

1                    HOUSE      BILL NO. 14  
 2    INTRODUCED BY KVAALEN  
 3  
 4    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 5    CLARIFY THE LAWS RELATING TO MARRIAGE, HUSBAND AND WIFE,  
 6    RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND  
 7    CHILD, AND ADOPTION; INCLUDING EXTENDING THE POWER TO  
 8    SOLEMNIZE MARRIAGES TO MAYORS AND JUSTICES OF THE PEACE."  
 9  
 10    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11        Section 1. Section 25-232, R.C.M. 1947, is amended to  
 12    read as follows:  
 13        "25-232. Fees of clerk of district court. (1) At the  
 14    commencement of each action or proceeding, the clerk must  
 15    collect from the plaintiff the sum of ~~ten-dollars-(\$10)~~, and  
 16    for filing a complaint in intervention the clerk must  
 17    collect from the intervenor the sum of ~~ten-dollars-(\$10)++~~.  
 18        (2) ~~And-the~~ the defendant, on his appearance, must pay  
 19    the sum of ~~five-dollars-(\$5)-(which-includes-att-the-fees-to~~  
 20    ~~be-paid-up-to-the-entry-of-judgment)~~.  
 21        (3) On the entry of judgment in favor of plaintiff, he  
 22    ~~the plaintiff~~ must pay the additional sum of ~~five--dollars~~  
 23    ~~(\$5)++~~.  
 24        (4) ~~And--if~~ On the entry of judgment in favor of  
 25    defendant, the defendant must pay the sum of ~~ten--dollars~~

1    ~~(\$10)++ (which~~  
 2        (5) Items (1) through (4) ~~includes include~~ all the  
 3    clerk's costs for all services rendered in any action or  
 4    proceeding, except ~~for~~ issuing an execution or order of  
 5    ~~sale-and-the-fees~~ or for issuing a transcript on appeal.  
 6    If the action is dismissed, no fee for the entry of judgment  
 7    need be paid, unless the party desires the entry of such  
 8    judgment).  
 9        (6) For filing the papers and transcript on appeal  
 10    from a justice or other inferior court or other tribunal,  
 11    the party appealing must pay the sum of ~~ten--dollars--(\$10)++~~  
 12    ~~(which includes all costs up to the entry of judgment)~~.  
 13        (7) For entry of judgment in favor of party appealing,  
 14    he must pay the sum of ~~five-dollars-(\$5)~~.  
 15        (8) For entry of judgment in favor of the ~~other-party,~~  
 16    or respondent, he must pay the sum of ~~ten-dollars-(\$10)++~~.  
 17        (9) Items (6) through (8) ~~(which-includes~~ include all  
 18    ~~of~~ the clerk's costs for all services rendered on such  
 19    appeal).  
 20        (10) The clerk must collect the following fees:  
 21        (a) For ~~for~~ certifying transcripts on appeal, where if  
 22    the same are not prepared by him, ~~five-dollars-(\$5)~~, and in  
 23    addition thereto, ~~five 2 cents (\$05)-per~~ a page for each  
 24    page in excess of ~~two-hundred-(200)~~ pages.;  
 25        (b) ~~And--where~~ if he prepares such transcript, in

1 addition thereto, per folio, fifteen 15 cents ~~(\$15)~~;  
 2 (c) For for preparing copies of papers in his office,  
 3 per folio, fifteen 15 cents ~~(\$15)~~, when-certified-to, and  
 4 in addition thereto, ~~when-certified,~~ fifty 50 cents ~~(\$50)~~  
 5 for certificate and seal;  
 6 (d) For for certificate with seal, fifty 50 cents  
 7 ~~(\$50)~~;  
 8 (e) For for oath and jurat, with seal, fifty 50 cents  
 9 ~~(\$50)~~;  
 10 (f) For for administering oath, twenty-five 25 cents  
 11 ~~(\$25)~~;  
 12 (g) For for taking depositions, per folio, twenty 20  
 13 cents ~~(\$20)~~;  
 14 (h) For for filing and docketing transcript of  
 15 judgment from all other courts and issuing execution  
 16 thereon, two-dollars-and-fifty-cents-~~(\$2.50)~~;  
 17 (i) For for issuing execution and all services  
 18 connected therewith, one-dollar-~~(\$1)~~;  
 19 (j) For for issuing execution or order of sale on  
 20 foreclosure of liens, one-dollar-~~(\$1)~~, and ~~and~~ in addition  
 21 per folio, twenty 20 cents ~~(\$20)~~;  
 22 (k) For for searching records of files for each year,  
 23 except for suitors or their attorneys, twenty-five 25 cents  
 24 ~~(\$25)~~;  
 25 (l) For for transmission of records or files or

1 transfer of cases to other courts, two-dollars-and-fifty  
 2 cents-~~(\$2.50)~~;  
 3 (m) For for filing and entering papers on transfer  
 4 from other courts, five-dollars-~~(\$5)~~;  
 5 (n) For for making, acknowledging, and procuring the  
 6 signature of judge to deed of lot in townsite, four--dollars  
 7 ~~(\$4)~~;  
 8 (o) For for issuing a marriage license, five-dollars  
 9 ~~(\$5)~~ \$15.  
 10 (ll) ~~One-quarter-(1/4)~~ One-fourth of all fees collected  
 11 by said ~~the~~ clerk of the district court must be paid to the  
 12 secretary of the public employees' retirement system board  
 13 to be credited to the judges' retirement fund."  
 14 Section 2. Section 36-204, R.C.M. 1947, is amended to  
 15 read as follows:  
 16 "36-204. Procedure. (1) Whenever any controversy  
 17 exists between the spouses which may, unless a  
 18 reconciliation is achieved, result in the dissolution or  
 19 annulment of the marriage or in the disruption of the  
 20 household, and there is any minor child of the spouses or of  
 21 either of them whose welfare might be affected thereby, the  
 22 conciliation court shall have jurisdiction over the  
 23 controversy, and over the parties thereto and all persons  
 24 having any relation to the controversy as further provided  
 25 in this chapter.

1 (2) Prior to the filing of any action for divorce  
 2 dissolution, annulment, or separate maintenance, either  
 3 spouse or both spouses may file in the conciliation court  
 4 a petition invoking the jurisdiction of the court for the  
 5 purpose of preserving the marriage by effecting a  
 6 reconciliation between the parties, or for amicable  
 7 settlement of the controversy between the spouses, so as to  
 8 avoid further litigation over the issue involved.

9 (3) The petition shall be captioned substantially as  
 10 follows:

11 District Court of the State of Montana  
 12 For the County of ....

13 Upon the petition of Petition for Conciliation  
 14 ..... (Under the Conciliation  
 15 Petitioner Court Law)

16 And concerning  
 17 ..... and  
 18 .....

19 Respondents.

20 To the Conciliation Court:

21 (4) The petition shall:

22 (a) ~~Allege~~ allege that a controversy exists between  
 23 the spouses and request the aid of the court to effect a  
 24 reconciliation or an amicable settlement of the  
 25 controversy;

1 (b) ~~State~~ state the name and age of each minor child  
 2 whose welfare may be affected by the controversy;

3 (c) ~~State~~ state the name and address of the  
 4 petitioner or the names and addresses of the petitioners;

5 (d) ~~if~~ if the petition is presented by one spouse  
 6 only, name the other spouse as a respondent, and state the  
 7 address of that spouse;

8 (e) ~~Also~~ also name as a respondent any other person  
 9 who has any relation to the controversy, and state the  
 10 address of the person, if known to the petitioner;

11 (f) ~~State~~ state such other information as the court  
 12 may by rule require.

13 (5) The clerk of the court shall provide, at the  
 14 expense of the county, blank forms for petitions for filing  
 15 pursuant to this chapter. The probation officers of the  
 16 county and the attaches and employees of the conciliation  
 17 court shall assist any person in the preparation and  
 18 presentation of any such petition when any person requests  
 19 such assistance. All public officers in each county shall  
 20 refer to the conciliation court all petitions and complaints  
 21 made to them in respect to controversies within the  
 22 jurisdiction of the conciliation court.

23 (6) ~~No-Fees~~ No fee ~~shall~~ may be charged by any  
 24 officer for filing the petition, nor ~~shall~~ may any fee be  
 25 charged by any officer for the performance of any duty

1 pursuant to this chapter.

2 (7) ~~Time--and-Place-of-Hearings.~~ The court shall fix a  
3 reasonable time and place for hearing on the petition, and  
4 shall cause such notice of the filing of the petition and  
5 the time and place of the hearing as it ~~deems~~ considers  
6 necessary to be given to the respondents. The court may,  
7 when it ~~deems~~ considers it necessary, issue a citation to  
8 any respondent requiring him to appear at the time and place  
9 stated in the citation, and may require the attendance of  
10 witnesses as in other civil cases.

11 (8) For the purpose of conducting hearings pursuant to  
12 this chapter, the conciliation court may be convened at any  
13 time and place within the district, and the hearing may be  
14 had in chambers or otherwise, except that the time and place  
15 for hearing ~~shall~~ may not be different from the time and  
16 place provided by law for the trial of civil actions if any  
17 party, prior to the hearing, objects to any different time  
18 or place.

19 (9) ~~Hearings--informal.~~ The hearing shall be conducted  
20 informally as a conference or series of conferences to  
21 effect a reconciliation of the spouses or an amicable  
22 adjustment or settlement of the issues of the controversy.  
23 To facilitate and promote the purposes of this act ~~chapter,~~  
24 the court may, with the consent of both of the parties to  
25 the proceeding, recommend or invoke the aid of physicians,

1 or psychiatrists, or other specialists or scientific  
2 experts, or of the pastor or director of any religious  
3 denomination to which the parties may belong. Such aid,  
4 however, shall not be at the expense of the court or of the  
5 county, unless the county commissioners of the county  
6 specifically provide and authorize such aid.

7 (10) ~~Orders--Effective-time--Reconciliation-Agreements.~~  
8 At or after hearing, the court may make such orders in  
9 respect to the conduct of the spouses and the subject matter  
10 of the controversy as the court ~~deems~~ considers necessary to  
11 preserve the marriage or to implement the reconciliation of  
12 the spouses, but in no event ~~shall~~ may such orders be  
13 effective for more than ~~thirty~~ (30) days from the hearing of  
14 the petition, unless the parties mutually consent to a  
15 continuation of such time. Any reconciliation agreement  
16 between the parties may be reduced to writing, and, with the  
17 consent of the parties, a court order may be made requiring  
18 the parties to comply fully therewith.

19 (11) During a period beginning upon the filing of the  
20 petition for conciliation and continuing until ~~thirty~~ (30)  
21 days after the hearing of the petition for conciliation,  
22 neither spouse shall file any action for ~~divorce~~  
23 dissolution, annulment of marriage, or separate maintenance.  
24 ~~If--however~~ after the expiration of such period, the  
25 controversy between the spouses has not been terminated,

1 either spouse may institute proceedings for divorce  
 2 dissolution, annulment of marriage, or separate maintenance.  
 3 The pendency of a divorce dissolution, annulment, or  
 4 separate maintenance action shall may not operate as a bar  
 5 to the instituting of proceedings for conciliation under  
 6 this chapter.

7 (12) ~~Stay--of--Divorce-Proceedings--Where-Conciliation~~  
 8 ~~Petition--Filed--First.~~ Whenever any action for divorce  
 9 dissolution, annulment of marriage, or separate maintenance  
 10 is filed in the district court, and it appears to the court  
 11 at any time during the pendency of the action that there is  
 12 any minor child of the spouses or of either of them whose  
 13 welfare may be adversely affected by the dissolution or  
 14 annulment of the marriage or of the disruption of the  
 15 household, and that there appears to be some reasonable  
 16 possibility of a reconciliation being effected, the case may  
 17 be transferred to the conciliation court for proceedings for  
 18 reconciliation of the spouses or amicable settlement of  
 19 issues in controversy, in accordance with the provisions of  
 20 this chapter.

21 (13) ~~Jurisdiction--Where--No--Minors--Involved.~~ Whenever  
 22 application is made to the conciliation court for  
 23 conciliation proceedings in respect to a controversy between  
 24 spouses, or a contested action for divorce dissolution,  
 25 annulment, or separate maintenance, but there is no minor

1 child whose welfare may be affected by the results of the  
 2 controversy, and it appears to the court that reconciliation  
 3 of the spouses or amicable adjustment of the controversy can  
 4 probably be achieved, and that the work of the court in  
 5 cases involving children will not be seriously impeded by  
 6 acceptance of the case, the court may accept and dispose of  
 7 the case in the same manner as similar cases involving the  
 8 welfare of children are disposed of. In the event of such  
 9 application and acceptance, the court shall have the same  
 10 jurisdiction over the controversy and the parties thereto or  
 11 having any relation thereto that it has under this chapter  
 12 in similar cases involving the welfare of children."

13 Section 3. Section 48-126, R.C.M. 1947, is amended to  
 14 read as follows:

15 "48-126. Certificate and copy ~~prima-facie~~ prima facie  
 16 evidence. The original certificate of marriage--~~made--as~~  
 17 ~~prescribed--in--this--chapter~~ and the record thereof by the  
 18 clerk of the district court, or a copy of such record duly  
 19 certified by the clerk of the district court, shall be  
 20 received by all courts in all places as presumptive evidence  
 21 of such marriage."

22 Section 4. Section 48-134, R.C.M. 1947, is amended to  
 23 read as follows:

24 "48-134. Proof of age --~~premarital-test~~ and medical  
 25 certificate required of--~~applicants--for--marriage--license.~~

1 (1) Before a person, who is authorized by law to issue  
 2 marriage licenses, ~~shall~~ may issue a marriage license, each  
 3 applicant therefor shall exhibit to him a birth certificate  
 4 or other satisfactory evidence of age, and, if such  
 5 applicant is a minor, ~~the consent required by section 48-118~~  
 6 the approval required by 48-308, and shall also file with  
 7 him a medical certificate from a duly qualified physician,  
 8 licensed to practice medicine and surgery in any state or  
 9 United States territory, or any other person authorized by  
 10 laws of Montana to make such a medical certificate, which  
 11 certificate shall state that the applicant has been given  
 12 such an examination, including a standard serological test,  
 13 made not more than ~~twenty--(20)~~ days before the date of  
 14 issuance of the license, and that the report of the results  
 15 of the serological test has been exhibited to the applicant  
 16 and that each party to the proposed marriage contract has  
 17 examined the report of the serological test of the other  
 18 party to the proposed contract.

