

1 SENATE BILL NO. 5
 2 INTRODUCTION BY REGAN, GREELY

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE
 5 AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING
 6 THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS
 7 RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON
 8 UNIFORM STATE LAWS; AMENDING SECTION 48-130, R.C.M. 1947;
 9 AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103
 10 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119,
 11 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133,
 12 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH
 13 48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN
 14 EFFECTIVE DATE."

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

17 Section 1. Short title. This act may be cited as the
 18 "Uniform Marriage and Divorce Act".

19 Section 2. Purposes of act. This act shall be
 20 liberally construed and applied to promote its underlying
 21 purposes, which are to:

22 (1) provide adequate procedures for the solemnization
 23 and registration of marriage;

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

1 (3) promote the amicable settlement of disputes that
 2 have arisen between parties to a marriage;

3 (4) mitigate the potential harm to the spouses and
 4 their children caused by the process of legal dissolution of
 5 marriage;

6 (5) make reasonable provision for spouse and minor
 7 children during and after litigation; and

8 (6) make the law of legal dissolution of marriage
 9 effective for dealing with the realities of matrimonial
 10 experience by making irrevocable breakdown of the marriage
 11 relationship the sole basis for its dissolution.

12 Section 3. Uniformity of application and construction.
 13 This act shall be so applied and construed as to effectuate
 14 its general purpose to make uniform the law with respect to
 15 the subject of this act among those states which enact it.

16 Section 4. Formalities. Marriage is a personal
 17 relationship between a man and a woman arising out of a
 18 civil contract to which the consent of the parties is
 19 essential. A marriage licensed, solemnized, and registered
 20 as provided in this act is valid in this state. A marriage
 21 may be contracted, maintained, invalidated, or dissolved
 22 only as provided by the law of this state.

23 Section 5. Form of application, license, certificate,
 24 and consent. (1) The director of the department of health
 25 and environmental sciences shall prescribe the form for an

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1 application for a marriage license, which shall include the
2 following information:

3 (a) name, sex, occupation, address, social security
4 number, date and place of birth of each party to the
5 proposed marriage;

6 (b) if either party was previously married, his name,
7 and the date, place, and court in which the marriage was
8 dissolved or declared invalid or the date and place of death
9 of the former spouse;

10 (c) name and address of the parents or guardian of
11 each party;

12 (d) whether the parties are related to each other and,
13 if so, their relationship; and

14 (e) the name and date of birth of any child, of whom
15 both parties are parents, born prior to the making of the
16 application unless their parental rights and the parent and
17 child relationship with respect to the child have been
18 terminated.

19 (2) The director of the department of health and
20 environmental sciences shall prescribe the forms for the
21 marriage license, the marriage certificate, and the consent
22 to marriage.

23 Section 6. License to marry. When a marriage
24 application has been completed and signed by both parties to
25 a prospective marriage and at least one (1) party has

1 appeared before the clerk of the district court and paid the
2 marriage license fee of five dollars (\$5), the clerk of the
3 district court shall issue a license to marry and a marriage
4 certificate form upon being furnished:

5 (1) satisfactory proof that each party to the marriage
6 will have attained the age of eighteen (18) years at the
7 time the marriage license is effective, or will have
8 attained the age of sixteen (16) years and has either the
9 consent to the marriage of both parents or his guardian, or
10 judicial approval; and

11 (2) satisfactory proof that the marriage is not
12 prohibited; and

13 (3) a certificate of the results of any medical
14 examination required by the laws of this state.

15 Section 7. Effective date of license. A license to
16 marry becomes effective throughout this state three (3) days
17 after the date of issuance, unless the judge of the district
18 court orders that the license is effective when issued, and
19 expires one hundred eighty (180) days after it becomes
20 effective.

21 Section 8. Judicial approval. (1) The district
22 court, after a reasonable effort has been made to notify the
23 parents or guardian of each underaged party, may order the
24 clerk of the district court to issue a marriage license and
25 a marriage certificate form:

1 (a) to a party aged sixteen, (16) or seventeen (17)
 2 years who has no parent capable of consenting to his
 3 marriage, or whose parent or guardian has not consented to
 4 his marriage; or

5 (b) to a party under the age of sixteen (16) years who
 6 has the consent of both parents to his marriage, if capable
 7 of giving consent, or of his guardian.

8 (2) A marriage license and a marriage certificate form
 9 may be issued under this section only if the court finds
 10 that the underaged party is capable of assuming the
 11 responsibilities of marriage and the marriage will serve his
 12 best interest. Pregnancy alone does not establish that the
 13 best interest of the party will be served.

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

17 Section 9. Solemnization and registration. (1) A
 18 marriage may be solemnized by a judge of a court of record,
 19 by a public official whose powers include solemnization of
 20 marriages, or in accordance with any mode of solemnization
 21 recognized by any religious denomination, Indian nation or
 22 tribe, or native group. Either the person solemnizing the
 23 marriage, or, if no individual acting alone solemnized the
 24 marriage, a party to the marriage, shall complete the
 25 marriage certificate form and forward it to the clerk of the

1 district court.

2 (2) If a party to a marriage is unable to be present
 3 at the solemnization, he may authorize in writing a third
 4 person to act as his proxy. If the person solemnizing the
 5 marriage is satisfied that the absent party is unable to be
 6 present and has consented to the marriage, he may solemnize
 7 the marriage by proxy. If he is not satisfied, the parties
 8 may petition the district court for an order permitting the
 9 marriage to be solemnized by proxy.

10 (3) Upon receipt of the marriage certificate, the
 11 clerk of the district court shall register the marriage.

12 (4) The solemnization of the marriage is not
 13 invalidated by the fact that the person solemnizing the
 14 marriage was not legally qualified to solemnize it, if
 15 either party to the marriage believed him to be so
 16 qualified.

17 Section 10. Prohibited marriages. (1) Marriages
 18 between parents and children, ancestors and descendants of
 19 every degree, and between brothers and sisters of the half
 20 as well as the whole blood, and between nieces and uncles,
 21 and between aunts and nephews, and between first cousins,
 22 and between persons, either of whom is feeble-minded, are
 23 prohibited and void from the beginning, whether the
 24 relationship is legitimate or illegitimate.

25 (2) Children born of a prohibited marriage are

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1 legitimate.

2 Section 11. Declaration of invalidity. (1) The
3 district court shall enter its decree declaring the
4 invalidity of a marriage entered into under the following
5 circumstances:

6 (a) a party lacked capacity to consent to the marriage
7 at the time the marriage was solemnized, either because of
98 mental incapacity or infirmity or because of the influence
9 of alcohol, drugs, or other incapacitating substances, or a
10 party was induced to enter into a marriage by force or
11 duress, or by fraud involving the essentials of marriage;

12 (b) a party lacks the physical capacity to consummate
13 the marriage by sexual intercourse, and at the time the
14 marriage was solemnized the other party did not know of the
15 incapacity.

16 (c) a party was under the age of sixteen (16) years
17 and did not have the consent of his parents or guardian and
18 judicial approval or was aged sixteen (16) or seventeen (17)
19 years and did not have the consent of his parents or
20 guardian or judicial approval; or

21 (d) the marriage is prohibited.

22 (2) A declaration of invalidity under subsection
23 (1)(a) through (c) may be sought by any of the following
24 persons and must be commenced within the times specified,
25 but in no event may a declaration of invalidity be sought

1 after the death of either party to the marriage:

2 (a) for a reason set forth in subsection (1)(a), by
3 either party or by the legal representative of the party who
4 lacked capacity to consent, no later than ninety (90) days
5 after the petitioner obtained knowledge of the described
6 condition;

7 (b) for the reason set forth in subsection (1)(b), by
8 either party, no later than one (1) year after the
9 petitioner obtained knowledge of the described condition;

10 (c) for the reason set forth in subsection (1)(c), by
11 the underaged party, his parent or guardian, prior to the
12 time the underaged party reaches the age at which he could
13 have married without satisfying the omitted requirement.

14 (3) A declaration of invalidity for the reason set
15 forth in subsection (1)(d) may be sought by either party,
16 the legal spouse in case of a bigamous marriage, the county
17 attorney, or a child of either party, at any time prior to
18 the death of one (1) of the parties.

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

21 (5) Unless the court finds, after a consideration of
22 all relevant circumstances, including the effect of a
23 retroactive decree on third parties, that the interests of
24 justice would be served by making the decree not
25 retroactive, it shall declare the marriage invalid as of the

1 date of the marriage. The provisions of this act relating
2 to property rights of the spouses, maintenance, support, and
3 custody of children on dissolution of marriage are
4 applicable to nonretroactive decrees of invalidity.

5 Section 12. Putative spouse. Any person who has
6 cohabited with another to whom he is not legally married in
7 the good faith belief that he was married to that person is
8 a putative spouse until knowledge of the fact that he is not
9 legally married terminates his status and prevents
10 acquisition of further rights. A putative spouse acquires
11 the rights conferred upon a legal spouse, including the
12 right to maintenance following termination of his status,
13 whether or not the marriage is prohibited (section 10) or
14 declared invalid (section 11). If there is a legal spouse
15 or other putative spouses, rights acquired by a putative
16 spouse do not supersede the rights of the legal spouse or
17 those acquired by other putative spouses, but the court
18 shall apportion property, maintenance, and support rights
19 among the claimants as appropriate in the circumstances and
20 in the interests of justice.

21 Section 13. Application. All marriages contracted
22 within this state prior to the effective date of this act,
23 or outside the state, that were valid at the time of the
24 contract or subsequently validated by the laws of the place
25 in which they were contracted or by the domicil of the

1 parties, are valid in this state.

2 Section 14. Validity of common law marriage. Common
3 law marriages are not invalidated by this act. Declarations
4 of marriage pursuant to sections 48-130 through 48-132 are
5 not invalidated by this act.

6 Section 15. Application of the Montana rules of civil
97 procedure to proceedings under this act. (1) The Montana
8 rules of civil procedure apply to all proceedings under this
9 act, except as otherwise provided in this act.

10 (2) A proceeding for dissolution of marriage, legal
11 separation, or declaration of invalidity of marriage shall
12 be entitled "In re the Marriage of _____ and
13 _____". A custody or support proceeding shall be
14 entitled "In re the (Custody) (Support) of _____".

15 (3) The initial pleading in all proceedings under this
16 act shall be denominated a petition. A responsive pleading
17 shall be denominated a response. Other pleadings, and all
18 pleadings in other matters under this act, shall be
19 denominated as provided in the Montana rules of civil
20 procedure.

21 (4) In this act, "decree" includes "judgment".

22 (5) A decree of dissolution or of legal separation, if
23 made, shall not be awarded to one of the parties, but shall
24 provide that it affects the status previously existing
25 between the parties in the manner decreed.

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1 Section 16. Dissolution of marriage--legal separation.

2 (1) The district court shall enter a decree of dissolution
3 of marriage if:

4 (a) the court finds that one of the parties, at the
5 time the action was commenced, was domiciled in this state,
6 or was stationed in this state while a member of the armed
7 services, and that the domicil or military presence has been
8 maintained for ninety (90) days next preceding the making of
9 the findings;

10 (b) the court finds that the marriage is irretrievably
11 broken, which findings shall be supported by evidence

12 (i) that the parties have lived separate and apart for
13 a period of more than one hundred eighty (180) days next
14 preceding the commencement of this proceeding, or

15 (ii) that there is serious marital discord which
16 adversely affects the attitude of one or both of the parties
17 towards the marriage; and

18 (c) the court finds that the conciliation provisions
19 of the Montana Conciliation Law and of section 19 either do
20 not apply or have been met; and

21 (d) to the extent it has jurisdiction to do so, the
22 court has considered, approved, or made provision for child
23 custody, the support of any child entitled to support, the
24 maintenance of either spouse, and the disposition of
25 property; or provided for a separate, later hearing to

1 complete these matters.

2 (2) If a party requests a decree of legal separation
3 rather than a decree of dissolution of marriage, the court
4 shall grant the decree in that form unless the other party
5 objects.

6 Section 17. Procedure -- commencement -- pleadings --
7 abolition of existing defenses. (1) All proceedings under
8 this act are commenced in the manner provided by the Montana
9 rules of civil procedure.

10 (2) The verified petition in a proceeding for
11 dissolution of marriage or legal separation shall allege
12 that the marriage is irretrievably broken and shall set
13 forth:

14 (a) the age, occupation, and residence of each party
15 and his length of residence in this state;

16 (b) the date of the marriage and the place at which it
17 was registered;

18 (c) that the jurisdictional requirements of section 16
19 exist and that the marriage is irretrievably broken in that
20 either

21 (i) the parties have lived separate and apart for a
22 period of more than one hundred eighty (180) days next
23 preceding the commencement of this proceeding, or

24 (ii) that there is serious marital discord which
25 adversely affects the attitude of one or both of the parties

1 towards the marriage, and that there is no reasonable
2 prospect of reconciliation;

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

5 (e) any arrangements as to support, custody, and
6 visitation of the children and maintenance of a spouse; and

7 (f) the relief sought.

8 (3) Either or both parties to the marriage may
9 initiate the proceeding.

10 (4) If a proceeding is commenced by one of the
11 parties, the other party must be served in the manner
12 provided by the Montana rules of civil procedure and may
13 within twenty (20) days after the date of service file a
14 verified response. No decree may be entered until twenty
15 (20) days after the date of service.

16 (5) Previously existing defenses to divorce and legal
17 separation, including but not limited to condonation,
18 connivance, collusion, recrimination, insanity, and lapse of
19 time, are abolished.

20 (6) The court may join additional parties proper for
21 the exercise of its authority to implement this act.

22 Section 18. Temporary order or temporary injunction.

23 (1) In a proceeding for dissolution of marriage or for
24 legal separation, or in a proceeding for disposition of
25 property or for maintenance or support following dissolution

1 of the marriage by a court which lacked personal
2 jurisdiction over the absent spouse, either party may move
3 for temporary maintenance or temporary support of a child of
4 the marriage entitled to support. The motion shall be
5 accompanied by an affidavit setting forth the factual basis
6 for the motion and the amounts requested.

7 (2) As a part of a motion for temporary maintenance or
8 support or by independent motion accompanied by affidavit,
9 either party may request the court to issue a temporary
10 injunction for any of the following relief:

11 (a) restraining any person from transferring,
12 encumbering, concealing, or otherwise disposing of any
13 property except in the usual course of business or for the
14 necessities of life, and, if so restrained, requiring him to
15 notify the moving party of any proposed extraordinary
16 expenditures made after the order is issued;

17 (b) enjoining a party from molesting or disturbing the
18 peace of the other party or of any child;

19 (c) excluding a party from the family home or from the
20 home of the other party upon a showing that physical or
21 emotional harm would otherwise result;

22 (d) enjoining a party from removing a child from the
23 jurisdiction of the court; and

24 (e) providing other injunctive relief proper in the
25 circumstances.

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1 (3) The court may issue a temporary restraining order
2 without requiring notice to the other party only if it finds
3 on the basis of the moving affidavit or other evidence that
4 irreparable injury will result to the moving party if no
5 order is issued until the time for responding has elapsed.

6 (4) A response may be filed within twenty (20) days
7 after service of notice of motion or at the time specified
8 in the temporary restraining order.

9 (5) On the basis of the showing made and in conformity
10 with sections 22 and 23, the court may issue a temporary
11 injunction and an order for temporary maintenance or support
12 in amounts and on terms just and proper in the circumstance.

13 (6) A temporary order or temporary injunction:

14 (a) does not prejudice the rights of the parties or
15 the child which are to be adjudicated at subsequent hearings
16 in the proceeding;

17 (b) may be revoked or modified before final decree on
18 a showing by affidavit of the facts necessary to revocation
19 or modification of a final decree under section 30; and

20 (c) terminates when the final decree is entered or
21 when the petition for dissolution or legal separation is
22 voluntarily dismissed.

23 Section 19. Irretrievable breakdown. (1) If both of
24 the parties by petition or otherwise have stated under oath
25 or affirmation that the marriage is irretrievably broken, or

1 one of the parties has so stated and the other has not
2 denied it, the court, after hearing, shall make a finding
3 whether the marriage is irretrievably broken.

4 (2) If one of the parties has denied under oath or
5 affirmation that the marriage is irretrievably broken, the
6 court shall consider all relevant factors, including the
7 circumstances that gave rise to filing the petition and the
8 prospect of reconciliation, and shall:

9 (a) make a finding whether the marriage is
10 irretrievably broken; or

11 (b) continue the matter for further hearing not fewer
12 than thirty (30) nor more than sixty (60) days later, or as
13 soon thereafter as the matter may be reached on the court's
14 calendar, and may suggest to the parties that they seek
15 counseling. The court at the request of either party shall,
16 or on its own motion may, order a conciliation conference.
17 At the adjourned hearing the court shall make a finding
18 whether the marriage is irretrievably broken.

19 (3) A finding of irretrievable breakdown is a
20 determination that there is no reasonable prospect of
21 reconciliation.

22 (4) Nothing in this section shall be interpreted to
23 affect the provisions of sections 36-201 through 36-205,
24 known as the Montana Conciliation Law.

25 Section 20. Separation agreement. (1) To promote

1 amicable settlement of disputes between parties to a
 2 marriage attendant upon their separation or the dissolution
 3 of their marriage, the parties may enter into a written
 4 separation agreement containing provisions for disposition
 5 of any property owned by either of them, maintenance of
 6 either of them, and support, custody, and visitation of
 7 their children.

8 (2) In a proceeding for dissolution of marriage or for
 9 legal separation, the terms of the separation agreement,
 10 except those providing for the support, custody, and
 11 visitation of children, are binding upon the court unless it
 12 finds, after considering the economic circumstances of the
 13 parties and any other relevant evidence produced by the
 14 parties, on their own motion or on request of the court,
 15 that the separation agreement is unconscionable.

16 (3) If the court finds the separation agreement
 17 unconscionable, it may request the parties to submit a
 18 revised separation agreement or may make orders for the
 19 disposition of property, maintenance, and support.

20 (4) If the court finds that the separation agreement
 21 is not unconscionable as to disposition of property or
 22 maintenance, and not unsatisfactory as to support:

23 (a) unless the separation agreement provides to the
 24 contrary, its terms shall be set forth in the decree of
 25 dissolution or legal separation and the parties shall be

1 ordered to perform them, or

2 (b) if the separation agreement provides that its
 3 terms shall not be set forth in the decree, the decree shall
 4 identify the separation agreement and state that the court
 5 has found the terms not unconscionable.

6 (5) Terms of the agreement set forth in the decree are
 7 enforceable by all remedies available for enforcement of a
 8 judgment, including contempt, and are enforceable as
 9 contract terms.

10 (6) Except for terms concerning the support, custody,
 11 or visitation of children, the decree may expressly preclude
 12 or limit modification of terms set forth in the decree if
 13 the separation agreement so provides. Otherwise, terms of a
 14 separation agreement set forth in the decree are
 15 automatically modified by modification of the decree.

16 Section 21. Disposition of property. (1) In a
 17 proceeding for dissolution of a marriage, legal separation,
 18 or disposition of property following a decree of dissolution
 19 of marriage or legal separation by a court which lacked
 20 personal jurisdiction over the absent spouse or lacked
 21 jurisdiction to dispose of the property, the court, without
 22 regard to marital misconduct, shall, and in a proceeding for
 23 legal separation may, finally equitably apportion between
 24 the parties the property and assets belonging to either or
 25 both however and whenever acquired, and whether the title

1 thereto is in the name of the husband or wife or both. In
 2 making apportionment the court shall consider the duration
 3 of the marriage, and prior marriage of either party,
 4 antenuptial agreement of the parties, the age, health,
 5 station, occupation, amount and sources of income,
 6 vocational skills, employability, estate, liabilities, and
 7 needs of each of the parties, custodial provisions, whether
 8 the apportionment is in lieu of or in addition to
 9 maintenance, and the opportunity of each for future
 10 acquisition of capital assets and income. The court shall
 11 also consider the contribution or dissipation of value of
 12 the respective estates, and the contribution of a spouse as
 13 a homemaker or to the family unit. In disposing of property
 14 acquired prior to the marriage; property acquired by gift,
 15 bequest, devise or descent; property acquired in exchange
 16 for property acquired before the marriage or in exchange for
 17 property acquired by gift, bequest, devise, or descent; the
 18 increased value of property acquired prior to marriage; and
 19 property acquired by a spouse after a decree of legal
 20 separation, the court shall consider those contributions of
 21 the other spouse to the marriage, including the non-monetary
 22 contribution of a homemaker; the extent to which such
 23 contributions have facilitated the maintenance of this
 24 property and whether or not the property disposition serves
 25 as an alternative to maintenance arrangements.

1 (2) In a proceeding, the court may protect and promote
 2 the best interests of the children by setting aside a
 3 portion of the jointly and separately held estates of the
 4 parties in a separate fund or trust for the support,
 5 maintenance, education, and general welfare of any minor,
 6 dependent, or incompetent children of the parties.

