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House BILL NO. 174

INTRODUCED BY

Antoinette R. Morgan - Chris Ahner

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW RELATING TO NOTICE TO OTHER JURISDICTIONS OF DECREES OF SEPARATION OR INVALIDITY OF MARRIAGE; REQUIRING NOTICE OF INVALIDITY OF MARRIAGE; ELIMINATING NOTICE FOR DECREES OF SEPARATION; AND AMENDING SECTIONS 40-1-402 AND 40-4-108, MCA."

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

**Section 1.** Section 40-1-402, MCA, is amended to read:

**"40-1-402. Declaration of invalidity.** (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

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

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time that the marriage was entered into, the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of ~~his~~ the party's parents or guardian or judicial approval; or

(d) the marriage is prohibited.

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

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

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

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

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

5 (e) for the reason set forth in subsection (1)(c), by the underaged party, ~~his~~ or the party's parent  
6 or guardian, prior to the time that the underaged party reaches the age at which ~~he~~ the party could have  
7 married without satisfying the omitted requirement.

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

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

12 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect  
13 of a retroactive decree on third parties, that the interests of justice would be served by making the decree  
14 not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of  
15 chapter 4 relating to property rights of the spouses, maintenance, support, and custody of children on  
16 dissolution of marriage are applicable to nonretroactive decrees of invalidity.

17 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a  
18 marriage:

19 (a) if the marriage is registered in this state, to the clerk of the district court of the county where  
20 the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license  
21 and certificate are recorded; or

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

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25 **Section 2.** Section 40-4-108, MCA, is amended to read:

26 **"40-4-108. Decree.** (1) A decree of dissolution of marriage or of legal separation is final when  
27 entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge  
28 the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree  
29 ~~which~~ that dissolves the marriage beyond the time for appealing from that provision, and either of the  
30 parties may remarry pending appeal.

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

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

5           (a) if the marriage is registered in this state, to the clerk of the district court of the county where  
6 the marriage is registered, who shall enter the fact of dissolution ~~or separation~~ in the book in which the  
7 marriage license and certificate are recorded; or

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

10           (4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order  
11 ~~her~~ the wife's maiden name or a former name restored."

12

-END-

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2 INTRODUCED BY Antoinette R. Morgan - Chris Ahner

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15 into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other  
16 incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud  
17 involving the essentials of marriage;

18 (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at  
19 the time that the marriage was entered into, the other party did not know of the incapacity;

20 (c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the  
21 consent of ~~his~~ the party's parents or guardian or judicial approval; or

22 (d) the marriage is prohibited.

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

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7 married without satisfying the omitted requirement.

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

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

12 (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect  
13 of a retroactive decree on third parties, that the interests of justice would be served by making the decree  
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16 dissolution of marriage are applicable to nonretroactive decrees of invalidity.

17 (6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a  
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19 (a) if the marriage is registered in this state, to the clerk of the district court of the county where  
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26 **"40-4-108. Decree.** (1) A decree of dissolution of marriage or of legal separation is final when  
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28 the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree  
29 ~~which~~ that dissolves the marriage beyond the time for appealing from that provision, and either of the  
30 parties may remarry pending appeal.

1 (2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of  
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3 (3) The clerk of the court shall give notice of the entry of a decree of dissolution ~~or legal~~  
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2 INTRODUCED BY HAGENER, AHNER

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