19 (2) A person who by law is validly able to obtain a  
 20 marriage license in this state is also validly able to give  
 21 ~~his-or-her~~ consent to any examinations and tests required by  
 22 this ~~act~~ section. In submitting the blood specimen to the  
 23 laboratory, the physician, or any other person authorized by  
 24 the laws of Montana to make such a medical certificate,  
 25 shall designate that it is a premarital test."

1 Section 5. Section 48-135, R.C.M. 1947, is amended to  
 2 read as follows:

3 "48-135. Contents and form of medical certificate. (1)  
 4 The medical certificate shall contain a statement, from the  
 5 person in charge of the laboratory making the test or  
 6 authorized to make such reports, setting forth:

- 7 (a) the name of the test;  
 8 (b) the date it was made;  
 9 (c) the name and address of the physician, or ~~to--any~~  
 10 other person authorized under the laws of Montana to make  
 11 the test;  
 12 (d) to whom the test was sent; and  
 13 (e) the name and address of the person whose blood was  
 14 tested.

15 (2) In the event that an error is discovered in the  
 16 results of the test, such results will be expunged from the  
 17 records of the department of health and environmental  
 18 sciences.

19 (3) The ~~said~~ certificate and statement shall be on a  
 20 form to be provided and distributed by the department of  
 21 health and environmental sciences to all county clerks of  
 22 the court in the state and to laboratories in this state  
 23 approved by the department ~~of--health--and--environmental~~  
 24 sciences. This form is hereinafter referred to in this act  
 25 as "the certificate form."1"

1 Section 6. Section 48-137, R.C.M. 1947, is amended to  
2 read as follows:

3 "48-137. Definition of test -- rules ~~and--regulations.~~  
4 For the purpose of this act, a standard serological test  
5 shall be a test for ~~syphitis,~~ rubella immunity, ~~and~~  
6 ~~syphilis, as~~ approved by the department of health and  
7 environmental sciences. An approved laboratory shall be the  
8 laboratory of the department of ~~health and environmental~~  
9 ~~sciences~~ or a laboratory approved by that department. Any  
10 other state ~~or~~ United States public health service or  
11 United States armed forces laboratory shall be considered  
12 approved for the purposes of this act. Such laboratory test  
13 may be made on request at the laboratory of the department  
14 of health and environmental sciences. Reasonable rules for  
15 reports to be submitted by any laboratory making tests and  
16 the manner of furnishing the reports to the certifying  
17 physician and the state shall be adopted by the department  
18 of health and environmental sciences."

19 Section 7. Section 48-139, R.C.M. 1947, is amended to  
20 read as follows:

21 "48-139. Penalties. ~~(1) Any~~ ~~An~~ applicant for a  
22 marriage license, a physician, or other person authorized by  
23 the laws of Montana to make such a medical certificate, ~~or~~  
24 any person in charge of, or authorized to make such reports  
25 or statements for a laboratory who ~~shall~~ misrepresent

1 ~~misrepresents~~ his identity or any of the facts called for by  
2 the certificate form prescribed by this act, ~~1~~ or any  
3 licensing officer who ~~shall--issue~~ issues a marriage license  
4 without having received the certificate form or who ~~shall~~  
5 have has reason to believe that any of the facts on the  
6 certificate form have been misrepresented, and ~~shall~~  
7 nevertheless ~~issue~~ issues a marriage license, ~~1~~ or any person  
8 who ~~shall~~ otherwise ~~fail~~ fails to comply with the provisions  
9 of this act ~~shall--be~~ is guilty of a misdemeanor, and, upon  
10 conviction, shall be punished by a fine of not more than one  
11 ~~hundred-dollars--(\$100.00).~~

12 ~~(2) Certificates~~ Medical certificates, laboratory  
13 statements or reports, and applications, ~~in--this--act~~  
14 referred to in this act ~~and--the--information--therein~~  
15 ~~contained,--shall--be~~ are confidential and ~~shall~~ may not be  
16 divulged to or open to inspection by any person other than  
17 state or local health officers or their ~~duty--authorized~~  
18 representatives. Any ~~A~~ person who ~~shall--divulge~~ divulges  
19 such information or ~~open~~ opens to inspection such  
20 certificates, statements, or reports, ~~or--applications,~~  
21 without authority, to any person not by law entitled to the  
22 same, ~~shall--be~~ is guilty of a misdemeanor, and, upon  
23 conviction, shall be punished by a fine of not more than one  
24 ~~hundred-dollars--(\$100.00).~~"

25 Section 8. Section 48-146, R.C.M. 1947, is amended to

1 read as follows:

2 \*48-146. License required--for---marriage--place---of  
3 ceremony--county--where--license-issued application. (1) No  
4 Montana resident shall ~~may~~ be joined in marriage within this  
5 state until a license has been obtained for that purpose  
6 from the clerk of the district court of the county in which  
7 one of the parties has resided for at least ~~five--(5)~~ days  
8 immediately prior to making application therefor.

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

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

20 Section 9. Section 48-309, R.C.M. 1947, is amended to  
21 read as follows:

22 \*48-309. Solemnization and registration. (1) A  
23 marriage may be solemnized by a judge of a court of record,  
24 by a public official whose powers include solemnization of  
25 marriages, by a mayor or justice of the peace, or in

1 accordance with any mode of solemnization recognized by any  
2 religious denomination, Indian nation or tribe, or native  
3 group. Either the person solemnizing the marriage, or, if  
4 no individual acting alone solemnized the marriage, a party  
5 to the marriage, shall complete the marriage certificate  
6 form and forward it to the clerk of the district court.

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

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

17 (4) The solemnization of the marriage is not  
18 invalidated by the fact that the person solemnizing the  
19 marriage was not legally qualified to solemnize it, if  
20 either party to the marriage believed him to be so  
21 qualified."

22 Section 10. Section 48-317, R.C.M. 1947, is amended to  
23 read as follows:

24 \*48-317. Procedure -- commencement -- pleadings --  
25 abolition of existing defenses. ~~(1)---(1)---proceedings---under~~



1 ~~this act are commenced in the manner provided by the Montana~~  
 2 ~~rules of civil procedure.~~

3 ~~{2}{1}~~ The verified petition in a proceeding for  
 4 dissolution of marriage or legal separation shall allege  
 5 that the marriage is irretrievably broken and shall set  
 6 forth:

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

9 (b) the date of the marriage and the place at which it  
 10 was registered;

11 (c) that the jurisdictional requirements of section  
 12 48-316 exist and that the marriage is irretrievably broken  
 13 in that either:

14 (i) the parties have lived separate and apart for a  
 15 period of more than ~~one--hundred--eighty--{180}~~ days next  
 16 preceding the commencement of this proceeding; or

17 (ii) ~~that~~ there is serious marital discord which  
 18 adversely affects the attitude of one or both of the parties  
 19 towards the marriage, and ~~that~~ there is no reasonable  
 20 prospect of reconciliation;

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

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

25 (f) the relief sought.

1 ~~{3}{2}~~ Either or both parties to the marriage may  
 2 initiate the proceeding.

3 ~~{4}{3}~~ If a proceeding is commenced by one of the  
 4 parties, the other party must be served in the manner  
 5 provided by the Montana rules of civil procedure and may  
 6 within ~~twenty--{20}~~ days after the date of service file a  
 7 verified response. No decree may be entered until ~~twenty~~  
 8 ~~{20}~~ days after the date of service.

9 ~~{5}{4}~~ Previously existing defenses to divorce and  
 10 legal separation, including but not limited to condonation,  
 11 connivance, collusion, recrimination, insanity, and lapse of  
 12 time, are abolished.

13 ~~{6}{5}~~ The court may join additional parties proper  
 14 for the exercise of its authority to implement this act."

15 Section 11. Section 48-331, R.C.M. 1947, is amended to  
 16 read as follows:

17 "48-331. Jurisdiction -- commencement of proceedings.

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

21 (a) this state;

22 (i) is the home state of the child at the time of  
 23 commencement of the proceedings; or

24 (ii) had been the child's home state within ~~six--{6}~~  
 25 months before commencement of the proceeding and the child

1 is absent from this state because of his removal or  
 2 retention by a person claiming his custody or for other  
 3 reason, and a parent or person acting as parent continues to  
 4 live in this state; or

5 (b) it is in the best interest of the child that a  
 6 court of this state assume jurisdiction because:

7 (i) the child and his parents, or the child and at  
 8 least one contestant, have a significant connection with  
 9 this state; and

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

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

14 (i) has been abandoned; or

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

18 (d) (i) no other state has jurisdiction under  
 19 prerequisites substantially in accordance with paragraphs  
 20 subsections 11(a), 11(b), or 11(c), of this section or  
 21 another state has declined to exercise jurisdiction on the  
 22 ground that this state is the more appropriate forum to  
 23 determine custody of the child; and

24 (ii) it is in his best interest that the court assume  
 25 jurisdiction.

1 (2) Except under paragraphs subsections 11(c) and  
 2 11(d) of subsection (1) this section, physical presence in  
 3 this state of the child, or of the child and one of the  
 4 contestants, is not alone sufficient to confer jurisdiction  
 5 on a court of this state to make a child custody  
 6 determination.

7 (3) Physical presence of the child, while desirable,  
 8 is not a prerequisite for jurisdiction to determine his  
 9 custody.

10 (4) A child custody proceeding is commenced in the  
 11 district court:

12 (a) by a parent, by filing a petition;

13 (i) for dissolution or legal separation; or

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

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

20 (5) Notice of a child custody proceeding shall be  
 21 given to the child's parent, guardian, and or custodian, who  
 22 may appear, be heard, and file a responsive pleading. The  
 23 court, upon a showing of good cause, may permit intervention  
 24 of other interested parties."

25 Section 12. Section 48-333, R.C.M. 1947, is amended to

1 read as follows:

2 "48-333. Temporary orders. (1) A party to a custody  
3 proceeding may move for a temporary custody order. The  
4 motion must be supported by an affidavit as provided in  
5 section 48-340. The court may award temporary custody under  
6 the standards of section 48-332 after a hearing, or, if  
7 there is no objection, solely on the basis of the  
8 affidavits.

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

16 (3) If a custody proceeding commenced in the absence  
17 of a petition for dissolution of marriage or legal  
18 separation ~~under subsection (a) or (b) of section 48-333~~  
19 is dismissed, any temporary custody order is vacated."

20 Section 13. Section 61-105, R.C.M. 1947, is amended to  
21 read as follows:

22 "61-105. Custody of ~~legitimate, services, and earnings~~  
23 of child. The father and mother of an unmarried minor child  
24 are equally entitled to ~~its the~~ custody, services, and  
25 earnings of the child. If either parent be dead, or unable

1 or ~~refuse~~ refuses to take the custody, or has abandoned his  
2 or her family, the other is entitled to ~~its the~~ custody,  
3 services, and earnings of the child."

4 Section 14. Section 61-109, R.C.M. 1947, is amended to  
5 read as follows:

6 "61-109. Allowance to parent. The proper court may  
7 direct an allowance to be made to the parent of a child, out  
8 of ~~its the~~ the child's property, for ~~its the~~ past or future  
9 support and education of the child, on such conditions as  
10 may be proper, whenever such direction is for ~~its the~~  
11 child's benefit."

12 Section 15. Section 61-113, R.C.M. 1947, is amended to  
13 read as follows:

14 "61-113. Remedy when a parent dies without providing  
15 for the support of his child. If a parent chargeable with  
16 the support of a child dies, leaving ~~it the~~ the child chargeable  
17 to the county, and leaving an estate sufficient for ~~its the~~  
18 child's support, the county commissioners of the county may  
19 claim provision for ~~its the~~ the child's support from the  
20 parent's estate by civil action, and for this purpose may  
21 have the same remedies as any creditors against that estate,  
22 and against the heirs, devisees, and the next of kin of the  
23 parent."

24 Section 16. Section 61-118, R.C.M. 1947, is amended to  
25 read as follows:

1           "61-118. Compensation and support of ~~adult--child~~  
2 person after attaining majority. Where a ~~child~~ person, after  
3 attaining majority, continues to serve and to be supported  
4 by the parent, neither party is entitled to compensation, in  
5 the absence of an agreement therefor."

6           Section 17. Section 61-122, R.C.M. 1947, is amended to  
7 read as follows:

8           "61-122. Custody when custody may be awarded without  
9 divorce dissolution proceedings ~~when parents separated~~. When  
10 a husband and wife live in a state of separation, without  
11 ~~being--divorced~~ the marriage being dissolved, any court of  
12 competent jurisdiction, upon application of either, if an  
13 inhabitant of this state, may inquire into the custody of  
14 any unmarried minor child of the marriage, and may award the  
15 custody of such child to either for such time and under such  
16 regulations as the case may require. ~~The--decision--of--the~~  
17 ~~court--must--be--guided--by--the--rules--prescribed--in--section~~  
18 91-4515."

19           Section 18. Section 61-208, R.C.M. 1947, is amended to  
20 read as follows:

21           "61-208. Petition for adoption. (1) A petition for  
22 adoption shall be filed in duplicate, verified by the  
23 petitioners, and shall specify:

24           (a) ~~The the~~ full names, ages, and place of residence  
25 of the petitioners, and, if married, the place and date of

1 the marriage;

2           (b) ~~When when~~ the petitioners acquired or intend to  
3 acquire custody of the child and from what person or  
4 agency;

5           (c) ~~The the~~ date and place of birth of child, if  
6 known;

7           (d) ~~The the~~ name used for the child in the proceeding,  
8 and, if a change in name is desired, the new name;

9           (e) ~~That that~~ it is the desire of the petitioners that  
10 the relationship of parent and child be established between  
11 them and the child;

12           (f) ~~A a~~ full description and statement of value of all  
13 property owned or possessed by the child;

14           (g) ~~Facts facts~~, if any, which excuse consent on the  
15 part of a parent to the adoption.

16           (2) One copy of the petition shall be retained by the  
17 court. The other shall be sent to the state department of  
18 social and rehabilitation services, and An additional copy  
19 shall be sent to any agency participating in the adoption  
20 proceeding.

21           (3) Any written consent required by this act may be  
22 attached to the petition, or may be filed, after the filing  
23 of the petition, with the consent of the court."