7 Section 22. Maintenance. (1) In a proceeding for
 8 dissolution of marriage or legal separation, or a proceeding
 9 for maintenance following dissolution of the marriage by a
 10 court which lacked personal jurisdiction over the absent
 11 spouse, the court may grant a maintenance order for either
 12 spouse only if it finds that the spouse seeking maintenance:

13 (a) lacks sufficient property to provide for his
 14 reasonable needs, and

15 (b) is unable to support himself through appropriate
 16 employment or is the custodian of a child whose condition or
 17 circumstances make it appropriate that the custodian not be
 18 required to seek employment outside the home.

19 (2) The maintenance order shall be in such amounts and
 20 for such periods of time as the court deems just, without
 21 regard to marital misconduct, and after considering all
 22 relevant facts including:

23 (a) the financial resources of the party seeking
 24 maintenance, including marital property apportioned to him,
 25 and his ability to meet his needs independently, including

1 the extent to which a provision for support of a child
2 living with the party includes a sum for that party as
3 custodian;

4 (b) the time necessary to acquire sufficient education
5 or training to enable the party seeking maintenance to find
6 appropriate employment;

7 (c) the standard of living established during the
8 marriage;

9 (d) the duration of the marriage;

10 (e) the age, and the physical and emotional condition
11 of the spouse seeking maintenance; and

12 (f) the ability of the spouse from whom maintenance is
13 sought to meet his needs while meeting those of the spouse
14 seeking maintenance.

15 Section 23. Child support. In a proceeding for
16 dissolution of marriage, legal separation, maintenance, or
17 child support, the court may order either or both parents
18 owing a duty of support to a child to pay an amount
19 reasonable or necessary for his support, without regard to
20 marital misconduct, after considering all relevant factors
21 including:

22 (1) the financial resources of the child;

23 (2) the financial resources of the custodial parent;

24 (3) the standard of living the child would have
25 enjoyed had the marriage not been dissolved;

1 (4) the physical and emotional condition of the child,
2 and his educational needs; and

3 (5) the financial resources and needs of the
4 noncustodial parent.

5 Section 24. Representation of child. The court may
6 appoint an attorney to represent the interests of a minor
7 dependent child with respect to his support, custody, and
8 visitation. The court shall enter an order for costs and
9 fees in favor of the child's attorney. The order shall be
10 made against either or both parents, except that, if the
11 responsible party is indigent, the costs shall be waived.

12 Section 25. Payment of maintenance or support to
13 court. (1) Upon its own motion or upon motion of either
14 party, the court may order at any time that maintenance or
15 support payments be made to the clerk of the district court
16 as trustee for remittance to the person entitled to receive
17 the payments.

18 (2) The clerk of the district court shall maintain
19 records listing the amount of payments, the date payments
20 are required to be made, and the names and addresses of the
21 parties affected by the order.

22 (3) The parties affected by the order shall inform the
23 clerk of the district court of any change of address or of
24 other condition that may affect the administration of the
25 order.

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1 Section 26. Assignments. The court may order the
 2 person obligated to pay support or maintenance to make an
 3 assignment of a part of his periodic earnings or trust
 4 income to the person entitled to receive the payments. The
 5 assignment is binding on the employer, trustee, or other
 6 payor of the funds two (2) weeks after service upon him of
 7 notice that it has been made. The payor shall withhold from
 8 the earnings or trust income payable to the person obligated
 9 to support the amount specified in the assignment and shall
 10 transmit the payments to the person specified in the order.
 11 The payor may deduct from each payment a sum not exceeding
 12 one dollar (\$1) as reimbursement for costs. An employer
 13 shall not discharge or otherwise discipline an employee as a
 14 result of a wage or salary assignment authorized by this
 15 section.

16 Section 27. Costs--attorney's fees. The court from
 17 time to time after considering the financial resources of
 18 both parties may order a party to pay a reasonable amount
 19 for the cost to the other party of maintaining or defending
 20 any proceeding under this act and for attorney's fees,
 21 including sums for legal services rendered and costs
 22 incurred prior to the commencement of the proceeding or
 23 after entry of judgment. The court may order that the
 24 amount be paid directly to the attorney, who may enforce the
 25 order in his name.

1 Section 28. Decree. (1) A decree of dissolution of
 2 marriage or of legal separation is final when entered,
 3 subject to the right of appeal. An appeal from the decree
 4 of dissolution that does not challenge the finding that the
 5 marriage is irretrievably broken does not delay the finality
 6 of that provision of the decree which dissolves the marriage
 7 beyond the time for appealing from that provision, and
 8 either of the parties may remarry pending appeal.

9 (2) No earlier than six (6) months after entry of a
 10 decree of legal separation, the court on motion of either
 11 party shall convert the decree to a decree of dissolution of
 12 marriage.

13 (3) The clerk of court shall give notice of the entry
 14 of a decree of dissolution or legal separation:

15 (a) if the marriage is registered in this state, to
 16 the clerk of the district court of the county where the
 17 marriage is registered who shall enter the fact of
 18 dissolution or separation in the book in which the marriage
 19 license and certificate are recorded; or

20 (b) if the marriage is registered in another
 21 jurisdiction, to the appropriate official of that
 22 jurisdiction, with the request that he enter the fact of
 23 dissolution in the appropriate record.

24 (4) Upon request by a wife whose marriage is dissolved
 25 or declared invalid, the court may, and if there are no

1 children of the parties shall, order her maiden name or a
2 former name restored.

3 Section 29. Independence of provisions of decree or
4 temporary order. If a party fails to comply with a
5 provision of a decree or temporary order or injunction, the
6 obligation of the other party to make payments for support
7 or maintenance or to permit visitation is not suspended; but
8 he may move the court to grant an appropriate order.

9 Section 30. Modification and termination of provisions
10 for maintenance, support, and property disposition. (1)
11 Except as otherwise provided in subsection (6) of section
12 20, the provisions of any decree respecting maintenance or
13 support may be modified only as to installments accruing
14 subsequent to the motion for modification and only upon a
15 showing of changed circumstances so substantial and
16 continuing as to make the terms unconscionable. The
17 provisions as to property disposition may not be revoked or
18 modified, unless the court finds the existence of conditions
19 that justify the reopening of a judgment under the laws of
20 this state.

21 (2) Unless otherwise agreed in writing or expressly
22 provided in the decree, the obligation to pay future
23 maintenance is terminated upon the death of either party or
24 the remarriage of the party receiving maintenance.

25 (3) Unless otherwise agreed in writing or expressly

1 provided in the decree, provisions for the support of a
2 child are terminated by emancipation of the child but not by
3 the death of a parent obligated to support the child. When
4 a parent obligated to pay support dies, the amount of
5 support may be modified, revoked, or commuted to a lump sum
6 payment, to the extent just and appropriate in the
7 circumstances.

8 Section 31. Jurisdiction--commencement of proceedings.

9 (1) A court of this state competent to decide child custody
10 matters has jurisdiction to make a child custody
11 determination by initial or modification decree if:

12 (a) this state

13 (i) is the home state of the child at the time of
14 commencement of the proceedings, or

15 (ii) had been the child's home state within six (6)
16 months before commencement of the proceeding and the child
17 is absent from this state because of his removal or
18 retention by a person claiming his custody or for other
19 reason, and a parent or person acting as parent continues to
20 live in this state; or

21 (b) it is in the best interest of the child that a
22 court of this state assume jurisdiction because

23 (i) the child and his parents, or the child and at
24 least one contestant, have a significant connection with
25 this state, and

1 (ii) there is available in this state substantial
2 evidence concerning the child's present or future care,
3 protection, training, and personal relationships; or

4 (c) the child is physically present in this state and

5 (i) has been abandoned or

6 (ii) it is necessary in an emergency to protect him
7 because he has been subjected to or threatened with
8 mistreatment or abuse or is neglected or dependent; or

9 (d) (i) no other state has jurisdiction under
10 prerequisites substantially in accordance with paragraphs
11 (a), (b), or (c), or another state has declined to exercise
12 jurisdiction on the ground that this state is the more
13 appropriate forum to determine custody of the child, and

14 (ii) it is in his best interest that the court assume
15 jurisdiction.

16 (2) Except under paragraphs (c) and (d) of subsection
17 (1), physical presence in this state of the child, or of the
18 child and one of the contestants, is not alone sufficient to
19 confer jurisdiction on a court of this state to make a child
20 custody determination.

21 (3) Physical presence of the child, while desirable,
22 is not a prerequisite for jurisdiction to determine his
23 custody.

24 (4) A child custody proceeding is commenced in the
25 district court:

1 (a) by a parent, by filing a petition

2 (i) for dissolution or legal separation; or

3 (ii) for custody of the child in the county in which he
4 is permanently resident or found; or

5 (b) by a person other than a parent, by filing a
6 petition for custody of the child in the county in which he
7 is permanently resident or found, but only if he is not in
8 the physical custody of one of his parents.

9 (5) Notice of a child custody proceeding shall be
10 given to the child's parent, guardian, and custodian, who
11 may appear, be heard, and file a responsive pleading. The
12 court, upon a showing of good cause, may permit intervention
13 of other interested parties.

14 Section 32. Best interest of child. The court shall
15 determine custody in accordance with the best interest of
16 the child. The court shall consider all relevant factors
17 including:

18 (1) the wishes of the child's parent or parents as to
19 his custody;

20 (2) the wishes of the child as to his custodian;

21 (3) the interaction and interrelationship of the child
22 with his parent or parents, his siblings, and any other
23 person who may significantly affect the child's best
24 interest;

25 (4) the child's adjustment to his home, school, and

1 community; and

2 (5) the mental and physical health of all individuals
3 involved.

4 The court shall not consider conduct of a proposed
5 custodian that does not affect his relationship to the
6 child.

7 Section 33. Temporary orders. (1) A party to a
8 custody proceeding may move for a temporary custody order.
9 The motion must be supported by an affidavit as provided in
10 section 40. The court may award temporary custody under the
11 standards of section 32 after a hearing, or, if there is no
12 objection, solely on the basis of the affidavits.

13 (2) If a proceeding for dissolution of marriage or
14 legal separation is dismissed, any temporary custody order
15 is vacated unless a parent or the child's custodian moves
16 that the proceeding continue as a custody proceeding and the
17 court finds, after a hearing, that the circumstances of the
18 parents and the best interest of the child requires that a
19 custody decree be issued.

20 (3) If a custody proceeding commenced in the absence
21 of a petition for dissolution of marriage or legal
22 separation under subsection (a) (ii) or (b) of section 31 is
23 dismissed, any temporary custody order is vacated.

24 Section 34. Interviews. (1) The court may interview
25 the child in chambers to ascertain the child's wishes as to

1 his custodian and as to visitation. The court may permit
2 counsel to be present at the interview. The court shall
3 cause a record of the interview to be made and to be part of
4 the record in the case.

5 (2) The court may seek the advice of professional
6 personnel, whether or not employed by the court on a regular
7 basis. The advice given shall be in writing and made
8 available by the court to counsel upon request. Counsel may
9 examine as a witness any professional personnel consulted by
10 the court.

11 Section 35. Investigations and reports. (1) In
12 contested custody proceedings, and in other custody
13 proceedings if a parent or the child's custodian so
14 requests, the court may order an investigation and report
15 concerning custodial arrangements for the child. The
16 investigation and report may be made by the county welfare
17 department.

18 (2) In preparing his report concerning a child, the
19 investigator may consult any person who may have information
20 about the child and his potential custodial arrangements.
21 Upon order of the court, the investigator may refer the
22 child to professional personnel for diagnosis. The
23 investigator may consult with and obtain information from
24 medical, psychiatric, or other expert persons who have
25 served the child in the past without obtaining the consent

1 of the parent or the child's custodian; but the child's
 2 consent must be obtained if he has reached the age of
 3 sixteen (16) unless the court finds that he lacks mental
 4 capacity to consent. If the requirements of subsection (3)
 5 are fulfilled, the investigator's report may be received in
 6 evidence at the hearing.

7 (3) The court shall mail the investigator's report to
 8 counsel and to any party not represented by counsel at least
 9 ten (10) days prior to the hearing. The investigator shall
 10 make available to counsel and to any party not represented
 11 by counsel the investigator's file of underlying data, and
 12 reports, complete texts of diagnostic reports made to the
 13 investigator pursuant to the provisions of subsection (2),
 14 and the names and addresses of all persons whom the
 15 investigator has consulted. Any party to the proceeding may
 16 call the investigator and any person whom he has consulted
 17 for cross-examination. A party may not waive his right of
 18 cross-examination prior to the hearing.

19 Section 36. Hearings. (1) Custody proceedings shall
 20 receive priority in being set for hearing.

21 (2) The court may tax as costs the payment of
 22 necessary travel and other expenses incurred by any person
 23 whose presence at the hearing the court deems necessary to
 24 determine the best interest of the child.

25 (3) The court without a jury shall determine questions

1 of law and fact. If it finds that a public hearing may be
 2 detrimental to the child's best interest, the court may
 3 exclude the public from a custody hearing, but may admit any
 4 person who has a direct and legitimate interest in the
 5 particular case or a legitimate educational or research
 6 interest in the work of the court.

7 (4) If the court finds it necessary to protect the
 8 child's welfare that the record of any interview, report,
 9 investigation, or testimony in a custody proceeding be kept
 10 secret, the court may make an appropriate order sealing the
 11 record.

12 Section 37. Visitation. (1) A parent not granted
 13 custody of the child is entitled to reasonable visitation
 14 rights unless the court finds, after a hearing, that
 15 visitation would endanger seriously the child's physical,
 16 mental, moral, or emotional health.

17 (2) The court may modify an order granting or denying
 18 visitation rights whenever modification would serve the best
 19 interest of the child; but the court shall not restrict a
 20 parent's visitation rights unless it finds that the
 21 visitation would endanger seriously the child's physical,
 22 mental, moral, or emotional health.

23 Section 38. Judicial supervision. (1) Except as
 24 otherwise agreed by the parties in writing at the time of
 25 the custody decree, the custodian may determine the child's

1 upbringing, including his education, health care, and
 2 religious training, unless the court after hearing, finds,
 3 upon motion by the noncustodial parent, that in the absence
 4 of a specific limitation of the custodian's authority, the
 5 child's physical health would be endangered or his emotional
 6 development significantly impaired.

7 (2) If both parents or all contestants agree to the
 8 order, or if the court finds that in the absence of the
 9 order the child's physical health would be endangered or his
 10 emotional development significantly impaired, the court may
 11 order the county welfare department to exercise continuing
 12 supervision over the case to assure that the custodial or
 13 visitation terms of the decree are carried out.

14 Section 39. Modification. (1) No motion to modify a
 15 custody decree may be made earlier than two (2) years after
 16 its date, unless the court permits it to be made on the
 17 basis of affidavits that there is reason to believe the
 18 child's present environment may endanger seriously his
 19 physical, mental, moral, or emotional health.

20 (2) If a court of this state has jurisdiction pursuant
 21 to the Uniform Child Custody Jurisdiction Act, the court
 22 shall not modify a prior custody decree unless it finds,
 23 upon the basis of facts that have arisen since the prior
 24 decree or that were unknown to the court at the time of
 25 entry of the prior decree, that a change has occurred in the

1 circumstances of the child or his custodian, and that the
 2 modification is necessary to serve the best interest of the
 3 child. In applying these standards the court shall retain
 4 the custodian appointed pursuant to the prior decree unless:

- 5 (a) the custodian agrees to the modification;
 6 (b) the child has been integrated into the family of
 7 the petitioner with consent of the custodian; or
 8 (c) the child's present environment endangers
 9 seriously his physical, mental, moral, or emotional health,
 10 and the harm likely to be caused by a change of environment
 11 is outweighed by its advantages to him.

12 (3) Attorney fees and costs shall be assessed against
 13 a party seeking modification if the court finds that the
 14 modification action is vexatious and constitutes harassment.

15 Section 40. Affidavit practice. A party seeking a
 16 temporary custody order or modification of a custody decree
 17 shall submit together with his moving papers an affidavit
 18 setting forth facts supporting the requested order or
 19 modification and shall give notice, together with a copy of
 20 his affidavit, to other parties to the proceeding, who may
 21 file opposing affidavits. The court shall deny the motion
 22 unless it finds that adequate cause for hearing the motion
 23 is established by the affidavits, in which case it shall set
 24 a date for hearing on an order to show cause why the
 25 requested order or modification should not be granted.

EB5

1 Section 41. Application. (1) This act applies to all
2 proceedings commenced on or after its effective date.

3 (2) This act applies to all pending actions and
4 proceedings commenced prior to its effective date with
5 respect to issues on which a judgment has not been entered.
6 Pending actions for divorce or separation are deemed to have
7 been commenced on the basis of irretrievable breakdown.
8 Evidence adduced after the effective date of this act shall
9 be in compliance with this act.

10 (3) This act applies to all proceedings commenced
11 after its effective date for the modification of a judgment
12 or order entered prior to the effective date of this act.

13 (4) In any action or proceeding in which an appeal was
14 pending or a new trial was ordered prior to the effective
15 date of this act, the law in effect at the time of the order
16 sustaining the appeal or the new trial governs the appeal,
17 the new trial, and any subsequent trial or appeal.

18 Section 42. Act supersedes other laws or regulations.
19 If any provision of this act is in conflict with any other
20 law of this state, or any rule or regulation promulgated
21 thereunder, this act shall govern and control, and such
22 other law, rule, or regulation shall be deemed superseded
23 for the purpose of this act.

24 Section 43. Severability. If any provision of this
25 act or application thereof to any person or circumstance is

1 held invalid, the invalidity does not affect other
2 provisions or applications of the act which can be given
3 effect without the invalid provision or application, and to
4 this end the provisions of the act are severable.

5 Section 44. Section 48-130, R.C.M. 1947, is amended to
6 read as follows:

7 "48-130. Declaration of marriage without
8 solemnization--how made. Persons desiring to consummate a
9 marriage by written declaration in this state without the
10 solemnization provided for in section ~~48-116~~ 9 of this act
11 must prior to executing the declaration, secure the
12 premarital test certificate required by ~~section-48-134~~ this
13 act, which shall be firmly attached to the declaration and
14 shall be filed by the clerk of the district court in the
15 county where the contract was executed. Any such
16 declaration of marriage shall substantially contain the
17 following:

- 18 1. The names, ages, and residences of the parties;
- 19 2. The fact of marriage;
- 20 3. Name of father, and maiden name of mother, of both
21 parties, and address of each;
- 22 4. That both parties are legally competent to enter
23 into the marriage contract.

24 Such declaration must be subscribed by the parties and
25 attested by at least two (2) witnesses, and formally

1 acknowledged before the clerk of the district court of said
2 county. Unless all the provisions of this act shall be
3 complied with the marriage shall be deemed invalid."

4 Section 45. Sections 21-101 through 21-150, 48-101,
5 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1,
6 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129,
7 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201
8 through 48-203, 48-206, and 48-207, R.C.M. 1947, are
9 repealed.

10 Section 46. This act is effective January 1, 1976.

-End-

SB-5

Approved by Committee
on Judiciary

1 SENATE BILL NO. 5
2 INTRODUCED BY REGAN, GREELY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE
5 AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING
6 THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS
7 RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON
8 UNIFORM STATE LAWS; AMENDING SECTION 48-130, R.C.M. 1947;
9 AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103
10 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119,
11 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133,
12 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH
13 48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN
14 EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Short title. This act may be cited as the
18 "Uniform Marriage and Divorce Act".

19 Section 2. Purposes of act. This act shall be
20 liberally construed and applied to promote its underlying
21 purposes, which are to:

- 22 (1) provide adequate procedures for the solemnization
- 23 and registration of marriage;
- 24 (2) strengthen and preserve the integrity of marriage
- 25 and safeguard family relationships;

1 (3) promote the amicable settlement of disputes that
2 have arisen between parties to a marriage;

3 (4) mitigate the potential harm to the spouses and
4 their children caused by the process of legal dissolution of
5 marriage;

6 (5) make reasonable provision for spouse and minor
7 children during and after litigation; and

8 (6) make the law of legal dissolution of marriage
9 effective for dealing with the realities of matrimonial
10 experience by making ir retrievable breakdown of the marriage
11 relationship the sole basis for its dissolution.

12 Section 3. Uniformity of application and construction.
13 This act shall be so applied and construed as to effectuate
14 its general purpose to make uniform the law with respect to
15 the subject of this act among those states which enact it.

16 Section 4. Formalities. Marriage is a personal
17 relationship between a man and a woman arising out of a
18 civil contract to which the consent of the parties is
19 essential. A marriage licensed, solemnized, and registered
20 as provided in this act is valid in this state. A marriage
21 may be contracted, maintained, invalidated, or dissolved
22 only as provided by the law of this state.

