(c) When consistent with the purposes of this chapter, the language of the chapter shall read so that the singular includes the plural and the plural includes the singular and so that the masculine includes the feminine and the feminine includes the masculine.

Sec. 2. Definitions. When used in this chapter:

(a) The term "court" shall mean the circuit, superior or other courts of this state upon which jurisdiction to enter divorce decrees or dissolution decrees has been or may be conferred.

(b) The term "dissolution decree" means a judicial decree entered in a proceeding for the dissolution of marriage which has the effect of terminating the marriage and restoring the parties to the state of unmarried persons and which may include those matters set out in section 9.

(c) The term "child" means a child or children of both parties to the marriage and includes children born out of wedlock to such parties as well as children born or adopted during the marriage of such parties.

Sec. 3. Causes of Action. There shall be the following causes of action:

(a) dissolution of marriage which shall be decreed upon a finding by a court of one of the following grounds, and no other:

(1) Irretrievable breakdown.

(2) The conviction of either parties, subsequent to the marriage, of an infamous crime.

(3) Impotency, existing at the time of the marriage.

(4) Incurable insanity of either party for a period of at least two (2) years; and

(b) child support.

Sec. 4. Commencement of Proceedings. (a) A proceeding for dissolution of marriage shall be commenced by the filing of a petition entitled, "In Re the marriage of ..... and .....".

The petition shall be verified and it shall set forth:

(1) the residence of each party and the length of residence in the state and county;

(2) the date of the marriage;

(3) the date on which the parties separated;

(4) the names, ages and addresses of any living children of the marriage and whether the wife is pregnant;

(5) the grounds for dissolution of the marriage; and

(6) the relief sought.

(b) A proceeding for child support shall be commenced by the filing of a petition entitled, "In Re the support of .....". The petition may be filed by any person entitled to receive child support payments. The petition shall be verified and shall set forth:

(1) the relationship of the parties;

(2) the present residence of each party;

(3) the names and addresses of any living children of the marriage; and

(4) the relief sought.

Sec. 5. Summons. (a) When a petition is filed by only one (1) of the parties, a copy of the petition together with a copy of a summons shall be served upon the other party to the marriage, upon any person claiming an interest in the property of the parties, or upon the person alleged to be responsible for child support in the same manner as service of summons in civil actions generally.

(b) When a petition is jointly filed by both parties to a marriage and verified as to both, summons need not issue.

Sec. 6. Residence and Venue. (a) At the time of the filing of a petition pursuant to section 3 (a), at least one (1) of the parties shall have been a resident of the state or stationed at a United States military installation within the state for six (6) months immediately preceding the filing of each petition.

(b) At the time of the filing of a petition pursuant to section 3(a), at least one (1) of the parties shall have been a resident of the county where the petition is filed for three (3) months immediately preceding the filing of the petition.

(c) In an action for child support pursuant to section 3(b), the above residence provisions shall not be required: Provided, however, That one (1) of such parties must be a resident of the state and county at the time of the filing of the action.

Sec. 7. Provisional Orders. (a) In any action pursuant to section 3 either party may make a motion for temporary maintenance, for temporary support or custody of a child of the marriage entitled to support or for possession of property. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested or other relief sought.

(b) As a part of a motion for temporary maintenance, for support or custody of a child or for possession of property or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order:

(1) restraining any person from transferring, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life;

(2) enjoining any party from molesting or disturbing the peace of the other party;

(3) excluding either party from the family dwelling or from the dwelling of the other upon a showing that harm would otherwise result;

(4) granting temporary possession of property to either party. A temporary restraining order may be issued if the court finds on the basis of the moving affidavit that the injury would result to the moving party if no immediate order were issued.

(c) The motion for temporary maintenance, support or custody of a child or possession of property shall be set for hearing by the court.

(d) The court may issue an order for temporary maintenance or support in such amounts and on such terms as may seem just and proper and may issue a temporary restraining order, a custody order or an order for possession of property to the extent it deems proper.

(e) The issuance of a provisional order shall be without prejudice to the rights of the parties or the child as adjudicated at the final hearing in the proceeding. Its terms may be revoked or modified prior to final decree on a showing of the facts appropriate to revocation or modification and it shall terminate when the final decree is entered subject to right of appeal or when the petition for dissolution is dismissed.

Sec. 8. Final Hearings. (a) In an action pursuant to section 3(a), a final hearing shall be conducted no earlier than sixty (60) days after the filing of the petition. Upon the final hearing: the court shall hear evidence and, if it finds that the material allegations of the petition are true, either enter a dissolution decree as provided in section 9(a) or if the court finds that there is a reasonable possibility of reconciliation, the court may continue the matter and may order the parties to seek reconciliation through any available counseling. At any time forty-five (45) days after the date of the continuance either party may move for the dissolution of the marriage and the court may enter a dissolution decree as provided in section 9(a). If no motion for the dissolution is filed, the matter shall be, automatically and without further action by the court, dismissed after the expiration of ninety (90) days from the date of continuance.

(b) In an action pursuant to section 3(b) when the court finds:

(1) that there is a duty to support by the person alleged to have that duty;

(2) that the duty to support has not been fulfilled; and

(3) that an order should be entered pursuant to section 12, the court shall enter a decree pursuant to section 9(b).

Sec. 9. Final Decree. (a) In an action pursuant to section 3(a) when the court has made the findings required by section 8(a), the court shall enter a dissolution decree. The decree may include orders as provided for in sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 23.

A dissolution decree shall become final when entered, subject to the right of appeal. An appeal from the provisions of a dissolution decree that does not challenge the findings as to the dissolution of said marriage shall not delay the finality of that provision of the decree which dissolves the marriage, so that the parties may remarry pending appeal.

(b) In an action pursuant to section 3(b) when the court has made the findings required by section 8(b), the court may enter a decree; the decree may include orders as provided for in sections 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 23.

(c) The court may make no provision for maintenance except that when the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of such incapacitated spouse to support himself or herself is materially affected, the court may make provision for the maintenance of said spouse during any such incapacity, subject to further order of the court.

Sec. 10. Agreements. (a) To promote the amicable settlements of disputes that have arisen or may arise between the parties to a marriage attendant upon the dissolution of their marriage, the parties may agree in writing to provisions for the maintenance of either of them, the disposition of any property owned by either or both of them and the custody and support of their children.

(b) In an action for dissolution of the marriage the terms of the agreement if approved by the court shall be incorporated and merged into the decree and the parties ordered to perform them, or the court may make provisions for disposition of property, child support, maintenance, and custody as provided by sections 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 23.

(c) The disposition of property settled by such an agreement and incorporated and merged into the decree shall not be subject to subsequent modification by the court except as the agreement itself may prescribe or the parties may subsequently consent.

Sec. 11. Disposition of Property. In an action pursuant to section 3(a), the court shall divide the property of the parties, whether owned by either spouse prior to the marriage, acquired by either spouse in his or her own right after the marriage and prior to final separation of the parties, or acquired by their joint efforts, in a just and reasonable manner, either by division of the property in kind, or by setting the same or parts thereof over to one (1) of the spouses and requiring either to pay such sum as may be just and proper, or by ordering the sale of the same under such conditions as the court may prescribe and dividing the proceeds of such sale.

In determining what is just and reasonable the court shall consider the following factors:

(a) the contribution of each spouse to the acquisition of the property, including the contribution of a spouse as homemaker;

(b) the extent to which the property was acquired by each spouse prior to the marriage or through inheritance or gift;

(c) the economic circumstances of the spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell therein for such periods as the court may deem just to the spouse having custody of any children;

(d) the conduct of the parties during the marriage as related to the disposition or dissipation of their property;

(e) the earnings or earning ability of the parties as related to a final division of property and final determination of the property rights of the parties.

Sec. 12. Child Support. (a) In an action pursuant to section 3(a) or (b), the court may order either parent to pay any amount reasonable for support of a child, without regard to marital misconduct after considering all relevant factors including:

(1) the financial resources of the custodial parent;

(2) standard of living the child would have enjoyed had the marriage not been dissolved;

(3) physical or mental condition of the child and his educational needs; and

(4) financial resources and needs of the noncustodial parent.

(b) Such child support order may also include, where appropriate:

(1) sums for the child's education in schools and at institutions of higher learning, taking into account the child's attitude and ability and the ability of the parent or parents to meet these expenses; and

(2) special medical, hospital or dental expenses necessary to serve the best interests of the child.

(c) As part of such child support order the court may set apart such portion of the property of either the husband or the wife, or both of them, as may seem necessary and proper for the support of the child.

(d) The duty to support a child under this provision ceases when the child becomes emancipated; provided, however, that the court may enter an order providing for the educational needs of the child which order may continue in effect until the child reaches his twenty-first birthday or, if the court has set apart a portion of the property of either the husband or the wife or both of them for the support of the child, or if the child is incapacitated, such order continues in effect indefinitely.

Sec. 13. Payment of Support Orders. (a) Upon entering an order pursuant to section 12 the court may require that the child support payments be made to the clerk of

the circuit court as trustee for remittance to the person entitled to receive payments.

(b) The clerk of the circuit court shall maintain records listing the amount of such payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the clerk of the court of any change of address or other conditions that may affect the administration of the order.

(d) At the time of entering an order pursuant to section 12, or at any time thereafter, the court may make an order, upon a proper showing of the necessity therefor, requiring the spouse or other person receiving such child support payments to render an accounting to the court of future expenditures upon such terms and conditions as the court shall decree.

Sec. 14. Persons Entitled to Receive Payments. (a) Upon entering an order pursuant to section 12 or at any time thereafter the court may make an order, upon the proper showing that a person other than the person awarded custody pursuant to section 23 should receive payments, directing the clerk of the circuit court or the person obligated to make the payments to transmit such payments to any third person agreed upon by the parties and approved by the court or appointed by the court, including but not limited to:

(1) a trustee, or

(2) the guardian of the estate of the child, or

(3) to any third person, or

(4) to the county department of public welfare or any appropriate social service agency.

(b) Any person named in subsection (a) shall be entitled to receive such child support payments from the clerk of the circuit court, or the person obligated to make the payments. Such payments shall be used solely for the benefit of the child entitled to receive such payments. The court may allow such person to receive a reasonable fee for ser-

vices rendered hereunder. Such person shall make financial reports in connection with such services at the time and the manner as may be prescribed by the court or required by law.

Sec. 15. Security for Payment. Upon entering an order pursuant to section 11 or 12, the court may provide for such security, bond or other guarantee that shall be satisfactory to the court to secure the obligation to make child support payments or to secure the division of property.

Sec. 16. Attorneys Fees. The court from time to time may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for attorneys' fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceedings or after entry of judgment. The court may order the amount to be paid directly to the attorney, who may enforce the order in his name.

Sec. 17. Modification and Termination of Provisions for Maintenance, Support and Property Disposition. (a) Provisions of an order with respect to child support may be modified or revoked. Such modification shall be made only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable. The orders as to property disposition entered pursuant to section 9 may not be revoked or modified, except in case of fraud which ground shall be asserted within two (2) years of said order. Terms of the decree may be enforced by all remedies available for enforcement of a judgment including but not limited to contempt or wage assignments except as otherwise provided in this chapter.

(b) Unless otherwise agreed in writing, or expressly terminated by the emancipation of the child but not by the death of the parent obligated to pay the child support, when the parent obligated to pay support dies, the amount of support may be modified or revoked to the extent just and appropriate under the circumstances on petition of representatives of his estate.

Sec. 18. Name Change of Woman. If the woman requests restoration of her maiden or previous married name, the court shall grant such name change upon entering the decree of dissolution. Any woman desiring such name change shall set out the name she desires to be restored to her in her petition for dissolution as part of the relief sought.

Sec. 19. Conciliation. A majority of the judges of the courts in any judicial circuit may establish a family relations division of such courts. Such division shall offer counseling and related services to persons before such courts. Such conciliation procedures may include, but shall not be limited to, referrals to the family relations division of the court, if established, public or private marriage counselors, family service agencies, community mental health centers, clinical psychologists, physicians or clergymen. The costs of any such conciliation procedures shall be paid by the parties as the court shall order, unless the court determines that such parties will be unable to pay the costs without prejudicing their financial ability to provide themselves and any minor children with economic necessities, in which event such costs shall be paid from the budget of the court.

Sec. 20. Child Custody: Commencement of Proceeding, Jurisdiction. A child custody proceeding is commenced in the court by a parent by filing a petition pursuant to section 4(a) or (b); or by a person other than a parent, by filing a petition seeking a determination of custody of the child in the county in which the child is permanently resident or where he is found.

Sec. 21. Child Custody Order: Best Interests of Child. (a) The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there shall be no presumption favoring either parent. The court shall consider all relevant factors including:

(1) the age and sex of the child;

(2) the wishes of the child's parent or parents;

(3) the wishes of the child;

(4) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(5) the child's adjustment to his home, school and community; and

(6) the mental and physical health of all individuals involved.

(b) Except as otherwise agreed by the parties in writing at the time of the custody order, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court finds, after motion by a non-custodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(c) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health might be endangered or his emotional development significantly impaired, the court may order the court social service agency, the staff of the juvenile court, the local probation or welfare department, or a private agency employed by the court for that purpose to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

(d) The court may interview the child in chambers to ascertain the child's wishes. The court may permit counsel to be present at the interview, in which event a record may be made of the interview and the same may be made part of the record for purposes of appeal.

(e) The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court.

Sec. 22. Investigations and Reports. (a) In contested custody proceedings, and in other custody proceedings if

a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the court social service agency, the staff of the juvenile Court, the local probation or welfare department, or a private agency employed by the court for the purpose.

(b) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he is of sufficient age and capable of forming rational and independent judgments. If the requirements of subsection (c) are fulfilled, the investigator's report may be received in evidence at the hearing, and it shall not be excluded on the grounds that it is hearsay or otherwise incompetent.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. No party may waive his right of cross-examination prior to the hearing.

(d) The court in determining said child custody, shall not hear evidence on matters occurring prior to the last custody proceeding between the parties unless such matters relate to a change of circumstances.

Sec. 23. Hearings. (a) Custody proceedings shall receive priority in being set for hearing.

(b) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(c) The court without a jury shall determine questions of law and fact.

(d) If the court finds it necessary to protect the child's welfare that the record of any interview, report, or investigation, in a custody proceeding, not be a public record, the court may make an appropriate order accordingly.

Sec. 24. Visitation. (a) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation by the parent might endanger the child's physical health or significantly impair his emotional development.

(b) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation might endanger the child's physical health or significantly impair his emotional development.

SECTION 2. If any provision of this act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

SECTION 3. The following laws are hereby specifically repealed: IC 1971, 31-1-12, sections 1 through 19; 31-1-13; 31-1-14; 31-1-17; 31-1-18; 31-1-19; 31-1-20; 31-1-21; 31-1-22; 31-2-3; 31-2-4; 31-2-6; 35-2-1, sections 2 and 3. Provided, however, That no such repeal shall apply to any action for divorce pending without a final decree on the effective date of this act, but upon the first entry of a final decree for divorce thereon by the trial court, such repeals shall thereafter apply to such pending action.

SECTION 4. This act shall be in full force and effect on and after September 1, 1973, except that this act shall

not apply to any action for divorce then pending without a final decree entered, but upon the first entry of a final decree for divorce therein by the trial court, this act shall thereafter apply to such pending action, and to all final decrees entered after September 1, 1973.

PUBLIC LAW No. 298

[H. 1168. Approved April 16, 1973.]

AN ACT to amend IC 1971, 31-3-1 as it relates to adoption procedures.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 1971, 31-3-1-1 is amended to read as follows: Sec. 1. Any resident of this state desirous of adopting any person under ~~twenty one (21)~~ **eighteen (18)** years of age, hereinafter referred to as a child, may by attorney of record file a petition with the clerk of the court having jurisdiction in probate matters in the county where such petitioner resides or in which is located any duly licensed child-placing agency or governmental agency having custody of such child, or in the county where such child may be found. In any county of this state where there is now or may hereafter be established a separate probate court, such court shall have exclusive jurisdiction in all adoption matters. No petition by a married person shall be granted unless the husband and wife shall join therein, except that when such petitioner shall be shown to be married to the natural, or adoptive, father or mother of such child then such joinder by such father or mother shall be deemed not necessary provided that duly acknowledged consent of the natural, or adoptive, parent is filed with the petition.

SECTION 2. IC 1971, 31-3-1-6 as amended by Acts 1971, P.L. 421, SECTION 1 is amended to read as follows: Sec. 6. (a) Except as otherwise provided in this section, a petition to adopt a ~~minor~~ **child under eighteen (18) years of age** may be granted only if written consent to adoption has been executed by:

and under the same procedure as is now provided by law for bringing such suits and proceedings against private corporations.

Sec. 4. K. S. A. 60-717 and 60-723 and K. S. A. 1968 Supp. 60-718 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 1969.

CHAPTER 285 *

Senate Bill No. 278

AN ACT providing for the commencement of ouster proceedings against certain gubernatorial appointees.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Whenever the attorney general determines that any person appointed by the governor to any public office, position, board, commission, department, agency or other instrumentality of the state, or any governmental subdivision thereof, does not possess the requisite qualifications prescribed by law for such appointee, or that the appointment was otherwise in contravention of such law or any other law of this state, said attorney general shall commence ouster proceedings against such appointee in the manner provided in the code of civil procedure.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 15, 1969.

CHAPTER 286

House Bill No. 1205

AN ACT relating to divorce; providing the grounds for divorce; amending K. S. A. 1968 Supp. 60-1601 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1968 Supp. 60-1601 is hereby amended to read as follows: 60-1601. The district court may grant a decree of divorce or separate maintenance for any of the following causes: (1) Abandonment for one year; (2) adultery; (3) extreme cruelty; (4) habitual drunkenness; (5) gross neglect of duty; (6) the conviction of a felony and imprisonment therefor subsequent to the marriage; (7) confinement in an institution by reason of mental illness for a period of three (3) years, which confinement need not be continuous, or an adjudication of mental illness or mental incapacity by a court of competent jurisdiction, without discharge or restoration therefrom and without confinement for more than three (3) years, with, in either case, a finding by at least two (2) of three

(3) physicians, appointed by the court before whom the action is pending, that the defendant has, based upon general knowledge available at such time, a poor prognosis for recovery from such mental illness or mental incapacity; but a decree granted on this ground shall not relieve the plaintiff from contributing to the support and maintenance of the defendant; *(8) incompatibility.*

Sec. 2. K. S. A. 1968 Supp. 60-1601 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 1969.

CHAPTER 287

House Bill No. 1129

AN ACT concerning the code of civil procedure; residence for divorce action; amending K. S. A. 60-1603 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 60-1603 is hereby amended to read as follows: 60-1603. *(a) State.* The plaintiff in an action for divorce must have been an actual resident of the state for ~~one year~~ *six (6) months* next preceding the filing of the petition.

(b) Military residence. Any person who has been a resident of or stationed at a United States post or military reservation within the state for ~~one year~~ *at least one hundred twenty (120) days* next preceding the filing of the petition may file an action for divorce in any county adjacent thereto.

(c) Residence of wife. For the purposes of this article, a wife may have a residence in this state separate and apart from the residence of the husband.

Sec. 2. K. S. A. 60-1603 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 18, 1969.

CHAPTER 288 *

House Bill No. 1316

AN ACT providing for taxing attorney fees as costs in actions for damages sustained by the negligent operation of motor vehicles.

Be it enacted by the Legislature of the State of Kansas:

Section 1. In actions brought for the recovery of damages of less than five hundred dollars ($500.00) sustained and caused by the negligent operation of a motor vehicle, the prevailing party, if he recovers damages, shall be allowed reasonable attorneys' fees which shall be taxed as part of the costs of such action: *Provided,*

STATE OF KANSAS

1969 SESSION LAWS OF KANSAS

(Prepared in accordance with subsection (*c*) of section 10 of Senate bill No. 1 of the 1969 Kansas Legislature *)

PASSED AT THE SIXTY-THIRD LEGISLATURE OF THE STATE OF KANSAS—1969 REGULAR SESSION

Date of Publication of this Volume
July 1, 1969

* See explanatory notes.

PRINTED BY
ROBERT R. (BOB) SANDERS, STATE PRINTER
TOPEKA, KANSAS
1969

32-8503

however, That such related functions or related services may include, but are not limited to, the following examples: computer-assisted instruction, data for teaching or administrative purposes, and educational noncommercial radio;

(12) "Related facilities" means and includes sites, buildings, structures, machinery, equipment and installations, each with necessary or appropriate appurtenances, used or useful in the furtherance of related functions or services.

Approved March 25, 1972

CHAPTER 182

(S. B. 133)

AN ACT relating to marriage and divorce.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. A new section of KRS Chapter 403 is created to read as follows:

This Act shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) Strengthen and preserve the integrity of marriage and safeguard family relationships;

(2) Promote the amicable settlement of disputes that have arisen between parties to a marriage;

(3) Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4) Makes reasonable provision for spouse and minor children during and after litigation; and

(5) Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 2. A new section of KRS Chapter 403 is created to read as follows:

(1) The circuit 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 the marriage was solemnized, either because of mental incapacity or deformity 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 the other party did not at the time the marriage was solemnized know of the incapacity;

(c) The marriage is prohibited.

(2) A declaration of invalidity under paragraph (a), (b) or (c) of subsection (1) may be sought by any of the following persons and must be commenced within the times specified, but only for the causes set out in paragraph (a) may a declaration of invalidity be sought after the death of either party to the marriage.

(a) For a reason set forth in paragraphs (a) and (b) of Subsection (1), by party or by the legal representative of the party who lacked capacity to consent was the offended party or did not know of the incapacity, no later than 90 days after the petitioner obtained knowledge of the described condition;

(b) For the reason set forth in Paragraph (c) of subsection (1), by either party, no later than one year after the petitioner obtained knowledge of the described condition;

Section 3. A new section of KRS Chapter 403 is created to read as follows:

(1) The Rules of Civil Procedure apply to all proceedings under this Act, except as otherwise provided in this Act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of_____ and_____." A custody or support proceeding shall be entitled "In re the (Custody) (Support) of_____."

(3) The initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this Act, shall be denominated as provided in the Rules of Civil Procedure.

(4) In this Act, "decree" includes "judgment."

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

Section 4. A new section of KRS Chapter 403 is created to read as follows:

(1) The circuit court shall enter a decree of dissolution of marriage if:

(a) The court finds that one of the parties, at the time the action was commenced, resided in this state, or was stationed in this state while a member of the armed services, and that the residence or military presence has been maintained for 180 days next preceding the filing of the petition;

(b) The court finds that the conciliation provisions of Section 7 either do not apply or have been met;

(c) The court finds that the marriage is irretrievably broken; and

(d) To the extent it has jurisdiction to do so, the court has considered, approved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects, in which latter event the other provisions of this act shall apply.

Section 5. A new section of KRS Chapter 403 is created to read as follows:

(1) All proceedings under this Act are commenced in the manner provided by the Rules of Civil Procedure.

(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege the marriage is irretrievably broken and shall set forth:

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

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

(c) That the parties are separated and the date on which the parties separated;

(d) The names, ages, and addresses of any living infant children of the marriage, and whether the wife is pregnant;

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

(f) The relief sought.

(3) Either or both parties to the marirage may initiate the proceeding.

(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Rules of Civil Procedure and may file a verified response.

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

(6) The court may join additional parties proper for the exercise of its authority to implement this Act.

(7) When the wife is pregnant at the time the petition is filed, the court may continue the case until the pregnancy is terminated.

Section 6. A new section of KRS Chapter 403 is created to read as follows:

(1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion

shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction or restraining order pursuant to the Rules of Civil Procedure.

(3) On the basis of the showing made and in conformity with Sections 10 and 11, the court may issue a temporary injunction or restraining order and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstances.

(4) A temporary order or temporary injunction:

(a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified before final decree on a showing of the facts necessary to revocation or modification under the circumstances; and

(c) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Section 7. A new section of KRS Chapter 403 is created to read as follows:

(1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken. No decree shall be entered until the parties have lived apart for 60 days. The Court may order a conciliation conference as a part of the hearing.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) Make a finding whether the marriage is irretrievably broken; or

(b) Continue the matter for further hearing not fewer than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court, at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

Section 8. A new section of KRS Chapter 403 is created to read as follows:

(1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for maintenance of either of them, disposition of any property owned by either of them, and custody, support and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the custody, support, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:

(a) Unless the separation agreement provides to the contrary, its terms shall be set forth verbatim or incorporated by reference in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the

separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforcible by all remedies available for enforcement of a judgment, including contempt, and are enforcible as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms if the separation agreement so provides. Otherwise, terms of a separation agreement are automatically modified by modification of the decree.

Section 9. A new section of KRS Chapter 403 is created to read as follows:

(1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart to each spouse;

(c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(2) For the purpose of this Act, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(a) Property acquired by gift, bequest, devise, or descent;

(b) Property acquired in exchange for property acquired

before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(c) Property acquired by a spouse after a decree of legal separation;

(d) Property excluded by valid agreement of the parties; and

(e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

Section 10. A new section of KRS Chapter 403 is created to read as follows:

(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to

which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

Section 11. A new section of KRS Chapter 403 is created to read as follows:

In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) The financial resources of the child;

(2) The financial resources of the custodial parent;

(3) The standard of living the child would have enjoyed had the marriage not been dissolved;

(4) The physical and emotional condition of the child, and his educational needs; and

(5) The financial resources and needs of the noncustodial parent.

Section 12. A new section of KRS Chapter 403 is created to read as follows:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defend-

ing any proceeding under this Act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 13. A new section of KRS Chapter 403 is created to read as follows:

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

(2) Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

Section 14. A new section of KRS Chapter 403 is created to read as follows:

If a party fails to comply with a provision of a decree of temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

Section 15. A new section of KRS Chapter 403 is created to read as follows:

(1) Except as otherwise provided in subsection 6 of Section 8, the provisions of any decree respecting maintenance or support may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly pro-

vided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Section 16. A new section of KRS Chapter 403 is created to read as follows:

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

(a) This State:

1. Is the home state of the child at the time of commencement of the proceeding; or

2. Had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

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

1. The child and his parents, or the child and at least one contestant, have a significant connection with this state; and

2. There is available in this state substantial evidence concerning the child's present future care, protection, training, and personal relationships; or

(c) The child is physically present in this state; and

1. Has been abandoned; or

2. It is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) 1. No other state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b) or (c) of subsection (1), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

2. It is in his best interest that the court assume jurisdiction.

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

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

(4) A child custody proceeding is commenced in the circuit court:

(a) By a parent, by filing a petition:

1. For dissolution or legal separation; or

2. For custody of the child in the county in which he is permanently resident or found; or

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

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

Section 17. A new section of KRS Chapter 403 is created to read as follows:

(1) The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(a) The wishes of the child's parent or parents as to his custody;

(b) The wishes of the child as to his custodian;

(c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(d) The child's adjustment to his home, school, and community; and

(e) The mental and physical health of all individuals involved.

(2) The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

Section 18. A new section of KRS Chapter 403 is created to read as follows:

(1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in Section 25. The court may award temporary custody under the standards of Section 17 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

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

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under subparagraph 2. of paragraph (a) or paragraph (b) of subsection (1) of Section 16 is dismissed, any temporary custody order is vacated.

Section 19. A new section of KRS Chapter 403 is created to read as follows:

(1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

Section 20. A new section of KRS Chapter 403 is created to read as follows:

(1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the friend of the court or such other agency as the court may select.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16, unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The clerk shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

Section 21. A new section of KRS Chapter 403 is created to read as follows:

(1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(3) The court without a jury shall determine questions of

law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

Section 22. A new section of KRS Chapter 403 is created to read as follows:

(1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health.

Section 23. A new section of KRS Chapter 403 is created to read as follows:

(1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodians may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the non-custodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the local probation or welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Section 24. A new section of KRS Chapter 403 is created to read as follows:

(1) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health.

(2) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with consent of the custodian; or

(c) The child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harrassment.

Section 25. A new section of KRS Chapter 403 is created to read as follows:

A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

Section 26. (1) This Act applies to all proceedings commenced on or after its effective date.

(2) This Act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this Act shall be in compliance with this Act.

(3) This Act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this Act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

Section 27. KRS 403.010 is amended to read as follows:

A jury shall not be impaneled in any action for divorce, alimony or maintenance, but courts having general equity jurisdiction may grant a divorce for *the cause set out in this chapter.* [any of the causes enumerated in KRS 403.020.] A decree of dissolution of marriage [judgment of divorce] authorizes either party to marry again.

Section 28. This Act does not repeal any laws relating to:

(1) The contents of and forms for marriage licenses and methods of registering marriages and providing for license or registration fees;

(2) The validity of premarital agreements between spouses concerning their marital property rights;

(3) Marital property rights during a marriage or when the marriage terminates by the death of one of the spouses;

(4) The scope and extent of the duty of a parent to support a child of the marriage;

(5) Custody of and support duty owed to an illegitimate child;

(6) Any applicable laws relating to wage assignments, garnishments, and exemptions other than those providing for family support and maintenance.

Section 29. KRS 403.020, 403.030, 403.035, 403.040, 403.055, 403.060, 403.065, 403.070, 403.080 and 453.120 are hereby repealed.

Approved March 25, 1972

CHAPTER 183

(S. B. 140)

AN ACT relating to presumption of death.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. A new section of KRS Chapter 422 is created to read as follows:

A determination of death made by a federal agency or military service of the United States government pursuant to Title 5, United States Code, Chapter 55, Subchapter VII; Title 37, United States Code, Chapter 10, or other applicable federal law shall be prima facie evidence that the death actually occurred with respect to any proceeding in any court in the Commonwealth of Kentucky or with respect to any action of an agency of government in the Commonwealth of Kentucky.

Approved March 25, 1972

CHAPTER 184

(S. B. 147)

AN ACT relating to the motor vehicle usage tax.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 138.470 is amended to read as follows:

There is expressly exempted from the tax imposed by KRS 138.460:

Kentucky Legislature

Normal Effective Dates

Legislation from Sessions of the Kentucky General Assembly

Updated June 2014

Section 55 of the Kentucky Constitution provides that "[n]o act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals, an act may become a law when approved by the Governor; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House."

Below, the effective date for legislation (other than appropriation bills) that does not contain an emergency or special effective date is set out for each legislative session from 1970. The source of this date is also given. "OAG" stands for a formal opinion of the Attorney General of the Commonwealth of Kentucky.

NOTE: In years when only one extraordinary session was called, it is still referred to as "first".

SESSION	EFFECTIVE DATE
2014 Regular Session	July 15, 2014, per OAG 14-001.
2013 Regular Session	June 25, 2013, per OAG 13-005.
2012 First Extraordinary Session	July 20, 2012, per OAG 12-007.
2012 Regular Session	July 12, 2012, per OAG 12-006.
2011 Regular Session	June 8, 2011, per OAG 11-002.
2010 First Extraordinary Session	August 28, 2010, per OAG 10-004.
2010 Regular Session	July 15, 2010, per OAG 10-002.
2009 Regular Session	June 25, 2009, per OAG 09-003.
2008 Regular Session	July 15, 2008, per OAG 08-001.
2007 Second Extraordinary Session	Act had emergency clause.
2007 Regular Session	June 26, 2007, per OAG 07-002.
2006 First Extraordinary Session	All Acts had emergency clauses.
2006 Regular Session	July 12, 2006, per OAG 06-001.
2005 Regular Session	June 20, 2005, per OAG 05-004.
2004 First Extraordinary Session	Act had emergency clause.
2004 Regular Session	July 13, 2004 per OAG 04-002
2003 Regular Session	June 24, 2003, per OAG 03-002
2002 Regular Session	July 15, 2002, per OAG 02-3
2001 Regular Session	June 21, 2001, per OAG 01-4
2000 Regular Session	July 14, 2000, per OAG 00-4
1998 Regular Session	July 15, 1998, per OAG 96-19
1997 First Extraordinary Session	August 29, 1997, per OAG 97-23
1996 First Extraordinary Session	All Acts had emergency clauses.
1996 Regular Session	July 15, 1996, per OAG 96-19
1995 Third Extraordinary Session	November 3, 1995, per OAG 95-32
1995 Second Extraordinary Session	April 28, 1995, per OAG 95-8
1995 First Extraordinary Session	April 7, 1995, per OAG 95-8
1994 Second Extraordinary Session	December 26, 1994, per OAG 95-8
1994 First Extraordinary Session	September 21, 1994, per OAG 95-8
1994 Regular Session	July 15, 1994, per OAG 94-30
1993 First Extraordinary Session	May 18, 1993, per OAG 93-25
1992 Regular Session	July 14, 1992, per OAG 92-72
1991 First Extraordinary Session	May 24, 1991, per OAG 91-38
1990 Regular Session	July 13, 1990, per OAG 89-56
1988 First Extraordinary Session	March 15, 1989, per OAG 89-1

1988 Regular Session	July 15, 1988, per OAG 88-21
1987 First Extraordinary Session	January 21, 1988, per OAG 87-74
1986 Regular Session	July 15, 1986, per OAG 86-6
1985 First Extraordinary Session	October 18, 1985, per OAG 85-113
1984 Regular Session	July 13, 1984, per OAG 84-164
1982 Regular Session	July 15, 1982, per OAG 82-308 and 82-15
1980 Regular Session	July 15, 1980, per OAG 80-44
1979 First Extraordinary Session	May 12, 1979, per Foreword of Acts volume
1978 Regular Session	June 17, 1978, per Foreword of Acts volume
1976 First Extraordinary Session	March 19, 1977, per Foreword of Acts volume
1976 Regular Session	June 19, 1976, per Foreword of Acts volume
1974 Regular Session	June 21, 1974, per Foreword of Acts volume
1972 Regular Session	June 16, 1972, per OAG 72-195
1970 Regular Session	June 18, 1970, per OAG 70-145

TITLE V - DIVORCE
CHAPTER 1. THE DIVORCE ACTION

Art. 102. Judgment of divorce; living separate and apart prior to rule

Except in the case of a covenant marriage, a divorce shall be granted upon motion of a spouse when either spouse has filed a petition for divorce and upon proof that the requisite period of time, in accordance with Article 103.1, has elapsed from the service of the petition, or from the execution of written waiver of the service, and that the spouses have lived separate and apart continuously for at least the requisite period of time, in accordance with Article 103.1, prior to the filing of the rule to show cause.

The motion shall be a rule to show cause filed after all such delays have elapsed.

Amended by Acts 1952, No. 229, §1; Acts 1958, No. 331; Acts 1990, No. 1009, §2, eff. Jan. 1, 1991; Acts 1991, No. 367, §1; Acts 1993, No. 107, §1; Acts 1995, No. 386, §1; Acts 1997, No. 1380, §1; Acts 2006, No. 743, §1, eff. Jan. 1, 2007.

Art. 103. Judgment of divorce; other grounds

Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

(1) The spouses have been living separate and apart continuously for the requisite period of time, in accordance with Article 103.1, or more on the date the petition is filed.

(2) The other spouse has committed adultery.

(3) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

(4) The other spouse has physically or sexually abused the spouse seeking divorce or a child of one of the spouses, regardless of whether the other spouse was prosecuted for the act of abuse.

(5) After a contradictory hearing or consent decree, a protective order or an injunction has been issued, in accordance with law, against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse.

Acts 1990, No. 1009, §2, eff. Jan. 1, 1991; Acts 1991, No. 918, §1; Acts 1997, No. 1380, §1; Acts 2006, No. 743, §1, eff. Jan. 1, 2007; Acts 2014, No. 316, §1.

Art. 103.1. Judgment of divorce; time periods

The requisite periods of time, in accordance with Articles 102 and 103 shall be as follows:

(1) One hundred eighty days where there are no minor children of the marriage.

(2) Three hundred sixty-five days when there are minor children of the marriage at the time the rule to show cause is filed in accordance with Article 102 or a petition is filed in accordance with Article 103.

Acts 2006, No. 743, §1, eff. Jan. 1, 2007; Acts 2010, No. 604, §1, eff. June 25, 2010; Acts 2014, No. 316, §1.

Chap. 696. AN ACT VALIDATING THE ACTS AND PROCEEDINGS OF THE ANNUAL TOWN MEETING AND THE ELECTION OF TOWN OFFICIALS IN THE TOWN OF ROCKLAND IN THE YEAR NINETEEN HUNDRED AND SEVENTY-FIVE.

Be it enacted, etc., as follows:

SECTION 1. The acts and proceedings of the town of Rockland taken at its annual town meeting held on April seventh, nineteen hundred and seventy-five, and its election of town officials held on March first, nineteen hundred and seventy-five, and all acts done in pursuance thereof are hereby ratified, validated, and confirmed to the same extent as if said meeting and election were held in accordance with the provisions of section nine A of chapter thirty-nine of the General Laws relative to the warrant requirements and the time for holding said meeting and election.

SECTION 2. This act shall take effect upon its passage.

Approved November 17, 1975.

Chap. 697. AN ACT PERMITTING THE TRANSPORT OF CAROUSELS AND SIMILAR DEVICES DURING CERTAIN HOURS ON THE COMMON DAY OF REST AND LEGAL HOLIDAYS.

Be it enacted, etc., as follows:

Section 6 of chapter 136 of the General Laws is hereby amended by inserting after paragraph (48), inserted by chapter 219 of the acts of 1974, the following clause: —

(49) The transport of amusement devices, such as carousels, ferris wheels, inclined railways and other similar devices, concessions stands and tents from one location to the next between eight o'clock in the forenoon and one o'clock in the afternoon.

Approved November 17, 1975.

Chap. 698. AN ACT PROVIDING FOR AN IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE AS A GROUND FOR AN ACTION FOR DIVORCE.

Be it enacted, etc., as follows:

SECTION 1. Chapter 208 of the General Laws is hereby amended by striking out section 1, as most recently amended by section 6 of chapter 400 of the acts of 1975, and inserting in place thereof the following section: —

Section 1. A divorce from the bond of matrimony may be adjudged for adultery, impotency, utter desertion continued for one year next prior to the filing of the complaint, gross and con-

firmed habits of intoxication caused by voluntary and excessive use of intoxicating liquor, opium, or other drugs, cruel and abusive treatment, or, on the complaint of the wife, if the husband being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her, or for an irretrievable breakdown of the marriage as provided in sections one A or one B; provided, however, that a divorce shall be adjudged although both parties have cause, and no defense upon recrimination shall be entertained by the court.

SECTION 2. Said chapter 208 is hereby further amended by inserting after section 1 the following two sections: —

Section 1A. An action for divorce on the ground of an irretrievable breakdown of the marriage may be commenced with the filing of: (*a*) the complaint; (*b*) a sworn affidavit by both parties that an irretrievable breakdown of the marriage exists; and (*c*) a notarized separation agreement executed by the parties, except as hereinafter set forth. After a hearing on a separation agreement which has been presented to the court, the court shall, within thirty days of said hearing, make a finding as to whether or not an irretrievable breakdown of the marriage exists and whether or not the agreement has made proper provisions for custody, for support and maintenance, for alimony and for the disposition of marital property. In making its finding, the court shall apply the provisions of section thirty-four, except that the court shall make no inquiry into, nor consider any evidence of the individual marital fault of the parties. In the event the notarized separation agreement has not been filed at the time of the commencement of the action, it shall in any event be filed with the court within ninety days following the commencement of said action.

If the finding is in the affirmative, the court shall approve the agreement and it shall have the full force and effect of an order of the court and shall be incorporated and merged into said order, and by agreement of the parties it may also remain as an independent contract. In the event that the court does not approve the agreement as executed, or modified by agreement of the parties, said agreement shall become null and void and of no further effect between the parties; and the action shall be treated as dismissed, but without prejudice. Following approval of an agreement by the court, but prior to the entry of judgment nisi, said agreement may be modified in accordance with the foregoing provisions at any time by agreement of the parties and with the approval of the court, or by the court upon the petition of one of the parties after a showing of a substantial change of circumstances; and the agreement, as modified, shall continue as the order of the court.

Ten months from the time that the court has given its initial approval to a dissolution agreement of the parties which makes

proper provisions for custody, for support and maintenance, for alimony and for the disposition of marital property, notwithstanding subsequent modification of said agreement, a judgment of divorce nisi shall be entered without further action by the parties.

Nothing in the foregoing shall prevent the court, at any time prior to the approval of the agreement by the court, from making temporary orders for custody, support and maintenance, or such other temporary orders as it deems appropriate, including referral of the parties and the children, if any, for marriage or family counseling.

Prior to the entry of judgment under this section, the complaint may be withdrawn by mutual agreement of the parties.

An action commenced under this section shall be placed by the register of probate for the county in which the action is so commenced on a hearing list separate from that for all other actions for divorce brought under this chapter, and shall be given a speedy hearing on the dissolution agreement insofar as that is consistent with the wishes of the parties.

Section 1B. An action for divorce on the ground of an irretrievable breakdown of the marriage may be commenced by the filing of the complaint unaccompanied by the signed statement and dissolution agreement of the parties required in section one A.

No earlier than twenty-four months after the filing of the complaint, there shall be a hearing and the court may enter a judgment of divorce nisi if the court finds that there has existed, for the period following the filing of the complaint and up to the date of the hearing, a continuing irretrievable breakdown of the marriage.

As part of the entry of the judgment of divorce nisi, appropriate orders shall be made by the court with respect to custody, support and maintenance of children, and, in accordance with the provisions of section thirty-four, for alimony and for the disposition of marital property.

Nothing in the foregoing shall prevent the court, at any time prior to judgment, from making temporary orders for custody, support and maintenance or such other temporary orders as it deems appropriate, including referral of the parties and the children, if any, for marriage or family counseling.

Prior to the entry of judgment under this section, in the event that the parties file the statement and dissolution agreement as required under section one A hereinabove, then said action for divorce shall proceed under said section one A.

SECTION 3. Said chapter 208 is hereby further amended by striking out section 3, as amended by section 8 of chapter 400 of the acts of 1975, and inserting in place thereof the following section: —

Section 3. A divorce may be adjudged for any of the causes allowed by sections one, one B, or two although the defendant

has been continuously absent for such time and under such circumstances as would raise a presumption of death.

SECTION 4. This act shall take effect on January first, nineteen hundred and seventy-six, and shall apply to actions for divorce commenced on or after said date.

Approved November 19, 1975.

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT, STATE HOUSE
BOSTON, December 30, 1975.

The Honorable PAUL H. GUZZI, *Secretary of the Commonwealth, State House, Boston, Massachusetts.*

DEAR MR. SECRETARY: — I, Michael S. Dukakis, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, the Referendum II, Emergency Measures, hereby declare in my opinion the immediate preservation of the public convenience requires that the law being Chapter 698 of the Acts of 1975, entitled AN ACT PROVIDING FOR AN IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE AS A GROUND FOR AN ACTION FOR DIVORCE., and the enactment of which received my approval on November 19, 1975, should take effect forthwith.

I further declare that in my opinion said law is an emergency law and the facts constituting the emergency are as follows:

In order to allow for certain procedures contained in Chapter 698 of the Acts of 1975 immediately available to petitioners for divorce.

Sincerely,
MICHAEL S. DUKAKIS,
Governor of the Commonwealth.

OFFICE OF THE SECRETARY, BOSTON, December 30, 1975.

I, Paul Guzzi, Secretary of the Commonwealth, hereby certify that the accompanying statement was filed in this office by His Excellency the Governor of the Commonwealth of Massachusetts at three o'clock and twenty minutes, P.M., on the above date, and in accordance with Article Forty-eight of the Amendments to the Constitution said chapter takes effect forthwith, being chapter six hundred and ninety-eight of the acts of nineteen hundred and seventy-five.

PAUL GUZZI,
Secretary of the Commonwealth.

Chap. 699. AN ACT REGULATING THE BUSINESS OF PIPEFITTING.

Article - Family Law

§7–103.

(a) The court may decree an absolute divorce on the following grounds:

(1) adultery;

(2) desertion, if:

(i) the desertion has continued for 12 months without interruption before the filing of the application for divorce;

(ii) the desertion is deliberate and final; and

(iii) there is no reasonable expectation of reconciliation;

(3) conviction of a felony or misdemeanor in any state or in any court of the United States if before the filing of the application for divorce the defendant has:

(i) been sentenced to serve at least 3 years or an indeterminate sentence in a penal institution; and

(ii) served 12 months of the sentence;

(4) 12–month separation, when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce;

(5) insanity if:

(i) the insane spouse has been confined in a mental institution, hospital, or other similar institution for at least 3 years before the filing of the application for divorce;

(ii) the court determines from the testimony of at least 2 physicians who are competent in psychiatry that the insanity is incurable and there is no hope of recovery; and

(iii) 1 of the parties has been a resident of this State for at least 2 years before the filing of the application for divorce;

(6) cruelty of treatment toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation; or

(7) excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

(b) Recrimination is not a bar to either party obtaining an absolute divorce on

the grounds set forth in subsection (a)(1) through (7) of this section, but is a factor to be considered by the court in a case involving the ground of adultery.

(c) Res judicata with respect to another ground under this section is not a bar to either party obtaining an absolute divorce on the ground of 12–month separation.

(d) Condonation is not an absolute bar to a decree of an absolute divorce on the ground of adultery, but is a factor to be considered by the court in determining whether the divorce should be decreed.

(e) (1) A court may decree an absolute divorce even if a party has obtained a limited divorce.

(2) If a party obtained a limited divorce on the ground of desertion that at the time of the decree did not meet the requirements of subsection (a)(2) of this section, the party may obtain an absolute divorce on the ground of desertion when the desertion meets the requirements of subsection (a)(2) of this section.

Whoever violates this section shall be punished by a fine of not more than $100 and by imprisonment for not more than 90 days.

Effective October 3, 1973

CHAPTER 531

AN ACT to Amend the Workmen's Compensation Act to Make Compensation for Permanent Partial Incapacity Coextensive with the Duration of Disability.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 39, § 55, amended. Section 55 of Title 39 of the Revised Statutes, as last repealed and replaced by section 140 of chapter 622 of the public laws of 1971, is amended to read as follows:

§ 55. Compensation for partial incapacity

While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to ⅔ the difference, due to said injury, between his average weekly wages, earnings or salary before the accident and the weekly wages, earnings or salary which he is able to earn thereafter, but not more than ⅔ of the average weekly wage in the State of Maine as computed by the Employment Security Commission; and such weekly compensation shall be adjusted annually on July 1st so that it continues to bear the same percentage relationship to the average weekly wage in the State of Maine as computed by the Employment Security Commission, as it did at the time of the injury~~; and in no case shall the period covered by such compensation be greater than 325 weeks from the date of the accident except for vocational rehabilitation services provided under sections 52 and 54~~.

Sec. 2. Effective date. This Act shall become effective November 30, 1973.

Effective November 30, 1973

CHAPTER 532

AN ACT Providing for Irreconcilable Marital Differences as a Ground for Divorce.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 19, § 691, amended. The first sentence of section 691 of Title 19 of the Revised Statutes is amended to read as follows:

A divorce from the bonds of matrimony may be decreed in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for 3 consecutive

years next prior to the filing of the complaint, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment **or the marital differences are irreconcilable and the marriage has broken down** or, on the complaint of the wife, where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her, provided the parties were married in this State or cohabited here after marriage, or if the plaintiff resided here when the cause of divorce accrued, or had resided here in good faith for 6 months prior to the commencement of proceedings, or if the defendant is a resident of this State. **When the alleged cause is irreconcilable marital differences, a divorce shall not be granted unless both parties have received counseling by a professional counselor who is qualified in counseling either through educational certification or experience and as approved by the court, and a copy of the counselor's report is made available to the parties and to the court.**

Effective October 3, 1973

CHAPTER 533

AN ACT to Clarify and Improve the Enforcement of Decisions of the Public Employees Labor Relations Board.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 26, § 968, sub-§ 5, ¶ D, amended. Paragraph D of subsection 5 of section 968 of Title 26 of the Revised Statutes, as enacted by section 9 of chapter 609 of the public laws of 1971, is amended to read as follows:

D. If after the issuance of an order by the board requiring any party to cease and desist or to take any other affirmative action, ~~such~~ **said** party fails to comply with the order of the board then the party in whose favor the order operates may file a civil action in the Superior Court ~~in the county in which the prohibited practice was found to have occurred~~ **of Kennebec County,** to compel compliance with the order of the board. **Upon application of any party of interest or the board, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it deems just and proper; provided that the board's decision shall not be stayed except where it is clearly shown to the satisfaction of the court that substantial and irreparable injury shall be sustained or that there is a substantial risk of danger to the public health or safety.** In such action **to compel compliance** the Superior Court shall not review the action of the board other than to determine whether the board has acted in excess of its jurisdiction. If an action to review the decision of the board is pending at the time of the commencement of an action for enforcement pursuant to this subsection or is thereafter filed, the 2 actions shall be consolidated.

Sec. 2. R. S., T. 26, § 968, sub-§ 5, ¶ F, repealed and replaced. Paragraph F of subsection 5 of section 968 of Title 26 of the Revised Statutes, as enacted by section 9 of chapter 609 of the public laws of 1971, is repealed and the following enacted in place thereof:

LEGISLATIVE RECORD

OF THE

One Hundred and Sixth Legislature

OF THE

STATE OF MAINE

Volume III

June 6, 1973 to July 3, 1973

Index

KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Tuesday, June 19, 1973

Senate called to order by the President.

Prayer by the Rev. Sumner L. Morrison of Augusta.

Reading of the Journal of yesterday.

Papers from the House
Non-concurrent Matter

Bill, "An Act to Insure Permanent Funding of the Maine Law Enforcement and Criminal Justice Academy." (H. P. 1575) (L. D. 2004)

In the House June 14, 1973, Passed to be Enacted.

In the Senate June 15, 1973, Indefinitely Postponed in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

On motion by Mr. Berry of Cumberland, tabled until later in today's session, pending Consideration.

Non-concurrent Matter

Bill, "An Act to Amend the Land Use Regulation Commission Law." (H. P. 627) (L. D. 851)

In the House June 1, 1973, Passed to be Engrossed as Amended by Committee Amendment "A" (H-471).

In the Senate June 15, 1973, Passed to be Engrossed as Amended by Committee Amendment "A" and Senate Amendment "C" (S-239), in non- concurrence.

Comes from the House, that Body having Insisted.

On motion by Mr. Berry of Cumberland, tabled until later in today's session, pending Consideration.

Non-concurrent Matter

Bill, "An Act Relating to the Maine Development Act." (S. P. 536) (L. D. 1756)

In the Senate June 14, 1973, Passed to be Engrossed as Amended by Committee Amendment "A" (S-234).

Comes from the House, the Majority Ought Not to Pass report Read and Accepted in non-concurrence.

On motion by Mr. Minkowsky of Androscoggin, the Senate voted to Insist and Ask for a Committee of Conference.

The President appointed the following Conferees on the part of the Senate:

Senators:

MINKOWSKY of Androscoggin
SHUTE of Franklin
CLIFFORD of Androscoggin

Non-concurrent Matter

Bill, "An Act Regulating the Interception of Wire and Oral Communications." (S. P. 377) (L. D. 1108)

In the Senate May 25, 1973, Passed to be Engrossed as Amended by Senate Amendment "B" (S-171).

Comes from the House, Passed to be Engrossed as Amended by Senate Amendment "B" and as Amended by House Amendment "A" (H-531), as Amended by House Amendment "A" Thereto (H-576), in non-concurrence.

On motion by Mr. Katz of Kennebec, the Senate voted to Recede and Concur.

State of Maine
Joint Resolution

In the Year of our Lord One Thousand Nine Hundred and Seventy-three.

Joint Resolution in Recognition of the Appointment of Rosalyne S. Bernstein as one of the First Women Members of the Board of Trustees of Bowdoin College

WHEREAS, Rosalyne S. Bernstein, of Portland has recently been appointed as one of the first women members of the Board of Trustees of Bowdoin College; and

WHEREAS, Rosalyne S. Bernstein is well known in her community and State for her many acts of charitable and public service, including membership on and the chairmanship of the Portland School Committee; now, therefore, be it

RESOLVED: That We, the Members of the Senate and House of Representatives of the One Hundred and Sixth Legislature, extend

to Rosalyne S. Bernstein sincere best wishes for continued successful public service as a member of the Board of Trustees of Bowdoin College; and be it further

RESOLVED: That a duly authenticated copy of this resolution be forwarded by the Secretary of State to Rosalyne S. Bernstein of Portland.

Comes from the House, Read and Adopted.

Which was Read and Adopted in concurrence.