24           Section 19. Section 61-211, R.C.M. 1947, is amended to  
25 read as follows:

1       \*61-211. Interlocutory and final decree. ~~11~~ Upon  
 2 examination of the report described in section 61-209, if  
 3 such report has been deemed ~~considered~~ necessary by said ~~the~~  
 4 court, and after hearing, the court may issue an  
 5 interlocutory decree giving the care and custody to the  
 6 petitioners pending the further order of the court.

7       ~~12~~ When a petition has been filed seeking the  
 8 adoption of a child, the court must cause service of process  
 9 to be made on the parent or parents of the child, except in  
 10 those cases hereinafter provided, in the following manner:

11       ~~1a~~ The court shall order a citation to issue to the  
 12 parent or parents in the name of the state of Montana and  
 13 under the seal of the court, directing such parent or  
 14 parents to appear in court at a time to be fixed by the  
 15 court, and show cause why said ~~the~~ petition should not be  
 16 granted.

17       ~~1b~~ Such citation, together with a copy of the  
 18 petition for adoption, shall be personally served upon such  
 19 parent or parents. If, however, any such parent or parents  
 20 cannot be found within this state, service may be had by  
 21 publication of a copy of said ~~the~~ citation in the manner  
 22 provided for the publication of summons by Rule 4,  
 23 M.R.Civ.P.

24       ~~13~~ If, after completion of such service, any parent  
 25 so served does not appear, the court may act upon the

1 petition, and the order of the court thereon shall be  
 2 binding upon all persons so served; provided that any such  
 3 person ~~shall have the right to~~ may appeal from the order in  
 4 the manner and form provided for appeals from a judgment in  
 5 civil actions.

6       ~~14~~ The petitioners and the child shall appear at said  
 7 ~~the~~ hearing, unless the presence of the child is waived by  
 8 the court.

9       ~~15~~ Service of process, as aforesaid, need not be made  
 10 on a parent who has consented in writing to an adoption ~~or~~  
 11 ~~on the father of an illegitimate child~~; or on any parent  
 12 whose consent to adoption is not required under the  
 13 provisions of section 61-205, ~~or 61-325~~, and service of  
 14 process shall not be made on any parent who has relinquished  
 15 his child to the state department of social and  
 16 rehabilitation services or an adoption agency licensed by  
 17 the state department of ~~social and rehabilitation services~~.

18       ~~16~~ After an interlocutory decree ~~as aforesaid~~ has  
 19 been issued by the court, the investigator, if any, shall  
 20 observe the child in his adoptive home and report in writing  
 21 to the court within ~~six to~~ six months on any circumstances or  
 22 conditions which may have a bearing on the adoption. After  
 23 ~~six to~~ six months from the date of the interlocutory decree,  
 24 the petitioners may apply to the court for a final decree of  
 25 adoption. The court shall thereupon set a time and place for

1 final hearing. Notice of the time and date of the hearing  
 2 shall be served on the state department of social and  
 3 rehabilitation services, and the investigator, if any. The  
 4 investigator, if any, shall file with the court a written  
 5 report of his findings and recommendations and certify that  
 6 the described investigation, if any, has been made since the  
 7 granting of the interlocutory decree. After hearing on said  
 8 application, at which the petitioners and the child shall  
 9 appear, unless the presence of the child is waived by the  
 10 court, the court may enter a final decree of adoption if  
 11 satisfied that the adoption is for the best interests of the  
 12 child. If the adoption is denied, an appropriate order  
 13 shall be made as to the future custody of said ~~the~~ child."

14 Section 20. Section 61-214, R.C.M. 1947, is amended to  
 15 read as follows:

16 "61-214. Appeal. An appeal may be taken from any final  
 17 order, judgment, or decree rendered hereunder to in the  
 18 district court by any person aggrieved thereby, in the  
 19 manner provided for appeals from ~~said the~~ court in other  
 20 civil matters."

21 Section 21. Section 61-309, R.C.M. 1947, is amended to  
 22 read as follows:

23 "61-309. Jurisdiction -- venue. (1) The district court  
 24 has jurisdiction of an action brought under this act. The  
 25 action may be joined with an action for divorce dissolution,

1 annulment, separate maintenance, support, or adoption.

2 (2) For purposes of an action brought under this act,  
 3 personal jurisdiction is established in the courts of this  
 4 state over any person who has had sexual intercourse in this  
 5 state which has resulted in the birth of a child who is the  
 6 subject of such proceedings. In addition to any other method  
 7 provided by rule or statute, ~~including--Rule--4B--of--the~~  
 8 ~~Montana--Rules-of-Civil-Procedure,~~ personal jurisdiction may  
 9 be acquired by service in accordance with Rule 4B of the  
 10 Montana Rules rules of ~~Civil-Procedure~~ civil procedure.

11 (3) The action may be brought in the county in which  
 12 the child or the alleged father resides or is found or, if  
 13 the father is deceased, in which proceedings for probate of  
 14 his estate have been or could be commenced."

15 Section 22. Section 61-323, R.C.M. 1947, is amended to  
 16 read as follows:

17 "61-323. Promise to render support. (1) Any promise in  
 18 writing to furnish support for a child, growing out of a  
 19 supposed or alleged father and child relationship, does not  
 20 require consideration and is enforceable according to its  
 21 terms, subject to section 61-307(4).

22 (2) In the best interest of the child or the mother,  
 23 the court may, and upon the ~~provision's~~ promisor's request  
 24 shall, order the promise to be kept in confidence and  
 25 designate a person or agency to receive and disburse on

1 behalf of the child all amounts paid in performance of the  
2 promise."

3 Section 23. Section 93-505, R.C.M. 1947, is amended to  
4 read as follows:

5 \*93-505. Sittings of court -- when private. In an  
6 action for divorce ~~dissolution of marriage~~, criminal  
7 conversation, ~~or seduction--or--breach--of--promise--of~~  
8 ~~marriage~~, the court may direct the trial of any issue of  
9 fact joined therein to be private, and exclude all persons  
10 except the officers of the court, the parties, their  
11 witnesses, and counsel~~s~~, provided~~v~~ that in any cause the  
12 court may, in the exercise of a sound discretion, during the  
13 examination of a witness, exclude any or all witnesses in  
14 the cause.\*

15 Section 24. Section 93-2601-60, R.C.M. 1947, is  
16 amended to read as follows:

17 \*93-2601-60. Hearing and continuance. If the obligee  
18 is not present at the hearing and the obligor denies owing  
19 the duty of support alleged in the petition or offers  
20 evidence constituting a defense~~s~~, the court, upon request of  
21 either party, ~~may~~ continue the hearing to permit evidence  
22 relative to the duty to be adduced by either party by  
23 deposition or by appearing in person before the court. The  
24 court may designate the judge of the initiating court as a  
25 person before whom a deposition may be taken.\*

1 Section 25. Repealer. Sections 36-110, 36-130, 36-131,  
2 48-112, 48-123, 48-144, and 93-2201-6, R.C.M. 1947, are  
3 repealed.

-End-

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LC 0035

1977 Legialture  
Code Commissioner Bill - Summary

House Bill No. 14

TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 25-232. Changed the amount of the marriage license fee to \$15, to conform with 48-306, the later statute.

Section 2. 36-204(12). Changed "of" to "or" to correct obvious grammatical error.

Section 3. 48-126. Deleted "made as prescribed in this chapter" since the marriage certificate is no longer prescribed by chapter 1 of Title 48, but rather by the director of the department of health and environmental sciences pursuant to 48-305.

Section 4. 48-134. Premarital test. The language ". . . the consent required by section 41-118 . . ." is obsolete because 41-118 has been repealed. It is changed to read ". . . the approval required by 48-308" which permits judicial approval as well as parental consent. Also the word "certificate" has been changed to "medical certificate" to avoid possible confusion with "marriage certificate".

Section 5. 48-135. Changed "certificate" to medical certificate" for above reason. In (1)(c) deleted "to any" to correct apparent grammatical error.



Section 6. 48-137. Changed ". . . syphilis, rubella immunity, approved by the department . . ." to ". . . rubella immunity and syphilis, as approved by the department . . ." for grammatical clarity. Added "or" for same reason.

Section 7. 48-139. Changed "certificate" to "medical certificate". Added "applications" in second sentence of second paragraph to make it conform to 1st sentence.

Section 8. 48-146. In (3) added an "and" for grammatical reasons.

Section 9. 48-309. Added mayors and justices of the peace to the list of persons who may solemnize marriages. Those officers were apparently inadvertently deprived of such authority upon the adoption in 1975 of the uniform marriage and divorce act.

Section 10. 48-317(1). This subsection is deleted as it is merely redundant to 48-315(1).

Section 11. 48-331(5). Changed "and" to "or" in this subsection since it would be impossible generally to notify all three (parent, guardian, and custodian).

Section 12. 48-333(3). Deleted reference to "(a) (ii) or (b)" as unnecessary and ambiguous. The proper reference seems to be "(4) (a) (ii) or (4) (b)", however "(1) (a) (ii) or (1) (b)" might also be relevant. Best alternative is to delete the reference.

Section 13, 14, and 15. 61-105, 61-109, 61-113. Children are referred to as "it" in these sections. Changed references to "the child" instead.

Section 16. 61-118. Changed references to "adult child" and "child, after attaining majority" to "person, after attaining majority" to avoid reference to the impossible person.

Section 17. 61-122. Deleted the last sentence because 91-4515 has been repealed. The bill which repealed that section did not replace its provisions, however other provisions for determination of custody are set forth in the uniform marriage and divorce act. If desired, the reference to "91-4515" could probably be replaced with "48-332 through 48-340", or "this chapter".

Section 18. 61-208(2). This subsection contemplates two copies of the petition, one to be retained by the court, and the other to be sent to several different parties, a task which would require the services of a magician. The second sentence is amended to provide for additional copies when needed to be sent to additional parties.

Section 19. 61-211. The fifth paragraph states that in the case of adoption of an illegitimate child, service of process is not required on the father. This seems to conflict with 61-325, which requires notice be given unless and until a decree is entered terminating such father's parental rights. Amended by striking ". . . or on the father of an illegitimate child . . ." and adding "61-325" after ". . . or on any parent whose consent to adoption is not required under the provisions of section 61-205 or 61-325 . . ."

Section 20. 61-214. Changed "to" to "in" for grammatical reasons. Orders, etc. are rendered "in" a court, not "to" a court.

Section 21. 61-309. Deleted ". . . including rule 4B of the Montana Rules of Civil Procedure . . ." as compliance with rule 4B is required later in the same sentence. Use of the words is awkward and redundant.

Section 22. 61-323(2). Changed ". . . provision's request . . ." to "promisor's request . . ." to correct apparent error.

Section 23. 93-505. Deleted "breach of promise of marriage" since by authority of 17-1202 such actions may no longer be brought.

Section 24. 93-2601-60. Added "may" to correct apparent error. The alternative substitution would be "shall".

Section 25. Repealers.

36-110. This section and 36-128 are redundant. Repealed this section.

36-130. This section and 36-105 are redundant. Repealed this section.

36-131. This section disallowing courtesy is replaced by 91A-2-112 of the uniform probate code.

48-112. Lack of chastity as releasing a party from a contract to marry. This section is probably obsolete and at any rate would seem to be impliedly repealed by 17-1202, which abolishes the cause of action for breach of a promise to marry, hence the marriage contract. It should be noted that 17-1202, which is the later statute, although disallowing action for breach of marriage promise, still preserves actions based on fraud or unjust enrichment.

48-123, 48-144. Form of marriage certificate and license. The Uniform Marriage and Divorce Act requires the director of the department of health and environmental sciences to prescribe the forms for the marriage certificate and license (48-305), hence these forms previously prescribed by the legislature are impliedly inapplicable.

93-2201-6. Admission of adultery. Adultery is no longer a ground, per se, for divorce (see 48-316), hence this section is obsolete.

Approved by Committee  
on Judiciary

HOUSE BILL NO. 14

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION; INCLUDING EXTENDING THE POWER TO SOLEMNIZE MARRIAGES TO MAYORS AND JUSTICES OF THE PEACE."

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

Section 1. Section 25-232, R.C.M. 1947, is amended to read as follows:

"25-232. Fees of clerk of district court. (1) At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of ~~ten dollars~~ ~~(\$10)~~, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of ~~ten dollars~~ ~~(\$10)~~ ~~+~~.

(2) ~~And the~~ The defendant, on his appearance, must pay the sum of ~~five dollars~~ ~~(\$5)~~ ~~(which includes all the fees to be paid up to the entry of judgment)~~.

(3) On the entry of judgment in favor of plaintiff, ~~he~~ the plaintiff must pay the additional sum of ~~five dollars~~ ~~(\$5)~~ ~~+~~.

(4) ~~And if~~ On the entry of judgment in favor of defendant, the defendant must pay the sum of ~~ten dollars~~

~~(\$10)~~ ~~(which~~

(5) Items (1) through (4) includes include all the clerk's costs for all services rendered in any action or proceeding, except for issuing an execution or order of sale, ~~and the fees or~~ for issuing a transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment).

(6) For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of ~~ten dollars~~ ~~(\$10)~~ ~~(which includes all costs up to the entry of judgment)~~.

(7) For entry of judgment in favor of party appealing, he must pay the sum of ~~five dollars~~ ~~(\$5)~~.

(8) For entry of judgment in favor of the ~~other party,~~ ~~or~~ respondent, he must pay the sum of ~~ten dollars~~ ~~(\$10)~~.

(9) Items (6) through (8) (which includes include all of the clerk's costs for all services rendered on such appeal).

(10) The clerk must collect the following fees:

(a) ~~For for~~ certifying transcripts on appeal, ~~where if~~ the same are not prepared by him, ~~five dollars~~ ~~(\$5)~~, and in addition thereto, ~~five~~ 5 cents ~~(\$0.05)~~ ~~per a~~ page for each page in excess of ~~two hundred~~ ~~(200)~~ pages.