23 Section 5. Form of application, license, certificate,
24 and consent. (1) The director of the department of health
25 and environmental sciences shall prescribe the form for an

1 application for a marriage license, which shall include the
2 following information:

3 (a) name, sex, ~~occupation,~~ address, ~~social security~~
4 ~~number,~~ date and place of birth of each party to the
5 proposed marriage;

6 (b) if either party was previously married, his name,
7 and the date, place, and court in which the marriage was
8 dissolved or declared invalid or the date and place of death
9 of the former spouse;

10 (c) name and address of the parents or guardian of
11 each party;

12 (d) whether the parties are related to each other and,
13 if so, their relationship; and

14 (e) the name and date of birth of any child, of whom
15 both parties are parents, born prior to the making of the
16 application unless their parental rights and the parent and
17 child relationship with respect to the child have been
18 terminated.

19 (2) The director of the department of health and
20 environmental sciences shall prescribe the forms for the
21 marriage license, the marriage certificate, and the consent
22 to marriage.

23 Section 6. License to marry. When a marriage
24 application has been completed and signed by both parties to
25 a prospective marriage and at least one (1) party has

1 appeared before the clerk of the district court and paid the
2 marriage license fee of ~~five dollars (\$5)~~ FIFTEEN DOLLARS
3 (\$15), the clerk of the district court shall issue a license
4 to marry and a marriage certificate form upon being
5 furnished:

6 (1) satisfactory proof that each party to the marriage
7 will have attained the age of eighteen (18) years at the
8 time the marriage license is effective, or will have
9 attained the age of sixteen (16) years and has either the
10 consent to the marriage of both parents or his guardian, or
11 judicial approval; and

12 (2) satisfactory proof that the marriage is not
13 prohibited; and

14 (3) a certificate of the results of any medical
15 examination required by the laws of this state.

16 Section 7. Effective date of license. A license to
17 marry becomes effective throughout this state three (3) days
18 after the date of issuance, unless the judge of the district
19 court orders that the license is effective when issued, and
20 expires one hundred eighty (180) days after it becomes
21 effective.

22 Section 8. Judicial approval. (1) The district
23 court, ~~after a reasonable effort has been made to notify the~~
24 ~~parents or guardian of each endangered party,~~ may order the
25 clerk of the district court to issue a marriage license and

1 ~~a marriage certificate form~~

2 ~~(a) to a party aged sixteen (16) or seventeen (17)~~
3 ~~years who has no parent capable of consenting to his~~
4 ~~marriage, or whose parent or guardian has not consented to~~
5 ~~his marriage; or~~

6 ~~(b) to a party under the age of sixteen (16) years who~~
7 ~~has the consent of both parents to his marriage, if capable~~
8 ~~of giving consent, or of his guardian. A MARRIAGE~~
9 ~~CERTIFICATE FORM TO A PARTY AGED SIXTEEN (16) OR SEVENTEEN~~
10 ~~(17) YEARS WHO HAS NO PARENT CAPABLE OF CONSENTING TO HIS~~
11 ~~MARRIAGE, OR HAS THE CONSENT OF BOTH PARENTS, OR OF THE~~
12 ~~PARENT HAVING THE ACTUAL CARE, CUSTODY, AND CONTROL, TO HIS~~
13 ~~MARRIAGE, IF CAPABLE OF GIVING CONSENT, OR OF HIS GUARDIAN.~~
14 ~~THE COURT MAY REQUIRE BOTH PARTIES TO PARTICIPATE IN A~~
15 ~~REASONABLE PERIOD OF MARRIAGE COUNSELING WITH A DESIGNATED~~
16 ~~COUNSELOR AS A CONDITION OF THE ORDER FOR ISSUANCE OF A~~
17 ~~MARRIAGE LICENSE AND A MARRIAGE CERTIFICATE FORM UNDER THIS~~
18 ~~SECTION.~~

19 (2) A marriage license and a marriage certificate form
20 may be issued under this section only if the court finds
21 that the underaged party is capable of assuming the
22 responsibilities of marriage and the marriage will serve his
23 best interest. Pregnancy alone does not establish that the
24 best interest of the party will be served.

25 (3) The district court shall authorize performance of

1 a marriage by proxy upon the showing required by the
2 provisions on solemnization.

3 Section 9. Solemnization and registration. (1) A
4 marriage may be solemnized by a judge of a court of record,
5 by a public official whose powers include solemnization of
6 marriages, or in accordance with any mode of solemnization
7 recognized by any religious denomination, Indian nation or
8 tribe, or native group. Either the person solemnizing the
9 marriage, or, if no individual acting alone solemnized the
10 marriage, a party to the marriage, shall complete the
11 marriage certificate form and forward it to the clerk of the
12 district court.

13 (2) If a party to a marriage is unable to be present
14 at the solemnization, he may authorize in writing a third
15 person to act as his proxy. If the person solemnizing the
16 marriage is satisfied that the absent party is unable to be
17 present and has consented to the marriage, he may solemnize
18 the marriage by proxy. If he is not satisfied, the parties
19 may petition the district court for an order permitting the
20 marriage to be solemnized by proxy.

21 (3) Upon receipt of the marriage certificate, the
22 clerk of the district court shall register the marriage.

23 (4) The solemnization of the marriage is not
24 invalidated by the fact that the person solemnizing the
25 marriage was not legally qualified to solemnize it, if

1 either party to the marriage believed him to be so
2 qualified.

3 Section 10. Prohibited marriages. (1) ~~Marriages~~
4 ~~between parents and children, ancestors and descendants of~~
5 ~~every degree, and between brothers and sisters of the half~~
6 ~~as well as the whole blood, and between nieces and uncles,~~
7 ~~and between aunts and nephews, and between first cousins,~~
8 ~~and between persons, either of whom is feebleminded, are~~
9 ~~prohibited and void from the beginning, whether the~~
10 ~~relationship is legitimate or illegitimate. THE FOLLOWING~~
11 MARRIAGES ARE PROHIBITED:

12 (A) A MARRIAGE ENTERED INTO PRIOR TO THE DISSOLUTION
13 OF AN EARLIER MARRIAGE OF ONE OF THE PARTIES;

14 (B) A MARRIAGE BETWEEN AN ANCESTOR AND A DESCENDANT,
15 OR BETWEEN A BROTHER AND A SISTER, WHETHER THE RELATIONSHIP
16 IS BY THE HALF OR THE WHOLE BLOOD, OR BETWEEN FIRST COUSINS;

17 (C) A MARRIAGE BETWEEN AN UNCLE AND A NIECE OR BETWEEN
18 AN AUNT AND A NEPHEW, WHETHER THE RELATIONSHIP IS BY THE
19 HALF OR THE WHOLE BLOOD.

20 (2) PARTIES TO A MARRIAGE PROHIBITED UNDER THIS
21 SECTION WHO COHABIT AFTER REMOVAL OF THE IMPEDIMENT ARE
22 LAWFULLY MARRIED AS OF THE DATE OF THE REMOVAL OF THE
23 IMPEDIMENT.

24 ~~(2)~~ (3) Children born of a prohibited marriage are
25 legitimate.

1 Section 11. Declaration of invalidity. (1) The
2 district court shall enter its decree declaring the
3 invalidity of a marriage entered into under the following
4 circumstances:

5 (a) a party lacked capacity to consent to the marriage
6 at the time the marriage was solemnized, either because of
7 mental incapacity or infirmity or because of the influence
8 of alcohol, drugs, or other incapacitating substances, or a
9 party was induced to enter into a marriage by force or
10 duress, or by fraud involving the essentials of marriage;

11 (b) a party lacks the physical capacity to consummate
12 the marriage by sexual intercourse, and at the time the
13 marriage was solemnized the other party did not know of the
14 incapacity.

15 (c) a party was under the age of sixteen (16) years
16 and did not have the consent of his parents or guardian and
17 judicial approval or was aged sixteen (16) or seventeen (17)
18 years and did not have the consent of his parents or
19 guardian or judicial approval; or

20 (d) the marriage is prohibited.

21 (2) A declaration of invalidity under subsection
22 (1) (a) through (c) may be sought by any of the following
23 persons and must be commenced within the times specified,
24 but in no event may a declaration of invalidity be sought
25 after the death of either party to the marriage:

1 (a) for a reason set forth in subsection (1) (a), by
 2 either party or by the legal representative of the party who
 3 lacked capacity to consent, no later than ninety (90) days
 4 after the petitioner obtained knowledge of the described
 5 condition;

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

9 (c) for the reason set forth in subsection (1) (c), by
 10 the underaged party, his parent or guardian, prior to the
 11 time the underaged party reaches the age at which he could
 12 have married without satisfying the omitted requirement.

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

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

20 (5) Unless the court finds, after a consideration of
 21 all relevant circumstances, including the effect of a
 22 retroactive decree on third parties, that the interests of
 23 justice would be served by making the decree not
 24 retroactive, it shall declare the marriage invalid as of the
 25 date of the marriage. The provisions of this act relating

1 to property rights of the spouses, maintenance, support, and
 2 custody of children on dissolution of marriage are
 3 applicable to nonretroactive decrees of invalidity.

4 Section 12. Putative spouse. Any person who has
 5 cohabited with another to whom he is not legally married in
 6 the good faith belief that he was married to that person is
 7 a putative spouse until knowledge of the fact that he is not
 8 legally married terminates his status and prevents
 9 acquisition of further rights. A putative spouse acquires
 10 the rights conferred upon a legal spouse, including the
 11 right to maintenance following termination of his status,
 12 whether or not the marriage is prohibited (section 10) or
 13 declared invalid (section 11). If there is a legal spouse
 14 or other putative spouses, rights acquired by a putative
 15 spouse do not supersede the rights of the legal spouse or
 16 those acquired by other putative spouses, but the court
 17 shall apportion property, maintenance, and support rights
 18 among the claimants as appropriate in the circumstances and
 19 in the interests of justice.

20 Section 13. Application. All marriages contracted
 21 within this state prior to the effective date of this act,
 22 or outside the state, that were valid at the time of the
 23 contract or subsequently validated by the laws of the place
 24 in which they were contracted or by the domicile of the
 25 parties, are valid in this state.

1 Section 14. Validity of common law marriage. Common
 2 law marriages are not invalidated by this act. Declarations
 3 of marriage pursuant to sections 48-130 through 48-132 are
 4 not invalidated by this act.

5 Section 15. Application of the Montana rules of civil
 6 procedure to proceedings under this act. (1) The Montana
 7 rules of civil procedure apply to all proceedings under this
 8 act, except as otherwise provided in this act.

9 (2) A proceeding for dissolution of marriage, legal
 10 separation, or declaration of invalidity of marriage shall
 11 be entitled "In re the Marriage of _____ and
 12 _____". A custody or support proceeding shall be
 13 entitled "In re the (Custody) (Support) of _____".

14 (3) The initial pleading in all proceedings under this
 15 act shall be denominated a petition. A responsive pleading
 16 shall be denominated a response. Other pleadings, and all
 17 pleadings in other matters under this act, shall be
 18 denominated as provided in the Montana rules of civil
 19 procedure.

20 (4) In this act, "decree" includes "judgment".

21 (5) A decree of dissolution or of legal separation, if
 22 made, shall not be awarded to one of the parties, but shall
 23 provide that it affects the status previously existing
 24 between the parties in the manner decreed.

25 Section 16. Dissolution of marriage—legal separation.

1 (1) The district court shall enter a decree of dissolution
 2 of marriage if:

3 (a) the court finds that one of the parties, at the
 4 time the action was commenced, was domiciled in this state,
 5 or was stationed in this state while a member of the armed
 6 services, and that the domicil or military presence has been
 7 maintained for ninety (90) days next preceding the making of
 8 the findings;

9 (b) the court finds that the marriage is irretrievably
 10 broken, which findings shall be supported by evidence

11 (i) that the parties have lived separate and apart for
 12 a period of more than one hundred eighty (180) days next
 13 preceding the commencement of this proceeding, or

14 (ii) that there is serious marital discord which
 15 adversely affects the attitude of one or both of the parties
 16 towards the marriage; and

17 (c) the court finds that the conciliation provisions
 18 of the Montana Conciliation Law and of section 19 either do
 19 not apply or have been met; and

20 (d) to the extent it has jurisdiction to do so, the
 21 court has considered, approved, or made provision for child
 22 custody, the support of any child entitled to support, the
 23 maintenance of either spouse, and the disposition of
 24 property; or provided for a separate, later hearing to
 25 complete these matters.

1 (2) If a party requests a decree of legal separation
2 rather than a decree of dissolution of marriage, the court
3 shall grant the decree in that form unless the other party
4 objects.

5 Section 17. Procedure — commencement — pleadings —
6 abolition of existing defenses. (1) All proceedings under
7 this act are commenced in the manner provided by the Montana
8 rules of civil procedure.

9 (2) The verified petition in a proceeding for
10 dissolution of marriage or legal separation shall allege
11 that the marriage is irretrievably broken and shall set
12 forth:

13 (a) the age, occupation, and residence of each party
14 and his length of residence in this state;

15 (b) the date of the marriage and the place at which it
16 was registered;

17 (c) that the jurisdictional requirements of section 16
18 exist and that the marriage is irretrievably broken in that
19 either

20 (i) the parties have lived separate and apart for a
21 period of more than one hundred eighty (180) days next
22 preceding the commencement of this proceeding, or

23 (ii) that there is serious marital discord which
24 adversely affects the attitude of one or both of the parties
25 towards the marriage, and that there is no reasonable

1 prospect of reconciliation;

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

4 (e) any arrangements as to support, custody, and
5 visitation of the children and maintenance of a spouse; and

6 (f) the relief sought.

7 (3) Either or both parties to the marriage may
8 initiate the proceeding.

9 (4) If a proceeding is commenced by one of the
10 parties, the other party must be served in the manner
11 provided by the Montana rules of civil procedure and may
12 within twenty (20) days after the date of service file a
13 verified response. No decree may be entered until twenty
14 (20) days after the date of service.

15 (5) Previously existing defenses to divorce and legal
16 separation, including but not limited to condonation,
17 connivance, collusion, recrimination, insanity, and lapse of
18 time, are abolished.

19 (6) The court may join additional parties proper for
20 the exercise of its authority to implement this act.

21 Section 18. Temporary order or temporary injunction.

22 (1) In a proceeding for dissolution of marriage or for
23 legal separation, or in a proceeding for disposition of
24 property or for maintenance or support following dissolution
25 of the marriage by a court which lacked personal

1 jurisdiction over the absent spouse, either party may move
2 for temporary maintenance or temporary support of a child of
3 the marriage entitled to support. The motion shall be
4 accompanied by an affidavit setting forth the factual basis
5 for the motion and the amounts requested.

6 (2) As a part of a motion for temporary maintenance or
7 support or by independent motion accompanied by affidavit,
8 either party may request the court to issue a temporary
9 injunction for any of the following relief:

10 (a) restraining any person from transferring,
11 encumbering, concealing, or otherwise disposing of any
12 property except in the usual course of business or for the
13 necessities of life, and, if so restrained, requiring him to
14 notify the moving party of any proposed extraordinary
15 expenditures made after the order is issued;

16 (b) enjoining a party from molesting or disturbing the
17 peace of the other party or of any child;

18 (c) excluding a party from the family home or from the
19 home of the other party upon a showing that physical or
20 emotional harm would otherwise result;

21 (d) enjoining a party from removing a child from the
22 jurisdiction of the court; and

23 (e) providing other injunctive relief proper in the
24 circumstances.

25 (3) The court may issue a temporary restraining order

1 without requiring notice to the other party only if it finds
2 on the basis of the moving affidavit or other evidence that
3 irreparable injury will result to the moving party if no
4 order is issued until the time for responding has elapsed.

5 (4) A response may be filed within twenty (20) days
6 after service of notice of motion or at the time specified
7 in the temporary restraining order.

8 (5) On the basis of the showing made and in conformity
9 with sections 22 and 23, the court may issue a temporary
10 injunction and an order for temporary maintenance or support
11 in amounts and on terms just and proper in the circumstance.

12 (6) A temporary order or temporary injunction:

13 (a) does not prejudice the rights of the parties or
14 the child which are to be adjudicated at subsequent hearings
15 in the proceeding;

16 (b) may be revoked or modified before final decree on
17 a showing by affidavit of the facts necessary to revocation
18 or modification of a final decree under section 30; and

19 (c) terminates when the final decree is entered or
20 when the petition for dissolution or legal separation is
21 voluntarily dismissed.

22 Section 19. Irretrievable breakdown. (1) If both of
23 the parties by petition or otherwise have stated under oath
24 or affirmation that the marriage is irretrievably broken, or
25 one of the parties has so stated and the other has not

1 denied it, the court, after hearing, shall make a finding
2 whether the marriage is irretrievably broken.

3 (2) If one of the parties has denied under oath or
4 affirmation that the marriage is irretrievably broken, the
5 court shall consider all relevant factors, including the
6 circumstances that gave rise to filing the petition and the
7 prospect of reconciliation, and shall:

8 (a) make a finding whether the marriage is
9 irretrievably broken; or

10 (b) continue the matter for further hearing not fewer
11 than thirty (30) nor more than sixty (60) days later, or as
12 soon thereafter as the matter may be reached on the court's
13 calendar, and may suggest to the parties that they seek
14 counseling. The court at the request of either party shall,
15 or on its own motion may, order a conciliation conference.
16 At the adjourned hearing the court shall make a finding
17 whether the marriage is irretrievably broken.

18 (3) A finding of irretrievable breakdown is a
19 determination that there is no reasonable prospect of
20 reconciliation.

21 (4) Nothing in this section shall be interpreted to
22 affect the provisions of sections 36-201 through 36-205,
23 known as the Montana Conciliation Law.

24 Section 20. Separation agreement. (1) To promote
25 amicable settlement of disputes between parties to a

1 marriage attendant upon their separation or the dissolution
2 of their marriage, the parties may enter into a written
3 separation agreement containing provisions for disposition
4 of any property owned by either of them, maintenance of
5 either of them, and support, custody, and visitation of
6 their children.

7 (2) In a proceeding for dissolution of marriage or for
8 legal separation, the terms of the separation agreement,
9 except those providing for the support, custody, and
10 visitation of children, are binding upon the court unless it
11 finds, after considering the economic circumstances of the
12 parties and any other relevant evidence produced by the
13 parties, on their own motion or on request of the court,
14 that the separation agreement is unconscionable.

15 (3) If the court finds the separation agreement
16 unconscionable, it may request the parties to submit a
17 revised separation agreement or may make orders for the
18 disposition of property, maintenance, and support.

19 (4) If the court finds that the separation agreement
20 is not unconscionable as to disposition of property or
21 maintenance, and not unsatisfactory as to support:

22 (a) unless the separation agreement provides to the
23 contrary, its terms shall be set forth in the decree of
24 dissolution or legal separation and the parties shall be
25 ordered to perform them, or

1 (b) if the separation agreement provides that its
 2 terms shall not be set forth in the decree, the decree shall
 3 identify the separation agreement and state that the court
 4 has found the terms not unconscionable.

5 (5) Terms of the agreement set forth in the decree are
 6 enforceable by all remedies available for enforcement of a
 7 judgment, including contempt, and are enforceable as
 8 contract terms.

9 (6) Except for terms concerning the support, custody,
 10 or visitation of children, the decree may expressly preclude
 11 or limit modification of terms set forth in the decree if
 12 the separation agreement so provides. Otherwise, terms of a
 13 separation agreement set forth in the decree are
 14 automatically modified by modification of the decree.

15 Section 21. Disposition of property. (1) In a
 16 proceeding for dissolution of a marriage, legal separation,
 17 or disposition of property following a decree of dissolution
 18 of marriage or legal separation by a court which lacked
 19 personal jurisdiction over the absent spouse or lacked
 20 jurisdiction to dispose of the property, the court, without
 21 regard to marital misconduct, shall, and in a proceeding for
 22 legal separation may, finally equitably apportion between
 23 the parties the property and assets belonging to either or
 24 both however and whenever acquired, and whether the title
 25 thereto is in the name of the husband or wife or both. In

1 making apportionment the court shall consider the duration
 2 of the marriage, and prior marriage of either party,
 3 antenuptial agreement of the parties, the age, health,
 4 station, occupation, amount and sources of income,
 5 vocational skills, employability, estate, liabilities, and
 6 needs of each of the parties, custodial provisions, whether
 7 the apportionment is in lieu of or in addition to
 8 maintenance, and the opportunity of each for future
 9 acquisition of capital assets and income. The court shall
 10 also consider the contribution or dissipation of value of
 11 the respective estates, and the contribution of a spouse as
 12 a homemaker or to the family unit. In disposing of property
 13 acquired prior to the marriage; property acquired by gift,
 14 bequest, devise or descent; property acquired in exchange
 15 for property acquired before the marriage or in exchange for
 16 property acquired by gift, bequest, devise, or descent; the
 17 increased value of property acquired prior to marriage; and
 18 property acquired by a spouse after a decree of legal
 19 separation, the court shall consider those contributions of
 20 the other spouse to the marriage, including the non-monetary
 21 contribution of a homemaker; the extent to which such
 22 contributions have facilitated the maintenance of this
 23 property and whether or not the property disposition serves
 24 as an alternative to maintenance arrangements.

