

1 *Senate* BILL NO. *326*  
 2 INTRODUCED BY *Turnage*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW INVALIDATION  
 5 OF MARRIAGES ENTERED INTO BY WRITTEN DECLARATION UPON THE  
 6 SAME TERMS AS INVALIDATION OF SOLEMNIZED MARRIAGES; AMENDING  
 7 SECTION 48-311, R.C.M. 1947."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 48-311, R.C.M. 1947, is amended to  
 11 read as follows:

12 "48-311. Declaration of invalidity. (1) The district  
 13 court shall enter its decree declaring the invalidity of a  
 14 marriage entered into under the following circumstances:

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

22 (b) a party lacks the physical capacity to consummate  
 23 the marriage by sexual intercourse, and at the time the  
 24 marriage was solemnized the other party did not know of the  
 25 incapacity.

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

5 (d) the marriage is prohibited.

6 (2) A declaration of invalidity under subsection  
 7 (1)(a) through (c) may be sought by any of the following  
 8 persons and must be commenced within the times specified,  
 9 but in no event may a declaration of invalidity be sought  
 10 after the death of either party to the marriage:

11 (a) for lack of capacity to consent because of mental  
 12 incapacity or infirmity, no later than one (1) year after  
 13 the petitioner obtained knowledge of the described  
 14 condition;

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

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

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

25 (e) for the reason set forth in subsection (1)(c), by

1 the underaged party, his parent or guardian, prior to the  
2 time the underaged party reaches the age at which he could  
3 have married without satisfying the omitted requirement.

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

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

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

-End-

Approved by Committee  
on Judiciary

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5 INVALIDATION OF MARRIAGES ENTERED---INTO---BY---WRITTEN  
6 BECLARATION--UPON--THE--SAME--TERMS---AS---INVALIDATION---OF  
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