(b) ~~And where if~~ he prepares such transcript, in

1 addition thereto, per folio, ~~fifteen~~ 15 cents ~~(\$15)~~;  
 2 (c) ~~For for~~ preparing copies of papers in his office,  
 3 per folio, fifteen 15 cents ~~(\$15)~~, ~~when certified to, and~~  
 4 in addition thereto, when certified, fifty 50 cents ~~(\$50)~~  
 5 for certificate and seal;  
 6 (d) ~~For for~~ certificate with seal, fifty 50 cents  
 7 ~~(\$50)~~;  
 8 (e) ~~For for~~ oath and jurat, with seal, fifty 50 cents  
 9 ~~(\$50)~~;  
 10 (f) ~~For for~~ administering oath, ~~twenty-five~~ 25 cents  
 11 ~~(\$25)~~;  
 12 (g) ~~For for~~ taking depositions, per folio, twenty 20  
 13 cents ~~(\$20)~~;  
 14 (h) ~~For for~~ filing and docketing transcript of  
 15 judgment from all other courts and issuing execution  
 16 thereon, ~~two dollars and fifty cents~~ ~~(\$2.50)~~;  
 17 (i) ~~For for~~ issuing execution and all services  
 18 connected therewith, ~~one dollar~~ ~~(\$1)~~;  
 19 (j) ~~For for~~ issuing execution or order of sale on  
 20 foreclosure of liens, ~~one dollar~~ ~~(\$1)~~, ~~and and~~ in addition  
 21 per folio, twenty 20 cents ~~(\$20)~~;  
 22 (k) ~~For for~~ searching records of files for each year,  
 23 except for suitors or their attorneys, ~~twenty-five~~ 25 cents  
 24 ~~(\$25)~~;  
 25 (l) ~~For for~~ transmission of records or files or

1 transfer of cases to other courts, ~~two dollars and fifty~~  
 2 ~~cents~~ ~~(\$2.50)~~;  
 3 (m) ~~For for~~ filing and entering papers on transfer  
 4 from other courts, ~~five dollars~~ ~~(\$5)~~;  
 5 (n) ~~For for~~ making, acknowledging, and procuring the  
 6 signature of judge to deed of lot in townsite, ~~four~~ ~~dollars~~  
 7 ~~(\$4)~~;  
 8 (o) ~~For for~~ issuing a marriage license, ~~five dollars~~  
 9 ~~(\$5)~~ \$15.  
 10 (11) ~~One quarter (1/4)~~ One fourth of all fees collected  
 11 by ~~said the~~ clerk of the district court must be paid to the  
 12 secretary of the public employees' retirement system board  
 13 to be credited to the judges' retirement fund."  
 14 Section 2. Section 36-204, R.C.M. 1947, is amended to  
 15 read as follows:  
 16 "36-204. Procedure. (1) Whenever any controversy  
 17 exists between the spouses which may, unless a  
 18 reconciliation is achieved, result in the dissolution or  
 19 annulment of the marriage or in the disruption of the  
 20 household, and there is any minor child of the spouses or of  
 21 either of them whose welfare might be affected thereby, the  
 22 conciliation court shall have jurisdiction over the  
 23 controversy, and over the parties thereto and all persons  
 24 having any relation to the controversy as further provided  
 25 in this chapter.

1 (2) Prior to the filing of any action for ~~divorce~~  
 2 dissolution, annulment, or separate maintenance, either  
 3 spouse, or both spouses, may file in the conciliation court  
 4 a petition invoking the jurisdiction of the court for the  
 5 purpose of preserving the marriage by effecting a  
 6 reconciliation between the parties, or for amicable  
 7 settlement of the controversy between the spouses, so as to  
 8 avoid further litigation over the issue involved.

9 (3) The petition shall be captioned substantially as  
 10 follows:

11 District Court of the State of Montana  
 12 For the County of ....

13 Upon the petition of Petition for Conciliation  
 14 ..... (Under the Conciliation  
 15 Petitioner Court Law)

16 And concerning  
 17 ..... and  
 18 .....

19 Respondents.

20 To the Conciliation Court:

21 (4) The petition shall:

22 (a) ~~allege~~ allege that a controversy exists between  
 23 the spouses and request the aid of the court to effect a  
 24 reconciliation or an amicable settlement of the  
 25 controversy;

1 (b) ~~State~~ state the name and age of each minor child  
 2 whose welfare may be affected by the controversy;

3 (c) ~~State~~ state the name and address of the  
 4 petitioner, or the names and addresses of the petitioners;

5 (d) ~~if~~ if the petition is presented by one spouse  
 6 only, name the other spouse as a respondent, and state the  
 7 address of that spouse;

8 (e) ~~also~~ also name as a respondent any other person  
 9 who has any relation to the controversy, and state the  
 10 address of the person, if known to the petitioner;

11 (f) ~~State~~ state such other information as the court  
 12 may by rule require.

13 (5) The clerk of the court shall provide, at the  
 14 expense of the county, blank forms for petitions for filing  
 15 pursuant to this chapter. The probation officers of the  
 16 county and the attaches and employees of the conciliation  
 17 court shall assist any person in the preparation and  
 18 presentation of any such petition, when any person requests  
 19 such assistance. All public officers in each county shall  
 20 refer to the conciliation court all petitions and complaints  
 21 made to them in respect to controversies within the  
 22 jurisdiction of the conciliation court.

23 (6) ~~No Fees.~~ No fee ~~shall~~ may be charged by any  
 24 officer for filing the petition, nor ~~shall~~ may any fee be  
 25 charged by any officer for the performance of any duty

1 pursuant to this chapter.

2 (7) ~~Time and Place of Hearings.~~ The court shall fix a  
3 reasonable time and place for hearing on the petition, and  
4 shall cause such notice of the filing of the petition and  
5 the time and place of the hearing as it ~~deems~~ considers  
6 necessary to be given to the respondents. The court may,  
7 when it ~~deems~~ considers it necessary, issue a citation to  
8 any respondent requiring him to appear at the time and place  
9 stated in the citation, and may require the attendance of  
10 witnesses as in other civil cases.

11 (8) For the purpose of conducting hearings pursuant to  
12 this chapter, the conciliation court may be convened at any  
13 time and place within the district, and the hearing may be  
14 had in chambers or otherwise, except that the time and place  
15 for hearing ~~shall~~ may not be different from the time and  
16 place provided by law for the trial of civil actions if any  
17 party, prior to the hearing, objects to any different time  
18 or place.

19 (9) ~~Hearings—Informal.~~ The hearing shall be conducted  
20 informally as a conference or series of conferences to  
21 effect a reconciliation of the spouses or an amicable  
22 adjustment or settlement of the issues of the controversy.  
23 To facilitate and promote the purposes of this ~~act~~ chapter,  
24 the court may, with the consent of both of the parties to  
25 the proceeding, recommend or invoke the aid of physicians,

1 ~~or~~ psychiatrists, ~~or~~ other specialists or scientific  
2 experts, or ~~of~~ the pastor or director of any religious  
3 denomination to which the parties may belong. Such aid,  
4 however, shall not be at the expense of the court or of the  
5 county, unless the county commissioners of the county  
6 specifically provide and authorize such aid.

7 (10) ~~Orders—Effective Time—Reconciliation Agreement.~~  
8 At or after hearing, the court ~~may~~ make such orders in  
9 respect to the conduct of the spouses and the subject matter  
10 of the controversy as the court ~~deems~~ considers necessary to  
11 preserve the marriage or to implement the reconciliation of  
12 the spouses, but in no event ~~shall~~ may such orders be  
13 effective for more than ~~thirty~~ (30) days from the hearing of  
14 the petition, unless the parties mutually consent to a  
15 continuation of such time. Any reconciliation agreement  
16 between the parties may be reduced to writing, and, with the  
17 consent of the parties, a court order may be made requiring  
18 the parties to comply fully therewith.

19 (11) During a period beginning upon the filing of the  
20 petition for conciliation and continuing until ~~thirty~~ (30)  
21 days after the hearing of the petition for conciliation,  
22 neither spouse shall file any action for ~~divorce~~  
23 dissolution, annulment of marriage, or separate maintenance.  
24 If, ~~however~~, after the expiration of such period, the  
25 controversy between the spouses has not been terminated,

1 either spouse may institute proceedings for ~~divorce~~  
 2 dissolution, annulment of marriage, or separate maintenance.  
 3 The pendency of a ~~divorce~~ dissolution, annulment, or  
 4 separate maintenance action ~~shall~~ may not operate as a bar  
 5 to the instituting of proceedings for conciliation under  
 6 this chapter.

7 ~~(12) Stay of Divorce Proceedings Where Conciliation~~  
 8 ~~Petition Filed First.~~ Whenever any action for ~~divorce~~  
 9 dissolution, annulment of marriage, or separate maintenance  
 10 is filed in the district court, and it appears to the court  
 11 at any time during the pendency of the action that there is  
 12 any minor child of the spouses or of either of them whose  
 13 welfare may be adversely affected by the dissolution or  
 14 annulment of the marriage ~~of~~ or the disruption of the  
 15 household, and that there appears to be some reasonable  
 16 possibility of a reconciliation being effected, the case may  
 17 be transferred to the conciliation court for proceedings for  
 18 reconciliation of the spouses or amicable settlement of  
 19 issues in controversy, in accordance with the provisions of  
 20 this chapter.

21 ~~(13) Jurisdiction Where No Minors Involved.~~ Whenever  
 22 application is made to the conciliation court for  
 23 conciliation proceedings in respect to a controversy between  
 24 spouses, or a contested action for ~~divorce~~ dissolution,  
 25 annulment, or separate maintenance, but there is no minor

1 child whose welfare may be affected by the results of the  
 2 controversy, and it appears to the court that reconciliation  
 3 of the spouses or amicable adjustment of the controversy can  
 4 probably be achieved, and that the work of the court in  
 5 cases involving children will not be seriously impeded by  
 6 acceptance of the case, the court may accept and dispose of  
 7 the case in the same manner as similar cases involving the  
 8 welfare of children are disposed of. In the event of such  
 9 application and acceptance, the court shall have the same  
 10 jurisdiction over the controversy and the parties thereto or  
 11 having any relation thereto that it has under this chapter  
 12 in similar cases involving the welfare of children."

13 Section 3. Section 48-126, R.C.M. 1947, is amended to  
 14 read as follows:

15 "48-126. Certificate and copy ~~prima facie~~ prima facie  
 16 evidence. The original certificate of marriage, ~~made as~~  
 17 ~~prescribed in this chapter,~~ and the record thereof by the  
 18 clerk of the district court, or a copy of such record duly  
 19 certified by the clerk of the district court, shall be  
 20 received by all courts in all places as presumptive evidence  
 21 of such marriage."

22 Section 4. Section 48-134, R.C.M. 1947, is amended to  
 23 read as follows:

24 "48-134. Proof of age ~~premarital test and medical~~  
 25 certificate required ~~of applicants for marriage license.~~



1 (1) Before a person, who is authorized by law to issue  
 2 marriage licenses, ~~shall~~ may issue a marriage license, each  
 3 applicant therefor shall exhibit to him a birth certificate  
 4 or other satisfactory evidence of age, and, if such  
 5 applicant is a minor, ~~the consent required by section 48-148~~  
 6 ~~the approval required by 48-308~~, and shall also file with  
 7 him a medical certificate from a duly qualified physician,  
 8 licensed to practice medicine and surgery in any state or  
 9 United States territory, or any other person authorized by  
 10 laws of Montana to make such a medical certificate, which  
 11 certificate shall state that the applicant has been given  
 12 such an examination, including a standard serological test,  
 13 made not more than ~~twenty~~ (20) days before the date of  
 14 issuance of the license, and that the report of the results  
 15 of the serological test has been exhibited to the applicant  
 16 and that each party to the proposed marriage contract has  
 17 examined the report of the serological test of the other  
 18 party to the proposed contract.

19 (2) A person who by law is validly able to obtain a  
 20 marriage license in this state is also validly able to give  
 21 ~~his or her~~ consent to any examinations and tests required by  
 22 this ~~act~~ section. In submitting the blood specimen to the  
 23 laboratory, the physician, or any other person authorized by  
 24 the laws of Montana to make such a medical certificate,  
 25 shall designate that it is a premarital test."

1 Section 5. Section 48-135, R.C.M. 1947, is amended to  
 2 read as follows:

3 \*48-135. Contents and form of medical certificate. (1)  
 4 The medical certificate shall contain a statement, from the  
 5 person in charge of the laboratory making the test or  
 6 authorized to make such reports, setting forth:

- 7 (a) the name of the test;  
 8 (b) the date it was made;  
 9 (c) the name and address of the physician, or ~~to any~~  
 10 other person authorized under the laws of Montana to make  
 11 the test;  
 12 (d) to whom the test was sent; and  
 13 (e) the name and address of the person whose blood was  
 14 tested.

15 (2) In the event that an error is discovered in the  
 16 results of the test, such results will be expunged from the  
 17 records of the department of health and environmental  
 18 sciences.

19 (3) The ~~said~~ certificate and statement shall be on a  
 20 form to be provided and distributed by the department of  
 21 health and environmental sciences to all county clerks of  
 22 the court in the state and to laboratories in this state  
 23 approved by the department ~~of health and environmental~~  
 24 ~~sciences~~. This form is hereinafter referred to in this act  
 25 as "the certificate form."

1 Section 6. Section 48-137, R.C.M. 1947, is amended to  
2 read as follows:

3 "48-137. Definition of test -- rules ~~and regulations.~~

4 For the purpose of this act, a standard serological test  
5 shall be a test for ~~syphilis~~, rubella immunity, and  
6 syphilis, as approved by the department of health and  
7 environmental sciences. An approved laboratory shall be the  
8 laboratory of the department ~~of health and environmental~~  
9 ~~sciences~~ or a laboratory approved by that department. Any  
10 other state, or United States public health service or  
11 United States armed forces laboratory shall be considered  
12 approved for the purposes of this act. Such laboratory test  
13 may be made on request at the laboratory of the department  
14 of health and environmental sciences. Reasonable rules for  
15 reports to be submitted by any laboratory making tests and  
16 the manner of furnishing the reports to the certifying  
17 physician and the state shall be adopted by the department  
18 of health and environmental sciences."

19 Section 7. Section 48-139, R.C.M. 1947, is amended to  
20 read as follows:

21 "48-139. Penalties. (1) ~~Any~~ An applicant for a  
22 marriage license, a physician, or other person authorized by  
23 the laws of Montana to make ~~such~~ a medical certificate, or  
24 any person in charge of, or authorized to make ~~such~~ reports  
25 or statements for a laboratory who ~~shall~~ misrepresent

1 misrepresents his identity or any of the facts called for by  
2 the certificate form prescribed by this act, ~~or~~ or any  
3 licensing officer who ~~shall issue~~ issues a marriage license  
4 without having received the certificate form or who shall  
5 ~~have~~ has reason to believe that any of the facts on the  
6 certificate form have been misrepresented, and shall  
7 nevertheless ~~issue~~ issues a marriage license, ~~or~~ or any person  
8 who shall otherwise ~~fail~~ fails to comply with the provisions  
9 of this act ~~shall be~~ is guilty of a misdemeanor, and, upon  
10 conviction, shall be punished by a fine of not more than ~~one~~  
11 ~~hundred dollars~~ (\$100.00).