25 (2) In a proceeding, the court may protect and promote

1 the best interests of the children by setting aside a
2 portion of the jointly and separately held estates of the
3 parties in a separate fund or trust for the support,
4 maintenance, education, and general welfare of any minor,
5 dependent, or incompetent children of the parties.

6 Section 22. Maintenance. (1) In a proceeding for
7 dissolution of marriage or legal separation, or a proceeding
8 for maintenance following dissolution of the marriage by a
9 court which lacked personal jurisdiction over the absent
10 spouse, the court may grant a maintenance order for either
11 spouse only if it finds that the spouse seeking maintenance:

12 (a) lacks sufficient property to provide for his
13 reasonable needs, and

14 (b) is unable to support himself through appropriate
15 employment or is the custodian of a child whose condition or
16 circumstances make it appropriate that the custodian not be
17 required to seek employment outside the home.

18 (2) The maintenance order shall be in such amounts and
19 for such periods of time as the court deems just, without
20 regard to marital misconduct, and after considering all
21 relevant facts including:

22 (a) the financial resources of the party seeking
23 maintenance, including marital property apportioned to him,
24 and his ability to meet his needs independently, including
25 the extent to which a provision for support of a child

1 living with the party includes a sum for that party as
2 custodian;

3 (b) the time necessary to acquire sufficient education
4 or training to enable the party seeking maintenance to find
5 appropriate employment;

6 (c) the standard of living established during the
7 marriage;

8 (d) the duration of the marriage;

9 (e) the age, and the physical and emotional condition
10 of the spouse seeking maintenance; and

11 (f) the ability of the spouse from whom maintenance is
12 sought to meet his needs while meeting those of the spouse
13 seeking maintenance.

14 Section 23. Child support. In a proceeding for
15 dissolution of marriage, legal separation, maintenance, or
16 child support, the court may order either or both parents
17 owing a duty of support to a child to pay an amount
18 reasonable or necessary for his support, without regard to
19 marital misconduct, after considering all relevant factors
20 including:

21 (1) the financial resources of the child;

22 (2) the financial resources of the custodial parent;

23 (3) the standard of living the child would have
24 enjoyed had the marriage not been dissolved;

25 (4) the physical and emotional condition of the child,

1 and his educational needs; and

2 (5) the financial resources and needs of the
3 noncustodial parent.

4 Section 24. Representation of child. The court may
5 appoint an attorney to represent the interests of a minor
6 dependent child with respect to his support, custody, and
7 visitation. The court shall enter an order for costs and
8 fees in favor of the child's attorney. The order shall be
9 made against either or both parents, except that, if the
10 responsible party is indigent, the costs shall be waived.

11 Section 25. Payment of maintenance or support to
12 court. (1) Upon its own motion or upon motion of either
13 party, the court may order at any time that maintenance or
14 support payments be made to the clerk of the district court
15 as trustee for remittance to the person entitled to receive
16 the payments.

17 (2) The clerk of the district court shall maintain
18 records listing the amount of payments, the date payments
19 are required to be made, and the names and addresses of the
20 parties affected by the order.

21 (3) The parties affected by the order shall inform the
22 clerk of the district court of any change of address or of
23 other condition that may affect the administration of the
24 order.

25 Section 26. Assignments. The court may order the

1 person obligated to pay support or maintenance to make an
2 assignment of a part of his periodic earnings or trust
3 income to the person entitled to receive the payments. The
4 assignment is binding on the employer, trustee, or other
5 payor of the funds two (2) weeks after service upon him of
6 notice that it has been made. The payor shall withhold from
7 the earnings or trust income payable to the person obligated
8 to support the amount specified in the assignment and shall
9 transmit the payments to the person specified in the order.
10 The payor may deduct from each payment a sum not exceeding
11 one dollar (\$1) as reimbursement for costs. An employer
12 shall not discharge or otherwise discipline an employee as a
13 result of a wage or salary assignment authorized by this
14 section.

15 Section 27. Costs—attorney's fees. The court from
16 time to time after considering the financial resources of
17 both parties may order a party to pay a reasonable amount
18 for the cost to the other party of maintaining or defending
19 any proceeding under this act and for attorney's fees,
20 including sums for legal services rendered and costs
21 incurred prior to the commencement of the proceeding or
22 after entry of judgment. The court may order that the
23 amount be paid directly to the attorney, who may enforce the
24 order in his name.

25 Section 28. Decree. (1) A decree of dissolution of

1 marriage or of legal separation is final when entered,
 2 subject to the right of appeal. An appeal from the decree
 3 of dissolution that does not challenge the finding that the
 4 marriage is irretrievably broken does not delay the finality
 5 of that provision of the decree which dissolves the marriage
 6 beyond the time for appealing from that provision, and
 7 either of the parties may remarry pending appeal.

8 (2) No earlier than six (6) months after entry of a
 9 decree of legal separation, the court on motion of either
 10 party shall convert the decree to a decree of dissolution of
 11 marriage.

12 (3) The clerk of court shall give notice of the entry
 13 of a decree of dissolution or legal separation:

14 (a) if the marriage is registered in this state, to
 15 the clerk of the district court of the county where the
 16 marriage is registered who shall enter the fact of
 17 dissolution or separation in the book in which the marriage
 18 license and certificate are recorded; or

19 (b) if the marriage is registered in another
 20 jurisdiction, to the appropriate official of that
 21 jurisdiction, with the request that he enter the fact of
 22 dissolution in the appropriate record.

23 (4) Upon request by a wife whose marriage is dissolved
 24 or declared invalid, the court may, and if there are no
 25 children of the parties shall, order her maiden name or a

1 former name restored.

2 Section 29. Independence of provisions of decree or
 3 temporary order. If a party fails to comply with a
 4 provision of a decree or temporary order or injunction, the
 5 obligation of the other party to make payments for support
 6 or maintenance or to permit visitation is not suspended; but
 7 he may move the court to grant an appropriate order.

8 Section 30. Modification and termination of provisions
 9 for maintenance, support, and property disposition. (1)
 10 Except as otherwise provided in subsection (6) of section
 11 20, the provisions of any decree respecting maintenance or
 12 support may be modified only as to installments accruing
 13 subsequent to the motion for modification and only upon a
 14 showing of changed circumstances so substantial and
 15 continuing as to make the terms unconscionable EXCEPT BY
 16 WRITTEN CONSENT OF THE PARTIES. The provisions as to
 17 property disposition may not be revoked or modified, EXCEPT
 18 BY WRITTEN CONSENT OF THE PARTIES, OR unless the court finds
 19 the existence of conditions that justify the reopening of a
 20 judgment under the laws of this state.

21 (2) Unless otherwise agreed in writing or expressly
 22 provided in the decree, the obligation to pay future
 23 maintenance is terminated upon the death of either party or
 24 the remarriage of the party receiving maintenance.

25 (3) Unless otherwise agreed in writing or expressly

1 provided in the decree, provisions for the support of a
 2 child are terminated by emancipation of the child but not by
 3 the death of a parent obligated to support the child. When
 4 a parent obligated to pay support dies, the amount of
 5 support may be modified, revoked, or commuted to a lump sum
 6 payment, to the extent just and appropriate in the
 7 circumstances.

8 Section 31. Jurisdiction—commencement of proceedings.

9 (1) A court of this state competent to decide child custody
 10 matters has jurisdiction to make a child custody
 11 determination by initial or modification decree if:

12 (a) this state

13 (i) is the home state of the child at the time of
 14 commencement of the proceedings, or

15 (ii) had been the child's home state within six (6)
 16 months before commencement of the proceeding and the child
 17 is absent from this state because of his removal or
 18 retention by a person claiming his custody or for other
 19 reason, and a parent or person acting as parent continues to
 20 live in this state; or

21 (b) it is in the best interest of the child that a
 22 court of this state assume jurisdiction because

23 (i) the child and his parents, or the child and at
 24 least one contestant, have a significant connection with
 25 this state, and

1 (ii) there is available in this state substantial
 2 evidence concerning the child's present or future care,
 3 protection, training, and personal relationships; or

4 (c) the child is physically present in this state and

5 (i) has been abandoned or

6 (ii) it is necessary in an emergency to protect him
 7 because he has been subjected to or threatened with
 8 mistreatment or abuse or is neglected or dependent; or

9 (d) (i) no other state has jurisdiction under
 10 prerequisites substantially in accordance with paragraphs

11 (a), (b), or (c), or another state has declined to exercise
 12 jurisdiction on the ground that this state is the more
 13 appropriate forum to determine custody of the child, and

14 (ii) it is in his best interest that the court assume
 15 jurisdiction.

16 (2) Except under paragraphs (c) and (d) of subsection
 17 (1), physical presence in this state of the child, or of the
 18 child and one of the contestants, is not alone sufficient to
 19 confer jurisdiction on a court of this state to make a child
 20 custody determination.

21 (3) Physical presence of the child, while desirable,
 22 is not a prerequisite for jurisdiction to determine his
 23 custody.

24 (4) A child custody proceeding is commenced in the
 25 district court:

1 (a) by a parent, by filing a petition
 2 (i) for dissolution or legal separation; or
 3 (ii) for custody of the child in the county in which he
 4 is permanently resident or found; or

5 (b) by a person other than a parent, by filing a
 6 petition for custody of the child in the county in which he
 7 is permanently resident or found, but only if he is not in
 8 the physical custody of one of his parents.

9 (5) Notice of a child custody proceeding shall be
 10 given to the child's parent, guardian, and custodian, who
 11 may appear, be heard, and file a responsive pleading. The
 12 court, upon a showing of good cause, may permit intervention
 13 of other interested parties.

14 Section 32. Best interest of child. The court shall
 15 determine custody in accordance with the best interest of
 16 the child. The court shall consider all relevant factors
 17 including:

18 (1) the wishes of the child's parent or parents as to
 19 his custody;

20 (2) the wishes of the child as to his custodian;

21 (3) the interaction and interrelationship of the child
 22 with his parent or parents, his siblings, and any other
 23 person who may significantly affect the child's best
 24 interest;

25 (4) the child's adjustment to his home, school, and

1 community; and

2 (5) the mental and physical health of all individuals
 3 involved.

4 The court shall not consider conduct of a proposed
 5 custodian that does not affect his relationship to the
 6 child.

7 Section 33. Temporary orders. (1) A party to a
 8 custody proceeding may move for a temporary custody order.
 9 The motion must be supported by an affidavit as provided in
 10 section 40. The court may award temporary custody under the
 11 standards of section 32 after a hearing, or, if there is no
 12 objection, solely on the basis of the affidavits.

13 (2) If a proceeding for dissolution of marriage or
 14 legal separation is dismissed, any temporary custody order
 15 is vacated unless a parent or the child's custodian moves
 16 that the proceeding continue as a custody proceeding and the
 17 court finds, after a hearing, that the circumstances of the
 18 parents and the best interest of the child requires that a
 19 custody decree be issued.

20 (3) If a custody proceeding commenced in the absence
 21 of a petition for dissolution of marriage or legal
 22 separation under subsection (a) (ii) or (b) of section 31 is
 23 dismissed, any temporary custody order is vacated.

24 Section 34. Interviews. (1) The court may interview
 25 the child in chambers to ascertain the child's wishes as to

1 his custodian and as to visitation. The court may permit
2 counsel to be present at the interview. The court shall
3 cause a record of the interview to be made and to be part of
4 the record in the case.

5 (2) The court may seek the advice of professional
6 personnel, whether or not employed by the court on a regular
7 basis. The advice given shall be in writing and made
8 available by the court to counsel upon request. Counsel may
9 examine as a witness any professional personnel consulted by
10 the court.

11 Section 35. Investigations and reports. (1) In
12 contested custody proceedings, and in other custody
13 proceedings if a parent or the child's custodian so
14 requests, the court may order an investigation and report
15 concerning custodial arrangements for the child. The
16 investigation and report may be made by the county welfare
17 department.

18 (2) In preparing his report concerning a child, the
19 investigator may consult any person who may have information
20 about the child and his potential custodial arrangements.
21 Upon order of the court, the investigator may refer the
22 child to professional personnel for diagnosis. The
23 investigator may consult with and obtain information from
24 medical, psychiatric, or other expert persons who have
25 served the child in the past without obtaining the consent

1 of the parent or the child's custodian; but the child's
2 consent must be obtained if he has reached the age of
3 sixteen (16) unless the court finds that he lacks mental
4 capacity to consent. If the requirements of subsection (3)
5 are fulfilled, the investigator's report may be received in
6 evidence at the hearing.

7 (3) The court shall mail the investigator's report to
8 counsel and to any party not represented by counsel at least
9 ten (10) days prior to the hearing. The investigator shall
10 make available to counsel and to any party not represented
11 by counsel the investigator's file of underlying data, and
12 reports, complete texts of diagnostic reports made to the
13 investigator pursuant to the provisions of subsection (2),
14 and the names and addresses of all persons whom the
15 investigator has consulted. Any party to the proceeding may
16 call the investigator and any person whom he has consulted
17 for cross-examination. A party may not waive his right of
18 cross-examination prior to the hearing.

19 Section 36. Hearings. (1) Custody proceedings shall
20 receive priority in being set for hearing.

21 (2) The court may tax as costs the payment of
22 necessary travel and other expenses incurred by any person
23 whose presence at the hearing the court deems necessary to
24 determine the best interest of the child.

25 (3) The court without a jury shall determine questions

1 of law and fact. If it finds that a public hearing may be
 2 detrimental to the child's best interest, the court may
 3 exclude the public from a custody hearing, but may admit any
 4 person who has a direct and legitimate interest in the
 5 particular case or a legitimate educational or research
 6 interest in the work of the court.

7 (4) If the court finds it necessary to protect the
 8 child's welfare that the record of any interview, report,
 9 investigation, or testimony in a custody proceeding be kept
 10 secret, the court may make an appropriate order sealing the
 11 record.

12 Section 37. Visitation. (1) A parent not granted
 13 custody of the child is entitled to reasonable visitation
 14 rights unless the court finds, after a hearing, that
 15 visitation would endanger seriously the child's physical,
 16 mental, moral, or emotional health.

17 (2) The court may modify an order granting or denying
 18 visitation rights whenever modification would serve the best
 19 interest of the child; but the court shall not restrict a
 20 parent's visitation rights unless it finds that the
 21 visitation would endanger seriously the child's physical,
 22 mental, moral, or emotional health.

23 Section 38. Judicial supervision. (1) Except as
 24 otherwise agreed by the parties in writing at the time of
 25 the custody decree, the custodian may determine the child's

1 upbringing, including his education, health care, and
 2 religious training, unless the court after hearing, finds,
 3 upon motion by the noncustodial parent, that in the absence
 4 of a specific limitation of the custodian's authority, the
 5 child's physical health would be endangered or his emotional
 6 development significantly impaired.

7 (2) If both parents or all contestants agree to the
 8 order, or if the court finds that in the absence of the
 9 order the child's physical health would be endangered or his
 10 emotional development significantly impaired, the court may
 11 order the county welfare department to exercise continuing
 12 supervision over the case to assure that the custodial or
 13 visitation terms of the decree are carried out.

14 Section 39. Modification. (1) No motion to modify a
 15 custody decree may be made earlier than two (2) years after
 16 its date, unless the court permits it to be made on the
 17 basis of affidavits that there is reason to believe the
 18 child's present environment may endanger seriously his
 19 physical, mental, moral, or emotional health.

20 (2) ~~If a court of this state has jurisdiction pursuant~~
 21 ~~to the Uniform Child Custody Jurisdiction Act, the THE~~ court
 22 shall not modify a prior custody decree unless it finds,
 23 upon the basis of facts that have arisen since the prior
 24 decree or that were unknown to the court at the time of
 25 entry of the prior decree, that a change has occurred in the

1 circumstances of the child or his custodian, and that the
 2 modification is necessary to serve the best interest of the
 3 child. In applying these standards the court shall retain
 4 the custodian appointed pursuant to the prior decree unless:

5 (a) the custodian agrees to the modification;

6 (b) the child has been integrated into the family of
 7 the petitioner with consent of the custodian; or

8 (c) the child's present environment endangers
 9 seriously his physical, mental, moral, or emotional health,
 10 and the harm likely to be caused by a change of environment
 11 is outweighed by its advantages to him.

12 (3) Attorney fees and costs shall be assessed against
 13 a party seeking modification if the court finds that the
 14 modification action is vexatious and constitutes harassment.

15 Section 40. Affidavit practice. A party seeking a
 16 temporary custody order or modification of a custody decree
 17 shall submit together with his moving papers an affidavit
 18 setting forth facts supporting the requested order or
 19 modification and shall give notice, together with a copy of
 20 his affidavit, to other parties to the proceeding, who may
 21 file opposing affidavits. The court shall deny the motion
 22 unless it finds that adequate cause for hearing the motion
 23 is established by the affidavits, in which case it shall set
 24 a date for hearing on an order to show cause why the
 25 requested order or modification should not be granted.

1 Section 41. Application. (1) This act applies to all
 2 proceedings commenced on or after its effective date.

3 (2) This act applies to all pending actions and
 4 proceedings commenced prior to its effective date with
 5 respect to issues on which a judgment has not been entered.
 6 Pending actions for divorce or separation are deemed to have
 7 been commenced on the basis of irretrievable breakdown.
 8 Evidence adduced after the effective date of this act shall
 9 be in compliance with this act.

10 (3) This act applies to all proceedings commenced
 11 after its effective date for the modification of a judgment
 12 or order entered prior to the effective date of this act.

13 (4) In any action or proceeding in which an appeal was
 14 pending or a new trial was ordered prior to the effective
 15 date of this act, the law in effect at the time of the order
 16 sustaining the appeal or the new trial governs the appeal,
 17 the new trial, and any subsequent trial or appeal.

18 Section 42. Act supersedes other laws or regulations.
 19 If any provision of this act is in conflict with any other
 20 law of this state, or any rule or regulation promulgated
 21 thereunder, this act shall govern and control, and such
 22 other law, rule, or regulation shall be deemed superseded
 23 for the purpose of this act.

24 Section 43. Severability. If any provision of this
 25 act or application thereof to any person or circumstance is

1 held invalid, the invalidity does not affect other
2 provisions or applications of the act which can be given
3 effect without the invalid provision or application, and to
4 this end the provisions of the act are severable.

5 Section 44. Section 48-130, R.C.M. 1947, is amended to
6 read as follows:

7 "48-130. Declaration of marriage without
8 solemnization—how made. Persons desiring to consummate a
9 marriage by written declaration in this state without the
10 solemnization provided for in section ~~48-116~~ 9 of this act
11 must prior to executing the declaration, secure the
12 premarital test certificate required by ~~section 48-134~~ this
13 act, which shall be firmly attached to the declaration and
14 shall be filed by the clerk of the district court in the
15 county where the contract was executed. Any such
16 declaration of marriage shall substantially contain the
17 following:

- 18 1. The names, ages, and residences of the parties;
- 19 2. The fact of marriage;
- 20 3. Name of father, and maiden name of mother, of both
21 parties, and address of each;
- 22 4. That both parties are legally competent to enter
23 into the marriage contract.

24 Such declaration must be subscribed by the parties and
25 attested by at least two (2) witnesses, and formally

1 acknowledged before the clerk of the district court of said
2 county. ~~Unless all the provisions of this act shall be
3 complied with the marriage shall be deemed invalid."~~

4 Section 45. Sections 21-101 through 21-150, 48-101,
5 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1,
6 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129,
7 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201
8 through 48-203, 48-206, and 48-207, R.C.M. 1947, are
9 repealed.

10 Section 46. This act is effective January 1, 1976.

-End-

SENATE BILL NO. 5

INTRODUCED BY REGAN, GREELY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTION 48-130, R.C.M. 1947; AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH 48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Short title. This act may be cited as the "Uniform Marriage and Divorce Act".

Section 2. Purposes of act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

- (1) provide adequate procedures for the solemnization and registration of marriage;
- (2) strengthen and preserve the integrity of marriage and safeguard family relationships;

(3) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(5) make reasonable provision for spouse and minor children during and after litigation; and

(6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making ir retrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 3. Uniformity of application and construction.

This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 4. Formalities. Marriage is a personal

relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this act is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

Section 5. Form of application, license, certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an

1 application for a marriage license, which shall include the
2 following information:

3 (a) name, sex, ~~occupation,~~ address, ~~social-security~~
4 ~~number,~~ date and place of birth of each party to the
5 proposed marriage;

6 (b) if either party was previously married, his name,
7 and the date, place, and court in which the marriage was
8 dissolved or declared invalid or the date and place of death
9 of the former spouse;

10 (c) name and address of the parents or guardian of
11 each party;

12 (d) whether the parties are related to each other and,
13 if so, their relationship; and

14 (e) the name and date of birth of any child, of whom
15 both parties are parents, born prior to the making of the
16 application unless their parental rights and the parent and
17 child relationship with respect to the child have been
18 terminated.

