

CHAPTER NO. 119.

HOUSE BILL NO. 194

INTRODUCED BY MANUEL

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 16, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill do pass as amended and be placed on Consent Calendar. Report adopted.
January 26, 1979	Printed and placed on members' desks.
January 30, 1979	Third reading Consent Calendar, passed. Transmitted to second house.

IN THE SENATE

January 31, 1979	Introduced and referred to Committee on Judiciary.
February 27, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 1, 1979	Second reading, concurred in.
March 3, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 5, 1979	Returned from second house. Concurred in as amended.
March 6, 1979	Second reading, amendments adopted.
March 7, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

1 HOUSE BILL NO. 194
 2 INTRODUCED BY Mann
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS IN TITLE 1, MCA, COMPOSED OF GENERAL LAWS AND
 7 DEFINITIONS; REPEALING SECTIONS 12-212 AND 93-1101-1, R.C.M.
 8 1947; AND REPEALING SECTIONS 1-5-501 THROUGH 1-5-507, MCA."

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

11 NEW SECTION. Section 1. Relationship by affinity. (1)
 12 Unless the context requires otherwise, in this code
 13 "affinity" means the relation which one spouse has, by
 14 virtue of the marriage, to blood relatives of the other.
 15 Therefore, a person has the same relation by affinity to his
 16 spouse's blood relatives as his spouse has to them by
 17 consanguinity and vice versa.

18 (2) Degrees of relationship by affinity are computed
 19 in the same manner as degrees of relationship by
 20 consanguinity.

21 (3) Notwithstanding subsection (1), the term
 22 "affinity" includes the relation of husband and wife.
 23 Husband and wife are considered to be related by affinity in
 24 the first degree.

25 Section 2. Section 1-2-201, MCA, is amended to read:

1 "1-2-201. Statutes -- effective date. (1) Every
 2 statute, unless a different time is prescribed therein,
 3 takes effect on the first day of July ~~1-of-the-year-of~~
 4 following its passage and approval.

5 (2) "Passage", as used in subsection (1), means the
 6 enactment into law of a bill which has passed the
 7 legislature either with or without the approval of the
 8 governor, as provided in the constitution."

9 Section 3. Section 1-5-101, MCA, is amended to read:

10 "1-5-101. By whom and where acknowledgments proof or
 11 acknowledgment may be taken. (1) The proof of or
 12 acknowledgment of an instrument may be made at any place
 13 within this state before a justice or clerk of the supreme
 14 court or a judge of the district court.

15 (2) The proof of or acknowledgment of an instrument
 16 may be made in this state within the city, county, or
 17 district for which the officer was elected or appointed,
 18 before either:

- 19 (a) a clerk of a court of record;
- 20 (b) a county clerk;
- 21 (c) a notary public;
- 22 (d) a justice of the peace; or
- 23 (e) a United States commissioner."

24 Section 4. Section 1-5-102, MCA, is amended to read:

25 "1-5-102. Acknowledgments Proof or acknowledgment

1 taken outside this state. The proof of ~~an~~ acknowledgment of
 2 an instrument may be made ~~without~~ outside this state but
 3 within the United States and within the jurisdiction of the
 4 officer, before either:

5 (1) a justice, judge, or clerk of any court of record
 6 of the United States;

7 (2) a justice, judge, or clerk of any court of record
 8 of any state or territory;

9 (3) a commissioner appointed by the governor of this
 10 state for that purpose;

11 (4) a notary public; or,

12 (5) any other officer of the state or territory where
 13 the acknowledgment is made, authorized by its laws to take
 14 such proof or acknowledgment."

15 Section 5. Section 1-5-105, MCA, is amended to read:

16 "1-5-105. Notarial acts by officers in the armed
 17 services. (1) In addition to the acknowledgment of
 18 instruments and the performance of other notarial acts in
 19 the manner and form ~~and~~ otherwise authorized by law,
 20 instruments may be acknowledged, documents attested, oaths
 21 and affirmations administered, depositions and affidavits
 22 executed, and other notarial acts performed before or by any
 23 commissioned officer in active service of the armed forces
 24 of the United States with the rank of second lieutenant or
 25 higher in the army or marine corps, with the rank of ensign

1 or higher in the navy or coast guard, or with equivalent
 2 rank in any other component part of the armed forces of the
 3 United States, by at the request of any person who either:

4 (a) is a member of the armed forces of the United
 5 States;

6 (b) is serving as a merchant seaman outside the
 7 limits of the continental United States ~~included within the~~
 8 ~~48 states and the District of Columbia~~, excluding Alaska;
 9 or

10 (c) is outside the limits of the United States of
 11 America by permission, assignment, or direction of any
 12 department or official of the United States government in
 13 connection with any activity pertaining to the prosecution
 14 of any war in which the United States is then engaged.

15 (2) Such acknowledgment of instruments, attestation of
 16 documents, administration of oaths and affirmations,
 17 execution of depositions and affidavits, and performance of
 18 other notarial acts, heretofore or hereafter made or taken,
 19 are ~~hereby declared to be~~ valid and binding; and
 20 instruments and documents so acknowledged, authenticated, or
 21 sworn to ~~shall be~~ are admissible in evidence and eligible to
 22 record be recorded in this state under the same
 23 circumstances and with the same ~~force and~~ effect as if such
 24 acknowledgment, attestation, oath, affirmation, deposition,
 25 affidavit, or other notarial act had been made or taken

1 within this state before or by a duly qualified officer or
2 official as otherwise provided by law.

3 (3) In the taking of acknowledgments and the
4 performing of other notarial acts requiring certification, a
5 certificate endorsed upon or attached to the instrument or
6 documents which shows the date of the notarial act and which
7 states, in substance, that the person appearing before the
8 officer acknowledged the instrument as his act or made or
9 signed the instrument or ~~document~~ under oath ~~shall be~~ is
10 sufficient for all ~~intents and purposes~~. The instrument or
11 ~~document shall~~ is not be rendered invalid by the failure to
12 state the place of execution or acknowledgment.

