

1 House BILL NO. 149
 2 INTRODUCED BY Seifert Lockrem Quintana
 3 Salvo

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
 5 48-143, 48-146, 48-149, R.C.M. 1947, RELATING TO THE AGE,
 6 RESIDENCE, AND NOTICE REQUIREMENTS FOR THE ISSUANCE OF
 7 MARRIAGE LICENSES; AND REPEALING SECTIONS 48-118.1 AND
 8 48-145, R.C.M. 1947."
 9

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

11 Section 1. Section 48-143, R.C.M. 1947, is amended to
 12 read as follows:

13 "48-143. Persons capable of marriage -- when consent
 14 of parent or guardian required -- special authority for
 15 underage marriages. (1) Every male person who has attained
 16 the full age of eighteen (18) years or who has obtained the
 17 permission of the district judge as provided in subparagraph
 18 (3) and every female person who has attained the full age of
 19 eighteen (18) years or who has obtained the permission of
 20 the district judge as provided in subparagraph (3) shall be
 21 capable in law of contracting marriage if otherwise
 22 competent.

23 (2) If either of the contracting parties is under the
 24 age of eighteen (18), no license shall be issued without the
 25 consent of his or her parents or guardian, or of the parent

1 having the actual care, custody and control of said party,
 2 given before the clerk of the court under oath, or certified
 3 under the hands of such parents or guardian as aforesaid
 4 attested by two adult witnesses, and properly verified by
 5 affidavit (or affirmation) before a notary public or other
 6 official authorized by law to take affidavits, which
 7 certificate shall be filed of record in the office of the
 8 said clerk of court at the time of application for said
 9 license. If there is no guardian or parent having the actual
 10 care, custody and control of said party, then the judge of
 11 the district court in the county where the application is
 12 pending may, after hearing upon proper cause shown, make an
 13 order allowing the marriage of said party.

14 (3) A male under the age of ~~eighteen-(18)~~ sixteen (16)
 15 or a female under the age of ~~eighteen-(18)~~ sixteen (16) may
 16 lawfully contract to marry and obtain a marriage license if
 17 there is first procured the consent of the parent or
 18 guardian as provided in subparagraph (2) and if the district
 19 judge of the county wherein the application is made, after
 20 examining the parties under oath, shall decide that it is to
 21 the best interest of such applicant and of the established
 22 public policy of the state of Montana, and shall authorize
 23 the clerk of the court to issue the license in conformance
 24 with the other provisions of this act."

25 Section 2. Section 48-146, R.C.M. 1947, is amended to

HB 149

1 read as follows:

2 "48-146. License required for marriage -- place of
3 ceremony -- county where license issued. No ~~Montana-resident~~
4 person shall be joined in marriage within this state until a
5 license has been obtained for that purpose from the clerk of
6 the district court. ~~of--the--county--in--which--one--of--the~~
7 ~~parties--has--resided-for-at-least-five-(5)-days-immediately~~
8 ~~prior-to-making-application-therefor~~

9 A license so issued shall authorize a marriage ceremony
10 to be performed in the county where the license is issued or
11 in any other county of this state."

12 ~~If-both-parties-be--nonresidents--of--the--state,--such~~
13 ~~license-may-be-obtained-from-the-clerk-of-the-district-court~~
14 ~~of--the--county--where--the--marriage--ceremony--is--to--be~~
15 ~~performed--if-one-of-such-persons-is-a--nonresident--of--the~~
16 ~~county--where--such--license--is--to--issue,--his-part-of-the~~
17 ~~application-may-be-completed-sworn-to-(or-affirmed)--before~~
18 ~~the--person--authorized--to--accept-such-applications-in-the~~
19 ~~county-and-state-in-which-he-resides.~~

20 Section 3. Section 48-149, R.C.M. 1947, is amended to
21 read as follows:

22 "48-149. Posting of notice of application --
23 objections to marriage -- hearing on objections -- order
24 refusing license -- amendment of application -- issuance
25 without objection -- waiting period. (1) ~~Immediately--upon~~