19 (2) The director of the department of health and
20 environmental sciences shall prescribe the forms for the
21 marriage license, the marriage certificate, and the consent
22 to marriage.

23 Section 6. License to marry. When a marriage
24 application has been completed and signed by both parties to
25 a prospective marriage and at least one (1) party has

1 appeared before the clerk of the district court and paid the
2 marriage license fee of ~~five-dollars-(65)~~ FIFTEEN DOLLARS
3 (\$15), the clerk of the district court shall issue a license
4 to marry and a marriage certificate form upon being
5 furnished:

6 (1) satisfactory proof that each party to the marriage
7 will have attained the age of eighteen (18) years at the
8 time the marriage license is effective, or will have
9 attained the age of sixteen (16) years and has ~~either-the~~
10 ~~consent-to-the-marriage-of-both-parents-or-his-guardian--or~~
11 OBTAINED judicial approval AS PROVIDED IN SECTION 8; and

12 (2) satisfactory proof that the marriage is not
13 prohibited; and

14 (3) a certificate of the results of any medical
15 examination required by the laws of this state.

16 Section 7. Effective date of license. A license to
17 marry becomes effective throughout this state three (3) days
18 after the date of issuance, unless the judge of the district
19 court orders that the license is effective when issued, and
20 expires one hundred eighty (180) days after it becomes
21 effective.

22 Section 8. Judicial approval. (1) The district
23 court, ~~after-a-reasonable-effort-has-been-made-to-notify-the~~
24 ~~parents--or--guardian-of-each-underaged-party,~~ may order the
25 clerk of the district court to issue a marriage license and

~~a marriage certificate form:~~

~~(a) to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage, or~~

~~(b) to a party under the age of sixteen (16) years who has the consent of both parents to his marriage, if capable of giving consent, or of his guardian.~~ A MARRIAGE

CERTIFICATE FORM TO A PARTY AGED SIXTEEN (16) OR SEVENTEEN (17) YEARS WHO HAS NO PARENT CAPABLE OF CONSENTING TO HIS MARRIAGE, OR HAS THE CONSENT OF BOTH PARENTS, OR OF THE PARENT HAVING THE ACTUAL CARE, CUSTODY, AND CONTROL, TO HIS MARRIAGE, IF CAPABLE OF GIVING CONSENT, OR OF HIS GUARDIAN.

THE COURT MAY REQUIRE BOTH PARTIES TO PARTICIPATE IN A REASONABLE PERIOD OF MARRIAGE COUNSELING WITH A DESIGNATED COUNSELOR AS A CONDITION OF THE ORDER FOR ISSUANCE OF A MARRIAGE LICENSE AND A MARRIAGE CERTIFICATE FORM UNDER THIS SECTION.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of

a marriage by proxy upon the showing required by the provisions on solemnization.

Section 9. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if

1 either party to the marriage believed him to be so
2 qualified.

3 Section 10. Prohibited marriages. (1) Marriages
4 between--parents--and--children,--ancestors--and--descendants--of
5 every--degree,--and--between--brothers--and--sisters--of--the--half
6 as--well--as--the--whole--blood,--and--between--nieces--and--uncles,
7 and--between--aunts--and--nephews,--and--between--first--cousins,
8 and--between--persons,--either--of--whom--is--feebleminded,--are
9 prohibited--and--void--from--the--beginning,--whether--the
10 relationship--is--legitimate--or--illegitimate. THE FOLLOWING
11 MARRIAGES ARE PROHIBITED:

12 (A) A MARRIAGE ENTERED INTO PRIOR TO THE DISSOLUTION
13 OF AN EARLIER MARRIAGE OF ONE OF THE PARTIES;

14 (B) A MARRIAGE BETWEEN AN ANCESTOR AND A DESCENDANT,
15 OR BETWEEN A BROTHER AND A SISTER, WHETHER THE RELATIONSHIP
16 IS BY THE HALF OR THE WHOLE BLOOD, OR BETWEEN FIRST COUSINS;

17 (C) A MARRIAGE BETWEEN AN UNCLE AND A NIECE OR BETWEEN
18 AN AUNT AND A NEPHEW, WHETHER THE RELATIONSHIP IS BY THE
19 HALF OR THE WHOLE BLOOD.

20 (2) PARTIES TO A MARRIAGE PROHIBITED UNDER THIS
21 SECTION WHO COHABIT AFTER REMOVAL OF THE IMPEDIMENT ARE
22 LAWFULLY MARRIED AS OF THE DATE OF THE REMOVAL OF THE
23 IMPEDIMENT.

24 ~~(2)~~ (3) Children born of a prohibited marriage are
25 legitimate.

1 Section 11. Declaration of invalidity. (1) The
2 district court shall enter its decree declaring the
3 invalidity of a marriage entered into under the following
4 circumstances:

5 (a) a party lacked capacity to consent to the marriage
6 at the time the marriage was solemnized, either because of
7 mental incapacity or infirmity or because of the influence
8 of alcohol, drugs, or other incapacitating substances, or a
9 party was induced to enter into a marriage by force or
10 duress, or by fraud involving the essentials of marriage;

11 (b) a party lacks the physical capacity to consummate
12 the marriage by sexual intercourse, and at the time the
13 marriage was solemnized the other party did not know of the
14 incapacity.

15 (c) a party was under the age of sixteen (16) years
16 and did not have the consent of his parents or guardian and
17 judicial approval or was aged sixteen (16) or seventeen (17)
18 years and did not have the consent of his parents or
19 guardian or judicial approval; or

20 (d) the marriage is prohibited.

21 (2) A declaration of invalidity under subsection
22 (1)(a) through (c) may be sought by any of the following
23 persons and must be commenced within the times specified,
24 but in no event may a declaration of invalidity be sought
25 after the death of either party to the marriage:

1 (a) for a reason set forth in subsection (1)(a), by
 2 either party or by the legal representative of the party who
 3 lacked capacity to consent, no later than ninety (90) days
 4 after the petitioner obtained knowledge of the described
 5 condition;

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

9 (c) for the reason set forth in subsection (1)(c), by
 10 the underaged party, his parent or guardian, prior to the
 11 time the underaged party reaches the age at which he could
 12 have married without satisfying the omitted requirement.

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

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

20 (5) Unless the court finds, after a consideration of
 21 all relevant circumstances, including the effect of a
 22 retroactive decree on third parties, that the interests of
 23 justice would be served by making the decree not
 24 retroactive, it shall declare the marriage invalid as of the
 25 date of the marriage. The provisions of this act relating

1 to property rights of the spouses, maintenance, support, and
 2 custody of children on dissolution of marriage are
 3 applicable to nonretroactive decrees of invalidity.

4 Section 12. Putative spouse. Any person who has
 5 cohabited with another to whom he is not legally married in
 6 the good faith belief that he was married to that person is
 7 a putative spouse until knowledge of the fact that he is not
 8 legally married terminates his status and prevents
 9 acquisition of further rights. A putative spouse acquires
 10 the rights conferred upon a legal spouse, including the
 11 right to maintenance following termination of his status,
 12 whether or not the marriage is prohibited (section 10) or
 13 declared invalid (section 11). If there is a legal spouse
 14 or other putative spouses, rights acquired by a putative
 15 spouse do not supersede the rights of the legal spouse or
 16 those acquired by other putative spouses, but the court
 17 shall apportion property, maintenance, and support rights
 18 among the claimants as appropriate in the circumstances and
 19 in the interests of justice.

20 Section 13. Application. All marriages contracted
 21 within this state prior to the effective date of this act,
 22 or outside the state, that were valid at the time of the
 23 contract or subsequently validated by the laws of the place
 24 in which they were contracted or by the domicil of the
 25 parties, are valid in this state.

1 Section 14. Validity of common law marriage. Common
2 law marriages are not invalidated by this act. Declarations
3 of marriage pursuant to sections 48-130 through 48-132 are
4 not invalidated by this act.

5 Section 15. Application of the Montana rules of civil
6 procedure to proceedings under this act. (1) The Montana
7 rules of civil procedure apply to all proceedings under this
8 act, except as otherwise provided in this act.

9 (2) A proceeding for dissolution of marriage, legal
10 separation, or declaration of invalidity of marriage shall
11 be entitled "In re the Marriage of _____ and
12 _____". A custody or support proceeding shall be
13 entitled "In re the (Custody) (Support) of _____".

14 (3) The initial pleading in all proceedings under this
15 act shall be denominated a petition. A responsive pleading
16 shall be denominated a response. Other pleadings, and all
17 pleadings in other matters under this act, shall be
18 denominated as provided in the Montana rules of civil
19 procedure.

20 (4) In this act, "decree" includes "judgment".

21 (5) A decree of dissolution or of legal separation, if
22 made, shall not be awarded to one of the parties, but shall
23 provide that it affects the status previously existing
24 between the parties in the manner decreed.

25 Section 16. Dissolution of marriage--legal separation.

1 (1) The district court shall enter a decree of dissolution
2 of marriage if:

3 (a) the court finds that one of the parties, at the
4 time the action was commenced, was domiciled in this state,
5 or was stationed in this state while a member of the armed
6 services, and that the domicile or military presence has been
7 maintained for ninety (90) days next preceding the making of
8 the findings;

9 (b) the court finds that the marriage is irretrievably
10 broken, which findings shall be supported by evidence

11 (i) that the parties have lived separate and apart for
12 a period of more than one hundred eighty (180) days next
13 preceding the commencement of this proceeding, or

14 (ii) that there is serious marital discord which
15 adversely affects the attitude of one or both of the parties
16 towards the marriage; and

17 (c) the court finds that the conciliation provisions
18 of the Montana Conciliation Law and of section 19 either do
19 not apply or have been met; and

20 (d) to the extent it has jurisdiction to do so, the
21 court has considered, approved, or made provision for child
22 custody, the support of any child entitled to support, the
23 maintenance of either spouse, and the disposition of
24 property; or provided for a separate, later hearing to
25 complete these matters.

1 (2) If a party requests a decree of legal separation
2 rather than a decree of dissolution of marriage, the court
3 shall grant the decree in that form unless the other party
4 objects.

5 Section 17. Procedure -- commencement -- pleadings --
6 abolition of existing defenses. (1) All proceedings under
7 this act are commenced in the manner provided by the Montana
8 rules of civil procedure.

9 (2) The verified petition in a proceeding for
10 dissolution of marriage or legal separation shall allege
11 that the marriage is irretrievably broken and shall set
12 forth:

13 (a) the age, occupation, and residence of each party
14 and his length of residence in this state;

15 (b) the date of the marriage and the place at which it
16 was registered;

17 (c) that the jurisdictional requirements of section 16
18 exist and that the marriage is irretrievably broken in that
19 either

20 (i) the parties have lived separate and apart for a
21 period of more than one hundred eighty (180) days next
22 preceding the commencement of this proceeding, or

23 (ii) that there is serious marital discord which
24 adversely affects the attitude of one or both of the parties
25 towards the marriage, and that there is no reasonable

1 prospect of reconciliation;

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

4 (e) any arrangements as to support, custody, and
5 visitation of the children and maintenance of a spouse; and

6 (f) the relief sought.

7 (3) Either or both parties to the marriage may
8 initiate the proceeding.

9 (4) If a proceeding is commenced by one of the
10 parties, the other party must be served in the manner
11 provided by the Montana rules of civil procedure and may
12 within twenty (20) days after the date of service file a
13 verified response. No decree may be entered until twenty
14 (20) days after the date of service.

15 (5) Previously existing defenses to divorce and legal
16 separation, including but not limited to condonation,
17 connivance, collusion, recrimination, insanity, and lapse of
18 time, are abolished.

19 (6) The court may join additional parties proper for
20 the exercise of its authority to implement this act.

21 Section 18. Temporary order or temporary injunction.

22 (1) In a proceeding for dissolution of marriage or for
23 legal separation, or in a proceeding for disposition of
24 property or for maintenance or support following dissolution
25 of the marriage by a court which lacked personal

1 jurisdiction over the absent spouse, either party may move
 2 for temporary maintenance or temporary support of a child of
 3 the marriage entitled to support. The motion shall be
 4 accompanied by an affidavit setting forth the factual basis
 5 for the motion and the amounts requested.

6 (2) As a part of a motion for temporary maintenance or
 7 support or by independent motion accompanied by affidavit,
 8 either party may request the court to issue a temporary
 9 injunction for any of the following relief:

10 (a) restraining any person from transferring,
 11 encumbering, concealing, or otherwise disposing of any
 12 property except in the usual course of business or for the
 13 necessities of life, and, if so restrained, requiring him to
 14 notify the moving party of any proposed extraordinary
 15 expenditures made after the order is issued;

16 (b) enjoining a party from molesting or disturbing the
 17 peace of the other party or of any child;

18 (c) excluding a party from the family home or from the
 19 home of the other party upon a showing that physical or
 20 emotional harm would otherwise result;

21 (d) enjoining a party from removing a child from the
 22 jurisdiction of the court; and

23 (e) providing other injunctive relief proper in the
 24 circumstances.

25 (3) The court may issue a temporary restraining order

1 without requiring notice to the other party only if it finds
 2 on the basis of the moving affidavit or other evidence that
 3 irreparable injury will result to the moving party if no
 4 order is issued until the time for responding has elapsed.

5 (4) A response may be filed within twenty (20) days
 6 after service of notice of motion or at the time specified
 7 in the temporary restraining order.

8 (5) On the basis of the showing made and in conformity
 9 with sections 22 and 23, the court may issue a temporary
 10 injunction and an order for temporary maintenance or support
 11 in amounts and on terms just and proper in the circumstance,

12 (6) A temporary order or temporary injunction:

13 (a) does not prejudice the rights of the parties or
 14 the child which are to be adjudicated at subsequent hearings
 15 in the proceeding;

16 (b) may be revoked or modified before final decree on
 17 a showing by affidavit of the facts necessary to revocation
 18 or modification of a final decree under section 30; and

19 (c) terminates when the final decree is entered or
 20 when the petition for dissolution or legal separation is
 21 voluntarily dismissed.

22 Section 19. Irretrievable breakdown. (1) If both of
 23 the parties by petition or otherwise have stated under oath
 24 or affirmation that the marriage is irretrievably broken, or
 25 one of the parties has so stated and the other has not

1 denied it, the court, after hearing, shall make a finding
2 whether the marriage is irretrievably broken.

3 (2) If one of the parties has denied under oath or
4 affirmation that the marriage is irretrievably broken, the
5 court shall consider all relevant factors, including the
6 circumstances that gave rise to filing the petition and the
7 prospect of reconciliation, and shall:

8 (a) make a finding whether the marriage is
9 irretrievably broken; or

10 (b) continue the matter for further hearing not fewer
11 than thirty (30) nor more than sixty (60) days later, or as
12 soon thereafter as the matter may be reached on the court's
13 calendar, and may suggest to the parties that they seek
14 counseling. The court at the request of either party shall,
15 or on its own motion may, order a conciliation conference.
16 At the adjourned hearing the court shall make a finding
17 whether the marriage is irretrievably broken.

18 (3) A finding of irretrievable breakdown is a
19 determination that there is no reasonable prospect of
20 reconciliation.

21 (4) Nothing in this section shall be interpreted to
22 affect the provisions of sections 36-201 through 36-205,
23 known as the Montana Conciliation Law.

24 Section 20. Separation agreement. (1) To promote
25 amicable settlement of disputes between parties to a

1 marriage attendant upon their separation or the dissolution
2 of their marriage, the parties may enter into a written
3 separation agreement containing provisions for disposition
4 of any property owned by either of them, maintenance of
5 either of them, and support, custody, and visitation of
6 their children.

7 (2) In a proceeding for dissolution of marriage or for
8 legal separation, the terms of the separation agreement,
9 except those providing for the support, custody, and
10 visitation of children, are binding upon the court unless it
11 finds, after considering the economic circumstances of the
12 parties and any other relevant evidence produced by the
13 parties, on their own motion or on request of the court,
14 that the separation agreement is unconscionable.

15 (3) If the court finds the separation agreement
16 unconscionable, it may request the parties to submit a
17 revised separation agreement or may make orders for the
18 disposition of property, maintenance, and support.

19 (4) If the court finds that the separation agreement
20 is not unconscionable as to disposition of property or
21 maintenance, and not unsatisfactory as to support:

22 (a) unless the separation agreement provides to the
23 contrary, its terms shall be set forth in the decree of
24 dissolution or legal separation and the parties shall be
25 ordered to perform them, or

1 (b) if the separation agreement provides that its
 2 terms shall not be set forth in the decree, the decree shall
 3 identify the separation agreement and state that the court
 4 has found the terms not unconscionable.

5 (5) Terms of the agreement set forth in the decree are
 6 enforceable by all remedies available for enforcement of a
 7 judgment, including contempt, and are enforceable as
 8 contract terms.

9 (6) Except for terms concerning the support, custody,
 10 or visitation of children, the decree may expressly preclude
 11 or limit modification of terms set forth in the decree if
 12 the separation agreement so provides. Otherwise, terms of a
 13 separation agreement set forth in the decree are
 14 automatically modified by modification of the decree.

15 Section 21. Disposition of property. (1) In a
 16 proceeding for dissolution of a marriage, legal separation,
 17 or disposition of property following a decree of dissolution
 18 of marriage or legal separation by a court which lacked
 19 personal jurisdiction over the absent spouse or lacked
 20 jurisdiction to dispose of the property, the court, without
 21 regard to marital misconduct, shall, and in a proceeding for
 22 legal separation may, finally equitably apportion between
 23 the parties the property and assets belonging to either or
 24 both however and whenever acquired, and whether the title
 25 thereto is in the name of the husband or wife or both. In

1 making apportionment the court shall consider the duration
 2 of the marriage, and prior marriage of either party,
 3 antenuptial agreement of the parties, the age, health,
 4 station, occupation, amount and sources of income,
 5 vocational skills, employability, estate, liabilities, and
 6 needs of each of the parties, custodial provisions, whether
 7 the apportionment is in lieu of or in addition to
 8 maintenance, and the opportunity of each for future
 9 acquisition of capital assets and income. The court shall
 10 also consider the contribution or dissipation of value of
 11 the respective estates, and the contribution of a spouse as
 12 a homemaker or to the family unit. In disposing of property
 13 acquired prior to the marriage; property acquired by gift,
 14 bequest, devise or descent; property acquired in exchange
 15 for property acquired before the marriage or in exchange for
 16 property acquired by gift, bequest, devise, or descent; the
 17 increased value of property acquired prior to marriage; and
 18 property acquired by a spouse after a decree of legal
 19 separation, the court shall consider those contributions of
 20 the other spouse to the marriage, including the non-monetary
 21 contribution of a homemaker; the extent to which such
 22 contributions have facilitated the maintenance of this
 23 property and whether or not the property disposition serves
 24 as an alternative to maintenance arrangements.

25 (2) In a proceeding, the court may protect and promote

1 the best interests of the children by setting aside a
2 portion of the jointly and separately held estates of the
3 parties in a separate fund or trust for the support,
4 maintenance, education, and general welfare of any minor,
5 dependent, or incompetent children of the parties.

6 Section 22. Maintenance. (1) In a proceeding for
7 dissolution of marriage or legal separation, or a proceeding
8 for maintenance following dissolution of the marriage by a
9 court which lacked personal jurisdiction over the absent
10 spouse, the court may grant a maintenance order for either
11 spouse only if it finds that the spouse seeking maintenance:

12 (a) lacks sufficient property to provide for his
13 reasonable needs, and

14 (b) is unable to support himself through appropriate
15 employment or is the custodian of a child whose condition or
16 circumstances make it appropriate that the custodian not be
17 required to seek employment outside the home.

18 (2) The maintenance order shall be in such amounts and
19 for such periods of time as the court deems just, without
20 regard to marital misconduct, and after considering all
21 relevant facts including:

22 (a) the financial resources of the party seeking
23 maintenance, including marital property apportioned to him,
24 and his ability to meet his needs independently, including
25 the extent to which a provision for support of a child

1 living with the party includes a sum for that party as
2 custodian;

3 (b) the time necessary to acquire sufficient education
4 or training to enable the party seeking maintenance to find
5 appropriate employment;

6 (c) the standard of living established during the
7 marriage;

8 (d) the duration of the marriage;

9 (e) the age, and the physical and emotional condition
10 of the spouse seeking maintenance; and

11 (f) the ability of the spouse from whom maintenance is
12 sought to meet his needs while meeting those of the spouse
13 seeking maintenance.

14 Section 23. Child support. In a proceeding for
15 dissolution of marriage, legal separation, maintenance, or
16 child support, the court may order either or both parents
17 owing a duty of support to a child to pay an amount
18 reasonable or necessary for his support, without regard to
19 marital misconduct, after considering all relevant factors
20 including:

21 (1) the financial resources of the child;

22 (2) the financial resources of the custodial parent;

23 (3) the standard of living the child would have
24 enjoyed had the marriage not been dissolved;

25 (4) the physical and emotional condition of the child,

1 and his educational needs; and

2 (5) the financial resources and needs of the
3 noncustodial parent.