13 (4) The signature, rank, and branch of service or
14 subdivision thereof of any such commissioned officer ~~shall~~
15 must appear upon ~~such the~~ instrument or ~~document~~ or
16 certificate, and no further proof of the authority of ~~such~~
17 ~~the~~ officer so to ~~so~~ act ~~shall be~~ is required. Such action
18 by ~~such the~~ commissioned officer ~~shall be~~ is prima facie
19 evidence that the person making ~~such the~~ oath or
20 acknowledgment is within the purview of this section."

21 Section 6. Section 1-5-301, MCA, is amended to read:

22 "1-5-301. Who may prove execution of instrument. Proof
23 of the execution of an instrument ~~when which has~~ not ~~been~~
24 acknowledged ~~may~~ be made either by:

25 (1) ~~the party executing it or either~~ all of the

1 parties who executed it or any one of them;

2 (2) a subscribing witness; or

3 (3) other witnesses in cases mentioned in 1-5-302."

4 Section 7. Section 1-5-303, MCA, is amended to read:
5 "1-5-303. Facts which must be shown when offering
6 proof of handwriting. The evidence taken under 1-5-302 must
7 satisfactorily prove to the officer the following facts:

8 (1) the existence of one or more of the conditions
9 mentioned in 1-5-302;

10 (2) that the witness testifying knew the person whose
11 name purports to be subscribed to the instrument as a party
12 and is well acquainted with his signature ~~and that it is~~
13 genuine;

14 (3) that the witness testifying personally knew the
15 person who subscribed the instrument as a witness and is
16 well acquainted with his signature ~~and that it is~~
17 genuine;
18 and

19 (4) that the signature or signatures in question are
20 genuine; and

21 ~~(4)(5)~~ the place of residence of the witness."

22 Section 8. Section 1-5-304, MCA, is amended to read:

23 "1-5-304. Powers of officer taking proof of execution.

24 ~~(1)~~ Officers authorized to take the proof of instruments are
25 authorized in such proceedings to:

~~(a)~~ (1) administer oaths or affirmations as prescribed

1 ~~in the Code of Civil Procedure by law;~~
2 ~~(b)(2) employ and swear interpreters; and~~
3 ~~(c)(3) issue subpoenas as prescribed in the Code of~~
4 ~~Civil Procedure by law.~~
5 ~~(d) --punish for contempt as prescribed in the Code of~~
6 ~~Civil Procedure.~~
7 ~~(2) --The civil damages and forfeiture to the party~~
8 ~~aggrieved are prescribed in the Code of Civil Procedure."~~
9 Section 9. Section 1-5-416, MCA, is amended to read:
10 "1-5-416. Powers and duties. ~~It is the duty of a~~ A
11 notary public shall:
12 (1) when ~~whenever~~ requested, to demand acceptance and
13 payment of foreign, domestic, and inland bills of exchange
14 or promissory notes and protest the same for nonacceptance
15 or nonpayment and to exercise such other powers and duties
16 as by the law of nations and according to commercial usages
17 or by the laws of any other state, government, or country
18 may be performed by notaries and keep a record of such acts;
19 (2) to take the acknowledgment or proof of ~~any~~ powers
20 ~~power~~ of attorney, mortgages ~~mortgage~~, deeds ~~deed~~, grants
21 ~~grant~~, transfers ~~transfer~~, and ~~or~~ other instruments --of
22 writing ~~instrument~~ executed by any person and to give a
23 certificate of such proof or acknowledgment, endorsed ~~on~~ or
24 attached to the instrument;
25 (3) to take depositions and affidavits and administer

1 oaths and affirmations in all matters incident to the duties
2 of the ~~his~~ office or to be used before any court, judge,
3 officer, or board in this state;
4 (4) when ~~whenever~~ requested and upon payment of his
5 fees therefor, to make and give a certified copy of any
6 record in his office;
7 (5) to provide and keep an official seal, upon which
8 must be engraved the name of the state of Montana and the
9 words "Notarial Seal", with the surname of the notary and at
10 least the initials of his Christian ~~given~~ names;
11 (6) to authenticate with his official seal all
12 official acts. ~~in all cases when whenever~~ the notary public
13 signs his name officially as a notary public, he ~~must~~ shall
14 add to his signature the words "Notary Public for the State
15 of Montana, residing at (stating the name of his post
16 office)" and ~~must~~ shall endorse upon the instrument the date
17 of the expiration of his commission."
18 Section 10. Section 1-5-505, MCA, is amended to read:
19 "1-5-505. Powers of commissioners. Every commissioner
20 of deeds has power within the state for which he was
21 appointed to:
22 (1) administer and certify oaths;
23 (2) take and certify depositions and affidavits;
24 (3) take and certify the acknowledgment of ~~or~~ proof of
25 powers of attorney, mortgages, transfers, grants, deeds, or

1 other instruments for record;

2 (4) provide and keep an official seal, upon which must
3 be engraved his name, the words "Commissioner of Deeds for
4 the State of Montana", and the name of the state for which
5 he is commissioned;

6 (5) authenticate with his official seal all his
7 official acts."

8 Section 11. Section 1-6-103, MCA, is amended to read:

9 "1-6-103. Variation of oath to suit witness's belief.
10 ~~{1} Whenever the court before which a person is offered as a~~
11 ~~witness is satisfied that he has a peculiar mode of~~
12 ~~swearing connected with or in addition to the usual form of~~
13 ~~administration which in his opinion is more solemn or~~
14 ~~obligatory, the court may in its discretion adopt that~~
15 ~~mode.~~

16 ~~{2} When a person is sworn who believes in any other~~
17 ~~than the Christian religion he may be sworn according to~~
18 ~~the peculiar ceremonies of his religion if there be any~~
19 ~~such. The court shall vary the mode of swearing to accord~~
20 ~~with the witness's beliefs whenever it is satisfied that the~~
21 ~~witness has a distinct mode of swearing.~~

22 Section 12. Section 1-11-102, MCA, is amended to read:

23 "1-11-102. Name of ~~recodification~~ citation. The
24 recodification recodified laws shall be known as the
25 "Montana Code Annotated" and may be cited as "MCA."