1 ~~entering--an--application--for--a--license,--the-clerk-of-the~~
2 ~~district-court-shall-post-in-his-office-a-notice-giving--the~~
3 ~~names--and--residences-of-the-parties-applying-therefor,--and~~
4 ~~the-date-of-the-application.~~ Any parent, grandparent, child,
5 or natural guardian thereof if a minor, brother, sister or
6 guardian of either of the applicants for a license, or
7 either of the applicants, or the county attorney, believing
8 that the statements of the application are false or
9 insufficient, or that the applicants or either of them are
10 incompetent to marry, may file with the district court in
11 the county in which the license is applied for, a petition
12 under oath, setting forth the grounds of objection to the
13 marriage and asking for an order requiring the parties
14 making such application to show cause why the license should
15 not be refused. Whereupon, said court, if satisfied that the
16 grounds of objection are prima facie valid, shall issue an
17 order to show cause as aforesaid, returnable as the court
18 may direct, but not more than fourteen (14) days after the
19 date of said order, which shall be served forthwith upon the
20 applicants for such license residing in the state, and upon
21 the clerk before whom such application has been made, and
22 shall operate as a stay upon the issuance of the license
23 until further ordered; if either or both of said applicants
24 are nonresidents of the state said order shall be served
25 forthwith upon said nonresident by publication one time in a

1 newspaper published in the county wherein said application
 2 is pending, and by mailing a copy thereof to said
 3 nonresident at the address contained in the application.

4 (2) If, upon hearing, the court finds that the
 5 statements in the application are willfully false or
 6 insufficient, or that either or both of said parties are not
 7 competent in law to marry, the court shall make an order
 8 refusing the license, and shall immediately report such
 9 matter to the county attorney. If said falseness or
 10 insufficiency is due merely to inadvertence, then the court
 11 shall permit the parties to amend the application so as to
 12 make the statements therein true and sufficient, and upon
 13 application being so amended, the license shall be issued.
 14 If any party is unable to supply any of the information
 15 required in the application, the court may, if satisfied
 16 that such inability is not due to willfulness or negligence,
 17 order the license to be issued notwithstanding such
 18 insufficiency. The costs and disbursements of the
 19 proceedings under this section shall rest in the discretion
 20 of the court, but none shall be taxed against any county
 21 attorney acting in good faith."

22 ~~(3)-If there be no legal objection to said application~~
 23 ~~for license within five (5) days of the application, the~~
 24 ~~clerk of the district court shall issue a marriage license.~~

25 Section 4. Sections 48-188.1 and 48-145, B.C.M. 1947,

1 are repealed.

-End-

HB 149

Approved by Committee on Judiciary

1 Zimmer BILL NO. 149
2 INTRODUCED BY Seifert Lockman
3 Foley

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 of parent or guardian required -- special authority for
15 underage marriages. (1) Every male person who has attained
16 the full age of eighteen (18) years or who has obtained the
17 permission of the district judge as provided in subparagraph
18 (3) and every female person who has attained the full age of
19 eighteen (18) years or who has obtained the permission of
20 the district judge as provided in subparagraph (3) shall be
21 capable in law of contracting marriage if otherwise
22 competent.

23 (2) If either of the contracting parties is under the
24 age of eighteen (18), no license shall be issued without the
25 consent of his or her parents or guardian, or of the parent

1 having the actual care, custody and control of said party,
2 given before the clerk of the court under oath, or certified
3 under the hands of such parents or guardian as aforesaid
4 attested by two adult witnesses, and properly verified by
5 affidavit (or affirmation) before a notary public or other
6 official authorized by law to take affidavits, which
7 certificate shall be filed of record in the office of the
8 said clerk of court at the time of application for said
9 license. If there is no guardian or parent having the actual
10 care, custody and control of said party, then the judge of
11 the district court in the county where the application is
12 pending may, after hearing upon proper cause shown, make an
13 order allowing the marriage of said party.