4 Section 24. Representation of child. The court may
5 appoint an attorney to represent the interests of a minor
6 dependent child with respect to his support, custody, and
7 visitation. The court shall enter an order for costs and
8 fees in favor of the child's attorney. The order shall be
9 made against either or both parents, except that, if the
10 responsible party is indigent, the costs shall be waived.

11 Section 25. Payment of maintenance or support to
12 court. (1) Upon its own motion or upon motion of either
13 party, the court may order at any time that maintenance or
14 support payments be made to the clerk of the district court
15 as trustee for remittance to the person entitled to receive
16 the payments.

17 (2) The clerk of the district court shall maintain
18 records listing the amount of payments, the date payments
19 are required to be made, and the names and addresses of the
20 parties affected by the order.

21 (3) The parties affected by the order shall inform the
22 clerk of the district court of any change of address or of
23 other condition that may affect the administration of the
24 order.

25 Section 26. Assignments. The court may order the

1 person obligated to pay support or maintenance to make an
2 assignment of a part of his periodic earnings or trust
3 income to the person entitled to receive the payments. The
4 assignment is binding on the employer, trustee, or other
5 payor of the funds two (2) weeks after service upon him of
6 notice that it has been made. The payor shall withhold from
7 the earnings or trust income payable to the person obligated
8 to support the amount specified in the assignment and shall
9 transmit the payments to the person specified in the order.
10 The payor may deduct from each payment a sum not exceeding
11 one dollar (\$1) as reimbursement for costs. An employer
12 shall not discharge or otherwise discipline an employee as a
13 result of a wage or salary assignment authorized by this
14 section.

15 Section 27. Costs--attorney's fees. The court from
16 time to time after considering the financial resources of
17 both parties may order a party to pay a reasonable amount
18 for the cost to the other party of maintaining or defending
19 any proceeding under this act and for attorney's fees,
20 including sums for legal services rendered and costs
21 incurred prior to the commencement of the proceeding or
22 after entry of judgment. The court may order that the
23 amount be paid directly to the attorney, who may enforce the
24 order in his name.

25 Section 28. Decree. (1) A decree of dissolution of

1 marriage or of legal separation is final when entered,
 2 subject to the right of appeal. An appeal from the decree
 3 of dissolution that does not challenge the finding that the
 4 marriage is irretrievably broken does not delay the finality
 5 of that provision of the decree which dissolves the marriage
 6 beyond the time for appealing from that provision, and
 7 either of the parties may remarry pending appeal.

8 (2) No earlier than six (6) months after entry of a
 9 decree of legal separation, the court on motion of either
 10 party shall convert the decree to a decree of dissolution of
 11 marriage.

12 (3) The clerk of court shall give notice of the entry
 13 of a decree of dissolution or legal separation:

14 (a) if the marriage is registered in this state, to
 15 the clerk of the district court of the county where the
 16 marriage is registered who shall enter the fact of
 17 dissolution or separation in the book in which the marriage
 18 license and certificate are recorded; or

19 (b) if the marriage is registered in another
 20 jurisdiction, to the appropriate official of that
 21 jurisdiction, with the request that he enter the fact of
 22 dissolution in the appropriate record.

23 (4) Upon request by a wife whose marriage is dissolved
 24 or declared invalid, the court may, and if there are no
 25 children of the parties shall, order her maiden name or a

1 former name restored.

2 Section 29. Independence of provisions of decree or
 3 temporary order. If a party fails to comply with a
 4 provision of a decree or temporary order or injunction, the
 5 obligation of the other party to make payments for support
 6 or maintenance or to permit visitation is not suspended; but
 7 he may move the court to grant an appropriate order.

8 Section 30. Modification and termination of provisions
 9 for maintenance, support, and property disposition. (1)
 10 Except as otherwise provided in subsection (6) of section
 11 20, the provisions of any decree respecting maintenance or
 12 support may be modified only as to installments accruing
 13 subsequent to the motion for modification and only upon a
 14 showing of changed circumstances so substantial and
 15 continuing as to make the terms unconscionable EXCEPT BY
 16 WRITTEN CONSENT OF THE PARTIES. The provisions as to
 17 property disposition may not be revoked or modified, EXCEPT
 18 BY WRITTEN CONSENT OF THE PARTIES, OR unless the court finds
 19 the existence of conditions that justify the reopening of a
 20 judgment under the laws of this state.

21 (2) Unless otherwise agreed in writing or expressly
 22 provided in the decree, the obligation to pay future
 23 maintenance is terminated upon the death of either party or
 24 the remarriage of the party receiving maintenance.

25 (3) Unless otherwise agreed in writing or expressly

1 provided in the decree, provisions for the support of a
 2 child are terminated by emancipation of the child but not by
 3 the death of a parent obligated to support the child. When
 4 a parent obligated to pay support dies, the amount of
 5 support may be modified, revoked, or commuted to a lump sum
 6 payment, to the extent just and appropriate in the
 7 circumstances.

8 Section 31. Jurisdiction--commencement of proceedings.

9 (1) A court of this state competent to decide child custody
 10 matters has jurisdiction to make a child custody
 11 determination by initial or modification decree if:

12 (a) this state

13 (i) is the home state of the child at the time of
 14 commencement of the proceedings, or

15 (ii) had been the child's home state within six (6)
 16 months before commencement of the proceeding and the child
 17 is absent from this state because of his removal or
 18 retention by a person claiming his custody or for other
 19 reason, and a parent or person acting as parent continues to
 20 live in this state; or

21 (b) it is in the best interest of the child that a
 22 court of this state assume jurisdiction because

23 (i) the child and his parents, or the child and at
 24 least one contestant, have a significant connection with
 25 this state, and

1 (ii) there is available in this state substantial
 2 evidence concerning the child's present or future care,
 3 protection, training, and personal relationships; or

4 (c) the child is physically present in this state and
 5 (i) has been abandoned or

6 (ii) it is necessary in an emergency to protect him
 7 because he has been subjected to or threatened with
 8 mistreatment or abuse or is neglected or dependent; or

9 (d) (i) no other state has jurisdiction under
 10 prerequisites substantially in accordance with paragraphs
 11 (a), (b), or (c), or another state has declined to exercise
 12 jurisdiction on the ground that this state is the more
 13 appropriate forum to determine custody of the child, and

14 (ii) it is in his best interest that the court assume
 15 jurisdiction.

16 (2) Except under paragraphs (c) and (d) of subsection
 17 (1), physical presence in this state of the child, or of the
 18 child and one of the contestants, is not alone sufficient to
 19 confer jurisdiction on a court of this state to make a child
 20 custody determination.

21 (3) Physical presence of the child, while desirable,
 22 is not a prerequisite for jurisdiction to determine his
 23 custody.

24 (4) A child custody proceeding is commenced in the
 25 district court:

1 (a) by a parent, by filing a petition
 2 (i) for dissolution or legal separation; or
 3 (ii) for custody of the child in the county in which he
 4 is permanently resident or found; or

5 (b) by a person other than a parent, by filing a
 6 petition for custody of the child in the county in which he
 7 is permanently resident or found, but only if he is not in
 8 the physical custody of one of his parents.

9 (5) Notice of a child custody proceeding shall be
 10 given to the child's parent, guardian, and custodian, who
 11 may appear, be heard, and file a responsive pleading. The
 12 court, upon a showing of good cause, may permit intervention
 13 of other interested parties.

14 Section 32. Best interest of child. The court shall
 15 determine custody in accordance with the best interest of
 16 the child. The court shall consider all relevant factors
 17 including:

18 (1) the wishes of the child's parent or parents as to
 19 his custody;

20 (2) the wishes of the child as to his custodian;

21 (3) the interaction and interrelationship of the child
 22 with his parent or parents, his siblings, and any other
 23 person who may significantly affect the child's best
 24 interest;

25 (4) the child's adjustment to his home, school, and

1 community; and

2 (5) the mental and physical health of all individuals
 3 involved.

4 The court shall not consider conduct of a proposed
 5 custodian that does not affect his relationship to the
 6 child.

7 Section 33. Temporary orders. (1) A party to a
 8 custody proceeding may move for a temporary custody order.
 9 The motion must be supported by an affidavit as provided in
 10 section 40. The court may award temporary custody under the
 11 standards of section 32 after a hearing, or, if there is no
 12 objection, solely on the basis of the affidavits.

13 (2) If a proceeding for dissolution of marriage or
 14 legal separation is dismissed, any temporary custody order
 15 is vacated unless a parent or the child's custodian moves
 16 that the proceeding continue as a custody proceeding and the
 17 court finds, after a hearing, that the circumstances of the
 18 parents and the best interest of the child requires that a
 19 custody decree be issued.

20 (3) If a custody proceeding commenced in the absence
 21 of a petition for dissolution of marriage or legal
 22 separation under subsection (a)(ii) or (b) of section 31 is
 23 dismissed, any temporary custody order is vacated.

24 Section 34. Interviews. (1) The court may interview
 25 the child in chambers to ascertain the child's wishes as to

1 his custodian and as to visitation. The court may permit
2 counsel to be present at the interview. The court shall
3 cause a record of the interview to be made and to be part of
4 the record in the case.

5 (2) The court may seek the advice of professional
6 personnel, whether or not employed by the court on a regular
7 basis. The advice given shall be in writing and made
8 available by the court to counsel upon request. Counsel may
9 examine as a witness any professional personnel consulted by
10 the court.

11 Section 35. Investigations and reports. (1) In
12 contested custody proceedings, and in other custody
13 proceedings if a parent or the child's custodian so
14 requests, the court may order an investigation and report
15 concerning custodial arrangements for the child. The
16 investigation and report may be made by the county welfare
17 department.

18 (2) In preparing his report concerning a child, the
19 investigator may consult any person who may have information
20 about the child and his potential custodial arrangements.
21 Upon order of the court, the investigator may refer the
22 child to professional personnel for diagnosis. The
23 investigator may consult with and obtain information from
24 medical, psychiatric, or other expert persons who have
25 served the child in the past without obtaining the consent

1 of the parent or the child's custodian; but the child's
2 consent must be obtained if he has reached the age of
3 sixteen (16) unless the court finds that he lacks mental
4 capacity to consent. If the requirements of subsection (3)
5 are fulfilled, the investigator's report may be received in
6 evidence at the hearing.

7 (3) The court shall mail the investigator's report to
8 counsel and to any party not represented by counsel at least
9 ten (10) days prior to the hearing. The investigator shall
10 make available to counsel and to any party not represented
11 by counsel the investigator's file of underlying data, and
12 reports, complete texts of diagnostic reports made to the
13 investigator pursuant to the provisions of subsection (2),
14 and the names and addresses of all persons whom the
15 investigator has consulted. Any party to the proceeding may
16 call the investigator and any person whom he has consulted
17 for cross-examination. A party may not waive his right of
18 cross-examination prior to the hearing.

19 Section 36. Hearings. (1) Custody proceedings shall
20 receive priority in being set for hearing.

21 (2) The court may tax as costs the payment of
22 necessary travel and other expenses incurred by any person
23 whose presence at the hearing the court deems necessary to
24 determine the best interest of the child.

25 (3) The court without a jury shall determine questions

1 of law and fact. If it finds that a public hearing may be
 2 detrimental to the child's best interest, the court may
 3 exclude the public from a custody hearing, but may admit any
 4 person who has a direct and legitimate interest in the
 5 particular case or a legitimate educational or research
 6 interest in the work of the court.

7 (4) If the court finds it necessary to protect the
 8 child's welfare that the record of any interview, report,
 9 investigation, or testimony in a custody proceeding be kept
 10 secret, the court may make an appropriate order sealing the
 11 record.

12 Section 37. Visitation. (1) A parent not granted
 13 custody of the child is entitled to reasonable visitation
 14 rights unless the court finds, after a hearing, that
 15 visitation would endanger seriously the child's physical,
 16 mental, moral, or emotional health.

17 (2) The court may modify an order granting or denying
 18 visitation rights whenever modification would serve the best
 19 interest of the child; but the court shall not restrict a
 20 parent's visitation rights unless it finds that the
 21 visitation would endanger seriously the child's physical,
 22 mental, moral, or emotional health.

23 Section 38. Judicial supervision. (1) Except as
 24 otherwise agreed by the parties in writing at the time of
 25 the custody decree, the custodian may determine the child's

1 upbringing, including his education, health care, and
 2 religious training, unless the court after hearing, finds,
 3 upon motion by the noncustodial parent, that in the absence
 4 of a specific limitation of the custodian's authority, the
 5 child's physical health would be endangered or his emotional
 6 development significantly impaired.

7 (2) If both parents or all contestants agree to the
 8 order, or if the court finds that in the absence of the
 9 order the child's physical health would be endangered or his
 10 emotional development significantly impaired, the court may
 11 order the county welfare department to exercise continuing
 12 supervision over the case to assure that the custodial or
 13 visitation terms of the decree are carried out.

14 Section 39. Modification. (1) No motion to modify a
 15 custody decree may be made earlier than two (2) years after
 16 its date, unless the court permits it to be made on the
 17 basis of affidavits that there is reason to believe the
 18 child's present environment may endanger seriously his
 19 physical, mental, moral, or emotional health.

20 (2) ~~If a court of this state has jurisdiction pursuant~~
 21 ~~to the Uniform Child-Custody Jurisdiction Act, the~~ THE court
 22 shall not modify a prior custody decree unless it finds,
 23 upon the basis of facts that have arisen since the prior
 24 decree or that were unknown to the court at the time of
 25 entry of the prior decree, that a change has occurred in the

1 circumstances of the child or his custodian, and that the
 2 modification is necessary to serve the best interest of the
 3 child. In applying these standards the court shall retain
 4 the custodian appointed pursuant to the prior decree unless:

- 5 (a) the custodian agrees to the modification;
 6 (b) the child has been integrated into the family of
 7 the petitioner with consent of the custodian; or
 8 (c) the child's present environment endangers
 9 seriously his physical, mental, moral, or emotional health,
 10 and the harm likely to be caused by a change of environment
 11 is outweighed by its advantages to him.

12 (3) Attorney fees and costs shall be assessed against
 13 a party seeking modification if the court finds that the
 14 modification action is vexatious and constitutes harassment.

15 Section 40. Affidavit practice. A party seeking a
 16 temporary custody order or modification of a custody decree
 17 shall submit together with his moving papers an affidavit
 18 setting forth facts supporting the requested order or
 19 modification and shall give notice, together with a copy of
 20 his affidavit, to other parties to the proceeding, who may
 21 file opposing affidavits. The court shall deny the motion
 22 unless it finds that adequate cause for hearing the motion
 23 is established by the affidavits, in which case it shall set
 24 a date for hearing on an order to show cause why the
 25 requested order or modification should not be granted.

1 Section 41. Application. (1) This act applies to all
 2 proceedings commenced on or after its effective date.

3 (2) This act applies to all pending actions and
 4 proceedings commenced prior to its effective date with
 5 respect to issues on which a judgment has not been entered.
 6 Pending actions for divorce or separation are deemed to have
 7 been commenced on the basis of irretrievable breakdown.
 8 Evidence adduced after the effective date of this act shall
 9 be in compliance with this act.

10 (3) This act applies to all proceedings commenced
 11 after its effective date for the modification of a judgment
 12 or order entered prior to the effective date of this act.

13 (4) In any action or proceeding in which an appeal was
 14 pending or a new trial was ordered prior to the effective
 15 date of this act, the law in effect at the time of the order
 16 sustaining the appeal or the new trial governs the appeal,
 17 the new trial, and any subsequent trial or appeal.

18 Section 42. Act supersedes other laws or regulations.
 19 If any provision of this act is in conflict with any other
 20 law of this state, or any rule or regulation promulgated
 21 thereunder, this act shall govern and control, and such
 22 other law, rule, or regulation shall be deemed superseded
 23 for the purpose of this act.

24 Section 43. Severability. If any provision of this
 25 act or application thereof to any person or circumstance is

1 held invalid, the invalidity does not affect other
 2 provisions or applications of the act which can be given
 3 effect without the invalid provision or application, and to
 4 this end the provisions of the act are severable.

5 Section 44. Section 48-130, R.C.M. 1947, is amended to
 6 read as follows:

7 "48-130. Declaration of marriage without
 8 solemnization--how made. Persons desiring to consummate a
 9 marriage by written declaration in this state without the
 10 solemnization provided for in section ~~48-116~~ 9 of this act
 11 must prior to executing the declaration, secure the
 12 premarital test certificate required by ~~section-48-134~~ this
 13 act, which shall be firmly attached to the declaration and
 14 shall be filed by the clerk of the district court in the
 15 county where the contract was executed. Any such
 16 declaration of marriage shall substantially contain the
 17 following:

- 18 1. The names, ages, and residences of the parties;
- 19 2. The fact of marriage;
- 20 3. Name of father, and maiden name of mother, of both
 21 parties, and address of each;
- 22 4. That both parties are legally competent to enter
 23 into the marriage contract.

24 Such declaration must be subscribed by the parties and
 25 attested by at least two (2) witnesses, and formally

1 acknowledged before the clerk of the district court of said
 2 county. ~~Unless all the provisions of this act shall be
 3 complied with the marriage shall be deemed invalid."~~

4 Section 45. Sections 21-101 through 21-150, 48-101,
 5 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1,
 6 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129,
 7 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201
 8 through 48-203, 48-206, and 48-207, R.C.M. 1947, are
 9 repealed.

10 Section 46. This act is effective January 1, 1976.

-End-

March 19, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL NO. 5

That Senate Bill No. 5, third reading bill, be amended as follows:

1. Amend page 8, section 11, subsection (c), lines 16 and 17.
Strike: "and did not have the consent of his parents or guardian and judicial approval"
2. Amend page 9, section 11, subsection (a), lines 1 through 5.
Strike: Subsection (a) in its entirety.
Insert: New subsections (a), (b) and (c) to read as follows:
" (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than one (1) year after the petitioner obtained knowledge of the described condition;
 (b) for lack of capacity to consent because of the influence of alcohol, drugs or other incapacitating substances, no later than one (1) year after the petitioner obtained knowledge of the described condition;
 (c) for lack of capacity to consent because of force, duress or fraud, no later than two (2) years after the petitioner obtained knowledge of the described condition;"
Reletter: Subsequent subsections.
3. Amend page 9, section 11, present subsection (b), line 7.
Following: "than"
Strike: "one (1) year"
Insert: "four (4) years"
4. Amend page 30, section 32, subsection (5), lines 4 through 6.
Strike: "The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child."

AS SO AMENDED
BE CONCURRED IN

HSP/ds

March 24, 1975

HOUSE OF REPRESENTATIVES

Committee of the Whole Amendment to SENATE BILL NO. 5,
third reading, as follows:

1. Amend page 26, section 30, subsection (1), line 12.
Following: "modified"
Insert: "by a court"
2. Amend page 26, section 30, subsection (1), line 13.
Following: "and"
Strike: "only"
Insert: "either: (a)"
3. Amend page 26, section 30, subsection (1), line 15.
Following: "unconscionable"
Strike: "EXCEPT BY"
Insert: "; or (b) upon"
4. Amend page 26, section 30, subsection (1), line 17.
Following: "modified"
Insert: "by a court"
5. Amend page 26, section 30, subsection (1), line 17.
Following: "EXCEPT"
Insert: " : "
6. Amend page 26, section 30, subsection (1), line 18.
Strike: "BY"
Insert: "(a) upon"
7. Amend page 26, section 30, subsection (1), line 18.
Following: "OR"
Strike: "unless"
Insert: "(b) if"

AND AS SO AMENDED
BE CONCURRED IN

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SENATE BILL NO. 5
INTRODUCED BY REGAN, GREELY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE MARRIAGE AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTION 48-130, R.C.M. 1947; AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH 48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Short title. This act may be cited as the "Uniform Marriage and Divorce Act".

Section 2. Purposes of act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

- (1) provide adequate procedures for the solemnization and registration of marriage;
- (2) strengthen and preserve the integrity of marriage and safeguard family relationships;

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(3) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(5) make reasonable provision for spouse and minor children during and after litigation; and

(6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 3. Uniformity of application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 4. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this act is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

Section 5. Form of application, license, certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an

1 application for a marriage license, which shall include the
2 following information:

3 (a) name, sex, ~~occupation,~~ address, ~~social security~~
4 ~~number,~~ date and place of birth of each party to the
5 proposed marriage;

6 (b) if either party was previously married, his name,
7 and the date, place, and court in which the marriage was
8 dissolved or declared invalid or the date and place of death
9 of the former spouse;

10 (c) name and address of the parents or guardian of
11 each party;

12 (d) whether the parties are related to each other and,
13 if so, their relationship; and

14 (e) the name and date of birth of any child, or whom
15 both parties are parents, born prior to the making of the
16 application unless their parental rights and the parent and
17 child relationship with respect to the child have been
18 terminated.