1 Section 13. Section 1-11-103, MCA, is amended to read:

2 "1-11-103. Effect of Montana Code Annotated. (1) The
3 Montana Code Annotated shall be enacted as a reenactment of
4 the Revised Codes of Montana, 1947, and the supplements
5 thereto.

6 (2) The enactment of the Montana Code Annotated shall
7 not:

8 (a) revive a law repealed or superseded before the
9 effective date of the Montana Code Annotated;

10 (b) affect an act done, right accrued, or obligation
11 incurred or imposed by law prior to the effective date of
12 the Montana Code Annotated;

13 (c) affect any action, suit, or proceeding pending on
14 such effective date;

15 (d) repeal statutes of a nongeneral, nonpermanent
16 nature such as severability, construction, validating,
17 repealing, or similar statutes omitted from the Montana Code
18 Annotated.

19 (3) The Montana Code Annotated shall be given effect
20 as a continuation of the Revised Codes of Montana and not as
21 a new enactment. A defect in title of any act set out in
22 prior laws and reenacted by the Montana Code Annotated is
23 cured by such enactment.

24 (4) No implication or presumption of legislative
25 construction is to be drawn from the classification or

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1 arrangement of the Montana Code Annotated.

2 (5) Unless specifically adopted as such by the
3 legislature, annotations, code commissioner notes,
4 catchlines, or other editorial material included in the
5 Montana Code Annotated may not be construed as part of the
6 legislative text but are only for the purpose of
7 convenience, orderly arrangement, and information.

8 ~~(6) After enactment, the Montana Code Annotated,~~
9 ~~including all subsequent replacement volumes, shall be prima~~
10 ~~facie the official laws of Montana.~~ In case of any
11 inconsistency in meaning arising through omission or
12 otherwise between the provisions of the Montana Code
13 Annotated and the corresponding portion of the official
14 enrolled bill on file with the secretary of state, effect
15 shall be given to the official enrolled bill."

16 Section 14. Section 1-11-204, MCA, is amended to read:

17 "1-11-204. Duties of code commissioner. (1) Prior to
18 January 1, 1979, the code commissioner shall recodify all
19 the laws of a general and permanent nature appearing in the
20 codes and session laws and prepare them for publication.

21 (2) Prior to January 1, 1979, the commissioner shall
22 prepare and submit to the legislature a report which is
23 certified by the commissioner as the "Official Report of the
24 Montana Code Commissioner", together with a bill enacting
25 the Montana Code Annotated. A copy of the report and bill

1 shall be deposited with the secretary of state. The report
2 shall explain and indicate, in tabular or other form, all
3 changes made during recodification, other than punctuation
4 and capitalization, to clearly indicate the character of
5 each change.

6 (3) ~~Prior to November 1, 1976, and prior to the~~
7 ~~November 1 of each year thereafter~~ immediately preceding
8 each regular legislative session, the commissioner shall
9 prepare and submit to the legislative council a report, in
10 tabular or other form, indicating the commissioner's
11 recommendations for legislation which will:

- 12 (a) eliminate archaic or outdated laws;
- 13 (b) eliminate obsolete or redundant wording of laws;
- 14 (c) eliminate any duplications in law and any laws
15 repealed directly or by implication;
- 16 (d) clarify existing laws;
- 17 (e) correct errors and inconsistencies within the
18 laws.

19 (4) The commissioner shall cause to be prepared for
20 publication with the Montana Code Annotated the following
21 material:

- 22 (a) Statutory history of each code section;
- 23 (b) Annotations of state and federal court decisions
24 relating to the subject matter of the code;
- 25 (c) Such editorial notes, cross-references, and other

1 matter as the commissioner considers desirable or
2 advantageous;

3 (d) The Declaration of Independence;

4 (e) The Constitution of the United States of America
5 and amendments thereto;

6 (f) Acts of congress relating to the authentication of
7 laws and records;

8 (g) The Organic Act of the Territory of Montana;

9 (h) The Enabling Act;

10 (i) The 1972 Constitution of the State of Montana and
11 any amendments thereto;

12 (j) The Ordinances relating to federal relations and
13 elections;

14 (k) Rules of civil, criminal, and appellate procedure
15 and such other rules of procedure as the Montana supreme
16 court may adopt; and

17 (l) A complete subject index, a popular name index,
18 and comparative disposition tables or cross-reference
19 indexes relating sections of the Montana Code Annotated to
20 prior compilations and session laws.

21 (5) After publication of the Montana Code Annotated,
22 the code commissioner shall:

23 (a) annotate, arrange, and prepare for publication all
24 laws of a general and permanent nature enacted at each
25 legislative session and assign catchlines and code section

1 numbers to each new section;

2 (b) continue to codify, index, arrange, rearrange, and
3 generally update the Montana Code Annotated to maintain an
4 orderly and logical arrangement of the laws in order to
5 avoid future need for bulk revision;

6 (c) prepare and submit to each legislature a report
7 certified as the "Official Report of the Montana Code
8 Commissioner--(year)" which indicates, in tabular or other
9 form, all changes made during the continuous recodification,
10 other than punctuation, spelling, and capitalization, to
11 clearly indicate the character of each change made since the
12 ~~first publication of the Montana Code Annotated~~ last such
13 report.

14 (6) From time to time the commissioner shall confer
15 with members of the judiciary and the state bar relative to
16 recodification procedures."

17 Section 15. Section 1-11-302, MCA, is amended to read:

18 "1-11-302. Updates of Montana Code Annotated. (1) The
19 publication of updates to the Montana Code Annotated may be
20 as a cumulative supplement or replacement volume or in any
21 other format approved by the legislative council.