Committee Reports
House
Ought to Pass

The Committee on State Government on, Bill, "An Act Relating to Salaries of County Attorneys and Assistant County Attorneys," (H. P. 964) (L. D. 1285)

Reported that the same Ought to Pass.

Comes from the House, Passed to be Engrossed.

Which report was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, the reason that this particular bill came out of committee with an Ought to Pass Report is that the Committee on State Government did not have the information as to what would happen to the other two bills which are presently before this legislature as to creating full-time district prosecuting attorneys. We did feel that should those other two bills fail to pass, that there should be something done about creating full-time prosecuting attorneys. We, therefore, reported this bill out Ought to Pass in order to keep it alive, and I would hope that at some future point, should the bill be accepted at this point, that it would be tabled until we then find out what will happen to the other two bills.

The PRESIDENT: Is it the pleasure of the Senate to accept the Ought to Pass Report of the Committee in concurrence?

The Ought to Pass Report of the Committee was Accepted in concurrence and the Bill Read Once. Under suspension of the rules, the Bill was then given its Second Reading.

Thereupon, on motion by Mr. Speers of Kennebec, tabled, pending Passage to be Engrossed.

Ought to Pass in New Draft

The Committee on Education on, Bill, "An Act Relating to Representation on Boards of School Directors." (H. P. 99) (L. D. 120)

Reported that the same Ought to Pass in New Draft under New Title: "An Act Relating to Representation of Boards of School Directors" (H. P. 1617) (L. D. 2037)

Comes from the House, the Bill in New Draft Passed to be Engrossed.

Which report was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I rise only to call the Senate's attention to this bill because you are probably going to be getting substantial flak on it. This was the bill that was recalled from the legislative files because of the action of the federal court in a suit involving SAD 1 in Presque Isle declaring that the one-man one-vote rule must be applied to school district representation.

This bill is a necessity to give Presque Isle the legal ability to react, but it is going to cause a very substantial amount of dislocation in the state, and for that reason I call it to your attention.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, I would request through the Chair an explanation of the bill, as to whether it does require a substantial change. I know in my community the school board membership is of appointed members, and there is no requirement that they be from any part of the municipality. Would this, through the Chair again, affect appointive type school boards.

The PRESIDENT: The Senator from Androscoggin, Senator Clifford, poses a question through the Chair which the Senator may answer if he desires.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I would suggest that the bill not be given its second reading today. I would defer responding to the question as to the contents of the bill. It is a rather long and complicated bill. Briefly, it permits crossing of municipal lines for representation, but I would recommend it to the attention of each individual Senator to read the bill to get its impact.

The PRESIDENT: Is it now the pleasure of the Senate to accept the Ought to Pass in New Draft Report of the Committee in concurrence?

The Ought to Pass in New Draft Report of the Committee was Accepted, the Bill in New Draft Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Marine Resources on Bill, "An Act to Change the Lobster License to the Boats, Increase License Fees and to Limit the Number of Licenses." (H. P. 1221) (L. D. 1578)

Reported that the same Ought Not to Pass.

Signed:

Senators:

HUBER of Knox
RICHARDSON
of Cumberland

Representatives:

BROWN of Augusta
LEWIS of Bristol
DAVIS of Addison
SHUTE
of Stockton Springs
BUNKER of Gouldsboro

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass in New Draft under New Title: "An Act to Conserve, Manage and Regulate the Lobster Fishery" (H. P. 1614) (L. D. 2031)

Signed:

Senator:

DANTON of York

Representatives:

LaCHARITE
of Brunswick
MULKERN of Portland
WEBBER of Belfast
GREENLAW
of Stonington
KNIGHT of Scarborough

Comes from the House, Bill and accompanying papers Indefinitely Postponed.

Which reports were Read.

On motion by Mr. Huber of Knox, tabled and Tomorrow Assigned, pending Acceptance of Either Report.

Second Readers

The Committee on Bills in the Second Reading reported the following:

House — As Amended

Bill, "An Act Authorizing the State Housing Authority to Establish Capital Reserve Funds." (H. P. 1596) (L. D. 2022)

Which was Read a Second Time.

Mr. Brennan of Cumberland then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-248, was Read.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A"?

The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, I would ask a question through the Chair of the Senator from Cumberland, Senator Brennan, as to the purpose of this amendment.

The PRESIDENT: The Senator from Kennebec, Senator Speers, has posed a question through the Chair which the Senator may answer if he desires.

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: This amendment would give the capability to the State Housing Authority to make direct loans to a borrower when that borrower has been turned down by three banks. These direct loans though would be limited to housing insured, guaranteed or assisted by the federal government, such as the VA loans and the FHA loans.

As we all know, Maine has an absolutely horrible housing situation. I think if we permit the State Housing Authority this authority, this capability, we will be moving in the right direction to do something about that housing. Again, it would be restricted to direct loans where there is already

federal assurance or federal guarantees, so I think it is an amendment that makes an awful lot of sense.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: The Committee on State Government heard a number of bills in this session dealing with housing and housing problems, and I would certainly agree with the good Senator from Cumberland, Senator Brennan, when he states that housing is a very serious problem for the people of the State of Maine.

I think the Committee on State Government has done quite a bit in reporting out a number of bills Ought to Pass which expand the authority of the State Housing Authority and the ability of the State Housing Authority to deal with the problem of inadequate housing in the State of Maine.

The Committee was faced with a considerable amount of money that was being requested by the State Housing Authority, and we could have gone one of two routes. We could very easily have put a rubber stamp on all of these bills and said that they are all very well and very worthy of passage, and have passed the buck to the Appropriations Committee to then decide what they are going to be able to fund and what they are not going to be able to fund. Or I think the Committee could have taken, as I feel it did, a more responsible step to try and order priorities on these particular bills as far as the Housing Authority in operating its own responsibilities, as well as trying to order priorities on the amount of appropriations that would be forthcoming through the authority.

My feeling on this particular amendment — and this was heard before the Committee, the exact issue before us now, as to whether or not the Housing Authority should have the authority to enter into the direct loan business — it was my feeling, and I feel that it was the feeling on the part of the Committee, that they should not have this authority to enter into direct loans. Even the MRA or the MIBA does not have that authority, nor have they asked for that authority. They are a guarantee authority, and they do not make direct loans.

I think that the Housing Authority has a limited staff under the direction of one individual, and they are going to be having enough to be doing over there as a result of the number of bills that have been passed out by the Committee on State Government expanding their authority to subsidize mortgage payments, picking up on the federal housing programs, expanding their authority to make rent subsidies, expanding their authority to build housing for the elderly. They are going to be having enough new things to be doing over there without entering into the direct loan business.

There are a number of problems that arise from direct loans. The proponents would say that there are guarantees and limitations built into this in that the individual has to be turned down by three banks before he may come to the Housing Authority for a loan. The problem with that is simply this: that an individual can go to a bank for a $40,000 mortgage, he may not be financially able to meet the demands of the $40,000 mortgage, and of course the bank is going to turn him down. Then he will turn around and go to another bank for the same mortgage, and a third bank for the same mortgage, then he has been turned down by three banks. Then he comes to the Maine Housing Authority and says "Well, I have been turned down by three banks and I am here to apply for a loan from the Housing Authority." I am taking a rather extreme example in a $40,000 mortgage, but the point is that the same individual may very well have applied to all three of those banks for a $20,000 mortgage and may have been accepted by all three of the banks. So you have a basic problem built into the direct loan situation right there.

Now, I understand the problem that this amendment is attempting to reach, in that apparently a number of banks have not been loaning under the Veterans Administration loans. The Committee understood that problem as well, and I feel

we have acted to deal with that problem and to correct that problem. The legislation as it now stands would establish a capital reserve fund, and other legislation has been enacted which would allow the Maine Housing Authority to purchase mortgages which are older than six years. Because of this legislation, there will be freed a great deal more money within the banks to write new mortgages. And, because of the limitations written into that law, the banks must place this money, this new money which is being freed up by the Housing Authority being able to purchase older mortgages, the banks must place this new money into exactly the same kind of mortgages that the Housing Authority is buying up. So we have acted to correct the problem that this amendment is directed toward. That is, to create a good deal more money for the housing market on the part of the banks.

Mr. President, I would oppose the adoption of this amendment, and would move its indefinite postponement.

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that Senate Amendment "A" be indefinitely postponed.

The Chair recognizes the Senator from Hancock, Senator Anderson.

Mr. ANDERSON: Mr. President and Members of the Senate: The State of Maine is already in the television business and the real estate business. I don't think we should go into the banking business, so I go along with the good Senator from Kennebec, Senator Speers.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: As far as I can understand it, we can have all the rhetoric we want about our desires to help alleviate the housing situation in the State of Maine, but all that rhetoric will not build one more house, nor will it permit a veteran or somebody buying a house under the FHA, who can't get a loan, to buy a home. I think we have had all the rhetoric we need with reference to housing.

This amendment would give some real capability. This amendment would permit the State Housing Authority to move in and help those situations where people have been turned down. I don't see it as any give-away program where these loans would be guaranteed. Of course, the FHA has their standards and the VA has their standards, So if we are really serious about doing something about the housing situation in the State of Maine, we will support this amendment.

I can appreciate in the Maine Senate this amendment will be in big trouble. It is my understanding that the banking interests are opposed to it, and it is always a problem if the banking interests are opposed to something. But this is an amendment that seriously would give the capability to do something about housing. So I would again urge the adoption of this amendment and ask for a roll call on it.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I am sure the Junior Senator from Cumberland is not going to infer that I am a tool of the banking interests, although I have to admit that I am very frugal and have deposits in one.

The Maine Housing Authority, to a very real extent, was born in this chamber on a very snowy night in the 104th Legislature, and I participated in that meeting and have supported the Maine Housing Authority. But quite a few years have gone by since the Maine Housing Authority was created, and it has had a reasonably rocky road. The legislature has a habit of waiting until we have some real problems before we review programs.

Irrespective of the outcome of this debate today, I would hope that the Senator from Kennebec, Senator Speers, would think in terms of addressing the attention of the State Government Committee during the interim between

sessions to a review and evaluation of the accomplishments and potential accomplishments of the Maine Housing Authority, not as a witch hunt, not as an attempt to do any discrediting, but in an effort to see to what extent the Maine Housing Authority has lived up to its advance billing.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, the good Senator from Cumberland, Senator Brennan, has talked about rhetoric. I thought in explaining my opposition to this particular amendment that I had indicated a number of instances where the State Government Committee and this legislature had acted positively to deal with the problem of housing shortages in this state.

I am under no illusions as to the purpose of offering this amendment and the purpose of asking for a roll call. I am sure that the good Senator would have found some reason to propose some amendment to a housing bill in order to have the members of this body on record one way or the other on the issue of housing, but I feel that we have taken some good positive steps to deal with this problem and that we have been responsible in attempting to come up with a program that would alleviate the housing shortage in this state.

I am referring to L. D. 2001, which is An Act to Correct Errors and Inconsistencies in the State Housing Authority Act, which has been enacted and which has been signed by the Governor, in which we have removed the restriction of six months to purchasing mortgages. The purpose of that removal, as I tried to indicate in my prior remarks, was to free up some of the money that should be available for writing some of the very mortgages that the good Senator wishes to achieve with this amendment.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President, on the 15th of June in the Bangor Daily News was the following article, which I think is quite apropos to what we are talking about: This says that Maine should be in the midst of a building boom, according to figures released by the Dodge Division of McGraw-Hill. The total construction in Maine as per future contracts as of the end of April is up 24 percent over a year ago, for a total figure of $101 million. Residential construction shows the greatest gain, up 45 percent from 1972. It seems to me this indicates that what we are doing in residential construction is certainly right.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Kennebec, Senator Speers, that Senate Amendment "A" be indefinitely postponed. A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of one-fifth of those Senators present and voting. Will all those Senators favoring a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from Kennebec, Senator Speers, that Senate Amendment "A" be indefinitely postponed. A "Yes" vote will be in favor of indefinite postponement; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Anderson, Berry, Cox, Joly, Katz, Morrell, Roberts, Schulten, Sewall, Speers, Tanous, Wyman, MacLeod.

NAYS: Senators Aldrich, Brennan, Cianchette, Clifford, Conley, Cummings, Cyr, Danton, Fortier, Graffam, Greeley, Hichens, Huber, Kelley, Marcotte, Minkowsky, Peabody, Richardson.

ABSENT: Senators Olfene, Shute.

A roll call was had. 13 Senators having voted in the affirmative, and 18 Senators having voted in the negative, with two Senators being absent, the motion did not prevail.

Thereupon, Senate Amendment "A" was Adopted and the Bill, as

Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

Enactors

The Committee on Engrossed Bills reported as truly and strictly engrossed the following:

An Act Providing for Irreconcilable Marital Differences as a Ground for Divorce. (S. P. 69) (L. D. 171)

An Act to Provide Elected District Attorneys. (S. P. 474) (L. D. 1569)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

An Act Relating to Applicability of Workmen's Compensation Law to Employers. (S. P. 618) (L. D. 1934)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

An Act to Clarify and Simplify the Administration of the Mechanic's Lien Law. (H. P. 1361) (L. D. 1817)

(On motion by Mr. Berry of Cumberland, tabled and Tomorrow Assigned, pending Enactment.)

An Act Changing the Dates for Registration of Automobiles. H. P. 1597) (L. D. 2023)

(On motion by Mr. Greeley of Waldo, placed on the Special Highway Appropriations Table.)

Which, except for the tabled matters, were Passed to be Enacted and, having been signed by the President, were by the Secretary presented to the Governor for his approval.

Resolve, Approving Draft and Arrangement of the State Constitution Made by the Chief Justice of the Supreme Judicial Court, and Providing for its Publication and Distribution. (S. P. 93) (L. D. 239)

Which was Finally Passed and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

Emergencies

An Act Appropriating Additional Funds to Various Departments for the Fiscal Year Ending June 30, 1973. (H. P. 1603) (L. D. 2024)

An Act Relating to Medical Treatment of Persons at State Operated Facilities. (H. P. 1527) (L. D. 1957)

An Act to Make Allocations from the Highway Fund for the Fiscal Years Ending June 30, 1974 and June 30, 1975. (S. P. 657) (L. D. 2010)

These being emergency measures and having received the affirmative votes of 29 members of the Senate, were Passed to be Enacted and, having been signed by the President, were by the Secretary presented to the Governor for his approval.

Bond Issue

An Act to Authorize Bond Issue in the Amount of $7,800,000 to Build State Highways. (S. P. 187) (L. D. 494)

Comes from the House, Failed of Enactment.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Schulten.

Mr. SCHULTEN: Mr. President, a point of clarification, because I am a little confused here: L. D. 494, according to our calendar this morning, shows $7,800,000, and in looking at L.D. 494 in our book, they talk about $19,800,000. Could that be cleared up?

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, I believe that the bill before us now is a committee redraft of L.D. 494.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Schulten.

Mr. SCHULTEN: Mr. President, there is no mention here about redraft that I can see.

The PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Greeley.

Mr. GREELEY: Mr. President, in answer to the question of the Senator from Sagadahoc, Senator Schulten, this bill was amended from $19,800,000 to $7,800,000. The reason for doing that is that the committee felt it was impossible to get a $19,800,000 bond issue through the legislature, and the committee was opposed to it, so we relied on trying to get a cent

on the gas tax. That is why we amended the bill.

The PRESIDENT: The Chair would call the attention of the Senator from Sagadahoc to Senate Amendment 216.

Thereupon, this being a bond issue and having received the affirmative votes of 23 members of the Senate, with three Senators voting in the negative, was Passed to be Enacted in non-concurrence.

Sent down for concurrence.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President, having voted on the prevailing side, I move reconsideration.

The PRESIDENT: The Senator from Cumberland, Senator Berry, now moves that the Senate reconsider its action whereby the bill was passed to be enacted. As many Senators as are in favor of reconsideration please say "Yes"; those opposed "No".

A viva voce vote being taken, the motion did not prevail.

Orders of the Day

The President laid before the Senate the first tabled and specially assigned matter:

An Act Relating to Service Retirement Benefits under State Retirement System. (S. P. 184) (L. D. 492)

Tabled—June 14, 1973 by Senator Richardson of Cumberland.

Pending — Enactment.

On motion by Mr. Richardson of Cumberland, retabled and Tomorrow Assigned, pending Enactment.

The President laid before the Senate the second tabled and specially assigned matter:

JOINT ORDER — Relative to amending of Joint Rule 4. (S. P. 672)

Tabled — June 18, 1973 by Senator Richardson of Cumberland.

Pending — Passage.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President, I have heard stories about what may possibly happen to this elsewhere, but it seems to me in all fairness that the matter should be discussed in this body, as it is a joint rule.

I think the motives of the drafter, of course, are extremely laudable. We are all very concerned about this problem of conflict of interest. And a lot of thought has been given by many people a lot smarter than I am to the possible solution of it. We have a modus operandi at the present time that indicates that if it is a direct personal conflict of interest reflected by a financial gain peculiar to the individual involved, not applicable to other members of his profession or other people who earn their livelihood the same way, then there is a conflict of interest.

We have ruled there is no conflict of interest in the case of the executive secretary or assistant executive secretary to the Teachers Association, and similar instances where there might appear to the casual observer a conflict of interest.

Senator Richardson of Cumberland here has come up with a proposed unique solution, saying that the presiding officer shall rule in case of a conflict of interest. This appears to me to be, from a practical standpoint, a very difficult thing to do. The presiding officer should be privy then to all sorts of information which it would almost appear he wouldn't have at his beck and call. I know, as working on the committee of leadership that discussed conflict of interest, that the information necessary in this instance is elicited after a conference with the individual or individuals involved and thorough discussion. It would appear very difficult for a presiding officer to be able to get this information by himself and evaluate it in the time element necessary. I think, as I say, I agree 100 percent with Senator Richardson's purpose, but I feel an explanation of this nature is somewhat necessary in this body.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President, to this day it is very tempting to be quite rhetorically brilliant about the morality or lack of morality of government, and the

Senator from Cumberland, Senator Brennan, has from time to time entertained us with his views of the proceedings of the Watergate. In all seriousness, I feel we must do something more than we have done at this session.

I believe that our present rules regarding conflicts of interest and our present rules regarding legislative ethics are a farce. I sponsored the bill which would have adopted the legislation proposed by the citizens' organization called Common Cause. That bill received gentle but definite 17-A treatment from the committee which heard it.

I believe that every member of this legislature is under a moral obligation, and should be under an obligation by rule, to make an affirmative disclosure of the existence of a conflict of interest situation. I think we should embody this within our rules. Everybody always says about this problem, "Well, yes there is a problem, but what you are proposing won't do anything about it. We have had proposals like this time and again before the legislature."

The Senator from Cumberland, Senator Berry, alludes to the possibility of this receiving something less than enthusiastically favorable response in the other body. I don't know whether that is the case or not. In any event, I think that every member of this legislature should be placed by rule under an affirmative duty to disclose. And if he fails to make that disclosure, and is found to have done so, then I think the presiding officer should be required to disqualify that member from voting on that legislation.

That is the purpose of the order, Mr. President. There is no pride of authorship involved. If anybody here has a better solution, I would certainly be pleased to listen to it, accept amendments, or whatever your wisdom may dictate. But I really don't think that our present laws are anything other than window dressing designed to convince the public that everything is right in Augusta. I don't think it is, and I think that this sort of rule provision would help insure that we do a better job as legislators.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President, I would like to pose a question through the Chair to the Senator from Cumberland, Senator Richardson, if he would care to answer, and that is to further clarify the intent, the reasoning, and to help me understand. I wonder if he would perhaps point out a couple of examples that might be considered a conflict of interest by the presiding officer.

The PRESIDENT: The Senator from Somerset, Senator Cianchette, has posed an inquiry through the Chair which the Senator from Cumberland, Senator Richardson, may answer if he desires.

The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President, without naming names, I was a member of the other branch, in fact, its majority leader several years ago when an officer of a corporation which had a direct financial interest in the outcome of a bill, which would have regulated the classification of a stream in which that company happened to have some passing interest, that legislator repeatedly voted against the legislation since it would, in his view, have adversely affected the economic interests of his employer, lobbied very actively and very vigorously against it. No one in the legislature felt that they should stand up and call him to account for his conduct, nobody wanted to offend him, nobody wanted to pay the price of the possibility of having that legislator take offense at being told or having it suggested that he wasn't doing right.

This rule change would have placed him under an affirmative duty to disclose the circumstances of his employment and the effect of this legislation on his employer, and I believe would have required his disqualification.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I certainly feel we have a long way to go in order to make an intelligent judgment as to whether or not there are conflicts. I suspect, particularly in this day and age, it may be proper that when we get to an area that we make full disclosure before we vote on any bill. Maybe when we appear here January 1st we give the good President, and for the press to see, a copy of our assets and liabilities and what businesses we happened to be interested in, what businesses we are likely to gain from. Unless the presiding officer has this information, I don't see how he is ever going to make a determination with reference to whether or not someone is in conflict.

I don't think this order provides that wherewithal right now. I personally will support the order because we have got to move in some direction. Presently there are just no conflicts in the Maine Legislature. We are only kidding ourselves if we think there are conflicts, as far as conflicts that are in violation of any rules.

So I think maybe it doesn't go far enough; that we should seriously consider requiring all Senators and all Representatives to present a balance sheet as to where their assets and where their liabilities are. Maybe this is one of the prices that a person should pay to run for office, because when you run for office and you take an office it is a public trust; it is not a private investment. So, frankly, I don't think it goes far enough, but I will support it at this time.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Joly.

Mr. JOLY: Mr. President and Members of the Senate: I don't like this bill. I think it is opening up a can of worms. I think if we progress in this direction that the day will come that the only people that can serve in the legislature of the State of Maine will be people who are retired, who have no money invested anywhere; they keep it in a strongbox at their home and hope they have enough to last them until they die.

Every one of us are connected in anything we do. If we have got a bank account, if we have got some stock, if we have an interest in a business, if we are a lawyer and represent various clients, there is going to be a conflict in every single bill that comes up. I think we are elected by the people and they trust us to do the best we can here, and this just bothers me to no end.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: Just very briefly, I trust that we have all learned at least one lesson from Watergate. I hate to keep bringing up Watergate, but it is a fact. And I think the lesson we should have learned is that we all ought to espouse, support, advocate, and work as hard as we can for openness in government. We have seen what has happend, we have seen a lot of people badly hurt, and we have seen a lot of people's families badly hurt, because of underhandedness, sneakiness, and undercoverness.

I think the time has come, I think this is moving in that direction for openness in government, and just rhetoric itself is not going to do much. It is time to support something like this and, hopefully, go a little further so that people will have to disclose their assets and liabilities, and know what their private interests are so we can judge whether they are making their judgment in the public interest.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President, very briefly, the reference to the Watergate reminds me to say something that I have been wanting to say to my good friend from Cumberland, Senator Brennan, for quite a while. That is that the Watergate is but one incident. Buried under the avalanche of media coverage is the indictment, trial, conviction and sentencing of the former Democratic Governor of Illinois, Otto Kerner, for accepting pay-offs while he was in office as Governor. That has been within the

past two or three months. It hasn't received the intense press attention that the conduct of Watergate did.

This is not a partisan problem. Citizen faith in the processes of government is absolutely essential to our survival as an institution. That sounds like a lot of corny rhetoric, but I really believe that, members of the Senate. And we can sit here and talk about what great repute we are held in as legislators, and all the rest of it, but I say that some of our views of ourselves are taken through rose-colored glasses.

I really believe that we should place every member of this legislature under an affirmative duty to disclose a conflict situation. And to my friend, the Senator from Kennebec, Senator Joly, I would say that this order does not make a conflict out of what would not now be a conflict of interest. This doesn't change the substantive rules of conflict one bit. It simply requires that the legislator himself has the affirmative duty to come forward and disclose the situation. And I request a roll call.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, may I request the Secretary to read the Joint Order.

Thereupon, the Secretary read the Joint Order in its entirety.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I was very encouraged to hear the good Senator from Cumberland, Senator Brennan, talk about openness in government, and I would certainly hope that he will do all in his power to urge very strongly the Governor of this state to reveal the results of the investigation into the power petitions which were requested by the Committee on Judiciary so that the Committee on Judiciary can then decide, and have all of the facts before it in deciding on whether or not to give the stamp of approval to the method used to obtain these petitions. I certainly hope that the good Senator is consistent in his desire to see openness in government.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I will repeat what I said a couple of weeks ago: I think Governor Curtis acted in one of his finest hours when he refused to permit the state police to intimidate, harass or threaten in any fashion citizens who merely signed a petition saying they wanted a chance to vote on public power. I think the good Senator from Penobscot, Senator Tanous, said there was no criminal conduct, other people of equal authority said there was no criminal conduct, I think statutes say the state police are supposed to patrol the highways and investigate criminal conduct, that they should not be used to further maybe some private power type interest. Again, I think the Governor is right, a hundred percent correct.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Sentor Berry.

Mr. BERRY: Mr. President and Members of the Senate: This matter, of course, is getting far more attention and rhetoric, as our good friend from Cumberland, Senator Brennan, says, than it deserves, but I must rise when we are describing our current results of past evaluations of conflict of interest problems as a farce, a word employed by Senator Richardson of Cumberland. It is not a farce. The legislature for the last four years has wrestled seriously with the problem of conflict of interest, and if one were new in this room and hadn't paid any attention or didn't know what was going on in the Maine Legislature for a long time, as maybe some people here do today, they might think that conflict of interest was a new problem that we have not wrestled with at all and never seriously considered. Such is not the case.

We have an Ethics Committee that I honestly feel functions extremely well. It has had delicate cases, and I have heard no questioning of the judgment of the

committee following statutory guidelines. This is the important point.

We are now in the closing days of the session, by amending our joint rules, attempting to change what the legislature has put on the books after very careful consideration and research by several select committees. One would not know that bills have been introduced and considered by this Legislature dealing with this subject, as they have been. Complete, total revelations of one's assets has been considered by the legislature. The lgeislature, in its wisdom, has said this is not yet the perfect solution. So while I don't disagree with the purpose of the order, I thoroughly disagree with the mechanics of the order.

As you listened as the Secretary read it, I am sure you found problems inherent in the definition of revealing your association with legislation. These are not easy solutions. I think that if and when we come to devoting more of our time to the legislature, as we get more experience and more wisdom, we are going to come up with a better conflict of interest law than we have now. We made several small beginnings at this session. We tackled a very important part of the problem, and that is the lobbyists' relations to the legislature, and this was a most progressive law which, in spite of some news media personalities, did not slip by the legislature and was put on the books with the full knowledge of its intent, its implication and its hoped for results.

Under Joint Rule 26, this order needs a two-thirds vote to pass of all members present, and I, for one, am voting against the order, not on its principles, but upon its application.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I don't want to belabor the question, but in looking over Rule 4, some of you have already looked at it, but I might read it to you: "No member shall be permitted to vote on any question in either branch of the Legislature or in committee whose private right, distinct from public interest, is immediately involved." This order seems to be a continuation of this particular rule. I don't think it involves any new question, except that it requires an affirmative action on the part of a member.

I am bothered in two areas, and I guess I should be bothered with Rule 4 as it exists. I would like to see a clarification of what we mean by "private right, distinct from public interest." I have looked through the rules I don't see a definition of these two terms. I think probably, if we are going to do this right, we ought to have a definition before a vote for the order, hoping maybe we can amend the order, defining what we mean by "private right, distinct from public interest". I can see instances where both of these would be entwined, and it would be almost impossible to differentiate whether we are talking about private rights, distinct from public interest.

Also the second part of the order, which provides that a member of the legislature who fails to reveal this instance will be barred from voting in the future, until he has revealed it, I guess. I think this ought to be clarified. Before the second part of the order, I think, could be enforced by either the Speaker or the President of the Senate, one would have to file a disclosure, prior to serving, of his interest. I would think so. Other than that, how would the President or the Speaker of the House ever realize that there is a direct interest by an individual? I would also add that this might be extremely difficult, and again I would like to see this clarified in the instance of an attorney representing a client. I could see instances where maybe this would be extremely difficult for an attorney serving in the legislature to be able to differentiate between the private interest and the public interest.

I shall support the order, hoping that we can amend it to clarify it somewhat. Thank you.

The PRESIDENT. The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: It discourages me a little bit when somebody like Senator Tanous of Penobscot says that he hopes that we can determine now and solve a problem by amending a joint order which several sessions of the legislature have wrestled with very devotedly. The difference between private and public interest specifically, as far as the individual legislator is concerned, it was determined that if an individual profited personally, to the exclusion of anybody else, he had a personal private conflict of interest. I don't believe that it is going to be possible to solve these problems by an amendment to a joint order, hopefully within a week before we adjourn, when we haven't been able to. I assure everybody we are making progress on this, and will.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President and Members of the Senate: Now really, I have served on some of these committees. I was a member of the Subcommittee of Legislative Research which drafted the bill in the interim between the general and special session of the 104th Maine Legislature. I followed with great interest what we have done. Senator Berry is absolutely right; the legislature has wrestled with the problem of conflicts of interest, and it has probably been the most unequal bout in wrestling history. We have lost every single match.

Our present statutory definition of what constitutes a conflict is, Members of the Senate, and I do not use this term wildly, is a farce. If you look at our present statutory regulation, in order to be in a conflict of interest a legislator has to literally, practically, introduce a bill requiring the State of Maine to pay him money.

Now all this bill does, all this order does is place an affirmative duty on a legislator to disclose the existence of a conflict situation. It doesn't make what is not now a conflict a conflict.

The PRESIDENT: The pending question before the Senator is the passage of the Joint Order, S. P. 672. A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The Chair would note that under Joint Rule 26, it states: "No joint rule or order shall be suspended without the consent of two-thirds of the members present in each house." This does not indicate to the Chair that it would require a two-thirds vote to amend the rules. There is nothing in the joint rules that I can find that states a two-thirds vote is required to amend the rules. In Mason's Manual, which is a back-up to our legislative rules, on page 279, section 408, Amendment of Rules, it states: "A majority vote only is required to amend rules unless the rules themselves require a higher vote." Unless a member will point out to the Chair a rule, other than Rule 26, that states it takes a two-thirds vote to amend the rules, the Chair will rule it will take only a majority vote.

The pending question before the Senate is the passage of Joint Order S. P. 672, Relative to Amending of Joint Rule 4. A "Yes" vote will be in favor of passage of the Joint Order; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Brennan, Cianchette, Clifford, Conley, Cox, Cummings, Cyr, Danton, Fortier, Kelley, Marcotte, Minkowsky, Richardson, Roberts, Schulten, Shute, Speers, Tanous, MacLeod

NAYS: Senators Anderson, Berry, Graffam, Greeley, Hichens, Huber, Joly, Katz, Peabody, Wyman.

ABSENT: Senators Morrell, Olfene, Sewall.

A roll call was had. 20 Senators having voted in the affirmative. and 10 Senators having voted in the negative, with three Senators

being absent, the Joint Order received Passage.

Sent down for concurrence.

The President laid before the Senate the third tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Appropriations and Financial Affairs — Bill, "An Act Relating to Service Retirement of State Mental Institution Employees." (H. P. 181) (L. D. 223) Report "A" — Ought Not to Pass; Report "B" — Ought to Pass.

Tabled — June 18, 1973 by Senator Morrell of Cumberland.

Pending — Motion by Senator Conley of Cumberland to accept Report "B".

The Ought to Pass as Amended Report "B" of the Committee was Accepted in concurrence and the Bill Read Once. House Amendment "A" was Read and Adopted in concurrence. House Amendment "B" was Read. House Amendment "A" to House Amendment "B" was Read and Adopted and House Amendment "B" as Amended by House Amendment "A" thereto, was Adopted in concurrence.

Under suspension of the rules the Bill, as Amended, was then Read a Second Time.

Thereupon, on motion by Mr. Richardson of Cumberland, tabled and Tomorrow Assigned, pending Passage to be Engrossed.

The President laid before the Senate the fourth tabled and specially assigned matter:

An Act to Amend the Employment Security Law. (H. P. 1212) (L. D. 1574)

Tabled — June 18, 1973 by Senator Berry of Cumberland.

Pending — Enactment.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: L. D. 1574 is a bill that is required under the Employment Security Law to conform with the federal government regulations. There were some items in this particular bill that were not necessary to conform with the federal government.

There were two different items in the bill that would have cost the unemployment security fund some $8½ million. We removed both of these items from the bill as a Committee Amendment, and other matters that were not pertinent to the bill. Subsequently there was a House Amendment that was put onto this bill amending the committee amendment, and I am sure, through error. it restored one section of the bill that would have cost the fund some $3½ million. Now, I am going through a process hopefully of the right motions to kill the House Amendment and insert Senate Amendment "A" to the Committee Amendment.

I would now move that, under suspension of the rules, Mr. President, we reconsider our action whereby we passed this bill to be engrossed.

The PRESIDENT: The Senator from Penobscot, Senator Tanous, moves that the rules be suspended and the Senate reconsider its action whereby this bill was passed to be engrossed. Is this the pleasure of the Senate?

The motion prevailed.

On further motion by the same Senator, the Senate voted to reconsider its action whereby Committee Amendment "A", as Amended by House Amendment "A" Thereto, was Adopted.

On further motion by the same Senator, the Senate voted to reconsider its action whereby House Amendment "A" to Committee Amendment "A" was Adopted and, on subsequent motion by the same Senator, House Amendment "A" to Committee Amendment "A" was Indefinitely Postponed.

The same Senator then presented Senate Amendment "A" to Committee Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-246, to Committee Amendment "A" was Read and Adopted and Committee Amendment "A", as Amended by Senate Amendment "A" Thereto, was Adopted and the Bill, as Amended, Passed to be Engrossed in non- concurrence.

Sent down for concurrence.

The President laid before the Senate the fifth tabled and specially assigned matter:

An Act to Amend the Workmen's Compensation Act to Make Compensation for Permanent Partial Incapacity Coextensive with the Duration of Disability. (H. P. 1409) (L. D. 1849)

Tabled — June 18, 1973 by Senator Richardson of Cumberland.

Pending — Enactment.

Which was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the sixth tabled and specially assigned matter:

Bill, "An Act Relating to County Estimates." (H. P. 1549) (L. D. 1983)

Tabled — June 18, 1973 by Senator Clifford of Androscoggin.

Pending — Adoption of Senate Amendment "A" (S-221)

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: Senate Amendment "A" is an amendment which I moved for adoption last week. We have met with the county commissioners, Senator Clifford and myself, and we have come up with another amendment which is a much better amendment, encompassing a better system on this particular bill of choosing the weight of the representatives to the county commissioners committee. So I would move to either withdraw my amendment or indefinite postponement, whichever.

The PRESIDENT: The Senator from Penobscot, Senator Tanous, moves that Senate Amendment "A" be indefinitely postponed. Is this the pleasure of the Senate?

The motion prevailed.

Mr. Clifford of Androscoggin then presented Senate Amendment "C" and moved its Adoption.

Senate Amendment "C", Filing No. S-247, was Read.

The PRESIDENT: The Senator has the floor.

Mr. CLIFFORD: Mr. President and Members of the Senate: I was on the County Government Committee, and this is one of the original home rule bills which was reported out of that committee, and I signed an Ought Not to Pass Report, basically for two reasons: The first reason was that it attempted to get municipal representation in reviewing a review board to review county budgets. But the review board, as originally constituted, was based on one vote per town, without regard to population or valuation.

The second reason I opposed the bill in its original form was that it set out and enumerated a number of powers for the county governments which in my opinion and the opinion of some, gave rise to some conflicts with the municipalities in carrying out municipal functions.

Senate Amendment "C" provides for a review board by the municipalities, which are the bodies which actually pay the county tax, and that review board is based on population: one member per ten thousand population, or part thereof, and then the number of votes that those members have is further based on valuation, so that there is weighted voting based on both population and on valuation which, of course, is relevant in the county field because that is how the tax is paid by the municipalities, and it comes out of the property tax.

Senate Amendment "C" also eliminates most of the powers which were enumerated under the original bill, and it leaves in there powers which there is no question the counties do have, and it also specifies that it is not the intent of the bill to take away any of the powers that the counties currently have.

I think an interesting provision in the bill, which is a good provision, in that it allows and specifies that a county government can contract with a municipal government, with a town, to provide a municipal service as long as that municipality pays for that service. Unlike some of the services now provided by the counties, which are provided to the towns and paid for by the larger municipalities which do not get the service, this would encourage, I

think, a movement away from that area so that the larger urban communities would not be paying for services which the county government might render to a town.

It also provides that no bonds be issued until there has been a referendum in the county. And there is an appeal, after the municipal review board reviews the budget and approves the budget. If some of the towns do not feel that the budget is fair, then three-fifths of those towns by number, or any town or combination of towns making up 50 percent of the valuation, or paying 50 percent of the tax, can appeal to the legislature, and the legislature would then do what it does now, go through the regular legislative review process to review the county budget. I might add they would do it under the bill which this legislature passed allowing the legislative delegation and the County Government Committee, and the legislature as a whole, to cut line items in the county budget.

I think that this amendment has been worked out with the County Commissioners Association, with the Maine Municipal Association. I think it is not perfect, but I think it is an improvement because it does involve the people in reviewing the county budget who actually are responsible for raising the taxes to pay them, that is, the municipal officials. I think it is a reasonable compromise worked out between those groups, and I would hope that the amendment would receive favorable action and that the bill could pass. Thank you, Mr. President.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "C"?

Thereupon, Senate Amendment "C" was Adopted and the Bill, as Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the seventh tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act Regulating Abortion Procedures." (H. P. 1195) (L. D. 1529) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass in New Draft, Same Title (H. P. 1615) (L. D. 2035)

Tabled — June 18, 1973 by Senator Berry of Cumberland.

Pending — Motion by Senator Tanous of Penobscot to accept Majority Report.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, at the present time the State of Maine has no constitutional abortion statute on the books. The Supreme Court of the United States has indicated that the states may regulate and prohibit abortions in certain instances. This bill was drafted to comply with those Supreme Court guidelines as to what the states may do, and I would like to inquire, through the Chair, of the reasons of those signing the Ought Not to Pass Report.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I assume that question was directed to me as the Chairman. You know, as I sit here and think about this subject, it is ironic that years ago all those people that were in favor of liberalized abortions in Maine, or at least removing the abortion law from our books, are now in favor of having legislation on our books speaking on abortions, regulating or attempting to regulate abortions. Really, you start to think about how does a situation change, because I know that two years ago and four years ago my good friend, Senator Berry, was in favor of liberalizing the law on abortion, or at least I assumed that from his debate, and I find now that, at least in my discussions with him and Senator Speers, that they are in favor of placing legislation on the books regulating abortions, and they felt two years ago just the opposite.

In any event, I don't mind explaining my position on this bill. I suppose many of you feel it is a religious issue and therefore I am opposed to this particular bill. Well, I will tell you that I was

opposed to abortion two years ago, not because it was a religious issue, but because the law in our state here recognized the rights of an unborn child. That was my reasoning for opposing abortions two years ago. Every lawyer is cognizant of the fact that an unborn child has certain legal rights, and I was convinced that these legal rights should not be taken away from an unborn child. That was my reason for opposing abortion.

I now find myself in a position of opposing a bill that would regulate, or since the Supreme Court has ruled that our statute is unconstitutional, I find myself opposed to a bill that seems to regulate abortion procedures in Maine. Personally, I don't think this is what it does, and I will tell you my reason why very briefly. At the hearing on another bill, which was sponsored by Representative Dunleavy, a member of the other body, which he subsequently withdrew, the sponsor of this particular L. D. 1529, on which we came out with a new draft, L. D. 2035, brought with him to the public hearing an attorney from the University of Maine Law School, a very capable attorney, to speak in opposition to Representative Dunleavy's bill, which dealt with the same subject matter in this same area. This attorney mentioned to the committee his background, and he probably is one of the most knowledgeable attorneys in this country, as far as abortions are concerned. And from listening to him, I was somewhat convinced that it was probably his philosophy that he would favor abortions, but yet he was opposed to the Dunleavy bill.

Well, it set me thinking, and at the public hearing I questioned him about this particular bill, which is sponsored by a member of the other branch as well, and I was indeed surprised that he felt this particular bill was constitutionally suspect, and I think he felt that some areas of this bill were definitely unconstitutional, specifically the area where you attempt to regulate abortions to be performed in a hospital, for instance, in the second trimester. His opinion was that this would be unreasonable, and I can concur with him, because what if an individual, for instance, a woman who was pregnant in the second trimester was dangerously ill, and I would assume that a doctor in his opinion would find it necessary that the child be taken from her to save her life, then under this particular bill it could be done in a hospital. Otherwise than that, he would be in violation of the law. So you would have to give him permission. I suppose you could amend the bill to give him permission to do it in case of an emergency. Then again, once you have given this permission, the permission would then be unconstitutional because it added regulations to the law.

Then you go on in Section 2, under B, the reporting section in there, and these reports are called for in this particular bill. I frankly feel this is an invasion of privacy under the Constitution. And it also makes these reports available to the Attorney General. Now, why should the Attorney General have this information from these reports, I question.

In continuation of my reasoning, I have here some remarks that were prepared by this attorney, and he mentions, for instance, Dill versus Bolten, which was a citation the Supreme Court used in its decision on the abortion question. And under Dill versus Bolten, this attorney from the Law School questions this act as being unconstitutional as well.

Now, last session, at the special session we enacted legislation, incidentally, which prohibits anyone from performing an abortion, so anyone else performing an abortion, which would be practicing medicine, would be subject to a penalty. So this does not mean that it is wide open abortion, because only doctors, under the federal court's ruling, could perform an abortion, and anyone else attempting this would be in violation of our present law.

Now, hospitals and doctors are regulated presently. It is my feeling that they are sufficiently regulated. The Health and Welfare

Department has rules and regulations which hospitals must follow relative to treatment of patients and hospitalization of patients. Doctors have upon them a further imposition of their particular oath of office.

Now, in argument in opposition to this bill, name me one other area in the law where we regulate doctors. Do we tell doctors how and where to perform tonsillectomies or appendectomies? Do we tell them they must be done in a hospital? No other area in the law tells doctors how they are going to perform their practice. Now, why should we all of a sudden come up with some legislation that is going to tell them how to practice in one particular area? It seems inconsistent. It seems inconsistent and it is opening the door perhaps to future legislation in regulating how other medical practices are going to be considered, how doctors will run their practices, or how hospitals will be run. I feel that if we have as much faith in our hospitals as we do now under the present Medical Practices Act, and our doctors, who have the ability to clean their own house if they have some complaints, I am convinced that if we have enough faith in our medical profession in our doctors, to act in their discretion on everything else that they have as far as medical treatment and hospital care is concerned, then I am certainly willing to abide by their decision and their discretion in this area. And I hope you would vote with me in accepting the Majority Ought Not to Pass Report of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Joly.

Mr. JOLY: Mr. President and Members of the Senate: I rise to support the good Senator from Penobscot, Senator Tanous. In so doing, I would like to read you a very short message. This is in the form of a petition that has been signed by 189 nurses, including six nursing supervisors. These are from Auburn, Lewiston, Portland, Sabattus, Lisbon Falls, all over the state.

"The nursing profession in Maine has always maintained high ethical standards in the performance of our duties. Accordingly, we the following Registered Nurses residing in Maine, urge our Representatives to pass L.D. 1992 to protect our professional prerogatives and request the defeat of L.D. 1529 which sanctions and implements abortion on demand. The reasons are as follows:

"1. The Supreme Court of the United States has made it legal to perform abortions up to and including the ninth month of pregnancy if a woman can prove to one physician that her life or health is endangered. Health, according to the Supreme Court of the United States, means the social and mental well-being of the woman.

"2. In L. D. 1529, which is an abortion on demand bill, the definition of abortion is as follows: 'Abortion is defined to mean the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.'

"3. This definition is in direct conflict to Sections 4 and 5 of L.D. 1992 which mandates that live born children be given immediate medical care to preserve the life and health of the child.

"As professional nurses, we will continue to place the highest possible premium on the value and dignity of human life. Therefore, we urge the passage of L.D. 1992 and the defeat of the abortion on demand bill, L.D. 1529."

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I, too, would like to read into the record the remarks of 47 physicians, all State of Maine residents concerning, L. D. 1529. It says, "We, the following physicians residing and practicing in the State of Maine, urge the defeat of L. D. 1529 for the following reasons:

"1. With the announcement of the Supreme Court decision, abortion is no longer a criminal procedure, that is, it is currently an ordinary medical procedure in the eyes of

the law. "2. As such the following can be reasonably said:

"(a) Abortions will only be done by physicians. State laws already exist which prevent non-physicians from practicing medicine.

"(b) By requiring that physicians perform the abortions in a hospital (after the 12th week of pregnancy) the state sets a precedent. No other medical procedure is required by law to be performed in a hospital (for example, tonsillectomies). This usurping of medical judgment is a serious step.

"(c) If a physician exercises bad judgment and attempts abortions under unsafe conditions, he is liable under civil action for negligence, malpractice and unprofessional behavior. This is now covered by Maine law.

"Finally, the Maine Legislature has in the past found itself against the destruction of children for non-compelling medical reasons.

"To enact L. D. 1529 would place the legislature in the position of endorsing the Supreme Court decision which allows abortion on demand up to birth and in fact would encourage hospitals and physicians to perform abortions.

"Clearly, if the legislature still does not sanction the destruction of children in utero, it must not pass this piece of unnecessary legislation. We urge the defeat of L. D. 1529." It is signed by 47 Maine physicians. Thank you.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: For the record, I would also like to read a letter that has been placed on your desks already.

"To all Members of the 106th Maine Legislature:

"Once again we ask you not to forget that the ministers and rabbis in the State of Maine have a great interest in what you will debate here today. The Supreme Court, aside from its having nullified God-given rights to life of a whole class of human beings, has contributed immeasurably to the already waning power of conscientious action in America. As men of God we believe and feel compelled to tell you that all Americans are less human for what the Supreme Court has done.

"We hereby implore you to vote No to L. D. 1529 which calls attention to and makes special and extraordinary this most inhuman action. To have what is repugnant to our sensibilities forced upon us is one thing, but to actively sanction abortions by legislation which indicates compliance with an intolerable decision will only demonstrate what we have believed from the beginning. Abortion is a very great evil. It does to the defenseless what the strong would not have done — it takes human life.

"Lastly, we challenge you in conscience as the Lord God challenged the Israelites: 'do not cause the death of the innocent and the guiltless' (Exodus 23:7). The memory of man is short and his actions are sometimes expedient, but the Lord God does not forget. We, the following ministers and rabbis urge the defeat of L. D. 1529." I am not going to read the whole list of ministers and rabbis, but I have this list here of over 60 and I have another list of over 70 that come from my own area.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Cummings.

Mrs. CUMMINGS: Mr. President and Members of the Senate: I think there is some misunderstanding. As I understand it, this bill is just to clarify what is now nothing. The Supreme Court decision rendered Maine's old law void in its entirety and wholely unenforceable. So as far as I understand it right now, there is nothing on the books to guide the procedure of hospitals and doctors.

I concur completely with the Senator from Penobscot, Senator Tanous, that of course the medical profession and the hospitals, and all those that are associated and trained to maintain health and preserve life, are going to behave in the most ethical fashion. But I think without having something on the books that we are in danger of perhaps allowing what are crudely known as abortion mills to flourish in the State of Maine. I think that this particular bill will add some regulations that will re-

quire that abortions shall be performed by physicians.

To me, and I perhaps am the only Senator that can speak knowingly on this subject, pregnancy is something that grows on you, and in the beginning its something like when you have an infection in your finger; the doctor can take care of it in your house. But as soon as it become a bone infection, or something that is major, he takes you to the hospital. Now this is something that has to happen when a doctor is going to take a woman to the hospital for an abortion of a pregnancy of any length of time, he has got to take her to the hospital, but there are the unscrupulous people who will not wait for a medical opinion and perhaps perform the abortion outside of the hospital. This I think would see to it this can happen, without the penalties that would become involved with breaking a law which we now no longr have.

After the 12th week it would have to be done in a hospital. It is now no longer a small infection in the finger; it is now a major operation. After the 24th week, it prohibits abortion except as necessary to preserve life and health. There are things besides just the life that I think should be taken into consideration of the women. It requires the consent of the husband, if the husband and wife are living together. It requires consent of the minor, in addition to that of her parent or guardian. In addition, these provisions would define abortion, would require filing of statistical data with the Department of Health and Welfare, and would repeal the invalid Maine Law.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I think that we have seen here this morning a classic example of the kind of misinformation that can be bandied about. Particularly on such a highly emotional issue as abortion, it can be garnered into a wave of support or opposition to a position which the opponents profess they do not wish to see come about.

We have seen a virtual parade here this morning of individuals professing to be opposed to abortion, but who are actually asking this body to sanction and, by taking no action whatever, to fully sanction what will come to be true abortion on demand.

Now, I was not in this body two years ago, and I am not one of the ones Senator Tanous from Penobscot mentioned were supporting attempts to liberalize abortion laws and are now turning around and supporting a position which would limit abortion. The same could be true of the individuals who took the other side on the issue of liberalizing abortion laws. It is quite clear that those who were opposed to liberalization of abortion laws in the past are now opposed to this particular bill which has as its purpose limiting abortion procedures as much as is constitutionally in the power of the state to do.

The good Senator from Penobscot, Senator Tanous, mentioned that an individual, an attorney, appeared before the Judiciary Committee and stated that he doubts whether the state would have the power to limit or control abortion procedures. Well, the Supreme Court of the United States has stated very specifically that the states may limit the procedure, or regulate the procedure, after the first trimester, and may prohibit the procedure after the second trimester, except in cases of the life or health of the mother.

Now, there is obviously quite some discussion as to what the meaning of "life or health of the mother" would be, as to whether or not this is actually any limitation whatever. But I would submit to this body that it certainly has a far greater chance of being a limitation on the ability or the legality of one performing an abortion than doing absolutely nothing and having nothing on the books. I fail to see how having no law whatever on the books is more regulatory of abortion procedures than is having a law on the books which was fashioned and designed to be constitutional and to be upheld by the Supreme Court of the United States.

Now, all of the arguments that the good Senator from Penobscot, Senator Tanous, used against this particular law: he said this is meddling in the medical procedure, it is requiring doctors to use a particular procedure where they do not have to use any particular procedure in other cases, such as tonsillectomies, all of these arguments could very well have been used against the abortion laws as they stood before the Supreme Court decision. Yet the good Senator from Penobscot supported the abortion laws as they stood before the Supreme Court decision.

It has been said that this particular law sanctions and implements abortion on demand. This particular law, as I read it—as I said, I was not here two years ago, and I come to this issue as a fresh issue and, as it was presented to the Committee on Judiciary and presented to this legislature, it seems to me that this particular law is an honest attempt to limit abortions on demand. We now have in the State of Maine abortion on demand. We do not have any law on our books at the present time which regulates or limits this procedure. That happens to be a fact. The Supreme Court of the United States has ruled that this law that we have had in the past is unconstitutional, and it has been implemented by the decision of the District Court here in the state. So we do not have any regulation of this procedure whatever at the present time. It would be legal to perform an abortion right up to the moment of birth, the seventh, eighth, or ninth month of pregnancy.

If we do not enact legislation, this legislature is actually being more liberal than the Supreme Court of the United States, because the Supreme Court has stated that the states may regulate and may prohibit in the third trimester. So if we wish to continue the situation whereby it would be legal for an individual to have an abortion, or another individual to perform an abortion, right up to the moment of birth, then all we need to do is to accept the Ought Not to Pass Report on this bill.

I would oppose the motion, and would do so because I feel that the state should take action, as far as it is constitutionally able to do, to prohibit and regulate this procedure. I would ask for a roll call, Mr. President.

The PRESIDENT: A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Ought Not to Pass Report of the Committee on Bill, "An Act Regulating Abortion Procedures." A "Yes" vote will be in favor of accepting the Ought Not to Pass Report; a "No" vote will be opposed.

the Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Anderson, Brennan, Cianchette, Clifford, Conley, Cox, Cyr, Danton, Fortier, Graffam, Greeley, Hichens, Joly, Katz, Kelley, Marcotte, Minkowsky, Richardson, Roberts, Schulten, Tanous.

NAYS: Senators Berry, Cummings, Huber, Morrell, Peabody, Sewall, Shute, Speers, Wyman, MacLeod.

ABSENT: Senator Olfene.

A roll call was had. 22 Senators having voted in the affirmative, and 10 Senators having voted in the negative, with one Senator being absent, the motion prevailed.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I move that the Senate reconsider its action whereby it accepted the Majority Report, and I urge you to vote against my motion.