12 (2) ~~Certificates~~ Medical certificates, laboratory  
13 statements or reports, and applications, ~~in this act~~  
14 referred to in this act ~~and the information therein~~  
15 ~~contained, shall be~~ are confidential and shall may not be  
16 divulged to or open to inspection by any person other than  
17 state or local health officers or their ~~duly~~ authorized  
18 representatives. ~~Any~~ A person who ~~shall divulge~~ divulges  
19 such information or ~~open~~ opens to inspection such  
20 certificates, statements, ~~or~~ or reports, or applications,  
21 without authority, to any person not by law entitled to the  
22 same, ~~shall be~~ is guilty of a misdemeanor, and, upon  
23 conviction, shall be punished by a fine of not more than ~~one~~  
24 ~~hundred dollars~~ (\$100.00)."

25 Section 8. Section 48-146, R.C.M. 1947, is amended to

1 read as follows:

2 "48-146. License ~~required for marriage place of~~  
3 ~~ceremony county where license issued~~ application. (1) No  
4 Montana resident ~~shall~~ may be joined in marriage within this  
5 state until a license has been obtained for that purpose  
6 from the clerk of the district court of the county in which  
7 one of the parties has resided for at least ~~five~~ (5) days  
8 immediately prior to making application therefor.

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

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

20 Section 9. Section 48-309, R.C.M. 1947, is amended to  
21 read as follows:

22 "48-309. Solemnization and registration. (1) A  
23 marriage ~~may~~ is solemnized by a judge of a court of record,  
24 by a public official whose powers include solemnization of  
25 marriages, by a mayor or justice of the peace, or in

1 accordance with any mode of solemnization recognized by any  
2 religious denomination, Indian nation or tribe, or native  
3 group. Either the person solemnizing the marriage, or, if  
4 no individual acting alone solemnized the marriage, a party  
5 to the marriage, shall complete the marriage certificate  
6 form and forward it to the clerk of the district court.

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

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

17 (4) The solemnization of the marriage is not  
18 invalidated by the fact that the person solemnizing the  
19 marriage was not legally qualified to solemnize it, if  
20 either party to the marriage believed him to be so  
21 qualified."

22 Section 10. Section 48-317, R.C.M. 1947, is amended to  
23 read as follows:

24 "48-317. Procedure -- commencement -- pleadings --  
25 abolition of existing defenses. ~~(4) All proceedings under~~

1 ~~this act are commenced in the manner provided by the Montana~~  
2 ~~rules of civil procedure.~~

3 ~~(2)~~ (1) The verified petition in a proceeding for  
4 dissolution of marriage or legal separation shall allege  
5 that the marriage is irretrievably broken and shall set  
6 forth:

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

9 (b) the date of the marriage and the place at which it  
10 was registered;

11 (c) that the jurisdictional requirements of ~~section~~  
12 ~~48-316~~ exist and that the marriage is irretrievably broken  
13 in that either:

14 (i) the parties have lived separate and apart for a  
15 period of more than ~~one hundred eighty~~ (180) days next  
16 preceding the commencement of this proceeding; or

17 (ii) ~~that~~ there is serious marital discord which  
18 adversely affects the attitude of one or both of the parties  
19 towards the marriage, and ~~that~~ there is no reasonable  
20 prospect of reconciliation;

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

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

25 (f) the relief sought.

1 ~~(3)~~ (2) Either or both parties to the marriage may  
2 initiate the proceeding.

3 ~~(4)~~ (3) If a proceeding is commenced by one of the  
4 parties, the other party must be served in the manner  
5 provided by the Montana rules of civil procedure and may  
6 within ~~twenty~~ (20) days after the date of service file a  
7 verified response. No decree may be entered until ~~twenty~~  
8 (20) days after the date of service.

9 ~~(5)~~ (4) Previously existing defenses to divorce and  
10 legal separation, including but not limited to condonation,  
11 connivance, collusion, recrimination, insanity, and lapse of  
12 time, are abolished.

13 ~~(6)~~ (5) The court may join additional parties proper  
14 for the exercise of its authority to implement this act."

15 Section 11. Section 48-331, R.C.M. 1947, is amended to  
16 read as follows:

17 "48-331. Jurisdiction -- commencement of proceedings.

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

21 (a) this state;

22 (i) is the home state of the child at the time of  
23 commencement of the proceedings; or

24 (ii) had been the child's home state within ~~six~~ (6)  
25 months before commencement of the proceeding and the child

1 is absent from this state because of his removal or  
2 retention by a person claiming his custody or for other  
3 reason, and a parent or person acting as parent continues to  
4 live in this state; or

5 (b) it is in the best interest of the child that a  
6 court of this state assume jurisdiction because:

7 (i) the child and his parents, or the child and at  
8 least one contestant, have a significant connection with  
9 this state; and

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

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

14 (i) has been abandoned; or

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

18 (d) (i) no other state has jurisdiction under  
19 prerequisites substantially in accordance with ~~paragraphs~~  
20 subsections (1) (a), (1) (b), or (1) (c) of this section or  
21 another state has declined to exercise jurisdiction on the  
22 ground that this state is the more appropriate forum to  
23 determine custody of the child; and

24 (ii) it is in his best interest that the court assume  
25 jurisdiction.

1 (2) Except under ~~paragraphs~~ subsections (1) (c) and  
2 (1) (d) of subsection (1) this section, physical presence in  
3 this state of the child, or of the child and one of the  
4 contestants, is not alone sufficient to confer jurisdiction  
5 on a court of this state to make a child custody  
6 determination.

7 (3) Physical presence of the child, while desirable,  
8 is not a prerequisite for jurisdiction to determine his  
9 custody.

10 (4) A child custody proceeding is commenced in the  
11 district court:

12 (a) by a parent, by filing a petition;

13 (i) for dissolution or legal separation; or

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

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

20 (5) Notice of a child custody proceeding shall be  
21 given to the child's parent, guardian, ~~and of~~ AND custodian,  
22 who may appear, be heard, and file a responsive pleading.  
23 The court, upon a showing of good cause, may permit  
24 intervention of other interested parties."

25 Section 12. Section 48-333, R.C.M. 1947, is amended to

1 read as follows:

2 "48-333. Temporary orders. (1) A party to a custody  
3 proceeding may move for a temporary custody order. The  
4 motion must be supported by an affidavit as provided in  
5 ~~section~~ 48-340. The court may award temporary custody under  
6 the standards of ~~section~~ 48-332 after a hearing, or, if  
7 there is no objection, solely on the basis of the  
8 affidavits.

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

16 (3) If a custody proceeding commenced in the absence  
17 of a petition for dissolution of marriage or legal  
18 separation ~~under subsection (a) (ii) or (b) of section 48-334~~  
19 is dismissed, any temporary custody order is vacated."

20 Section 13. Section 61-105, R.C.M. 1947, is amended to  
21 read as follows:

22 "61-105. Custody ~~of legitimate, services, and earnings~~  
23 of child. The father and mother of an unmarried minor child  
24 are equally entitled to ~~its~~ the custody, services, and  
25 earnings of the child. If either parent be dead, or unable,

1 or ~~refuse~~ refuses to take the custody, or has abandoned his  
2 or her family, the other is entitled to ~~its~~ the custody,  
3 services, and earnings of the child."

4 Section 14. Section 61-109, R.C.M. 1947, is amended to  
5 read as follows:

6 "61-109. Allowance to parent. The proper court may  
7 direct an allowance to be made to the parent of a child, out  
8 of ~~its~~ the child's property, for ~~its~~ the past or future  
9 support and education of the child, on such conditions as  
10 may be proper, whenever such direction is for ~~its~~ the  
11 child's benefit."

12 Section 15. Section 61-113, R.C.M. 1947, is amended to  
13 read as follows:

14 "61-113. Remedy when a parent dies without providing  
15 for ~~the~~ support of ~~his~~ child. If a parent chargeable with  
16 the support of a child dies, leaving ~~it~~ the child chargeable  
17 to the county, and leaving an estate sufficient for ~~its~~ the  
18 child's support, the county commissioners of the county may  
19 claim provision for ~~its~~ the child's support from the  
20 parent's estate by civil action, and for this purpose may  
21 have the same remedies as any creditors against that estate,  
22 and against the heirs, devisees, and the next of kin of the  
23 parent."

24 Section 16. Section 61-118, R.C.M. 1947, is amended to  
25 read as follows:

1 "61-118. Compensation and support of ~~adult—child~~  
 2 person after attaining majority. Where a ~~child person~~, after  
 3 attaining majority, continues to serve and to be supported  
 4 by the parent, neither party is entitled to compensation, in  
 5 the absence of an agreement therefor."

6 Section 17. Section 61-122, R.C.M. 1947, is amended to  
 7 read as follows:

8 "61-122. Custody when custody may be awarded without  
 9 divorce dissolution proceedings ~~when parents separated~~. When  
 10 a husband and wife live in a state of separation, without  
 11 ~~being divorced the marriage being dissolved~~, any court of  
 12 competent jurisdiction, upon application of either, if an  
 13 inhabitant of this state, may inquire into the custody of  
 14 any unmarried minor child of the marriage, and may award the  
 15 custody of such child to either for such time and under such  
 16 regulations as the case may require. ~~The decision of the~~  
 17 ~~court must be guided by the rules prescribed in section~~  
 18 ~~91-4515."~~

19 Section 18. Section 61-208, R.C.M. 1947, is amended to  
 20 read as follows:

21 "61-208. Petition for adoption. (1) A petition for  
 22 adoption shall be filed in duplicate, verified by the  
 23 petitioners, and shall specify:

24 (a) ~~The~~ the full names, ages, and place of residence  
 25 of the petitioners, and, if married, the place and date of

1 the marriage;

2 (b) ~~When~~ when the petitioners acquired or intend to  
 3 acquire custody of the child and from what person or  
 4 agency;

5 (c) ~~The~~ the date and place of birth of child, if  
 6 known;

7 (d) ~~The~~ the name used for the child in the proceeding,  
 8 and, if a change in name is desired, the new name;

9 (e) ~~That~~ that it is the desire of the petitioners that  
 10 the relationship of parent and child be established between  
 11 them and the child;

12 (f) ~~A~~ a full description and statement of value of all  
 13 property owned or possessed by the child;

14 (g) ~~Facts~~ facts, if any, which excuse consent on the  
 15 part of a parent, to the adoption.

16 (2) One copy of the petition shall be retained by the  
 17 court. The other shall be sent to the state department of  
 18 social and rehabilitation services, ~~and~~ An additional copy  
 19 shall be sent to any agency participating in the adoption  
 20 proceeding.

21 (3) Any written consent required by this act may be  
 22 attached to the petition, or may be filed, after the filing  
 23 of the petition, with the consent of the court."

24 Section 19. Section 61-211, R.C.M. 1947, is amended to  
 25 read as follows:

1 "61-211. Interlocutory and final decree. (1) Upon  
 2 examination of the report described in ~~section~~ 61-209, if  
 3 such report has been ~~deemed~~ considered necessary by ~~said~~ the  
 4 court, and after hearing, the court may issue an  
 5 interlocutory decree giving the care and custody to the  
 6 petitioners pending the further order of the court.

7 (2) When a petition has been filed seeking the  
 8 adoption of a child, the court must cause service of process  
 9 to be made on the parent or parents of the child, except in  
 10 those cases hereinafter provided, in the following manner:

11 (a) The court shall order a citation to issue to the  
 12 parent or parents in the name of the state of Montana and  
 13 under the seal of the court, directing such parent or  
 14 parents to appear in court at a time to be fixed by the  
 15 court, and show cause why ~~said~~ the petition should not be  
 16 granted.

17 (b) Such citation, together with a copy of the  
 18 petition for adoption, shall be personally served upon such  
 19 parent or parents. If, however, any such parent or parents  
 20 cannot be found within this state, service may be had by  
 21 publication of a copy of ~~said~~ the citation in the manner  
 22 provided for the publication of summons by Rule 4,  
 23 M.R.Civ.P.

24 (3) If, after completion of such service, any parent  
 25 so served does not appear, the court may act upon the

1 petition, and the order of the court thereon shall be  
 2 binding upon all persons so served; provided that any such  
 3 person ~~shall have the right to~~ may appeal from the order in  
 4 the manner and form provided for appeals from a judgment in  
 5 civil actions.

6 (4) The petitioners and the child shall appear at ~~said~~  
 7 the hearing, unless the presence of the child is waived by  
 8 the court.

9 (5) Service of process, as aforesaid, need not be made  
 10 on a parent who has consented in writing to an adoption, ~~or~~  
 11 ~~on the father of an illegitimate child;~~ or on any parent  
 12 whose consent to adoption is not required under the  
 13 provisions of ~~section~~ 61-205, or 61-325, and service of  
 14 process shall not be made on any parent who has relinquished  
 15 his child to the ~~state~~ department of social and  
 16 rehabilitation services or an adoption agency licensed by  
 17 the ~~state department of social and rehabilitation services.~~

18 (6) After an interlocutory decree, ~~as aforesaid,~~ has  
 19 been issued by the court, the investigator, if any, shall  
 20 observe the child in his adoptive home and report in writing  
 21 to the court within ~~six~~ (6) months on any circumstances or  
 22 conditions which may have a bearing on the adoption. After  
 23 ~~six~~ (6) months from the date of the interlocutory decree,  
 24 the petitioners may apply to the court for a final decree of  
 25 adoption. The court shall thereupon set a time and place for



1 final hearing. Notice of the time and date of the hearing  
 2 shall be served on the ~~state~~ department of social and  
 3 rehabilitation services, and the investigator, if any. The  
 4 investigator, if any, shall file with the court a written  
 5 report of his findings and recommendations and certify that  
 6 the described investigation, if any, has been made since the  
 7 granting of the interlocutory decree. After hearing on said  
 8 application, at which the petitioners and the child shall  
 9 appear, unless the presence of the child is waived by the  
 10 court, the court may enter a final decree of adoption if  
 11 satisfied that the adoption is for the best interests of the  
 12 child. If the adoption is denied, an appropriate order  
 13 shall be made as to the future custody of ~~said~~ the child."