22 (2) The supplements or replacements shall be
23 certified, ~~and reported to the legislature by the~~
24 ~~legislative council approved and enacted by the legislature~~
25 ~~as prime facie the official laws of Montana~~ published,

1 copyrighted and deposited with the secretary of state and
2 referred to as the Montana Code Annotated. The supplements
3 and replacements shall become effective on the date
4 deposited with and certified to the secretary of state."

5 Section 16. Repealer. Sections 12-212 and 93-1101-1,
6 R.C.M. 1947, are repealed. Sections 1-5-501 through 1-5-507,
7 MCA, are repealed.

-End-

Approved by Committee on Judiciary

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 2 INTRODUCED BY MANUEL
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS IN TITLE 1, MCA, COMPOSED OF GENERAL LAWS AND
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 8 1947; AND REPEALING SECTIONS 1-5-501 THROUGH 1-5-507, MCA."
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 12 Unless the context requires otherwise, in this code
 13 "affinity" means the relation which one spouse has, by
 14 virtue of the marriage, to blood relatives of the other.
 15 Therefore, a person has the same relation by affinity to his
 16 spouse's blood relatives as his spouse has to them by
 17 consanguinity and vice versa.
 18 (2) Degrees of relationship by affinity are computed
 19 in the same manner as degrees of relationship by
 20 consanguinity.
 21 (3) Notwithstanding subsection (1), the term
 22 "affinity" includes the relation of husband and wife.
 23 Husband and wife are considered to be related by affinity in
 24 the first degree.
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 2 statute, unless a different time is prescribed therein,
 3 takes effect on the first day of July 1-of-the-year-of
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 5 (2) "Passage", as used in subsection (1), means the
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 7 legislature either with or without the approval of the
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 11 acknowledgment may be taken. (1) The proof of or
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 13 within this state before a justice or clerk of the supreme
 14 court or a judge of the district court.
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 16 may be made in this state within the city, county, or
 17 district for which the officer was elected or appointed,
 18 before either:
 19 (a) a clerk of a court of record;
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 23 (e) a United States commissioner."
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 25 "1-5-102. Acknowledgments Proof or acknowledgment

1 taken outside this state. The proof of or acknowledgment of
 2 an instrument may be made without outside this state but
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5 (1) a justice, judge, or clerk of any court of record
 6 of the United States;

7 (2) a justice, judge, or clerk of any court of record
 8 of any state or territory;

9 ~~(3) a commissioner appointed by the governor of this~~
 10 ~~state for that purpose;~~

11 ~~(4)~~(3) a notary public; or

12 ~~(5)~~(4) any other officer of the state or territory
 13 where the acknowledgment is made, authorized by its laws to
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15 Section 5. Section 1-5-105, MCA, is amended to read:

16 "1-5-105. Notarial acts by officers in the armed
 17 services. (1) In addition to the acknowledgment of
 18 instruments and the performance of other notarial acts in
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 20 instruments may be acknowledged, documents attested, oaths
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 22 executed, and other notarial acts performed before or by any
 23 commissioned officer in active service of the armed forces
 24 of the United States with the rank of second lieutenant or
 25 higher in the army or marine corps, with the rank of ensign

1 or higher in the navy or coast guard, or with equivalent
 2 rank in any other component part of the armed forces of the
 3 United States, by at the request of any person who either:

4 (a) is a member of the armed forces of the United
 5 States;

6 (b) is serving as a merchant seaman outside the
 7 limits of the continental United States ~~included within the~~
 8 ~~48 states and the District of Columbia, excluding Alaska;~~
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10 (c) is outside the limits of the United States of
 11 America by permission, assignment, or direction of any
 12 department or official of the United States government in
 13 connection with any activity pertaining to the prosecution
 14 of any war in which the United States is then engaged.

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 16 documents, administration of oaths and affirmations,
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 18 other notarial acts, heretofore or hereafter made or taken,
 19 are hereby ~~declared~~ ~~to be~~ valid, and binding; and
 20 instruments and documents so acknowledged, authenticated, or
 21 sworn to ~~shall be~~ are admissible in evidence and eligible to
 22 record be recorded in this state under the same
 23 circumstances and with the same ~~force and~~ effect as if such
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 25 affidavit, or other notarial act had been made or taken

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 4 performing of other notarial acts requiring certification, a
 5 certificate endorsed upon or attached to the instrument or
 6 documents which shows the date of the notarial act and which
 7 states, in substance, that the person appearing before the
 8 officer acknowledged the instrument as his act or made or
 9 signed the instrument ~~or--document~~ under oath ~~shatt-be is~~
 10 sufficient for all intents-and purposes. The instrument or
 11 document--~~shatt is~~ not be rendered invalid by the failure to
 12 state the place of execution or acknowledgment.

13 (4) The signature, rank, and branch of service or
 14 subdivision thereof of any such commissioned officer ~~shatt~~
 15 ~~must~~ appear upon such ~~the~~ instrument ~~or--document~~ or
 16 certificate, and no further proof of the authority of such
 17 ~~the~~ officer so to ~~so~~ act ~~shatt-be is~~ required. Such action
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 7 satisfactorily prove to the officer the following facts:

8 (1) the existence of one or more of the conditions
 9 mentioned in 1-5-302;

10 (2) that the witness testifying knew the person whose
 11 name purports to be subscribed to the instrument as a party
 12 and is well acquainted with his signature ~~and--that--it--is~~
 13 genuine;

14 (3) that the witness testifying personally knew the
 15 person who subscribed the instrument as a witness and is
 16 well acquainted with his signature ~~and--that--it--is~~ genuine;
 17 and

18 ~~(4) that the signature or signatures in question are~~
 19 ~~genuine; and~~

20 ~~(4)(5)~~ the place of residence of the witness."

