28)~~~~(26)~~~~(27)~~ an index to filed subdivision plats, containing number of lots, number of acres, filing date,
2 and the location of the quarter section of each subdivision;

3 ~~(29)~~~~(27)~~~~(28)~~ an index to the book of maps and plats, which must contain the name of the proprietor of
4 the town, village, or addition platted and a general description of the same;

5 ~~(30)~~~~(28)~~~~(29)~~ a miscellaneous index, in which must be indexed papers not hereinbefore stated."
6

7 **Section 3.** Section 25-1-201, MCA, is amended to read:

8 **"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

9 (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from
10 the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for
11 dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested
12 amendment of a final parenting plan, \$120;

13 (b) from each defendant or respondent, on appearance, \$60;

14 (c) on the entry of judgment, from the prevailing party, \$45;

15 (d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office
16 in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50 cents
17 for each additional page;

18 (ii) for a copy of a marriage license or declaration of marriage, \$5, and for a copy of a dissolution decree,
19 \$10;

20 (iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means
21 in all criminal and civil proceedings, 25 cents per page;

22 (e) for each certificate, with seal, \$2;

23 (f) for oath and jurat, with seal, \$1;

24 (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years,
25 and an additional \$1 for each name for any additional year searched;

26 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the
27 fee for entry of judgment provided for in subsection (1)(c);

28 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

29 (j) for transmission of records or files or transfer of a case to another court, \$5;

30 (k) for filing and entering papers received by transfer from other courts, \$10;

- 1 ~~(t)~~ for issuing a marriage license, ~~\$53~~;
- 2 ~~(m)~~(l) on the filing of an application for informal, formal, or supervised probate or for the appointment of
- 3 a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the
- 4 applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 5 ~~(n)~~(m) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of
- 6 the estate of a nonresident decedent, \$55;
- 7 ~~(o)~~(n) for filing a declaration of marriage ~~without solemnization~~, \$53;
- 8 ~~(p)~~(o) for filing a motion for substitution of a judge, \$100;
- 9 ~~(q)~~(p) for filing a petition for adoption, \$75;
- 10 ~~(r)~~(q) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.
- 11 (2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court
- 12 must be deposited in the state general fund as specified by the supreme court administrator.
- 13 (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's
- 14 trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent victims
- 15 of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family
- 16 member assault intervention and treatment fund established in 40-15-110.
- 17 (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund
- 18 account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention
- 19 and treatment fund established in 40-15-110.
- 20 (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an
- 21 amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may
- 22 not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under
- 23 subsection (1)(a).
- 24 (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be
- 25 deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.
- 26 (6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and ~~(1)(r)~~ (1)(q) must be deposited in the
- 27 county district court fund. If a district court fund does not exist, the fees must be deposited in the county general
- 28 fund to be used for district court operations.
- 29 (7) Of the fee ~~for issuance of a marriage license and the fee for filing a declaration of marriage without~~
- 30 ~~solemnization~~, \$13 must be deposited in the domestic violence intervention account established by 44-4-310 and

1 \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be
2 deposited in the county general fund to be used for district court operations.

3 (8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not
4 otherwise specifically allocated must be deposited in the state general fund."

5

6 **Section 4.** Section 25-10-404, MCA, is amended to read:

7 **"25-10-404. Poor persons not required to prepay fees -- definition.** (1) Except as provided in
8 subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported by a financial
9 statement, stating that the person has a good cause of action or defense and is unable to pay the costs or
10 procure security to secure the cause of action or defense. Except as provided in subsections (2) and (6), upon
11 issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may
12 commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and
13 the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in
14 the action without demanding or receiving their fees in advance, except the fees under 25-1-201(1)(d) and ~~(1)(t)~~
15 (1)(q).

16 (2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for
17 a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request
18 is subsequently denied, the fees must be paid before the case may proceed further.

19 (3) A person represented by an entity that provides free legal services to indigent persons is not required
20 to file the financial statement required by subsection (1).

21 (4) The department of justice shall, by rule, prescribe the form of the financial statement required by
22 subsection (1) for use in determining indigence. The form may require the disclosure of income and assets,
23 including but not limited to the ownership of real and personal property, cash, and savings.