The PRESIDENT: The Senator from Penobscot, Senator Tanous, moves that the Senate reconsider its action whereby it accepted the Majority Ought Not to Pass Report

of the Committee. As many Senators as are in favor of reconsideration will please say "Yes"; those opposed "No".

A viva voce vote being taken, the motion did not prevail.

The President laid before the Senate the eighth tabled and specially assigned matter:

"An Act Reconstituting and More Effectively Coordinating the Maine Commission on Drug Abuse and the Division of Alcoholism and Providing an Alternative Sentencing for Violators of Drug Laws. (S. P. 635) (L. D. 2008)

Tabled — June 18, 1973 by Senator Conley of Cumberland.

Pending — Enactment.

On motion by Mr. Speers of Kennebec, and under suspension of the rules, the Senate voted to reconsider its action whereby the Bill was Passed to be Engrossed.

The same Senator then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-245, was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I don't see Senate Amendment "A", so would the good Senator from Kennebec, Senator Speers, explain what it does?

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: This particular amendment would remove the law enforcement function, or make it clear to the law enforcement function of drug prevention would not be included in the new Office of Drug Abuse and Alcoholism Services. It was done at the request of the Attorney General's Office. When they were reading down through the bill and realized the broad powers given to the Office of Drug Abuse, the proposed new office of Drug Abuse and Alcoholism Services, there was some concern that the new office would have some sort of veto power over the law enforcement functions of the Attorney General's Office. This amendment is designed to make it clear that the Attorney General's Office will have the sole duties and responsibilities for the law enforcement of drug abuse.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A"?

Thereupon, Senate Amendment "A" was Adopted and the Bill, as Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the ninth tabled and specially assigned matter:

An Act to Reform the Methods of Computing Benefit Payments under Workmen's Compensation Act. (S. P. 427) (L. D. 1287)

Tabled — June 18, 1973 by Senator Berry of Cumberland.

Pending — Enactment.

On motion by Mr. Berry of Cumberland, retabled and Tomorrow Assigned, pending Enactment.

The President laid before the Senate the tenth tabled and specially assigned matter:

Bill, "An Act to Protect the Rights of Injured Persons under the Workmen's Compensation Law." (H. P. 1584) (L. D. 2011)

Tabled — June 18, 1973 by Senator Berry of Cumberland.

Pending — Passage to be Engrossed.

Mr. Tanous of Penobscot then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-243, was Read.

The PRESIDENT: The Senator has the floor.

Mr. TANOUS: Mr. President and Members of the Senate: The amendment was prepared by Asa Richardson of the Department of Transportation, and substantially rewrites the bill in its present form. But he felt the amended version, I guess, would be a better version of the bill, so he submitted that to me to present for our consideration.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A"?

Thereupon, Senate Amendment "A" was Adopted and the Bill. as

Amended, Passed to be Engrossed in non- concurrence.

Sent down for concurrence.

The President laid before the Senate the matter tabled earlier in today's session by Mr. Berry of Cumberland:

Bill, "An Act to Insure Permanent Funding of the Maine Law Enforcement and Criminal Justice Academy." (H. P. 1575) (L. D. 2004)

Pending — Consideration.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Schulten.

Mr. SCHULTEN: Mr. President and Members of the Senate: L. D. 2004, "An Act to Insure Permanent Funding of the Maine Law Enforcement and Criminal Justice Academy", was thoroughly discussed here last Friday afternoon, and whether I was persuaded by the logic, wisdom and the eloquence of the Floor Leader to vote in the affirmative, I am not certain. Even today I feel I did vote according to logic.

I notice now that we are in conflict with the other body, and if we take a wrong vote today I am afraid what we will do is set up an area of disagreement within the state on a project that should mean, and evidently means, a great deal to all of us. In other words, this Maine Law Enforcement Academy in Waterville, which many of us have attended and seen the results of, is a project that is near and dear to many of us. It is doing a great deal of good to make our state police and our officers on local scenes a lot more receptive and knowledgeable about the laws that they are paid to enforce, and whose career they enter with the purpose of dedication. Without this academy I think we would be in dire straits.

I still believe the arguments that were used last Friday afternoon, that perhaps we should go slow and we should not consider at this point dedicated funds to enable the academy to continue, inasmuch as this academy does have sufficient funding until December 31, 1974. I believe also the Floor Leader pointed out that it was his suggestion that the Legislative Research, I believe, should study how funding was to be implemented to cover the final six months of the 1975 time lapse, which would then put this funding problem into the following fiscal year.

My purpose this morning in speaking is just to say that if we take the action of not agreeing to join a committee of conference — and I might remind you gentlemen that last Friday afternoon our vote was very decisive; I think it was 19 to eight in favor of indefinitely postponing this bill which was not a true reflection, I don't think, of how we felt about the police academy — what I am saying is that the word has gotten out, it has caused a great deal of consternation among those who were charged with the responsibility of running the academy, and they can understand perhaps our decision that we too have problems, and particularly so when you talk about setting up dedicated funds for any department. However, they have come back, at least to me, with the argument that "Well, this is very fine and very logical, and certainly it is in the best interest of the state if what you say is true. However, our particular problem is that we need competent and fully qualified personnel to insure that the training programs that we have do the job that they were intended to do. While the federal funding may last until December of 1974, we are concerned right now with the constant need for qualified personnel, and certainly as we attempt to recruit people who can be of meaningful help to the academy, we find the thought that there may be a big problem about future funding is of great concern to possible applicants for the job."

I would ask this morning that the Senate would join a committee of conference with the other body, in the hopes that some sort of amendment or intent could be put forth that would express the sincere desires of the legislature to see the police academy continue to do the work that it is currently doing under federal funds, but that this problem will be studied with the aim and the whole legislative intent that come 1975 the matter will

receive the highest priority. For that reason I would vote to join a committee of conference.

The PRESIDENT: The Senator from Sagadahoc, Senator Schulten, moves that the Senate insist and join in a committee of conference.

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: The fact that we have on the record committed ourselves to a very serious evaluation and promised that this problem will be worked on before the special session, and thoroughly handled and debated at the special session, that our regular budget for the second year is being treated in exactly the same way, would indicate that the precedent of establishing this operation in the budget now would be making an exception. I think that we are all pledged, and I personally have been well committed and have already started to contact some of the people to work on the program, and get everybody together so we can present the special session with a good analysis of this program, and at the special session can put it in the general services budget if it is so desired. I hope you vote against the motion, and then I hope we could adhere.

The PRESIDENT: As many Senators as are in favor of the motion of the Senator from Sagadahoc, Senator Schulten, that the Senate insist and join in a committee of conference will please say "Yes"; those opposed "No".

A viva voce vote being taken, the motion prevailed.

The President laid before the Senate the matter tabled earlier in today's session by Mr. Berry of Cumberland:

Bill, "An Act to Amend the Land Use Regulation Commission Law." (H. P. 627) (L. D. 851)

Pending — Consideration.

On motion by Mr. Berry of Cumberland, the Senate voted to Insist and Request a Committee of Conference.

The PRESIDENT: Is it now the pleasure of the Senate that, under suspension of the rules, all matters handled this morning in the Senate Chamber be sent forthwith either to the Engrossing Department or down to the House, wherever appropriate?

It is a vote.

On motion by Mr. Sewall of Penobscot,

Recessed until 2:00 o'clock this afternoon.

(After Recess)

Called to order by the President.

Committee of Conference

On the disagreeing action of the two branches of the Legislature on Bill, "An Act to Amend the Land Use Regulation Commission Law", (H. P. 627) (L. D. 851), the President appointed the following Conferees on the part of the Senate:

Senators:

SCHULTEN of Sagadahoc
CUMMINGS of Penobscot
MARCOTTE of York

Committee of Conference

On the disagreeing action of the two branches of the Legislature on Bill, "An Act to Insure Permanent Funding of the Maine Law Enforcement and Criminal Justice Academy", H. P. 1575) (L. D. 2004), the President appointed the following Conferees on the part of the Senate:

Senators:

BERRY of Cumberland
JOLY of Kennebec
CLIFFORD
of Androscoggin

Papers from the House

Out of order and under suspension of the rules, the Senate voted to take up the following:

Non-concurrent Matter

Bill, "An Act Establishing the Office of Constituent Services." (H. P. 427) (L. D. 576)

In the House June 15, 1973, Passed to be Engrossed.

In the Senate June 18, 1973, Report "A", Ought Not to Pass, Read and Accepted, in non-concurrence.

Comes from the House, that Body having Insisted and Asked for a Committee of Conference.

Thereupon, the Senate voted to Adhere.

Non-concurrent Matter

Bill, "An Act Relating to Sale of Crawfish or Imitation Lobster." (S. P. 237) (L. D. 688)

In the Senate June 18, 1973, Passed to be Engrossed as Amended by Senate Amendment "A" (S-244).

Comes from the House, Bill and accompanying papers Indefinitely Postponed, in non-concurrence.

On motion by Mr. Berry of Cumberland, the Senate voted to Insist.

Joint Order

ORDERED, the Senate concurring, that the Joint Standing Committee of the 106th Legislature on Transportation report out a bill empowering the Governor, the Commissioner of Transportation or upon decision of both, to reduce speed limits in order to conserve fuel should it become warranted by an energy crisis. (H. P. 1623)

Comes from the House, Read and Passed.

Which was Read and Passed in concurrence.

Joint Order

WHERAS, "A single man has not nearly the value he would have in a state of union. He is an incomplete animal. He resembles the odd half of a pair of scissors"; and

WHEREAS, inspired by such thoughts the Honorable Thomas J. Mulkern of Portland has made firm plans to leave the ranks of bachelorhood on June 30, 1973; and

WHEREAS, at that time, he will enter the solemn bonds of holy matrimony with none other than the attractive and personable Miss Judith Moseley of Portland; now, therefore, be it

ORDERED, the Senate concurring, that We, his friends and colleagues of the One Hundred and Sixth Leislature of the great and sovereign State of Maine extend to that courageous gentleman from Portland, Mr. Mulkern and his attractive bride-to-be, the most sincere best wishes of the Legislature for a long and happy life; and be it further

ORDERED, that a suitable copy of this Order be transmitted forthwith to the bride and groom in honor of this occasion. (H. P. 1624)

Comes from the House, Read and Passed.

Which was Read and Passed in concurrence.

Communications

State of Maine
House of Representatives
Augusta
June 19, 1973

Hon. Harry N. Starbranch
Secretary of the Senate
106th Legislature
Dear Mr. Secretary:

The Speaker of the House appointed the following conferees on the disagreeing action of the two branches of the Legislature on Bill "An Act Relating to Psychotherapist and Patient Privilege" (H. P. 1226) (L. D. 1601)

Messrs. McTEAGUE of Brunswick
NORRIS of Brewer
PERKINS of So. Portland

Respectfully,
E. LOUISE LINCOLN,
Clerk
House of Representatives

Which was Read and Ordered Placed on File.

State of Maine
House of Representatives
Augusta
June 19, 1973

Hon. Harry N. Starbranch
Secretary of the Senate
106th Legislature
Dear Mr. Secretary:

Today the House voted to adhere to its action of June 15 whereby it Indefinitely Postponed Resolution, Proposing an Amendment to the Constitution Changing the Tenure of Office of Senators to Four-year Terms. (S. P. 492) (L. D. 1557)

Respectfully,
E. LOUISE LINCOLN,
Clerk
House of Representatives

Which was Read and Ordered Placed on File.

State of Maine
One Hundred and
Sixth Legislature
Committee on Transportation
June 15, 1973

Honorable Kenneth P. MacLeod
President of the Senate

State House
Augusta, Maine
Dear President MacLeod:

It is a pleasure to inform you that the Committee on Transportation has considered and acted on all matters referred to it by the One Hundred and Sixth Legislature.

Following is the tabulation of bills as reported out of committee:

Total Number of Bills Received	99
Ought to Pass	22
Ought Not to Pass	24
(15 Covered by Orders to Study)	
Ought to pass as Amended	22
Ought to Pass in New Draft	7
Divided Reports	10
Leave to Withdraw	13
Referred to Another Committee	1

Very truly yours,
EDWIN H. GREELEY,
Chairman

EHG:ib

Which was Read and Ordered Placed on File.

Committee Reports
House
Ought to Pass

The Committee on State Government on, Bill, "An Act Relating to the Terms of the Commissioners of the Departments of Health and Welfare and Mental Health and Corrections and the Constitution of those Departments." (H. P. 1621) (L. D. 2039)

Reports pursuant to Joint Order (H. P. 1602) that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

Which report was Read, the Ought to Pass Report of the Committee Accepted in concurrence and the Bill Read Once.

Thereupon, under suspension of the rules, the Bill was given its Second Reading and Passed to be Engrossed in concurrence.

Divided Report

The Majority of the Committee on Taxation on, Bill, "An Act Exempting "Trade-in" Property from the Stock in Trade Tax." (H. P. 679) (L. D. 886)

Reported that the same Ought to Pass.

Signed:
Senators:
COX of Penobscot
WYMAN of Washington
Representatives:
MAXWELL of Jay
MERRILL of Bowdoinham
MORTON of Farmington
IMMONEN of West Paris
SUSI of Pittsfield
DAM of Skowhegan

The Minority of the same Committee on the same subject matter reports that the same Ought Not to Pass.

Signed:
Senator:
FORTIER of Oxford
Representatives:
DRIGOTAS of Auburn
COTTRELL of Portland
FINEMORE of Bridgewater
DOW of West Gardiner

Comes from the House, the Majority report Read and Accepted and the Bill Passed to be Engrossed.

Which reports were Read.

Mr. Fortier of Oxford then moved that the Senate accept the Minority Ought Not to Pass Report of the Committee.

The PRESIDENT: The Senator has the floor.

Mr. FORTIER: Mr. President and Members of the Senate: Of course, I have no figures to present on this. This would not cost anything to the state but it would erode the municipal tax base. This is something else we have been doing consistently in spite of the work on the part of our municipal officials to increase that tax base.

I would also like to point out to you that there is nothing in the bill in regards to auditing the inventory. It requires inventory to be kept on trade-in items. For example, an item taken in trade 15, 20, or 25 years ago could still be kept on the inventory list. It could be an accumulation to the point that it could become ridiculous, so that the inventory required by law does not mean much except as an erosion of our tax base.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN: Mr. President and Members of the Senate: We have other bills dealing with inventories, and I would appreciate it if somebody would table this bill until we find what we are going to do with the other bills.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Thereupon, on motion by Mr. Berry of Cumberland, tabled and Tomorrow Assigned, pending the motion by Mr. Fortier of Oxford to Accept the Minority Ought Not to Pass Report of the Committee.

Enactors

The Committee on Engrossed Bills reports as truly and strictly engrossed the following:

An Act to Correct Errors and Inconsistencies in the Executive Reorganization. (S. P. 430) (L. D. 1302)

An Act Relating to Mobile Home Parks. (S. P. 630) (L. D. 1956)

(On motion by Mr. Richardson of Cumberland tabled and Tomorrow Assigned pending Enactment.)

An Act Revising the Laws Governing Admission to Mental Health Facilities. (S. P. 668) (L. D. 2034)

An Act Clarifying Certain Municipal Laws. (H. P. 1118) (L. D. 1454)

An Act Prohibiting the Acceptance of Money for Enrollment of Voters. (H. P. 1270) (L. D. 1645)

An Act to Allow Group Self-Insurance Under Maine's Workmen's Compensation Law. (H. P. 1345) (L. D. 1779)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

An Act Repealing the Bank Stock Tax. (H. P. 1491) (L. D. 1919)

An Act Authorizing the Commissioner of Agriculture to Investigate Certain Farming Practices. (H. P. 1497) (L. D. 1924)

An Act Relating to the Certification and Regulation of Geologists and Soil Scientists. (H. P. 1570) (L. D. 2000)

(On motion by Mr. Sewall of Penobscot, tabled and Tomorrow Assigned, pending Enactment.)

An Act Relating to Criminal Penalties for the Possession, Manufacture and Cultivation of Cannabis, Mescaline and Peyote. (H. P. 1604) (L. D. 2025)

An Act Relating to the Transfer of Prisoners Committed to County Jails. (H. P. 1605) (L. D. 2026)

Which, except for the tabled matters, were Passed to be Enacted and, having been signed by the President, were by the Secretary presented to the Governor for his approval.

Emergency

An Act Reestablishing the Capitol Planning Commission. (S. P. 535) (L. D. 1688)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

Emergencies

An Act Relating to Salaries of Jury Commissioners and County Officers in the Several Counties of the State and Court Messenger of Cumberland County and Payments to the County Law Libraries. (H. P. 1565) (L. D. 1999)

An Act Making Capital Construction and Improvement Appropriations from the General Fund for the Fiscal Year Ending June 30, 1974. (S. P. 664) (L. D. 2020)

An Act to Make Allocations from the Departments of Inland Fisheries and Game for the Fiscal Years Ending June 30, 1974 and June 30, 1975. (S. P. 666) (L. D. 2032)

These being emergency measures and having received the affirmative votes of 25 members of the Senate were Passed to be Enacted and, having been signed by the President, were by the Secretary presented to the Governor for his approval.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President, having voted on the prevailing side I move reconsideration of these bills.

The PRESIDENT: The Senator from Cumberland, Senator Berry, moves that the Senate reconsider its action whereby the above emergency measures were passed to be enacted. As many Senators as are

in favor of reconsideration will please say "Yes"; those opposed "No."

A viva voce vote being taken, the motion did not prevail.

Reconsidered Matter

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President, is the Senate in possession of L. D. 2022, "An Act Authorizing the State Housing Authority to Establish Capital Reserve Funds"?

The PRESIDENT: The Chair would answer in the affirmative, the bill having been held at the request of the Senator.

Mr. BERRY: Having voted on the prevailing side whereby this bill was passed to be engrossed, as amended, I move the Senate reconsider its action.

The PRESIDENT: The Senator from Cumberland, Senator Berry, now moves the Senate reconsider its action whereby Bill, "An Act Authorizing the State Housing Authority to Establish Capital Reserve Funds", was passed to be engrossed.

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I would oppose that motion. It was debated this morning, and I would hope that the Senate would be consistent. The purpose of that amendment was to permit the state housing authority to make direct loans, but only those loans that were federally guaranteed.

Again I will say that we have a lot of rhetoric here about trying to do something about housing in this state. If we seriously want to do something about it, we would vote against reconsideration and leave that amendment on the bill.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Berry, that the Senate reconsider its action whereby this bill as amended was passed to be engrossed in non-concurrence.

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President, I would ask for a roll call.

The PRESIDENT: A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Berry, that the Senate reconsider its action whereby Bill, "An Act Authorizing the State Housing Authority to Establish Capital Reserve Funds", was passed to be engrossed. A "Yes" vote will be in favor of reconsideration; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Anderson, Berry, Cox, Graffam, Greeley, Hichens, Huber, Joly, Katz, Morrell, Peabody, Richardson, Roberts, Schulten, Sewall, Speers, Tanous, Wyman, MacLeod.

NAYS: Senators Aldrich, Brennan, Clifford, Conley, Cyr, Danton, Fortier, Marcotte, Minkowsky.

ABSENT: Senators Cianchette, Cummings, Kelley, Olfene, Shute.

A roll call was had. 19 Senators having voted in the affirmative, and nine Senators having voted in the negative, with five Senators being absent, the motion prevailed.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY: Mr. President and Members of the Senate: I move the Senate reconsider its action whereby it adopted Senate Amendment "A".

The PRESIDENT: The Senator from Cumberland, Senator Berry, now moves that the Senate reconsider its action whereby it adopted Senate Amendment "A". Is this the pleasure of the Senate?

The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: I

would again oppose that motion. I think the housing shortage is absolutely terrible in the state. Again there is an opportunity to do something about it, but I suppose I get a message from the last vote that the Senate really doesn't care about the housing shortage in the state. I again would ask you to vote against the motion of the Senator from Cumberland, Senator Berry.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I take exception to the remarks of the good Senator from Cumberland, Senator Brennan, and characterize them as absolute nonsense that the Senate cares not about the housing shortage in this state. As I indicated this morning, the State Government Committee has considered a number of bills and has acted, I believe, quite responsibly in reporting out the bills that we feel would help the housing situation in the State of Maine, including the bill which would allow the housing authority to buy up some of the mortgages that presently exist, and free a good deal more money for the state banks to begin again to loan the money for some of these mortgages, and which the amendment is intended to place the government of the State of Maine directly in the direct loan business.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Mr. BRENNAN: Mr. President and Members of the Senate: Very briefly, I would like to reiterate what we said this morning. Rhetoric will not build one more house nor buy one more house. Rhetoric will do nothing but be rhetoric, just mere words. It is by your actions you are going to be known.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I am amazed that the Senator from Kennebec, Senator Speers, can get so uptight over any words that the Minority Leader has to say relative to this item. It seems to me that the Senator stated his objections this morning to the adoption of this amendment, and everybody here understood clearly what the amendment was all about. And we had a very good vote on it this morning in adopting the amendment, 18 to 13. It seems strange to me that three hours later, after we go to lunch, that we can come back and reconsider, and then decide to kill it. I hope the Senate does vote to sustain the amendment and vote against the indefinite postponement of it.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Richardson.

Mr. RICHARDSON: Mr. President, I would inquire of the Chair, if I might, as to whether or not this was a unanimous Ought to Pass Report on L. D. 2022.

The PRESIDENT: The Chair would answer in the affirmative, it is the unanimous Ought to Pass in New Draft Report.

The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Berry, that the Senate reconsider its action whereby it adopted Senate Amendment "A" to Bill, "An Act Authorizing the State Housing Authority to Establish Capital Reserve Funds". The Chair will order a division. As many Senators as are in favor of reconsideration will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. 19 Senators having voted in the affirmative, and nine Senators having voted in the negative, the motion prevailed.

Thereupon, on motion by Mr. Berry of Cumberland, Senate Amendment "A" was Indefinitely Postponed and the Bill Passed to be Engrossed in concurrence.

On motion by Mr. Sewall of Penobscot,

Adjourned until 9:30 tomorrow morning.

days from the action or decision. After a hearing held upon not less than 10 days' written notice to the aggrieved person and the inspection bureau or the pool, the commissioner shall issue an order approving the action or decision, disapproving the action or decision, or directing the inspection bureau or the pool to give further consideration to the matter. Proceedings under this chapter are subject to Act No. 306 of the Public Acts of 1969, as amended.

Sections repealed.

Section 2. Sections 2926 to 2929 and 2950 of Act No. 218 of the Public Acts of 1956, as added, being sections 500.2926 to 500.2929 and 500.2950 of the Compiled Laws of 1948, are repealed.

Effective date.

Section 3. This amendatory act shall take effect August 1, 1971.

This act is ordered to take immediate effect.
Approved July 28, 1971.

[No. 75.]

AN ACT to amend sections 6, 7, 19 and 29 of chapter 84 of the Revised Statutes of 1846, entitled "Of divorce," section 19 as amended by Act No. 182 of the Public Acts of 1970, being sections 552.6, 552.7, 552.19 and 552.29 of the Compiled Laws of 1948; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Sections amended.

Section 1. Sections 6, 7, 19 and 29 of chapter 84 of the Revised Statutes of 1846, section 19 as amended by Act No. 182 of the Public Acts of 1970, being sections 552.6, 552.7, 552.19 and 552.29 of the Compiled Laws of 1948, are amended to read as follows:

552.6 Divorce; grounds, complaint, answer; judgment. [M.S.A. 25.86]

Sec. 6. (1) A complaint for divorce may be filed in the circuit court upon the allegation that there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. In the complaint the plaintiff shall make no other explanation of the grounds for divorce than by the use of the statutory language.

(2) The defendant, by answer, may either admit the grounds for divorce alleged or deny them without further explanation. An admission by the defendant of the grounds for divorce may be considered by the court but is not binding on the court's determination.

(3) The court shall enter a judgment dissolving the bonds of matrimony if evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

552.7 Separate maintenance; grounds, judgment of separate maintenance or divorce. [M.S.A. 25.87]

Sec. 7. (1) An action for separate maintenance may be filed in the circuit court in the same manner and on the same grounds as an action for divorce. In the complaint the plaintiff shall make no other explanation of the grounds for separate maintenance than by use of the statutory language.

(2) The defendant, by answer, may either admit the grounds for separate maintenance alleged or deny them without further explanation. An admission by the defendant of the grounds for separate maintenance may be considered by the court but is not binding on the court's determination. The defendant may also file a counterclaim for divorce.

(3) If the defendant files a counterclaim for divorce, the allegation contained in the plaintiff's complaint as to the grounds for separate maintenance may be considered by the court but is not binding on the court's determination.

(4) If evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, the court shall enter:

(a) A judgment of separate maintenance if a counterclaim for divorce has not been filed.

(b) A judgment dissolving the bonds of matrimony if a counterclaim for divorce has been filed.

552.19 Disposition of marital property. [M.S.A. 25.99]

Sec. 19. Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money.

552.29 Legitimacy of children; presumption. [M.S.A. 25.107]

Sec. 29. The legitimacy of all children begotten before the commencement of any action under this act shall be presumed until the contrary be shown.

Sections repealed.

Section 2. Sections 8, 9d, 10, 18, 24, 40, 41, 42, 44 and 46 of chapter 84 of the Revised Statutes of 1846, as amended, being sections 552.8, 552.9d, 552.10, 552.18, 552.24, 552.40, 552.41, 552.42, 552.44 and 552.46 of the Compiled Laws of 1948, and Act No. 243 of the Public Acts of 1889, being sections 552.301 and 552.302 of the Compiled Laws of 1948, are repealed.

Applicability of act.

Section 3. The provisions of this amendatory act shall apply to all actions for divorce or separate maintenance commenced on or after the effective date of this act. An action for divorce or separate maintenance pending at the effective date of this act shall be consummated in accordance with and subject to the law in force at the time the action was com-

menced except that the provisions of this amendatory act shall be made applicable to a pending action for divorce or separate maintenance if either party amends his respective complaint or counterclaim at any time before trial to allege the new grounds for divorce or separate maintenance by use of the statutory language prescribed in this amendatory act.

Effective date.

Section 4. This act shall take effect January 1, 1972.

This act is ordered to take immediate effect.
Approved July 29, 1971.

[No. 76.]

AN ACT to amend sections 10, 51, 61, 71, 257, 258 and 481 of Act No. 281 of the Public Acts of 1967, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts," as amended by Act No. 315 of the Public Acts of 1968 and Acts No. 140 and 233 of the Public Acts of 1970, being sections 206.10, 206.51, 206.61, 206.71, 206.257, 206.258 and 206.481 of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Sections amended.

Section 1. Sections 10, 51, 61, 71, 257, 258 and 481 of Act No. 281 of the Public Acts of 1967, as amended by Act No. 315 of the Public Acts of 1968 and Acts No. 140 and 233 of the Public Acts of 1970, being sections 206.10, 206.51, 206.61, 206.71, 206.257, 206.258 and 206.481 of the Compiled Laws of 1948, are amended to read as follows:

206.10 Income tax; definitions. [M.S.A. 7.557(110)]

Sec. 10. (1) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity, whether or not a resident of this state.

(2) "Financial institution" means any bank, trust company, building and loan or savings and loan association, industrial bank or bank holding company as defined in section 1841, chapter 17, title 12 of the laws of the United States.

(3) "Financial organization" means a bank, industrial bank, trust company, building and loan or savings and loan association, bank holding company as defined in section 1841, chapter 17, title 12 of the laws of the United States, credit union, safety and collateral deposit company, regulated investment company as defined in section 851 and the following sections of the internal revenue code, under whatever authority organized,

time, the issuer did not have sufficient funds or credit with the drawee and that he failed ~~within five days after receiving notice of nonpayment or dishonor to pay the check or other order~~ to pay the check or other order within five business days after mailing of notice of nonpayment or dishonor as provided in this subdivision .

Notice of nonpayment or dishonor shall be sent by the payee or holder of the check to the maker or drawer by certified mail, return receipt requested, to the address of record. Refusal by the maker or drawer of the check to accept certified mail notice shall not constitute a defense that notice was not received.

Approved March 14, 1974.

CHAPTER 107—H.F.No.835
[Coded in Part]

An act relating to divorce; abolishing the action and substituting proceedings for dissolution; amending Minnesota Statutes 1971, Sections 518.001; 518.01; 518.03; 518.06; 518.07; 518.09; 518.10; 518.11; 518.12; 518.13; 518.14; 518.15; 518.16; 518.17; 518.175, Subdivision 1; 518.25; 518.27; 518.54; 518.55; 518.551; 518.57; 518.58; 518.59; 518.62; 518.63; 518.64 and 518.66; repealing Minnesota Statutes 1971, Sections 518.08; 518.26 and 518.28.

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

Section 1. Minnesota Statutes 1971, Section 518.001, is amended to read:

518.001 **NO-FAULT DIVORCE; REPORTS OF DISSOLUTION AND ANNULMENT.** Subdivision 1. For each ~~divorce~~ dissolution and annulment of marriage granted by any court in this state, a report shall be prepared and filed by the clerk of court with the state registrar of vital statistics. The report shall include only the following information: Name and date of birth of the husband and the wife, county of decree, date of decree, and the signature of the clerk of court and the date signed.

Subd. 2. On or before the 11th day of each month the clerk of court shall forward to the state registrar of vital statistics the report of each ~~divorce~~ dissolution and annulment granted during the preceding calendar month.

Sec. 2. Minnesota Statutes 1971, Section 518.01, is amended to read:

518.01 **VOID OR VOIDABLE MARRIAGES.** All marriages which are prohibited by law on account of consanguinity, or on account of ei-

ther or both parties being under the age established for marriage by Minnesota Statutes, Section 517.03, or on account of either party having a former husband or wife then living, if solemnized within this state, shall be absolutely void, without any decree of ~~divorce~~ dissolution or other legal proceedings; provided, that if any person whose husband or wife has been absent for five successive years, without being known to such person to be living during that time, marries during the lifetime of such absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged.

Sec. 3. Minnesota Statutes 1971, Section 518.03, is amended to read:

518.03 **ACTION TO ANNUL.** When the validity of a marriage is disputed for any of the causes mentioned in section 518.01 or 518.02, either party may begin an action in the district court of the county where either resides, to annul the same. In such action the complaint shall be filed and proceedings had thereon as in ~~actions for divorce~~ proceedings for dissolution and, upon due proof of the nullity of the marriage, it shall be adjudged null and void.

Sec. 4. Minnesota Statutes 1971, Section 518.06, is amended to read:

518.06 **GROUNDS.** ~~A divorce from the bonds of matrimony may be adjudged by the district court for any of the following causes:~~

~~(1) Adultery;~~

~~(2) Impotency;~~

~~(3) A course of conduct detrimental to the marriage relationship of the party seeking the divorce;~~

~~(4) Sentence to imprisonment in any state or United States prison or any state or United States reformatory subsequent to the marriage; and in such case a pardon shall not restore the conjugal rights;~~

~~(5) Wilful desertion for one year next preceding the commencement of the action;~~

~~(6) Habitual drunkenness for one year immediately preceding the commencement of the action;~~

~~(7) Three years under commitment pursuant to the provisions of chapter 253A for mental illness or previous commitment statutes; provided that: (a) Commitment itself be sufficient with or without institutionalization; (b) the three years need not be continuous; (c) in granting a divorce upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the guardian of the person and the guardian of the estate of such mentally~~

Changes or additions indicated by underline deletions by ~~strikeout~~

~~ill person, if such guardian or guardians have been appointed and have qualified, and if such mentally ill person be confined, upon the superintendent of the institution in which such mentally ill person is confined; (d) such guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues; (e) the rights of the parties as to the support and maintenance of the mentally ill person shall not be altered in any way by the granting of the divorce; (f) the person be under commitment for mental illness at the time of the commencement of the action; and (g) a guardian ad litem shall be appointed for such mentally ill person;~~

~~(8) Continuous separation under decree of limited divorce for more than five years next preceding the commencement of the action, and continuous separation under an order or decree of separate maintenance for a period of two years immediately preceding the commencement of the action.~~

~~(9) A decree of divorce may be adjudged to either husband or wife notwithstanding that both have conducted themselves in such manner as to constitute grounds for divorce.~~ Subdivision 1. A dissolution of a marriage may be granted by a court of competent jurisdiction upon a showing to the satisfaction of the court that there has been an irretrievable breakdown of the marriage relationship.

Subd. 2. A court may make a finding that there has been an irretrievable breakdown of the marriage relationship if the finding is supported by evidence of any of the following:

(1) A course of conduct detrimental to the marriage relationship of the party seeking the dissolution;

(2) Sentence to imprisonment in any state or United States prison or any state or United States reformatory subsequent to the marriage; and in such case a pardon shall not restore the conjugal rights;

(3) Habitual alcoholism or chemical dependency for a period of one year immediately prior to the commencement of the proceedings;

(4) Commitment pursuant to the provisions of chapter 253A for mental illness or previous commitment statutes, provided that: (a) Commitment itself be sufficient with or without institutionalization; (b) in granting a dissolution upon this ground, notice of the pendency of the action shall be served in such manner as the court may direct, upon the guardian of the person and the guardian of the estate of such mentally ill person, if such guardian or guardians have been appointed and have qualified, and if such mentally ill person be confined, upon the superintendent of the institution in which such mentally ill person is confined; (c) such guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues; (d) the rights of the parties as to the support and maintenance of the mentally ill person shall not be altered in any way by the granting of the

dissolution; (e) the person be under commitment for mental illness at the time of the commencement of the action; and (f) a guardian ad litem shall be appointed for such mentally ill person;

(5) Continuous separation under an order of decree of separate maintenance for a period of one year immediately preceding the commencement of the proceeding;

(6) Serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage.

Sec. 5. Minnesota Statutes 1971, Section 518.07, is amended to read:

518.07 **RESIDENCE OF PETITIONER.** No ~~divorce~~ dissolution shall be granted unless the ~~plaintiff~~ petitioner has resided in this state one year immediately preceding the filing of the ~~complaint; except for adultery committed while the plaintiff was a resident of this state~~ petition .

Sec. 6. Minnesota Statutes 1971, Section 518.09, is amended to read:

518.09 **PROCEEDING; HOW AND WHERE BROUGHT; VENUE.** ~~An action for divorce or separate maintenance may be brought by a wife in her own name, and all actions for divorce shall be commenced by summons and complaint in the county where the plaintiff resides, as hereinafter provided, subject to the power of the court to change the place of trial by consent of parties, or when it shall appear that an impartial trial cannot be had in the county where the action is pending, or that the convenience of witnesses and ends of justice would be promoted by the change.~~ A proceeding for dissolution or separate maintenance may be brought by a petitioner and all such proceedings shall be commenced by summons and petition in the county where the petitioner resides, as hereinafter provided, subject to the power of the court to change the place of hearing by consent of the parties, or when it shall appear to the court that an impartial hearing cannot be had in the county where the proceedings are pending, or when the convenience of the parties or the ends of justice would be promoted by the change.

Sec. 7. Minnesota Statutes 1971, Section 518.10, is amended to read:

518.10 **REQUISITES OF PETITION.** ~~The complaint shall state:~~

~~(1) The names and ages of the parties, the date and place of marriage, and the facts relating to the residence of the plaintiff in this state,~~

~~(2) The names and dates of birth of the minor and dependent chil-~~

~~dren of the parties;~~

~~(3) The statutory ground of the action.~~

~~The facts relied upon as the statutory ground of the action shall be furnished in a verified bill of particulars within ten days after a written demand therefor. The time to answer or reply shall begin to run from the time such bill of particulars is furnished. The court may, upon motion therefor, order either party to furnish such a verified bill of particulars, or if the bill of particulars furnished is insufficient, to require such additional facts so as to advise the other party of the facts relied upon as the statutory ground of the action.~~ The petition for dissolution of marriage shall:

(1) State the name and address of the petitioner and his attorney;

(2) State the place and date of marriage of the parties;

(3) State the name and address, if known, of the respondent;

(4) State the name and age of each minor child by date of birth whose welfare may be affected by the controversy;

(5) State whether or not a separate proceeding for dissolution of marriage has been commenced by the respondent and whether such proceeding is pending in any court in this state or elsewhere;

(6) Allege that the petition has been filed in good faith and for the purposes set forth therein;

(7) Allege that there has been an irretrievable breakdown of the marriage relationship;

(8) Set forth any application for temporary support of the petitioner and any children;

(9) Set forth any application for permanent alimony or support, child custody, or disposition of property, as well as attorneys' fees and suit money, without enumerating the amounts thereof; and

(10) State that the petitioner has been for the last year a resident of the state.

The petition shall be verified by the petitioner, and its allegations established by competent evidence.

Sec. 8. Minnesota Statutes 1971, Section 518.11, is amended to read:

518.11 **SERVICE; PUBLICATION.** Copies of the summons and ~~complaint~~ petition shall be served on the ~~defendant~~ respondent person-

ally, and, when such service is made out of this state and within the United States, it may be proved by the affidavit of the person making the same, ~~with the certificate of the clerk of the court of the county to the identity of the officer taking the affidavit,~~ and when made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same, but, if personal service cannot well be made, the court may order service of the summons by publication, which publication shall be made as in other actions.

Sec. 9. Minnesota Statutes 1971, Section 518.12, is amended to read:

518.12 **TIME FOR ANSWERING.** The ~~defendant~~ respondent shall have 30 days in which to answer the ~~complaint~~ petition . In case of service by publication, the 30 days shall not begin to run until the expiration of the period allowed for publication.

Sec. 10. Minnesota Statutes 1971, Section 518.13, is amended to read:

518.13 **FAILURE TO ANSWER; REFERENCE.** If the ~~defendant~~ respondent does not appear after service duly made and proved, the court may hear and determine the ~~action~~ proceeding at a general or special term, or in vacation; provided, that the court or judge, upon application, may refer the ~~action~~ proceeding to a referee to take and report the evidence therein. ~~When issue is joined, like proceedings shall be had as in civil actions.~~ Hearings for dissolution of marriage shall be heard in open court or before a referee appointed by the court to receive the testimony of the witnesses, or depositions taken as in other equitable actions. However, the court may in its discretion close the hearing. Hearings held for the purpose of determining child custody may be limited in attendance by the court to the affected parties and necessary witnesses if any.

Sec. 11. Minnesota Statutes 1971, Section 518.14, is amended to read:

518.14 **TEMPORARY SUPPORT MONEY; COSTS AND DISBURSEMENTS AND ATTORNEY'S FEES.** In any ~~action~~ proceeding brought either for ~~divorce~~ dissolution or separate maintenance, the court, in its discretion, may require one party to pay a reasonable amount, necessary to enable the other spouse to carry on, or to ~~defend the action~~ contest the proceeding , and to support such spouse and the children during its pendency. The court may adjudge costs and dis-

bursements against either party. The court may authorize the collection of any money so awarded by execution, or out of any property sequestered, or in any other manner within the power of the court. An award of attorney's fees made by the court during the pendency of the ~~action~~ proceeding or in the final judgment survives the ~~action~~ proceeding and if not paid by the party directed to pay the same may be enforced as above provided or by a separate civil action brought by the attorney in his own name. If the ~~action~~ proceeding is dismissed or abandoned prior to determination and award of attorney's fees the court may nevertheless award attorney's fees upon the attorney's motion and such award shall also survive the ~~action~~ proceeding and may be enforced in the same manner as last above provided.

Sec. 12. Minnesota Statutes 1971, Section 518.15, is amended to read:

518.15 **PROTECTION OF PARTY.** When ~~an action~~ a proceeding is commenced, or about to be commenced, to annul a marriage, or for a ~~divorce~~ dissolution or separation, the court may, at any time, on the petition of ~~the wife~~ a party , prohibit the ~~husband~~ other party from imposing any restraint on ~~her~~ the petitioning party's personal liberty during the pendency of the ~~action~~ proceeding .

Sec. 13. Minnesota Statutes 1971, Section 518.16, is amended to read:

518.16 **CUSTODY OF CHILDREN DURING PENDENCY.** The court, on the application of either party, may make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance, during the pendency of such ~~action~~ proceeding , and such temporary orders relative to the persons or property of the parties, as shall be deemed necessary and proper.

Sec. 14. Minnesota Statutes 1971, Section 518.17, is amended to read:

518.17 **CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.** Upon adjudging the nullity of a marriage, or a ~~divorce~~ dissolution or separation, the court may make such further order as it deems just and proper concerning the care, custody, and maintenance of the minor children of the parties and may determine with which of the parents they, or any of them, shall remain, having due regard to the age and sex of such children and the children's relationship with each parent prior to the commencement of the ~~action~~ proceeding . In determining the parent with whom a child shall remain, the court shall consider all facts in the best interest of the children and shall not prefer one parent over the other solely on the basis of the sex of the parent. In determining the ~~appropriate~~ amount of child support to be paid by each parent, the court shall consider the earning capacity and financial circumstances of each parent. On petition for any change in child support because of alleged change in circumstances the court shall take

into consideration the earning capacity and financial circumstances of each parent and the custodial parent's spouse, if any.

Sec. 15. Minnesota Statutes 1971, Section 518.175, Subdivision 1, is amended to read:

518.175 **VISITATION OF CHILDREN AND NONCUSTODIAL PARENT.** Subdivision 1. In all ~~divorce~~ proceedings for dissolution, subsequent to the commencement of the ~~action~~ proceeding and continuing thereafter during the minority of the child, the court may, upon the request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain such child to parent relationship as will be beneficial to the child. The court shall consider the age of the child and the child's relationship with the noncustodial parent prior to the commencement of the ~~action~~ proceeding. The court may deny visitation rights to the noncustodial parent if such visitation is not in the best interest of the child. A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of visitation, unless such inability is willful.

Sec. 16. Minnesota Statutes 1971, Section 518.25, is amended to read:

518.25 **REMARRIAGE; REVOCATION.** When a ~~divorce~~ dissolution has been granted, and the parties afterward intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of ~~divorce~~ dissolution, alimony, and subsistence which will not affect the rights of third persons.

Sec. 17. Minnesota Statutes 1971, Section 518.27, is amended to read:

518.27 **EFFECT OF DISSOLUTION; NAME OF PARTY.** When a decree of ~~divorce~~ dissolution from the bonds of matrimony is granted in this state, such decree shall completely dissolve the marriage contract as to both parties. ~~In all actions for a divorce brought by a woman,~~ If a ~~divorce~~ dissolution is granted, the court may change the name of ~~such woman~~ either party, upon the request of the party, who shall thereafter be known by such name as the court designates in its decree.

Sec. 18. Minnesota Statutes 1971, Section 518.54, is amended to read:

518.54 **DEFINITIONS.** Subdivision 1. **TERMS.** For the purposes of sections 518.54 to 518.67, the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **CHILD.** "Child" means an individual under 18 years of age, or an individual who, by reason of his physical or mental condition, is unable to support himself.

Changes or additions indicated by underline deletions by ~~strikeout~~

Subd. 3. **ALIMONY.** "Alimony" means an award made in a ~~divorce~~ dissolution proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.

Subd. 4. **SUPPORT MONEY.** "Support money" means an award in a ~~divorce~~ dissolution or annulment proceeding for the care, support and education of any child of the marriage or of the parties to the annulment proceeding.

Subd. 5. **PROPERTY ACQUIRED DURING COVERTURE.** Except as provided in this subdivision, "property acquired during coverture" means any property, real or personal, acquired by the parties, or either of them, to a ~~divorce~~ dissolution or annulment proceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceedings. "Property acquired during coverture" does not include any property real or personal, acquired by either spouse before, during, or after coverture, where said property is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse, or any property transferred from one spouse to the other.

Sec. 19. Minnesota Statutes 1971, Section 518.55, is amended to read:

518.55 **ALIMONY OR SUPPORT MONEY.** Every award of alimony or support money in a judgment of ~~divorce~~ dissolution shall clearly designate whether the same is alimony or support money, or what part of the award is alimony and what part thereof is support money. Any award of payments from future income or earnings of the custodial parent shall be presumed to be alimony. Any award of payments from the future income or earnings of the non-custodial parent shall be presumed to be support money unless otherwise designated by the court. In any judgment of ~~divorce~~ dissolution the court may determine, as one of the issues of the case, whether or not either spouse is entitled to an award of alimony notwithstanding that no award is then made, or it may reserve jurisdiction of the issue of alimony for determination at a later date.

Sec. 20. Minnesota Statutes 1971, Section 518.551, is amended to read:

518.551 **ALIMONY AND SUPPORT PAYMENTS MADE TO WELFARE AGENCIES.** Notwithstanding any law to the contrary, any court having jurisdiction over ~~matters of divorce~~ proceedings for dissolution shall direct that all payments ordered for alimony and support shall be made to the agency responsible for the welfare payments, when it appears that the party who is to receive the alimony and support payments will receive public assistance. Amounts so received by the board over and above the amount granted to the party receiving public assis-

tance shall be remitted to that party.

The agency responsible for the welfare payments shall be notified by the ~~plaintiff~~ petitioner of all ~~actions for divorce~~ proceedings for dissolution , separate maintenance or for the custody of a child if either party is receiving aid to families of dependent children or applies for such aid subsequent to the commencement of such ~~action~~ proceeding . Failure of such notification shall not affect the validity of the ~~action for divorce~~ proceeding for dissolution , separate maintenance, or custody of the child.

Sec. 21. Minnesota Statutes 1971, Section 518.57, is amended to read:

518.57 **MINOR CHILDREN, MAINTENANCE.** Upon a decree of ~~divorce~~ dissolution or annulment, the court may make such further order as it deems just and proper concerning the maintenance of the minor children as is provided by section 518.17, and for the maintenance of any child of the parties as defined in this act, as support money, and may make the same a lien or charge upon the property of the parties to such ~~action~~ proceeding , or either of them, either at the time of the entry of such judgment or by subsequent order upon proper application therefor.

Sec. 22. Minnesota Statutes 1971, Section 518.58, is amended to read:

518.58 **DISPOSITION OF PROPERTY ACQUIRED DURING COVERTURE.** Upon a ~~divorce for any cause~~ dissolution of a marriage , or upon an annulment, the court may make such disposition of the property of the parties acquired during coverture as shall appear just and equitable, having regard to the nature and determination of the issues in the case, the amount of alimony or support money, if any, awarded in the judgment, the manner by which said property was acquired and the persons paying or supplying the consideration therefor, the charges or liens imposed thereon to secure payment of alimony or support money, and all the facts and circumstances of the case.

Sec. 23. Minnesota Statutes 1971, Section 518.59, is amended to read:

518.59 **HOUSEHOLD GOODS, FURNITURE, AND OTHER PROPERTY.** Upon a ~~divorce for any cause~~ dissolution of a marriage , the court may also award to either spouse the household goods and furniture of the parties, whether or not the same was acquired during coverture, and may also order and decree to either spouse such part of the real and personal estate of the other not acquired during coverture, not exceeding in present value one-half thereof, as it deems just and reasonable, having regard to the amount of property decreed under section 518.58, the amount of alimony and support money awarded, if any, ~~the character and situation of the parties, the nature and determi-~~

~~nation of the issues;~~ and all other circumstances of the case.

Sec. 24. Minnesota Statutes 1971, Section 518.62, is amended to read:

518.62 **TEMPORARY ALIMONY.** Temporary alimony may be awarded as provided in section 518.14, and temporary support money may be awarded as provided in section 518.16, for the support of any children of the parties, including children as defined in section 518.54; and the court may also award to either party to the ~~action~~ proceeding , having due regard to all the circumstances and the party awarded the custody of the children, the right to the exclusive use of the household goods and furniture of the parties pending the ~~action~~ proceeding and the right to the use of the homestead of the parties, exclusive or otherwise, pending the ~~action~~ proceeding ; and the court may order and direct either party to remove from the homestead of the parties upon proper application to the court for such order, pending the ~~action~~ proceeding .

Sec. 25. Minnesota Statutes 1971, Section 518.63, is amended to read:

518.63 **HOMESTEAD, OCCUPANCY.** The court, having due regard to all the circumstances and the custody of any children of the parties, may award to either party the right of occupancy of the homestead of the parties, exclusive or otherwise, upon a final decree of ~~divorce~~ dissolution , or proper modification thereof, for such period of time as may be determined by the court, and such award of the right of occupancy of the homestead, whether exclusive or otherwise, may be in addition to the maximum amount which may be awarded under section 518.59.

Sec. 26. Minnesota Statutes 1971, Section 518.64, is amended to read:

518.64 **ALTERATION OF ORDERS OR DECREES.** After an order or decree for alimony or support money, temporary or permanent, or for the appointment of trustees to receive and hold any property awarded as alimony or support money, the court may from time to time, on petition of either of the parties revise and alter such order or decree respecting the amount of such alimony, or support money, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any order respecting these matters which it might have made in the original ~~action~~ proceeding , except as herein otherwise provided. Except for an award of the right of occupancy of the homestead, all divisions of real and personal property provided by sections 518.58 and 518.59 shall be final, and subject only to the power of the court to impose a lien or charge thereon at any time while such property, or subsequently acquired property, is owned by the parties or either of them, for the payment of alimony or support money, or to se-

quester the property as is provided by Minnesota Statutes ~~1949~~ , Section 518.24.

Sec. 27. Minnesota Statutes 1971, Section 518.66, is amended to read:

518.66 **POWER OF COURT NOT LIMITED.** Nothing contained in sections 518.54 to 518.67 shall be construed as limiting the power of the court in appropriate cases to make adequate provision for the support and education of any children of the parties to any ~~divorce~~ dissolution or annulment action where such ~~divorce~~ dissolution or annulment is denied.

Sec. 28. **[518.002] DISSOLUTION; DEFINITION.** Wherever the word "divorce" is used in the statutes, it has the same meaning as "dissolution" or "dissolution of marriage".

Sec. 29. Minnesota Statutes 1971, Sections 518.08; 518.26; and 518.28 are repealed.

Sec. 30. This act is effective on the day following final enactment and applies to all proceedings commenced after that date and may be invoked by either party in proceedings pending on that date.

Approved March 14, 1974.

CHAPTER 108—H.F.No.1962
[Not Coded]

An act relating to the park and recreation board of the city of Minneapolis; providing a tax levy limit for the tree preservation and reforestation fund; amending Laws 1969, Chapter 593, Section 3.

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

Section 1. Laws 1969, Chapter 593, Section 3, is amended to read:

Sec. 3. **MINNEAPOLIS, CITY OF; TREE PRESERVATION AND REFORESTATION FUND.** Notwithstanding any provision of the charter of the city of Minneapolis or any other statute, the ~~board of park commissioners~~ park and recreation board of the city of Minneapolis is hereby authorized and empowered, in addition to all other powers by it now possessed, to establish a fund to be known and designated as the "Tree Preservation and Reforestation Fund" which shall be kept distinct from all other funds of the city and park and recreation board. Said fund shall be in lieu of existing tax levies for the planting, caring for, maintenance and removal of trees and shrubbery and shall be used for the accomplishment of the purposes enumerated in section 1

2. Upon the filing for record of such request, the recorder shall index the request in a separate index so that the name of the mortgagor or grantor shall be indexed as the grantor and the name of the requesting party shall be indexed as the grantee.

3. In the event of foreclosure under a power of sale, the foreclosing mortgagee or trustee shall, not less than twenty (20) days prior to the scheduled date of the sale, cause to be deposited in the United States mail an envelope, certified or registered, deliver to addressee only, return receipt requested, and with postage prepaid, enclosing a notice containing the information required in the published notice of sale referred to in section 443.320, addressed:

(a) To each person whose name and address is set forth in any such request recorded at least forty (40) days prior to the scheduled date of sale; and

(b) To the person shown by the records in the office of the Recorder of Deeds to be the owner of the property as of forty (40) days prior to the scheduled date of foreclosure sale at the foreclosing mortgagee's last known address for said record owner; and

(c) To the mortgagor or grantor named in the deed of trust or mortgage at the foreclosing mortgagee's last known address for said mortgagor or grantor.

(d) Recording of receipt for certified or registered mail shall constitute proof of notice required herein.

4. The foreclosing mortgagee or trustee of a deed of trust or mortgage filed subsequent to a deed of trust or mortgage for which a request has been recorded in accordance with subsection 1 hereof shall give notice to each person named in each such request so long as the prior deed of trust or mortgage identified in such notice has not been released of record.

5. The release of a deed of trust or mortgage shall cancel of record all requests for notice which pertain to the deed of trust or mortgage identified in such request.