19 (2) The director of the department of health and
20 environmental sciences shall prescribe the forms for the
21 marriage license, the marriage certificate, and the consent
22 to marriage.

23 Section 6. License to marry. When a marriage
24 application has been completed and signed by both parties to
25 a prospective marriage and at least one (1) party has

1 appeared before the clerk of the district court and paid the
2 marriage license fee of ~~five dollars (\$5)~~ FIFTEEN DOLLARS
3 (\$15), the clerk of the district court shall issue a license
4 to marry and a marriage certificate ~~and~~ upon being
5 furnished:

6 (1) satisfactory proof that each party to the marriage
7 will have attained the age of eighteen (18) years at the
8 time the marriage license is effective, or will have
9 attained the age of sixteen (16) years and has ~~either the~~
10 ~~consent to the marriage of both parents or his guardian, or~~
11 OBTAINED judicial approval AS PROVIDED IN SECTION 8; and

12 (2) satisfactory proof that the marriage is not
13 prohibited; and

14 (3) a certificate of the results of any medical
15 examination required by the laws of this state.

16 Section 7. Effective date of license. A license to
17 marry becomes effective throughout this state three (3) days
18 after the date of issuance, unless the judge of the district
19 court orders that the license is effective when issued, and
20 expires one hundred eighty (180) days after it becomes
21 effective.

22 Section 8. Judicial approval. (1) The district
23 court, ~~after a reasonable effort has been made to notify the~~
24 ~~parents or guardian of each underage party,~~ may order the
25 clerk of the district court to issue a marriage license and

1 ~~a marriage certificate form~~
 2 ~~(a) to a party aged sixteen (16) or seventeen (17)~~
 3 ~~years who has no parent capable of consenting to his~~
 4 ~~marriage, or whose parent or guardian has not consented to~~
 5 ~~his marriage; or~~

6 ~~(b) to a party under the age of sixteen (16) years who~~
 7 ~~has the consent of both parents to his marriage, if capable~~
 8 ~~of giving consent, or of his guardian. A MARRIAGE~~
 9 ~~CERTIFICATE FORM TO A PARTY AGED SIXTEEN (16) OR SEVENTEEN~~
 10 ~~(17) YEARS WHO HAS NO PARENT CAPABLE OF CONSENTING TO HIS~~
 11 ~~MARRIAGE, OR HAS THE CONSENT OF BOTH PARENTS, OR OF THE~~
 12 ~~PARENT SAVING THE ACTUAL CARE, CUSTODY, AND CONTROL, TO HIS~~
 13 ~~MARRIAGE, IF CAPABLE OF GIVING CONSENT, OR OF HIS GUARDIAN.~~
 14 ~~THE COURT MAY REQUIRE BOTH PARTIES TO PARTICIPATE IN A~~
 15 ~~REASONABLE PERIOD OF MARRIAGE COUNSELING WITH A DESIGNATED~~
 16 ~~COUNSELOR AS A CONDITION OF THE ORDER FOR ISSUANCE OF A~~
 17 ~~MARRIAGE LICENSE AND A MARRIAGE CERTIFICATE FORM UNDER THIS~~
 18 ~~SECTION.~~

19 (2) A marriage license and a marriage certificate form
 20 may be issued under this section only if the court finds
 21 that the underaged party is capable of assuming the
 22 responsibilities of marriage and the marriage will serve his
 23 best interest. Pregnancy alone does not establish that the
 24 best interest of the party will be served.

25 (3) The district court shall authorize performance of

1 a marriage by proxy upon the showing required by the
 2 provisions on solemnization.

3 Section 9. Solemnization and registration. (1) A
 4 marriage may be solemnized by a judge of a court of record,
 5 by a public official whose powers include solemnization of
 6 marriages, or in accordance with any mode of solemnization
 7 recognized by any religious denomination, Indian nation or
 8 tribe, or native group. Either the person solemnizing the
 9 marriage, or, if no individual acting alone solemnized the
 10 marriage, a party to the marriage, shall complete the
 11 marriage certificate form and forward it to the clerk of the
 12 district court.

13 (2) If a party to a marriage is unable to be present
 14 at the solemnization, he may authorize in writing a third
 15 person to act as his proxy. If the person solemnizing the
 16 marriage is satisfied that the absent party is unable to be
 17 present and has consented to the marriage, he may solemnize
 18 the marriage by proxy. If he is not satisfied, the parties
 19 may petition the district court for an order permitting the
 20 marriage to be solemnized by proxy.

21 (3) Upon receipt of the marriage certificate, the
 22 clerk of the district court shall register the marriage.

23 (4) The solemnization of the marriage is not
 24 invalidated by the fact that the person solemnizing the
 25 marriage was not legally qualified to solemnize it, if

1 either party to the marriage believed him to be so
2 qualified.

3 Section 10. Prohibited marriages. (1) ~~Marriages~~
4 ~~between parents and children, ancestors and descendants of~~
5 ~~every degree, and between brothers and sisters of the half~~
6 ~~as well as the whole blood, and between nieces and uncles,~~
7 ~~and between aunts and nephews, and between first cousins,~~
8 ~~and between persons, either of whom is feeble-minded, are~~
9 ~~prohibited and void from the beginning, whether the~~
10 ~~relationship is legitimate or illegitimate. THE FOLLOWING~~
11 MARRIAGES ARE PROHIBITED:

12 (A) A MARRIAGE ENTERED INTO PRIOR TO THE DISSOLUTION
13 OF AN EARLIER MARRIAGE OF ONE OF THE PARTIES;

14 (B) A MARRIAGE BETWEEN AN ANCESTOR AND A DESCENDANT,
15 OR BETWEEN A BROTHER AND A SISTER, WHETHER THE RELATIONSHIP
16 IS BY THE HALF OR THE WHOLE BLOOD, OR BETWEEN FIRST COUSINS;

17 (C) A MARRIAGE BETWEEN AN UNCLE AND A NIECE OR BETWEEN
18 AN AUNT AND A NEPHEW, WHETHER THE RELATIONSHIP IS BY THE
19 HALF OR THE WHOLE BLOOD.

20 (2) PARTIES TO A MARRIAGE PROHIBITED UNDER THIS
21 SECTION WHO COHABIT AFTER REMOVAL OF THE IMPEDIMENT ARE
22 LAWFULLY MARRIED AS OF THE DATE OF THE REMOVAL OF THE
23 IMPEDIMENT.

24 ~~(*)~~ (3) Children born of a prohibited marriage are
25 legitimate.

1 Section 11. Declaration of invalidity. (1) The
2 district court shall enter its decree declaring the
3 invalidity of a marriage entered into under the following
4 circumstances:

5 (a) a party lacked capacity to consent to the marriage
6 at the time the marriage was solemnized, either because of
7 mental incapacity or infirmity or because of the influence
8 of alcohol, drugs, or other incapacitating substances, or a
9 party was induced to enter into a marriage by force or
10 duress, or by fraud involving the essentials of marriage;

11 (b) a party lacks the physical capacity to consummate
12 the marriage by sexual intercourse, and at the time the
13 marriage was solemnized the other party did not know of the
14 incapacity.

15 (c) a party was under the age of sixteen (16) years
16 ~~and did not have the consent of his parents or guardian and~~
17 ~~judicial approval~~ or was aged sixteen (16) or seventeen (17)
18 years and did not have the consent of his parents or
19 guardian or judicial approval; or

20 (d) the marriage is prohibited.

21 (2) A declaration of invalidity under subsection
22 (1) (a) through (c) may be sought by any of the following
23 persons and must be commenced within the times specified,
24 but in no event may a declaration of invalidity be sought
25 after the death of either party to the marriage:

1 ~~(a) for a reason set forth in subsection (1) (a), by~~
 2 ~~either party or by the legal representative of the party who~~
 3 ~~lacked capacity to consent, no later than ninety (90) days~~
 4 ~~after the petitioner obtained knowledge of the described~~
 5 ~~condition; FOR LACK OF CAPACITY TO CONSENT BECAUSE OF MENTAL~~
 6 ~~INCAPACITY OR INFIRMITY, NO LATER THAN ONE (1) YEAR AFTER~~
 7 ~~THE PETITIONER OBTAINED KNOWLEDGE OF THE DESCRIBED~~
 8 ~~CONDITION;~~

9 (B) FOR LACK OF CAPACITY TO CONSENT BECAUSE OF THE
 10 INFLUENCE OF ALCOHOL, DRUGS, OR OTHER INCAPACITATING
 11 SUBSTANCES, NO LATER THAN ONE (1) YEAR AFTER THE PETITIONER
 12 OBTAINED KNOWLEDGE OF THE DESCRIBED CONDITION;

13 (C) FOR LACK OF CAPACITY TO CONSENT BECAUSE OF FORCE,
 14 DURESS OR FRAUD, NO LATER THAN TWO (2) YEARS AFTER THE
 15 PETITIONER OBTAINED KNOWLEDGE OF THE DESCRIBED CONDITION;

16 ~~(d)~~ (D) for the reason set forth in subsection (1) (b),
 17 by either party, no later than ~~one (1) year~~ FOUR (4) YEARS
 18 after the petitioner obtained knowledge of the described
 19 condition;

20 ~~(e)~~ (E) for the reason set forth in subsection (1) (c),
 21 by the underaged party, his parent or guardian, prior to the
 22 time the underaged party reaches the age at which he could
 23 have married without satisfying the omitted requirement.

24 (3) A declaration of invalidity for the reason set
 25 forth in subsection (1) (d) may be sought by either party,

1 the legal spouse in case of a bigamous marriage, the county
 2 attorney, or a child of either party, at any time prior to
 3 the death of one (1) of the parties.

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

6 (5) Unless the court finds, after a consideration of
 7 all relevant circumstances, including the effect of a
 8 retroactive decree on third parties, that the interests of
 9 justice would be served by making the decree not
 10 retroactive, it shall declare the marriage invalid as of the
 11 date of the marriage. The provisions of this act relating
 12 to property rights of the spouses, maintenance, support, and
 13 custody of children on dissolution of marriage are
 14 applicable to nonretroactive decrees of invalidity.

15 Section 12. Putative spouse. Any person who has
 16 cohabited with another to whom he is not legally married in
 17 the good faith belief that he was married to that person is
 18 a putative spouse until knowledge of the fact that he is not
 19 legally married terminates his status and prevents
 20 acquisition of further rights. A putative spouse acquires
 21 the rights conferred upon a legal spouse, including the
 22 right to maintenance following termination of his status,
 23 whether or not the marriage is prohibited (section 10) or
 24 declared invalid (section 11). If there is a legal spouse
 25 or other putative spouses, rights acquired by a putative

1 spouse do not supersede the rights of the legal spouse or
2 those acquired by other putative spouses, but the court
3 shall apportion property, maintenance, and support rights
4 among the claimants as appropriate in the circumstances and
5 in the interests of justice.

6 Section 13. Application. All marriages contracted
7 within this state prior to the effective date of this act,
8 or outside the state, that were valid at the time of the
9 contract or subsequently validated by the laws of the place
10 in which they were contracted or by the domicile of the
11 parties, are valid in this state.

12 Section 14. Validity of common law marriage. Common
13 law marriages are not invalidated by this act. Declarations
14 of marriage pursuant to sections 48-130 through 48-132 are
15 not invalidated by this act.

16 Section 15. Application of the Montana rules of civil
17 procedure to proceedings under this act. (1) The Montana
18 rules of civil procedure apply to all proceedings under this
19 act, except as otherwise provided in this act.

20 (2) A proceeding for dissolution of marriage, legal
21 separation, or declaration of invalidity of marriage shall
22 be entitled "In re the Marriage of _____ and
23 _____". A custody or support proceeding shall be
24 entitled "In re the (Custody) (Support) of _____".

25 (3) The initial pleading in all proceedings under this

1 act shall be denominated a petition. A responsive pleading
2 shall be denominated a response. Other pleadings, and all
3 pleadings in other matters under this act, shall be
4 denominated as provided in the Montana rules of civil
5 procedure.

6 (4) In this act, "decree" includes "judgment".

7 (5) A decree of dissolution or of legal separation, if
8 made, shall not be awarded to one of the parties, but shall
9 provide that it affects the status previously existing
10 between the parties in the manner decreed.

11 Section 16. Dissolution of marriage—legal separation.

12 (1) The district court shall enter a decree of dissolution
13 of marriage if:

14 (a) the court finds that one of the parties, at the
15 time the action was commenced, was domiciled in this state,
16 or was stationed in this state while a member of the armed
17 services, and that the domicile or military presence has been
18 maintained for ninety (90) days next preceding the making of
19 the findings;

20 (b) the court finds that the marriage is irretrievably
21 broken, which findings shall be supported by evidence

22 (i) that the parties have lived separate and apart for
23 a period of more than one hundred eighty (180) days next
24 preceding the commencement of this proceeding, or

25 (ii) that there is serious marital discord which

1 adversely affects the attitude of one or both of the parties
2 towards the marriage; and

3 (c) the court finds that the conciliation provisions
4 of the Montana Conciliation Law and of section 19 either do
5 not apply or have been met; and

6 (d) to the extent it has jurisdiction to do so, the
7 court has considered, approved, or made provision for child
8 custody, the support of any child entitled to support, the
9 maintenance of either spouse, and the disposition of
10 property; or provided for a separate, later hearing to
11 complete these matters.

12 (2) If a party requests a decree of legal separation
13 rather than a decree of dissolution of marriage, the court
14 shall grant the decree in that form unless the other party
15 objects.

16 Section 17. Procedure — commencement — pleadings —
17 abolition of existing defenses. (1) All proceedings under
18 this act are commenced in the manner provided by the Montana
19 rules of civil procedure.

20 (2) The verified petition in a proceeding for
21 dissolution of marriage or legal separation shall allege
22 that the marriage is irretrievably broken and shall set
23 forth:

24 (a) the age, occupation, and residence of each party
25 and his length of residence in this state;

1 (b) the date of the marriage and the place at which it
2 was registered;

3 (c) that the jurisdictional requirements of section 16
4 exist and that the marriage is irretrievably broken in that
5 either

6 (i) the parties have lived separate and apart for a
7 period of more than one hundred eighty (180) days next
8 preceding the commencement of this proceeding, or

9 (ii) that there is serious marital discord which
10 adversely affects the attitude of one or both of the parties
11 towards the marriage, and that there is no reasonable
12 prospect of reconciliation;

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

15 (e) any arrangements as to support, custody, and
16 visitation of the children and maintenance of a spouse; and

17 (f) the relief sought.

18 (3) Either or both parties to the marriage may
19 initiate the proceeding.

20 (4) If a proceeding is commenced by one of the
21 parties, the other party must be served in the manner
22 provided by the Montana rules of civil procedure and may
23 within twenty (20) days after the date of service file a
24 verified response. No decree may be entered until twenty
25 (20) days after the date of service.

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

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

7 Section 18. Temporary order or temporary injunction.

8 (1) In a proceeding for dissolution of marriage or for
9 legal separation, or in a proceeding for disposition of
10 property or for maintenance or support following dissolution
11 of the marriage by a court which lacked personal
12 jurisdiction over the absent spouse, either party may move
13 for temporary maintenance or temporary support of a child of
14 the marriage entitled to support. The motion shall be
15 accompanied by an affidavit setting forth the factual basis
16 for the motion and the amounts requested.

17 (2) As a part of a motion for temporary maintenance or
18 support or by independent motion accompanied by affidavit,
19 either party may request the court to issue a temporary
20 injunction for any of the following relief:

21 (a) restraining any person from transferring,
22 encumbering, concealing, or otherwise disposing of any
23 property except in the usual course of business or for the
24 necessities of life, and, if so restrained, requiring him to
25 notify the moving party of any proposed extraordinary

1 expenditures made after the order is issued;

2 (b) enjoining a party from molesting or disturbing the
3 peace of the other party or of any child;

4 (c) excluding a party from the family home or from the
5 home of the other party upon a showing that physical or
6 emotional harm would otherwise result;

7 (d) enjoining a party from removing a child from the
8 jurisdiction of the court; and

9 (e) providing other injunctive relief proper in the
10 circumstances.

11 (3) The court may issue a temporary restraining order
12 without requiring notice to the other party only if it finds
13 on the basis of the moving affidavit or other evidence that
14 irreparable injury will result to the moving party if no
15 order is issued until the time for responding has elapsed.

16 (4) A response may be filed within twenty (20) days
17 after service of notice of motion or at the time specified
18 in the temporary restraining order.

19 (5) On the basis of the showing made and in conformity
20 with sections 22 and 23, the court may issue a temporary
21 injunction and an order for temporary maintenance or support
22 in amounts and on terms just and proper in the circumstance.

23 (6) A temporary order or temporary injunction:

24 (a) does not prejudice the rights of the parties or
25 the child which are to be adjudicated at subsequent hearings

1 in the proceeding;

2 (b) may be revoked or modified before final decree on
3 a showing by affidavit of the facts necessary to revocation
4 or modification of a final decree under section 30; and

5 (c) terminates when the final decree is entered or
6 when the petition for dissolution or legal separation is
7 voluntarily dismissed.

8 Section 19. Irretrievable breakdown. (1) If both of
9 the parties by petition or otherwise have stated under oath
10 or affirmation that the marriage is irretrievably broken, or
11 one of the parties has so stated and the other has not
12 denied it, the court, after hearing, shall make a finding
13 whether the marriage is irretrievably broken.

14 (2) If one of the parties has denied under oath or
15 affirmation that the marriage is irretrievably broken, the
16 court shall consider all relevant factors, including the
17 circumstances that gave rise to filing the petition and the
18 prospect of reconciliation, and shall:

19 (a) make a finding whether the marriage is
20 irretrievably broken; or

21 (b) continue the matter for further hearing not fewer
22 than thirty (30) nor more than sixty (60) days later, or as
23 soon thereafter as the matter may be reached on the court's
24 calendar, and may suggest to the parties that they seek
25 counseling. The court at the request of either party shall,

1 or on its own motion may, order a conciliation conference.
2 At the adjourned hearing the court shall make a finding
3 whether the marriage is irretrievably broken.

4 (3) A finding of irretrievable breakdown is a
5 determination that there is no reasonable prospect of
6 reconciliation.

7 (4) Nothing in this section shall be interpreted to
8 affect the provisions of sections 36-201 through 36-205,
9 known as the Montana Conciliation Law.

10 Section 20. Separation agreement. (1) To promote
11 amicable settlement of disputes between parties to a
12 marriage attendant upon their separation or the dissolution
13 of their marriage, the parties may enter into a written
14 separation agreement containing provisions for disposition
15 of any property owned by either of them, maintenance of
16 either of them, and support, custody, and visitation of
17 their children.

18 (2) In a proceeding for dissolution of marriage or for
19 legal separation, the terms of the separation agreement,
20 except those providing for the support, custody, and
21 visitation of children, are binding upon the court unless it
22 finds, after considering the economic circumstances of the
23 parties and any other relevant evidence produced by the
24 parties, on their own motion or on request of the court,
25 that the separation agreement is unconscionable.

1 (3) If the court finds the separation agreement
2 unconscionable, it may request the parties to submit a
3 revised separation agreement or may make orders for the
4 disposition of property, maintenance, and support.

5 (4) If the court finds that the separation agreement
6 is not unconscionable as to disposition of property or
7 maintenance, and not unsatisfactory as to support:

8 (a) unless the separation agreement provides to the
9 contrary, its terms shall be set forth in the decree of
10 dissolution or legal separation and the parties shall be
11 ordered to perform them, or

12 (b) if the separation agreement provides that its
13 terms shall not be set forth in the decree, the decree shall
14 identify the separation agreement and state that the court
15 has found the terms not unconscionable.

16 (5) Terms of the agreement set forth in the decree are
17 enforceable by all remedies available for enforcement of a
18 judgment, including contempt, and are enforceable as
19 contract terms.

20 (6) Except for terms concerning the support, custody,
21 or visitation of children, the decree may expressly preclude
22 or limit modification of terms set forth in the decree if
23 the separation agreement so provides. Otherwise, terms of a
24 separation agreement set forth in the decree are
25 automatically modified by modification of the decree.