14 (3) A male under the age of ~~eighteen-(18)~~ sixteen (16)
15 or a female under the age of ~~eighteen-(18)~~ sixteen (16) may
16 lawfully contract to marry and obtain a marriage license if
17 there is first procured the consent of the parent or
18 guardian as provided in subparagraph (2) and if the district
19 judge of the county wherein the application is made, after
20 examining the parties under oath, shall decide that it is to
21 the best interest of such applicant and of the established
22 public policy of the state of Montana, and shall authorize
23 the clerk of the court to issue the license in conformance
24 with the other provisions of this act."

25 Section 2. Section 48-146, R.C.M. 1947, is amended to

1 read as follows:

2 "48-146. License required for marriage -- place of
3 ceremony -- county where license issued. No Montana-resident
4 person shall be joined in marriage within this state until a
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6 the district court. ~~of--the--county--in--which--one--of--the~~
7 ~~parties--has--resided--for--at--least--five--(5)--days--immediately~~
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10 to be performed in the county where the license is issued or
11 in any other county of this state."

12 ~~If--both--parties--be--nonresidents--of--the--state--such~~
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25 without objection -- waiting period. (1) ~~Immediately--upon~~

1 ~~entering--an--application--for--a--license--the--clerk--of--the~~
2 ~~district--court--shall--post--in--his--office--a--notice--giving--the~~
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5 or natural guardian thereof if a minor, brother, sister or
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7 either of the applicants, or the county attorney, believing
8 that the statements of the application are false or
9 insufficient, or that the applicants or either of them are
10 incompetent to marry, may file with the district court in
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16 grounds of objection are prima facie valid, shall issue an
17 order to show cause as aforesaid, returnable as the court
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20 applicants for such license residing in the state, and upon
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23 ~~for--license--within--five--(5)-days-of-the-application, the~~
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-End-

HB 149

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 2 INTRODUCED BY Seifert Lockman
 3 Seifert

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 18 insufficiency. The costs and disbursements of the
 19 proceedings under this section shall rest in the discretion
 20 of the court, but none shall be taxed against any county
 21 attorney acting in good faith."

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 23 ~~for license within five (5) days of the application, the~~
 24 ~~clerk of the district court shall issue a marriage license.~~

25 Section 4. Sections 48-188.1 and 48-145, R.C.M. 1947,

1 are repealed.

-End-

March 4, 1975

SENATE COMMITTEE ON STATE ADMINISTRATION

AMENDMENTS TO HOUSE BILL NO. 149

That House Bill No. 149, third reading, be amended as follows:

1. Amend title, lines 4 and 5.
Following: "AMEND"
Strike: "SECTIONS 48-143,"
Insert: "SECTION"
2. Amend title, line 5.
Following: "48-146,"
Strike: "48-149,"
3. Amend title, lines 5 and 6.
Following: "THE"
Strike: "AGE, RESIDENCE, AND NOTICE REQUIREMENTS FOR THE"
4. Amend title, lines 7 and 8.
Following: "LICENSES"
Strike: "; AND REPEALING SECTIONS 48-118.1 AND 48-145,
R.C.M. 1947"
5. Amend page 1, section 1, lines 10 through line 24 on page 2.
Following: line 10
Strike: Section 1 in its entirety
Renumber: Subsequent section
6. Amend page 3, section 2, lines 19 through line 1 on page 6.
Following: line 19
Strike: Sections 3 through 4 in their entirety

HOUSE BILL NO. 149

INTRODUCED BY SEIFERT, LOCKREM, JACK MOORE, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 48-143, SECTION 48-146, 48-149, R.C.M. 1947, RELATING TO THE AGE, RESIDENCE, AND NOTICE REQUIREMENTS FOR THE ISSUANCE OF MARRIAGE LICENSES, AND REPEALING SECTIONS 48-118.1 AND 48-145, R.C.M., 1947."

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(2) If either of the contracting parties is under the age of eighteen (18), no license shall be issued without the consent of his or her parents or guardian, or of the parent

having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of eighteen (18) sixteen (16) or a female under the age of eighteen (18) sixteen (16) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act."