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2 (b)(2) employ and swear interpreters; and

3 (c)(3) issue subpoenas as prescribed in-the-Code-of

4 Civil-Procedure by laws

5 (d)--punish-for-contempt-as-prescribed-in-the--Code--of

6 Civil-Procedure

7 (2)--The--civil--damages--and--forfeiture--to--the--party

8 aggrieved--are--prescribed--in--the--Code--of--Civil--Procedure"

9 Section 9. Section 1-5-416, MCA, is amended to read:

10 "1-5-416. Powers and duties. It--is--the--duty--of--a

11 notary public shall:

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14 or promissory notes and protest the same for nonacceptance

15 or nonpayment and to exercise such other powers and duties

16 as by the law of nations and according to commercial usages

17 or by the laws of any other state, government, or country

18 may be performed by notaries and keep a record of such acts;

19 (2) to take the acknowledgment or proof of any powers

20 power of attorney, mortgages mortgage, deeds deed, grants

21 grant, transfers transfer, and or other instruments--of

22 writing instrument executed by any person and to give a

23 certificate of such proof or acknowledgment, endorsed on or

24 attached to the instrument;

25 (3) to take depositions and affidavits and administer

1 oaths and affirmations in all matters incident to the duties

2 of the his office or to be used before any court, judge,

3 officer, or board in this state;

4 (4) when whenever requested and upon payment of his

5 fees therefor, to make and give a certified copy of any

6 record in his office;

7 (5) to provide and keep an official seal, upon which

8 must be engraved the name of the state of Montana and the

9 words "Notarial Seal", with the surname of the notary and at

10 least the initials of his Christian given name;

11 (6) to authenticate with his official seal all

12 official acts. In--all--cases--when--whenever the notary public

13 signs his name officially as a notary public, he must shall

14 add to his signature the words "Notary Public for the State

15 of Montana, residing at (stating the name of his post

16 office)" and must shall endorse upon the instrument the date

17 of the expiration of his commission."

18 Section--10--Section--1-5-505--MCA--is--amended--to--read

19 "1-5-505--Powers-of-commissioners--Every-commissioner

20 of--deeds--has--power--within--the--state--for--which--he--was

21 appointed--to

22 (1)--administer--and--certify--oaths

23 (2)--take--and--certify--depositions--and--affidavits

24 (3)--take--and--certify--the--acknowledgment--of--or--proof--of

25 powers--of--attorney--mortgages--transfers--grants--deeds--or

1 other-instruments-for-record†

2 {4}--provide-and-keep-an-official-seat-upon-which-must
3 be--engraved--his-name--the-words-"Commissioner-of-Deeds-for
4 the-State-of-Montana"--and-the-name-of-the-state--for--which
5 he-is-commissioned†

6 {5}--authenticate---with--his--official--seat--at--his
7 official--acts†

8 Section 10. Section 1-6-103, MCA, is amended to read:

9 "1-6-103. Variation of oath to suit witness's belief.
10 {1}--Whenever-the-court-before-which-a-person-is-offered-as-a
11 witness--is--satisfied--that--he--has--a--peculiar--mode--of
12 swearing--connected-with-or-in-addition-to-the-usual-form-of
13 administration--which--in--his--opinion--is--more--solemn-or
14 obligatory--the-court-may--in--its--discretion--adopt--that
15 mode.

16 {2}--When--a--person-is-sworn-who-believes-in-any-other
17 than-the-Christian-religion--he-may-be-sworn--according--to
18 the--peculiar--ceremonies--of--his-religion--if--there-be-any
19 such. The court shall vary the mode of swearing to accord
20 with the witness's beliefs whenever it is satisfied that the
21 witness has a distinct mode of swearing."

22 Section 11. Section 1-11-102, MCA, is amended to read:

23 "1-11-102. Name of--recodification == citation. The
24 recodification recodified laws shall be known as the
25 "Montana Code Annotated" and may be cited as "MCA.""

1 Section 12. Section 1-11-103, MCA, is amended to read:

2 "1-11-103. Effect of Montana Code Annotated. (1) The
3 Montana Code Annotated shall be enacted as a reenactment of
4 the Revised Codes of Montana, 1947, and the supplements
5 thereto.

6 (2) The enactment of the Montana Code Annotated shall
7 not:

8 (a) revive a law repealed or superseded before the
9 effective date of the Montana Code Annotated;

10 (b) affect an act done, right accrued, or obligation
11 incurred or imposed by law prior to the effective date of
12 the Montana Code Annotated;

13 (c) affect any action, suit, or proceeding pending on
14 such effective date;

15 (d) repeal statutes of a nongeneral, nonpermanent
16 nature such as severability, construction, validating,
17 repealing, or similar statutes omitted from the Montana Code
18 Annotated.

19 (3) The Montana Code Annotated shall be given effect
20 as a continuation of the Revised Codes of Montana and not as
21 a new enactment. A defect in title of any act set out in
22 prior laws and reenacted by the Montana Code Annotated is
23 cured by such enactment.

24 (4) No implication or presumption of legislative
25 construction is to be drawn from the classification or

1 arrangement of the Montana Code Annotated.

2 (5) Unless specifically adopted as such by the
3 legislature, annotations, code commissioner notes,
4 catchlines, or other editorial material included in the
5 Montana Code Annotated may not be construed as part of the
6 legislative text but are only for the purpose of
7 convenience, orderly arrangement, and information.

8 (6) After enactment, the Montana Code Annotated,
9 including all subsequent replacement volumes, shall be prima
10 facie the official laws of Montana. In case of any
11 inconsistency in meaning arising through omission or
12 otherwise between the provisions of the Montana Code
13 Annotated and the corresponding portion of the official
14 enrolled bill on file with the secretary of state, effect
15 shall be given to the official enrolled bill."

16 Section 13. Section 1-11-204, MCA, is amended to read:

17 "1-11-204. Duties of code commissioner. (1) Prior to
18 January 1, 1979, the code commissioner shall recodify all
19 the laws of a general and permanent nature appearing in the
20 codes and session laws and prepare them for publication.

21 (2) Prior to January 1, 1979, the commissioner shall
22 prepare and submit to the legislature a report which is
23 certified by the commissioner as the "Official Report of the
24 Montana Code Commissioner", together with a bill enacting
25 the Montana Code Annotated. A copy of the report and bill

1 shall be deposited with the secretary of state. The report
2 shall explain and indicate, in tabular or other form, all
3 changes made during recodification, other than punctuation
4 and capitalization, to clearly indicate the character of
5 each change.