14 Section 20. Section 61-214, R.C.M. 1947, is amended to  
 15 read as follows:

16 "61-214. Appeal. An appeal may be taken from any final  
 17 order, judgment, or decree rendered hereunder ~~to~~ in the  
 18 district court by any person aggrieved thereby, in the  
 19 manner provided for appeals from ~~said~~ the court in other  
 20 civil matters."

21 Section 21. Section 61-309, R.C.M. 1947, is amended to  
 22 read as follows:

23 "61-309. Jurisdiction — venue. (1) The district court  
 24 has jurisdiction of an action brought under this act. The  
 25 action may be joined with an action for ~~divorce~~ dissolution,

1 annulment, separate maintenance, support, or adoption.

2 (2) For purposes of an action brought under this act,  
 3 personal jurisdiction is established in the courts of this  
 4 state over any person who has had sexual intercourse in this  
 5 state which has resulted in the birth of a child who is the  
 6 subject of such proceedings. In addition to any other method  
 7 provided by rule or statute, ~~including Rule 4B of the~~  
 8 ~~Montana Rules of Civil Procedure~~, personal jurisdiction may  
 9 be acquired by service in accordance with Rule 4B of the  
 10 Montana ~~Rules~~ rules of Civil Procedure civil procedure.

11 (3) The action may be brought in the county in which  
 12 the child or the alleged father resides or is found or, if  
 13 the father is deceased, in which proceedings for probate of  
 14 his estate have been or could be commenced."

15 Section 22. Section 61-323, R.C.M. 1947, is amended to  
 16 read as follows:

17 "61-323. Promise to render support. (1) Any promise in  
 18 writing to furnish support for a child, growing out of a  
 19 supposed or alleged father and child relationship, does not  
 20 require consideration and is enforceable according to its  
 21 terms, subject to ~~section~~ 61-307(4).

22 (2) In the best interest of the child or the mother,  
 23 the court may, and upon the ~~promisee's~~ promisor's request  
 24 shall, order the promise to be kept in confidence and  
 25 designate a person or agency to receive and disburse on

1 behalf of the child all amounts paid in performance of the  
2 promise."

3 Section 23. Section 93-505, R.C.M. 1947, is amended to  
4 read as follows:

5 "93-505. Sittings of court -- when private. In an  
6 action for ~~divorce dissolution of marriage~~, criminal  
7 conversation, or seduction, ~~or breach of promise of~~  
8 ~~marriage~~, the court may direct the trial of any issue of  
9 fact joined therein to be private, and exclude all persons  
10 except the officers of the court, the parties, their  
11 witnesses, and counsel, provided, that in any cause the  
12 court may, in the exercise of a sound discretion, during the  
13 examination of a witness, exclude any or all witnesses in  
14 the cause."

15 Section 24. Section 93-2601-60, R.C.M. 1947, is  
16 amended to read as follows:

17 "93-2601-60. Hearing and continuance. If the obligee  
18 is not present at the hearing and the obligor denies owing  
19 the duty of support alleged in the petition or offers  
20 evidence constituting a defense, the court, upon request of  
21 either party, may continue the hearing to permit evidence  
22 relative to the duty to be adduced by either party by  
23 deposition or by appearing in person before the court. The  
24 court may designate the judge of the initiating court as a  
25 person before whom a deposition may be taken."

1 Section 25. Repealer. Sections 36-110, 36-130, 36-131,  
2 48-112, 48-123, 48-144, and 93-2201-6, R.C.M. 1947, are  
3 repealed.

-End-

## HOUSE BILL NO. 14

INTRODUCED BY KVIAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION; INCLUDING EXTENDING THE POWER TO SOLEMNIZE MARRIAGES TO MAYORS AND JUSTICES OF THE PEACE."

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

Section 1. Section 25-232, R.C.M. 1947, is amended to read as follows:

"25-232. Fees of clerk of district court. (1) At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of ~~ten dollars~~ ~~(\$10)~~, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of ~~ten dollars~~ ~~(\$10)~~.

(2) ~~And the~~ The defendant, on his appearance, must pay the sum of ~~five dollars~~ ~~(\$5)~~ ~~(which includes all the fees to be paid up to the entry of judgment)~~.

(3) On the entry of judgment in favor of plaintiff, ~~he~~ the plaintiff must pay the additional sum of ~~five dollars~~ ~~(\$5)~~.

(4) ~~And if~~ On the entry of judgment in favor of defendant, the defendant must pay the sum of ~~ten dollars~~

There are no changes in HB 14, and due to length will not be rerun. Please refer to yellow copy for complete text.

~~(\$10)~~, ~~(which~~

(5) Items (1) through (4) includes include all the clerk's costs for all services rendered in any action or proceeding, except for issuing an execution or order of sale, ~~and the fees or for issuing a~~ transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment).

(6) For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of ~~ten dollars~~ ~~(\$10)~~, ~~(which includes all costs up to the entry of judgment)~~.

(7) For entry of judgment in favor of party appealing, he must pay the sum of ~~five dollars~~ ~~(\$5)~~.

(8) For entry of judgment in favor of the ~~other party,~~ ~~or~~ respondent, he must pay the sum of ~~ten dollars~~ ~~(\$10)~~.

(9) Items (6) through (8) (which includes include all of the clerk's costs for all services rendered on such appeal).

(10) The clerk must collect the following fees:

(a) ~~For~~ for certifying transcripts on appeal, ~~where if~~ the same are not prepared by him, ~~five dollars~~ ~~(\$5)~~, and in addition thereto, ~~five~~ 5 cents ~~(\$.05)~~ ~~per~~ a page for each page in excess of ~~two hundred~~ ~~(200)~~ pages.

(b) ~~And where if~~ he prepares such transcript, in

1 addition thereto, per folio, ~~fifteen 15~~ cents ~~(\$15)~~;  
 2 (c) ~~Fee for~~ preparing copies of papers in his office,  
 3 per folio, ~~fifteen 15~~ cents ~~(\$15)~~, ~~when certified to, and~~  
 4 in addition thereto, when certified, fifty 50 cents ~~(\$50)~~  
 5 for certificate and seal;  
 6 (d) ~~Fee for~~ certificate with seal, fifty 50 cents  
 7 ~~(\$50)~~;  
 8 (e) ~~Fee for~~ oath and jurat, with seal, fifty 50 cents  
 9 ~~(\$50)~~;  
 10 (f) ~~Fee for~~ administering oath, twenty-five 25 cents  
 11 ~~(\$25)~~;  
 12 (g) ~~Fee for~~ taking depositions, per folio, twenty 20  
 13 cents ~~(\$20)~~;  
 14 (h) ~~Fee for~~ filing and docketing transcript of  
 15 judgment from all other courts and issuing execution  
 16 thereon, ~~two-dollars-and-fifty-cents-(\$2.50)~~;  
 17 (i) ~~Fee for~~ issuing execution and all services  
 18 connected therewith, ~~one-dollar-(\$1)~~;  
 19 (j) ~~Fee for~~ issuing execution or order of sale on  
 20 foreclosure of liens, ~~one-dollar-(\$1)~~, ~~and~~ and in addition  
 21 per folio, twenty 20 cents ~~(\$20)~~;  
 22 (k) ~~Fee for~~ searching records of files for each year,  
 23 except for suitors or their attorneys, twenty-five 25 cents  
 24 ~~(\$25)~~;  
 25 (l) ~~Fee for~~ transmission of records or files or

1 transfer of cases to other courts, ~~two-dollars-and-fifty~~  
 2 ~~cents-(\$2.50)~~;  
 3 (m) ~~Fee for~~ filing and entering papers on transfer  
 4 from other courts, ~~five-dollars-(\$5)~~;  
 5 (n) ~~Fee for~~ making, acknowledging, and procuring the  
 6 signature of judge to deed of lot in townsite, ~~four-dollars~~  
 7 ~~(\$4)~~;  
 8 (o) ~~Fee for~~ issuing a marriage license, ~~five-dollars~~  
 9 ~~(\$5)~~ \$15.  
 10 (11) ~~One-quarter-(1/4)~~ One-fourth of all fees collected  
 11 by ~~said the~~ clerk of the district court must be paid to the  
 12 secretary of the public employees' retirement system board  
 13 to be credited to the judges' retirement fund."  
 14 Section 2. Section 36-204, R.C.M. 1947, is amended to  
 15 read as follows:  
 16 "36-204. Procedure. (1) Whenever any controversy  
 17 exists between the spouses which may, unless a  
 18 reconciliation is achieved, result in the dissolution or  
 19 annulment of the marriage or in the disruption of the  
 20 household, and there is any minor child of the spouses or of  
 21 either of them whose welfare might be affected thereby, the  
 22 conciliation court shall have jurisdiction over the  
 23 controversy, and over the parties thereto and all persons  
 24 having any relation to the controversy as further provided  
 25 in this chapter.

HOUSE BILL NO. 14

INTRODUCED BY KVAALEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION; INCLUDING EXTENDING THE POWER TO SOLEMNIZE MARRIAGES TO MAYORS AND JUSTICES OF THE PEACE."

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(2) ~~And the~~ The defendant, on his appearance, must pay the sum of five-dollars-(\$5) ~~(which includes all the fees to be paid up to the entry of judgment).~~

(3) On the entry of judgment in favor of plaintiff, ~~he~~ the plaintiff must pay the additional sum of five-dollars-(\$5)+.

(4) ~~And if~~ On the entry of judgment in favor of defendant, the defendant must pay the sum of ten-dollars

~~-\$10)+ (which~~

(5) Items (1) through (4) includes include all the clerk's costs for all services rendered in any action or proceeding, except for issuing an execution or order of sale, ~~and the fees or~~ for issuing a transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment).

(6) For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of ~~ten-dollars-(\$10)+~~ (which includes all costs up to the entry of judgment).

(7) For entry of judgment in favor of party appealing, he must pay the sum of ~~five-dollars-(\$5).~~

(8) For entry of judgment in favor of the ~~other party~~ or respondent, he must pay the sum of ~~ten-dollars-(\$10)+~~

(9) Items (6) through (8) (which includes include all of the clerk's costs for all services rendered on such appeal).

(10) The clerk must collect the following fees:

(a) For ~~for~~ certifying transcripts on appeal, ~~where if~~ the same are not prepared by him, ~~five-dollars-(\$5),~~ and in addition thereto, ~~five 5 cents (\$.05) per a~~ five 5 cents (\$.05) per a page for each page in excess of ~~two-hundred-(200) pages.~~

(b) And where if he prepares such transcript, in

1 addition thereto, per folio, ~~fifteen~~ 15 cents ~~(\$15)~~;

2 (c) ~~For for~~ preparing copies of papers in his office,  
3 per folio, ~~fifteen~~ 15 cents ~~(\$15)~~, ~~when certified to, and~~  
4 in addition thereto, when certified, ~~fifty~~ 50 cents ~~(\$50)~~  
5 for certificate and seal;

6 (d) ~~For for~~ certificate with seal, ~~fifty~~ 50 cents  
7 ~~(\$50)~~;

8 (e) ~~For for~~ oath and jurat, with seal, ~~fifty~~ 50 cents  
9 ~~(\$50)~~;

10 (f) ~~For for~~ administering oath, ~~twenty-five~~ 25 cents  
11 ~~(\$25)~~;

12 (g) ~~For for~~ taking depositions, per folio. ~~twenty~~ 20  
13 cents ~~(\$20)~~;

14 (h) ~~For for~~ filing and docketing transcript of  
15 judgment from all other courts and issuing execution  
16 thereon, ~~two-dollars-and-fifty-cents~~ ~~(\$2.50)~~;

17 (i) ~~For for~~ issuing execution and all services  
18 connected therewith, ~~one-dollar~~ ~~(\$1)~~;

19 (j) ~~For for~~ issuing execution or order of sale on  
20 foreclosure of liens, ~~one-dollar~~ ~~(\$1)~~, ~~and and~~ in addition  
21 per folio, ~~twenty~~ 20 cents ~~(\$20)~~;

22 (k) ~~For for~~ searching records of files for each year,  
23 except for suitors or their attorneys, ~~twenty-five~~ 25 cents  
24 ~~(\$25)~~;

25 (l) ~~For for~~ transmission of records or files or

1 transfer of cases to other courts, ~~two-dollars-and-fifty~~  
2 ~~cents~~ ~~(\$2.50)~~;

3 (m) ~~For for~~ filing and entering papers on transfer  
4 from other courts, ~~five-dollars~~ ~~(\$5)~~;

5 (n) ~~For for~~ making, acknowledging, and procuring the  
6 signature of judge to deed of lot in townsite, ~~four~~ ~~dollars~~  
7 ~~(\$4)~~;

8 (o) ~~For for~~ issuing a marriage license, ~~five-dollars~~  
9 ~~(\$5)~~ \$15.

10 (11) ~~One-quarter~~ ~~(1/4)~~ One-fourth of all fees collected  
11 by said the clerk of the district court must be paid to the  
12 secretary of the public employees' retirement system board  
13 to be credited to the judges' retirement fund."

14 Section 2. Section 36-204, R.C.M. 1947, is amended to  
15 read as follows:

16 "36-204. Procedure. (1) Whenever any controversy  
17 exists between the spouses which may, unless a  
18 reconciliation is achieved, result in the dissolution or  
19 annulment of the marriage or in the disruption of the  
20 household, and there is any minor child of the spouses or of  
21 either of them whose welfare might be affected thereby, the  
22 conciliation court shall have jurisdiction over the  
23 controversy, and over the parties thereto and all persons  
24 having any relation to the controversy as further provided  
25 in this chapter.

1 (2) Prior to the filing of any action for ~~divorce~~  
 2 dissolution, annulment, or separate maintenance, either  
 3 spouse, or both spouses, may file in the conciliation court  
 4 a petition invoking the jurisdiction of the court for the  
 5 purpose of preserving the marriage by effecting a  
 6 reconciliation between the parties, or for amicable  
 7 settlement of the controversy between the spouses, so as to  
 8 avoid further litigation over the issue involved.

9 (3) The petition shall be captioned substantially as  
 10 follows:

11 District Court of the State of Montana  
 12 For the County of ....  
 13 Upon the petition of Petition for Conciliation  
 14 ..... (Under the Conciliation  
 15 Petitioner Court Law)  
 16 And concerning  
 17 ..... and  
 18 .....  
 19 Respondents.