24 (5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals a
25 judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition to filing
26 the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account statement,
27 obtained from the facility in which the prisoner is confined, for the 6-month period immediately preceding any
28 filing.

29 (6) If an indigent prisoner in the legal custody of the department of corrections files a civil complaint or
30 an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a prisoner is unable to pay

1 the total filing fee, the court shall order the prisoner to make partial payments of any fees required by law when
 2 funds exist. The court shall consider the indigence policy of the department when determining whether funds
 3 exist.

4 (7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or criminal
 5 conviction because of lack of assets or money to pay the initial partial filing fee. The court shall dismiss an action
 6 if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by the court.

7 (8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or adjudicated
 8 delinquent for violations of criminal law or the terms and conditions of parole, probation, or a diversionary program
 9 and who is subject to incarceration, detention, or admission to any facility."
 10

11 **Section 5.** Section 25-10-405, MCA, is amended to read:

12 **"25-10-405. Governmental entities not required to prepay fees -- exceptions.** The state, a county,
 13 a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the
 14 state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or
 15 with any officer during the prosecution or defense of an action, except the fee under 25-1-201~~(+)(p)~~(1)(o) for filing
 16 a motion for substitution of a judge, the fee under 25-1-201~~(+)(r)~~(1)(q) for filing a pleading by facsimile or e-mail,
 17 and all fees for photocopies, postage and handling, certifications, authentications, and record searches."
 18

19 **Section 6.** Section 40-1-101, MCA, is amended to read:

20 **"40-1-101. Purposes.** This chapter shall be liberally construed and applied to promote its underlying
 21 purposes, which are to:

22 (1) provide adequate procedures for ~~the solemnization and registration of~~ preparing and filing a
 23 declaration of marriage;

24 (2) strengthen and preserve the integrity of marriage and safeguard family relationships."
 25

26 **Section 7.** Section 40-1-103, MCA, is amended to read:

27 **"40-1-103. Formalities.** Marriage is a personal relationship between a man and a woman arising out
 28 of a civil contract to which the consent of the parties is essential. ~~A marriage licensed, solemnized, and registered~~
 29 A marriage contract entered into by two parties by filing a declaration of marriage as provided in this chapter is
 30 valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the

1 law of this state."

2

3 **Section 8.** Section 40-1-213, MCA, is amended to read:

4 **"40-1-213. Judicial approval.** (1) The district court may order the clerk of the district court to ~~issue a~~
5 ~~marriage license and a marriage certificate form to~~ authorize a declaration of marriage from a party 16 or 17 years
6 of age who has no parent capable of consenting to the party's marriage or has the consent of both parents or of
7 the parent having the actual care, parenting authority, and control to the party's marriage, if capable of giving
8 consent, or of the party's guardian. The court must require both parties to participate in a period of marriage
9 counseling involving at least two separate counseling sessions not less than 10 days apart with a designated
10 counselor as a condition of the order ~~for issuance of a marriage license and a marriage certificate form~~
11 authorizing the filing of a declaration of marriage under this section.

12 (2) ~~A marriage license and a marriage certificate form may be issued~~ The court may allow the
13 authorization of a declaration of marriage under this section only if the court finds that the underaged party is
14 capable of assuming the responsibilities of marriage and the marriage will serve the party's best interests.
15 Pregnancy alone does not establish that the best interests of the party will be served.

16 (3) ~~The district court shall authorize performance of a marriage by proxy upon the showing required by~~
17 ~~the provisions on solemnization."~~

18

19 **Section 9.** Section 40-1-311, MCA, is amended to read:

20 **"40-1-311. Declaration of marriage without solemnization.** (1) Persons desiring to consummate a
21 marriage by written declaration in this state ~~without the solemnization provided for in 40-1-301 shall, prior to~~
22 ~~executing the declaration, secure the medical certificate required by this chapter. The declaration and the~~
23 ~~certificate or the waiver provided for in 40-1-203 must be filed by the clerk of the district court in the county where~~
24 ~~the contract was executed~~ must file a declaration of marriage with the clerk of the district court of the county
25 where the contract was executed.