Section 1. Section 48-146, R.C.M. 1947, is amended to

1 read as follows:

2 "48-146. License required for marriage -- place of
3 ceremony -- county where license issued. No ~~Montana resident~~
4 person shall be joined in marriage within this state until a
5 license has been obtained for that purpose from the clerk of
6 the district court. ~~of the county in which one of the~~
7 ~~parties has resided for at least five (5) days immediately~~
8 ~~prior to making application therefor~~

9 A license so issued shall authorize a marriage ceremony
10 to be performed in the county where the license is issued or
11 in any other county of this state."

12 ~~If both parties be nonresidents of the state, such~~
13 ~~license may be obtained from the clerk of the district court~~
14 ~~of the county where the marriage ceremony is to be~~
15 ~~performed. If one of such persons is a nonresident of the~~
16 ~~county where such license is to issue, his part of the~~
17 ~~application may be completed sworn to (or affirmed) before~~
18 ~~the person authorized to accept such applications in the~~
19 ~~county and state in which he resides.~~

20 ~~Section 3, Section 48-149, R.C.M., 1947, is amended to~~
21 ~~read as follows:~~

22 ~~"48-149. Posting of notice of application and~~
23 ~~objections to marriage hearing on objections and order~~
24 ~~refusing license amendment of application issuance~~
25 ~~without objection waiting period: (1) Immediately upon~~

1 ~~entering an application for a license, the clerk of the~~
2 ~~district court shall post in his office a notice giving the~~
3 ~~names and residences of the parties applying therefor, and~~
4 ~~the date of the application. Any parent, grandparent, child,~~
5 ~~or natural guardian thereof if a minor, brother, sister or~~
6 ~~guardian of either of the applicants for a license, or~~
7 ~~either of the applicants, or the county attorney, believing~~
8 ~~that the statements of the application are false or~~
9 ~~insufficient, or that the applicants or either of them are~~
10 ~~incompetent to marry, may file with the district court in~~
11 ~~the county in which the license is applied for, a petition~~
12 ~~under oath, setting forth the grounds of objection to the~~
13 ~~marriage and asking for an order requiring the parties~~
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24 ~~are nonresidents of the state said order shall be served~~
25 ~~forthwith upon said nonresident by publication one time in a~~

1 newspaper-published-in-the-county-wherein--said--application
2 is---pending,---and--by--mailing--a--copy--thereof--to--said
3 nonresident-at-the-address-contained-in-the-application;

1 are-repealed;

-End-

4 (2)--If,--upon--hearing,--the--court--finds--that--the
5 statements---in--the--application--are--willfully--false--or
6 insufficient,--or--that--either--or--both--of--said--parties--are--not
7 competent--in--law--to--marry,--the--court--shall--make--an--order
8 refusing--the--license,--and--shall--immediately--report--such
9 matter--to--the--county--attorney.---If--said--falseness---or
10 insufficiency--is--due--merely--to--inadvertence,--then--the--court
11 shall--permit--the--parties--to--amend--the--application--so--as--to
12 make--the--statements--therein--true--and--sufficient,--and--upon
13 application--being--so--amended,--the--license--shall--be--issued.
14 If--any--party--is--unable--to--supply--any--of--the--information
15 required--in--the--application,--the--court--may,--if--satisfied
16 that--such--inability--is--not--due--to--willfulness--or--negligence,
17 order---the---license--to--be--issued--notwithstanding--such
18 insufficiency.---The---costs---and---disbursements---of---the
19 proceedings--under--this--section--shall--rest--in--the--discretion
20 of--the--court,--but--none--shall--be--taxed--against--any--county
21 attorney--acting--in--good--faith. "

22 (3)--If--there--be--no--legal--objection--to--said--application
23 for--license--within--five--(5)--days--of--the--application,--the
24 clerk--of--the--district--court--shall--issue--a--marriage--license.

25 Section-4,--Sections-48-188.1-and-48-145,--R.C.M.--1947,