Approved June 14, 1973.

[H. B. 315]

DOMESTIC RELATIONS: Divorce, alimony and separate maintenance.

AN ACT to repeal sections 452.010, 452.020, 452.030, 452.040, 452.050, 452.060, 452.070, 452.090, 452.100, and 452.120, RSMo 1969, relating to domestic relations, and to enact in lieu thereof twenty-four new sections relating to the same subject, with penalty provisions, with an effective date.

SECTION
A. Enacting clause.
1. Procedure and venue.
2. Decree of dissolution, grounds for—legal separation.
3. Petition, contents—service, how—rules to apply—defenses abolished.
4. Authorized motions—restraining order, when, answer, when due, effect of.
5. Finding that marriage is irretrievably broken, when—notice—denial by a party, effect of—alternate findings.
6. Separation agreements authorized, effect of—orders for disposition of property, when—terms of agreement, how enforced.
7. Disposition of property, factors to be considered when jurisdiction lacked by court.
8. Maintenance order when jurisdiction lacked—findings required for.
9. Child support, how allocated—factors to be considered.
10. Maintenance or support payments to circuit clerk, when—procedure, costs—duties of parties—failure to pay, effect of—duties of prosecuting attorney.
11. Assignment of earnings, court may order—reimbursement to payor—discharge or discipline of assignor by employer prohibited.
12. Allocation of cost of action and attorney fees by court.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Enacting clause.—Sections 452.010, 452.020, 452.030, 452.040, 452.050, 452.060, 452.070, 452.090, 452.100 and 452.120, RSMo 1969, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, to read as follows:

Section 1. Procedure and venue.—1. The rules of the Supreme Court and applicable court rules apply to all proceedings under this act. The proceedings shall be had in the county where the Plaintiff resides, and the proceedings may be directed, in the first instance, in any other county in the state where the Defendant resides.

2. A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled
"In re the Marriage of and ".

3. The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated an answer. Other pleadings, and all pleadings in other matters under this act shall be denominated as provided in the rules of civil procedure and applicable court rules.

4. In this act, "decree" includes "judgment".

Section 2. Decree of dissolution, grounds for—legal separation.—1. The circuit court shall enter a decree of dissolution of marriage if:

(1) The court finds that one of the parties has been a resident of this state, or is a member of the armed services who has been stationed in this state, for ninety days next preceding the commencement of the proceeding and that thirty days have elapsed since the filing of the petition;

(2) The court finds that there remains no reasonable likelihood that the marriage can be preserved and therefore the marriage is irretrievably broken; and

(3) To the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child of the marriage who is entitled to support, the maintenance of either spouse, and the disposition of property.

2. If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form.

Section 3. Petition, contents—service, how—rules to apply—defenses abolished.—1. All proceedings under this act are commenced in the manner provided by the rules of the Supreme Court.

2. The petition in a proceeding for dissolution of marriage or legal separation shall be verified and shall allege the marriage is irretrievably broken and shall set forth:

(1) The residence of each party and the length of residence in this state;

(2) The date of the marriage and the place at which it was registered;

(3) The date on which the parties separated;

(4) The names, ages, and addresses of any living children of the marriage and whether the wife is pregnant;

(5) Any arrangements as to the custody and support of the children and the maintenance of a spouse; and

(6) The relief sought.

(7) In listing the names, ages, and addresses of any living children of the marriage, the party filing the petition shall state which party has actual custody of any minor children, and upon the filing of the petition all unemancipated, unmarried minor children shall come under the immediate jurisdiction of the court in which the action is filed. Thereafter, until permitted to do so by order of the court, neither party shall remove such minor children from the jurisdiction of the court nor from the care and custody of the party which has custody of the children at the time the action is filed.

3. The other party must be served in the manner provided by the rules of civil procedure and applicable court rules and may within thirty days after the date of service file a verified answer.

4. Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

Section 4. Authorized motions—restraining order, when, answer, when due, effect of.—1. In a proceeding for dissolution of marriage or legal separation, either party may move for temporary maintenance and for temporary support for children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested. In a proceeding for disposition of property, maintenance, or support following the dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for maintenance and for support of children of the marriage entitled to support. This motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested. This motion and the affidavit shall be served as though an original pleading upon the opposite party.

2. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue an order after notice and hearing:

(1) Restraining any person from transferring, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result.

3. The court may issue a restraining order only if it finds on the evidence that irreparable injury would result to the moving party if an order is not issued until the time for answering has elapsed.

4. An answer may be filed within ten days after service of notice of motion or at the time specified in the restraining order.

5. On the basis of the showing made and in conformity with section 8 on

maintenance and section 9 on support, the court may issue a temporary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances.

6. A restraining order or temporary injunction:

(1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceedings;

(2) May be revoked or modified prior to final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 16; and

(3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Section 5. Finding that marriage is irretrievably broken, when—notice—denial by a party, effect of—alternate findings.—1. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after considering the aforesaid petition or statement, and after a hearing thereon shall make a finding whether or not the marriage is irretrievably broken and where one of the parties has not denied it the court shall cause to be deposited in the United States mail an envelope, certified or registered, deliver to addressee only, return receipt requested, and with postage prepaid, enclosing a notice to the party not denying that absent objection from said party being filed within ten (10) days after date of mailing that a finding the marriage is irretrievably broken and an order of dissolution of the marriage may be entered of record. The failure of such party to receive such notice shall not impair the power of the court to enter an order dissolving the marriage or the validity of such an order; but

2. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation and after hearing the evidence shall:

(1) Make a finding whether or not the marriage is irretrievably broken, and in order for the court to find that the marriage is irretrievably broken, the petitioner shall satisfy the court of one or more of the following facts:

(a) That the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) That the respondent has abandoned the petitioner for a continuous period of at least six months preceding the presentation of the petition;

(d) That the parties to the marriage have lived separate and apart by mutual consent for a continuous period of twelve months immediately preceding the filing of the petition;

(e) That the parties to the marriage have lived separate and apart for a continuous period of at least twenty-four months preceding the filing of the petition; or

(2) Continue the matter for further hearing not less than thirty days or more than six months later, or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. No court shall require counseling as a condition precedent to a decree, nor shall any employee of any court, or of the state or any political subdivision of the state be utilized as a marriage counselor. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken as set forth

in sub-paragraph (1) above and shall enter an order of dissolution or dismissal accordingly.

Section 6. Separation agreements authorized, effect of—orders for disposition of property, when—terms of agreement, how enforced.—1. To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the custody, support and visitation of their children.

2. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except terms providing for the custody, support, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

3. If the court finds the separation agreement unconscionable, the court may request the parties to submit a revised separation agreement or the court may make orders for the disposition of property, support, and maintenance in accordance with the provisions of sections 7, 8 and 9.

4. If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:

(1) Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(2) If the separation agreement provides that its terms shall not be set forth in the decree, only those terms concerning child support, custody and visitation shall be set forth in the decree, and the decree shall state that the court has found the remaining terms not unconscionable.

5. Terms of the agreement set forth in the decree are enforceable by all remedies available for the enforcement of a judgment, and the court may punish any party who willfully violates its decree to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

6. Except for terms concerning the support, custody or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides.

Section 7. Disposition of property, factors to be considered when jurisdiction lacked by court.—1. In a proceeding for nonretroactive invalidity, dissolution of the marriage or legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse his property and shall divide the marital property in such proportions as the court deems just after considering all relevant factors including:

(1) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(2) The value of the property set apart to each spouse;

(3) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children; and

(4) The conduct of the parties during the marriage.

2. For purposes of this act only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired by gift, bequest, devise or descent;

(2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(3) Property acquired by a spouse after a decree of legal separation;

(4) Property excluded by valid agreement of the parties; and

(5) The increase in value of property acquired prior to the marriage.

3. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2.

4. The court's order as it affects distribution of marital property shall be a final order not subject to modification.

5. A certified copy of any decree of court affecting title to real estate shall forthwith be filed for record in the office of the recorder of deeds of the county and state in which the real estate is situate, by the clerk of the court in which the decree was made, and the filing fees shall be taxed as costs in the cause.

Section 8. Maintenance order when jurisdiction lacked—findings required for.—1. In a proceeding for nonretroactive invalidity, dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order to either spouse, but only if it finds that the spouse seeking maintenance:

(1) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(2) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

2. The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

(1) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) The standard of living established during the marriage;

(4) The duration of the marriage;

(5) The age, and the physical and emotional condition of the spouse seeking maintenance;

(6) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance; and

(7) The conduct of a party seeking maintenance during the marriage.

Section 9. Child support, how allocated—factors to be considered.—In a proceeding for nonretroactive invalidity, dissolution of marriage, legal separation,

maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) The father's primary responsibility for support of his child;

(2) The financial resources of the child;

(3) The financial resources of the custodial parent;

(4) The standard of living the child would have enjoyed had the marriage not been dissolved;

(5) The physical and emotional condition of the child, and his educational needs; and

(6) The financial resources and needs of the noncustodial parent.

Section 10. Maintenance or support payments to circuit clerk, when—procedure, costs—duties of parties—failure to pay, effect of—duties of prosecuting attorney.—1. Upon its own motion or upon motion of either party, the court at any time may order that maintenance or support payments be made to the circuit clerk as trustee for remittance to the person entitled to receive the payments.

2. The circuit clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order. The circuit clerk shall charge ten dollars per year as costs for maintaining records, which fee shall be deducted from the first payment made each calendar year. This fee shall be paid to county or city general revenue.

3. The parties affected by the order shall inform the circuit clerk of any change of address or of other conditions that may affect the administration of the order.

4. If a party fails to make required payment, the circuit clerk shall send by registered or certified mail notice of the arrearage to the obligor. If payment of the sum due is not made to the circuit clerk within ten days after sending notice, the circuit clerk shall certify the amount due to the prosecuting attorney. The prosecuting attorney shall, with the consent of the obligee, promptly initiate contempt proceedings against the obligor.

5. The prosecuting attorney shall assist the court on behalf of a person entitled to receive maintenance or support in all proceedings initiated under this section to enforce compliance with the order.

6. If the person obligated to pay support has left or is beyond the jurisdiction of the court, the prosecuting attorney may institute any other proceeding available under the laws of this state for the enforcement of duties of support and maintenance.

Section 11. Assignment of earnings, court may order—reimbursement to payor—discharge or discipline of assignor by employer prohibited.—The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or other income to the person entitled to receive the payments or to the circuit clerk as trustee for such person. The assignment is binding on the employer or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from such earnings or other income the amount specified in the assignment and shall transmit the payments to the person specified in the order. Section 432.032, RSMo, or any other law or statute to the contrary notwithstanding, the payor may deduct from each payment a sum not exceeding one dollar as reim-

bursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Section 12. Allocation of cost of action and attorney fees by court.—The court from time to time after considering all relevant factors including the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 13. Decree of dissolution or legal separation final when entered—appeal, effect of—distribution of property final—conversion of decree of legal separation to dissolution, when—notice, to whom.—1. A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from a decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, so that either of the parties may remarry pending appeal.

2. The court's order as it affects distribution of marital property shall be a final order not subject to modification.

3. No earlier than ninety days after entry of a decree of legal separation, on motion of either party, the court may convert the decree of legal separation to a decree of dissolution of marriage.

4. On motion of both parties, the court shall set aside a decree of legal separation.

5. The circuit clerk shall give notice of the entry of a decree of legal separation or dissolution to the department of public health and welfare.

Section 14. Party failing to comply with decree, effect of.—If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

Section 15. Modification of decree as to maintenance or support, when.—1. Except as otherwise provided in subsection 6 of section 6, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable.

2. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

3. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child.

Section 16. Factors to be used in determining custody of child.—The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parents as to his custody;

(2) The wishes of a child as to his custodian;

(3) The interaction and interrelationship of the child with his parents, his

siblings, and any other person who may significantly affect the child's best interests;

(4) The child's adjustment to his home, school, and community; and

(5) The mental and physical health of all individuals involved.

Section 17. Temporary custody, motion for—dismissal of action, effect of.—1. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit. The court may award temporary custody after a hearing or, if there is no objection, solely on the basis of the affidavits.

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

Section 18. Child's wishes as to custodian, how determined.—The court may interview the child in chambers to ascertain the child's wishes as to his custodian and relevant matters within his knowledge. The court shall permit counsel to be present at the interview and to participate therein. The court shall cause a record of the interview to be made and to be made part of the record in the case.

Section 19. Investigation and report on custodial arrangements for a child—how conducted—report due, when—material to be available to counsel and parties.—1. The court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare office, the county juvenile officer, or any other competent person.

2. In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen, unless the court finds that he lacks mental capacity to consent.

3. At least ten days prior to the hearing the investigator shall furnish his report to counsel and to any party not represented by counsel. No one else, including the court, shall be entitled thereto prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel an investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection 2, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call as witnesses the investigator and any person whom the investigator has consulted.

Section 20. Custody proceedings, priority of—costs, how taxed—judge to determine law and fact—secrecy, when.—1. Custody proceedings shall receive priority in being set for hearing.

2. The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

3. The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case.

4. If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

Section 21. Visitation rights—modified, when—restriction of, when.—1. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or impair his emotional development.

2. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or impair his emotional development.

Section 22. Custodian to determine child's upbringing, exception—continued supervision, when.—1. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development impaired.

2. The court may order the county welfare office or the county juvenile officer to exercise continuing supervision over the case.

Section 23. Custody decree, modification of, when.—1. The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child.

Section 24. When sections 425.300 to 425.400 shall apply.—1. This act applies to all proceedings commenced on or after its effective date.

2. This act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

3. This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

4. In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

B. The provisions of this act shall become effective January 1, 1974.

Approved August 6, 1973.

[H. B. 254]

DOMESTIC RELATIONS: Adoption.

AN ACT to repeal Section 453.070, RSMo 1969, relating to adoption and to enact in lieu thereof two new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Enacting clause.—Section 453.070, RSMo 1969, is repealed and two new sections are enacted in lieu thereof to be known as Section 453.070 and 453.085 to read as follows:

453.070. Investigations in adoption proceedings—preferable to foster parent, when.—1. No decree for the adoption of a minor child shall be entered nor shall transfer of custody of such a child to the petitioner or petitioners in such adoption petition be ordered by the juvenile court having jurisdiction, until a full investigation has been made of the physical and mental conditions and antecedents of such child for the purpose of ascertaining whether the child is suitable for adoption by this petitioner or petitioners and of the suitability of the petitioner or petitioners as parents for the child. Such investigation shall be made, as directed by the court having jurisdiction either by the division of welfare of the state department of public health and welfare, or any agency, organization or institution, one of the purposes of which is the care and placement of children in family homes, or a juvenile court officer, or other suitable person appointed by the court. The results of such investigation shall be embodied in a written report that shall be submitted to the court.

2. Any adult person or persons over the age of twenty-one, who, as foster parent or parents, have cared for a child continuously for a period of eighteen months or more, may apply to such authorized agency for the placement of said child with them for the purpose of adoption, and if said child is eligible for adoption, the agency shall give preference and first consideration for adoption placements to foster parents. However, the final determination of the propriety of the said adoption of such foster child shall be within the sole discretion of the court.

453.085. Definitions, subsidy to adopted family.—1. As used in this act the following words and terms shall have the meanings indicated:

(1) "Special Services"—an allotment to provide needed services to the adopted child or his family. Included would be medical and dental care, psychiatric treatment, related health services, and allotment for maintenance or education. At the time of placement of the child, the family and placing agency shall determine the extent of the allotment participation, subject to the approval of the Court.

(2) "Time Limited Subsidy"—a monthly allotment which is continued for a limited time after legal adoption, not exceeding four years. This compensation is to aid the family in integrating the care of the new child in their home.

(3) "Long Term Subsidy"—a continuous monthly payment toward the child's care for a period of more than four years.

(4) "Diminishing Allotment"—a monthly payment which periodically diminishes over a period of not longer than four years at which time it ceases.

(5) "Child"—person within the state who is under the age of 18. If the physical, dental or psychiatric condition of the child requires care after the age of 18 payment can be continued on the recommendation of the placing agency with the approval of the Court and subject to annual review.

2. The juvenile court is authorized to subsidize the family of an adopted child in one of the aforementioned forms of allotment. The subsidy shall not exceed the expenses of foster care and medical care for foster children paid under

the homeless, dependent and neglected foster care program of the division of welfare of the department of public health and welfare of the state of Missouri. The subsidy shall be paid only for the same children for whom foster care payments have been paid under the homeless, dependent and neglected foster care program of the division of welfare of the department of public health and welfare of the state of Missouri and the subsidy shall be paid in the same manner and from the same funds as foster care payments. This authorization shall pertain to those children previously considered unadoptable; those suffering from physical handicaps or mental retardation or those children belonging to minority racial and ethnic groups for whom adoptive homes are not readily available.

3. Determination of the amount of monetary need is to be made by the placing agency in reference to the child's and family's needs, subject to the approval of the Court. The child's physical and mental condition, age, and ethnic background are to be considered as are financial needs of the adopting family. Each case shall be handled individually.

4. In the case that the subsidized family moves from the state of Missouri, the granted subsidy shall remain in force as stipulated in the original allotment agreement, as long as the adopting family follows the established requirements and provided further that a subsidized family which has moved its residence from the state of Missouri shall, as a condition for the continuance of the granted subsidy, submit to the juvenile court authorizing the grant an affidavit by the thirtieth day of March of each year containing a listing of all the assets of the subsidized family and a statement of the amounts paid for expenses for the care and maintenance of the adopted child in the preceding year. If the subsidized family fails to submit the affidavit by the thirtieth day of March of any year, payments under the provisions of this act to a family which has moved its residence from the state of Missouri shall cease.

Approved August 1, 1973.

[H. C. S. H. B. 255]

DOMESTIC RELATIONS: Relating to adoption.

AN ACT relating to adoption.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Definitions.—As used in this act, the following words and terms shall have the meanings indicated:

(1) "Foster care" shall mean care provided a child in a foster family or boarding home, a group home, agency or boarding home, child care institution, or any combination thereof;

(2) "Child" shall mean a child whose custody has been committed to an authorized agency by an order of a judge, or by a surrender agreement, or who has been committed temporarily to the care of an authorized agency by a parent, guardian or relative within the second degree of consanguinity.

Section 2. Petition to review status of child, when required—hearing, purpose of.—In the case of a child who has been committed to the care of an authorized

agency by a parent, guardian or relative and where such child has remained in the care of one or more authorized agencies for a continuous period of six months, the agency shall petition the juvenile court in the county where the child is present to review the status of the child. A written report on the status of the child shall be presented to the court. The court shall then review the status of the child and may hold a hearing thereon. The purpose of the hearing shall be to determine whether or not the child should be continued in foster care or whether the child should be returned to a parent, guardian or relative, or whether or not proceedings should be instituted to terminate parental right and legally free such child for adoption.

Section 3. Semiannual report required of person or agency furnishing foster care—review, purpose of.—In the case of a child who has been placed in the custody of an authorized agency by a court or who has been placed in foster care by a court, every six months after the placement, the foster family or boarding home, group home, agency, or boarding home or child care institution with which the child is placed shall file with the court a written report on the status of the child and the court shall consider the report and may hold a hearing to review the status of the child. The review shall be for the purpose of determining whether or not the child should be continued in foster care or whether the child should be returned to a parent, guardian or relative, or whether or not proceedings should be instituted to terminate parental rights and legally free such child for adoption.

Section 4. Order of protection, purpose of.—The court may make an order of protection as a condition of any order made under this section. The order of protection may set forth reasonable conditions of behavior by a person or agency who is before the court, and the order may require any such person or agency to make periodic reports to the court containing such information as the court may prescribe.

Section 5. Continuing jurisdiction by court.—The court shall possess continuing jurisdiction in proceedings under this section, and in the case of children who are continued under foster care, shall review the status of the child whenever it deems necessary or desirable, but at least once every six months.

Approved August 1, 1973.

[H. B. 216]

TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY: Time within which wills must be offered for probate.

AN ACT to repeal Section 473.050, RSMo 1969, relating to the time within which wills must be offered for probate, and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Enacting clause.—Section 473.050, RSMo 1969, is repealed and one section enacted in lieu thereof to be known as Section 473.050 to read as follows:

473.050. Wills, presentment for probate, time limited.—No proof shall be taken of any will nor any certificate of probate thereof issued, unless the will

has been presented to the judge or clerk of the Probate Court, within six (6) months from the date of the first publication of the notice of granting Letters Testamentary or of administration by any Probate Court in the State of Missouri, or within thirty (30) days from the commencement of an action under Section 473.083 to establish or contest the validity of a will, whichever is later, on the estate of the testator named in the will so presented.

Approved June 15, 1973.

[S. B. 132]

TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY: Commission for testimony of nonresident witness to wills.

AN ACT to repeal section 473.057, RSMo 1969, relating to a commission for the testimony of nonresident witness to wills and to enact in lieu thereof one new section relating to the same subject.

SECTION		SECTION	
1.	Enacting clause.	473.057.	Commission for testimony of nonresident witness.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Enacting clause.—Section 473.057, RSMo 1969, is repealed and one new section enacted in lieu thereof, to be known as section 473.057, to read as follows:

473.057. Commission for testimony of nonresident witness.—If a witness to any will for good cause shown is preventing from attending at the time when any will is produced for probate, the clerk or court may issue a commission annexed to the will or a photostatic copy thereof, and directed, if the witness resides out of the United States, to any court, having a seal, or any state, kingdom, republic or empire, or mayor or other chief officer of any city or town having a seal, or to any minister or consul of the United States to any country in which the witness resides; if without this state and within the United States, to any court having a seal or to any notary public in the state, territory or district in which the witness resides; and if within this state, to any court having a seal, or judge thereof, magistrate, notary public, mayor, or other chief officer of any city or town in the county where the witness resides, empowering him to take and certify the attestation of the witness. If any witness is a member of the armed forces of the United States on active duty and out of this state, the commission may be issued to any commissioned officer, other than a warrant officer, of any of the armed forces of the United States, on active duty, and shall authorize him to take and certify the attestation of the witness.

Approved June 22, 1973.

[S. B. 114]

TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY: Will contests.

AN ACT to repeal section 473.083, RSMo 1969, relating to will contests, and to enact in lieu thereof one new section relating to the same subject.

SECTION		SECTION	
1.	Enacting clause.	473.083.	Contest of will, when, procedure.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Enacting clause.—Section 473.083, RSMo 1969, is repealed and one new section enacted in lieu thereof, to be known as section 473.083, to read as follows:

473.083. Contest of will, when, procedure.—1. Unless any person interested in the probate of a will appeals within six months after the date of the probate or rejection thereof by the probate court, or within six months after the first publication of notice of granting of letters on the estate of the decedent, whichever is later, and, by petition to the circuit court of the county contests the validity of a probated will, or prays to have a will probated which has been rejected by the probate court, then probate or rejection of the will is binding.

2. Whenever it is shown or appears to and is found by the probate court that any person interested in the probate of a will is a minor or person of unsound mind, and that the filing of a contest may be to the interest of the minor or person, the court shall appoint a guardian for the minor or person, who shall file or join in the contest within the time fixed by subsection 1 of this section.

3. Upon filing of the petition the clerk of the circuit court shall immediately notify the probate court and transmit a copy of the petition to the probate court within ten (10) days after its filing.

4. In any such action, the petitioner shall proceed diligently to secure and complete service of process as provided by law on all parties defendant. If service of process is not secured and completed upon all parties defendant within ninety (90) days after the petition is filed, the petition, on motion of any defendant, duly served upon the petitioner or his attorney of record, in the absence of a showing by the petitioner of good cause for failure to secure and complete service, shall be dismissed by the circuit court at the cost of the petitioner.

5. If a timely petition is filed, it and the answer or answers thereto shall frame the issues of intestacy or testacy or which writing or writings constitute the decedent's will, the issues shall be tried by a jury, or if no party requires a jury, by the court, and the judgment thereon shall determine the issues. The verdict of jury or the finding and judgment of the court is final, saving to the court the right of granting a new trial and to the parties the right of appeal as in other cases.

6. Any such action may be voluntarily dismissed, after the period of contest has expired, by consent of all parties not in default, at the cost of the party or parties designated, at anytime prior to final judgment.

7. Any dismissal under subsection 4 and 6 of this section shall revest the probate court in which the estate was being administered at the time the petition was filed with the cause and the probate court shall proceed with the administration of the estate in accord with its previous order admitting the will to probate or rejecting a will as if the petition had never been filed in the circuit court.

Approved June 22, 1973.

[S. B. 210]

TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY: Proceedings for discovery of assets and trial of title of personality in decedents' estates.

AN ACT to repeal sections 473.340, 473.343, 473.347, 473.350, 473.353, and 473.357, RSMo 1969 relating to proceedings for discovery of assets and trial of title

of personality in decedents' estates and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Enacting clause.—Sections 473.340, 473.343, 473.347, 473.350, 473.353, and 473.357, RSMo 1969, are repealed and one new section enacted in lieu thereof to be known as Section 473.340, to read as follows:

473.340. Discovery of assets, procedure for.—1. Any executor, administrator, creditor, beneficiary or other person who claims an interest in personal property which is claimed to be an asset of an estate or which is claimed should be an asset of an estate may file a verified petition in the probate court in which said estate is pending seeking determination of the title, or right of possession thereto, or both. The petition shall describe the property, if known, shall allege the nature of the interest of the petitioner and that title or possession of the property, or both, are being adversely withheld or claimed. The court may order the joinder, as a party, of any person who may claim an interest in or who may have possession of any such property.

2. Service of summons, petition and answer thereto together with all subsequent proceedings shall be governed by the Missouri Rules of Civil Procedure. Any party may demand a jury trial. If the court believes there is a probability that any judgment rendered by it may be appealed, or if a jury trial is demanded, the court may, or upon application of any party, shall certify the cause to the circuit court for trial.

3. Upon a trial of the issues, the court shall determine the persons who have an interest in said property together with the nature and extent of any such interest. The court shall direct the delivery or transfer of the title or possession, or both, of said property to the person or persons entitled thereto and may attach the person of any party refusing to make delivery as directed. If the party found to have adversely withheld the title or possession, or both, of said property has transferred or otherwise disposed of the same, the court shall render a money judgment for the value thereof with interest thereon from the date the property, or any interest therein, was adversely withheld. In addition to a judgment for title and possession, or either, or for the value thereof, the court may enter a judgment for all losses, expenses and damages sustained, if any, but not including attorney fees, if it finds that the property was wrongfully detained, transferred or otherwise disposed of.

4. If the court finds that a complete determination of the issues cannot be had without the presence of other parties, the court may order them to be brought in by an amended or supplemental petition. The court shall order the joinder of the personal representative of the estate if he is not named as a party.

Approved June 22, 1973.

[S. B. 113]

TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY: Proceedings for discovery of assets and trial of personality in guardianship estates.

AN ACT to repeal section 475.160, RSMo 1969 relating to proceedings for discovery of assets and trial of title of personality in guardianship estates and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Enacting clause.—Section 475.160, RSMo 1969, is repealed and one new section enacted in lieu thereof to be known as Section 475.160, to read as follows:

475.160. Assets of ward, action to obtain, procedure.—1. Any guardian, ward, creditor or other person (including a person interested in expectancy, reversion or otherwise) who claims an interest in personal property which is claimed to be an asset of a ward's estate or which is claimed should be an asset of a ward's estate, may file a verified petition in any court having jurisdiction of such ward's estate seeking determination of the title and right of possession thereto. The petition shall describe the property, if known, shall allege the nature of the interest of the petitioner and that title or possession of the property, or both, are being adversely withheld or claimed. The court shall proceed on said petition in accordance with the provisions of Section 473.340.

Approved June 22, 1973.

[S. C. S. H. B. 69]

COURTS: Circuit judges.

AN ACT to repeal sections 478.010, 478.513, 478.517, and 478.520, RSMo 1969, relating to circuit judges and to enact in lieu thereof three new sections relating to the same subject, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Enacting clause.—Sections 478.010, 478.513, 478.517, and 478.520, RSMo 1969, are repealed and three new sections enacted in lieu thereof to be known as sections 478.010, 478.513, and 478.700, to read as follows:

478.010. Election of circuit judges.—1. Except as provided in section 29 of article V of the constitution of Missouri, the circuit judges of the various judicial circuits shall be elected at the general elections as herein provided and at the general election every six years thereafter, and shall enter upon the duties of their office on the first Monday in January next following their election.

2. In judicial circuit number five, the judges of divisions one and three shall be elected in 1970, and the judge of division two shall be elected in 1968.

3. In the judicial circuit number seven, the judge of division one shall be elected in 1970, and the judge of division two shall be elected in 1968.

4. In judicial circuit number twenty-one, the judges of divisions one, two, seven and eight shall be elected in 1970, the judges of divisions three, four, eleven, twelve, thirteen, fourteen and fifteen shall be elected in 1966, and the judges of divisions five, six, nine and ten shall be elected in 1968. In 1966, the judge of division fourteen shall be elected for a two year term, the judges of divisions twelve and fifteen shall be elected for a four year term and their successors shall be elected for six year terms.

5. In judicial circuit number twenty-nine, the judge of division one shall be elected in 1970, and the judge of division two shall be elected in 1968.

6. In judicial circuit number thirty-one, the judge of division three shall be elected in 1974; the judges of divisions one and four shall be elected in 1976; and the judge in division two shall be elected in 1978.

7. The judge of judicial circuit number one shall be elected in 1962.

8. The judges of judicial circuits numbers eleven, thirty-two and thirty-six shall be elected in 1960.

9. The judges of the remaining judicial circuits shall be elected in 1964.

10. The person appointed to fill the vacancy created by this act in division four, thirty-first judicial circuit, and which division by its terms, comes into existence on January 1, 1976 shall serve until his successor, who shall be elected at the general election in 1976, takes office.

478.513. Circuit court of Green county to consist of four divisions.—1. The circuit court of Greene county, comprising circuit number thirty-one, shall be composed of four judges and each of the judges shall separately try causes, exercise such powers and perform all duties imposed upon circuit judges. The divisions of the circuit court shall be circuit court division number one, circuit court division number two, circuit court division number three, and circuit court division number four.

2. The method of assignment of cases and the terms of court between the divisions shall be determined by court rule. When a judge is not occupied with business of the court in his division, he shall, as far as practicable, aid the other judges.

478.700. Twenty-fifth judicial circuit to be composed of two judges.—1. Beginning on the first Monday in January, 1975, the circuit court of the counties of Maries, Phelps, Pulaski and Texas, composing the twenty-fifth judicial circuit, shall be composed of two judges. Each judge shall separately try causes, exercise the powers, and perform all duties of circuit judges. The divisions of the circuit court shall be "Circuit Court Division Number One" and "Circuit Court Division Number Two".

2. The judge of division one shall be elected at the general election in 1976 for a six-year term and the judge of division two shall be elected at the general election in 1974 for a six-year term and their successors shall be elected for six-year terms; provided, however, the circuit judge who was elected in 1970 shall not be affected by this act except that he shall become a judge of division one on the first Monday in January, 1975, and serve as circuit judge of division one until his successor is duly elected and qualified, and the circuit judge elected in 1974 shall become a judge of division two on the first Monday in January, 1975, and serve as circuit judge of division two until his successor is duly elected and qualified.

3. The method of assignment of cases and the terms of court between the divisions shall be determined by court rule. When a judge is not occupied with other business of the court or his division, he shall, as far as practicable, aid the other judge.

Section A. Effective date.—Sections 478.010 and 478.513 of this act shall become effective on January 1, 1974.

Approved August 7, 1973.

based upon such cost accounting rules and regulations as may be prescribed from time to time by the State Aid Engineer, but in no event shall the purchase of any road machinery or other general equipment out of the state aid road funds be allowed or permitted by such rules and regulations. Force account estimates may include a reasonable rental for machinery or equipment, and the reasonableness of the rental so estimated and as actually paid shall be subject at all times to modification, revision, approval, or disapproval of the State Aid Engineer and under the cost accounting rules and regulations promulgated by him.

The State Aid Engineer and such assistants as he may designate shall supervise and inspect all state aid road projects as the work progresses. Upon final completion of any such project, the State Aid Engineer shall cause a final inspection to be made of such project for the purpose of determining whether such project has been completed satisfactorily in accordance with the plans and specifications; and if satisfactorily completed, the State Aid Engineer shall approve payment of the final estimate on such project. No progress or final estimate, either on a contract or a force account project, shall be paid unless approved in such manner by the State Aid Engineer, and on all such contracts or force account projects a percentage of not less than two and one-half percent (2 1/2%) of each estimate thereon paid shall be retained until final acceptance of such project.

Section 3. This act shall take effect and be in force from and after July 1, 1976.

Approved: May 20, 1976.

CHAPTER 451

SENATE BILL NO. 2074

AN ACT to authorize the granting of divorce on the ground of irreconcilable differences in addition to other grounds; to amend Sections 93-5-7 and 93-5-17 to conform therewith; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Divorce from the bonds of matrimony may be granted on the ground of irreconcilable differences, but only upon the joint bill of the husband and wife or a bill of complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process. No divorce shall be granted on the ground of irreconcilable differences unless the court shall affirmatively find in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the settlement of any property rights between the parties. The agreement may be incorporated in the decree, and such decree may be modified as other decrees

for divorce. Bills for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard. A joint bill of husband and wife or a bill of complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process, for divorce solely on the ground of irreconcilable differences, may be taken as confessed and a final decree entered thereon, pro confesso, as in other cases and without proof or testimony in term time or vacation, the provisions of Section 93-5-17 to the contrary notwithstanding. No divorce shall be granted on the ground of irreconcilable differences where there has been a contest or denial. Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground for divorce with any other cause for divorce set out in Section 93-5-1.

Section 2. It shall be no impediment to a divorce that the offended spouse did not leave the marital domicile or separate from the offending spouse on account of the conduct of the offending spouse.

Section 3. Section 93-5-7, Mississippi Code of 1972, is amended as follows:

93-5-7. The proceedings to obtain a divorce shall be by bill in chancery, and shall be conducted as other suits in chancery, except that (1) the defendant shall not be required to answer on oath; (2) the bill shall not be taken as confessed except divorces, pro confesso, may be granted on the ground of irreconcilable differences in term time or vacation; (3) admissions made in the answer shall not be taken as evidence; (4) the clerk shall not set down on the issue docket any divorce case unless upon the request of one of the parties; (5) the complainant may allege only the statutory language as cause for divorce in a separate paragraph in the bill. Provided, however, the defendant shall be entitled to a bill of particulars; (6) the court shall have full power in its discretion to grant continuances in such cases without the compliance by the parties with any of the requirements of law respecting continuances in other cases; and (7) in all cases, except bills seeking a divorce on the ground of irreconcilable differences, the bill must be accompanied with an affidavit of complainant that it is not filed by collusion with the defendant for the purpose of obtaining a divorce, but that the cause or causes for divorce stated in the bill are true as stated.

Section 4. Section 93-5-17, Mississippi Code of 1972, is amended as follows:

93-5-17. The proceedings to obtain a divorce shall not be heard or considered nor a decree of divorce entered except in open court at a regular or special term of the court, save in cases heard in term time and taken under advisement, or in cases heard in vacation after the return term when set by special order of the court in

term time for vacation hearing, or in cases where divorce is granted solely on the ground of irreconcilable differences as otherwise provided by law. Any decree made or entered contrary to the provisions of this section shall be null and void. Nothing herein shall be construed as limiting the right of the chancellor in vacation to dismiss such proceedings upon the application of the complainant or by agreement of the parties; provided, however, that the chancellor in vacation may, upon reasonable notice, in urgent and necessitous cases, hear petitions for temporary alimony and temporary custody of children and make all proper orders and decrees thereon.

Section 5. This act shall take effect and be in force from and after July 1, 1976.

Approved: May 20, 1976

CHAPTER 452

SENATE BILL NO. 2346

AN ACT to designate the State Board of Health as the Drinking Water Supply Regulatory Agency for the State of Mississippi; to authorize said board to prescribe means of adequately protecting the health of users of water supplies; to authorize said board to accept and administer grants, appropriations and funds which may become available from any source; and for related purposes.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. This act shall be known and cited as "the Mississippi Safe Drinking Water Act of 1976."

Section 2. For purposes of this act, the following terms shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Agency" shall mean the Mississippi State Board of Health.

(b) "Director" shall mean the Executive Officer of the Mississippi State Board of Health or his authorized agent.

(c) "Public water system" shall mean a system for the provision to the public of piped water for human consumption if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals, including but not limited to:

(i) Any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(ii) Any collection or pre-treatment storage facilities not under such control which are used primarily in connection with such system.

(d) "Person" shall mean an individual, corporation, company, association, partnership, municipality or federal agency.

CHAPTER NO. 84

An Act Amending Section 21-103, R.C.M. 1947, Providing "Irreconcilable Differences" as an Additional Cause for Divorce; and Providing that the Factual Circumstances Supporting that Cause Need Not Be Pleaded in the Particular."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 21-103, R.C.M. 1947, is amended to read as follows:

"21-103. **Causes for divorce.** Absolute divorces, or separations from bed and board, or decrees for separate maintenance, may be granted for any of the following causes:

1. Incurable insanity;
2. Adultery;
3. Extreme cruelty;
4. Willful desertion;
5. Willful neglect;
6. Habitual intemperance;
7. Conviction of felony;

8. Irreconcilable differences, which have existed and persisted for a period of six months before the commencement of an action and which have caused the irremediable breakdown of the marriage. This cause need not be pleaded in the particular."

Approved: March 3, 1973.

CHAPTER NO. 85

An Act Amending Section 11-2214, R.C.M. 1947, by Providing an Additional Method of Financing of Offstreet Parking Improvement Districts and for Determining the Assessment of Each Parcel Within the District, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 11-2214, R.C.M. 1947, is amended to read as follows:

"11-2214. **Methods of payments of improvements.** (1) To defray the cost of the making of any of the improvements provided for in this act, the city council or commission shall adopt one of the

1-2-201. Statutes -- effective date. (1) (a) Except as provided in subsection (1)(b), (1)(c), or (1)(d), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) Subject to subsection (1)(d), every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) Subject to subsection (1)(d), every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(d) Every statute enacted during a special session of the legislature takes effect upon passage and approval unless a different time is prescribed in the enacting legislation.

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

History: (1)En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921; re-en. Sec. 90, R.C.M. 1921; Cal. Pol. C. Sec. 323; re-en. Sec. 90, R.C.M. 1935; Sec. 43-507, R.C.M. 1947; (2)En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R.C.M. 1921; re-en. Sec. 91, R.C.M. 1935; amd. Sec. 20, Ch. 100, L. 1973; amd. Sec. 9, Ch. 309, L. 1977; Sec. 43-508, R.C.M. 1947; R.C.M. 1947, 43-507, 43-508; amd. Sec. 2, Ch. 119, L. 1979; amd. Sec. 1, Ch. 466, L. 1981; amd. Sec. 1, Ch. 604, L. 1991; amd. Sec. 1, Ch. 18, L. 1995; amd. Sec. 1, Ch. 104, L. 2003.

and the citizenship of each incorporator who is not a citizen of the United States."

Section 19. Section 41-1603, R.C.M. 1947, is amended to read as follows:

"41-1603. **Commissioner of labor and industry—term—salary—oath.** The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of labor and industry. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana Constitution."

Section 20. Section 43-508, R.C.M. 1947, is amended to read as follows:

"43-508. **"Final passage," meaning of.** The words "final passage," as used in the preceding section, shall be held to mean the enactment into law of a bill which has passed the legislative assembly, either with or without the approval of the governor, as provided in the constitution."

Section 21. Section 46-1903, R.C.M. 1947, is amended to read as follows:

"46-1903. **Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.** (a) The destruction, extermination and control of wild animals, including wolf, wolverine, coyote, mountain lion, lynx, cougar, bobcat and any other wild animals predatory in nature and causing, or capable of causing the killing, destruction, maiming or injury of domestic livestock of all species, and of domestic poultry of all varieties, or depredations thereon, shall, as respects the protection and safeguarding of all said livestock and poultry in the state, against all depredations from such animals, be conducted in the state and carried out by the Montana livestock commission which is hereby charged with the primary duty and responsibility of formulating practical programs for accomplishing said objectives in all areas of Montana, and of carrying out such programs in an efficient and practical

3. It requires the attendance of such witness at a time and place certain.

4. It is signed by the president of the senate, speaker of the house, or chairman of a committee.

History: En. Sec. 260, Pol. C. 1895; re-en. Sec. 95, Rev. C. 1907; re-en. Sec. 79, R. C. M. 1921. Cal. Pol. C. Sec. 300.

80. Service of subpoenas. The subpoena may be served by any elector of the state, and his affidavit that he delivered a copy to the witness is evidence of service.

History: En. Sec. 261, Pol. C. 1895; re-en. Sec. 96, Rev. C. 1907; re-en. Sec. 80 R. C. M. 1921. Cal. Pol. C. Sec. 301.

81. Contempt. If any witness neglects or refuses to obey such subpoena, or appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit him for contempt.

History: En. Sec. 262, Pol. C. 1895; re-en. Sec. 97, Rev. C. 1907; re-en. Sec. 81, R. C. M. 1921. Cal. Pol. C. Sec. 302.

References

State v. District Court, 61 M 558, 567, 202 P 756; referred to as Sec. 97, R. C. M. 1907.

82. Compelling attendance. Any witness neglecting or refusing to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize such arrest is a copy of a resolution of the senate or house, signed by the president or speaker of the house of representatives, and countersigned by the secretary or clerk.

History: En. Sec. 263, Pol. C. 1895; re-en. Sec. 98, Rev. C. 1907; re-en. Sec. 82, R. C. M. 1921. Cal. Pol. C. Sec. 303.

83. Witness will not be held to answer criminally—refusal to testify. No person sworn and examined before either house of the legislative assembly, or any committee thereof, can be held to answer criminally, or be subject to any penalty or forfeiture, for any fact or act touching which he is required to testify; nor is any statement made or paper produced by any such witness competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper touching which he is examined, for the reason that his testimony, or the production of such paper, tends to disgrace him or render him infamous. Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

History: En. Sec. 264, Pol. C. 1895; re-en. Sec. 99, Rev. C. 1907; re-en. Sec. 83, R. C. M. 1921. Cal. Pol. C. Sec. 304.

CHAPTER 12

STATUTES—THEIR ENACTMENT AND OPERATION

93. Effect of amendment.
94. Construction of statutes.
95. Repeal of statutes.
96. Act repealed not revived by repeal of repealing act.
97. Repeal of laws creating criminal offenses, when bar to prosecution.
98. Amendatory act, when void.

84. Bills received by the governor, how indorsed. Every bill must, as soon as delivered to the governor, be indorsed as follows: "This bill was received by the governor this ..... day of....., 19....." The indorsement must be signed by the private secretary of the governor, or by the governor himself.

History: En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907; re-en. Sec. 84, R. C. M. 1921. Cal. Pol. C. Sec. 309.

85. Approval of bills. When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state. If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and his objections thereto. If the legislative assembly be in session, the governor must transmit to the house in which the bill originated a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R. C. M. 1921. Cal. Pol. C. Sec. 310.

86. Bills returned without approval. When a bill has passed both houses of the legislative assembly, and is returned by the governor without his signature, and with objections thereto, or if it be a bill containing several items of appropriation of money, with objections to one or more items, and upon reconsideration, such bill, or item, or items, pass both houses by the constitutional majority, the bill, or item, or items, must be authenticated as having become a law by a certificate indorsed on or attached to the bill, or indorsed or attached to the copy of the statement of objections, in the following form: "This bill having been returned by the governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, has become a law this ..... day of ....., A. D. ....."; or, "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority, have become a law this ..... day of....., A. D. ....," which indorsement, signed by the president of the senate and the speaker of the house of representatives, is a sufficient authentication thereof. Such bill or statement must then be delivered to the governor, and by him must be deposited with the laws in the office of the secretary of state.

History: En. Sec. 272, Pol. C. 1895; re-en. Sec. 102, Rev. C. 1907; re-en. Sec. 86, R. C. M. 1921. Cal. Pol. C. Sec. 311.

87. Return, when house not in session. If, on the day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day

(but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when and the person to whom such delivery was made.

History: En Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907; re-en. Sec. 87, R. C. M. 1921. Cal. Pol. C. Sec. 312.

88. Bills remaining with the governor more than five days. Every bill which has passed both houses of the legislative assembly, and has not been returned by the governor within five days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor five days (Sundays excepted), and the legislative assembly being in session, it has become a law this ..... day of....., A. D. .....," which certificate must be signed by the secretary of state and deposited with the laws in his office.

History: En. Sec. 274, Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907; re-en. Sec. 88, R. C. M. 1921. Cal. Pol. C. Sec. 313.

89. Effect of final adjournment on bills. No bill shall become a law after the final adjournment of the legislative assembly, unless approved by the governor within fifteen days after such adjournment. In case the governor fails to approve of any bill after the final adjournment of the legislative assembly, it must be filed, with his objections, in the office of the secretary of state.

History: En. Sec. 275, Pol. C. 1895; re-en. Sec. 105, Rev. C. 1907; re-en. Sec. 89, R. C. M. 1921.

90. Statutes, when effective. Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval.

90
101 Mont. 449
54 P (2d) 868

90
91 P.(2d) 694

History: En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921; re-en. Sec. 90, R. C. M. 1921. Cal. Pol. C. Sec. 323.

References

Gustafson v. Hammond Irr. Dist., 87 M 217, 219, 287 P 640; National Supply Co.-Midwest v. Abell, 87 M 555, 557, 289 P 577; Glacier County v. Schlinski et al., 90 M 136, 145, 300 P 270; Benema v. Union Cent. Life Ins. Co., 94 M 138, 143, 21 P 2d 69; Continental Supply Co. v. Abell et al., 95 M 148, 163, 24 P 2d 133.

91. "Final passage," meaning of. The words "final passage," as used in the preceding section, shall be held to mean the enactment into law of a bill which has passed the legislative assembly, either with or without the approval of the governor, as provided in section 12 of article VII of the constitution.

History: En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R. C. M. 1921.

92. When joint resolutions take effect. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

History: En. Sec. 291, Pol. C. 1895; re-en. Sec. 118, Rev. C. 1907; re-en. Sec. 92, R. C. M. 1921. Cal. Pol. C. Sec. 324.

93. Effect of amendment. Where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted

93
90 P.(2d) 509, 510

93
117 P.(2d) 261

93
146 P.(2d) 1014

93
194 P.(2d) 641

in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

History: En. Sec. 292, Pol. C. 1895; re-en. Sec. 119, Rev. C. 1907; re-en. Sec. 93, R. C. M. 1921. Cal. Pol. C. Sec. 325.

Operation and Effect

This section merely states a general rule as it was recognized by the authorities at the time of the adoption of the codes. State ex rel. Jacobson v. Board of Commrs., 47 M 531, 539, 134 P 291.

Where the legislature declares that an existing statute is amended "to read as follows," the new act takes the place of the old one exclusively, and so much only of the original act as is repeated in the new statute is continued in force. State ex rel. Paige v. District Court, 54 M 332, 334, 169 P 1180.

Of two constructions either of which is warranted by the words of the amendment of a statute, that is to be preferred which best harmonizes the amendment with the general tenor and spirit of the act amended. In re Klune, 74 M 332, 336, 240 P 286.

The true rule, in this state, is that where a section or a part of a statute is amended it is not to be considered as repealed and enacted in its new form. The portions which are not amended are considered to have been in force from the time of the first enactment. Snidow v. Montana Home for the Aged, 88 M 337, 344, 292 P 723. See, also, State v. Yale Oil Corp. of South Dakota, 88 M 506, 513, 295 P 255.

Held, further, that in view of this section, relating to effect of amendment of statutes, and section 6013, providing that amendment or repeal of a code section relating to corporations shall not impair or take away a remedy given against a corporation or its officers for a liability previously incurred, prior decisions holding that amendment of section 6003 "to read as follows" and repealing "all acts and parts of acts in conflict herewith" worked the extinction of the amended section "as though it had never existed" in the absence of a saving clause, were erroneous and are overruled. Continental Supply Co. v. Abell et al., 95 M 148, 164 et seq., 24 P 2d 133.

References

Cited or applied as section 292, political code, in Dowty v. Pittwood, 23 M 113, 116, 57 P 727; as section 119, revised codes, in State ex rel. Hay v. Hindson, 40 M 353, 356, 106 P 362; Edwards v. County of Lewis and Clark, 53 M 359, 367, 165 P 297; State ex rel. Esgar v. District Court, 56 M 464, 469, 185 P 157; Standard Oil Co. v. Idaho Community Oil Co., 95 M 412, 417 et seq., 27 P 2d 173.

94. Construction of statutes. The general rules for the construction of statutes are contained in the provisions of the different codes.

History: En. Sec. 293, Pol. C. 1895; re-en. Sec. 120, Rev. C. 1907; re-en. Sec. 94, R. C. M. 1921. Cal. Pol. C. Sec. 326.

95. Repeal of statutes. Any statute may be repealed at any time, except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

95
181 P. (2) 156

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R. C. M. 1921. Cal. Pol. C. Sec. 326.

Operation and Effect

It is the general rule that the repeal of a statute without any reservation takes away all the remedies existing under the repealed act and defeats all actions pending under it at the time of its repeal. The rule is peculiarly applicable to the repeal of a statute which creates a cause of action providing a remedy not known to the common law. This principle is in harmony with the above section. Continental Oil Co. v. Montana C. Co., 63 M 223, 230, 207 P 116.

96. Act repealed not revived by repeal of repealing act. No act or part of an act, repealed by another act of the legislative assembly, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

History: Ap. p. Sec. 2, p. 390, Cod. Stat. 1871; re-en. Sec. 146, 5th Div. Rev. Stat. 1879; re-en. Sec. 203, 5th Div. Comp. Stat. 1887; amd. Sec. 295, Pol. C. 1895; re-en. Sec. 122, Rev. C. 1907; re-en. Sec. 96, R. C. M. 1921. Cal. Pol. C. Sec. 328.

References

Cited or applied as section 122, revised codes, in State ex rel. Esgar v. District Court, 56 M 464, 469, 185 P 157.

97. Repeal of laws creating criminal offenses, when bar to prosecution. The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

History: Ap. p. Sec. 8, p. 390, Cod. Stat. 1871; re-en. Sec. 152, 5th Div. Rev. Stat. 1879; re-en. Sec. 209, 5th Div. Comp. Stat. 1887; amd. Sec. 296, Pol. C. 1895; re-en. Sec. 123, Rev. C. 1907; re-en. Sec. 97, R. C. M. 1921. Cal. Pol. C. Sec. 329.

98. Amendatory act, when void. An act amending a section of an act repealed is void. 98 194 P.(2d) 657

History: En. Sec. 297, Pol. C. 1895; re-en. Sec. 124, Rev. C. 1907; re-en. Sec. 98, R. C. M. 1921. Cal. Pol. C. Sec. 330.

References

In re Naegle, 70 M 129, 136, 224 P 269; State v. Silver Bow Refining Co., 78 M 1, 13, 252 P 301; State v. Brennan, 89 M 479, 486, 300 P 273.

CHAPTER 13

INITIATIVE AND REFERENDUM

99. Form of petition for referendum. The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Montana:

Warning.

Any person signing any name other than his own to this petition, or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a legal voter of this state, is punishable by a fine not exceeding five hundred dollars ($500.00), or imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment.

Petition for referendum.

To the Honorable ....., Secretary of State for the state of Montana:

We, the undersigned citizens and legal voters of the state of Montana, respectfully order that Senate (House) Bill Number ....., entitled (title of act), passed by the ..... legislative assembly of the state of Montana, at the regular (special) session of said legislative assembly, shall be referred to the people of the state for their approval or rejection, at the regular, general, or special election to be held on the ..... day of ....., 19....., and each for himself says: I have personally signed this petition; I am a legal voter of the state of Montana; and my residence, postoffice address, and voting precinct are correctly written after my name.

§ 50-6. Divorce after separation of one year on application of either party.

Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for one year, and the plaintiff or defendant in the suit for divorce has resided in the State for a period of six months. A divorce under this section shall not be barred to either party by any defense or plea based upon any provision of G.S. 50-7, a plea of res judicata, or a plea of recrimination. Notwithstanding the provisions of G.S. 50-11, or of the common law, a divorce under this section shall not affect the rights of a dependent spouse with respect to alimony which have been asserted in the action or any other pending action.