6 (3) ~~Prior to November--17--1976,--and--prior--to the~~
7 ~~November 1 of each year--thereafter~~ immediately preceding
8 each regular legislative session, the commissioner shall
9 prepare and submit to the legislative council a report, in
10 tabular or other form, indicating the commissioner's
11 recommendations for legislation which will:

- 12 (a) eliminate archaic or outdated laws;
- 13 (b) eliminate obsolete or redundant wording of laws;
- 14 (c) eliminate any duplications in law and any laws
15 repealed directly or by implication;
- 16 (d) clarify existing laws;
- 17 (e) correct errors and inconsistencies within the
18 laws.

19 (4) The commissioner shall cause to be prepared for
20 publication with the Montana Code Annotated the following
21 material:

- 22 (a) Statutory history of each code section;
- 23 (b) Annotations of state and federal court decisions
24 relating to the subject matter of the code;
- 25 (c) Such editorial notes, cross-references, and other

1 matter as the commissioner considers desirable or
2 advantageous;

3 (d) The Declaration of Independence;

4 (e) The Constitution of the United States of America
5 and amendments thereto;

6 (f) Acts of congress relating to the authentication of
7 laws and records;

8 (g) The Organic Act of the Territory of Montana;

9 (h) The Enabling Act;

10 (i) The 1972 Constitution of the State of Montana and
11 any amendments thereto;

12 (j) The Ordinances relating to federal relations and
13 elections;

14 (k) Rules of civil, criminal, and appellate procedure
15 and such other rules of procedure as the Montana supreme
16 court may adopt; and

17 (l) A complete subject index, a popular name index,
18 and comparative disposition tables or cross-reference
19 indexes relating sections of the Montana Code Annotated to
20 prior compilations and session laws.

21 (5) After publication of the Montana Code Annotated,
22 the code commissioner shall:

23 (a) annotate, arrange, and prepare for publication all
24 laws of a general and permanent nature enacted at each
25 legislative session and assign catchlines and code section

1 numbers to each new section;

2 (b) continue to codify, index, arrange, rearrange, and
3 generally update the Montana Code Annotated to maintain an
4 orderly and logical arrangement of the laws in order to
5 avoid future need for bulk revision;

6 (c) prepare and submit to each legislature a report
7 certified as the "Official Report of the Montana Code
8 Commissioner--(year)" which indicates, in tabular or other
9 form, all changes made during the continuous recodification,
10 other than punctuation, spelling, and capitalization, to
11 clearly indicate the character of each change made since the
12 ~~first--publication--of--the--Montana--Code--Annotated~~ last such
13 report.

14 (6) From time to time the commissioner shall confer
15 with members of the judiciary and the state bar relative to
16 recodification procedures."

17 Section 14. Section 1-11-302, MCA, is amended to read:

18 "1-11-302. Updates of Montana Code Annotated. (1) The
19 publication of updates to the Montana Code Annotated may be
20 as a cumulative supplement or replacement volume or in any
21 other format approved by the legislative council.

22 (2) The supplements or replacements shall be
23 certified, ~~and--reported--to--the--legislature--by--the~~
24 ~~legislative-council--approved--and--enacted--by--the--legislature~~
25 ~~as--prima--facie--the--official--laws--of--Montana~~ published,

1 copyrighted, and deposited with the secretary of state--and
2 ~~referred--to--as--the--Montana--Code--Annotated.~~ The supplements
3 and replacements ~~shall~~ become effective on the date
4 deposited with and certified to the secretary of state."

5 Section 15. Repealer. Sections 12-212 and 93-1101-1,
6 R.C.M. 1947, are repealed. Sections 1-5-501 through 1-5-507,
7 MCA, are repealed.

-End-

1 HOUSE BILL NO. 194
 2 INTRODUCED BY MANUEL
 3 BY REQUEST OF THE CODE COMMISSIONER
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS IN TITLE 1, MCA, COMPOSED OF GENERAL LAWS AND
 7 DEFINITIONS; REPEALING SECTIONS 12-212 AND 93-1101-1, R.C.M.
 8 1947; AND REPEALING SECTIONS 1-5-501 THROUGH 1-5-507, MCA."
 9

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

11 NEW SECTION. Section 1. Relationship by affinity. (1)
 12 Unless the context requires otherwise, in this code
 13 "affinity" means the relation which one spouse has, by
 14 virtue of the marriage, to blood relatives of the other.
 15 Therefore, a person has the same relation by affinity to his
 16 spouse's blood relatives as his spouse has to them by
 17 consanguinity and vice versa.

18 (2) Degrees of relationship by affinity are computed
 19 in the same manner as degrees of relationship by
 20 consanguinity.

21 (3) Notwithstanding subsection (1), the term
 22 "affinity" includes the relation of husband and wife.
 23 Husband and wife are considered to be related by affinity in
 24 the first degree.

25 Section 2. Section 1-2-201, MCA, is amended to read:

1 "1-2-201. Statutes -- effective date. (1) Every
 2 statute, unless a different time is prescribed therein,
 3 takes effect on the first day of July ~~1~~ of the year of
 4 following its passage and approval.

5 (2) "Passage", as used in subsection (1), means the
 6 enactment into law of a bill which has passed the
 7 legislature either with or without the approval of the
 8 governor, as provided in the constitution."