1 Section 21. Disposition of property. (1) In a
2 proceeding for dissolution of a marriage, legal separation,
3 or disposition of property following a decree of dissolution
4 of marriage or legal separation by a court which lacked
5 personal jurisdiction over the absent spouse or lacked
6 jurisdiction to dispose of the property, the court, without
7 regard to marital misconduct, shall, and in a proceeding for
8 legal separation may, finally equitably apportion between
9 the parties the property and assets belonging to either or
10 both however and whenever acquired, and whether the title
11 thereto is in the name of the husband or wife or both. In
12 making apportionment the court shall consider the duration
13 of the marriage, and prior marriage of either party,
14 antenuptial agreement of the parties, the age, health,
15 station, occupation, amount and sources of income,
16 vocational skills, employability, estate, liabilities, and
17 needs of each of the parties, custodial provisions, whether
18 the apportionment is in lieu of or in addition to
19 maintenance, and the opportunity of each for future
20 acquisition of capital assets and income. The court shall
21 also consider the contribution or dissipation of value of
22 the respective estates, and the contribution of a spouse as
23 a homemaker or to the family unit. In disposing of property
24 acquired prior to the marriage; property acquired by gift,
25 bequest, devise or descent; property acquired in exchange

1 for property acquired before the marriage or in exchange for
 2 property acquired by gift, bequest, devise, or descent; the
 3 increased value of property acquired prior to marriage; and
 4 property acquired by a spouse after a decree of legal
 5 separation, the court shall consider those contributions of
 6 the other spouse to the marriage, including the non-monetary
 7 contribution of a homemaker; the extent to which such
 8 contributions have facilitated the maintenance of this
 9 property and whether or not the property disposition serves
 10 as an alternative to maintenance arrangements.

11 (2) In a proceeding, the court may protect and promote
 12 the best interests of the children by setting aside a
 13 portion of the jointly and separately held estates of the
 14 parties in a separate fund or trust for the support,
 15 maintenance, education, and general welfare of any minor,
 16 dependent, or incompetent children of the parties.

17 Section 22. Maintenance. (1) In a proceeding for
 18 dissolution of marriage or legal separation, or a proceeding
 19 for maintenance following dissolution of the marriage by a
 20 court which lacked personal jurisdiction over the absent
 21 spouse, the court may grant a maintenance order for either
 22 spouse only if it finds that the spouse seeking maintenance:

- 23 (a) lacks sufficient property to provide for his
- 24 reasonable needs, and
- 25 (b) is unable to support himself through appropriate

1 employment or is the custodian of a child whose condition or
 2 circumstances make it appropriate that the custodian not be
 3 required to seek employment outside the home.

4 (2) The maintenance order shall be in such amounts and
 5 for such periods of time as the court deems just, without
 6 regard to marital misconduct, and after considering all
 7 relevant facts including:

8 (a) the financial resources of the party seeking
 9 maintenance, including marital property apportioned to him,
 10 and his ability to meet his needs independently, including
 11 the extent to which a provision for support of a child
 12 living with the party includes a sum for that party as
 13 custodian;

14 (b) the time necessary to acquire sufficient education
 15 or training to enable the party seeking maintenance to find
 16 appropriate employment;

17 (c) the standard of living established during the
 18 marriage;

19 (d) the duration of the marriage;

20 (e) the age, and the physical and emotional condition
 21 of the spouse seeking maintenance; and

22 (f) the ability of the spouse from whom maintenance is
 23 sought to meet his needs while meeting those of the spouse
 24 seeking maintenance.

25 Section 23. Child support. In a proceeding for

1 dissolution of marriage, legal separation, maintenance, or
 2 child support, the court may order either or both parents
 3 owing a duty of support to a child to pay an amount
 4 reasonable or necessary for his support, without regard to
 5 marital misconduct, after considering all relevant factors
 6 including:

- 7 (1) the financial resources of the child;
- 8 (2) the financial resources of the custodial parent;
- 9 (3) the standard of living the child would have
 10 enjoyed had the marriage not been dissolved;
- 11 (4) the physical and emotional condition of the child,
 12 and his educational needs; and
- 13 (5) the financial resources and needs of the
 14 noncustodial parent.

15 Section 24. Representation of child. The court may
 16 appoint an attorney to represent the interests of a minor
 17 dependent child with respect to his support, custody, and
 18 visitation. The court shall enter an order for costs and
 19 fees in favor of the child's attorney. The order shall be
 20 made against either or both parents, except that, if the
 21 responsible party is indigent, the costs shall be waived.

22 Section 25. Payment of maintenance or support to
 23 court. (1) Upon its own motion or upon motion of either
 24 party, the court may order at any time that maintenance or
 25 support payments be made to the clerk of the district court

1 as trustee for remittance to the person entitled to receive
 2 the payments.

3 (2) The clerk of the district court shall maintain
 4 records listing the amount of payments, the date payments
 5 are required to be made, and the names and addresses of the
 6 parties affected by the order.

7 (3) The parties affected by the order shall inform the
 8 clerk of the district court of any change of address or of
 9 other condition that may affect the administration of the
 10 order.

11 Section 26. Assignments. The court may order the
 12 person obligated to pay support or maintenance to make an
 13 assignment of a part of his periodic earnings or trust
 14 income to the person entitled to receive the payments. The
 15 assignment is binding on the employer, trustee, or other
 16 payor of the funds two (2) weeks after service upon him of
 17 notice that it has been made. The payor shall withhold from
 18 the earnings or trust income payable to the person obligated
 19 to support the amount specified in the assignment and shall
 20 transmit the payments to the person specified in the order.
 21 The payor may deduct from each payment a sum not exceeding
 22 one dollar (\$1) as reimbursement for costs. An employer
 23 shall not discharge or otherwise discipline an employee as a
 24 result of a wage or salary assignment authorized by this
 25 section.

1 Section 27. Costs—attorney's fees. The court from
 2 time to time after considering the financial resources of
 3 both parties may order a party to pay a reasonable amount
 4 for the cost to the other party of maintaining or defending
 5 any proceeding under this act and for attorney's fees,
 6 including sums for legal services rendered and costs
 7 incurred prior to the commencement of the proceeding or
 8 after entry of judgment. The court may order that the
 9 amount be paid directly to the attorney, who may enforce the
 10 order in his name.

11 Section 28. Decree. (1) A decree of dissolution of
 12 marriage or of legal separation is final when entered,
 13 subject to the right of appeal. An appeal from the decree
 14 of dissolution that does not challenge the finding that the
 15 marriage is irretrievably broken does not delay the finality
 16 of that provision of the decree which dissolves the marriage
 17 beyond the time for appealing from that provision, and
 18 either of the parties may remarry pending appeal.

19 (2) No earlier than six (6) months after entry of a
 20 decree of legal separation, the court on motion of either
 21 party shall convert the decree to a decree of dissolution of
 22 marriage.

23 (3) The clerk of court shall give notice of the entry
 24 of a decree of dissolution or legal separation:

25 (a) if the marriage is registered in this state, to

1 the clerk of the district court of the county where the
 2 marriage is registered who shall enter the fact of
 3 dissolution or separation in the book in which the marriage
 4 license and certificate are recorded; or

5 (b) if the marriage is registered in another
 6 jurisdiction, to the appropriate official of that
 7 jurisdiction, with the request that he enter the fact of
 8 dissolution in the appropriate record.

9 (4) Upon request by a wife whose marriage is dissolved
 10 or declared invalid, the court may, and if there are no
 11 children of the parties shall, order her maiden name or a
 12 former name restored.

13 Section 29. Independence of provisions of decree or
 14 temporary order. If a party fails to comply with a
 15 provision of a decree or temporary order or injunction, the
 16 obligation of the other party to make payments for support
 17 or maintenance or to permit visitation is not suspended; but
 18 he may move the court to grant an appropriate order.

19 Section 30. Modification and termination of provisions
 20 for maintenance, support, and property disposition. (1)
 21 Except as otherwise provided in subsection (6) of section
 22 20, the provisions of any decree respecting maintenance or
 23 support may be modified BY A COURT only as to installments
 24 accruing subsequent to the motion for modification and ~~only~~
 25 EITHER:

1 (A) upon a showing of changed circumstances so
 2 substantial and continuing as to make the terms
 3 unconscionable ~~EXCEPT BY: OR~~

4 (B) UPON WRITTEN CONSENT OF THE PARTIES. The
 5 provisions as to property disposition may not be revoked or
 6 modified BY A COURT, EXCEPT: BY

7 (A) UPON WRITTEN CONSENT OF THE PARTIES, OR unless

8 (B) IF the court finds the existence of conditions
 9 that justify the reopening of a judgment under the laws of
 10 this state.

11 (2) Unless otherwise agreed in writing or expressly
 12 provided in the decree, the obligation to pay future
 13 maintenance is terminated upon the death of either party or
 14 the remarriage of the party receiving maintenance.

15 (3) Unless otherwise agreed in writing or expressly
 16 provided in the decree, provisions for the support of a
 17 child are terminated by emancipation of the child but not by
 18 the death of a parent obligated to support the child. When
 19 a parent obligated to pay support dies, the amount of
 20 support may be modified, revoked, or commuted to a lump sum
 21 payment, to the extent just and appropriate in the
 22 circumstances.

23 Section 31. Jurisdiction—commencement of proceedings.

24 (1) A court of this state competent to decide child custody
 25 matters has jurisdiction to make a child custody

1 determination by initial or modification decree if:

2 (a) this state

3 (i) is the home state of the child at the time of
 4 commencement of the proceedings, or

5 (ii) had been the child's home state within six (6)
 6 months before commencement of the proceeding and the child
 7 is absent from this state because of his removal or
 8 retention by a person claiming his custody or for other
 9 reason, and a parent or person acting as parent continues to
 10 live in this state; or

11 (b) it is in the best interest of the child that a
 12 court of this state assume jurisdiction because

13 (i) the child and his parents, or the child and at
 14 least one contestant, have a significant connection with
 15 this state, and

16 (ii) there is available in this state substantial
 17 evidence concerning the child's present or future care,
 18 protection, training, and personal relationships; or

19 (c) the child is physically present in this state and

20 (i) has been abandoned or

21 (ii) it is necessary in an emergency to protect him
 22 because he has been subjected to or threatened with
 23 mistreatment or abuse or is neglected or dependent; or

24 (d) (i) no other state has jurisdiction under
 25 prerequisites substantially in accordance with paragraphs

1 (a), (b), or (c), or another state has declined to exercise
2 jurisdiction on the ground that this state is the more
3 appropriate forum to determine custody of the child, and

4 (ii) it is in his best interest that the court assume
5 jurisdiction.

6 (2) Except under paragraphs (c) and (d) of subsection
7 (1), physical presence in this state of the child, or of the
8 child and one of the contestants, is not alone sufficient to
9 confer jurisdiction on a court of this state to make a child
10 custody determination.

11 (3) Physical presence of the child, while desirable,
12 is not a prerequisite for jurisdiction to determine his
13 custody.

14 (4) A child custody proceeding is commenced in the
15 district court:

- 16 (a) by a parent, by filing a petition
- 17 (i) for dissolution or legal separation; or
- 18 (ii) for custody of the child in the county in which he
- 19 is permanently resident or found; or

20 (b) by a person other than a parent, by filing a
21 petition for custody of the child in the county in which he
22 is permanently resident or found, but only if he is not in
23 the physical custody of one of his parents.

24 (5) Notice of a child custody proceeding shall be
25 given to the child's parent, guardian, and custodian, who

1 may appear, be heard, and file a responsive pleading. The
2 court, upon a showing of good cause, may permit intervention
3 of other interested parties.

4 Section 32. Best interest of child. The court shall
5 determine custody in accordance with the best interest of
6 the child. The court shall consider all relevant factors
7 including:

- 8 (1) the wishes of the child's parent or parents as to
- 9 his custody;
- 10 (2) the wishes of the child as to his custodian;
- 11 (3) the interaction and interrelationship of the child
- 12 with his parent or parents, his siblings, and any other
- 13 person who may significantly affect the child's best
- 14 interest;
- 15 (4) the child's adjustment to his home, school, and
- 16 community; and
- 17 (5) the mental and physical health of all individuals
- 18 involved.

19 ~~The court shall not consider conduct of a proposed~~
20 ~~custodian that does not affect his relationship to the~~
21 ~~child.~~

22 Section 33. Temporary orders. (1) A party to a
23 custody proceeding may move for a temporary custody order.
24 The motion must be supported by an affidavit as provided in
25 section 40. The court may award temporary custody under the

1 standards of section 32 after a hearing, or, if there is no
2 objection, solely on the basis of the affidavits.

3 (2) If a proceeding for dissolution of marriage or
4 legal separation is dismissed, any temporary custody order
5 is vacated unless a parent or the child's custodian moves
6 that the proceeding continue as a custody proceeding and the
7 court finds, after a hearing, that the circumstances of the
8 parents and the best interest of the child requires that a
9 custody decree be issued.

10 (3) If a custody proceeding commenced in the absence
11 of a petition for dissolution of marriage or legal
12 separation under subsection (a) (ii) or (b) of section 31 is
13 dismissed, any temporary custody order is vacated.

14 Section 34. Interviews. (1) The court may interview
15 the child in chambers to ascertain the child's wishes as to
16 his custodian and as to visitation. The court may permit
17 counsel to be present at the interview. The court shall
18 cause a record of the interview to be made and to be part of
19 the record in the case.

20 (2) The court may seek the advice of professional
21 personnel, whether or not employed by the court on a regular
22 basis. The advice given shall be in writing and made
23 available by the court to counsel upon request. Counsel may
24 examine as a witness any professional personnel consulted by
25 the court.

1 Section 35. Investigations and reports. (1) In
2 contested custody proceedings, and in other custody
3 proceedings if a parent or the child's custodian so
4 requests, the court may order an investigation and report
5 concerning custodial arrangements for the child. The
6 investigation and report may be made by the county welfare
7 department.

8 (2) In preparing his report concerning a child, the
9 investigator may consult any person who may have information
10 about the child and his potential custodial arrangements.
11 Upon order of the court, the investigator may refer the
12 child to professional personnel for diagnosis. The
13 investigator may consult with and obtain information from
14 medical, psychiatric, or other expert persons who have
15 served the child in the past without obtaining the consent
16 of the parent or the child's custodian; but the child's
17 consent must be obtained if he has reached the age of
18 sixteen (16) unless the court finds that he lacks mental
19 capacity to consent. If the requirements of subsection (3)
20 are fulfilled, the investigator's report may be received in
21 evidence at the hearing.

22 (3) The court shall mail the investigator's report to
23 counsel and to any party not represented by counsel at least
24 ten (10) days prior to the hearing. The investigator shall
25 make available to counsel and to any party not represented

1 by counsel the investigator's file of underlying data, and
 2 reports, complete texts of diagnostic reports made to the
 3 investigator pursuant to the provisions of subsection (2),
 4 and the names and addresses of all persons whom the
 5 investigator has consulted. Any party to the proceeding may
 6 call the investigator and any person whom he has consulted
 7 for cross-examination. A party may not waive his right of
 8 cross-examination prior to the hearing.

9 Section 36. Hearings. (1) Custody proceedings shall
 10 receive priority in being set for hearing.

11 (2) The court may tax as costs the payment of
 12 necessary travel and other expenses incurred by any person
 13 whose presence at the hearing the court deems necessary to
 14 determine the best interest of the child.

15 (3) The court without a jury shall determine questions
 16 of law and fact. If it finds that a public hearing may be
 17 detrimental to the child's best interest, the court may
 18 exclude the public from a custody hearing, but may admit any
 19 person who has a direct and legitimate interest in the
 20 particular case or a legitimate educational or research
 21 interest in the work of the court.

22 (4) If the court finds it necessary to protect the
 23 child's welfare that the record of any interview, report,
 24 investigation, or testimony in a custody proceeding be kept
 25 secret, the court may make an appropriate order sealing the

1 record.

2 Section 37. Visitation. (1) A parent not granted
 3 custody of the child is entitled to reasonable visitation
 4 rights unless the court finds, after a hearing, that
 5 visitation would endanger seriously the child's physical,
 6 mental, moral, or emotional health.

7 (2) The court may modify an order granting or denying
 8 visitation rights whenever modification would serve the best
 9 interest of the child; but the court shall not restrict a
 10 parent's visitation rights unless it finds that the
 11 visitation would endanger seriously the child's physical,
 12 mental, moral, or emotional health.

13 Section 38. Judicial supervision. (1) Except as
 14 otherwise agreed by the parties in writing at the time of
 15 the custody decree, the custodian may determine the child's
 16 upbringing, including his education, health care, and
 17 religious training, unless the court after hearing, finds,
 18 upon motion by the noncustodial parent, that in the absence
 19 of a specific limitation of the custodian's authority, the
 20 child's physical health would be endangered or his emotional
 21 development significantly impaired.

22 (2) If both parents or all contestants agree to the
 23 order, or if the court finds that in the absence of the
 24 order the child's physical health would be endangered or his
 25 emotional development significantly impaired, the court may

1 order the county welfare department to exercise continuing
2 supervision over the case to assure that the custodial or
3 visitation terms of the decree are carried out.

4 Section 39. Modification. (1) No motion to modify a
5 custody decree may be made earlier than two (2) years after
6 its date, unless the court permits it to be made on the
7 basis of affidavits that there is reason to believe the
8 child's present environment may endanger seriously his
9 physical, mental, moral, or emotional health.

10 (2) ~~If a court of this state has jurisdiction pursuant~~
11 ~~to the Uniform Child Custody Jurisdiction Act, the THE~~ court
12 shall not modify a prior custody decree unless it finds,
13 upon the basis of facts that have arisen since the prior
14 decree or that were unknown to the court at the time of
15 entry of the prior decree, that a change has occurred in the
16 circumstances of the child or his custodian, and that the
17 modification is necessary to serve the best interest of the
18 child. In applying these standards the court shall retain
19 the custodian appointed pursuant to the prior decree unless:

- 20 (a) the custodian agrees to the modification;
- 21 (b) the child has been integrated into the family of
22 the petitioner with consent of the custodian; or
- 23 (c) the child's present environment endangers
24 seriously his physical, mental, moral, or emotional health,
25 and the harm likely to be caused by a change of environment

1 is outweighed by its advantages to him.

2 (3) Attorney fees and costs shall be assessed against
3 a party seeking modification if the court finds that the
4 modification action is vexatious and constitutes harassment.

5 Section 40. Affidavit practice. A party seeking a
6 temporary custody order or modification of a custody decree
7 shall submit together with his moving papers an affidavit
8 setting forth facts supporting the requested order or
9 modification and shall give notice, together with a copy of
10 his affidavit, to other parties to the proceeding, who may
11 file opposing affidavits. The court shall deny the motion
12 unless it finds that adequate cause for hearing the motion
13 is established by the affidavits, in which case it shall set
14 a date for hearing on an order to show cause why the
15 requested order or modification should not be granted.

16 Section 41. Application. (1) This act applies to all
17 proceedings commenced on or after its effective date.

18 (2) This act applies to all pending actions and
19 proceedings commenced prior to its effective date with
20 respect to issues on which a judgment has not been entered.
21 Pending actions for divorce or separation are deemed to have
22 been commenced on the basis of irretrievable breakdown.
23 Evidence adduced after the effective date of this act shall
24 be in compliance with this act.

25 (3) This act applies to all proceedings commenced

1 after its effective date for the modification of a judgment
2 or order entered prior to the effective date of this act.

3 (4) In any action or proceeding in which an appeal was
4 pending or a new trial was ordered prior to the effective
5 date of this act, the law in effect at the time of the order
6 sustaining the appeal or the new trial governs the appeal,
7 the new trial, and any subsequent trial or appeal.

8 Section 42. Act supersedes other laws or regulations.
9 If any provision of this act is in conflict with any other
10 law of this state, or any rule or regulation promulgated
11 thereunder, this act shall govern and control, and such
12 other law, rule, or regulation shall be deemed superseded
13 for the purpose of this act.

14 Section 43. Severability. If any provision of this
15 act or application thereof to any person or circumstance is
16 held invalid, the invalidity does not affect other
17 provisions or applications of the act which can be given
18 effect without the invalid provision or application, and to
19 this end the provisions of the act are severable.

20 Section 44. Section 48-130, R.C.M. 1947, is amended to
21 read as follows:

22 "48-130. Declaration of marriage without
23 solemnization—how made. Persons desiring to consummate a
24 marriage by written declaration in this state without the
25 solemnization provided for in section ~~48-136~~ 9 of this act

1 must prior to executing the declaration, secure the
2 premarital test certificate required by ~~section 48-134~~ this
3 act, which shall be firmly attached to the declaration and
4 shall be filed by the clerk of the district court in the
5 county where the contract was executed. Any such
6 declaration of marriage shall substantially contain the
7 following:

- 8 1. The names, ages, and residences of the parties;
- 9 2. The fact of marriage;
- 10 3. Name of father, and maiden name of mother, of both
11 parties, and address of each;
- 12 4. That both parties are legally competent to enter
13 into the marriage contract.

14 Such declaration must be subscribed by the parties and
15 attested by at least two (2) witnesses, and formally
16 acknowledged before the clerk of the district court of said
17 county. ~~Unless all the provisions of this act shall be~~
18 ~~complied with the marriage shall be deemed invalid."~~

19 Section 45. Sections 21-101 through 21-150, 48-101,
20 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1,
21 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129,
22 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201
23 through 48-203, 48-206, and 48-207, R.C.M. 1947, are
24 repealed.

25 Section 46. This act is effective January 1, 1976.