Whether there has been a resumption of marital relations during the period of separation shall be determined pursuant to G.S. 52-10.2. Isolated incidents of sexual intercourse between the parties shall not toll the statutory period required for divorce predicated on separation of one year. (1931, c. 72; 1933, c. 163; 1937, c. 100, ss. 1, 2; 1943, c. 448, s. 3; 1949, c. 264, s. 3; 1965, c. 636, s. 2; 1977, c. 817, s. 1; 1977, 2nd Sess., c. 1190, s. 1; 1979, c. 709, s. 1; 1981, c. 182; 1983, c. 613, s. 2; c. 923, s. 217; 1987, c. 664, s. 2.)

CHAPTER 149

HOUSE BILL NO. 1097
(Hilleboe)

DIVORCE DUE TO IRRECONCILABLE DIFFERENCES

AN ACT to create and enact section 14-05-09.1 of the North Dakota Century Code and to amend and reenact section 14-05-03 of the North Dakota Century Code, relating to allowing irreconcilable differences as grounds for divorce.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 14-05-03 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-03. CAUSES FOR DIVORCE.) Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. Habitual intemperance.
6. Conviction of felony.
7. Insanity for a period of five years, the insane person having been an inmate of an institution for such period, and affected with any psychosis. No divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians who are recognized authorities on mental diseases, one of which physicians shall be the superintendent of the state hospital for the insane, or the chief medical officer of a veterans administration hospital or government institution within or without the state of North Dakota, the other two physicians to be appointed by the court before whom the action is pending, all of whom shall agree that such insane person is incurable. No divorce shall be granted to any person whose husband or wife is an inmate

of an institution, except a United States Government hospital or institution, in any other than the state of North Dakota, unless the person applying for such divorce shall have been a resident of the state of North Dakota for at least five years.

8. Irreconcilable differences.

SECTION 2.) Section 14-05-09.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-05-09.1. IRRECONCILABLE DIFFERENCES DEFINED.) Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

Approved March 18, 1971

North Dakota - 8\17\1889

Article 2.0 [Last Modified: 5/30/2006 8:48:15 PM]

ARTICLE II THE LEGISLATIVE DEPARTMENT

Section 67.0 0 [Last Modified: 5/30/2006 8:48:14 PM]

SEC. 67. No act of the legislative assembly shall take EFFECT until July first, after the close of the session, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislative assembly shall, by a vote of two-thirds of all the members present in each house, otherwise direct.

Amendment 21

SEC. 67. No act of the legislative assembly shall take EFFECT until July first after the close of the session, unless in the legislature by a vote of two-thirds of the members present and voting, in each house, shall declare it an emergency measure, which declaration shall be set forth in the act, provided, however, that no act granting a franchise or special privilege, or act creating any vested right or interest other than in the state, shall be declared an emergency measure. An emergency measure shall take EFFECT and be in force from and after its passage and approval by the Governor. [Approved November 5, 1918]

LEGISLATIVE BILL 820

Approved by the Governor April 8, 1972

Introduced by J. James Waldron, 42nd District; Terry Carpenter, 48th District

AN ACT relating to husband and wife; to provide procedures for the dissolution of marriage, legal separation, and anullment; and to repeal sections 42-301 to 42-340, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Dissolution of marriage shall mean the termination of a marriage by decree of a court of competent jurisdiction upon a finding that the marriage is irretrievably broken. After the effective date of this act, the term dissolution of marriage shall be considered synonymous with divorce, and whenever the term divorce appears in the statutes it shall mean dissolution of marriage pursuant to this act; and

(2) Legal separation shall mean a decree of a court of competent jurisdiction providing that two persons who have been legally married shall thereafter live separate and apart and providing for any necessary adjustment of property, support, and custody rights between the parties, but not dissolving the marriage.

Sec. 2. All proceedings under this act shall be brought in the district court of the county in which one of the parties reside. Proceedings may be transferred to a separate juvenile court which has acquired jurisdiction pursuant to section 43-230, Reissue Revised Statutes of Nebraska, 1943.

Sec. 3. No action for dissolution of marriage may be brought unless at least one of the parties has had actual residence in this state with a bona fide intention of making this state his permanent home for at least one year prior to the filing of the petition, or unless the marriage was solemnized in this state and either party has resided in this state from the time of marriage to filing the petition. Persons serving in the armed forces of the United States who have been continuously stationed at any military base or installation in this state for

one year or, if the marriage was solemnized in this state, have resided in this state from the time of marriage to the filing of the petition shall for the purposes of this act be deemed residents of this state.

Sec. 4. If a petition for legal separation is filed before residence requirements for dissolution of marriage have been complied with, either party, upon complying with such requirements, may amend his pleadings to request a dissolution of marriage, and notice of such amendment shall be given in the same manner as for an original action under this act.

Sec. 5. In proceedings under this act, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorneys' fees.

Sec. 6. A proceeding under this act shall be commenced by filing a petition in the district court. Except when service is by publication, a copy of the petition, together with a copy of a summons, shall be served upon the other party to the marriage.

Sec. 7. The form of the petition and all other pleadings required by this act shall be prescribed by the Supreme Court. The petition shall include the following:

(1) The name and address of petitioner and his attorney;

(2) The name and address, if known, of respondent;

(3) The date and place of marriage;

(4) The name and date of birth of each child whose custody or welfare may be affected by the proceedings;

(5) If the petitioner is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;

(6) A statement of the relief sought by petitioner, including adjustment of custody, property, and support rights; and

(7) An allegation that the marriage is irretrievably broken.

Sec. 8. A responsive pleading, if any, shall be filed and served upon the petitioner within thirty days of the date of service upon the respondent.

Sec. 9. No marriage shall be dissolved or legal separation decreed unless the respondent shall have (1) been personally served with process if within the state; (2) been served with personal notice duly proved and appearing of record if out of this state; (3) been served by publication as provided in section 25-519, Revised Statutes Supplement, 1971, after an order for publication has been signed and filed upon affidavit of petitioner or his attorney that respondent's whereabouts is unknown and could not be determined after reasonable and due inquiry and search for thirty days after filing the petition; or (4) entered an appearance in the case.

Sec. 10. Hearings shall be held in open court upon the oral testimony of witnesses or upon the depositions of such witnesses taken as in other actions. The court may in its discretion close the hearing and may restrict the availability of the evidence or bill of exceptions.

Sec. 11. The court may order either party to pay to the clerk a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action, and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the petition or by motion by the petitioner or by the respondent in a responsive pleading; but no such order shall be entered until three clear days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under this act after the petition is filed, upon application of either party the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessaries of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him; (2) enjoining any party from molesting or disturbing the peace of the other party; and (3) determining the temporary custody of any minor children of the marriage; Provided, ex parte orders issued pursuant to subdivision (1) of this section shall remain in force for no more than ten days or until a hearing is held thereon,

whichever is earlier. After motion, notice to the party's attorney, and hearing, the court may order either party excluded from the family dwelling of the other upon a showing that physical or emotional harm would otherwise result.

Sec. 12. The court may appoint an attorney to protect the interests of any minor children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify on matters pertinent to the welfare of the children. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered, unless the court finds the party responsible is indigent and orders the county to pay.

Sec. 13. Applications for support or alimony shall be accompanied by a statement of the applicant's financial condition and, to the best of the applicant's knowledge, a statement of the other party's financial condition. Such other party may file his statement if he so desires, and shall do so if ordered by the court. Statements shall be under oath and shall show income from salary or other sources, assets, debts and payments thereon, living expenses, and other relevant information. Required forms for financial statements may be furnished by the court.

Sec. 14. No decree shall be entered under this act unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to this act shall be subject to transfer to a conciliation court pursuant to section 42-822 or section 42-823, Reissue Revised Statutes of Nebraska, 1943, in counties where such a court has been established. In counties having no conciliation court, the court hearing proceedings under this act may refer the parties to qualified marriage counselors or family service agencies, or other persons or agencies determined by the court to be qualified to provide conciliation services, if the court finds that there appears to be some reasonable possibility of a reconciliation being effected.

Sec. 15. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

Sec. 16. When the pleadings or evidence in any action pursuant to this act indicate that either spouse is mentally ill, a guardian ad litem shall be appointed to represent his interests. Such guardian's fee, when allowed by the court, shall be taxed as costs, and shall be paid by the county if the parties are unable to do so. When a marriage is dissolved and the evidence indicates that either spouse is mentally ill, the court may, at the time of dissolving the marriage or at any time thereafter, make such order for the support and maintenance of such mentally ill person as it may deem necessary and proper, having due regard to the property and income of the parties, and the court may require the party ordered to provide support and maintenance to file a bond or otherwise give security for such support. Such an order for support may be entered upon the application of the guardian or guardian ad litem or of any person, county, municipality, or institution charged with the support of such mentally ill person. The order for support may, if necessary, be revised from time to time on like application.

Sec. 17. No decree dissolving a marriage shall be granted in any proceeding before six months shall have elapsed after service of process or after the last day of publication of notice or after the date that a voluntary appearance is filed with the clerk or after proceedings in the conciliation court are completed, but the court may waive the waiting period if it shall determine that conciliation efforts have failed.

Sec. 18. When dissolution of a marriage or legal separation is decreed, the court may include such orders in relation to any minor children and their maintenance as shall be justified, including placing the minor children in court custody if their welfare so requires. Custody and visitation of minor children shall be determined on the basis of their best interests. Subsequent changes may be made by the court when required after notice and hearing.

Sec. 19. When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other as may be reasonable, having regard for the circumstances of the parties, duration of

the marriage, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Reasonable security for payment may be required by the court. Except as to amounts accrued prior to the date of service of process on a petition to modify, orders for alimony may be modified or revoked for good cause shown, but where alimony is not allowed in the original decree dissolving a marriage, such decree may not be modified to award alimony. Except as otherwise agreed by the parties in writing or by order of the court, alimony orders shall terminate upon the death of either party or the remarriage of the recipient.

Sec. 20. (1) To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written property settlement agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the support and custody of minor children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the agreement, except terms providing for the support and custody of minor children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(3) If the court finds the agreement unconscionable, the court may request the parties to submit a revised agreement or the court may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the agreement is not unconscionable as to support, maintenance, and property: (a) Unless the agreement provides to the contrary, its term may be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or (b) if the agreement provides that its terms shall not be set forth in the decree, the decree shall identify the agreement and shall state that the court has found the terms not unconscionable, and the parties shall be ordered to perform them.

(5) Terms of the agreement set forth in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt.

(6) Alimony may be ordered in addition to a property settlement award.

(7) Except for terms concerning the custody or support of minor children, the decree may expressly preclude or limit modification of terms set forth in the decree.

Sec. 21. In every action for dissolution of marriage or legal separation, the court may require the husband to pay any sum necessary to enable the wife to maintain the action during its pendency. When dissolution of marriage or a legal separation is decreed, the court may decree costs against either party and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Sec. 22. When a legal separation is decreed, the court may order payment of such support by one party to the other as may be reasonable, having regard for the circumstances of the parties and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Orders for support may be modified or revoked for good cause shown upon notice and hearing, except as to amounts accrued prior to date of service of motion to modify, to which date modification may be retroactive.

Sec. 23. All orders or judgments for temporary or permanent support payments or alimony shall direct the payment of such sums to the clerk of the district court for the use of the persons for whom the same have been awarded. Orders and judgments for temporary or permanent support or alimony shall be filed with the clerk, and have the force and effect of judgments when entered, and the clerk shall disburse all payments received as directed by the court. Records shall be kept of all funds received and disbursed by the clerk, which records shall be open to inspection by the parties and their attorneys.

Sec. 24. Nothing in this act shall prohibit a party from initiating contempt proceedings. Costs, including a reasonable attorney's fee, may be taxed against a party found to be in contempt.

Sec. 25. (1) All judgments and orders for payment of money under this act shall be liens upon property as in other actions and may be enforced or collected by execution and the means authorized for collection of money judgments. The judgment creditor may

execute a partial or total release of the judgment, generally or on specific property. Release of judgments for child support must be approved by the court which rendered the judgment.

(2) Child support judgments shall cease to be liens on property ten years from the date (a) the youngest child becomes of age or dies, or (b) the most recent execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated.

(3) Alimony and property settlement award judgments shall cease to be a lien on property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated.

(4) Whenever a judgment creditor under this act refuses to execute a release of the judgment as provided in this section, the person desiring such release may file an application for the relief desired. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no less than ten days before the date of hearing. If the court finds that the release is not requested for the purpose of avoiding payment and that the release will not unduly reduce the security, the court may release property from the judgment lien. As a condition for such release, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment.

(5) The court may in any case, if it finds it necessary, order a person required to make payments under this act to post sufficient security with the clerk to insure payment. Upon failure to comply with the order the court may also appoint a receiver to take charge of the debtor's property to insure payment.

Sec. 26. A decree dissolving a marriage shall not become final or operative until six months after the decree is rendered, except for the purpose of review by appeal, and for such purpose only the decree shall be treated as a final order as soon as rendered. If an appeal is instituted within one month, such decree shall not become final until such proceedings are finally determined. If no such proceedings have been instituted, the court may, at any time within such six months, vacate or modify its decree. If such decree shall not have been vacated or modified, unless proceedings are then pending with that end in view, the original decree shall at the

expiration of six months become final without any further action of the court.

Sec. 27. Actions for annulment of a marriage shall be brought in the same manner as actions for dissolution of marriage, and shall be subject to all applicable provisions of this act pertaining to dissolution of marriage, except that the only residence requirement shall be that petitioner be an actual resident of the county in which the petition is filed.

Sec. 28. A marriage may be annulled for any of the following causes:

(1) Where the marriage between the parties is prohibited by law;

(2) Where either party is impotent at the time of marriage;

(3) Where either party had a spouse living at the time of marriage;

(4) Where either party was mentally ill or a mental retardate at the time of marriage; or

(5) Force or fraud.

Sec. 29. Annulment actions on behalf of persons under disablility may be brought by a parent or adult next friend. An annulment may not be decreed if the marriage is found to be voidable and the parties freely cohabited after the ground for annulment has terminated or become known to the innocent party.

Sec. 30. When validity of a marriage is doubted, either party may file a petition and the court shall decree it annulled or affirmed according to the proof. Notice shall be given the other party as in the case of a petition for dissolutions of marriage.

Sec. 31. Children born to the parties, or to the wife, in a marriage relationship which may be dissolved or annulled pursuant to this act, shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

Sec. 32. When the court finds that a party entered into the contract of marriage in good faith supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be

entered in the decree and the court may order such innocent party compensated as in the case of dissolution of marriage, including an award for costs and attorney fees.

Sec. 33. (1) This act shall apply to all proceedings commenced on or after its effective date.

(2) This act shall apply to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation shall be deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act shall apply to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial shall govern the appeal, the new trial, and any subsequent trial or appeal.

Sec. 34. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions threof.

Sec. 35. That sections 42-301 to 42-340, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, are repealed.

III-27. Acts take effect after three months; emergency bills; session laws.

No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency, which is expressed in the preamble or body of the act, the Legislature shall by a vote of two-thirds of all the members elected otherwise direct. All laws shall be published within sixty days after the adjournment of each session and distributed among the several counties in such manner as the Legislature may provide.

Source: Neb. Const. art. III, sec. 24 (1875); Amended 1972, Laws 1971, LB 126, sec. 1; Amended 1998, Laws 1997, LR 17CA, sec. 1.

Annotations

1. Without emergency clause
2. With emergency clause
3. Miscellaneous

1. Without emergency clause

Without an emergency clause, a legislative act takes effect three calendar months after adjournment of Legislature. Summerville v. North Platte Valley Weather Control Dist., 170 Neb. 46, 101 N.W.2d 748 (1960).

While act passed without emergency clause takes effect three calendar months after adjournment of session, operation of act can be postponed to a later date. Wilson v. Marsh, 162 Neb. 237, 75 N.W.2d 723 (1956).

Statute without emergency clause does not become operative until three calendar months after adjournment of the Legislature which enacted it. Bainter v. Appel, 124 Neb. 40, 245 N.W. 16 (1932).

Following clause of act "this act shall take effect on and after its passage and approval" does not express an emergency. State v. Pacific Express Co., 80 Neb. 823, 115 N.W. 619 (1908).

Act containing no emergency clause does not become operative until after three calendar months from adjournment of Legislature. State ex rel. City Water Co. v. City of Kearney, 49 Neb. 325, 68 N.W. 533 (1896).

2. With emergency clause

An act adopted with an emergency clause by vote of two-thirds of all members elected to the Legislature and vetoed by the Governor becomes effective when passed over the veto by vote of three-fifths of the members elected. Sandberg v. State, 188 Neb. 335, 196 N.W.2d 501 (1972).

An act of the Legislature stating an emergency, without stating the nature thereof, is sufficient. Read v. City of Scottsbluff, 179 Neb. 410, 138 N.W.2d 471 (1965).

When a statute passes with an emergency clause in computing the time it takes effect, the day of its passage is excluded, and it goes into effect the next day. Wilson & Company, Inc. v. Otoe County et al., 140 Neb. 518, 300 N.W. 415

(1941).

Where two acts are companion laws and must be construed together, the fact that one has an emergency clause does not operate to put companion law into effect prior to date set by Constitution. Lincoln Tel. & Tel. Co. v. Albers, 126 Neb. 329, 253 N.W. 429 (1934).

3. Miscellaneous

This provision provides the only restriction on the Legislature's power to determine the effective date of its enactments. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Right of referendum extends to emergency acts of Legislature. Klosterman v. Marsh, 180 Neb. 506, 143 N.W.2d 744 (1966).

Interest on forbearance of money computed at the legal rate on date claim arose. Wheaton v. Aetna Life Ins. Co., 128 Neb. 583, 259 N.W. 753 (1935).

Automobile guest law does not affect a cause of action arising after Legislature adjourned but before law took effect. Roh v. Opocensky, 125 Neb. 551, 251 N.W. 102 (1933).

Act may specifically provide for separate provisions taking effect at different dates. State ex rel. Wheeler v. Stuht, 52 Neb. 209, 71 N.W. 941 (1897).

Term "calendar month" denotes period terminating with day of succeeding month, numerically corresponding to day of its beginning, less one. McGinn v. State, 46 Neb. 427, 65 N.W. 46 (1895).

Legislative act may provide that it shall not apply until expiration of terms of incumbent officers. Hopkins v. Scott, 38 Neb. 661, 57 N.W. 391 (1894).

LEGISLATIVE BILL 126

Approved by the Governor April 5, 1971

Introduced by Ramey C. Whitney, 44th District; William H. Hasebroock, 18th District

AN ACT for submission to the electors of an amendment to Article III, sections 8, 17, and 27, of the Constitution of Nebraska, relating to the Legislature; to provide qualifications of members of the Legislature; to correct provisions; to provide for the submission of the proposed amendment to the electors at the general election in November, 1972; to provide for the manner of submission and form of ballot; and to provide the effective date thereof.

Be it enacted by the people of the State of Nebraska,

Section 1. That at the general election in November, 1972, there shall be submitted to the electors of the State of Nebraska for approval the following amendment to Article III, sections 8, 17, and 27, of the Constitution of Nebraska, which is hereby proposed by the Legislature:

"Sec. 8. No person shall be eligible to the office of ~~Senator, or member of the House of Representatives, who shall not be an elector~~ member of the Legislature unless on the date of the general election at which he is elected or on the date of his appointment he is a registered voter, has attained the age of twenty-one years and ~~have~~ has resided within the district from which he is elected for the term of one year next before his election, unless he shall have been absent on the public business of the United States or of this State. And no person elected as aforesaid shall hold his office after he shall have removed from such district.

Sec. 17. The ~~Senate and House of Representatives in joint convention~~ Legislature shall have the sole power of impeachment, but a majority of the members elected must concur therein. Upon the ~~entertainment~~ adoption of a resolution ~~to impeach by either house the other house shall at once be notified thereof and the two houses shall meet in joint convention for the purpose of acting upon such resolution within three days of such notification. A~~ of impeachment a notice of an impeachment of any officer, other than a ~~justice~~ Judge of the Supreme

Court, shall be forthwith served upon the Chief Justice, by the ~~Secretary-of-the-Senate~~ Clerk of the Legislature, who shall thereupon call a session of the Supreme Court to meet at the Capitol within ten days after such notice to try the impeachment. A notice of an impeachment of a the Chief Justice or any Judge of the Supreme Court shall be served by the ~~Secretary-of-the-Senate~~ Clerk of the Legislature, upon ~~the~~ any Judge of the judicial district within which the Capitol is located, and he thereupon shall notify all the Judges of the District Court in the State to meet with him within thirty days at the Capitol, to sit as a Court to try such impeachment, which Court shall organize by electing one of its number to preside. No person shall be convicted without the concurrence of two-thirds of the members of the Court of impeachment, but judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, profit, or trust, in this State, but the party impeached, whether convicted or acquitted shall nevertheless be liable to prosecution and punishment according to law. No officer shall exercise his official duties after he shall have been impeached and notified thereof, until he shall have been acquitted.

Sec. 27. No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency, to be expressed in the preamble or body of the act, the Legislature shall, by a vote of two-thirds of all the members elected ~~to-each--house~~ otherwise direct. All laws shall be published in book form within sixty days after the adjournment of each session and distributed among the several counties in such manner as the ~~legislature~~ Legislature may provide."

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by Article XVI, section 1, of the Constitution of Nebraska. The proposition for the submission of the proposed amendment shall be placed upon the ballot in the following form:

"Constitutional amendment providing for the qualifications of members of the Legislature and correcting provisions of the Constitution.
For
Against"

Sec. 3. That the proposed amendment, if adopted, shall be in force and take effect immediately upon the completion of the canvass of the votes, at

which time it shall be the duty of the Governor to proclaim it as a part of the Constitution of Nebraska.

LAWS

Passed by the

Legislature of the State of Nebraska

Eighty-Second Legislature

Second Session

1972

VOLUME 1

Which convened in the City of Lincoln, Nebraska
Tuesday, January 4, 1972 and adjourned
Wednesday, April 5, 1972

Compiled by
Vincent D. Brown
and published under authority of
Allen J. Beermann
Secretary of State

receipt of written notification from the builder that such system is ready for inspection.

444:5 **Prior Approval of Sewage Disposal Systems.** Amend RSA 149-E:3, III (supp) as inserted by 1967, 147:13 by striking out in lines two and three the words "near shorelines" so that said paragraph as amended shall read as follows:

III. No person shall construct any building from which sewage or other wastes will discharge or construct a sewage or waste disposal system without prior approval of the plans and specifications of the sewage or waste disposal system by the commission. Nothing herein shall be construed to modify or lessen the powers conferred upon local authorities by other statutes; provided, however, that in all instances the requirements contained in this chapter shall be considered as minimum.

444:6 **Public Sewer Connections Excepted.** Amend RSA 149-E:3, IV (supp) as inserted by 1967, 147:13 by striking out in line two the words "near any shoreline" so that said paragraph as amended shall read as follows:

IV. No plans and specifications shall be required whenever the proposed sewage or waste disposal system will be connected to any public sewer system operated by any municipality or other governmental body within the state.

444:7 **Enforcement.** Amend RSA 149-E:6 (supp) as inserted by 1967, 147:13 by striking out in line three the words "near any shoreline" so that said section as amended shall read as follows:

149-E:6 **Enforcement.** Whenever it is found that a sewage or waste disposal system or any building from which waste is being discharged is being or has been constructed after the effective date of this chapter without prior approval of the commission, the commission shall issue an order to cease and desist such construction or use and shall notify the appropriate local authorities. Upon certification by the commission, local officials are hereby authorized and fully empowered to exercise concurrent jurisdiction in the enforcement of this chapter.

444:8 **Effective Date.** This act shall take effect July 1, 1971.

[Approved June 30, 1971.]

[Effective date July 1, 1971.]

CHAPTER 445.

AN ACT PROVIDING THAT IRRECONCILABLE DIFFERENCES SHALL BE GROUNDS FOR DIVORCE.

Be it Enacted by the Senate and House of Representatives in General Court convened:

445:1 **Irreconcilable Differences.** Amend RSA 458 by inserting after section 7 the following new sections:

458:7-a **[New] Absolute Divorce, Irreconcilable Differences.** A divorce from the bonds of matrimony shall be decreed, irrespective of the fault of either party, on the ground of irreconcilable differences which have caused the irremediable breakdown of the marriage. In any pleading or

hearing of a libel for divorce under this section, allegations or evidence of specific acts of misconduct shall be improper and inadmissable, except where child custody is in issue and such evidence is relevant to establish that parental custody would be detrimental to the child or at a hearing where it is determined by the court to be necessary to establish the existence of irreconcilable differences. If, upon hearing of an action for divorce under this section, both parties are found to have committed an act or acts which justify a finding of irreconcilable differences, a divorce shall be decreed and the acts of one party shall not negate the acts of the other nor bar the divorce decree.

458:7-b **[New] Reconciliation.** Whenever, before or during a hearing but before a final decree, the court shall determine that there is a likelihood for rehabilitation of the marriage relationship, the court shall refer the parties to an appropriate counseling agency within its jurisdiction, which referral may be made according to RSA 167-B or as the parties request, with the approval of the court. If the court determines that there is a reasonable possibility of reconciliation, the court shall continue the proceedings and require that both parties submit to marriage counseling.

445:2 **Insanity of Libelee.** Amend RSA 458:12 by striking out said section and inserting in place thereof the following:

458:12 **Insanity of Libelee.** If the libelee is insane and has no legal guardian other than his spouse, the court may appoint a guardian to appear for and answer for the libelee. Although the insanity of the libelee may be considered by the court in determining whether a divorce should be granted, such insanity shall not constitute a defense to a libel for divorce. Where a decree of divorce has been entered and where it has been proven by competent medical testimony at the divorce hearing that the libelee was incurably insane at the time the libel for divorce was filed, the decree shall in no way relieve a spouse from any obligation imposed by law as a result of marriage to support the incurably insane spouse.

445:3 **Provision for Temporary Orders.** Amend RSA 458:16, as amended by striking out said section and inserting in place thereof the following:

458:16 **Temporary Orders.** After the filing of a libel for divorce, annulment or a decree of nullity, the superior court may issue orders with such conditions and limitations as the court deems just which may, at the discretion of the court, be made ex parte. Said orders may be to the following effect:

I. Enjoining any person from imposing any restraint upon the person or liberty of the other;

II. Enjoining any party from molesting or disturbing the peace of the other party;

III. Enjoining either party from entering the family dwelling or the dwelling of the other upon a showing that physical or emotional harm would otherwise result;

IV. Determining the temporary custody and maintenance of any minor children of the marriage as shall be deemed expedient for the benefit of the children;

V. Ordering a temporary allowance to be paid for the support of the other;

VI. Enjoining any person from transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, except in the usual course of business or for the necessities of life, and if such order is directed against a party, it may require him to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures. If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than five days after the request is received by the clerk for the county in which the libel for divorce, annulment or decree of nullity is filed.

445:4 **Change of Name.** Amend RSA 458:24 (supp) as amended by striking out the same and inserting in place thereof the following:

458:24 **Decree.** In any proceeding under this chapter, except an action for legal separation, the court may, when a decree of divorce or nullity is made, restore the maiden or former name of the wife, regardless of whether a request therefor had been included in the libel.

445:5 **Limited Divorce.** Amend RSA 458:26 by striking out said section and inserting in place thereof the following:

458:26 **Legal Separation.**

I. In any case in which a divorce might be decreed, the superior court, on petition of either party, may decree a legal separation of the parties, which separation shall have in all respects the effect of a divorce, except that the parties shall not thereby be made free to marry any third person and except as hereinafter provided.

II. A person concerning whom a legal separation has been decreed may, after a period of four years following the granting of the decree, file a motion to amend the decree to one of divorce and the court may then consider whether justice requires that such a change be made, provided that no such motion shall be granted unless the respondent has substantially complied with all orders made by the court pursuant to the decree of separation.

445:6 **Orders for Support in Cases Other than Divorce.** Amend RSA 458:31 as amended by striking out said section and inserting in place thereof the following:

458:31 **Orders for Support of Spouse.** Whenever a husband fails, without justifiable cause to provide suitable support for his wife, or deserts her, or if the wife for justifiable cause is actually living apart from her husband, or if the husband is deserted by the wife, or is actually living apart from his wife for justifiable cause, the superior court, upon his or her petition, or if insane by his or her guardian or next friend, may issue orders which may at the discretion of the court be ex parte and which may grant such relief as provided for in RSA 458:16. The domicile requirements of RSA 458:4, 5 and 6 shall not apply to this section; and the court may grant relief hereunder to a nonresident plaintiff if the defendant is a resident of this state.

445:7 **Repeal.** The following sections of RSA 458 are hereby repealed:

I. RSA 458:8, relative to the existence of the cause for divorce at the time of filing;

II. RSA 458:30-a (supp) as inserted by 1969, 327:1, relative to the granting of absolute divorce after limited divorce.

445:8 **Effective Date.** This act shall take effect sixty days after its passage.

[Approved June 30, 1971.]

[Effective date August 29, 1971.]

CHAPTER 446.

AN ACT RELATIVE TO GROUP LIFE INSURANCE PLANS.

Be it Enacted by the Senate and House of Representatives in General Court convened:

446:1 **Policies to Employers.** Amend RSA 408:15, (1), (d) by adding at the end of said paragraph the following:

No policy may be issued which provides insurance on any employee which together with any other insurance issued to such employee under any group life policy or policies issued to the employer or to the trustees of a fund established wholly or in part by the employer exceeds eighty thousand dollars.

446:2 **Policies to Labor Unions.** Amend RSA 408:15, (3), (d) by striking out said paragraph and inserting in place thereof the following:

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides insurance on any union member which together with any other insurance issued to such member under any group life insurance policies issued to the union exceeds eighty thousand dollars.

446:3 **Policies to Trustees.** Amend RSA 408:15, (4), (d) as inserted by 1955, 79:1 and amended by 1965, 254:1 by striking out said paragraph and inserting in place thereof the following:

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides insurance on any person which together with any other insurance issued to such person under any group life insurance policy or policies issued to the employers or any of them, or to the trustees of a fund established in whole or in part by the employers or any of them, exceeds eighty thousand dollars.

446:4 **Policies to Nonprofit Industrial Associations; Number.** Amend RSA 408:15, (5), (b) by striking out said paragraph and inserting in place thereof the following:

(b) The total number of insured employees must not be less than one hundred.

446:5 **Policies to Nonprofit Industrial Associations: Amount.** Amend RSA 408:15, (5), (e) as inserted by 1959, 190:1 and amended by 1963,

(1) who were killed in the terrorist attack on the United States on September 11, 2001; or

(2) who died as a result of injuries received in the attack; or

(3) who died as a result of illness caused by exposure to the attack sites, as established in medical records or other appropriate documentation as required by the board; or

(4) who are missing and officially presumed dead as a direct result of the attack.

The terrorist attack on the United States shall include the hijackings of American Airlines Flight 11, American Airlines Flight 77, United Airlines Flight 93 and United Airlines Flight 175 and the subsequent crashes at the World Trade Center in New York City, the Pentagon in Washington, D.C. and in Somerset County, Pennsylvania.

b. Scholarships from the fund may be awarded annually upon proper application to the fund to any student who qualifies under the criteria developed by the board.

2. This act shall take effect immediately.

Approved January 17, 2007.

CHAPTER 6

AN ACT establishing a cause of divorce from the bond of matrimony and amending N.J.S.2A:34-2.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.2A:34-2 is amended to read as follows:

Causes for divorce from bond of matrimony.

2A:34-2. Divorce from the bond of matrimony may be adjudged for the following causes heretofore or hereafter arising:

a. Adultery;

b. Willful and continued desertion for the term of 12 or more months, which may be established by satisfactory proof that the parties have ceased to cohabit as man and wife;

c. Extreme cruelty, which is defined as including any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it im-

proper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; provided that no complaint for divorce shall be filed until after 3 months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;

d. Separation, provided that the husband and wife have lived separate and apart in different habitations for a period of at least 18 or more consecutive months and there is no reasonable prospect of reconciliation; provided, further that after the 18-month period there shall be a presumption that there is no reasonable prospect of reconciliation;

e. Voluntarily induced addiction or habituation to any narcotic drug as defined in the New Jersey Controlled Dangerous Substances Act, P.L.1970, c.226 or habitual drunkenness for a period of 12 or more consecutive months subsequent to marriage and next preceding the filing of the complaint;

f. Institutionalization for mental illness for a period of 24 or more consecutive months subsequent to marriage and next preceding the filing of the complaint;

g. Imprisonment of the defendant for 18 or more consecutive months after marriage, provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation following such imprisonment;

h. Deviant sexual conduct voluntarily performed by the defendant without the consent of the plaintiff;

i. Irreconcilable differences which have caused the breakdown of the marriage for a period of six months and which make it appear that the marriage should be dissolved and that there is no reasonable prospect of reconciliation.

2. This act shall take effect immediately.

Approved January 20, 2007.

CHAPTER 7

AN ACT concerning municipal dog license fees and amending P.L.1941, c.151.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 12 of P.L.1941, c.151 (C.4:19-15.12) is amended to read as follows:

C.4:19-15.12 License fee may be fixed by ordinance; fee otherwise.

12. a. The governing body of each municipality may, by ordinance, fix the sum to be paid annually for a dog license and each renewal thereof, as required by section 3 of this act, which sum shall be not less than $1.50 or more than $21; provided however, that the governing body may by ordinance, provide for a reduction or waiver of the sum to be paid by an owner who presents a certificate signed by a licensed veterinarian stating that the dog has been spayed or neutered. In the absence of any local ordinance, the fee for all dog licenses shall be $1.50.

b. The governing body of each municipality, may, by ordinance, fix the sum to be paid for a 3-year dog license and each renewal thereof, which sum shall be not more than 3 times the sum charged for an annual license under subsection a. of this section. In the absence of such a local ordinance, the license fee for a 3-year dog license shall be $4.50. The Department of Health and Senior Services shall promulgate appropriate regulations concerning veterinarians' certificates for rabies inoculations of dogs for 3-year periods in connection with licenses issued under this subsection.

2. This act shall take effect immediately, and shall apply to all dog licenses issued after the effective date of this act.

Approved January 24, 2007.

CHAPTER 8

AN ACT concerning State-subsidized rental housing and supplementing P.L.1983, c.530 (C.55:14K-1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.55:14K-7.3 Tenants forum; State-subsidized rental housing, complaints.

1. a. The agency shall require every manager of rental housing which has been financed, in whole or in part, by the agency or any other State entity, to arrange meetings, to be held at least once every three months, with notification to tenants residing in such housing in order to provide a forum for the tenants to discuss complaints that the tenants may have concerning the rental housing. For the purposes of this section, "rental housing" means a multiple dwelling as defined in section 3 of P.L.1967, c.76 (C.55:13A-3).

b. Each meeting shall take place on the site of the rental housing at a time convenient for the tenants, although if the property has no suitable facility to accommodate the attendees, the meeting shall take place at a suitable nearby facility which is open to the public, such as a public library.

c. The tenants of a building, by a majority vote, may waive the holding of any meeting required pursuant to this section.

This section shall not apply to any property which is owned by a public housing authority, other than the Department of Community Affairs when acting as a public housing authority.

2. This act shall take effect immediately.

Approved January 24, 2007.

CHAPTER 9

AN ACT concerning the return of certain security deposits, supplementing and amending P.L.1971, c.223.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.46:8-21.5 Deposit recovery, certain; court action not required for tenant receiving financial assistance.

1. A tenant who has received financial assistance through any State or federal program, including welfare or rental assistance, shall not be required to file an action in court to recover deposits withheld by a landlord in violation of P.L.1967, c.265 (C.46:8-19 et seq.) in order to continue participation in any such program.

2. Section 3 of P.L.1971, c.223 (C.46:8-21.1) is amended to read as follows:

C.46:8-21.1 Return of deposit; displaced tenant; civil penalties, certain.

3. Within 30 days after the termination of the tenant's lease or licensee's agreement, the owner or lessee shall return by personal delivery, registered or certified mail the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of a contract, lease, or agreement, to the tenant or

licensee, or, in the case of a lease terminated pursuant to P.L.1971, c.318 (C.46:8-9.1), the executor or administrator of the estate of the tenant or licensee or the surviving spouse of the tenant or licensee so terminating the lease. The interest or earnings and any such deductions shall be itemized and the tenant, licensee, executor, administrator or surviving spouse notified thereof by personal delivery, registered or certified mail. Notwithstanding the provisions of this or any other section of law to the contrary, no deductions shall be made from a security deposit of a tenant who remains in possession of the rental premises.

Within five business days after:

a. the tenant is caused to be displaced by fire, flood, condemnation, or evacuation, and

b. an authorized public official posts the premises with a notice prohibiting occupancy; or

c. any building inspector, in consultation with a relocation officer, where applicable, has certified within 48 hours that displacement is expected to continue longer than seven days and has so notified the owner or lessee in writing, the owner or lessee shall have available and return to the tenant or the tenant's designated agent upon his demand the sum so deposited plus the tenant's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of the contract, lease or agreement and less any rent due and owing at the time of displacement.

Such net sum shall continue to be available to be returned upon demand during normal business hours for a period of 30 days at a location in the same municipality in which the subject leased property is located and shall be accompanied by an itemized statement of the interest or earnings and any deductions. The owner or lessee may, by mutual agreement with the municipal clerk, have the municipal clerk of the municipality in which the subject leased property is located return said net sum in the same manner. Within three business days after receiving notification of the displacement, the owner or lessee shall provide written notice to a displaced tenant by personal delivery or mail to the tenant's last known address. Such notice shall include, but not be limited to, the location at which and the hours and days during which said net sum shall be available to him. The owner or lessee shall provide a duplicate notice in the same manner to the relocation officer. Where a relocation officer has not been designated, the duplicate notice shall be provided to the municipal clerk. When the last known address of the tenant is that from which he was displaced and the mailbox of that address is not accessible during normal business hours, the owner or lessee shall also post such notice at each exterior public entrance of the property from which

the tenant was displaced. Any such net sum not demanded by and returned to the tenant or the tenant's designated agent within the period of 30 days shall be redeposited or reinvested by the owner or lessee in an appropriate interest bearing or dividend yielding account in the same investment company, State or federally chartered bank, savings bank or savings and loan association from which it was withdrawn. In the event that said displaced tenant resumes occupancy of the premises, said tenant shall redeliver to the owner or lessee one-third of the security deposit immediately, one-third in 30 days and one-third 60 days from the date of reoccupancy. Upon the failure of said tenant to make such payments of the security deposit, the owner or lessee may institute legal action for possession of the premises in the same manner that is authorized for nonpayment of rent.

The Commissioner of Community Affairs, the Public Advocate, the Attorney General, or any State entity which made deposits on behalf of a tenant may impose a civil penalty against an owner or lessee who has willfully and intentionally withheld deposits in violation of section 1 of P.L.1967, c.265 (C.46:8-19), when the deposits were made by or on behalf of a tenant who has received financial assistance through any State or federal program, including welfare or rental assistance. An owner or lessee of a tenant on whose behalf deposits were made by a State entity and who has willfully and intentionally withheld such deposits in violation of this section shall be liable for a civil penalty of not less than $500 or more than $2,000 for each offense. The penalty prescribed in this paragraph shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The State entity which made such deposits on behalf of a tenant shall be entitled to any penalty amounts recovered pursuant to such proceedings.

In any action by a tenant, licensee, executor, administrator or surviving spouse, or other person acting on behalf of a tenant, licensee, executor, administrator or surviving spouse, for the return of moneys due under this section, the court upon finding for the tenant, licensee, executor, administrator or surviving spouse shall award recovery of double the amount of said moneys, together with full costs of any action and, in the court's discretion, reasonable attorney's fees.

3. This act shall take effect immediately.

Approved January 24, 2007.

CHAPTER 10

AN ACT concerning financing underground storage tank closures and remediations, and amending and supplementing P.L.1997, c.235.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P.L.1997, c.235 (C.58:10A-37.6) is amended to read as follows:

C.58:10A-37.6 Application for financial assistance; fee.

6. An eligible owner or operator seeking financial assistance from the fund shall file an application on a form to be developed by the authority. The application form shall be submitted with the application fee. The application fee per facility for residential petroleum underground storage tanks shall be $250. The authority may establish the application fee per facility for nonresidential petroleum underground storage tanks.

The authority shall adopt rules and regulations listing the filing requirements for a complete application for financial assistance. If a financial assistance application is determined to be incomplete by the authority, an applicant shall have 30 days from the date of receipt of written notification of incompleteness to file such additional information as may be required by the authority for a completed application. If an applicant fails to file the additional information within the 30 days, the filing date for that application shall be the date that such additional information is received by the authority. If the additional information is filed within the 30 days and is satisfactory to the authority, the filing date for that application shall be the initial date of application with the authority. Notwithstanding the above, if a completed application has been submitted and the applicant fails to submit the filing fee, then the filing date for the application shall not be established until the date on which the authority receives the application fee. A change in the filing date resulting from failure to submit a completed application or from failure to submit the application fee in a timely fashion for applications filed for financial assistance for a regulated tank to meet the upgrade or closure requirements pursuant to 42 U.S.C. s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.) or for the remediation of a discharge from any such regulated tank shall not render the application ineligible for financial assistance as long as the initial date of application is prior to June 30, 2010, or for a regulated tank that is not operational, 18 months from the

date of discovery of the tank or June 30, 2010, whichever is later.

An applicant shall have 120 days from receipt of notice of approval of a financial assistance award to submit to the authority an executed contract for the upgrade, closure, or remediation, or all three, as the case may be, that is consistent with the terms and conditions of the financial assistance approval. Failure to submit an executed contract within the allotted time, without good cause, may result in an alteration of an applicant's priority ranking.

2. Section 7 of P.L.1997, c.235 (C.58:10A-37.7) is amended to read as follows:

C.58:10A-37.7 Conditions for awarding financial assistance.

7. a. The authority shall award financial assistance to an owner or operator of a facility only if the facility is properly registered with the department pursuant to section 3 of P.L.1986, c.102 (C.58:10A-23), where applicable, and if all fees or penalties due and payable on the facility to the department pursuant to P.L.1986, c.102 have either been paid or the nature or the amount of the fee or penalty is being contested in accordance with law.

b. The authority may deny an application for financial assistance, and any award of financial assistance may be recoverable by the authority, upon a finding that:

(1) in the case of financial assistance awarded for a remediation, the discharge was proximately caused by the applicant's knowing conduct;

(2) in the case of financial assistance awarded for a remediation, the discharge was proximately caused or exacerbated by knowing conduct by the applicant with regard to any lawful requirement applicable to petroleum underground storage tanks intended to prevent, or to facilitate the early detection of, the discharge;

(3) the applicant failed to commence or complete a remediation, closure, or an upgrade for which an award of financial assistance was made within the time required by the department in accordance with the applicable rules and regulations, within the time prescribed in an administrative order, an administrative consent agreement, a memorandum of agreement, or a court order; or

(4) the applicant provided false information or withheld information on a loan or grant application, or other relevant information required to be submitted to the authority, on any matter that would otherwise render the applicant ineligible for financial assistance from the fund, that would alter the priority of the applicant to receive financial assistance from the fund,

that resulted in the applicant receiving a larger grant or loan award than the applicant would otherwise be eligible, or that resulted in payments from the fund in excess of the actual eligible project costs incurred by the applicant or the amount to which the applicant is legally eligible.

Nothing in this subsection shall be construed to require the authority to undertake an investigation or make any findings concerning the conduct described in this subsection.

c. An application for financial assistance from the fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance. Except as provided in subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), once financial assistance for an upgrade or closure is awarded for a facility, no additional award of financial assistance for upgrade or closure costs may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend his application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of P.L.1997, c.235 (C.58:10A-37.5). An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with the rules and regulations of the department.

d. Except as provided in this subsection, and in subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial assistance for upgrade shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C.s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), unless the application is filed with the authority prior to January 1, 1999 and the application is complete and the application fee is received by August 1, 1999. Except as provided in subsection g. of section 5 of P.L.1997, c.235 (C.58:10A-37.5), no financial assistance for upgrade shall be awarded for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building required to be upgraded pursuant to P.L.1986, c.102 (C.58:10A-21 et seq.) but not pursuant to 42 U.S.C.s.6991 et seq., unless the applicant has received an extension of the deadline for compliance with the standards pursuant to subsection b. of section 9 of P.L.1986, c.102 (C.58:10A-29), the application is filed with the authority prior to June 30,

2005 and the application is complete and the application fee is received by December 31, 2005.

No financial assistance for closure shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C.s.6991 et seq. or P.L.1986, c.102 (C.58:10A-21 et seq.), or for the remediation of a discharge from any such regulated tank except as provided in subsection c. of this section, unless the application is filed with the authority prior to June 30, 2010 and the application is complete and the application fee is received by December 31, 2010.

In the case of a regulated tank that is not operational, financial assistance for the closure or the remediation of any discharge therefrom may be awarded if the application is filed with the authority no more than 18 months after the date of discovery of the existence of the regulated tank, or no later than June 30, 2010, whichever is later.

e. The date of occurrence of a discharge shall not affect eligibility for financial assistance from the fund. Except for a preliminary assessment or a site investigation performed after the effective date of P.L.1997, c.235 (C.58:10A-37.1 et seq.), and except as provided in subsections g. through j. of this section, no award of financial assistance shall be made from the fund for the otherwise eligible project costs of a remediation, closure, or an upgrade, or parts thereof, completed prior to an award of financial assistance from the fund.

f. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if financial assistance from the Hazardous Discharge Site Remediation Fund established pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4) has previously been made for a remediation at that site as a result of a discharge from that petroleum underground storage tank. No financial assistance may be awarded from the fund for the remediation of a discharge from a petroleum underground storage tank if the discharge began subsequent to the completion of an upgrade of that petroleum underground storage tank, which upgrade was intended to meet all applicable upgrade regulations of the department, no matter when the upgrade was performed.

g. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.), where an eligible owner or operator has filed an application for financial assistance from the fund, and there are either insufficient monies in the fund or the authority has not yet acted upon the application or awarded the financial assistance, the eligible owner or operator may expend its own funds for the upgrade, closure, or remediation, and upon approval of the application, the authority shall award the financial assistance as a

reimbursement of the monies expended for eligible project costs.

h. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has expended the applicant's own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the eligible owner or operator for the eligible project costs of the remediation.

i. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant that is an independent institution of higher education has expended the applicant's own funds on a remediation prior to filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for expenditures for the eligible project costs of the remediation made on or after December 1, 1996 in an amount not to exceed $500,000 for each independent institution of higher education.

j. Notwithstanding any provision of P.L.1997, c.235 (C.58:10A-37.1 et seq.) to the contrary, if an applicant has expended the applicant's own funds for a remediation of a petroleum underground storage tank used to store heating oil at the applicant's primary residence prior to filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for the eligible project costs of the remediation.

C.58:10A-37.3a DEP notification to municipalities of fund.

3. The Department of Environmental Protection shall notify the governing body of each municipality in the State of the existence of the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund and shall describe the eligibility criteria and the availability of loans and grants from the fund.

4. This act shall take effect immediately.

Approved January 24, 2007.

CHAPTER 11

AN ACT concerning higher education tuition assistance for New Jersey National Guard members and dependents and amending P.L.1999, c.46.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 21 of P.L.1999, c.46 (C:18A:62-24) is amended to read as follows:

C.18A:62-24 Tuition benefits for members of New Jersey National Guard; State payment.

21. a. Any member of the New Jersey National Guard shall be permitted to attend regularly-scheduled courses at any public institution of higher education in this State enumerated in N.J.S.18A:62-1 and receive up to 16 credits per semester tuition-free provided that:

(1) the member has completed Initial Active Duty Training and, except as otherwise provided pursuant to subsection c. of this section, is in good standing as an active member of the New Jersey National Guard;

(2) the member has been accepted to pursue a course of undergraduate study and is enrolled as an undergraduate student in good standing at that institution or a course of graduate study and is enrolled as a graduate student in good standing at that institution; and

(3) the member has applied for all available State student grants and scholarships and all available federal student grants and scholarships for which the member is eligible.

b. The State shall reimburse a public institution of higher education for the tuition cost of each National Guard member who enrolls in the institution pursuant to the provisions of this section.

c. Any member of the New Jersey National Guard whose enrollment in a public institution of higher education on a tuition-free basis pursuant to subsection a. of this section is interrupted by a deployment to active duty shall be permitted to receive the free tuition benefit after discharge from service under conditions other than dishonorable. In the event of a non-medical discharge or a medical discharge that is not caused by an illness or injury related to the performance of duties for the National Guard, eligibility for the free tuition benefit shall begin from the date of discharge and shall continue for one semester or a period of time equal to the length of the deployment, whichever is longer. In the event of medical discharge or

medical retirement as a result of illness or injury incurred in the combat theater, as a result of terrorist action, or in the response to a natural disaster, eligibility for the free tuition benefit shall begin from the date of discharge or retirement and shall continue until completion of the degree program in which enrolled or for five years, whichever occurs first.

2. Section 22 of P.L.1999, c.46 (C.18A:62-25) is amended to read as follows:

C.18A:62-25 Eligibility of child, surviving spouse of certain members of New Jersey National Guard for tuition benefits.

22. Any child or surviving spouse of a member of the New Jersey National Guard who heretofore completed Initial Active Duty Training and was killed in the performance of his duties while on active duty with the New Jersey National Guard, or who hereafter completes Initial Active Duty Training and is killed in the performance of his duties while a member of the New Jersey National Guard, shall be permitted to attend regularly-scheduled courses at any public institution of higher education in this State enumerated in N.J.S.18A:62-1 and receive up to 16 credits per semester tuition-free provided that:

a. the child or spouse has been accepted to pursue a course of undergraduate study and is enrolled as an undergraduate student in good standing at that institution or a course of graduate study and is enrolled as a graduate student in good standing at that institution;

b. the child or spouse has applied for all available State student grants and scholarships and all available federal student grants and scholarships for which the child or spouse is eligible; and

c. available classroom space permits and tuition-paying students constitute the minimum number required for the course.

3. This act shall take effect immediately.

Approved January 24, 2007.

CHAPTER 12

AN ACT establishing a commuter transportation services public awareness campaign and supplementing Title 27 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.27:1A-5.20 Legal commuter transportation services; public awareness campaign established.

1. a. The Commissioner of Transportation shall establish a public awareness campaign to inform the general public about legal commuter transportation services and to improve public awareness of safe, reliable transportation alternatives available to the residents of New Jersey. The commissioner shall work in conjunction with the Transportation Management Association Council of New Jersey as practical. The campaign shall include, but not be limited to, the dissemination of information relating to the provision of legal commuter transportation services, alternative transportation services available throughout the State, the importance of public safety on roads and highways, and resources for the general public to obtain more information on commuter transportation services.

b. The commissioner shall, at a minimum:

(1) provide for the development of printed educational materials and public service announcements in English and Spanish; and

(2) prepare information for distribution to the public, through a variety of entities, including, but not limited to, local transportation management associations, places of business, libraries, community centers, other community-based outreach programs and organizations, and the Department of Transportation's official website.

C.27:1A-5.21 Evaluation of campaign; report to Legislature.

2. The Commissioner of Transportation shall evaluate the campaign established by this act and shall report to the Legislature and the Governor within 18 months of the date the campaign becomes operational as to the effectiveness of the campaign in providing information relating to legal commuter transportation services and in improving safety on the roads and public highways in this State, along with recommendations as to whether the campaign should be continued, modified or expanded.

3. This act shall take effect immediately, but sections 1 and 2 shall be inoperative until the 90th day after enactment, except that the Commissioner of Transportation may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved January 24, 2007.

CHAPTER 13

AN ACT revising certain penalties relating to the operation of autobuses and amending R.S.48:4-3.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.48:4-3 is amended to read as follows:

Certificate of public convenience and necessity; penalties.

48:4-3. a. No autobus, charter bus operation or special bus operation which is engaged, wholly or partly, in intrastate commerce shall be operated or run while carrying passengers for hire within the State of New Jersey unless there is in force with respect to such operation a certificate of public convenience and necessity issued by the Chief Administrator of the New Jersey Motor Vehicle Commission authorizing such operation upon a determination that such operation is in the public interest.

b. Any person who owns or causes to be operated or operates an autobus without a valid certificate of public convenience and necessity or in violation of the provisions thereof is subject to a civil penalty of: $500 for the first violation, $750 for the second violation, and $1,000 for the third and each subsequent violation. Every day upon which a violation occurs shall be considered a separate violation.

c. When any person violates the provisions of this section on more than one occasion, the chief administrator may, by order, after notice and hearing, declare that person to be an unfit operator and cause the revocation of any certificates of public convenience and necessity issued to that person and declare that that person shall have no standing to petition for any further certificates. The chief administrator may stay or revoke any order made under this subsection when the chief administrator finds it to be in the public interest to do so.