20 To the Conciliation Court:

21 (4) The petition shall:

22 (a) ~~allege~~ allege that a controversy exists between  
 23 the spouses and request the aid of the court to effect a  
 24 reconciliation or an amicable settlement of the  
 25 controversy;

1 (b) ~~State~~ state the name and age of each minor child  
 2 whose welfare may be affected by the controversy;

3 (c) ~~State~~ state the name and address of the  
 4 petitioner, or the names and addresses of the petitioners;

5 (d) ~~if~~ if the petition is presented by one spouse  
 6 only, name the other spouse as a respondent, and state the  
 7 address of that spouse;

8 (e) ~~Also~~ also name as a respondent any other person  
 9 who has any relation to the controversy, and state the  
 10 address of the person, if known to the petitioner;

11 (f) ~~State~~ state such other information as the court  
 12 may by rule require.

13 (5) The clerk of the court shall provide, at the  
 14 expense of the county, blank forms for petitions for filing  
 15 pursuant to this chapter. The probation officers of the  
 16 county and the attaches and employees of the conciliation  
 17 court shall assist any person in the preparation and  
 18 presentation of any such petition, when any person requests  
 19 such assistance. All public officers in each county shall  
 20 refer to the conciliation court all petitions and complaints  
 21 made to them in respect to controversies within the  
 22 jurisdiction of the conciliation court.

23 (6) ~~No Fees.~~ No fee shall may be charged by any  
 24 officer for filing the petition, nor shall may any fee be  
 25 charged by any officer for the performance of any duty

1 pursuant to this chapter.

2 (7) ~~Time and Place of Hearings.~~ The court shall fix a  
 3 reasonable time and place for hearing on the petition, and  
 4 shall cause such notice of the filing of the petition and  
 5 the time and place of the hearing as it ~~deems~~ considers  
 6 necessary to be given to the respondents. The court may,  
 7 when it ~~deems~~ considers it necessary, issue a citation to  
 8 any respondent requiring him to appear at the time and place  
 9 stated in the citation, and may require the attendance of  
 10 witnesses as in other civil cases.

11 (8) For the purpose of conducting hearings pursuant to  
 12 this chapter, the conciliation court may be convened at any  
 13 time and place within the district, and the hearing may be  
 14 had in chambers or otherwise, except that the time and place  
 15 for hearing ~~shall~~ may not be different from the time and  
 16 place provided by law for the trial of civil actions if any  
 17 party, prior to the hearing, objects to any different time  
 18 or place.

19 (9) ~~Hearings Informal.~~ The hearing shall be conducted  
 20 informally as a conference or series of conferences to  
 21 effect a reconciliation of the spouses or an amicable  
 22 adjustment or settlement of the issues of the controversy.  
 23 To facilitate and promote the purposes of this ~~act~~ chapter,  
 24 the court may, with the consent of both of the parties to  
 25 the proceeding, recommend or invoke the aid of physicians,

1 ~~or~~ psychiatrists, ~~or~~ other specialists or scientific  
 2 experts, or ~~of~~ the pastor or director of any religious  
 3 denomination to which the parties may belong. Such aid,  
 4 however, shall not be at the expense of the court or of the  
 5 county, unless the county commissioners of the county  
 6 specifically provide and authorize such aid.

7 (10) ~~Orders Effective Time Reconciliation Agreement.~~

8 At or after hearing, the court may make such orders in  
 9 respect to the conduct of the spouses and the subject matter  
 10 of the controversy as the court ~~deems~~ considers necessary to  
 11 preserve the marriage or to implement the reconciliation of  
 12 the spouses, but in no event shall may such orders be  
 13 effective for more than ~~thirty~~ (30) days from the hearing of  
 14 the petition, unless the parties mutually consent to a  
 15 continuation of such time. Any reconciliation agreement  
 16 between the parties may be reduced to writing, and, with the  
 17 consent of the parties, a court order may be made requiring  
 18 the parties to comply fully therewith.

19 (11) During a period beginning upon the filing of the  
 20 petition for conciliation and continuing until ~~thirty~~ (30)  
 21 days after the hearing of the petition for conciliation,  
 22 neither spouse shall file any action for ~~divorce~~  
 23 dissolution, annulment of marriage, or separate maintenance.  
 24 If, ~~however~~, after the expiration of such period, the  
 25 controversy between the spouses has not been terminated,



1 either spouse may institute proceedings for ~~divorce~~  
 2 dissolution, annulment of marriage, or separate maintenance.  
 3 The pendency of a ~~divorce~~ dissolution, annulment, or  
 4 separate maintenance action shall ~~may~~ not operate as a bar  
 5 to the instituting of proceedings for conciliation under  
 6 this chapter.

7 (12) ~~Stay of Divorce Proceedings Where Conciliation~~  
 8 ~~Petition Filed First.~~ Whenever any action for ~~divorce~~  
 9 dissolution, annulment of marriage, or separate maintenance  
 10 is filed in the district court, and it appears to the court  
 11 at any time during the pendency of the action that there is  
 12 any minor child of the spouses or of either of them whose  
 13 welfare may be adversely affected by the dissolution or  
 14 annulment of the marriage ~~of~~ or the disruption of the  
 15 household, and that there appears to be some reasonable  
 16 possibility of a reconciliation being effected, the case may  
 17 be transferred to the conciliation court for proceedings for  
 18 reconciliation of the spouses or amicable settlement of  
 19 issues in controversy, in accordance with the provisions of  
 20 this chapter.

21 (13) ~~Jurisdiction Where No Minors Involved.~~ Whenever  
 22 application is made to the conciliation court for  
 23 conciliation proceedings in respect to a controversy between  
 24 spouses, or a contested action for ~~divorce~~ dissolution,  
 25 annulment, or separate maintenance, but there is no minor

1 child whose welfare may be affected by the results of the  
 2 controversy, and it appears to the court that reconciliation  
 3 of the spouses or amicable adjustment of the controversy can  
 4 probably be achieved, and that the work of the court in  
 5 cases involving children will not be seriously impeded by  
 6 acceptance of the case, the court may accept and dispose of  
 7 the case in the same manner as similar cases involving the  
 8 welfare of children are disposed of. In the event of such  
 9 application and acceptance, the court shall have the same  
 10 jurisdiction over the controversy and the parties thereto or  
 11 having any relation thereto that it has under this chapter  
 12 in similar cases involving the welfare of children."

13 Section 3. Section 48-126, R.C.M. 1947, is amended to  
 14 read as follows:

15 "48-126. Certificate and copy ~~prima facie~~ prima facie  
 16 evidence. The original certificate of marriage, ~~made as~~  
 17 ~~prescribed in this chapter~~, and the record thereof by the  
 18 clerk of the district court, or a copy of such record duly  
 19 certified by the clerk of the district court, shall be  
 20 received by all courts in all places as presumptive evidence  
 21 of such marriage."

22 Section 4. Section 48-134, R.C.M. 1947, is amended to  
 23 read as follows:

24 "48-134. Proof of age ~~premarital test and medical~~  
 25 certificate required ~~of applicants for marriage license~~.

1 (1) Before a person, who is authorized by law to issue  
 2 marriage licenses, ~~shall~~ may issue a marriage license, each  
 3 applicant therefor shall exhibit to him a birth certificate  
 4 or other satisfactory evidence of age, and, if such  
 5 applicant is a minor, ~~the consent required by section 48-148~~  
 6 the approval required by 48-308, and shall also file with  
 7 him a medical certificate from a duly qualified physician,  
 8 licensed to practice medicine and surgery in any state or  
 9 United States territory, or any other person authorized by  
 10 laws of Montana to make such a medical certificate, which  
 11 certificate shall state that the applicant has been given  
 12 such an examination, including a standard serological test,  
 13 made not more than ~~twenty~~ (20) days before the date of  
 14 issuance of the license, and that the report of the results  
 15 of the serological test has been exhibited to the applicant  
 16 and that each party to the proposed marriage contract has  
 17 examined the report of the serological test of the other  
 18 party to the proposed contract.

19 (2) A person who by law is validly able to obtain a  
 20 marriage license in this state is also validly able to give  
 21 ~~his or her~~ consent to any examinations and tests required by  
 22 this ~~act~~ section. In submitting the blood specimen to the  
 23 laboratory, the physician, or any other person authorized by  
 24 the laws of Montana to make such a medical certificate,  
 25 shall designate that it is a premarital test."

1 Section 5. Section 48-135, R.C.M. 1947, is amended to  
 2 read as follows:

3 "48-135. Contents and form of medical certificate. (1)  
 4 The medical certificate shall contain a statement, from the  
 5 person in charge of the laboratory making the test or  
 6 authorized to make such reports, setting forth:

- 7 (a) the name of the test;  
 8 (b) the date it was made;  
 9 (c) the name and address of the physician, or ~~to any~~  
 10 other person authorized under the laws of Montana to make  
 11 the test;  
 12 (d) to whom the test was sent; and  
 13 (e) the name and address of the person whose blood was  
 14 tested.

15 (2) In the event that an error is discovered in the  
 16 results of the test, such results will be expunged from the  
 17 records of the department of health and environmental  
 18 sciences.

19 (3) The ~~said~~ certificate and statement shall be on a  
 20 form to be provided and distributed by the department of  
 21 health and environmental sciences to all county clerks of  
 22 the court in the state and to laboratories in this state  
 23 approved by the department ~~of health and environmental~~  
 24 ~~sciences~~. This form is hereinafter referred to in this act  
 25 as "the certificate form."1"

1 Section 6. Section 48-137, R.C.M. 1947, is amended to  
2 read as follows:

3 "48-137. Definition of test -- ~~rules and regulations.~~  
4 For the purpose of this act, a standard serological test  
5 shall be a test for ~~syphilis~~, rubella immunity, and  
6 syphilis, as approved by the department of health and  
7 environmental sciences. An approved laboratory shall be the  
8 laboratory of the department ~~of health and environmental~~  
9 ~~sciences~~ or a laboratory approved by that department. Any  
10 other state, or United States public health service or  
11 United States armed forces laboratory shall be considered  
12 approved for the purposes of this act. Such laboratory test  
13 may be made on request at the laboratory of the department  
14 of health and environmental sciences. Reasonable rules for  
15 reports to be submitted by any laboratory making tests and  
16 the manner of furnishing the reports to the certifying  
17 physician and the state shall be adopted by the department  
18 of health and environmental sciences."

19 Section 7. Section 48-139, R.C.M. 1947, is amended to  
20 read as follows:

21 "48-139. Penalties. (1) ~~Any~~ an applicant for a  
22 marriage license, a physician, or other person authorized by  
23 the laws of Montana to make ~~such~~ a medical certificate, or  
24 any person in charge of, or authorized to make ~~such~~ reports  
25 or statements for a laboratory who shall ~~misrepresent~~

1 ~~misrepresents~~ his identity or any of the facts called for by  
2 the certificate form prescribed by this act, ~~or~~ any  
3 licensing officer who ~~shall issue~~ issues a marriage license  
4 without having received the certificate form or who shall  
5 ~~have~~ has reason to believe that any of the facts on the  
6 certificate form have been misrepresented, and shall  
7 nevertheless ~~issue~~ issues a marriage license, ~~or~~ any person  
8 who shall otherwise ~~fail~~ fails to comply with the provisions  
9 of this act ~~shall be~~ is guilty of a misdemeanor, and, upon  
10 conviction, shall be punished by a fine of not more than ~~one~~  
11 ~~hundred dollars (\$100.00).~~

12 (2) Certificates Medical certificates, laboratory  
13 statements or reports, and applications, ~~in this act~~  
14 referred to in this act ~~and the information therein~~  
15 ~~contained, shall be~~ are confidential and shall may not be  
16 divulged to or open to inspection by any person other than  
17 state or local health officers or their ~~duly authorized~~  
18 representatives. ~~Any~~ a person who ~~shall divulge~~ divulges  
19 such information or ~~open~~ opens to inspection such  
20 certificates, statements, ~~or~~ reports, or applications,  
21 without authority, to any person not by law entitled to the  
22 same, ~~shall be~~ is guilty of a misdemeanor, and, upon  
23 conviction, shall be punished by a fine of not more than ~~one~~  
24 ~~hundred dollars (\$100.00)."~~

25 Section 8. Section 48-146, R.C.M. 1947, is amended to

1 read as follows:

2 "48-146. License ~~required for marriage place of~~  
 3 ~~ceremony county where license issued~~ application. (1) No  
 4 Montana resident ~~shall~~ may be joined in marriage within this  
 5 state until a license has been obtained for that purpose  
 6 from the clerk of the district court of the county in which  
 7 one of the parties has resided for at least ~~five~~ {5} days  
 8 immediately prior to making application therefor.

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

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

20 Section 9. Section 48-309, R.C.M. 1947, is amended to  
 21 read as follows:

22 "48-309. Solemnization and registration. (1) A  
 23 marriage may be solemnized by a judge of a court of record,  
 24 by a public official whose powers include solemnization of  
 25 marriages, by a mayor or justice of the peace, or in

1 accordance with any mode of solemnization recognized by any  
 2 religious denomination. Indian nation or tribe, or native  
 3 group. Either the person solemnizing the marriage, or, if  
 4 no individual acting alone solemnized the marriage, a party  
 5 to the marriage, shall complete the marriage certificate  
 6 form and forward it to the clerk of the district court.

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

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

17 (4) The solemnization of the marriage is not  
 18 invalidated by the fact that the person solemnizing the  
 19 marriage was not legally qualified to solemnize it, if  
 20 either party to the marriage believed him to be so  
 21 qualified."

22 Section 10. Section 48-317, R.C.M. 1947, is amended to  
 23 read as follows:

24 "48-317. Procedure -- commencement -- pleadings --  
 25 abolition of existing defenses. ~~(1) All proceedings under~~

1 ~~this act are commenced in the manner provided by the Montana~~  
 2 ~~rules of civil procedure.~~

3 ~~(2)~~ (1) The verified petition in a proceeding for  
 4 dissolution of marriage or legal separation shall allege  
 5 that the marriage is irretrievably broken and shall set  
 6 forth:

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

9 (b) the date of the marriage and the place at which it  
 10 was registered;

11 (c) that the jurisdictional requirements of ~~section~~  
 12 48-316 exist and that the marriage is irretrievably broken  
 13 in that either:

14 (i) the parties have lived separate and apart for a  
 15 period of more than ~~one hundred eighty~~ (180) days next  
 16 preceding the commencement of this proceeding; or

17 (ii) ~~that~~ there is serious marital discord which  
 18 adversely affects the attitude of one or both of the parties  
 19 towards the marriage, and ~~that~~ there is no reasonable  
 20 prospect of reconciliation;

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

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

25 (f) the relief sought.

