

CHAPTER NO. 33

HOUSE BILL NO. 167

INTRODUCED BY KVAALEN

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 18, 1979	Committee recommend bill do pass and be placed on Consent Calendar. Report adopted.
January 19, 1979	Printed and placed on members' desks.
January 22, 1979	Third Reading Consent Calendar passed. Transmitted to Second House.

IN THE SENATE

January 23, 1979	Introduced and referred to Committee on Judiciary.
January 29, 1979	Committee recommend bill be concurred in as amended. Report adopted.
January 31, 1979	Second Reading, concurred in.
February 2, 1979	Third Reading, concurred in as amended.

IN THE HOUSE

February 3, 1979	Returned from Second House. Concurred in as amended.
February 6, 1979	Second Reading, amendments adopted.
February 7, 1979	Third Reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAW RELATING TO THE FAMILY; AMENDING SECTIONS
 7 40-1-203, 40-1-311, 40-5-112, 40-5-131, 40-6-108, AND
 8 40-8-111, MCA."

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 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 40-1-203, MCA, is amended to read:
 12 "40-1-203. Proof of age and medical certificate
 13 required. (1) Before a person who is authorized by law to
 14 issue marriage licenses may issue a marriage license, each
 15 applicant therefor shall exhibit to him a birth certificate
 16 or other satisfactory evidence of age and, if such the
 17 applicant is a minor, the approval required by 40-1-213, and
 18 shall file with him a medical certificate from a duly
 19 qualified physician, licensed to practice medicine and
 20 surgery in any state or United States territory, or any
 21 other person authorized by laws of Montana to make such a
 22 medical certificate, which the certificate shall state that
 23 the applicant has been given such an examination, including
 24 a standard serological test, made not more than 20 days
 25 before the date of issuance of the license, and that the

1 report of the results of the serological test has been
 2 exhibited to the applicant and that each party to the
 3 proposed marriage contract has examined the report of the
 4 serological test of the other party to the proposed
 5 contract.

6 (2) A person who by law is ~~validly~~ able to obtain a
 7 marriage license in this state is also ~~validly~~ able to give
 8 consent to any examinations and tests required by this
 9 section. In submitting the blood specimen to the laboratory,
 10 the physician or any other person authorized by the laws of
 11 Montana to make such a medical certificate shall designate
 12 that it is a premarital test."

13 Section 2. Section 40-1-311, MCA, is amended to read:
 14 "40-1-311. Declaration of marriage without
 15 solemnization. (1) Persons desiring to consummate a marriage
 16 by written declaration in this state without the
 17 solemnization provided for in 40-1-301 must, prior to
 18 executing the declaration, secure the ~~premarital~~ test
 19 ~~medical~~ certificate required by this chapter, which shall be
 20 firmly attached to the declaration and shall be filed by the
 21 clerk of the district court in the county where the contract
 22 was executed. Any such A declaration of marriage shall ~~must~~
 23 contain substantially contain the following:
 24 (a) the names, ages, and residences of the parties;
 25 (b) the fact of marriage;

1 (c) ~~the~~ name of father and maiden name of mother of
2 both parties and address of each;

3 (d) a statement that both parties are legally
4 competent to enter into the marriage contract.

5 (2) ~~Such~~ the declaration must be subscribed by the
6 parties and attested by at least two witnesses and formally
7 acknowledged before the clerk of the district court of said
8 the county."

9 Section 3. Section 40-5-112, MCA, is amended to read:

10 "40-5-112. Contents and filing of petition for support
11 -- venue. (1) The petition shall be verified and shall state
12 the name and, so far as known to the obligee, the address
13 and circumstances of the obligor and the persons for whom
14 support is sought and all other pertinent information. The
15 obligee may include in or attach to the petition any
16 information which may help in locating or identifying the
17 obligor, including a photograph of the obligor, a
18 description of any distinguishing marks on his person, other
19 names and aliases by which he has been or is known, the name
20 of his employer, his fingerprints, and his social security
21 number.

22 (2) At the time of filing the petition, the obligee
23 shall also file with the court an affidavit as required by
24 53-4-248 stating whether he has received public assistance
25 from any source and, if he has received public assistance,

1 that he has notified the department of social and
2 rehabilitation services in writing of the pending action.

3 (3) The petition may be filed in the appropriate court
4 of any state in which the obligee resides. The court may not
5 decline or refuse to accept and forward the petition on the
6 ground that it should be filed with some other court of this
7 or any other state where there is pending another action for
8 ~~divorce~~, separation, annulment, dissolution, habeas corpus,
9 adoption, or custody between the same parties or where
10 another court has already issued a support order in some
11 other proceeding and has retained jurisdiction for its
12 enforcement."

13 Section 4. Section 40-5-131, MCA, is amended to read:

14 "40-5-131. Proceedings not to be stayed -- when. A
15 responding court ~~shall~~ may not stay the proceeding or refuse
16 a hearing under this chapter because of any pending or prior
17 action or proceeding for ~~divorce~~, separation, annulment,
18 dissolution, habeas corpus, adoption, or custody in this or
19 any other state. The court shall hold a hearing and may
20 issue a support order pendente lite. In aid thereof it may
21 require the obligor to give a bond for the prompt
22 prosecution of the pending proceeding. If the other action
23 or proceeding is concluded before the hearing in the instant
24 proceeding and the judgment therein provides for the support
25 demanded in the petition being heard, the court must conform

1 its support order to the amount allowed in the other action
2 or proceeding. Thereafter, the court shall not stay
3 enforcement of its support order because of the retention of
4 jurisdiction for enforcement purposes by the court in the
5 other action or proceeding."