2. This act shall take effect on the first day of the sixth month next following enactment but such anticipatory administrative action may be taken as necessary to effectuate the purposes of this act.

Approved January 24, 2007.

CHAPTER 14

AN ACT concerning temporary help service firms and amending P.L.1981, c.1.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 14 of P.L.1981, c.1 (C.56:8-1.1) is amended to read as follows:

C.56:8-1.1 Temporary help services; inclusion within definition of merchandise; rules, regulations; fees, charges on firms; transport of workers regulated.

14. Services provided by a temporary help service firm shall constitute services within the term "merchandise" pursuant to P.L.1960, c.39, s.1 (C.56:8-1(c)), and the provisions of P.L.1960, c.39 (C.56:8-1 et seq.) shall apply to the operation of a temporary help service firm.

The Attorney General shall promulgate rules and regulations pursuant to section 4 of P.L.1960, c.39 (C.56:8-4). The Attorney General shall, by rule or regulation, establish, prescribe or change an annual registration fee or other charge on temporary help service firms to such extent as shall be necessary to defray all proper expenses incurred by his office in the performance of its duties under this section of this act but such registration fees or other charges shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required. In addition to any other appropriate requirements, the Attorney General shall, by rule or regulation require the following:

a. Each temporary help service firm operating within the State of New Jersey shall, prior to the effective date of this act or commencement of operation and annually thereafter, notify the Attorney General as to its appropriate name, if applicable; the trade name of its operation; its complete address, including street and street number of the building and place where its business is to be conducted; and the names and resident addresses of its officers. Each principal or owner shall provide an affidavit to the Attorney General setting forth whether such principal or owner has ever been convicted of a crime.

b. When a temporary help service firm utilizes any location other than its primary location for the recruiting of applicants, including mobile locations, it shall notify the Office of the Attorney General of such fact in writing or by telephone, and subsequently confirm in writing prior to the utilization of such facility.

c. Each temporary help service firm shall at the time of its initial notification to the Attorney General, and annually thereafter, post a bond of $1,000.00 with the Attorney General to secure compliance with P.L.1960, c. 39 (C. 56:8-1 et seq.), provided however that the Attorney General may waive such bond for any corporation or entity having a net worth of $100,000 or more.

d. Any temporary help service firm, as the term is used in P.L.1960, c.39 (C.56:8-1 et seq.), P.L.1989, c.331 (C.34:8-43 et seq.) or this section, which places individuals in work which requires them to obtain transportation services to get to, or return from, the site of the work shall be subject to the provisions of this subsection, except that the provisions of this subsection shall not apply if the firm requires the individuals to use their own vehicles or other transportation of their choice, for transportation to and from work and shall not apply if public transportation is available at the times needed for them to get to, and return from, the site of the work and the firm permits them to use the public transportation. If the firm provides transportation services with any vehicle owned, leased or otherwise under the control of the firm, the firm shall be responsible for compliance with the provisions of R.S.48:4-3 et seq. and any other applicable law or regulation regarding the vehicle and its use and shall keep records in the manner required by regulations adopted by the Attorney General in consultation with the New Jersey Motor Vehicle Commission. If the firm does not provide transportation services, but refers, directs or requires the individuals to use any other provider or providers of transportation services, or provides no practical alternative to the use of services of the provider or providers, the firm shall obtain, and keep on file, documentation that each provider is in compliance with the provisions of R.S.48:4-3 et seq. and any other applicable law or regulation in the manner required by regulations adopted by the Attorney General in consultation with the New Jersey Motor Vehicle Commission. The firm may not require the individuals to use transportation provided by the firm or another provider of transportation services if they have other transportation available. A failure to comply with the provisions of this subsection, including all record-keeping requirements of this subsection, shall be regarded as an unlawful practice and a violation of this section, of P.L.1960, c.39 (C.56:8-1 et seq.) and of R.S.48:4-3 et seq. and a temporary help service firm found to be in violation shall be subject to penalties provided for violations of those acts, and shall be jointly and severally liable with the provider of transportation services for any injury which occurs to the individuals while being transported in a vehicle owned, leased or otherwise under the control of the provider. In the case of noncompliance with the provisions of this section on more than one occasion, the Attorney General may suspend or revoke the

firm's registration as a temporary help service firm for the purposes of this section, P.L.1960, c.39 (C.56:8-1 et seq.) and P.L.1989, c.331 (C.34:8-43 et seq.).

2. This act shall take effect immediately, except that no penalty shall be assessed for a violation of the record-keeping requirements of subsection d. of section 14 of P.L.1981, c.1 (C.56:8-1.1) before the 365th day after enactment.

Approved January 24, 2007.

CHAPTER 15

AN ACT concerning the withholding and diversion of wages by a temporary help service firm and supplementing P.L.1960, c.39(C.56:8-1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.56:8-1.2 Unlawful withholding of diversion of wages by temporary help service firm; penalty.

1. It shall be an unlawful practice for a temporary help service firm, as the term is used in P.L.1960, c.39 (C.56:8-1 et seq.), section 14 of P.L.1981, c.1 (C.56:8-1.1) and P.L.1989, c.331 (C.34:8-43 et seq.), to willfully withhold or divert wages for any purpose not expressly permitted by section 4 of P.L.1965, c.173 (C.34:11-4.4). In addition to any fine or penalty, the Attorney General may refuse to issue or renew, and may suspend or revoke a firm's registration to operate as a temporary help service firm for the purposes of P.L.1960, c.39 (C.56:8-1 et seq.), section 14 of P.L.1981, c.1 (C.56:8-1.1), P.L.1989, c.331 (C.34:8-43 et seq.) and related regulations for a violation of this section. A refusal, suspension or revocation shall not be made except upon reasonable notice to, and the opportunity to be heard by, the applicant or registrant.

2. This act shall take effect immediately.

Approved January 24, 2007.

CHAPTER 16

AN ACT concerning school district monitoring, revising various parts of the statutory law and supplementing chapter 7A of Title 18A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.1975, c.212 (C.18A:7A-3) is amended to read as follows:

C.18A:7A-3 Definitions.

3. For the purposes of this act, unless the context clearly requires a different meaning:

"Administrative order" means a written directive ordering specific corrective action by a district which has shown insufficient compliance with the quality performance indicators.

"Highly skilled professional" means a designee of the commissioner deemed to have the skills and experience necessary to assist a school district in improving its effectiveness or to provide oversight in a school district in one or more of the five key components of school district effectiveness.

"Joint Committee on the Public Schools" means the committee created pursuant to P.L.1975, c.16 (C.52:9R-1 et seq.).

"Technical assistance" means guidance and support provided to a school district to enable the district to meet State and federal policy and regulatory requirements and to ensure the provision of a thorough and efficient education. "Technical assistance" may include, but shall not be limited to, support of the teaching and learning process and overall school district effectiveness.

2. Section 10 of P.L.1975, c.212 (C.18A:7A-10) is amended to read as follows:

C.18A:7A-10 New Jersey Quality Single Accountability Continuum for evaluating school performance.

10. For the purpose of evaluating the thoroughness and efficiency of all the public schools of the State, the commissioner, with the approval of the State board and after review by the Joint Committee on the Public Schools, shall develop and administer the New Jersey Quality Single Accountability

Continuum for evaluating the performance of each school district. The goal of the New Jersey Quality Single Accountability Continuum shall be to ensure that all districts are operating at a high level of performance. The system shall be based on an assessment of the degree to which the thoroughness and efficiency standards established pursuant to section 4 of P.L.1996, c.138 (C.18A:7F-4) are being achieved and an evaluation of school district capacity in the following five key components of school district effectiveness: instruction and program; personnel; fiscal management; operations; and governance. A school district's capacity and effectiveness shall be determined using quality performance indicators comprised of standards for each of the five key components of school district effectiveness. The quality performance indicators shall take into consideration a school district's performance over time, to the extent feasible. Based on a district's compliance with the indicators, the commissioner shall assess district capacity and effectiveness and place the district on a performance continuum that will determine the type and level of oversight and technical assistance and support the district receives.

3. Section 11 of P.L.1975, c.212 (C.18A:7A-11) is amended to read as follows:

C.18A:7A-11 Reports by school districts, commissioner; interim review.

11. Each school district and county vocational school district shall make a report of its progress in complying with all of the quality performance indicators adopted pursuant to section 10 of P.L.1975, c.212 (C.18A:7A-10) every three years, pursuant to a schedule to be established by the commissioner. In the years intervening between the district's three-year review, whenever the commissioner determines that conditions exist in a district that significantly and negatively impact the educational program or operations of the district, the commissioner may direct that the department immediately conduct a comprehensive review of the district. Nothing in this section shall preclude the commissioner, in his discretion, from conducting a random review of a school district to assess the district's compliance with the quality performance indicators.

The district reports shall be submitted to the commissioner on a date and in such form as prescribed by the commissioner, who shall make them the basis for an annual report to the Governor and the Legislature, describing the condition of education in New Jersey, the efforts of New Jersey schools in meeting the standards of a thorough and efficient education, the steps underway to correct deficiencies in school performance, and the pro-

gress of New Jersey schools in comparison to other state education systems in the United States.

4. Section 14 of P.L.1975, c.212 (C.18A:7A-14) is amended to read as follows:

C.18A:7A-14 Review, evaluation of reports, performance continuum placement, procedure.

14. a. The commissioner shall review the results of the report submitted pursuant to sections 10 and 11 of P.L.1975, c.212 (C.18A:7A-10 and 18A:7A-11) and after examination of all relevant data, including student assessment data, determine where on the performance continuum the district shall be placed. The commissioner, through collaboration, shall establish a mechanism for parent, school employee and community resident input into the review process. If the commissioner finds that a school district or county vocational school district satisfies 80 percent to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner shall issue to the district a letter of recognition designating the district as a high performing district, provided that the district has submitted to the department a statement of assurance which attests that the contents of the report are valid. The commissioner shall recommend that the State board certify the school district for a period of three years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators.

b. If a school district satisfies 50 percent to 79 percent of the quality performance indicators in any of the five key components of school district effectiveness, the commissioner shall require the district to develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to and approved by the commissioner. In accordance with the improvement plan, the commissioner shall provide technical assistance to the district. If necessary, the commissioner may authorize an in-depth evaluation of the district to determine the causes for the district's noncompliance with the quality performance indicators.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. If the commissioner finds, based on those reviews, that after two years the district has not satis-

fied 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner may require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

If a district effectively implements its improvement plan and is able to satisfy 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness through the interventions set forth in this subsection, the commissioner shall issue the district a letter of recognition designating the district as a high performing district. The commissioner shall recommend that the State board certify the school district for a period of three years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators. If the district has not effectively implemented its improvement plan and has not satisfied 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness through the interventions set forth in this subsection, the commissioner shall issue the district a letter detailing the areas in which the district remains deficient.

c. (1) If a school district satisfies less than 50 percent of the quality performance indicators in four or fewer of the five key components of school district effectiveness, the commissioner shall authorize an in-depth evaluation of the district's performance and capacity unless the commissioner determines that a comprehensive evaluation of the district by or directed by the department has occurred within the last year. Based on the findings and recommendations of that evaluation, the district, in cooperation with the department, shall develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to the commissioner for approval. Upon approval, the commissioner shall provide the district with the technical assistance outlined in the plan and shall assure that the district's budget provides the resources necessary to implement the improvement plan.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. The reviews shall include an on-site visit. If the commissioner finds, based on those reviews, that after two years the district has not satisfied at least 50% of the quality performance indicators in each of the key components of school district effectiveness, the commissioner may require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

Nothing in this paragraph shall be construed to prohibit the State board from directing the district to enter partial State intervention prior to the expiration of the two-year period.

(2) The district's improvement plan may include the appointment by the commissioner of one or more highly skilled professionals to provide technical assistance to the district in the areas in which it has failed to satisfy the quality performance indicators. Each highly skilled professional shall work collaboratively with the district to increase local capacity in the areas of need identified in the improvement plan. The cost for the compensation of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the cost and the school district being responsible for one-half of the cost.

(3) If the district satisfies less than 50% of the quality performance indicators in one to four of the five key components of school district effectiveness, the commissioner may also order the district board of education to show cause why an administrative order placing the district under partial State intervention should not be implemented. The plenary hearing before a judge of the Office of Administrative Law pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), upon said order to show cause, shall be conducted on an expedited basis and in the manner prescribed by subdivision B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes. In the proceeding the State shall have the burden of showing that the recommended administrative order is not arbitrary, unreasonable or capricious.

If, after a plenary hearing, the commissioner determines that it is necessary to take corrective action, the commissioner shall have the power to order necessary budgetary changes within the district or other measures the commissioner deems appropriate to establish a thorough and efficient system of education.

If the board fails to show cause why an administrative order placing the district under partial State intervention should not be implemented, the commissioner shall recommend to the State board that it issue an order placing the district under partial State intervention. Notwithstanding any other provision of law to the contrary and upon its determining that the school district is not providing a thorough and efficient system of education, the State board may place the district under partial State intervention. Nothing herein shall limit the right of any party to appeal the State board's order to the Superior Court, Appellate Division.

(4) If the position of superintendent of schools is vacant in a district under partial State intervention, the State board upon the recommendation

of the commissioner may appoint a superintendent who shall serve for an initial period not to exceed two years.

(5) In addition to the highly skilled professionals appointed pursuant to paragraph (2) of this subsection to provide technical assistance to the district in implementing its improvement plan, the commissioner, in consultation with the local board of education, may appoint one or more highly skilled professionals in a district under partial State intervention to provide direct oversight in the district regarding the quality performance indicators with which the district has failed to comply. The highly skilled professional shall represent the interests of the commissioner in all matters relating to the component of school district effectiveness that is under intervention and over which the highly skilled professional is providing direct oversight. The powers and authorities of the highly skilled professional shall include, but not be limited to:

(a) overseeing the operations of the district in the area of intervention over which the highly skilled professional is assigned to provide direct oversight;

(b) ensuring the development and implementation of the district improvement plan with respect to the area over which the highly skilled professional is assigned to provide direct oversight;

(c) overriding a chief school administrator's action and a vote by the board of education regarding matters under direct oversight of the highly skilled professional;

(d) attending all meetings of the board of education, including closed sessions; and

(e) obligating district funds for matters relating to the area under State intervention over which the highly skilled professional is providing direct oversight.

In the event that there is a need to hire, promote, or terminate employees working in the area of intervention over which the highly skilled professional is assigned to provide direct oversight, the hiring, promotion, and termination of those employees shall be determined by the State board upon the recommendation of the commissioner.

The highly skilled professional shall work collaboratively with the superintendent, the board of education and the employees of the district working in the area of the oversight to address areas identified in the improvement plan.

When the commissioner appoints more than one highly skilled professional in a district under partial State intervention, he shall delineate the scope and extent of authority of each highly skilled professional appointed and shall establish a decision-making hierarchy for the highly skilled pro-

fessionals and personnel in the district. The highly skilled professional shall report directly to the commissioner or his designee on a bi-weekly basis and shall report monthly to the board of education and members of the public at the regularly scheduled board of education meeting. The salary of a highly skilled professional appointed pursuant to this paragraph shall be fixed by the commissioner and adjusted from time to time as the commissioner deems appropriate. The cost of the salaries of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the cost and the school district being responsible for one-half of the cost. For the purpose of the New Jersey Tort Claims Act, N.J.S.59:1-1 et seq., the highly skilled professional appointed pursuant to this paragraph shall be considered a State officer.

(6) With the State board's approval the commissioner may appoint up to three additional members to the board of education of a district under partial State intervention. The board of education's membership shall remain increased by these additional seats until the State withdraws from intervention. If the commissioner appoints three additional members pursuant to this paragraph, the commissioner shall appoint one of these additional members from a list of three candidates provided by the local governing body of the municipality in which the school district is located. The commissioner shall make every effort to appoint residents of the district. A board member appointed by the commissioner shall be a nonvoting member of the board and shall have all the other rights, powers and privileges of a member of the board. A board member appointed by the commissioner shall report to the commissioner on the activities of the board of education and shall provide assistance to the board of education on such matters as deemed appropriate by the commissioner, including, but not limited to, the applicable laws and regulations governing specific school board action. A member appointed by the commissioner shall serve for a term of two years. The commissioner shall obtain approval of the State board for any extension of the two-year term. Any vacancy in the membership appointed by the commissioner shall be filled in the same manner as the original appointment.

If a board of education is subject to additional appointments pursuant to section 67 of P.L.2002, c.43 (C.52:27BBB-63), then the provisions of this paragraph shall not be applicable during the period in which the board is subject to those appointments.

Six months following the district being placed under partial State intervention, the commissioner shall determine whether or not the board members he has appointed shall become voting members of the board of education. If the commissioner determines that the board members he has ap-

pointed shall become voting members, the school district shall have 30 days to appeal the commissioner's determination to the State Board of Education.

(7) Based on the district's success in implementing its improvement plan, the commissioner shall make a determination to withdraw from intervention in one or more of the areas that have been under State intervention, to leave one or more areas under State intervention or to recommend to the State Board of Education that the district be placed under full State intervention.

If the commissioner determines that the district has successfully implemented the improvement plan and achieved sufficient progress in satisfying the performance indicators in one or more areas under intervention, the State shall withdraw from intervention in the district in those areas.

d. (Deleted by amendment, P.L.2005, c.235.)

e. (1) If a school district satisfies less than 50 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner shall authorize an in-depth evaluation of the district's performance and capacity, unless the commissioner determines that a comprehensive evaluation of the district by or directed by the department has occurred within the last year. Based on the findings and recommendations of that evaluation, the district, in cooperation with the department, shall develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to the commissioner for approval. Upon approval, the commissioner shall provide the district with the technical assistance outlined in the plan and shall assure that the district's budget provides the resources necessary to implement the improvement plan.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. The reviews shall include an on-site visit. If the commissioner finds, based on those reviews, that after two years the district has not satisfied at least 50% of the quality performance indicators in each of the key components of school district effectiveness, the commissioner may require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

Nothing in this paragraph shall be construed to prohibit the State board from directing the district to enter full State intervention prior to the expiration of the two-year period.

(2) The district's improvement plan may include the appointment by the commissioner of one or more highly skilled professionals to provide technical assistance to the district in the areas in which it has failed to sat-

and the lien for all subsequent installments of drainage assessments and interest thereon, and the said purchaser shall thereupon become the owner in fee simple of the lands, and the special master shall execute and deliver deeds which shall have the same force and effect as deeds executed under judgments and decrees in civil actions, but the owner of such land, or anyone interested in the title thereto may redeem from such sale by paying to the purchaser or his assignee the purchase price with interest thereon at the rate of twelve (12%) per cent. per annum, together with all moneys subsequently paid for taxes and assessments thereon, at any time within nine months from the date of sale. The several tracts or parcels of land to be sold shall be offered separately. *At such sale the Commissioners of the drainage district in which the lands are situated may bid and become purchasers the same as any other purchaser and shall not be required to pay the purchase price in cash, but shall take title to such lands in the name of the drainage district and may thereafter sell or lease the said lands and all proceeds from the sale or leasing thereof shall be disposed of as herein provided.* The amount received upon any bid shall be applied to the amount of the judgment against said tract or parcel of land bid upon; if the amount received is less than such judgment, nevertheless such judgment shall be deemed satisfied by such sale, but if the amount received is more than the judgment any surplus shall be applied first to the payment of any general state or county taxes outstanding and unpaid and then if a balance remains, as the court shall direct. All moneys received by the special master in payments on the judgment or for purchase of lands at the foreclosure sale over and above costs, attorney's fees and expenses of sale shall be paid to the treasurer of the district for credit pro rata to the respective funds entitled thereto.

CHAPTER 27.

AN ACT TO PROVIDE FOR DIVORCE ON THE GROUNDS OF INCURABLE INSANITY AND PRESCRIBING PROCEDURE THEREFOR.

S. B. No. 72; Approved February 20, 1933

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. Incurable insanity shall be sufficient grounds for divorce, where the same has existed continuously for a period of five years preceding the filing of a complaint therefor.

Sec. 2. After service of summons and copy of complaint on any insane defendant, and on the committee of his or her estate, the court shall appoint an attorney at law as guardian ad

litem to appear for and defend said action in behalf of said defendant.

Sec. 3. Before trial of said cause, the court shall appoint a committee of three competent and disinterested physicians, who shall make a thorough examination of the mental condition of the defendant and shall report their findings in writing to the court, under oath. If said committee shall report that in their opinion the defendant is incurably insane, the cause shall proceed, but if said committee shall report said defendant not to be incurably insane in their opinion, said cause shall be dismissed by the court.

Sec. 4. The court shall require such other and further proof of the insanity of the defendant as in its discretion may be necessary, and the court or either party to the action may call the members of said committee of physicians, or any of them, as witnesses. If it shall be established by competent evidence that such defendant is incurably insane, the court shall grant the plaintiff a divorce.

Sec. 5. If a divorce is granted the plaintiff in such action, the court shall make such orders and decrees for the division and preservation of the community estate, if any, and for the care, custody and maintenance of any minor child of the defendant, or maintenance of the defendant, as shall seem necessary or advisable.

Sec. 6. The court shall make an allowance to the attorney and guardian ad litem for the defendant, and shall fix the compensation to be paid said committee of physicians, which allowance and compensation, with all other costs and expenses incident to said suit shall be paid by plaintiff before a decree shall be granted. The court may, in its discretion, require the plaintiff to give bond to pay all fees and costs, or to deposit in court a sufficient sum of money to pay all such fees and costs, before proceeding with the cause.

Sec. 7. All Laws and parts of Laws in conflict with this Act are hereby repealed.

Sec. 20. That Section 1 Chapter 45 Laws of 1901 (Section 19-114 of the 1929 New Mexico Statutes Annotated) be amended to read as follows:

"Any person or persons hereafter engaging in the business of peddling beef in this State, shall first obtain from the authority provided by law for the issue thereof a peddler's license to carry on such business, and shall pay therefor the sum of two hundred and fifty dollars ($250.00), said payment to be made annually in advance, and which said license fee when collected, shall be transmitted to the Cattle Sanitary Board to be converted into the Cattle Indemnity Fund. This section and the following section shall not apply to any person who may sell or otherwise dispose of any beef butchered from animals of his own raising only.

Sec. 21. Repealing Section 2 Chapter 30 Laws of 1905, Section 4 Chapter 29 Laws of 1895, Chapter 66 Laws of 1921 as amended by Chapter 51 Laws of 1927, Section 7 Chapter 106 Laws of 1889, Section 13 Chapter 106 Laws of 1889, Section 17 Chapter 106 Laws of 1889 as amended by Section 1 Chapter 1 Laws of 1903, Section 18 Chapter 106 Laws of 1889, Section 19 Chapter 106 Laws of 1889, Sections 1, 2, 3, of Chapter 32 Laws of 1905, (Sections 4-809, 4-901, 4-917, 4-902, 4-907, 4-911, 4-912, 4-913, 35-2430, 35-2431, 35-2432, of the 1929 New Mexico Statutes Annotated).

Sec. 22. That it is necessary for the preservation of the public peace, health and safety of the inhabitants of the State of New Mexico, that the provisions of this Act shall become effective at the earliest possible time, and therefore an emergency is hereby declared to exist, and this Act shall take effect and be in full force and effect from and after its passage and approval.

CHAPTER 54.

AN ACT AMENDING SECTION 22, CHAPTER 62, LAWS OF 1901, (Section 68-501 of 1929, New Mexico Statutes Annotated) RELATING TO GROUNDS FOR DIVORCE.

H. B. No. 173; Approved March 3, 1933

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. That Section 22, Chapter 62, Laws of 1901, (Section 68-501 of 1929, New Mexico Statutes Annotated) be and the same is hereby amended to read as follows:

"68-501. *Grounds for Divorce.* The several District Courts within and for the State of New Mexico are hereby vested with

full power and authority to decree divorces from the bonds of matrimony for any of the following causes:

1. Abandonment.
2. Adultery.
3. Impotency.
4. When the wife, at the time of the marriage, was pregnant by another than her husband—said husband having been ignorant thereof.
5. Cruel and inhuman treatment.
6. Neglect on the part of the husband to support the wife, according to his means, station in life and ability.
7. Habitual drunkenness.
8. Incompatibility.
9. The conviction for a felony, and imprisonment therefor, in the penitentiary, subsequent to the marriage.

CHAPTER 55.

AN ACT RELATING TO AND PROHIBITING HORSE RACING EXCEPT WHERE A LICENSE THEREFOR HAS BEEN FIRST OBTAINED; PROVIDING FOR LICENSE FEES FOR HOLDING HORSE RACES AND THE TAXATION AND REGULATION THEREOF AND PERMITTING THE USE OF THE PARI MUTUEL SYSTEM IN CONNECTION THEREWITH UNDER CERTAIN CONDITIONS AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS HEREOF.

H. B. No. 155; Approved March 2, 1933

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. Hereafter it shall be unlawful for any person, firm, association, or corporation to hold public horse races or race meetings for profit or gain in any manner, unless a license therefor has been first had and obtained as herein provided.

Sec. 2. Any person, firm, association, or corporation desiring to hold a horse race or races or to engage in horse race meetings shall apply to the Board of County Commissioners of the county wherein such races are sought to be held for a license to hold same; *Provided, however,* if such races are sought to be held within the corporate limits of any city in this State having a population of over 10,000 inhabitants as shown by the last United States census, such application shall be made to the Mayor and City Council or City Commissioners of such city.

The NBER/Maryland State Constitutions Project

New Mexico - 1\1\1911

Article 4.0 [Last Modified: 7/19/2006 9:45:47 AM]

ARTICLE 4

Section 23.0 0 [Last Modified: 7/19/2006 9:45:44 AM]

23. Laws shall go into effect NINETY DAYS after the adjournment of the legislature enacting them, except general appropriation laws, which shall go into effect immediately upon their passage and approval. Any act necessary for the preservation of the public peace, health, or safety shall take effect immediately upon its passage and approval, provided it be passed by two-thirds vote of each house and such necessity be stated in a separate section.

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LAWS

OF THE

STATE OF NEW MEXICO

PASSED BY THE

ELEVENTH REGULAR SESSION OF THE LEGISLATURE OF THE STATE OF NEW MEXICO

WHICH CONVENED AT THE CITY OF SANTA FE, AT THE CAPITOL, AT THE HOUR OF NOON ON THE TENTH DAY OF JANUARY, 1933, AND ADJOURNED AT THE HOUR OF ELEVEN ON THE ELEVENTH DAY OF MARCH, 1933

PREPARED FOR PUBLICATION BY
MRS. MARGUERITE P. BACA, SECRETARY OF STATE

PUBLISHED BY AUTHORITY

Valliant Printing Company
Albuquerque, New Mexico
1933

bequests, devises, grants or trusts of funds or property to the services to the blind division or to the State of Nevada for purposes of helping the blind. Any funds received shall be deposited in the state treasury in a fund to be known as the state grant and gift fund for the blind.

2. The state grant and gift fund for the blind shall be a continuing fund without reversion, and money in the fund shall be used for the purposes specified by the donor or for the purpose of carrying out the provisions of this chapter and other programs or laws administered by the services to the blind division.

SEC. 2. Moneys in the state welfare gift and cooperative fund which are designated for the benefit of the blind shall be transferred to the state grant and gift fund for the blind.

SEC. 3. This act shall become effective upon passage and approval.

Assembly Bill No. 405—Mrs. Frazzini, Messrs. Close, Prince, Manning and Viani

CHAPTER 277

AN ACT to amend chapter 426 of NRS, relating to blind persons, by adding a new section restricting the disclosure of information concerning applicants for services to the blind.

[Approved April 5, 1967]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 426 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Information with respect to any individual applying for or receiving services to the blind shall not be disclosed by the services to the blind division of the department of health and welfare or any of its employees to any person, association or body unless such disclosure is related directly to carrying out the provisions of NRS 426.520 to 426.610, inclusive, or upon written permission of the applicant or recipient.

SEC. 2. This act shall become effective upon passage and approval.

Assembly Bill No. 424—Mr. McKissick

CHAPTER 278

AN ACT relating to divorce; to reduce the required period of separation and to add incompatibility as a ground for divorce.

[Approved April 5, 1967]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 125.010 is hereby amended to read as follows:

125.010 Divorce from the bonds of matrimony may be obtained for any of the following causes:

1. Impotency at the time of the marriage continuing to the time of the divorce.

2. Adultery since the marriage, remaining unforgiven.
3. Willful desertion, at any time, of either party by the other, for the period of 1 year.
4. Conviction of felony or infamous crime.
5. Habitual gross drunkenness contracted since marriage, of either party, which shall incapacitate such party from contributing his or her share to the support of the family.
6. Extreme cruelty in either party.
7. Neglect of the husband, for the period of 1 year, to provide the common necessaries of life, when such neglect is not the result of poverty on the part of the husband which he could not avoid by ordinary industry.
8. Insanity existing for 2 years prior to the commencement of the action. Upon this cause of action the court, before granting a divorce, shall require corroborative evidence of the insanity of the defendant at that time, and a decree granted on this ground shall not relieve the successful party from contributing to the support and maintenance of the defendant, and the plaintiff in such action shall give bond therefor in an amount to be fixed by the court.
9. When the husband and wife have lived separate and apart for [3 consecutive years] *1 year* without cohabitation the court may, in its discretion, grant an absolute decree of divorce at the suit of either party.
10. Incompatibility.

Assembly Bill No. 482—Committee on Labor

CHAPTER 279

AN ACT to amend NRS 608.280, relating to proceedings against a district attorney for failure to enforce the minimum wage standards for men, by inserting an omitted word.

[Approved April 5, 1967]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 608.280 is hereby amended to read as follows:

608.280 When a complaint is made to the attorney general by the labor commissioner or by an aggrieved person that any district attorney has been guilty of a willful violation of NRS 608.270, the attorney general shall make an investigation of the complaint, and [,] *if,* after such investigation, he is of the opinion that the complaint is well founded, he shall institute proceedings against the district attorney for the enforcement of the penalties provided in NRS 608.270.

SEC. 2. This act shall become effective upon passage and approval.

NRS 218D.330 Effective date of legislative measure when not specifically prescribed; period during which legislative measure that expires by limitation remains effective.

1. Each law and joint resolution passed by the Legislature becomes effective on October 1 following its passage, unless the law or joint resolution specifically prescribes a different effective date.

2. Each law and joint resolution passed by the Legislature which expires by limitation on a specific date remains effective until the last moment of the day on which it expires by limitation, unless the law or joint resolution specifically provides otherwise.

[1:6:1865; A 1925, 1; NCL § 7301]—(NRS A 1989, 2; 2011, 3194)—(Substituted in revision for NRS 218.530)

Assembly Bill No. 64–Committee on Legislative Functions

CHAPTER 3

AN ACT relating to legislative acts; changing the effective date of bills and joint resolutions from July 1 to October 1 following passage unless otherwise specified in the bill; and providing other matters properly relating thereto.

[Approved February 14, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 218.530 is hereby amended to read as follows:

218.530 Every law and joint resolution passed by the legislature [shall take effect and be in force on July] becomes effective October 1 following its passage, unless [such] the law or joint resolution [shall specifically prescribe] specifically prescribes a different effective date.

Sec. 2. Each law and joint resolution passed by the 65th session of the Legislature and approved before this act, unless otherwise provided in the law or joint resolution, becomes effective on October 1, 1989.

Sec. 3. This act becomes effective upon passage and approval.

shall, by reason of an extraordinary accumulation of work in their offices, be unable, without assistance, to perform the whole of said work, the committee having charge of such work shall have authority to employ additional clerks temporarily; *provided,* they shall first have made a written report showing the necessity, and the house for which the labor is to be performed shall have adopted a resolution granting authority to that effect to the committee.

§ 7300. **PRICE PER FOLIO FOR COPYING AND ENGROSSING.** § 2. The prices to be paid shall not exceed ten cents per folio for copying and comparing, fifteen cents per folio for engrossing and comparing, and twenty cents per folio for enrolling and comparing.

EFFECTIVE DATE OF LAWS AND JOINT RESOLUTIONS.

An Act fixing the time when laws and joint resolutions shall take effect.

APPROVED JANUARY 10, 1865, 90.

§ 7301. **TIME WHEN LAWS SHALL TAKE EFFECT.** § 1. Every law and joint resolution hereafter passed by the legislature of the State of Nevada shall take effect and be in force on July first following its passage, unless such law or joint resolution shall specifically prescribe a different effective date. *As amended, Stats. 1925, 1.*

PRESENTATION OF CLAIMS AGAINST STATE.

An Act fixing the limitation of time for the presentation to the legislature of alleged claims against the state for action thereon, and barring all future presentations thereof.

APPROVED APRIL 1, 1919, 439.

§ 7302. **ALLEGED CLAIMS BARRED, WHEN.** § 1. Any person having, or claiming to have, any alleged claim against the State of Nevada, shall present such alleged claim for consideration to the next succeeding session of the legislature following its incurrence. Any such alleged claim not so presented, or which has been so presented, shall be forever barred from presentation to any subsequent legislature for further consideration.

§ 7303. **RIGHT TO SUE NOT IMPAIRED.** § 2. Nothing herein contained shall be construed in any way to impair the rights of any claimant to bring an action against the state upon any such claim.

ARCHITECT.

STATE ARCHITECT.

An Act to provide for the employment of a supervising architect for the state.

APPROVED APRIL 1, 1919, 465.

VOLUNTEER FIREFIGHTERS' BENEFIT LAW—DISABILITY

CHAPTER 383

S. 2769–A

Approved and effective August 13, 2010

AN ACT to amend chapter 668 of the laws of 1977, amending the volunteer firefighters' benefit law, relating to disability due to disease or malfunction of the heart or coronary arteries, in relation to extending the expiration of such provisions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section 4 of chapter 668 of the laws of 1977, amending the volunteer firefighters' benefit law, relating to disability due to disease or malfunction of the heart or coronary arteries, as amended by chapter 138 of the laws of 2005, is amended to read as follows:

§ 4. The provisions of section two of this act shall remain in full force and effect to and including the thirtieth day of June, ~~2010~~ 2015.

§ 2. This act shall take effect immediately.

DOMESTIC RELATIONS LAW—NO FAULT DIVORCE

CHAPTER 384

S. 3890–A

Approved August 13, 2010

Effective October 12, 2010

AN ACT to amend the domestic relations law, in relation to no fault divorce

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Section 170 of the domestic relations law is amended by adding a new subdivision 7 to read as follows:

(7) The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. No judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law and and shall apply to matrimonial actions commenced on or after such effective date.

(Substitute House Bill Number 129)

AN ACT

To amend section 3105.01 of the Revised Code to eliminate impotency as a ground for divorce and to add incompatibility, unless denied by a party, as a ground for divorce.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 3105.01 of the Revised Code be amended to read as follows:

Sec. 3105.01. The court of common pleas may grant divorces for the following causes:

(A) Either party had a husband or wife living at the time of the marriage from which the divorce is sought;

(B) Willful absence of the adverse party for one year;

(C) Adultery;

(D) ~~Impotency;~~

~~(E)~~ Extreme cruelty;

~~(F)~~(E) Fraudulent contract;

~~(G)~~(F) Any gross neglect of duty;

~~(H)~~(G) Habitual drunkenness;

~~(I)~~(H) Imprisonment of the adverse party in a state or federal penal institution under sentence ~~thereto~~ TO THE INSTITUTION at the time of filing the ~~petition~~ COMPLAINT;

~~(J)~~(I) Procurement of a divorce outside this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while ~~such~~ THOSE obligations remain binding upon the other party;

~~(K)~~(J) On the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation;

(K) INCOMPATIBILITY, UNLESS DENIED BY EITHER PARTY.

A plea of res judicata or of recrimination with respect to any provision of this section does not bar either party from obtaining a divorce on this ground.

SECTION 2. That existing section 3105.01 of the Revised Code is hereby repealed.

Vernal L. Tiffe Jr.

Speaker _____ *of the House of Representatives.*

Stanley J. Aronoff

President _____ *of the Senate.*

Passed MAY 17, 1989

Approved May 26, 1989
9:42 AM

Richard D. Celeste

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Roscoe S Hall

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 26 day of June, A. D. 1989

Sherrod Brown

Secretary of State.

File No. 116 Effective Date August 25, 1989

on such terms as to the payment of the purchase price as the court may direct and in the event the sale is made partly in cash and partly on credit, the unpaid balance of the purchase money shall be evidenced by a first mortgage secured by the real estate sold. The trustee appointed to sell said real estate shall make a verified return of sale and, upon confirmation by the court, shall execute a trustee's deed conveying the fee simple title to the real estate sold. Said deed shall vest in the purchaser the full fee simple title to said real estate and the rights and claims of all persons who held an interest therein prior to the sale, including all those of a class not then in being, shall be forever barred. The court shall not confirm said sale unless it shall have received satisfactory evidence that the sale was fairly conducted and that a higher price cannot be obtained and furthermore that the sale is for the best interest of all parties who have or may claim an interest therein.

Section 5. **Proceeds of Sale a Trust—Trustee—Term—Distribution of Monies.** Upon confirming the sale of real estate under the provisions of the preceding Section 4, the court shall direct that the proceeds of the sale (including any purchase money mortgage which may be accepted as a part of the purchase price), less any costs chargeable against the same, constitute a trust to be managed and invested under the continuing jurisdiction of the court and, except as may be otherwise directed by the court, in accordance with the provisions of the Oklahoma Trust Act (60 O. S. 1951, § § 175.1 to 175.53). The trustee appointed to make said sale may be continued as trustee for the administration of the trust or the court may appoint a different trustee for the purpose of administering the trust. In the order of confirmation of sale and the appointment of the trustee to administer the trust, the court shall make appropriate provisions with respect to the term during which the trust shall be administered and how the income and principal thereof shall be distributed.

Section 6. **Fees and Costs—Compensation for Guardian or Guardian Ad Litem.** The court shall fix all fees and costs including reasonable compensation for the guardian or guardians ad litem and trustee and assess the same against the trust assets or, in the event the sale is not made, against the parties to the proceedings who are sui juris as equity may require.

Approved June 1, 1953. Emergency.

CHAPTER 22—Divorce and Alimony.

SENATE BILL NO. 123.

AN ACT amending Section 1271, Title 12, Oklahoma Statutes 1951, and prescribing the grounds for divorce. BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Section 1. **Grounds for Divorce.** 12 Oklahoma Statutes 1951, Section 1271 is hereby amended to read as follows:

§ 1271. GROUNDS FOR DIVORCE. The district court may grant a divorce for any of the following causes:

First. Abandonment for one (1) year.

Second. Adultery.

Third. Impotency.

Fourth. When the wife at the time of her marriage was pregnant by another than her husband.

Fifth. Extreme cruelty.

Sixth. Fraudulent contract.

Seventh. Incompatibility.

Eighth. Habitual drunkenness.

Ninth. Gross neglect of duty.

Tenth. Imprisonment of the other party in a State or Federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed.

Eleventh. The procurement of a final divorce decree without this State by a husband or wife which does not in this State release the other party from the obligations of the marriage.

Twelfth. Insanity for a period of five (5) years, the insane person having been an inmate of a State institution for the insane in the State of Oklahoma, or inmate of a State institution for the insane in some other state for such period, or of a private sanitarium, and affected with any incurable type of insanity; provided, that no divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians, one of which physicians shall be a superintendent of the hospital or sanitarium for the insane, in which the insane defendant is confined, and the other two physicians to be appointed by the court before whom the action is pending, all of whom shall agree that such insane person is incurable; provided, further, however, that no divorce shall be granted on this ground to any person whose husband or wife is an inmate of a state institution in any other than the State of Oklahoma, unless the person applying for such divorce shall have been a resident of the State of Oklahoma for at least five (5) years prior to the commencement of an action; and provided further, that a decree granted on this ground shall not relieve the successful party from contributing to the support and maintenance of the defendant. The Court shall appoint a guardian ad litem to represent the insane defendant, which appointment shall be made at least ten (10) days before any decree is entered.

Approved May 25, 1953.

CHAPTER 22a.

SENATE BILL NO. 95.

AN ACT relating to civil procedure and prescribing the method of alleging the grounds for divorce.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Section 1. **Allegations of Petition for Divorce to Follow Wording of Statute Without Statement of Facts—Opposing Party May Request Bill of Particulars Which Shall not Become Part of Court Records Except in Case-Made for Appeal.** In all actions for divorce or for legal separation, the petition or cross petition shall allege the causes relied upon as nearly as possible in the language of the statute and without detailed statement of facts. If the opposing party desires a statement of the facts relied upon, the same shall be furnished to him by the petitioner or cross petitioner in a bill of particulars. A copy of this bill of particulars shall be furnished to the court and shall constitute the allegations of fact on behalf of the party filing such bill, upon which such action is to be tried. The statements therein shall be regarded as being denied by the adverse party, except as they may be admitted. The bill of particulars shall not be filed with the clerk of the district court nor become a part of the records of such court, but if the action be appealed, and the question sought to be reviewed relates to the facts set forth in the bill of particulars, it shall be embodied in the original record or case made for the Supreme Court.

Approved May 23, 1953.

CHAPTER 28—Partition.

HOUSE BILL NO. 778.

AN ACT amending Section 1512, Title 12, Oklahoma Statutes 1951, relating to actions for partitions and prescribing the time to file an election to purchase at appraised value.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Section 1. **Purchase at Appraised Value—Time for Filing Election.** Title 12 Oklahoma Statutes 1951, Section 1512, is hereby amended to read as follows:

Section 1512. If partition cannot be made, and the property shall have been valued and appraised, any one or more of the parties may elect to take the same at the appraisement, and the court may direct the sheriff to make a deed to the party or parties so electing, on payment to the other parties of their proportion of the appraised value. Such election shall be filed within ten (10) day of the filing of the valuation and appraisement report provided that the court may, before expiration of the said ten (10) days, fix a different and longer period for the filing of elections.

Approved May 1, 1953.

Oklahoma - 7\16\1907

Article 5.0 [Last Modified: 1/1/2003]

ARTICLE V

Section 58.0 0 [Last Modified: 1/1/2003]

58. No act shall take effect until ninety DAYS after the adjournment of the session at which it was passed, except enactments for carrying into effect provisions relating to the initiative and referendum, or a general appropriation bill, unless in case of emergency, to be expressed in the act, the Legislature, by a vote of two-thirds of all members elected to each House, so directs. An emergency measure shall include only such measures as are immediately necessary for the preservation of the public peace, health, or safety, and shall not include the granting of franchises or license to a corporation or individual, to extend longer than one year, nor provision for the purchase or sale of real estate, nor the renting or encumbrance of real property for a longer term than one year. Emergency measures may be vetoed by the Governor, but such measures so vetoed may be passed by a three-fourths vote of each House, to be duly entered on the journal.

OFFICIAL
SESSION LAWS

1953

Enacted by the Regular Session of the
Twenty-Fourth Legislature of the
State of Oklahoma.

Convened January 6, 1953
Adjourned June 6, 1953

JOHNSTON MURRAY, Governor
Raymond Gary, President Pro Tempore of the Senate
J. C. Nance, Speaker of the House of Representatives

CO-OPERATIVE PUBLISHING COMPANY
Guthrie, Oklahoma
1953

paid by the commission to the State Treasurer and by him credited to the highway fund.

Approved by the Governor June 4, 1971.
Filed in the office of Secretary of State June 4, 1971.

CHAPTER 280

AN ACT [HB 1239]

Relating to suits for annulment or dissolution of marriage; creating new provisions; amending ORS 21.112, 23.775, 23.795, 107.300, 107.510, 107.520, 107.540 and 107.610; repealing ORS 107.010, 107.020, 107.030, 107.035, 107.040, 107.045, 107.050, 107.060, 107.070, 107.080, 107.090, 107.100, 107.110, 107.120, 107.125, 107.130, 107.141, 107.150, 107.160, 107.410, 107.420, 107.430, 107.440 and 107.450; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. When a court is sitting in proceedings for annulment or dissolution of a marriage, or for separation, it shall have full equity powers.

SECTION 2. (1) A suit for annulment or dissolution of a marriage hereafter brought shall be entitled: "IN THE MATTER OF DISSOLUTION OF THE MARRIAGE OF (names of parties)." The moving party shall be designated as the "Petitioner" and the other party the "Respondent." Nothing in this section shall preclude both parties from acting as "Co-Petitioners."

(2) The petition shall state the following:

(a) The names, addresses and dates of birth of all of the children of the marriage; and

(b) Whether a domestic relations suit or a petition for support pursuant to ORS 108.110 involving the same marriage is pending in any other court in this or any other state if the existence of such suit is known.

(3) At or prior to the hearing of a suit for annulment or dissolution of a marriage, the moving party or the party attending the hearing shall file with the court a written statement setting forth the residence or legal addresses of the parties, the maiden and all former legal names of the wife, the ages of both parties, their wage earner social security account numbers, the date and place of the marriage of the parties, and the names and ages of the children of the marriage. This information shall be incorporated in and made a part of the decree.

SECTION 3. (1) Whenever a domestic relations suit is filed, or whenever a habeas corpus proceeding or motion to modify an existing decree in a domestic relations suit is before the court, the court having jurisdiction may, in cases in which there are minor children involved, cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties to the suit for the purpose of protecting the children's future interest. The court may defer the entry

of a final decree until the court is satisfied that its decree in such suit will properly protect the welfare of such children. The investigative findings shall be offered as and subject to all rules of evidence.

(2) The court, on its own motion, may:

(a) Cite either party to the suit to appear and testify as a witness during this investigation; and

(b) Appoint counsel for the children. A reasonable fee for an attorney so appointed may be charged against either or both of the parties or as a cost in the proceedings.

(3) The court having jurisdiction of cases described in subsection (1) of this section may hire and fix the salaries of such professional and clerical personnel as are necessary to carry out the purposes of this section. The salaries of the professional and clerical assistants shall be paid in the same manner as the salaries of county officers are paid.

SECTION 4. In any suit for the annulment or dissolution of a marriage when the court requests it the district attorney shall appear to represent the interests of the state.

SECTION 5. If the marriage was solemnized in this state and either party is a resident of or domiciled in the state at the time the suit is commenced, a suit for its annulment or dissolution may be maintained where the ground alleged is one set forth in ORS 106.020 or section 8 of this Act. When the marriage was not solemnized in this state or when any other ground is alleged, at least one party must be a resident of or be domiciled in this state at the time the suit is commenced and continuously for a period of six months prior thereto. Such residence or domicile is sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or where the cause of suit arose.

SECTION 6. (1) Except as provided in section 12 of this Act and in subsection (2) of this section, no trial or hearing on the merits in a suit for the dissolution of a marriage shall be had until after the expiration of 90 days from the date of:

(a) The service of the summons and petition upon the respondent; or

(b) The first publication of summons under ORS 15.140.

(2) The court may in its discretion, on written motion supported by affidavit setting forth grounds of emergency or necessity and facts which satisfy the court that immediate action is warranted or required to protect the rights or interest of any party or person who might be affected by a final decree or order in the proceedings, hold a hearing and grant a decree dissolving the marriage prior to the expiration of the waiting period. In such case the grounds of emergency or necessity and the facts with respect thereto shall be found and recited in the decree.

SECTION 7. (1) A marriage may be declared void from the beginning for any of the causes specified in ORS 106.020; and, whether so declared or not, shall be deemed and held to be void in any action, suit or proceeding in which it may come into question.

(2) When either husband or wife claims or pretends that the marriage is void or voidable under the provisions of ORS 106.020, it may at the suit of the other be declared valid or that it was void from the beginning or that it is void from the time of the decree.

(3) A marriage once declared valid by the decree of a court having jurisdiction thereof, in a suit for that purpose, cannot afterward be questioned for the same cause directly or otherwise.

SECTION 8. The annulment or dissolution of a marriage may be decreed for the following causes:

(1) When either party to the marriage was incapable of making such contract or consenting thereto for want of legal age or sufficient understanding;

(2) When the consent of either party was obtained by force or fraud;

provided that in the situations described in subsections (1) or (2) of this section the contract was not afterward ratified.

SECTION 9. The dissolution of a marriage may be decreed when irreconcilable differences between the parties have caused the irremediable breakdown of the marriage.

SECTION 10. The doctrines of fault and of in pari delicto are abolished in suits for the annulment or dissolution of a marriage. The court shall not receive evidence of specific acts of misconduct, excepting where child custody is an issue and such evidence is relevant to that issue, or excepting at a hearing when the court finds such evidence necessary to prove irreconcilable differences. In dividing, awarding and distributing the real and personal property (or both) of the parties (or either of them) between the parties, or in making such property or any of it subject to a trust, and in fixing the amount and duration of the contribution one party is to make to the support of the other, the court shall not consider the fault, if any, of either of the parties in causing grounds for the annulment or dissolution of the marriage. Where satisfactory proof of grounds for the annulment or dissolution of a marriage has been made, the court shall not award a decree to either party but shall only decree the annulment or dissolution of the marriage.

SECTION 11. The respondent shall not be required to answer a petition for annulment or dissolution of a marriage except by filing a general appearance or a general appearance with counterclaims relating to matters other than the grounds for annulment or dissolution. Affirmative defenses are abolished.

SECTION 12. (1) After the commencement of a suit for annulment or dissolution of a marriage and before a decree therein, the court may provide as follows:

(a) That a party pay to the clerk of the court such amount of money as may be necessary to enable the other party to prosecute or defend the

suit, and also such amount of money as may be necessary to support and maintain the other party.

(b) For the care, custody, support and maintenance of the minor children of the marriage.

(c) For the restraint of a party from in any manner molesting or interfering with the other or the minor children.

(d) That if minor children reside in the family home and the court considers it necessary for their best interest to do so, the court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.

(e) Restraining and enjoining either party or both from encumbering or disposing of any of their property, real or personal, except as ordered by the court.

(f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of instalment liens and encumbrances thereon.

(2) In case default is made in the payment of any moneys falling due under the terms of an order pending suit, any such delinquent amount shall be entered and docketed as a judgment, and execution may issue thereon to enforce payment thereof in the same manner and with like effect as upon a final decree. The remedy provided in this subsection shall be deemed cumulative and not exclusive.

(3) The court shall not require an undertaking in case of the issuance of an order under paragraph (c), (d), (e) or (f) of subsection (1) of this section.

(4) In a suit for annulment or dissolution of marriage wherein the respondent is found by the court to be in default, the court may, when the cause is otherwise ready for hearing on the merits, if support or custody of minor children is not involved, in lieu of such hearing, enter a decree of annulment or dissolution based upon an affidavit of the petitioner, setting forth a prima facie case, and covering such additional matters as the court may require.

SECTION 13. (1) Whenever a marriage is declared void or dissolved, the court has power further to decree as follows:

(a) For the future care and custody of the minor children of the marriage as it may deem just and proper. In determining custody the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. No preference in custody shall be given to the mother over the father for the sole reason that she is the mother.

(b) For the recovery from the party not allowed the care and custody of such children, such amount of money, in gross or in instalments, or both, as may be just and proper for such party to contribute toward the support and welfare of such children. The court may at any time require an accounting from the custodian of the children with reference to the use of the money awarded.

(c) For the support of a party, in gross or in instalments, or both, such amount of money for such period of time as it may be just and equitable for the other party to contribute. The court may approve, ratify and decree voluntary property settlement agreements providing for contribution to the support of a party. If requested by either party, the court shall make and set forth in its decree the findings of fact upon which its award or denial of support was based. In making such support order, the court shall consider the following matters:

(A) The duration of the marriage;

(B) The ages of the parties;

(C) Their health and conditions;

(D) Their work experience and earning capacities;

(E) Their financial conditions, resources and property rights;

(F) The provisions of the decree relating to custody of the minor children of the parties;

(G) The ages, health and dependency conditions of the children of the parties, or either of them; and

(H) Such other matters as the court shall deem relevant.

(d) For the delivery to one party of such party's personal property in the possession or control of the other at the time of the giving of the decree.

(e) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances.

(f) (A) There is a minor child of the marriage, for the appointment of one or more trustees to hold, control and manage for the benefit of the children of the parties, of the marriage or otherwise, such of the real or personal property of either or both of the parties, as the court may order to be allocated or appropriated to their support and welfare; and to collect, receive, expend, manage or invest any sum of money decreed for the support and welfare of minor children of the parties.