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

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

28 (b) the fact of marriage;

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

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

1 (e) if the marriage was solemnized, the date of the solemnization, where the solemnization took place,
 2 and who performed the solemnization-; AND

3 (F) WHETHER EITHER OF THE PARTIES DESIRES A CHANGE IN NAME AND, IF SO, THE FULL NAME BY WHICH THAT
 4 PARTY IS TO BE KNOWN.

5 (3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally
 6 acknowledged before the clerk of the district court of the county or formally acknowledged by an official
 7 authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district
 8 court serves as the official record of the marriage of the parties.

9 (4) If one A party to the declaration is unable to be present when the declaration is formally
 10 acknowledged by the clerk of the district court of the county, the party who is not present must have their THE
 11 PARTY'S signature acknowledged by an official authorized to administer oaths or clerk of the district court in the
 12 county where the party is located.

13 ~~(4)~~(5) The fee for filing a declaration is \$53 and must be paid to the clerk at time of filing."
 14

15 **Section 10.** Section 40-1-402, MCA, is amended to read:

16 **"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the invalidity
 17 of a marriage entered into under the following circumstances:

18 (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered into,
 19 either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other
 20 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving
 21 the essentials of marriage;

22 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time
 23 that the marriage was entered into, the other party did not know of the incapacity;

24 (c) a party was under 16 years of age or was 16 or 17 years of age and did not have the consent of the
 25 party's parents or guardian or judicial approval; or

26 (d) the marriage is prohibited.

27 (2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the
 28 following persons and must be commenced within the times specified, but a declaration of invalidity may not be
 29 sought after the death of either party to the marriage:

30 (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the

1 petitioner obtained knowledge of the described condition;

2 (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating
3 substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

4 (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the
5 petitioner obtained knowledge of the described condition;

6 (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner
7 obtained knowledge of the described condition;

8 (e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or guardian,
9 before the time that the underaged party reaches the age at which the party could have married without satisfying
10 the omitted requirement.

11 (3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party,
12 the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time before
13 the death of one of the parties.

14 (4) Children born of a marriage declared invalid are legitimate.

15 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a
16 retroactive decree on third parties, that the interests of justice would be served by making the decree not
17 retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating
18 to property rights of the spouses, maintenance, support, and parenting of children on dissolution of marriage are
19 applicable to nonretroactive decrees of invalidity.

20 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

21 ~~(a) if the marriage is registered in this state, to the clerk of the district court of the county where the~~
22 ~~marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and~~
23 ~~certificate are recorded; or~~

24 ~~——~~(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with
25 the request that the official enter the fact of invalidity in the appropriate record."

26

27 **Section 11.** Section 40-1-403, MCA, is amended to read:

28 **"40-1-403. Validity of common-law marriage.** Common-law marriages are not invalidated by this
29 chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, ~~40-1-323, and 40-1-324~~ are not
30 invalidated by this chapter."

1
2 **Section 12.** Section 40-4-105, MCA, is amended to read:

3 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The
4 verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is
5 irretrievably broken and must set forth:

6 (a) the age, occupation, and residence of each party and the party's length of residence in this state;
7 (b) the date of the marriage and the place at which it was registered or the declaration of marriage was
8 filed;

9 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in
10 that either:

11 (i) the parties have lived separate and apart for a period of more than 180 days preceding the
12 commencement of this proceeding; or

13 (ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards
14 the marriage, and there is no reasonable prospect of reconciliation;

15 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
16 pregnant;

17 (e) any arrangements as to support of the children and maintenance of a spouse;

18 (f) a proposed parenting plan, if applicable; and

19 (g) the relief sought.

20 (2) Either or both parties to the marriage may initiate the proceeding.

21 (3) If a proceeding is commenced by one of the parties, the other party must be served in the manner
22 provided by the Montana Rules of Civil Procedure and may within 21 days after the date of service file a verified
23 response. A decree may not be entered until 21 days after the date of service.

24 (4) Previously existing defenses to divorce and legal separation, including but not limited to condonation,
25 connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

26 (5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

27 [(6) The social security number, if known, of a person subject to a decree of dissolution or a support
28 order must be recorded in the records relating to the matter. The social security number may be included in the
29 state case registry and vital statistics reporting form filed pursuant to 40-5-908(1). The recordkeeper shall keep
30 the social security number from this source confidential, except that the number may be provided to the

1 department of public health and human services for use in administering Title IV-D of the Social Security Act.]