9 ~~Section 3. Section 1-5-101, MCA, is amended to read:~~
 10 ~~"1-5-101. By whom and where acknowledgments proof or~~
 11 ~~acknowledgment may be taken: (1) The proof of an~~
 12 ~~acknowledgment of an instrument may be made at any place~~
 13 ~~within this state before a justice or clerk of the supreme~~
 14 ~~court or a judge of the district courts~~

15 ~~(2) The proof of an acknowledgment of an instrument~~
 16 ~~may be made in this state within the city, county, or~~
 17 ~~district for which the officer was elected or appointed,~~
 18 ~~before either:~~

- 19 ~~(a) a clerk of a court of record;~~
- 20 ~~(b) a county clerk;~~
- 21 ~~(c) a notary public;~~
- 22 ~~(d) a justice of the peace; or~~
- 23 ~~(e) a United States commissioner."~~

24 Section 3. Section 1-5-102, MCA, is amended to read:
 25 "1-5-102. Acknowledgments ~~Proof~~ or acknowledgment

1 ~~ACKNOWLEDGMENTS~~ taken outside this state. The proof of ~~or of~~
 2 acknowledgment of an instrument may be made without ~~outside~~
 3 this state but within the United States and within the
 4 jurisdiction of the officer, before either:

5 (1) a justice, judge, or clerk of any court of record
 6 of the United States;

7 (2) a justice, judge, or clerk of any court of record
 8 of any state or territory;

9 ~~{3}--a--commissioner--appointed-by-the-governor-of-this~~
 10 ~~state-for-that-purpose;~~

11 ~~{4}{1}~~ a notary public; or

12 ~~{5}{1}~~ any other officer of the state or territory
 13 where the acknowledgment is made, authorized by its laws to
 14 take such proof or acknowledgment."

15 Section 4. Section 1-5-105, MCA, is amended to read:

16 "1-5-105. Notarial acts by officers in the armed
 17 services. (1) In addition to the acknowledgment of
 18 instruments and the performance of other notarial acts in
 19 the manner and form ~~and--as~~ otherwise authorized by law,
 20 instruments may be acknowledged, documents attested, oaths
 21 and affirmations administered, depositions and affidavits
 22 executed, and other notarial acts performed before or by any
 23 commissioned officer in active service of the armed forces
 24 of the United States with the rank of second lieutenant or
 25 higher in the army or marine corps, with the rank of ensign

1 or higher in the navy or coast guard, or with equivalent
 2 rank in any other component part of the armed forces of the
 3 United States, by ~~at the request of~~ any person who either:

4 (a) is a member of the armed forces of the United
 5 States;

6 (b) is serving as a merchant seaman outside the
 7 limits of the ~~continental~~ United States included within the
 8 ~~48-states-and-the-District-of-Columbia, excluding Alaska;~~
 9 or

10 (c) is outside the limits of the United States of
 11 America by permission, assignment, or direction of any
 12 department or official of the United States government in
 13 connection with any activity pertaining to the prosecution
 14 of any war in which the United States is then engaged.

15 (2) Such acknowledgment of instruments, attestation of
 16 documents, administration of oaths and affirmations,
 17 execution of depositions and affidavits, and performance of
 18 other notarial acts, heretofore or hereafter made or taken,
 19 are ~~hereby--declared--to~~ valid, and binding; and
 20 instruments and documents so acknowledged, authenticated, or
 21 sworn to ~~shall-be~~ are admissible in evidence and eligible to
 22 record ~~be~~ recorded in this state under the same
 23 circumstances and with the same force and effect as if such
 24 acknowledgment, attestation, oath, affirmation, deposition,
 25 affidavit, or other notarial act had been made or taken

1 within this state before or by a duly qualified officer or
2 official as otherwise provided by law.

3 (3) In the taking of acknowledgments and the
4 performing of other notarial acts requiring certification, a
5 certificate endorsed upon or attached to the instrument or
6 documents which shows the date of the notarial act and which
7 states, in substance, that the person appearing before the
8 officer acknowledged the instrument as his act or made or
9 signed the instrument or document under oath ~~shall be~~ is
10 sufficient for all ~~intents and~~ purposes. The instrument or
11 document ~~shall~~ is not be rendered invalid by the failure to
12 state the place of execution or acknowledgment.

13 (4) The signature, rank, and branch of service or
14 subdivision thereof of any such commissioned officer ~~shall~~
15 must appear upon ~~such the~~ instrument or ~~document~~ or
16 certificate, and no further proof of the authority of ~~such~~
17 ~~the~~ officer so to ~~so~~ act ~~shall be~~ is required. Such action
18 by ~~such the~~ commissioned officer ~~shall be~~ is prima facie
19 evidence that the person making ~~such the~~ oath or
20 acknowledgment is within the purview of this section."

21 Section 5. Section 1-5-301, MCA, is amended to read:

22 "1-5-301. Who may prove execution of instrument. Proof
23 of the execution of an instrument ~~when which has not been~~
24 acknowledged ~~may be made either by:~~

25 (1) ~~the party executing it or either~~ all of the

1 ~~parties who executed it or any one~~ of them;

2 (2) a subscribing witness; or

3 (3) other witnesses in cases mentioned in 1-5-302."

4 Section 6. Section 1-5-303, MCA, is amended to read:

5 "1-5-303. Facts which must be shown when offering
6 proof of handwriting. The evidence taken under 1-5-302 must
7 satisfactorily prove to the officer the following facts:

8 (1) the existence of one or more of the conditions
9 mentioned in 1-5-302;

10 (2) that the witness testifying knew the person whose
11 name purports to be subscribed to the instrument as a party
12 and is well acquainted with his signature ~~and that it is~~
13 genuine;

14 (3) that the witness testifying personally knew the
15 person who subscribed the instrument as a witness and is
16 well acquainted with his signature ~~and that it is~~ genuine;
17 and

18 ~~(4) that the signature or signatures in question are~~
19 genuine; and

20 ~~(5) the place of residence of the witness."~~

21 Section 7. Section 1-5-304, MCA, is amended to read:

22 "1-5-304. Powers of officer taking proof of execution.