(B) For the appointment of one or more trustees to hold, manage and control such amount of money or such real or personal property of either or both of the parties, as may be set aside, allocated or appropriated for the support of a party.

(C) The court shall direct the terms of the trust and make provision for the disposition or distribution of such money or property to or between the parties, their successors, heirs and assigns after the purpose of the trust has been accomplished. Upon petition of a party or a person having an interest in the trust showing a change of circumstances warranting a change in the terms of the trust, the court shall have the power to make and direct reasonable modifications in its terms.

(g) To change the name of the wife.

(h) A judgment against one party in favor of the other for any sums of money found to be then remaining unpaid upon any enforceable order or orders theretofore duly made and entered in the proceedings pursuant to any of the provisions of section 12 of this Act, and for any such further

sums as additional attorney fees or additional costs and expenses of suit or defense as the court finds reasonably and necessarily incurred by such party; or, in the absence of any such order or orders pendente lite, a like judgment for such amount of money as the court finds was reasonably necessary to enable such party to prosecute or defend the suit.

(2) If an appeal is taken from a decree declaring a marriage void or dissolved or from any part of a decree rendered in pursuance of the provisions of this Act, the court making such decree shall provide for the temporary support of the minor children of the parties thereto, and may provide for the temporary support of a party. The order may be modified at any time by the court making the decree appealed from, shall provide that the support money be paid in monthly instalments, and shall further provide that it is to be in effect only during the pendency of the appeal. No appeal lies from any such temporary order.

(3) If an appeal is taken from the decree or other appealable order in a suit for annulment or dissolution of a marriage, and the appellate court awards costs and disbursements to the prevailing party, it may also award to that party, as part of the costs, such additional sum of money as it may adjudge reasonable as an attorney fee on the appeal.

(4) If, as a result of a suit for the annulment or dissolution of a marriage, the parties to such suit become owners of an undivided interest in any real or personal property, or both, either party may maintain supplemental proceedings by filing a petition in such suit for the partition of such real or personal property, or both, within two years from the entry of said decree, showing among other things that the original parties to such decree and their joint or several creditors having a lien upon any such real or personal property, if any there be, constitute the sole and only necessary parties to such supplemental proceedings. The procedure in the supplemental proceedings, so far as applicable, shall be the procedure provided in ORS 105.405, for the partition of real property, and the court granting such decree shall have in the first instance and retain jurisdiction in equity therefor.

SECTION 14. (1) A decree of annulment or dissolution of a marriage restores the parties thereto to the status of unmarried persons, unless a party is married to another person. Such decree shall give the court jurisdiction to award, to be effective immediately, the relief provided by section 13 of this Act. The decree shall revoke a will pursuant to the provisions of ORS 112.315, but the decree shall not be effective in so far as it affects the marital status of the parties until the expiration of 60 days from the date of the decree, or, if an appeal is taken, until the suit is determined on appeal, whichever is later.

(2) In case either party dies within the 60-day period specified in subsection (1) of this section, the decree shall be considered to have entirely terminated the marriage relationship immediately before such death, unless an appeal is pending.

(3) (a) The Court of Appeals or Supreme Court shall continue to have jurisdiction of such an appeal pending at the time of the death of

either party. The appeal may be continued by the personal representative of the deceased party. The attorney of record on the appeal, for the deceased party, may be allowed a reasonable attorney fee, to be paid from the decedent's estate. However, costs on appeal may not be awarded to either party.

(b) The Court of Appeals or Supreme Court shall have the power to determine finally all matters presented on such appeal. Before making final disposition, the Court of Appeals or Supreme Court may refer the proceeding back to the trial court for such additional findings of fact as are required.

(4) The marriage relationship is terminated in all respects at the expiration of the 60-day period specified in subsection (1) of this section, or, if an appeal is taken, when the suit is determined on appeal, whichever is later, without any further action by either party. However, at any time within the 60-day period or while an appeal is pending, the court may set aside the decree upon motion of both parties.

(5) A decree declaring a marriage void or dissolved shall specify the date on which the decree becomes finally effective to terminate the marriage relationship of the parties.

(6) The 60-day period specified in subsection (1) of this section does not apply when a decree declares a marriage void under section 7 of this Act.

SECTION 15. No order or decree for the future payment of money in gross or in instalments, entered under section 12 or 13 of this Act, shall continue to be a lien on real property for a period of more than 10 years from the date of such order or decree unless it is renewed as provided in ORS 18.360.

SECTION 16. (1) The court has the power at any time after a decree is given, upon the motion of either party and after service of notice on the other party in the manner provided by law for service of a summons, to:

(a) Set aside, alter or modify so much of the decree as may provide for the appointment and duties of trustees, for the custody, support and welfare of the minor children, or for the support of a party; and

(b) Make an order, after service of notice to the other party, providing for the future custody, support and welfare of minor children residing in the state, who, at the time the decree was given, were not residents of the state, or were unknown to the court or were erroneously omitted from the decree.

(2) The decree is a final judgment as to any instalment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the decree, and the court does not have the power to set aside, alter or modify such decree, or any portion thereof, which provides for any payment of money, either for minor children or the support of a party, which has accrued prior to the filing of such motion.

(3) The court may assess a reasonable attorney fee against an unsuc-

cessful moving party who files a motion to set aside, alter or modify a decree as in this section provided.

SECTION 17. (1) Any decree of divorce or annulment entered prior to January 1, 1970, otherwise valid but the validity of which may be affected by failure of the court records to evidence the service of process upon the district attorney or the presence of the district attorney at the final hearing, is in all respects valid.

(2) Any marriage in all other respects legal and regular, made prior to January 1, 1971, and before the expiration of 60 days from the date of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved, hereby is declared valid. Any child conceived or born of such a marriage is legitimate.

(3) Any marriage in all other respects legal and regular, made prior to January 1, 1965, and before the expiration of six months from the date of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved, hereby is declared valid. Any child conceived or born of such a marriage is legitimate.

(4) Any decree of divorce or annulment entered prior to August 13, 1965, otherwise valid but the validity of which may be affected by irregularities in the procedure relative to the bill of particulars or contents of the complaint, is in all respects valid.

SECTION 18. In any proceeding brought under ORS 108.110 and 108.120, and in any contempt proceeding brought to compel compliance with any orders authorized by section 12 of this 1971 Act, or with the decree in any suit to annul or dissolve a marriage or for separation the court may make an order awarding to a party a sum of money determined to be reasonable as an attorney fee therein. The order shall be entered and docketed as a judgment, and execution may issue thereon in the same manner and with like effect as upon a final decree.

SECTION 19. The provisions of sections 1, 2, 3, and paragraph (b) of subsection (1) of section 13 of this Act shall apply to suits brought under the provisions of ORS 107.210 to 107.320.

Section 20. ORS 21.112 is amended to read:

21.112. In all counties wherein the court is providing conciliation services, there shall be collected by the county clerk of such county at the time of the filing in the circuit court of a domestic relations suit (as defined in ORS 107.510), in addition to all other fees collected, a fee of $10 to assist in defraying the costs of the program of conciliation services provided by [*this section and ORS 107.440, 107.450 and*] **ORS** 107.510 to 107.610.

Section 21. ORS 23.775 is amended to read:

23.775. (1) When any court decrees or orders the payment of money for the support of any person under [*ORS 107.090, 107.100,*] **sections 12 and 13 of this 1971 Act, ORS** 107.250, 107.260, 108.120, 109.155 or 419.513, the per-

son ordered to pay the money shall make payment thereof to the clerk of the court, who shall transmit the payment to the person for whose benefit the decree or order was made.

(2) The decree or order shall contain the home address of the person for whose benefit the decree or order was made and the home and business address of the person against whom the decree or order is directed. Each person shall inform the clerk in writing of any change in his home or business address within 10 days after such change.

(3) Within 10 days after the second payment is delinquent, the clerk shall send notice by certified mail to the defaulting party of the amount due and an explanation of the procedure for collection under ORS 23.775 to 23.805.

Section 22. ORS 23.795 is amended to read:

23.795. With respect to any order or decree entered pursuant to [*ORS 107.100,*] **sections 12 and 13 of this 1971 Act, ORS** 107.260, 108.120, 109.155 or 419.513, if the party in whose favor such order or decree for the payment of money has been made files an affidavit to the effect that the party ordered to make such payments is in default in the payment of moneys due under such order or decree and is presently in another county of this state, the court may, upon motion of the party entitled to such support payments, order that certified copies of the files, records and transcripts of testimony in the original proceeding be transmitted to the county clerk of the county in which the moving party resides.

Section 23. ORS 107.300 is amended to read:

107.300. If an appeal is taken from all or part of a decree rendered in pursuance of ORS 107.250, 107.260, 107.280 or 107.290, the **appellate courts** [*Supreme Court*] may award attorney's fees [*in addition to those awarded under ORS 107.160*] .

Section 24. ORS 107.510 is amended to read:

107.510. As used in ORS 21.112 [*, 107.440, 107.450*] and 107.510 to 107.610:

(1) "Conciliation jurisdiction" means domestic relations conciliation jurisdiction and authority [*exercised*] **referred to** under ORS 21.112 [*, 107.440, 107.450*] and **exercised under** 107.510 to 107.610 by a circuit court in any controversy existing between spouses which may, unless a reconciliation or a settlement of the controversy is effected, result in the dissolution or annulment of the marriage or in disruption of the household.

(2) "Conciliation services" means domestic relations counseling and related services obtained by a circuit court exercising conciliation jurisdiction and used by the court in exercising that jurisdiction.

(3) "Domestic relations suit" means suit for dissolution of the marriage contract, annulment of the marriage or separation from bed and board.

Section 25. ORS 107.520 is amended to read:

107.520. The circuit court for any county or the circuit courts of more than one county comprising a judicial district after making a determination

that the social conditions of the county or district make it desirable to establish conciliation services for the full and proper consideration of domestic relations suits filed in such county or district may exercise conciliation jurisdiction and obtain, use and provide conciliation services [*as provided*] **referred to** in ORS 21.112 [*, 107.440, 107.450*] and **exercised under ORS** 107.510 to 107.610. After conciliation jurisdiction has been established the circuit court or courts of such county or district may at any time determine that the need for such service does not warrant its continuance and terminate the same.

Section 26. ORS 107.540 is amended to read:

107.540. Whenever any domestic relations suit is commenced in a circuit court exercising conciliation jurisdiction and providing conciliation services, the court may, in its discretion, exercise conciliation jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy. If, within 45 days after the court commences to exercise conciliation jurisdiction, a reconciliation or a settlement of the controversy has not been effected, the domestic relations suit shall proceed as if the court had not exercised conciliation jurisdiction [*, and, if the suit is for dissolution of the marriage contract, the waiting period prescribed by ORS 107.045 does not apply to the suit*] .

Section 27. ORS 107.610 is amended to read:

107.610. Persons performing conciliation services [*pursuant*] **referred** to **in** ORS 21.112 [*, 107.440, 107.450*] and **exercised under ORS** 107.510 to 107.610 shall have minimum educational and experience qualifications of a master's degree in the behavioral sciences; or a bachelor's degree and one year's graduate training, both in the behavioral [*science*] **sciences** plus two years' paid case work or clinical experience; or a bachelor's degree in the behavioral sciences plus four years' paid case work or clinical experience.

SECTION 28. ORS 107.010, 107.020, 107.030, 107.035, 107.040, 107.045, 107.050, 107.060, 107.070, 107.080, 107.090, 107.100, 107.110, 107.120, 107.125, 107.130, 107.141, 107.150, 107.160, 107.410, 107.420, 107.430, 107.440 and 107.450 are repealed.

SECTION 29. (1) This Act takes effect on October 1, 1971.

(2) All judgments, orders and decrees in domestic relations suits entered prior to the effective date of this Act are continued in effect until changed pursuant to the provisions of this Act.

(3) When a domestic relations suit is pending on the effective date of this Act, a right accrued under a law repealed hereby is not impaired and the court shall grant to a party seeking to enforce the accrued right the relief to which the party is entitled.

Approved by the Governor June 4, 1971.

Filed in the office of Secretary of State June 4, 1971.

No. 1980-26

AN ACT

HB 640

Consolidating, revising and amending the divorce and annulment laws of the Commonwealth and making certain repeals.

TABLE OF CONTENTS

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the "Divorce Code."

Section 102. Legislative findings and intent.

(a) The family is the basic unit in society and the protection and preservation of the family is of paramount public concern. Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to:

(1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.

(2) Encourage and effect reconciliation and settlement of differences between spouses, especially where children are involved.

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

(5) Seek causes rather than symptoms of family disintegration and cooperate with and utilize the resources available to deal with family problems.

(6) Effectuate economic justice between parties who are divorced or separated and grant or withhold alimony according to the actual need and ability to pay of the parties and insure a fair and just determination and settlement of their property rights.

(b) The objectives set forth in subsection (a) shall be considered in construing provisions of this act and shall be regarded as expressing the legislative intent.

Section 103. Construction.

The provisions of this act, so far as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The provisions of this act shall apply to all cases, whether the cause for divorce or annulment arose prior or subsequent to enactment of this act. The provisions of this act shall not affect any suit or action pending, but the same may be proceeded with and concluded either under the laws in existence when such suit or action was instituted, notwithstanding the repeal of such laws by this act, or, upon application granted, under the provisions of this act. The provisions of this act shall not apply to any case in which a decree has been rendered prior to the effective date of the act. This act shall not affect any marital agreement executed prior to the effective date of this act or any amendment or modification thereto.

Section 104. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Act." The Divorce Code.

"Alimony." An order for support granted by this or any other state to a spouse or former spouse in conjunction with a decree granting a divorce or annulment.

"Alimony pendente lite." An order for temporary support granted to a spouse during the pendency of a divorce or annulment proceeding.

"Court." The court of common pleas.

"Divorce." Divorce from the bonds of matrimony.

"Grounds for divorce." The grounds enumerated in section 201.

"Irretrievable breakdown." Estrangement due to marital difficulties with no reasonable prospect of reconciliation.

"Law." Includes both statutory and common law.

"Qualified professionals." Includes marriage counselors, psychologists, psychiatrists, social workers, ministers, priests, or rabbis, or other persons who, by virtue of their training and experience, are able to provide counseling.

"Separate and apart." Complete cessation of any and all cohabitation.

CHAPTER 2
DISSOLUTION OF MARITAL STATUS

Section 201. Grounds for divorce.

(a) It shall be lawful for the court to grant a divorce to the innocent and injured spouse whenever it shall be judged that the other spouse shall have:

(1) Committed willful and malicious desertion, and absence from the habitation of the injured and innocent spouse, without a reasonable cause, for the period of one or more years.

(2) Committed adultery.

(3) By cruel and barbarous treatment, endangered the life or health of the injured and innocent spouse.

(4) Knowingly entered into a bigamous marriage while a former marriage still is subsisting.

(5) Been sentenced to imprisonment for a term of two or more years upon conviction of having committed a crime.

(6) Offered such indignities to the innocent and injured spouse as to render his or her condition intolerable and life burdensome.

(b) It shall be lawful for the court to grant a divorce upon the ground that insanity or serious mental disorder has resulted in confinement in a mental institution for at least three years immediately before the filing of the complaint, and where there is no reasonable prospect of the defendant spouse's being discharged from inpatient care during the next three years subsequent to the filing of the complaint. A presumption that no such prospect of discharge exists shall be established by a certificate of the superintendent of such institution to that effect and which includes a supporting statement of a treating physician.

(c) It shall be lawful for the court to grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and 90 days have elapsed from the date of filing of the complaint and an affidavit has been filed by each of the parties evidencing that each of the parties consents to the divorce.

(d) (1) It shall be lawful for the court to grant a divorce where a party has filed a complaint and an affidavit alleging that the parties have lived separate and apart for a period of at least three years, and that the marriage is irretrievably broken, and:

(i) the respondent does not deny the allegations set forth in the affidavit; or

(ii) the respondent denies one or more of the allegations set forth in the affidavit, but after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least three years and that the marriage is irretrievably broken.

(2) If a hearing has been held pursuant to paragraph (1)(ii), and the court determines that there is a reasonable prospect of reconcili-

ation, then the court shall continue the matter for a period not less than 90 days nor more than 120 days, unless the parties agree to a period in excess of 120 days. During such period, the court shall require counseling as provided in section 202. If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

Section 202. Counseling.

(a) Whenever section 201(a)(6) is the ground for divorce, the court shall require up to a maximum of three counseling sessions where either of the parties requests it.

(b) Whenever section 201(c) is the ground for divorce, the court shall require up to a maximum of three counseling sessions within the 90 days following the filing of the complaint where either of the parties requests it.

(c) Whenever the court orders a continuation period as provided in section 201(d)(2), the court shall require up to a maximum of three counseling sessions within the time period where either of the parties requests it or may require such counseling where the parties have at least one child under 16 years of age.

(d) Whenever section 201(a)(6), (c) or (d) is the ground for divorce, the court shall upon filing of the complaint, notify both parties of the availability of counseling and upon request, provide both parties a list of qualified professionals who provide such services.

(e) The choice of a qualified professional shall be at the option of the parties and such professional need not be selected from the list provided by the court.

(f) Where the court requires counseling, a report shall be made by the qualified professional stating that the parties did or did not attend.

Section 203. Annulment of void and voidable marriages.

In all cases where a supposed or alleged marriage shall have been contracted which is void or voidable under this act or under applicable law, either party to such supposed or alleged marriage may bring an action in annulment to have it declared null and void in accordance with the procedures provided for under this act and the Rules of Civil Procedure.

Section 204. Annulment or invalidity of void marriages.

(a) Where there has been no confirmation by cohabitation following the removal of an impediment, the supposed or alleged marriage of any person shall be deemed void in the following cases:

(1) Where either party at the time of such marriage had an existing spouse and the former marriage had not been annulled nor had there been a divorce, except where such person had obtained a decree of presumed death of the former spouse.

(2) Where the parties to such marriage are related within the prohibited degrees of consanguinity, which degrees are as follows:

A man may not marry his mother.
A man may not marry his father's sister.
A man may not marry his mother's sister.
A man may not marry his sister.
A man may not marry his daughter.
A man may not marry the daughter of his son or daughter.
A woman may not marry her father.
A woman may not marry her father's brother.
A woman may not marry her mother's brother.
A woman may not marry her brother.
A woman may not marry her son.
A woman may not marry the son of her son or daughter.

(3) Where either party to such marriage was incapable of consenting by reason of insanity or serious mental disorder, or otherwise lacked capacity to consent or did not intend to assent to such marriage.

(b) In all such cases of marriages which are void, the marriage may be annulled as set forth in section 203, or its invalidity may be declared in any collateral proceeding.

Section 205. Grounds for annulment of voidable marriages.

(a) The marriage of any person shall be deemed voidable and subject to annulment in the following cases:

(1) Where either party to such marriage was under 16 years of age, unless such marriage was expressly authorized by a judge of the court.

(2) Where either party was 16 or 17 years of age and lacked the consent of parent or guardian or express authorization of the court and has not subsequently ratified such marriage upon reaching the age of 18 and such proceeding for annulment is commenced within 60 days after the marriage ceremony.

(3) Where either party to such marriage was under the influence of intoxicating liquor or drugs and a proceeding for annulment has been filed within 60 days after the marriage ceremony.

(4) Where either party to such marriage still is and was naturally and incurably impotent at the time of such marriage, unless the condition was known to the other party prior to the marriage.

(5) Where one party was induced to enter into such marriage due to the fraud, duress, coercion, or force attributable to the other party, and there has been no subsequent voluntary cohabitation after knowledge of such fraud or release from the effects of fraud, duress, coercion, or forces.

(b) In all such cases of marriages which are voidable, either party thereto may seek and obtain an annulment of such marriage, but unless and until such decree is obtained from a court of competent

jurisdiction, such marriage shall be valid and subsisting. The validity of such a voidable marriage shall not be subject to attack or question by any person if it is subsequently confirmed by the parties thereto or if either party has died.

Section 206. Proceedings to determine marital status.

When the validity of any marriage shall be denied or doubted, either or both of the parties to the marriage may bring an action for a declaratory judgment seeking a declaration of the validity or invalidity of the marriage, and, upon due proof of the validity or invalidity thereof, it shall be declared valid or invalid by decree of such court, and, unless reversed upon appeal, such declaration shall be conclusive upon all persons concerned.

Section 207. Defenses.

(a) Existing common law defenses are retained as to the grounds enumerated in section 201(a) and (b). The defenses of condonation, connivance, collusion; recrimination and provocation are abolished as to the grounds enumerated in section 201(c) and (d).

(b) In any action or suit for divorce for the cause of adultery, if the defendant shall allege and prove, or it shall appear in the evidence, that the plaintiff has been guilty of the like offense, or has admitted the defendant into conjugal society or embraces after he or she knew of the fact, or that the said plaintiff allowed the defendant's prostitution, or received hire from it, or exposed the defendant to lewd company whereby he or she became ensnared to the offense after said, it shall be a good defense and a perpetual bar against the same.

Section 208. Jurisdiction where defendant is insane or suffering from serious mental disorder.

In cases where a spouse is insane or suffering from serious mental disorder the court shall have jurisdiction to receive a complaint for divorce in which such person is made the defendant upon any ground set forth in section 201, and for annulment.

CHAPTER 3
PROCEDURE

Section 301. Jurisdiction.

(a) The courts of this Commonwealth as defined in section 104 shall have original jurisdiction in cases of divorce and for the annulment of void or voidable marriages and, where they have jurisdiction, shall determine in conjunction with any decree granting a divorce or annulment the following matters, where raised in the complaint or the answer and issue appropriate decrees or orders with reference thereto and may retain continuing jurisdiction thereof:

(1) The determination and disposition of property rights and interests between spouses, including any rights created by any antenuptial, postnuptial, or separation agreement and including the partition of property held as tenants by the entireties or otherwise

and any accounting between them, and the order of any alimony, alimony pendente lite, counsel fees, or costs authorized by law.

(2) The future care, custody and visitation rights as to children of such marriage or purported marriage.

(3) Any support or assistance which shall be paid for the benefit of any children of such marriage or purported marriage.

(4) Any property settlement, involving any of the matters set forth in paragraphs (1), (2) and (3) as submitted by the parties.

(5) Any other matters pertaining to such marriage and divorce or annulment authorized by law and which fairly and expeditiously may be determined and disposed of in such action.

(b) The said courts having power to grant divorces shall have authority to do so notwithstanding the fact that the marriage of the parties and the cause for divorce occurred outside of this Commonwealth and that both parties were at the time of such occurrence, domiciled without this Commonwealth. Said courts shall also have power to annul void or voidable marriages notwithstanding the fact such were celebrated without this Commonwealth at a time when neither party was domiciled within this Commonwealth.

Section 302. Residence and domicile of parties.

No spouse shall be entitled to commence proceeding for divorce or annulment by virtue of this act, unless at least one of the parties has been a bona fide resident in this Commonwealth for at least six months immediately previous to the filing of the complaint. Both parties shall be competent witnesses to prove his or her residence and proof of actual residence within the Commonwealth for six months shall create a presumption of domicile within the Commonwealth.

Section 303. General appearance and collusion.

The entry of a general appearance by, or in behalf of, a defendant shall not be deemed collusion. Collusion shall be found to exist only where the parties conspired to fabricate grounds for divorce or annulment, agreed to and did commit perjury, or perpetrated fraud on the court. Negotiation and discussion of terms of property settlement and other matters arising by reason of contemplated divorce or annulment shall not be deemed to constitute collusion.

Section 304. Hearing by master.

A master may be appointed by the court to hear testimony on all or some issues, except issues of custody and paternity and return the record and a transcript of the testimony together with his report and recommendation as provided by the Rules of Civil Procedure, or a judge of the court in chambers may appoint a master to take testimony and return the same to the court.

Section 305. Jury trial.

(a) After service of the complaint in divorce or annulment on the defendant in the manner provided by the Rules of Civil Procedure, or entry of a general appearance for the defendant, if either of the

parties shall desire any matter of fact that is affirmed by one and denied by the other to be tried by a jury, he or she may take a rule upon the opposite party, to be allowed by a judge of the court, to show cause why the issues of fact set forth in such rule shall not be tried by a jury, which rule shall be served upon the opposite party or his or her counsel.

(b) Upon the return of such rule, after hearing, the court may discharge it, or make it absolute, or frame issues itself, and only the issues so ordered by the court shall be tried accordingly, but such rule shall not be made absolute when, in the opinion of the court, a trial by jury cannot be had without prejudice to the public morals.

CHAPTER 4
DECREE OF COURT; PROPERTY RIGHTS AND COSTS

Section 401. Decree of court.

(a) In all matrimonial causes, the court having jurisdiction may either dismiss the complaint or enter a decree of divorce or annulment of the marriage.

(b) Any decree granting a divorce or an annulment, shall include after a full hearing, where these matters are raised in the complaint, the answer or other petition, an order or orders determining and disposing of existing property rights and interests between the parties, custody and visitation rights, child support, alimony and any other related matters including the enforcement of separation agreements voluntarily entered into between the parties. In the enforcement of the rights of any party to any such matters, the court shall have all necessary powers, including but not limited to, the power of contempt and the power to attach wages. In the event that the court is unable for any reason to determine and dispose of the matters provided for in this subsection within 30 days after the master's report has been filed, it may enter a decree of divorce or annulment. The court may order alimony, reasonable counsel fees and expenses pending final disposition of the matters provided for in this subsection and upon final disposition, the court may award costs to the party in whose favor the order or decree shall be entered, or may order that each party shall pay his or her own costs, or may order that costs be divided equitably as it shall appear just and reasonable.

(c) In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this act, and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

(d) In a proceeding for divorce or annulment, the court shall, upon request of either party, equitably divide, distribute or assign the

marital property between the parties without regard to marital misconduct in such proportions as the court deems just after considering all relevant factors including:

(1) The length of the marriage.

(2) Any prior marriage of either party.

(3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.

(4) The contribution by one party to the education, training, or increased earning power of the other party.

(5) The opportunity of each party for future acquisitions of capital assets and income.

(6) The sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.

(8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party at the time the division of property is to become effective.

(e) For purposes of this chapter only, "marital property" means all property acquired by either party during the marriage except:

(1) Property acquired in exchange for property acquired prior to the marriage except for the increase in value during the marriage.

(2) Property excluded by valid agreement of the parties entered into before, during or after the marriage.

(3) Property acquired by gift, bequest, devise or descent except for the increase in value during the marriage.

(4) Property acquired after separation until the date of divorce, provided however, if the parties separate and reconcile, all property acquired subsequent to the final separation until their divorce.

(5) Property which a party has sold, granted, conveyed or otherwise disposed of in good faith and for value prior to the time proceedings for the divorce are commenced.

(6) Veterans' benefits exempt from attachment, levy or seizure pursuant to the act of September 2, 1958, Public Law 85-857, 72 Statute 1229, as amended, except for those benefits received by a veteran where such veteran has waived a portion of his military retirement pay in order to receive Veteran's Compensation.

(7) Property to the extent to which such property has been mortgaged or otherwise encumbered in good faith for value, prior to the time proceedings for the divorce are commenced.

(f) All property, whether real or personal, acquired by either party during the marriage is presumed to be marital property regardless of

whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (e).

(g) The court may impose a lien or charge upon the marital property assigned to a party as security for the payment of alimony or other award for the other party.

(h) The court may award to one, each, or both of the parties the right to live in the family home for reasonable periods of time.

(i) The court may also direct the continued maintenance and beneficiary designations of existing policies insuring the life of either party. The court's power under this subsection shall extend only to policies originally purchased during the marriage and owned by or within the effective control of either party.

(j) Whenever a decree or judgment is granted which nullifies or absolutely terminates the bonds of matrimony, any and all property rights which are dependent upon such marital relation, save those which are vested rights, are terminated unless the court otherwise expressly provides in its decree in accordance with subsection (b). All duties, rights, and claims accruing to either of said parties at any time heretofore in pursuance of the said marriage, shall cease and the parties shall, severally, be at liberty to marry again in like manner as if they had never been married, except where otherwise provided by law.

Section 402. Disposition of realty and personalty after termination of marriage.

Unless otherwise provided by the court, whenever a decree of annulment or divorce is decreed by a court of competent jurisdiction, both parties whose marriage is so terminated or affected, shall have complete freedom of disposition as to their separate property and may mortgage, sell, grant, convey, or otherwise encumber or dispose of such realty or personalty, whether such separate property was acquired before, during, or after coverture, and neither need join in, consent to, or acknowledge any deed, mortgage, or instrument of the other.

Section 403. Injunction against disposition of property pending suit and decree rendering fraudulent transfers null and void.

(a) Where it appears to the court that a party is about to remove himself or herself or his or her property from the jurisdiction of the court or is about to dispose of, alienate, or encumber property in order to defeat alimony pendente lite, alimony, child and spousal support, or similar award, an injunction may issue to prevent such removal or disposition and such property may be attached as provided by the Rules of Civil Procedure. The court may also issue a writ of ne exeat to preclude such removal.

(b) Both parties shall submit to the court an inventory and appraisement of all property owned or possessed at the time action was commenced.

(c) If any party deliberately or negligently fails to disclose information required by subsection (b) and in consequence thereof any asset or assets with a fair market value of $500 or more is omitted from the final distribution of property, the party aggrieved by such nondisclosure may at any time petition the court granting the annulment or divorce to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, said trust to include such terms and conditions as the court may determine. The court shall grant the petition upon a finding of a failure to disclose such assets as required under subsection (b).

(d) Any encumbrance or disposition of property to third persons who had notice of the pendency of the matrimonial action or who paid wholly inadequate consideration for such property may be deemed fraudulent and declared null and void.

Section 404. Statement of reasons for distribution.

In an order made under this chapter for the distribution of property the court shall set forth the reason or reasons for the distribution ordered.

CHAPTER 5
ALIMONY AND SUPPORT

Section 501. Alimony.

(a) The court may allow alimony, as it deems reasonable, to either party, only if it finds that the party seeking alimony:

(1) lacks sufficient property, including but not limited to any property distributed pursuant to Chapter 4, to provide for his or her reasonable needs; and

(2) is unable to support himself or herself through appropriate employment.

(b) In determining whether alimony is necessary, and in determining the nature, amount, duration, and manner of payment of alimony, the court shall consider all relevant factors including:

(1) The relative earnings and earning capacities of the parties.

(2) The ages, and the physical, mental and emotional conditions of the parties.

(3) The sources of income of both parties including but not limited to medical, retirement, insurance or other benefits.

(4) The expectancies and inheritances of the parties.

(5) The duration of the marriage.

(6) The contribution by one party to the education, training or increased earning power of the other party.

(7) The extent to which it would be inappropriate for a party, because said party will be custodian of a minor child, to seek employment outside the home.

(8) The standard of living of the parties established during the marriage.

(9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.

(10) The relative assets and liabilities of the parties.

(11) The property brought to the marriage by either party.

(12) The contribution of a spouse as homemaker.

(13) The relative needs of the parties.

(14) The marital misconduct of either of the parties during the marriage; however, the marital misconduct of either of the parties during separation subsequent to the filing of a divorce complaint shall not be considered by the court in its determinations relative to alimony.

(c) Unless the ability of the party seeking the alimony to provide for his or her reasonable needs through employment is substantially diminished by reason of age, physical, mental or emotional condition, custody of minor children, or other compelling impediment to gainful employment, the court in ordering alimony shall limit the duration of the order to a period of time which is reasonable for the purpose of allowing the party seeking alimony to meet his or her reasonable needs by:

(1) obtaining appropriate employment; or

(2) developing an appropriate employable skill.

(d) In an order made under this section the court shall set forth the reason or reasons for its denial or award of alimony and the amount thereof.

(e) Any order entered pursuant to this section is subject to further order of the court upon changed circumstances of either party of a substantial and continuing nature whereupon such order may be modified, suspended, terminated, reinstituted, or a new order made. Any such further order shall apply only to payment accruing subsequent to the petition for the requested relief. Remarriage of the party receiving alimony shall terminate the award of alimony.

(f) Whenever the court shall approve an agreement for the payment of alimony voluntarily entered into between the parties, such agreement shall be deemed the order of the court and may be enforced as provided in section 503.

Section 502. Alimony pendente lite, counsel fees and expenses.

The court may, upon petition, in proper cases, allow a spouse reasonable alimony pendente lite and reasonable counsel fees and expenses.

Section 503. Enforcement of arrearages.

If at any time a party is in arrears in the payment of alimony or alimony pendente lite as provided for in sections 501 and 502, after hearing, the court may, in order to effect payment of the arrearages:

(1) Enter judgment.

(2) Authorize the taking and seizure of the goods and chattels and collection of the rents and profits of the real estate of the party.

(3) Attach no more than 50% of the wages of the party.

(4) Award interest on unpaid installments.

(5) Require security to insure future payments.

(6) Issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court at such time as the court may direct. If the court finds, after hearing, that the said person willfully failed to comply with the court order, it may deem said person in civil contempt of court and in its discretion make an appropriate order including, but not limited to, commitment of said person to the county jail for a period not to exceed six months.

Section 504. Payment of support, alimony and alimony pendente lite.

When so ordered by the court, all payments of child and spousal support, alimony or alimony pendente lite, shall be made to the domestic relations section of the court which issued the order or such section of the court at the residence of the party entitled to receive such an award. The domestic relations section shall keep an accurate record of all such payments and shall notify the court immediately whenever any person subject to a payment order is 30 days in arrears in such payment so that appropriate action may be taken to enforce the order of the court. It shall be the duty of the domestic relations section to distribute such payments to the person entitled thereto as soon as possible after receipt.

Section 505. Alimony where a foreign ex parte divorce or annulment.

Whenever a person who was a resident of this Commonwealth at the time such person was a defendant or respondent in a foreign ex parte action for annulment or divorce petitions a court of this Commonwealth for alimony and establishes the need therefor, such court, if it has jurisdiction over the person or property of the other party, may order that such alimony be paid in the same manner and under the same conditions and limitations which pertain when alimony is sought as provided in this chapter. In the event that the other party from whom such alimony is sought cannot be located within this Commonwealth, the court may attach such of the tangible or intangible property of said party as is within the jurisdiction of the court in the manner provided by the Rules of Civil Procedure, except

that no exemption shall apply. Such property shall thereupon be subject to the payment of alimony in the same manner as provided by law in actions for nonsupport.

Section 506. Enforcement of foreign decrees.

Whenever a person subject to a valid decree of a sister state or territory for the payment of alimony, temporary alimony, or alimony pendente lite, or his or her property is found within this Commonwealth, the obligee of such a decree may petition the court, where the obligor or his or her property is found, to register, adopt as its own, and to enforce the said decree as a duly issued and authenticated decree of a sister state or territory. Upon registration and adoption, such relief and process for enforcement as is provided for at law, in equity, or by court rule, in similar cases originally commenced in this Commonwealth, shall be available, and a copy of the decree and order shall be forwarded to the court of the state or territory which issued the original decree. The obligor, in such actions to register, adopt, and enforce, shall have such defenses and relief as are available to him in the state or territory which issued the original decree and may question the jurisdiction of that court if not otherwise barred. Interest may be awarded on unpaid installments and security may be required to insure future payments as in such cases originally commenced in this Commonwealth. Where property of the obligor, but not his person, is found within this Commonwealth, there shall be jurisdiction quasi in rem and, upon registration and adoption of the decree of the sister state or territory, such relief and enforcement of the decree shall be available as in other proceedings which are quasi in rem.

Section 507. Bar to any alimony.

No petitioner shall be entitled to receive any award of alimony where such petitioner has entered into cohabitation with a person of the opposite sex who is not a member of the petitioner's immediate family within the degrees of consanguinity subsequent to the divorce pursuant to which alimony is being sought.

CHAPTER 6
APPEALS AND ATTACKS UPON DECREES

Section 601. Limitations on attacks upon decrees.

The validity of any decree of divorce or annulment issued by a court shall not be questioned, except by appeal, in any court or place in this Commonwealth after the death of either party to such proceeding and if it is shown that a party who subsequently attempts to question the validity of such a decree had full knowledge of the facts and circumstances later complained of, at the time of issuance of said decree, or failed to take any action, despite such knowledge, within two years after the date of such decree, said party shall be barred from questioning such decree and it shall be deemed valid in all courts and places within this Commonwealth.

Section 602. Opening or vacating divorce decrees.

A motion to open a decree of divorce or annulment may be made only within 30 days after entry of the decree and not thereafter. Such motion may lie where it is alleged that the decree was procured by intrinsic fraud or that there is new evidence relating to the cause of action which will sustain the attack upon its validity. A motion to vacate a decree or strike a judgment alleged to be void because of extrinsic fraud, lack of jurisdiction over the subject matter or because of a fatal defect apparent upon the face of the record, must be made within five years after entry of the final decree. Intrinsic fraud is such as relates to a matter adjudicated by the judgment, including perjury and false testimony, whereas extrinsic fraud relates to matters collateral to the judgment which have the consequence of precluding a fair hearing or presentation of one side of the case.

Section 603. Plaintiff a competent witness.

In all proceedings for divorce, the plaintiff shall be fully competent to prove all the facts, as long as the defendant has been served as provided by the Rules of Civil Procedure.

Section 604. Rules of court.

The court is hereby authorized to make and adopt such rules and practices as may be necessary to carry this act into effect which are consistent with the Rules of Civil Procedure, and to regulate proceedings before masters, and to fix their fees.

Section 605. Res judicata and estoppel.

The validity of any divorce or annulment decree granted by a court having jurisdiction over the subject matter may not be questioned by any party who was subject to the personal jurisdiction of such court except by such direct appeal as is provided by law. A party who sought and obtained such decree, financed or agreed to its procurement, or accepted a property settlement, alimony pendente lite or alimony pursuant to the terms of such decree, or who remarries after such decree, or is guilty of laches, is barred from making a collateral attack upon the validity of such decree unless by clear and convincing evidence it is established that fraud by the other party prevented him from making a timely appeal from such divorce or annulment decree.

CHAPTER 7
MISCELLANEOUS PROVISIONS

Section 701. Marriage upon false rumor of spouse's death.

(a) The remarriage of a spouse who has obtained a license to marry and a decree of presumed death of the former spouse shall be valid for all intents and purposes as though the former marriage had been terminated by divorce, and any and all property of the presumed decedent shall be administered and disposed of as provided by Title 20 of the Pennsylvania Consolidated Statutes (relating to decedents, estates and fiduciaries).

(b) Where a remarriage has occurred upon false rumor of the death of a former spouse, in appearance well founded, but there has been no decree of presumed death, the remarriage shall be deemed void and subject to annulment by either party to such remarriage as provided by section 204 and the returning spouse shall have cause for divorce as provided in section 201.

(c) Where the remarriage was entered into in good faith, neither party to such remarriage shall be subject to criminal prosecution therefore.

(d) If the former spouse dies or procures a divorce the parties to the remarriage shall be deemed to be lawfully married from the date of such death or decree.

Section 702. Resumption of prior name.

It shall be lawful for any person who has heretofore been or shall hereafter be divorced, or whose marriage is annulled, to retake and thereafter use his or her prior name. Every such person who elects to resume his or her prior name shall file a written notice avowing such intention in the office of the prothonotary of the court in which such decree of divorce or annulment was entered, showing the caption and number and term of the proceeding in divorce or annulment, and duly acknowledged before a notary public. Where a person has a decree of divorce or annulment granted to him or her, or his or her spouse, in a foreign jurisdiction, a certified copy of such foreign divorce or annulment decree shall be filed with the prothonotary where the affiant resides, and thereafter such person desiring to resume his or her prior name may file a written notice to do so by making full reference therein to the filing of the foreign divorce or annulment decree with the prothonotary of the county where the affiant resides. A copy of the written notice in either case, so filed, duly certified by the prothonotary, shall be competent evidence for all purposes of right and duty of such person to use such prior name thereafter

Section 703. Privileged communications.

Communications of a confidential character made by a spouse to an attorney, or a qualified professional, shall be privileged and inadmissible in evidence in any matrimonial cause unless the party concerned waives such immunity.

CHAPTER 8
REPEALS AND EFFECTIVE DATE

Section 801. Repeals.

(a) The following acts and parts of acts and all amendments thereto are repealed to the extent specified:

Sections V, VI and IX, act of March 13, 1815 (P.L.150, Ch. 109), entitled "An act concerning divorces," insofar as supplied by this act.

The act of May 2, 1929 (P.L.1237, No.430), known as "The Divorce Law," absolutely.

Clause (h) of section 5, act of August 22, 1953 (P.L.1344, No.383), known as "The Marriage Law."

(b) All other acts and parts of acts, general, local and special, are repealed insofar as they are inconsistent herewith.

Section 802. Effective date.

This act shall take effect in 90 days.

APPROVED—The 2nd day of April, A. D. 1980.

DICK THORNBURGH

CHAPTER 286.

75-S 683
Effective
May 22, 1975.

AN ACT Concerning the Closing of School-Houses.

It is enacted by the General Assembly as follows:

Section 1. Section 16-2-15 of the general laws in chapter 16-2 entitled "School committees and superintendents" is hereby amended to read as follows:

School committee: Control of schools.

"16-2-15. LOCATION OF SCHOOLS — CONTROL OF PROPERTY.—The school committee shall locate all schoolhouses, and shall not abandon, **close** or change the location of any without good cause; and unless otherwise provided by law, said school committee of each town shall have the care and control of all public school buildings and other public school property of the town, including repairs of said buildings and the purchase of furniture and other school equipment.

"* * *"

Act effective, when.

Sec. 2. This act shall take effect upon its passage.

CHAPTER 287.

75-S 710
Effective
May 22, 1975.

AN ACT Adding Irreconcilable Differences as a Ground for Divorce.

It is enacted by the General Assembly as follows:

Section 1. Section 15-5-2 of the general laws in chapter 15-5 entitled "Divorce and separation" is hereby amended to read as follows:

"15-5-2. ADDITIONAL GROUNDS FOR DIVORCE. —Divorces from the bond of marriage shall also be decreed for the following causes: Impotency, adultery, extreme cruelty, wilful desertion for five (5) years of either of the parties, or for such desertion for a shorter period of time in the discretion of the court, for continued drunkenness, for the habitual, excessive, and intemperate use of opium, morphine, or chloral, and for neglect and refusal, for the period of at least one (1) year next before the filing of the petition, on the part of the husband to provide necessaries for the subsistence of his wife, the husband being of sufficient ability; and for any other gross misbehavior and wickedness, in either of the parties, repugnant to and in violation of the marriage covenant.

Additional grounds for divorce.

15-5-3.1. IRRECONCILABLE DIFFERENCES AS GROUNDS.—

[Title corrected by secretary of state. P. L. 1961, ch. 91. (§43-2-2.1)]. Irreconcilable differences as grounds.

Whenever in the trial of any petition for divorce from the bond of marriage, and it shall be alleged in the petition that the parties have irreconcilable differences between themselves, the court shall enter a decree divorcing the parties from the bond of marriage, and may make provision for alimony.

Sec. 2. This act shall take effect upon passage.

Act effective, when.

Title 20 - Domestic Relations

CHAPTER 3

Divorce

ARTICLE 1

Divorces in This State

SECTION 20-3-10. Grounds for divorce.

No divorce from the bonds of matrimony shall be granted except upon one or more of the following grounds, to wit:

(1) adultery;

(2) desertion for a period of one year;

(3) physical cruelty;

(4) habitual drunkenness; provided, that this ground shall be construed to include habitual drunkenness caused by the use of any narcotic drug; or

(5) on the application of either party if and when the husband and wife have lived separate and apart without cohabitation for a period of one year. A plea of res judicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground.

HISTORY: 1962 Code Section 20-101; 1952 Code Section 20-101; 1949 (46) 216; 1952 (47) 2142; 1969 (56) 172; 1979 Act No. 10 Section 1.

SECTION 20-3-20. Effect of collusion.

If it shall appear to the satisfaction of the court that the parties to any divorce proceeding colluded or that the act complained of was done with the knowledge or assent of the plaintiff for the purpose of obtaining a divorce the court

shall not grant such divorce.

HISTORY: 1962 Code Section 20-102; 1952 Code Section 20-102; 1949 (46) 216.

SECTION 20-3-30. Residence requirement.

In order to institute an action for divorce from the bonds of matrimony the plaintiff must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period; provided, that when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action. The terms 'residents' or 'resided' as used in this section as it applies to a plaintiff or defendant stationed in this State on active duty military service means a continuous presence in this State for the period required regardless of intent to permanently remain in South Carolina.

HISTORY: 1962 Code Section 20-103; 1952 Code Section 20-103; 1949 (46) 216; 1951 (47) 539; 1975 (59) 310; 1987 Act No. 17 Section 1, eff March 31, 1987.

SECTION 20-3-40. Married person deemed of age.

Any married person shall, for the purpose of maintaining or defending an action for divorce and the settlement of property rights arising thereunder, be deemed of age.

HISTORY: 1962 Code Section 20-104; 1952 Code Section 20-104; 1949 (46) 216.

SECTION 20-3-50. Jurisdiction of actions for divorce.

Actions for divorce from the bonds of matrimony shall, except as otherwise provided, be only in the equity jurisdiction of the court of common pleas.

HISTORY: 1962 Code Section 20-105; 1952 Code Section 20-105; 1949 (46) 216.

SECTION 20-3-60. Venue.

Actions for divorce from the bonds of matrimony or for separate support and maintenance must be tried in the county (a) in which the defendant resides at the time of the commencement of the action, (b) in which the plaintiff resides if the defendant is a nonresident or after due diligence cannot be found, or (c) in which the parties last resided together as husband and wife unless the plaintiff is a nonresident, in which case it must be brought in the county in which the defendant resides.

HISTORY: 1962 Code Section 20-106; 1952 Code Section 20-106; 1949 (46) 216; 1951 (47) 539; 1985 Act No. 56 Section 1, eff April 29, 1985.

SECTION 20-3-70. Service of summons on nonresident.

When the person on whom the service of the summons in an action for divorce from the bonds of matrimony is to be made cannot, after due diligence, be found within the State and that fact appears to the satisfaction of the court, or judge thereof, the clerk of the court of common pleas, the master or the probate judge of the county in which the cause is pending and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, such court, judge, clerk, master or judge of probate may grant an order that the service be made by the publication of the summons in the manner and with the effect provided in Sections 15-9-710 to 15-9-740. In lieu of publication of summons as provided in Sections 15-9-710 to 15-9-740 the plaintiff may cause such process to be served personally upon any nonresident and the service so made shall be sufficient.

HISTORY: 1962 Code Section 20-107; 1952 Code Section 20-107; 1949 (46) 216.

SECTION 20-3-80. Required delays before reference and final decree; exceptions.

No reference shall be had before two months after the filing of the complaint in the office of the Clerk of Court, nor shall a final decree be granted before three months after such filing.

Provided, however, that when the plaintiff seeks a divorce on the grounds of desertion or separation for one year, the hearing may be held and the decree issued after the responsive pleadings have been filed or after the respondent has been adjudged to be in default whichever occurs sooner.

HISTORY: 1962 Code Section 20-108; 1952 Code Section 20-108; 1949 (46) 216; 1979 Act No. 10 Section 2.

SECTION 20-3-90. Attempt at reconciliation.

In all cases referred to a master or special referee, such master or special referee shall, except in default cases, summon the party or parties within the jurisdiction of the court before him and shall in all cases make an earnest effort to bring about a reconciliation between the parties if they appear before him. No judgment of divorce shall be granted in such case unless the master or special referee to whom such cause may have been referred shall certify in his report or, if the cause has not been referred, unless the trial judge shall state in the decree that he has attempted to reconcile the parties to such action and that such efforts were unavailing.

HISTORY: 1962 Code Section 20-110; 1952 Code Section 20-110; 1949 (46) 216; 1950 (46) 2363.

SECTION 20-3-100. Attempt at reconciliation when one party is in armed forces overseas.

When either of the parties is a member of the armed forces and is serving without the continental limits of the United States, an affidavit by such party, taken before any officer of the armed forces authorized to administer an oath, to the effect that, so far as he is concerned, a reconciliation is impossible shall be accepted by the court in lieu of the certification that an unsuccessful attempt to reconcile the parties has been made.

HISTORY: 1962 Code Section 20-110.1; 1952 Code Section 20-110.1; 1951 (47) 538.

SECTION 20-3-110. Injunctions incident to divorce suits.

The court, pending the termination of the action or by final order, may restrain or enjoin either party to the cause from in any manner interposing any restraint upon the personal liberty of, or from harming, interfering with or molesting, the other party to the cause during the pendency of the suit or after final judgment. It may also, during the pendency of such action, restrain or enjoin any other person who is made a party to the action from doing or threatening to do any act calculated to prevent or interfere with a reconciliation of the husband and wife or other amicable adjustment of the action.

HISTORY: 1962 Code Section 20-111; 1952 Code Section 20-111; 1949 (46) 216.

SECTION 20-3-120. Alimony and suit money.

In every divorce action from the bonds of matrimony either party may in his or her complaint or answer or by petition pray for the allowance to him or her of alimony and suit money and for the allowance of such alimony and suit money pendente lite. If such claim shall appear well-founded the court shall allow a reasonable sum therefor.

HISTORY: 1962 Code Section 20-112; 1952 Code Section 20-112; 1949 (46) 216; 1979 Act No. 71 Section 5.

SECTION 20-3-125. Petition to enforce award of attorney fee.

Any attorney whose client has been awarded an attorney fee by the family court may petition the family court for the circuit in which the order was filed to enforce the payment of such fee.

HISTORY: 1984 Act No. 301.

SECTION 20-3-130. Award of alimony and other allowances.

(A) In proceedings for divorce from the bonds of matrimony, and in actions for separate maintenance and support, the court may grant alimony or separate maintenance and support in such amounts and for such term as the court considers appropriate as from the circumstances of the parties and the nature of case may be just, pendente lite, and permanently. No alimony may be awarded a spouse who commits adultery before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

(B) Alimony and separate maintenance and support awards may be granted pendente lite and permanently in such amounts and for periods of time subject to conditions as the court considers just including, but not limited to:

(1) Periodic alimony to be paid but terminating on the remarriage or continued cohabitation of the supported spouse or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances occurring in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to order the payment of alimony on an ongoing basis where it is desirable to make a current determination and requirement for the ongoing support of a spouse to be

reviewed and revised as circumstances may dictate in the future.

(2) Lump-sum alimony in a finite total sum to be paid in one installment, or periodically over a period of time, terminating only upon the death of the supported spouse, but not terminable or modifiable based upon remarriage or changed circumstances in the future. The purpose of this form of support may include, but not be limited to, circumstances where the court finds alimony appropriate but determines that such an award be of a finite and nonmodifiable nature.

(3) Rehabilitative alimony in a finite sum to be paid in one installment or periodically, terminable upon the remarriage or continued cohabitation of the supported spouse, the death of either spouse (except as secured in subsection (D)) or the occurrence of a specific event to occur in the future, or modifiable based upon unforeseen events frustrating the good faith efforts of the supported spouse to become self-supporting or the ability of the supporting spouse to pay the rehabilitative alimony. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to provide for the rehabilitation of the supported spouse, but to provide modifiable ending dates coinciding with events considered appropriate by the court such as the completion of job training or education and the like, and to require rehabilitative efforts by the supported spouse.

(4) Reimbursement alimony to be paid in a finite sum, to be paid in one installment or periodically, terminable on the remarriage or continued cohabitation of the supported spouse, or upon the death of either spouse (except as secured in subsection (D)) but not terminable or modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it necessary and desirable to reimburse the supported spouse from the future earnings of the payor spouse based upon circumstances or events that occurred during the marriage.

(5) Separate maintenance and support to be paid periodically, but terminating upon the continued cohabitation of the supported spouse, upon the divorce of the parties, or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where a divorce is not sought, but it is necessary to provide for support of the supported spouse by way of separate maintenance and support when the parties are living separate and apart.

(6) Such other form of spousal support, under terms and conditions as the court may consider just, as appropriate under the circumstances without limitation to grant more than one form of support.

For purposes of this subsection and unless otherwise agreed to in writing by the parties, "continued cohabitation" means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety-day requirement.