2 (7) Documents filed before the court containing financial account information must comply with the
3 privacy protection requirements of Rule 5.2 of the Montana Rules of Civil Procedure. (Bracketed language
4 terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999; sec. 12, Ch. 88, L. 2013.)"

5

6 **Section 13.** Section 45-8-206, MCA, is amended to read:

7 **"45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having
8 custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

9 (a) display obscene material to minors in such a way that minors, as a part of the invited public, will be
10 able to view the material. However, a person is considered not to have displayed obscene material to minors if
11 the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material
12 is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor.

13 (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with
14 or without consideration, any obscene material; or

15 (c) present to a minor or participate in presenting to a minor, with or without consideration, any
16 performance that is obscene to minors.

17 (2) A person does not violate this section if:

18 (a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable cause"
19 includes but is not limited to being shown a draft card, driver's license, marriage license or declaration of
20 marriage, birth certificate, educational identification card, governmental identification card, tribal identification
21 card, or other official or apparently official card or document purporting to establish that the person is 18 years
22 of age;

23 (b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a
24 retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material
25 or performance was disseminated in accordance with policies approved by the governing body of the institution;

26 (c) the person is an officer, director, trustee, or employee of a public library or museum and the material
27 or performance was acquired by the library or museum and disseminated in accordance with policies approved
28 by the governing body of the library or museum;

29 (d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school,
30 library, or museum; or

1 (e) the person is a retail sales clerk with no financial interest in the material or performance or in the
2 establishment displaying or selling the material or performance."
3

4 **Section 14.** Section 50-15-121, MCA, is amended to read:

5 **"50-15-121. Copies from system of vital statistics.** (1) Except as provided in subsections (6) and (7),
6 the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or
7 copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or
8 guardian, or an authorized representative. Other individuals may obtain certified copies when the individual
9 demonstrates that the record is needed for the determination or protection of the individual's personal or property
10 rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under
11 this chapter.

12 (2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the
13 state must be uniform and prepared or approved by the department. All certified copies must contain security
14 features that deter the document from being altered, counterfeited, duplicated, or simulated without ready
15 detection that there have been these changes to the document.

16 (3) Each copy issued must show the date of filing. Copies issued from amended records must be marked
17 and must show the effective date of the amendment. Copies issued from delayed records must be marked, must
18 include the date of filing, and must contain a statement of the evidence used to establish the delayed certificate.
19 A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known),
20 must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for
21 the adoptive child.

22 (4) A certified copy or other copy of a death certificate must be issued upon request of any person.

23 (5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections
24 (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or
25 vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been
26 amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official
27 before whom the certificate is offered as evidence.

28 (6) This section may not be construed to permit disclosure of confidential information contained in a birth
29 certificate for medical or health use or of information for statistical purposes only contained in a certificate of
30 marriage, declaration of marriage, or report of dissolution of marriage unless disclosure is specifically authorized

1 by law for statistical or research purposes or unless ordered by a court.

2 (7) (a) When the department receives information that a certificate may have been registered through
3 fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending
4 issuance of an order after an administrative contested case hearing before the department to determine whether
5 fraud or misrepresentation has occurred.

6 (b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana
7 Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's
8 authorized representative and provide the registrant or the representative the opportunity to be heard.

9 (c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue
10 the certificate or copies of the certificate in question.

11 (d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not
12 register the certificate unless ordered to do so by a court.

13 (e) An affected person may appeal the department's decision to the district court as provided in Title 2,
14 chapter 4, part 7.

15 (8) A person may not prepare or issue any certificate that purports to be an original or certified copy,
16 except as authorized in this chapter or rules adopted to implement this chapter.

17 (9) The department may, by rule, prescribe details for the hearing and appellate procedures contained
18 in this section."

19

20 **Section 15.** Section 50-15-122, MCA, is amended to read:

21 **"50-15-122. Disclosure of information from vital records or vital reports -- rules.** (1) It is the policy
22 of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the
23 efficient and proper administration of the system of vital statistics. In furtherance of the policy, a person may not
24 permit inspection of or disclose information contained in vital records or in vital reports or copy or issue a copy
25 of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court
26 of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and
27 confidentiality of vital records.