23 ~~(1) Officers authorized to take the proof of instruments are~~
24 authorized in such proceedings to:

25 ~~(a) (1) administer oaths or affirmations as prescribed~~

1 ~~in the Code of Civil Procedure by law:~~

2 ~~(b)(2) employ and swear interpreters; and~~

3 ~~(c)(2) issue subpoenas as prescribed in the Code of~~

4 ~~Civil Procedure by law.~~

5 ~~(d) punish for contempt as prescribed in the Code of~~

6 ~~Civil Procedure.~~

7 ~~(2) The civil damages and forfeiture to the party~~

8 ~~aggrieved are prescribed in the Code of Civil Procedure."~~

9 Section 8. Section 1-5-416, MCA, is amended to read:

10 "1-5-416. Powers and duties. ~~It is the duty of a~~ A

11 notary public shall:

12 (1) when ~~whenever~~ requested, to demand acceptance and

13 payment of foreign, domestic, and inland bills of exchange

14 or promissory notes and protest the same for nonacceptance

15 or nonpayment and to exercise such other powers and duties

16 as by the law of nations and according to commercial usages

17 or by the laws of any other state, government, or country

18 may be performed by notaries and keep a record of such acts;

19 (2) to take the acknowledgment or proof of ~~any~~ powers

20 ~~power~~ of attorney, mortgages ~~mortgage~~, deeds ~~deed~~, grants

21 ~~grant~~, transfers ~~transfer~~, and ~~or~~ other instruments of

22 writing ~~instrument~~ executed by any person and to give a

23 certificate of such proof or acknowledgment, endorsed ~~on~~ or

24 attached to the instrument;

25 (3) to take depositions and affidavits and administer

1 oaths and affirmations in all matters incident to the duties

2 of the ~~his~~ office or to be used before any court, judge,

3 officer, or board in this state;

4 (4) when ~~whenever~~ requested and upon payment of his

5 fees therefor, to make and give a certified copy of any

6 record in his office;

7 (5) to provide and keep an official seal, upon which

8 must be engraved the name of the state of Montana and the

9 words "Notarial Seal", with the surname of the notary and at

10 least the initials of his Christian ~~given~~ name;

11 (6) to authenticate with his official seal all

12 official acts. ~~in all cases when whenever~~ the notary public

13 signs his name officially as a notary public, he must ~~shall~~

14 add to his signature the words "Notary Public for the State

15 of Montana, residing at (stating the name of his post

16 office)" and must ~~shall~~ endorse upon the instrument the date

17 of the expiration of his commission."

18 ~~Section 10. Section 1-5-505, MCA, is amended to read:~~

19 ~~"1-5-505. Powers of commissioners. Every commissioner~~

20 ~~of deeds has power within the state for which he was~~

21 ~~appointed to:~~

22 ~~(1) administer and certify oaths;~~

23 ~~(2) take and certify depositions and affidavits;~~

24 ~~(3) take and certify the acknowledgment of or proof of~~

25 ~~powers of attorney, mortgages, transfers, grants, deeds, or~~

1 other-instruments-for-record;

2 (4) provide and keep an official seal upon which must
3 be engraved his name, the words "Commissioner of Deeds for
4 the State of Montana" and the name of the state for which
5 he is commissioned;

6 (5) authenticate with his official seal all his
7 official acts;

8 Section 9. Section 1-6-103, MCA, is amended to read:

9 "1-6-103. Variation of oath to suit witness's belief.

10 (1) Whenever the court before which a person is offered as a
11 witness is satisfied that he has a peculiar mode of
12 swearing connected with or in addition to the usual form of
13 administration which in his opinion is more solemn or
14 obligatory the court may in its discretion adopt that
15 mode;

16 (2) When a person is sworn who believes in any other
17 than the Christian religion he may be sworn according to
18 the peculiar ceremonies of his religion if there be any
19 such. The court shall vary the mode of swearing OR AFFIRMING
20 to accord with the witness's beliefs whenever it is
21 satisfied that the witness has a distinct mode of swearing
22 OR AFFIRMING."

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 7 legislative text but are only for the purpose of
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 23 prepare and submit to the legislature a report which is
 24 certified by the commissioner as the "Official Report of the
 25 Montana Code Commissioner", together with a bill enacting

1 the Montana Code Annotated. A copy of the report and bill
 2 shall be deposited with the secretary of state. The report
 3 shall explain and indicate, in tabular or other form, all
 4 changes made during recodification, other than punctuation
 5 and capitalization, to clearly indicate the character of
 6 each change.

7 (3) ~~Prior to November 1, 1976, and prior to the~~
 8 ~~November 1 of each year thereafter~~ immediately preceding
 9 each regular legislative session, the commissioner shall
 10 prepare and submit to the legislative council a report, in
 11 tabular or other form, indicating the commissioner's
 12 recommendations for legislation which will:

- 13 (a) eliminate archaic or outdated laws;
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 6 and amendments thereto;
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 12 any amendments thereto;
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 14 elections;
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 16 and such other rules of procedure as the Montana supreme
 17 court may adopt; and
 18 (l) A complete subject index, a popular name index,
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 22 (5) After publication of the Montana Code Annotated,
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 5 orderly and logical arrangement of the laws in order to
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 11 other than punctuation, ~~spellings~~ and capitalization, to
 12 clearly indicate the character of each change made since the
 13 ~~first--publication--of--the--Montana--Code--Annotated~~ last such
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 24 certified, ~~and--reported--to--the--legislature--by--the~~
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4 and replacements ~~shalt~~ become effective on the date
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6 Section 14. Repealer. Sections 12-212 and 93-1101-1,
7 R.C.M. 1947, are repealed. Sections 1-5-501 through 1-5-507,
8 MCA, are repealed.

-End-

February 27, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 194 be amended as follows:

1. Page 2, lines 9 through 23.
Strike: section 3 in its entirety
Re-number: all subsequent sections
2. Page 2, line 25.
Following: "Acknowledgments"
Strike: "Proof or acknowledgment"
Insert: "Acknowledgments"
3. Page 3, line 1.
Following: "of"
Strike: "or"
Insert: "of"
4. Page 9, line 19.
Following: "swearing"
Insert: "or affirming"
5. Page 9, line 21.
Following: "swearing"
Insert: "or affirming"