6 Section 5. Section 40-6-108, MCA, is amended to read:
7 "40-6-108. Statute of limitations. (1) An action may
8 be commenced:

9 (a) at any time for the purpose of declaring the
10 existence of the father and child relationship presumed
11 under subsection (a), (b), or (c) of 40-6-105(1); or

12 (b) for the purpose of declaring the nonexistence of
13 the father and child relationship presumed under subsection
14 (a), (b), or (c) of 40-6-105(1), only if the action is
15 brought within a reasonable time after obtaining knowledge
16 of relevant facts, but in no event not later than 5 years
17 after the child's birth.

18 (2) After the presumption has been rebutted, paternity
19 of the child by another man may be determined in the same
20 action if he has been made a party.

21 (3) An action to determine the existence or
22 nonexistence of the father and child relationship as to a
23 child who has no presumed father under 40-6-105 may not be
24 brought later than 3 years after the birth of the child or
25 later than July 1, 1978, whichever is later.

1 (4) Sections 40-6-107 and 40-6-108 do not extend the
2 time within which a right of inheritance or a right to a
3 succession may be asserted beyond the time provided by law
4 relating to distribution and closing of decedents' estates
5 or to the determination of heirship or otherwise.

6 (5) After the conclusion of an adoption proceeding
7 under chapter 8, Title 40, no further action to declare the
8 existence or nonexistence of the father and child
9 relationship of the adopted child may be commenced, except
10 as provided in 40-8-112."

11 Section 6. Section 40-8-111, MCA, is amended to read:
12 "40-8-111. Consent required for adoption. (1) An
13 adoption of a child may be decreed when there have been
14 filed written consents to adoption executed by:

15 (a) both parents, if living, or the surviving parent
16 of a child, provided that consent shall not be required
17 from a father or mother:

18 (i) adjudged guilty by a court of competent
19 jurisdiction of physical cruelty toward said the child;

20 (ii) ~~adjudged to be an habitual drunkard~~ involuntarily
21 committed as an alcoholic pursuant to 53-24-302;

22 (iii) who has been judicially deprived of the custody
23 of the child on account of cruelty or neglect toward the
24 child;

25 (iv) who has, in the state of Montana or in any other

1 state of the United States, willfully abandoned ~~such the~~
2 child;

3 (v) who has caused the child to be maintained by any
4 public or private children's institution, charitable agency,
5 or any licensed adoption agency or the department of social
6 and rehabilitation services of the state of Montana for a
7 period of 1 year without contributing to the support of ~~said~~
8 ~~the~~ child during said period, if able; or

9 (vi) if it is proven to the satisfaction of the court
10 that ~~said the~~ father or mother, if able, has not contributed
11 to the support of ~~said the~~ child during a period of 1 year
12 before the filing of a petition for adoption; or

13 ~~(vii) whose parental rights have been judicially~~
14 ~~terminated;~~

15 (b) the legal guardian of ~~the person of~~ the child if
16 both parents are dead or if the rights of the parents have
17 been terminated by judicial proceedings and such guardian
18 has authority by order of the court appointing him to
19 consent to the adoption;

20 (c) the executive head of an agency if the child has
21 been relinquished for adoption to such agency or if the
22 rights of the parents have been judicially terminated or if
23 both parents are dead and custody of the child has been
24 legally vested in such agency with authority to consent to
25 adoption of the child; or

1 (d) any person having legal custody of a child by
2 court order if the parental rights of the parents have been
3 judicially terminated, but in such case the court having
4 jurisdiction of the custody of the child must consent to
5 adoption and a certified copy of its order shall be attached
6 to the petition.

7 (2) The consents required by subsections (1)(a) and
8 (1)(b) shall be acknowledged before an officer authorized to
9 take acknowledgments or witnessed by a representative of the
10 department of social and rehabilitation services or of an
11 agency or witnessed by a representative of the court."

-End-

Approved by Committee
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1 other state of the United States, willfully abandoned such
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19 consent to the adoption;

20 (c) the executive head of an agency if the child has
21 been relinquished for adoption to such agency or if the
22 rights of the parents have been judicially terminated or if
23 both parents are dead and custody of the child has been
24 legally vested in such agency with authority to consent to
25 adoption of the child; or

1 (d) any person having legal custody of a child by
2 court order if the parental rights of the parents have been
3 judicially terminated, but in such case the court having
4 jurisdiction of the custody of the child must consent to
5 adoption and a certified copy of its order shall be attached
6 to the petition.

7 (2) The consents required by subsections (1)(a) and
8 (1)(b) shall be acknowledged before an officer authorized to
9 take acknowledgments or witnessed by a representative of the
10 department of social and rehabilitation services or of an
11 agency or witnessed by a representative of the court."

-End-

February 5, 1979

SENATE STANDING COMMITTEE REPORT

That House Bill No. 167 be amended as follows:

1. Page 6, lines 20 through 21.

Following: line 19

Strike: lines 20 through 21 in their entirety

Renumber: subsequent subsections accordingly