1 ~~(3)~~ (2) Either or both parties to the marriage may  
 2 initiate the proceeding.

3 ~~(4)~~ (3) If a proceeding is commenced by one of the  
 4 parties, the other party must be served in the manner  
 5 provided by the Montana rules of civil procedure and may  
 6 within ~~twenty~~ (20) days after the date of service file a  
 7 verified response. No decree may be entered until ~~twenty~~  
 8 (20) days after the date of service.

9 ~~(5)~~ (4) Previously existing defenses to divorce and  
 10 legal separation, including but not limited to condonation,  
 11 connivance, collusion, recrimination, insanity, and lapse of  
 12 time, are abolished.

13 ~~(6)~~ (5) The court may join additional parties proper  
 14 for the exercise of its authority to implement this act."

15 Section 11. Section 48-331, R.C.M. 1947, is amended to  
 16 read as follows:

17 "48-331. Jurisdiction -- commencement of proceedings.

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

21 (a) this state;

22 (i) is the home state of the child at the time of  
 23 commencement of the proceedings; or

24 (ii) had been the child's home state within ~~six~~ (6)  
 25 months before commencement of the proceeding and the child

1 is absent from this state because of his removal or  
 2 retention by a person claiming his custody or for other  
 3 reason, and a parent or person acting as parent continues to  
 4 live in this state; or

5 (b) it is in the best interest of the child that a  
 6 court of this state assume jurisdiction because:

7 (i) the child and his parents, or the child and at  
 8 least one contestant, have a significant connection with  
 9 this state; and

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

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

14 (i) has been abandoned; or

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

18 (d) (i) no other state has jurisdiction under  
 19 prerequisites substantially in accordance with paragraphs  
 20 subsections (1)(a), (1)(b), or (1)(c) of this section or  
 21 another state has declined to exercise jurisdiction on the  
 22 ground that this state is the more appropriate forum to  
 23 determine custody of the child; and

24 (ii) it is in his best interest that the court assume  
 25 jurisdiction.

1 (2) Except under paragraphs subsections (1)(c) and  
 2 (1)(d) of subsection (4) this section, physical presence in  
 3 this state of the child, or of the child and one of the  
 4 contestants, is not alone sufficient to confer jurisdiction  
 5 on a court of this state to make a child custody  
 6 determination.

7 (3) Physical presence of the child, while desirable,  
 8 is not a prerequisite for jurisdiction to determine his  
 9 custody.

10 (4) A child custody proceeding is commenced in the  
 11 district court:

12 (a) by a parent, by filing a petition;

13 (i) for dissolution or legal separation; or

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

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

20 (5) Notice of a child custody proceeding shall be  
 21 given to the child's parent, guardian, ~~and~~ or AND custodian,  
 22 who may appear, be heard, and file a responsive pleading.  
 23 The court, upon a showing of good cause, may permit  
 24 intervention of other interested parties."

25 Section 12. Section 48-333, R.C.M. 1947, is amended to

1 read as follows:

2 "48-333. Temporary orders. (1) A party to a custody  
3 proceeding may move for a temporary custody order. The  
4 motion must be supported by an affidavit as provided in  
5 ~~section~~ 48-340. The court may award temporary custody under  
6 the standards of ~~section~~ 48-332 after a hearing, or, if  
7 there is no objection, solely on the basis of the  
8 affidavits.

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

16 (3) If a custody proceeding commenced in the absence  
17 of a petition for dissolution of marriage or legal  
18 separation ~~under subsection (a) (ii) or (b) of section 48-334~~  
19 is dismissed, any temporary custody order is vacated."

20 Section 13. Section 61-105, R.C.M. 1947, is amended to  
21 read as follows:

22 "61-105. Custody ~~of legitimate, services, and earnings~~  
23 of child. The father and mother of an unmarried minor child  
24 are equally entitled to ~~its~~ the custody, services, and  
25 earnings of the child. If either parent be dead, or unable,

1 or ~~refuse~~ refuses to take the custody, or has abandoned his  
2 or her family, the other is entitled to ~~its~~ the custody,  
3 services, and earnings of the child."

4 Section 14. Section 61-109, R.C.M. 1947, is amended to  
5 read as follows:

6 "61-109. Allowance to parent. The proper court may  
7 direct an allowance to be made to the parent of a child, out  
8 of ~~its~~ the child's property, for ~~its~~ the past or future  
9 support and education of the child, on such conditions as  
10 may be proper, whenever such direction is for ~~its~~ the  
11 child's benefit."

12 Section 15. Section 61-113, R.C.M. 1947, is amended to  
13 read as follows:

14 "61-113. Remedy when a parent dies without providing  
15 for ~~the~~ support of ~~his~~ child. If a parent chargeable with  
16 the support of a child dies, leaving ~~it~~ the child chargeable  
17 to the county, and leaving an estate sufficient for ~~its~~ the  
18 child's support, the county commissioners of the county may  
19 claim provision for ~~its~~ the child's support from the  
20 parent's estate by civil action, and for this purpose may  
21 have the same remedies as any creditors against that estate,  
22 and against the heirs, devisees, and the next of kin of the  
23 parent."

24 Section 16. Section 61-118, R.C.M. 1947, is amended to  
25 read as follows:

1 "61-118. Compensation and support of ~~adult child~~  
 2 person after attaining majority. Where a ~~child~~ person, after  
 3 attaining majority, continues to serve and to be supported  
 4 by the parent, neither party is entitled to compensation, in  
 5 the absence of an agreement therefor."

6 Section 17. Section 61-122, R.C.M. 1947, is amended to  
 7 read as follows:

8 "61-122. ~~Custody when custody~~ When custody may be awarded without  
 9 divorce dissolution proceedings ~~when parents separated~~. When  
 10 a husband and wife live in a state of separation, without  
 11 ~~being divorced the marriage being dissolved~~, any court of  
 12 competent jurisdiction, upon application of either, if an  
 13 inhabitant of this state, may inquire into the custody of  
 14 any unmarried minor child of the marriage, and may award the  
 15 custody of such child to either for such time and under such  
 16 regulations as the case may require. ~~The decision of the~~  
 17 ~~court must be guided by the rules prescribed in section~~  
 18 ~~91-45-15."~~

19 Section 18. Section 61-208, R.C.M. 1947, is amended to  
 20 read as follows:

21 "61-208. Petition for adoption. (1) A petition for  
 22 adoption shall be filed in duplicate, verified by the  
 23 petitioners, and shall specify:

24 (a) ~~the the~~ the full names, ages, and place of residence  
 25 of the petitioners, and, if married, the place and date of

1 the marriage;

2 (b) ~~the when~~ when the petitioners acquired or intend to  
 3 acquire custody of the child and from what person or  
 4 agency;

5 (c) ~~the the~~ the date and place of birth of child, if  
 6 known;

7 (d) ~~the the~~ the name used for the child in the proceeding,  
 8 and, if a change in name is desired, the new name;

9 (e) ~~that that~~ that it is the desire of the petitioners that  
 10 the relationship of parent and child be established between  
 11 them and the child;

12 (f) ~~a a~~ a full description and statement of value of all  
 13 property owned or possessed by the child;

14 (g) ~~Facts facts~~ facts, if any, which excuse consent on the  
 15 part of a parent, to the adoption.

16 (2) One copy of the petition shall be retained by the  
 17 court. The other shall be sent to the state department of  
 18 social and rehabilitation services, ~~and an additional copy~~  
 19 shall be sent to any agency participating in the adoption  
 20 proceeding.

21 (3) Any written consent required by this act may be  
 22 attached to the petition, or may be filed, after the filing  
 23 of the petition, with the consent of the court."

24 Section 19. Section 61-211, R.C.M. 1947, is amended to  
 25 read as follows:



1 "61-211. Interlocutory and final decree. [1] Upon  
 2 examination of the report described in ~~sections~~ 61-209, if  
 3 such report has been ~~deemed~~ considered necessary by ~~said the~~  
 4 court, and after hearing, the court may issue an  
 5 interlocutory decree giving the care and custody to the  
 6 petitioners pending the further order of the court.

7 [2] When a petition has been filed seeking the  
 8 adoption of a child, the court must cause service of process  
 9 to be made on the parent or parents of the child, except in  
 10 those cases hereinafter provided, in the following manner:

11 [a] The court shall order a citation to issue to the  
 12 parent or parents in the name of the state of Montana and  
 13 under the seal of the court, directing such parent or  
 14 parents to appear in court at a time to be fixed by the  
 15 court, and show cause why ~~said the~~ petition should not be  
 16 granted.

17 [b] Such citation, together with a copy of the  
 18 petition for adoption, shall be personally served upon such  
 19 parent or parents. If, however, any such parent or parents  
 20 cannot be found within this state, service may be had by  
 21 publication of a copy of ~~said the~~ citation in the manner  
 22 provided for the publication of summons by Rule 4,  
 23 M.R.Civ.P.

24 [3] If, after completion of such service, any parent  
 25 so served does not appear, the court may act upon the

1 petition, and the order of the court thereon shall be  
 2 binding upon all persons so served; provided that any such  
 3 person ~~shall have the right to~~ may appeal from the order in  
 4 the manner and form provided for appeals from a judgment in  
 5 civil actions.

6 [4] The petitioners and the child shall appear at ~~said~~  
 7 the hearing, unless the presence of the child is waived by  
 8 the court.

9 [5] Service of process, as aforesaid, need not be made  
 10 on a parent who has consented in writing to an adoption, ~~or~~  
 11 ~~on the father of an illegitimate child;~~ or on any parent  
 12 whose consent to adoption is not required under the  
 13 provisions of ~~sections~~ 61-205, or 61-325, and service of  
 14 process shall not be made on any parent who has relinquished  
 15 his child to the state department of social and  
 16 rehabilitation services or an adoption agency licensed by  
 17 the state department ~~of social and rehabilitation services.~~

18 [6] After an interlocutory decree, ~~as aforesaid,~~ has  
 19 been issued by the court, the investigator, if any, shall  
 20 observe the child in his adoptive home and report in writing  
 21 to the court within ~~six~~ (6) months on any circumstances or  
 22 conditions which may have a bearing on the adoption. After  
 23 ~~six~~ (6) months from the date of the interlocutory decree,  
 24 the petitioners may apply to the court for a final decree of  
 25 adoption. The court shall thereupon set a time and place for

1 final hearing. Notice of the time and date of the hearing  
 2 shall be served on the ~~state~~ department of social and  
 3 rehabilitation services, and the investigator, if any. The  
 4 investigator, if any, shall file with the court a written  
 5 report of his findings and recommendations and certify that  
 6 the described investigation, if any, has been made since the  
 7 granting of the interlocutory decree. After hearing on said  
 8 application, at which the petitioners and the child shall  
 9 appear, unless the presence of the child is waived by the  
 10 court, the court may enter a final decree of adoption if  
 11 satisfied that the adoption is for the best interests of the  
 12 child. If the adoption is denied, an appropriate order  
 13 shall be made as to the future custody of ~~said the~~ child."

14 Section 20. Section 61-214, R.C.M. 1947, is amended to  
 15 read as follows:

16 "61-214. Appeal. An appeal may be taken from any final  
 17 order, judgment, or decree rendered hereunder ~~to~~ in the  
 18 district court by any person aggrieved thereby, in the  
 19 manner provided for appeals from ~~said the~~ court in other  
 20 civil matters."

21 Section 21. Section 61-309, R.C.M. 1947, is amended to  
 22 read as follows:

23 "61-309. Jurisdiction -- venue. (1) The district court  
 24 has jurisdiction of an action brought under this act. The  
 25 action may be joined with an action for ~~divorce~~ dissolution,

1 annulment, separate maintenance, support, or adoption.

2 (2) For purposes of an action brought under this act,  
 3 personal jurisdiction is established in the courts of this  
 4 state over any person who has had sexual intercourse in this  
 5 state which has resulted in the birth of a child who is the  
 6 subject of such proceedings. In addition to any other method  
 7 provided by rule or statute, ~~including Rule 4B of the~~  
 8 ~~Montana Rules of Civil Procedure~~, personal jurisdiction may  
 9 be acquired by service in accordance with Rule 4B of the  
 10 Montana Rules rules of Civil Procedure civil procedure.

11 (3) The action may be brought in the county in which  
 12 the child or the alleged father resides or is found or, if  
 13 the father is deceased, in which proceedings for probate of  
 14 his estate have been or could be commenced."

15 Section 22. Section 61-323, R.C.M. 1947, is amended to  
 16 read as follows:

17 "61-323. Promise to render support. (1) Any promise in  
 18 writing to furnish support for a child, growing out of a  
 19 supposed or alleged father and child relationship, does not  
 20 require consideration and is enforceable according to its  
 21 terms, subject to ~~section~~ 61-307(4).

22 (2) In the best interest of the child or the mother,  
 23 the court may, and upon the ~~provision's~~ promisor's request  
 24 shall, order the promise to be kept in confidence and  
 25 designate a person or agency to receive and disburse on

1 behalf of the child all amounts paid in performance of the  
 2 promise."

3 Section 23. Section 93-505, R.C.M. 1947, is amended to  
 4 read as follows:

5 "93-505. Sittings of court -- when private. In an  
 6 action for ~~divorce~~ dissolution of marriage, criminal  
 7 conversation, or seduction, ~~or breach of promise of~~  
 8 ~~marriage~~, the court may direct the trial of any issue of  
 9 fact joined therein to be private, and exclude all persons  
 10 except the officers of the court, the parties, their  
 11 witnesses, and counsel, provided, that in any cause the  
 12 court may, in the exercise of a sound discretion, during the  
 13 examination of a witness, exclude any or all witnesses in  
 14 the cause."

15 Section 24. Section 93-2601-60, R.C.M. 1947, is  
 16 amended to read as follows:

17 "93-2601-60. Hearing and continuance. If the obligee  
 18 is not present at the hearing and the obligor denies owing  
 19 the duty of support alleged in the petition or offers  
 20 evidence constituting a defense, the court, upon request of  
 21 either party, may continue the hearing to permit evidence  
 22 relative to the duty to be adduced by either party by  
 23 deposition or by appearing in person before the court. The  
 24 court may designate the judge of the initiating court as a  
 25 person before whom a deposition may be taken."

1 Section 25. Repealer. Sections 36-110, 36-130, 36-131,  
 2 48-112, 48-123, 48-144, and 93-2201-6, R.C.M. 1947, are  
 3 repealed.

-End-