28 (2) The execution of a research agreement that protects the confidentiality of the information provided
29 to a researcher in response to a written request is required for disclosure of information that may identify a person
30 or institution named in a vital record or report. This agreement must be made in compliance with this chapter or

1 rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any
2 information that might identify a person or institution, other than releases that may be provided for in the
3 agreement.

4 (3) This section does not prohibit the release of information or data that does not identify a person or
5 institution named in a vital record or report.

6 (4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records,
7 as prescribed by this section and rules issued to implement this section, must be made before the department
8 in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before
9 the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act.
10 An appeal of the department's decision to district court must be made by filing an original action pursuant to the
11 Montana Rules of Civil Procedure.

12 (5) (a) Immediately upon the filing of a record with the department, the fact that a birth or death has
13 occurred may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121,
14 complete birth records may be released to the public 30 years after the date of birth. The department shall adopt
15 rules that provide for the continued safekeeping of the records.

16 (b) Upon the filing of a declaration or other record of marriage with the clerk of the district court,
17 information that may be released to the public without restriction is specifically limited to:

18 (i) the names of the parties, the age of the parties, and their place of birth;

19 (ii) the date and place of the marriage;

20 (iii) the names and addresses of the parents of the parties;

21 (iv) the name of the officiant; and

22 (v) the type of ceremony.

23 (c) Any other information contained in a ~~marriage license application~~ declaration of marriage that is not
24 authorized to be disclosed under subsection (5)(b) is considered confidential and is subject to the disclosure
25 limitations and penalties provided in 50-15-114.

26 (d) Notwithstanding the restrictions provided in 50-15-121 and this section, the information contained
27 in a declaration of marriage, marriage license, and marriage certificate may be released to the public 30 years
28 after the date of the marriage.

29 (e) Upon the filing of a record of a dissolution of marriage with the clerk of the district court, that record
30 may be released to the public without restriction unless designated confidential by the court. A record of

1 dissolution of marriage designated confidential by the court may be provided to a federal, state, or local
2 government agency upon request when the record is used solely in the conduct of the agency's official duties.

3 (6) The department may provide the national center for health statistics or a successor agency with
4 copies of records, reports, or data from the system of vital statistics that are required for national statistics. The
5 department shall enter into an agreement with the center, indicating the scope of disclosure of information, as
6 required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for
7 statistical or research purposes. The agreement must set forth the financial support to be provided by the center
8 for the collection, processing, and transmission of the records, reports, or data. Upon written request of the
9 center, the department may approve, by amendment to the agreement, additional statistical or research uses of
10 the records, reports, or data supplied under the agreement.

11 (7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing
12 this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies
13 or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a
14 licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of
15 parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations,
16 or Indian tribal enrollment determinations.

17 (8) Subject to this chapter and rules implementing this chapter, the department may, by agreement,
18 transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics
19 outside this state when the records or reports concern residents of those jurisdictions or persons born in those
20 jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may
21 be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements,
22 and disposition of the copies. Copies received by the department from offices of vital statistics in other states must
23 be handled as provided for in this subsection."
24

25 **NEW SECTION. Section 16. Repealer.** The following sections of the Montana Code Annotated are
26 repealed:

- 27 40-1-107. Form of application, license, marriage certificate, and consent.
28 40-1-201. License application.
29 40-1-202. License issuance.
30 40-1-203. Proof of age and medical certificate -- waiver of medical certificate requirement.

- 1 40-1-204. Contents and form of medical certificate.
- 2 40-1-205. Certificates from other states or for military personnel -- when acceptable.
- 3 40-1-206. Premarital test -- approved laboratories -- rules.
- 4 40-1-207. Examination by health officer.
- 5 40-1-208. Penalties.
- 6 40-1-209. Expenses.
- 7 40-1-210. No license to be issued when applicants under influence of liquor or drug.
- 8 40-1-212. Effective period of license.
- 9 40-1-301. Solemnization and registration.
- 10 40-1-321. Registration of marriage.
- 11 40-1-322. Certificate and copy presumptive evidence.
- 12 40-1-323. Proof of solemnized marriage when no record.
- 13 40-1-324. Declaration to be acknowledged and recorded.
- 14 50-15-301. Marriage certificates.
- 15 - END -