(C) In making an award of alimony or separate maintenance and support, the court must consider and give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties;

(2) the physical and emotional condition of each spouse;

(3) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential;

(4) the employment history and earning potential of each spouse;

(5) the standard of living established during the marriage;

(6) the current and reasonably anticipated earnings of both spouses;

(7) the current and reasonably anticipated expenses and needs of both spouses;

(8) the marital and nonmarital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action;

(9) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;

(10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement or (b) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(11) the tax consequences to each party as a result of the particular form of support awarded;

(12) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and

(13) such other factors the court considers relevant.

(D) In making an award of alimony or separate maintenance and support, the court may make provision for security for the payment of the support including, but not limited to, requiring the posting of money, property, and bonds and may require a spouse, with due consideration of the cost of premiums, insurance plans carried by the parties during marriage, insurability of the payor spouse, the probable economic condition of the supported spouse upon the death of the payor spouse, and any other factors the court may deem relevant, to carry and maintain life insurance so as to assure support of a spouse beyond the death of the payor spouse.

(E) In making an award of alimony or separate maintenance and support, the court may order the direct payment to the supported spouse, or may require that the payments be made through the Family Court and allocate responsibility for the service fee in connection with the award. The court may require the payment of debts, obligations, and other matters on behalf of the supported spouse.

(F) The court may elect and determine the intended tax effect of the alimony and separate maintenance and support as provided by the Internal Revenue Code and any corresponding state tax provisions. The Family Court may allocate the right to claim dependency exemptions pursuant to the Internal Revenue Code and under corresponding state tax provisions and to require the execution and delivery of all necessary documents and tax filings in connection with the exemption.

(G) The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements. The parties may agree in writing if properly approved by the court to make the payment of alimony as set forth in items (1) through (6) of subsection (B) nonmodifiable and not subject to subsequent modification by the court.

(H) The court, from time to time after considering the financial resources and marital fault of both parties, may order one party to pay a reasonable amount to the other for attorney fees, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce from the bonds of matrimony, as well as in actions for separate maintenance and support, including sums for services rendered and costs incurred before the commencement of the proceeding and after entry of judgment, pendente lite and permanently.

HISTORY: 1962 Code Section 20-113; 1952 Code Section 20-113; 1949 (46) 216; 1979 Act No. 71 Section 6; 1990 Act No. 518, Section 1, eff six months after approval by the Governor and applies to all actions filed on or after that date (approved May 29, 1990); 2002 Act No. 328, Section 1, eff June 18, 2002.

SECTION 20-3-135. Spousal support obligation when marriage declared void due to fraud.

A marriage that would otherwise be lawful that is declared void ab initio by reason of fraud, does not relieve the party committing the fraud of the duty to provide spousal support that would have otherwise existed pursuant to Section 20-3-130.

HISTORY: 2008 Act No. 291, Section 1, eff June 11, 2008.

SECTION 20-3-140. Allowance of alimony and suit money in suits for separate support and maintenance and similar actions.

In all actions for separate support and maintenance, legal separation, or other marital litigation between the parties, allowances of alimony and suit money and allowances of alimony and suit money pendente lite shall be made according to the principles controlling such allowance and actions for divorce a vinculo matrimonii.

HISTORY: 1962 Code Section 20-113.1; 1952 Code Section 20-113.1; 1951 (47) 436; 1979 Act No. 71 Section 4B.

SECTION 20-3-145. Attorney fee to constitute lien; payment to estate.

In any divorce action any attorney fee awarded by the court shall constitute a lien on any property owned by the person ordered to pay the attorney fee and such attorney fee shall be paid to the estate of the person entitled to receive it under the order if such person dies during the pendency of the divorce action.

HISTORY: 1979 Act No. 71 Section 7.

SECTION 20-3-150. Segregation of allowance between spouse and children; effect of remarriage of spouse.

If the court awards the custody of the children to the spouse receiving alimony the court, by its decree, unless good cause to the contrary be shown, shall allocate any award for permanent alimony and support between the supported spouse and the children and upon the remarriage or continued cohabitation of the supported spouse the amount fixed in the decree for his or her support shall cease, and no further alimony payments may be required from the supporting spouse.

For purposes of this section and unless otherwise agreed to in writing by the parties, "continued cohabitation" means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety-day requirement.

HISTORY: 1962 Code Section 20-114; 1952 Code Section 20-114; 1949 (46) 216; 1979 Act No. 71 Section 8; 2002 Act No. 328, Section 2, eff June 18, 2002.

SECTION 20-3-160. Care, custody, and maintenance of children.

In any action for divorce from the bonds of matrimony the court may at any stage of the cause, or from time to time after final judgment, make such orders touching the care, custody and maintenance of the children of the marriage and what, if any, security shall be given for the same as from the circumstances of the parties and the nature of the case and the best spiritual as well as other interests of the children may be fit, equitable and just.

HISTORY: 1962 Code Section 20-115; 1952 Code Section 20-115; 1949 (46) 216.

SECTION 20-3-170. Modification, confirmation, or termination of alimony; retirement by supporting spouse.

(A) Whenever any husband or wife, pursuant to a judgment of divorce from the bonds of matrimony, has been required to make his or her spouse any periodic payments of alimony and the circumstances of the parties or the financial ability of the spouse making the periodic payments shall have changed since the rendition of such judgment, either party may apply to the court which rendered the judgment for an order and judgment decreasing or increasing the amount of such alimony payments or terminating such payments and the court, after giving both parties an opportunity to be heard and to introduce evidence relevant to the issue, shall make such order and judgment as justice and equity shall require, with due regard to the changed circumstances and the financial ability of the supporting spouse, decreasing or increasing or confirming the amount of alimony provided for in such original judgment or terminating such payments. Thereafter the supporting spouse shall pay and be liable to pay the amount of alimony payments directed in such order and judgment and no other or further amount and such original judgment, for the purpose of all actions or proceedings of every nature and wherever instituted, whether within or without this State, shall be deemed to be and shall be modified accordingly, subject in every case to a further proceeding or proceedings under the provisions of this section in relation to such modified judgment.

(B) Retirement by the supporting spouse is sufficient grounds to warrant a hearing, if so moved by a party, to evaluate whether there has been a change of circumstances for alimony. The court shall consider the following factors:

(1) whether retirement was contemplated when alimony was awarded;

(2) the age of the supporting spouse;

(3) the health of the supporting spouse;

(4) whether the retirement is mandatory or voluntary;

(5) whether retirement would result in a decrease in the supporting spouse's income; and

(6) any other factors the court sees fit.

HISTORY: 1962 Code Section 20-116; 1952 Code Section 20-116; 1949 (46) 216; 1979 Act No. 71 Section 9; 2012 Act No. 260, Section 1, eff June 18, 2012.

SECTION 20-3-180. Change of name after divorce or separation.

The court, upon the granting of final judgment of divorce or an order of separate maintenance, may allow a party to resume a former surname or the surname of a former spouse.

HISTORY: 1962 Code Section 20-117; 1952 Code Section 20-117; 1949 (46) 216; 1998 Act No. 431, Section 1, eff June 23, 1998.

SECTION 20-3-190. Divorced wife barred of dower.

On the granting of any final decree of divorce, the wife shall thereafter be barred of dower in lands formerly owned, then owned, or thereafter acquired by her former husband.

HISTORY: 1962 Code Section 20-118; 1952 Code Section 20-118; 1949 (46) 216; 1950 (46) 2251; 1953 (48) 318.

SECTION 20-3-200. Divorce shall not render children illegitimate.

No judgment of divorce from the bonds of matrimony shall render illegitimate the children begotten of the marriage.

HISTORY: 1962 Code Section 20-119; 1952 Code Section 20-119; 1949 (46) 216.

SECTION 20-3-210. Unlawful advertising for purpose of procuring divorce.

It shall be unlawful for any person to print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any card, handbill, advertisement, printed paper, book, newspaper or notice of any kind offering or otherwise to advertise to procure, attempt to procure or aid in procuring any divorce either in this State or elsewhere. But this section shall not apply to the printing or publishing of any notice or advertisement required or authorized by the laws of this State.

HISTORY: 1962 Code Section 20-120; 1952 Code Section 20-120; 1949 (46) 216.

SECTION 20-3-220. Unlawful advertising for purpose of procuring divorce; penalty.

Any person violating any of the provisions of Section 20-3-210 shall, upon conviction, be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars or by imprisonment for not less than one month or more than one year, or both such fine and such imprisonment, at the discretion of the court.

HISTORY: 1962 Code Section 20-121; 1952 Code Section 20-121; 1949 (46) 216.

SECTION 20-3-230. Clerks of court shall file reports of divorces and annulments with Division of Vital Statistics.

Whenever a divorce or annulment is decreed by a court having jurisdiction, the clerk of court shall, no later than thirty days following the filing of the final decree, send a report to the Registrar of the Division of Vital Statistics of the Department of Health and Environmental Control showing such information as may be required on a certificate to be furnished by the Division of Vital Statistics of the Department of Health and Environmental Control.

HISTORY: 1962 Code Section 20-122; 1962 (52) 2157.

SECTION 20-3-235. Decree to set forth social security numbers or alien identification numbers of parties in divorce.

A decree of divorce shall set forth the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the parties in the divorce. Filing the required form with the Department of Health and Environmental Control complies with the requirements of this section.

HISTORY: 1997 Act No. 71, Section 1, eff June 10, 1997; 1999 Act No. 100, Part II, Section 105, eff June 30, 1999.

SECTION 20-3-410. Short title.

This article may be cited as the "Uniform Divorce Recognition Act."

HISTORY: 1962 Code Section 20-131; 1952 Code Section 20-131; 1950 (46) 2390.

SECTION 20-3-420. Nonresident divorce shall be void if parties were domiciled here.

A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this State if both parties to the marriage were domiciled in this State at the time the proceeding for the divorce was commenced.

HISTORY: 1962 Code Section 20-132; 1952 Code Section 20-132; 1950 (46) 2390.

SECTION 20-3-430. Prima facie evidence of domicile.

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this State within twelve months prior to the commencement of the proceeding therefor and resumed residence in this State within eighteen months after the date of his departure therefrom or (b) at all times after his departure from this State and until his return maintained a place of residence within this State shall be prima facie evidence that the person was domiciled in this State when the divorce proceeding was commenced. But the provisions of this section shall not apply in cases of divorce when the decree of divorce was issued prior to June 3, 1950.

HISTORY: 1962 Code Section 20-133; 1952 Code Section 20-133; 1950 (46) 2390.

SECTION 20-3-440. Construction.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact substantially identical legislation.

HISTORY: 1962 Code Section 20-134; 1952 Code Section 20-134; 1950 (46) 2390.

ARTICLE 5

Equitable Apportionment of Marital Property

SECTION 20-3-610. Spousal equity and ownership rights.

During the marriage a spouse shall acquire, based upon the factors set out in Section 20-3-620, a vested special equity and ownership right in the marital property as defined in Section 20-3-630, which equity and ownership right are subject to apportionment between the spouses by the family courts of this State at the time marital litigation is filed or commenced as provided in Section 20-3-620.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

SECTION 20-3-620. Apportionment factors.

(A) In a proceeding for divorce a vinculo matrimonii or separate support and maintenance, or in a proceeding for disposition of property following a prior decree of dissolution of a marriage by a court which lacked personal jurisdiction over an absent spouse or which lacked jurisdiction to dispose of the property, and in other marital litigation between the parties, the court shall make a final equitable apportionment between the parties of the parties' marital property upon request by either party in the pleadings.

(B) In making apportionment, the court must give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance or other marital action between the parties;

(2) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce as such, if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage; provided, that no evidence of personal conduct which would otherwise be relevant and material for purposes of this subsection shall be considered with regard to this subsection if such conduct shall have taken place subsequent to the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(3) the value of the marital property, whether the property be within or without the State. The contribution of each spouse to the acquisition, preservation, depreciation, or appreciation in value of the marital property, including the contribution of the spouse as homemaker; provided, that the court shall consider the quality of the contribution as well as its factual existence;

(4) the income of each spouse, the earning potential of each spouse, and the opportunity for future acquisition of capital assets;

(5) the health, both physical and emotional, of each spouse;

(6) the need of each spouse or either spouse for additional training or education in order to achieve that spouses's income potential;

(7) the nonmarital property of each spouse;

(8) the existence or nonexistence of vested retirement benefits for each or either spouse;

(9) whether separate maintenance or alimony has been awarded;

(10) the desirability of awarding the family home as part of equitable distribution or the right to live therein for reasonable periods to the spouse having custody of any children;

(11) the tax consequences to each or either party as a result of any particular form of equitable apportionment;

(12) the existence and extent of any support obligations, from a prior marriage or for any other reason or reasons, of either party;

(13) liens and any other encumbrances upon the marital property, which themselves must be equitably divided, or upon the separate property of either of the parties, and any other existing debts incurred by the parties or either of them during the course of the marriage;

(14) child custody arrangements and obligations at the time of the entry of the order; and

(15) such other relevant factors as the trial court shall expressly enumerate in its order.

(C) The court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

SECTION 20-3-630. Marital property; nonmarital property.

(A) The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in Section 20-3-620 regardless of how legal title is held, except the following, which constitute nonmarital property:

(1) property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse;

(2) property acquired by either party before the marriage and property acquired after the happening of the earliest of:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property

or marital settlement agreement between the parties;

(3) property acquired by either party in exchange for property described in items (1) and (2) of this section;

(4) property excluded by written contract of the parties. "Written contract" includes any antenuptial agreement of the parties which must be considered presumptively fair and equitable so long as it was voluntarily executed with both parties separately represented by counsel and pursuant to the full financial disclosure to each other that is mandated by the rules of the family court as to income, debts, and assets;

(5) any increase in value in nonmarital property, except to the extent that the increase resulted directly or indirectly from efforts of the other spouse during marriage.

Interspousal gifts of property, including gifts of property from one spouse to the other made indirectly by way of a third party, are marital property which is subject to division.

(B) The court does not have jurisdiction or authority to apportion nonmarital property.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

SECTION 20-3-640. Declining values of contributions.

In determining the value of contributions prior to making an equitable apportionment, the court:

(1) shall make findings of fact from credible evidence of the values of property and services, if any;

(2) is empowered to take judicial notice of official reports of the federal and state governments, including official bulletins, publications, and reports of general public interest where these reports are made and published by authority of law or have been adopted by state statute;

(3) has the authority to appoint experts as necessary for the purpose of valuation of property and contributions and to assess the cost against any or all parties to the action.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

SECTION 20-3-650. Sequestration of property.

(A) At any stage of a proceeding under this article where it appears to the court that personal jurisdiction may not be obtained over an absent party or where a party refuses to comply with an order of the court, the court may, upon appropriate petition, order the sequestration of that party's real and personal property which is within this State. The court may also appoint a sequestrator and, by injunction or otherwise, authorize the sequestrator to take the property into possession and control. In the case of an absent party, the court may appoint the party residing in this State as sequestator.

(B) The property sequestered and the income from it may be applied in whole or in part, at the direction of the court and as justice may require, so as to achieve an equitable apportionment of property as set forth in this article.

(C) Additionally, the court, in its discretion, if the property and income from it which may be sequestered is insufficient to pay what is required, may, upon terms and conditions as it considers in the interests of justice, direct the mortgaging of or the public or private sale of a sufficient amount of the sequestered property to pay what is required.

(D) The family court in which the action is filed has jurisdiction and venue to sequester property located within this State.

(E) The remedies in this section are cumulative to all other remedies which may be available to the parties.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

SECTION 20-3-660. Court's authority to achieve equitable apportionment.

(A) The court may direct a party to execute and deliver any deed, bill of sale, note, mortgage, or other document necessary to carry out its order of equitable apportionment. If a party so directed fails to comply, the court may direct the clerk of court in the county in which the property involved is situate to execute and deliver the document, and this performance by the clerk is as effective as the performance of the party would have been. The court in making an equitable apportionment may order the public or private sale of all or any portion of the marital property upon terms

it determines.

(B) The court may utilize any other reasonable means to achieve equity between the parties, which means are subject to and may not be inconsistent with the other provisions of this article and may include making a monetary award to achieve an equitable apportionment. Any monetary award made does not constitute a payment which is treated as ordinary income to the recipient under either the provisions of Chapter 6, Title 12 or, to the extent lawful, under the United States Internal Revenue Code.

HISTORY: 2008 Act 361, Section 3, eff June 16, 2008.

SECTION 20-3-670. Notice of pendency of action.

(A)(1) In a proceeding under this article, either party may record a notice of the pendency of proceedings in the manner provided in civil actions generally, which has the same effect as a notice in civil actions. The rights and interests of each spouse in the other's property created by this article are not effective against third parties:

(a) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed as provided in Section 15-11-10 with the clerk of court of the county in which such parcel of real property is situated; and

(b) with regard to personal property, until the third party has received written notice from either spouse in a proceeding under this article that marital litigation has been filed.

(2) Prior rights and interests of third parties:

(a) in real property are not affected by filing a Notice of Pendency of Action; and

(b) in personal property are not affected by receipt of written notice of such a filing.

(B)(1) Upon entry of judgment against a party requiring payment of money or transfer of property, whether by interlocutory order or final decree, a party may apply to the court for issuance of a transcript of judgment in the form prescribed in Section 20-3-680. This transcript may be recorded in the office of the clerk of court of common pleas and indexed in the books of abstracts of judgments of any county of this State as provided by law.

(2) After the order or decree has been duly recorded and indexed in the office of the clerk of court of common pleas, the order or decree has all force and effect of judgments of the courts of common pleas as provided by law, the recording and indexing constituting record notice to all persons of the order or decree recorded and indexed.

(3) The recordation and filing of a transcript of judgment does not prevent the court from exercising any equitable or other presently existing power of enforcement of the order or decree which is within its jurisdiction.

(C) The statutory lien created by Section 20-3-145 is not effective as against third parties unless this section has been complied with.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

SECTION 20-3-680. Form of transcript of judgment.

A transcript of judgment may be substantially in the following form:

STATE OF SOUTH CAROLINA COUNTY OF IN THE FAMILY COURT
_____, Petitioner, vs. _____,
TRANSCRIPT OF JUDGMENT Respondent.

NOTICE IS HEREBY GIVEN that in the above-captioned proceeding, (family court docket # of proceeding or domestic judgment #), filed in the family court of the State and county aforesaid, judgment was entered against _____, the _____ in the action, on the ___ day of _____, 20__, [in the amount of _____, as and by reason of (an award of attorney's fees, equitable division of property, etc.)] OR (requiring conveyance to _____ of the real property described as following:) Attorneys of record are _____, representing the petitioner and _____, representing the respondent.

FURTHER NOTICE IS GIVEN that interest will accrue at the statutory rate from the ___ day of _____, 20__, together with costs in the amount of _____.

_____ Judge of the Family Court place

_____ date _____.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

SECTION 20-3-690. Subject matter jurisdiction over contracts.

The family courts of this State have subject matter jurisdiction over all contracts relating to property which is involved in a proceeding under this article and over the construction and enforcement of those contracts.

HISTORY: 2008 Act No. 361, Section 3, eff June 16, 2008.

DOMESTIC RELATIONS

CHAPTER 207

(HB 1169)

IRRECONCILABLE DIFFERENCES MADE GROUNDS FOR DIVORCE

AN ACT

ENTITLED, An Act to provide for irreconcilable differences as a grounds for divorce.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 25-4 be amended by adding thereto a new section to read as follows:

Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

Section 2. That chapter 25-4 be amended by adding thereto a new section to read as follows:

If from the evidence at the hearing the court finds that there are irreconcilable differences, which have caused the irremediable breakdown of the marriage, it shall order the dissolution of the marriage or a legal separation. If it appears that there is a reasonable possibility of reconciliation, the court shall continue the proceeding for a period not to exceed thirty days. During the period of the continuance, the court may enter any order for the support and maintenance of the parties, the custody, support, maintenance and education of the minor children of the marriage, attorney fees and for the preservation of the property of the parties. At any time after the termination of the thirty-day period, either party may move for the dissolution of the marriage or a legal separation, and the court may enter its judgment decreeing the dissolution or separation.

The court may not render a judgment decreeing the legal separation or divorce of the parties without the consent of both parties unless one party has not made a general appearance.

Section 3. That § 25-4-2 be amended to read as follows:

25-4-2. Divorces may be granted for any of the following causes:

(1) Adultery;

(2) Extreme cruelty;

(3) Willful desertion;

(4) Willful neglect;

(5) Habitual intemperance;

(6) Conviction of felony;

(7) Irreconcilable differences.

Signed March 12, 1985.

1985 SESSION LAWS

OF THE

STATE OF SOUTH DAKOTA

PASSED BY THE SIXTIETH SESSION OF THE LEGISLATIVE ASSEMBLY. BEGUN AND HELD IN PIERRE ON JANUARY 8, 1985 AND CONCLUDED ON MARCH 14, 1985.

OFFICIAL EDITION

AUTHENTICATION

STATE OF SOUTH DAKOTA,)
) SS
HUGHES COUNTY)

I, Thomas R. Vickerman, Code Counsel of the State of South Dakota, do hereby certify that the laws contained in this volume are, with the exception of clerical errors, true and correct copies of the proposed constitutional amendments and of the enacted Bills and Joint Resolutions passed by the Legislature of the State of South Dakota at the Sixtieth Session thereof, which have been filed in my office.

Signed this first day of May, 1985.

Thomas R. Vickerman

Thomas R. Vickerman
South Dakota Code Counsel

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The effective date of most of the legislation in this volume is July 1, 1985. See SDCL 2-14-16. For legislation which becomes effective before that date, see "Emergency Legislation" in the index. Legislation that becomes effective after that date will contain its effective date as one of its provisions.

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED: April 25, 1977

Ray Blanton,
GOVERNOR

CHAPTER NO. 107

HOUSE BILL NO. 4

By Spence, Bissell, Love

Substituted for: Senate Bill No. 87

By White

AN ACT to allow the granting of divorce from the bonds of matrimony on the ground of irreconcilable differences, in addition to existing grounds, and to amend Tennessee Code Annotated, Sections 36-806, 36-813, and 36-820.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Divorce from the bonds of matrimony may be granted on the ground of irreconcilable differences where the defendant has been personally served with process. No divorce shall be granted on the ground of irreconcilable differences unless the court shall affirmatively find in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the equitable settlement of any property rights between the parties. The agreement shall be incorporated in the decree, and such decree may be modified as other decrees for divorce. Bills for divorce

on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard if the parties have no unmarried child under eighteen (18) years of age and the same must have been on file at least ninety (90) days before being heard if the parties have an unmarried child under age eighteen (18) years of age. A bill of complaint for divorce where the defendant has been personally served, which includes the ground of irreconcilable differences, may be taken as confessed and a final decree entered thereon, as in other cases and without corroborative proof or testimony, the provisions of Tennessee Code Annotated, Sections 36-806 and 36-813, to the contrary notwithstanding. No divorce shall be granted on the ground of irreconcilable differences where there has been a contest or denial. Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground for divorce with any other cause for divorce set out in Tennessee Code Annotated, Section 36-801 or 36-802.

SECTION 2. It shall be no impediment to a divorce that the offended spouse did not leave the marital domicile or separate from the offending spouse on account of the conduct of the offending spouse.

SECTION 3. Tennessee Code Annotated, Section 36-806, is amended by inserting between the word "petition" and the word "shall" in the first line of the section the following:

, except those seeking a divorce from the bonds of matrimony on the ground of irreconcilable differences,.

SECTION 4. Tennessee Code Annotated, Section 36-813, is amended by inserting between the word "divorce," and the word "hear" in the fourth line of the section the following:

except a divorce on the ground of irreconcilable differences,.

SECTION 5. This Act shall take effect on becoming a law, the public welfare requiring it.

PASSED: April 20, 1977

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: April 28, 1977

Ray Blanton,
GOVERNOR

CHAPTER NO. 108

HOUSE BILL NO. 64

By Rhinehart, McWilliams, Murray (Franklin), Burnett (Fentress), Watson, Burks, Davidson (Robertson), Work, DePriest, Elkins, Miller, Bissell, Phillips

Substituted for: Senate Bill No. 64

By Davis

AN ACT to amend Tennessee Code Annotated, Section 8-3904, relative to creditable service for purposes of the Tennessee Consolidated Retirement System, to extend the time for applying for retirement credit on account of prior military service.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

FAMILY CODE

CHAPTER 888

H. B. No. 53

Effective January 1, 1970

An Act adopting Title 1 of the Family Code, a substantive revision of the statutes relating to husband and wife—entering the marriage relationship; validity of marriage; dissolution of marriage; rights, duties, powers, and liabilities of spouses; and marital property; amending certain laws to conform to the new code, as follows: amending Article 495, Penal Code of Texas, 1925, relating to punishment for incest; amending Article 5460, Revised Civil Statutes of Texas, 1925, as amended, relating to the requirements for securing a lien on the homestead of a married person; amending Section 17A, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927, as amended (Rule 50b, Article 4477, Vernon's Texas Civil Statutes), relating to the record-keeping and information-providing function of the Bureau of Vital Statistics; adding an Article 3930a—1 to Title 61, Revised Civil Statutes of Texas, 1925, providing a fee for certain services rendered by county clerks and county recorders; repealing the statutes replaced by Title 1 of the Family Code; declaring the effect of conflicting laws passed at the same session; declaring the applicability of the Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes); providing for severability; providing a saving clause; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Title 1 of the Family Code is adopted to read as follows:

FAMILY CODE

TITLE 1. HUSBAND AND WIFE

SUBTITLE A. THE MARRIAGE RELATIONSHIP

CHAPTER 1. ENTERING THE MARRIAGE RELATIONSHIP

SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

Section

[Sections 1.10–1.20 reserved for expansion]

SUBCHAPTER B. MEDICAL EXAMINATION

Section

[Sections 1.38–1.50 reserved for expansion]

SUBCHAPTER C. UNDERAGE APPLICANTS

[Sections 1.53–1.80 reserved for expansion]

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

Section

[Sections 1.86–1.90 reserved for expansion]

SUBCHAPTER E. MARRIAGE WITHOUT FORMALITIES

CHAPTER 2. VALIDITY OF MARRIAGE

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 2.04–2.20 reserved for expansion]

SUBCHAPTER B. VOID MARRIAGES

Section
2.21. Consanguinity.
2.22. Marriage During Existence of Prior Marriage.
2.23. Certain Void Marriages Validated.
2.24. Suit to Declare Marriage Void.

[Sections 2.25–2.40 reserved for expansion]

SUBCHAPTER C. VOIDABLE MARRIAGES

2.41. Underage.
2.42. Under Influence of Alcohol or Narcotics.
2.43. Impotency.
2.44. Fraud, Duress, Force.
2.45. Mental Incompetency.
2.46. Concealed Divorce.
2.47. Death of Party to Voidable Marriage.

CHAPTER 3. DISSOLUTION OF MARRIAGE

SUBCHAPTER A. GROUNDS FOR DIVORCE; DEFENSES

3.01. Insupportability.
3.02. Cruelty.
3.03. Adultery.
3.04. Conviction of Felony.
3.05. Abandonment.
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3.07. Confinement in Mental Hospital.
3.08. Defenses.

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SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

3.21. Residence—General Rule.
3.22. Resident with Out-of-State Military Service.
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3.24. Suit by Nonresident Spouse.
3.25. Annulment Suit.

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SUBCHAPTER C. SUIT

3.51. Caption.
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TITLE 1. HUSBAND AND WIFE

SUBTITLE A. THE MARRIAGE RELATIONSHIP

CHAPTER 1. ENTERING THE MARRIAGE RELATIONSHIP

SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

Section 1.01. Marriage License

Persons desiring to enter into a ceremonial marriage shall obtain a marriage license from the county clerk of any county of this state.

§ 1.02. Application for License

Persons applying for a marriage license shall:

(1) appear together or separately before the county clerk;

(2) submit for each applicant:

(A) proof of identity and age as prescribed by Section 1.04 of this code;

(B) a medical examination certificate or an exemption order as prescribed by Subchapter B of this chapter;

(C) if applicable, the county judge's order prescribed by Section 1.05 of this code; and

(D) if required, the documents establishing parental consent, or a court order, as prescribed by Subchapter C of this chapter;

(3) provide the information for which spaces are provided in the application for a marriage license; and

(4) take the oath printed on the application and sign the application before the county clerk.

§ 1.03. Application Form

(a) The county clerk shall furnish the application form as prescribed by the Bureau of Vital Statistics of the State Department of Health.

(b) The application form shall contain:

(1) a heading entitled "Application for Marriage License, ———— County, Texas";

(2) spaces for each applicant's full name (including the woman's maiden surname), address, date of birth, place of birth (including city, county, and state), and race;

(3) a space for indicating the document tendered by each applicant as proof of identity and age;

(4) spaces for indicating whether each applicant has been divorced, and if so, whether the applicant has been divorced during the six-month period preceding the date of the application;

(5) a printed oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT, THAT I AM NOT PRESENTLY MARRIED, AND THAT I AM NOT RELATED TO THE OTHER APPLICANT WITHIN THE DEGREES PROHIBITED BY LAW.";

(6) spaces immediately below the printed oath for the applicants' signatures;

(7) the jurat of the county clerk;

(8) spaces for indicating the date of the marriage and the county in which it is performed; and

(9) a space for the address to which the applicants desire the executed license to be mailed.

§ 1.04. Proof of Identity and Age

The county clerk shall require proof of identity and age of each applicant to be established by a certified copy of the applicant's birth certificate or by some certificate, license, or document issued by this state or another state, the United States, or a foreign government.

§ 1.05. Certain Information or Formalities May be Omitted

Any information pertaining to an applicant, other than the applicant's name, may be omitted from the application, and any formality required by Subchapters A, B, and D of this chapter may be waived on the county judge's written order, issued for good cause shown, and submitted to the county clerk at the time the application is made.

§ 1.06. Execution of Application

The county clerk shall:

(1) determine that all necessary information (other than the date of the marriage ceremony, the county in which it is conducted, and the name of the person who performs the ceremony) is entered in the application and that all necessary documents are submitted to him;

(2) administer the oath to each applicant;

(3) have each applicant sign the application in his presence; and

(4) execute his certificate on the application.

§ 1.07. Issuance of License

(a) On execution of the application, the county clerk shall prepare the license. On the reverse side of the license he shall enter the names of the licensees and, for each of them, the date of the medical examination or the fact that an exemption order was obtained.

(b) The county clerk shall not issue a license to the applicants if he knows any facts which would make the marriage void or voidable under this code.

(c) If it is revealed that either applicant has been divorced during the six-month period preceding the date of the application, the county clerk shall not issue the license unless it is shown that the subsequent marriage within the six-month period is permitted under Section 3.66 of this code.

§ 1.08. Recording

The county clerk shall record all licenses issued by him and shall record all documents submitted with applications for licenses or note a summary of them on the application.

§ 1.09 Violation by County Clerk

A county clerk or deputy county clerk who violates or fails to comply with any provision of this subchapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

[Sections 1.10–1.20 reserved for expansion]

SUBCHAPTER B. MEDICAL EXAMINATION

§ 1.21. Medical Examination Certificate Required

Except as provided by Section 1.22 of this code, the county clerk shall not issue a marriage license unless each applicant submits at the time of the application a medical examination certificate as prescribed by this code.

§ 1.22. Exemption Order

On the joint application of both applicants for a marriage license, the judge of any county or district court of the county in which the license is to be issued may issue a written order exempting the applicants from the medical examination requirements of this chapter if he is satisfied by proof that sufficient grounds exist for the exemption and that the exemption will not adversely affect the public health and welfare. The hearing on the application shall be private, and all records relating to the application shall be held in absolute confidence and shall not be opened to public inspection.

§ 1.23. Form and Content of Certificate

The medical examination certificate shall be made on a two-part form prescribed and supplied by the State Department of Health. One part of the form shall be for the laboratory statement and the other part shall be for the physician's statement.

§ 1.24. Serologic Tests

The first step in obtaining a medical examination certificate is to have a standard serologic test made by a state, county, or city laboratory, or a private laboratory approved by the State Department of Health. The applicant may apply to the laboratory in person for the test or may have a blood specimen taken by the physician for transmittal to the laboratory.

§ 1.25. Tests to be Prescribed by Health Department

The State Department of Health shall prescribe standard serologic tests for determining the existence of infectious syphilis in applicants for marriage licenses.

§ 1.26. Duties of Laboratory

The laboratory shall:

(1) conduct a standard serologic test prescribed by the State Department of Health;

(2) complete the laboratory statement and the detailed laboratory report on the prescribed forms and have them signed by the person in charge or a person authorized to enter the results of the test;

(3) transmit the laboratory statement and one copy of the detailed laboratory report to the designated physician; and

(4) transmit a copy of the detailed laboratory report to the State Department of Health.

§ 1.27. Content of Laboratory Statement

The laboratory statement shall specify the name and address of the person tested, the name and address of the physician to whom the report is sent, the name of the test, and the date of the test. This statement shall not include the result of the test.

§ 1.28. Detailed Laboratory Report

The detailed laboratory report shall include the result of the test. The copy submitted to the State Department of Health shall be held confidential and shall not be opened to public inspection. However, on the order of the court, the report is admissible as evidence in any judicial proceeding if it is relevant and material to any issue involved in the proceeding. The department may use these reports, without disclosing identities of persons, in compiling statistics for any purpose.

§ 1.29. Public Laboratories to Conduct Tests Free of Charge

All state, county, and city laboratories shall conduct the standard serologic tests and make the reports required by this chapter free of charge.

§ 1.30. List of Approved Private Laboratories

The State Department of Health shall furnish each county clerk a list of approved private laboratories. The department shall keep the list current with necessary additions and deletions.

§ 1.31. Examination; Issuance of Certificate

After receiving the laboratory report and examining the applicant, the physician may execute the physician's statement on the prescribed form and issue the completed medical examination certificate to the applicant. However, the physician shall not issue the certificate if he knows or has reason to believe that the applicant has any infectious condition of syphilis or other venereal disease.

§ 1.32. Content of Physician's Statement

The physician's statement must declare that on a specified date (which must be within the 21-day period immediately preceding the date the marriage license is applied for), the applicant was given a thorough examination for infectious venereal disease, including a standard serologic test, and that the results of the examination, test, and history showed that the applicant was free of any infectious condition of syphilis or other venereal disease.

§ 1.33. Physician

Except as provided by Section 1.34 of this code, the physician's statement must be executed by a physician licensed to practice medicine in this state.

§ 1.34. Nonresident Applicants

An applicant who resides in another state or territory may present a medical examination certificate executed by a physician who is licensed to practice medicine in that state or territory and by a laboratory approved by the official health agency of that state or territory, on the forms prescribed by the Texas State Department of Health under this chapter. If the standard serologic test was conducted by a private laboratory, the certificate must be accompanied by the affidavit of the director of the laboratory that the laboratory is certified by the state or territorial health agency.

§ 1.35. Reporting of Venereal Disease Cases

Nothing in this chapter affects any law, rule, or regulation relating to reporting of cases of venereal disease discovered by physicians in the course of their practice.

§ 1.36. Violation by County Clerk

A county clerk or deputy county clerk who violates or fails to comply with any provision of this subchapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

§ 1.37. Giving False Information

A person who knowingly gives false information in any medical examination certificate or detailed laboratory report is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

[Sections 1.38–1.50 reserved for expansion]

SUBCHAPTER C. UNDERAGE APPLICANTS

§ 1.51. Age Requirements: General Rules

(a) A male under 16 years of age may not marry. A female under 14 years of age may not marry.

(b) Except with parental consent as prescribed by Section 1.52 of this code, the county clerk shall not issue a marriage license if the male applicant is under 19 years of age or if the female applicant is under 18 years of age.

§ 1.52. Underage Applicant: Parental Consent

(a) If the male applicant is 16 years of age or older but under 19 years of age, or if the female applicant is 14 years of age or older but under 18 years of age, the county clerk shall issue the license if parental consent is given as prescribed by this section.

(b) Parental consent must be evidenced by a written declaration on a form supplied by the county clerk in which the person consents to the marriage and swears that he or she is a natural guardian of the person (when there is no judicially designated custodian or guardian of the person of the applicant), an actual custodian of the person (when there is no natural guardian of the person or judicially designated custodian or guardian of the person of the applicant), or a judicially designated cus-

todian or guardian of the person (whether an individual, authorized agency, or court) of the applicant.

(c) Except as otherwise provided by this section, consent must be acknowledged before the county clerk at the time the application is made for the marriage license.

(d) If the consenting parent or guardian resides in another state or territory of the United States, the consent may be acknowledged before an officer authorized to issue marriage licenses in that state or territory.

(e) If the consenting parent or guardian is unable to be present because of illness or incapacity, the consent may be acknowledged before any officer authorized to take acknowledgments; but it must be accompanied by a physician's affidavit stating that the parent or guardian is unable to be present because of illness or incapacity.

[Sections 1.53–1.80 reserved for expansion]

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

§ 1.81. Expiration of License

(a) Unless both applicants were exempted by court order from the medical examination requirements of this chapter, the marriage license expires at the end of the 21-day period immediately following the date of the medical examinations (or the earlier of the two examinations if they were conducted on different days), if the marriage ceremony has not been conducted within that period. The person who is to conduct the marriage ceremony shall determine this information from the county clerk's endorsement on the license.

(b) A person who conducts a marriage ceremony after the license has expired is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

§ 1.82. Ceremony

On receiving possession of the unexpired marriage license, any authorized person may conduct the marriage ceremony.

§ 1.83. Persons Authorized to Conduct Ceremony

The following persons are authorized to conduct marriage ceremonies:

(1) licensed or ordained Christian ministers and priests;

(2) Jewish rabbis;

(3) persons who are officers of religious organizations and who are duly authorized by the organization to conduct marriage ceremonies; and

(4) justices of the supreme court, judges of the court of criminal appeals, justices of the courts of civil appeals, judges of the district, county, and probate courts, judges of the county courts at law, courts of domestic relations and juvenile courts, justices of the peace, and judges of the federal courts of this state.

§ 1.84. Return of License; Penalty for Violation

(a) The person who conducts the ceremony shall enter on the license the date and county in which it was performed and his or her name as the person who performed the ceremony, subscribe it and return the li-

cense to the county clerk who issued it within 30 days after the ceremony is conducted.

(b) A person who violates or fails to comply with any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

§ 1.85. Recording of License; Delivery to Licensees

The county clerk shall record the returned license and shall mail the license to the address indicated in the application. On the application form the county clerk shall record the date of the marriage ceremony, the county in which it was conducted, and the name of the person who conducted the ceremony.

[Sections 1.86–1.90 reserved for expansion]

SUBCHAPTER E. MARRIAGE WITHOUT FORMALITIES

§ 1.91. Proof of Certain Informal Marriages

(a) In any judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

(1) a declaration of their marriage has been executed under Section 1.92 of this code; or

(2) they agreed to be married, and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.

(b) In any proceeding in which a marriage is to be proved under Subsection (a)(2) of this section, the agreement of the parties to marry may be inferred if it is proved that they lived together as husband and wife and represented to others that they were married.

§ 1.92. Declaration and Registration

(a) A declaration of informal marriage shall be executed on a form prescribed by the Bureau of Vital Statistics of the State Department of Health and provided by the county clerk. Each party to the declaration shall provide the information for which spaces are provided in the form.

(b) The declaration form shall contain:

(1) a heading entitled "Declaration and Registration of Informal Marriage, ———— County, Texas";

(2) spaces for each party's full name (including the woman's maiden surname), address, date of birth, place of birth (including city, county, and state), and race;

(3) a printed declaration reading: "We, the undersigned declare that we are married to each other by virtue of the following facts: On or about ———— (date), we agreed to be married, and after that date we lived together in this state as husband and wife and in this state represented to others that we were married.";

(4) a printed oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT THE ABOVE DECLARATION IS TRUE, THAT THE INFORMATION I HAVE GIVEN HEREIN IS CORRECT, THAT I AM NOT PRESENTLY MARRIED TO ANY OTHER PERSON, AND THAT I AM NOT RELATED TO THE OTHER PARTY TO THE DECLARATION WITH THE DEGREES PROHIBITED BY LAW.";

(5) spaces immediately below the printed oath for the parties' signatures; and

(6) a certificate of the county clerk that the applicant made the oath and place and date it was made.

(c) The county clerk shall:

(1) determine that all necessary information is entered on the form;

(2) administer the oath to each party;

(3) have each party sign the declaration in his presence; and

(4) execute his certificate on the declaration.

(d) The county clerk shall record the declaration, deliver the original of the declaration to the parties, and transmit a copy to the Bureau of Vital Statistics.

(e) A declaration executed under this section is prima facie evidence of the marriage.

CHAPTER 2. VALIDITY OF MARRIAGE

SUBCHAPTER A. GENERAL PROVISIONS

Section 2.01. State Policy

In order to promote the public health and welfare and to provide the necessary records, this code prescribes detailed and specific rules to be followed in establishing the marriage relationship. However, in order to provide stability for those entering into the marriage relationship in good faith and to provide legitimacy and security for the children of the relationship, it is the policy of this state to preserve and uphold each marriage against claims of invalidity unless strong reasons exist for holding it void or voidable. Therefore, every marriage entered into in this state is considered valid unless it is expressly made void by this chapter or unless it is expressly made voidable by this chapter and is annulled as provided by this chapter. When two or more marriages of a person to different spouses are alleged, the most recent marriage is presumed to be valid as against each marriage that precedes it until one who asserts the validity of a prior marriage proves its validity.

§ 2.02. Fraud, Mistake, or Illegality in Obtaining License

Except as otherwise provided by this chapter, the validity of a marriage is not affected by any fraud, mistake, or illegality that occurred in obtaining the marriage license.

§ 2.03. Ceremony Conducted by Unauthorized Person

The validity of a marriage is not affected by any lack of authority of the person conducting the marriage ceremony if there was a reasonable appearance of authority by that person and at least one party to the marriage participated in the ceremony in good faith and that party treats the marriage as valid.

[Sections 2.04–2.20 reserved for expansion]

SUBCHAPTER B. VOID MARRIAGES

§ 2.21. Consanguinity

(a) A person may not marry:
(1) an ancestor or descendant, by blood or adoption;
(2) a brother or sister, of the whole or half blood or by adoption; or
(3) a parent's brother or sister, of the whole or half blood.
(b) A marriage entered into in violation of this section is void.

§ 2.22. Marriage During Existence of Prior Marriage

A marriage is void if either party was previously married and the prior marriage is not dissolved. However, the marriage becomes valid when the prior marriage is dissolved if since that time the parties have lived together as husband and wife and represented themselves to others as being married.

§ 2.23. Certain Void Marriages Validated

Except for marriages that would have been void under Section 2.21 of this code, all marriages that were entered into before January 1, 1970, in violation of the prohibitions of Article 496, Penal Code of Texas, 1925, are validated from the beginning if the parties continued until January 1, 1970, to live together as husband and wife and to represent themselves to others as being married.

§ 2.24. Suit to Declare Marriage Void

(a) Either party to a marriage made void by this subchapter may sue to have the marriage declared void, or the marriage may be declared void in any collateral proceeding.
(b) A suit to have a marriage declared void may be maintained in this state only if the purported marriage was contracted in this state or if either party is domiciled in this state.
(c) A suit to have a marriage declared void is a suit in rem, affecting the status of the parties to the purported marriage. Process shall be served as in a suit for divorce.

[Sections 2.25–2.40 reserved for expansion]

SUBCHAPTER C. VOIDABLE MARRIAGES

§ 2.41. Underage

(a) The marriage of a male 16 years of age or older but under 19 years of age, or a female 14 years of age or older but under 18 years of age, without parental consent as provided by Section 1.52 of this code, is voidable and subject to annulment at the discretion of the court on the petition of a next friend for the benefit of the underage party, or on the petition of the parent or the guardian of the person of the underage party. However, a suit may not be brought under this subsection more than 90 days after the date of the marriage.
(b) In exercising its discretion under this section, the court shall consider all pertinent facts concerning the welfare and best interests of both parties to the marriage, including whether or not the woman is pregnant.

§ 2.42. Under Influence of Alcohol or Narcotics

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) at the time of the marriage the petitioner was under the influence of alcoholic beverages or narcotics and as a result did not have the capacity to consent to the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party to the marriage since the effects of the alcoholic beverages or narcotics ended.

§ 2.43. Impotency

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) either party, for physical or mental reasons, was permanently impotent at the time of the marriage;

(2) the petitioner did not know of the impotency at the time of the marriage; and

(3) the petitioner has not voluntarily cohabited with the other party since learning of the impotency.

§ 2.44. Fraud, Duress, Force

On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) the other party used fraud, duress, or force to induce the petitioner to enter into the marriage; and

(2) the petitioner has not voluntarily cohabited with the other party since learning of the fraud or since being released from the duress or force.

§ 2.45. Mental Incompetency

(a) On the suit of a party to a marriage, or on the suit of the party's guardian or next friend (if the court finds it to be in his best interest to be represented by a guardian or next friend), the marriage is voidable and subject to annulment if:

(1) at the time of the marriage, as a result of a mental disease or defect, the petitioner did not have the mental competency to consent to marriage or to understand the nature of the marriage ceremony; and

(2) since the marriage ceremony, the petitioner has not voluntarily cohabited with the other party during any period when the petitioner possessed the mental competency to recognize the marriage relationship.

(b) On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) at the time of the marriage, as a result of a mental disease or defect, the other party did not have the mental competency to consent to marriage or to understand the nature of the marriage ceremony;

(2) at the time of the marriage, the petitioner neither knew nor reasonably should have known of the mental disease or defect; and

(3) since the petitioner discovered or reasonably should have discovered the mental disease or defect, the petitioner has not voluntarily cohabited with the other party.

§ 2.46. Concealed Divorce

(a) On the suit of a party to a marriage, the marriage is voidable and subject to annulment if:

(1) the other party was divorced from a third party within the six-month period preceding the day of the marriage ceremony, and the prohibition against marrying again within the six-month period was not waived under Section 3.66 of this code;

(2) at the time of the marriage ceremony, the petitioner did not know, and a reasonably prudent person would not have known, of the divorce; and

(3) since the petitioner discovered, or a reasonably prudent person would have discovered, the fact of the divorce, the petitioner has not voluntarily cohabited with the other party.

(b) A suit may not be brought under this section more than one year after the date of the marriage.

§ 2.47. Death of Party to Voidable Marriage

A marriage voidable under this subchapter is not subject to challenge in any proceeding instituted after the death of either party.

CHAPTER 3. DISSOLUTION OF MARRIAGE

SUBCHAPTER A. GROUNDS FOR DIVORCE; DEFENSES

Section 3.01. Insupportability

On the petition of either party to a marriage, a divorce may be decreed without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

§ 3.02. Cruelty

A divorce may be decreed in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable.

§ 3.03. Adultery

A divorce may be decreed in favor of one spouse if the other spouse has committed adultery.

§ 3.04. Conviction of Felony

(a) A divorce may be decreed in favor of one spouse if since the marriage the other spouse:

(1) has been convicted of a felony;

(2) has been imprisoned for at least one year in the state penitentiary, a federal penitentiary, or the penitentiary of another state; and

(3) has not been pardoned.

(b) A divorce may not be decreed under this section against a spouse who was convicted on the testimony of the other spouse.

§ 3.05. Abandonment

A divorce may be decreed in favor of one spouse if the other spouse left the complaining spouse with the intention of abandonment and remained away for at least one year.

§ 3.06. Living Apart

A divorce may be decreed in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

§ 3.07. Confinement in Mental Hospital

A divorce may be decreed in favor of one spouse if at the time the suit is filed:

(1) the other spouse has been confined in a mental hospital, a state mental hospital, or private mental hospital, as defined in Section 4, Texas Mental Health Code, as amended (Article 5547—4, Vernon's Texas Civil Statutes), in this state or another state for at least three years; and

(2) it appears that the spouse's mental disorder is of such a degree and nature that he is not likely to adjust, or that if he adjusts it is probable that he will suffer a relapse.

§ 3.08. Defenses

(a) The defense of recrimination is abolished.

(b) Condonation, if proved, is a valid defense only if it is also proved that there is a reasonable expectation of reconciliation.

[Sections 3.09–3.20 reserved for expansion]

SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

§ 3.21. Residence—General Rule

No suit for divorce shall be maintained unless at the time the suit is filed the petitioner has been a domiciliary of this state for the preceding 12-month period and a resident of the county in which the suit is filed for the preceding six-month period.

§ 3.22. Resident with Out-of-State Military Service

A resident who has been absent from this state for more than six months in the military, naval, or other service of the United States or of this state may sue for divorce in the county where he resided before entering the service.

§ 3.23. Military Personnel not Previously Residents

A person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last 12 months and at one or more military installations in a county of this state for at least the last six months is considered to have been a domiciliary of this state and a resident of the county for those periods for the purpose of bringing suit for divorce or annulment or to declare a marriage void.

§ 3.24. Suit by Nonresident Spouse

If one spouse has been a domiciliary of this state for at least the last 12 months, a spouse domiciled in another jurisdiction may sue for divorce in the county where the domiciled spouse is domiciled at the time the petition is filed.

§ 3.25. Annulment Suit

(a) A suit for annulment of a marriage may be maintained in this state only if the parties were married in this state or if either party is domiciled in this state.

(b) A suit for annulment of a marriage is a suit in rem, affecting the status of the parties to the marriage. Process shall be served as in a suit for divorce.

[Sections 3.26–3.50 reserved for expansion]

SUBCHAPTER C. SUIT

§ 3.51. Caption

Pleadings in a divorce or annulment suit shall be entitled, "In the Matter of the Marriage of _____ and _____."

§ 3.52. Pleadings; Statement of Facts

(a) Any pleading praying for a divorce or annulment shall allege the grounds relied on as nearly as possible in the language of the statute and without a detailed statement of the facts.

(b) The opposing party shall be furnished on request a separate statement of the facts relied on to support a decree. Each fact alleged in the statement shall be considered as denied by the opposing party unless expressly admitted.

(c) A copy of the statement shall be furnished to the judge but shall not become a part of the record of the case. However, if the court's judgment is appealed on any ground relating to an allegation in the statement, then the statement shall be included in the record on appeal.

§ 3.53. Answer

In a suit for divorce or annulment, the defendant need not answer upon oath, and the petition shall not be taken as confessed for want of an answer.

§ 3.54. Counseling

(a) After a petition for divorce is filed, the court may, in its discretion, direct the parties to counsel with a person or persons named by the court, who shall submit a written report to the court before the hearing on the petition.

(b) In his report, the counselor shall give only his opinion as to whether there exists a reasonable expectation of reconciliation of the parties, and if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling, and the report shall not be admitted as evidence in the suit. Copies of the report shall be furnished to the parties.

(c) If the court is of the opinion that there exists a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to any person or persons named by the court for further counseling for a period of time fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court deems desirable. The court shall consider the circumstances of the parties, including the needs of the parties' family, and the availability of counseling services, in making its order. At the expiration of the period of time specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in divorce suits generally.

(d) No person who has counseled parties to a suit for divorce under this section is competent to testify in any action involving the parties or their children.

(e) The expenses of counseling may be taxed as costs against either or both parties.

§ 3.55. Child Custody and Support

Until Title 2 of this code is enacted and takes effect, nothing in this code affects the existing statutes relating to the awarding of custody and support of children in a divorce suit.

§ 3.56. Inventory and Appraisement

At any time during a suit for divorce or annulment either spouse may, for the preservation of his or her rights, require an inventory and appraisement of all property in the possession of the other spouse, and may obtain an injunction restraining the other spouse from disposing of any of the property in any manner.

§ 3.57. Transfers and Debts Pending Decree

After a petition for divorce or annulment is filed and until a final decree is entered

(1) a transfer of real or personal community property or

(2) a debt incurred which would subject community property to liability by either spouse is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse. A transfer is not void if the person dealing with the transferor or debtor spouse did not have notice of the intent to injure the rights of the other spouse.

§ 3.58. Temporary Orders

After a petition for divorce or annulment is filed, the court or judge may make temporary orders respecting the property and parties as deemed necessary and equitable.

§ 3.59. Temporary Support

After a petition for divorce or annulment is filed, the judge, after due notice may order payments for the support of the wife, or for the support of the husband if he is unable to support himself, until a final decree is entered.

§ 3.60. Waiting Period

A divorce shall not be granted until at least 60 days have elapsed since the day the suit was filed. However, a decree entered in violation of this section is not subject to collateral attack.

§ 3.61. Jury

Either party may demand a jury trial.

§ 3.62. Testimony of Husband or Wife

In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness and the weight to be given such testimony.

§ 3.63. Division of Property

In a decree of divorce or annulment the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.

§ 3.64. Decree

The court shall base its decree for divorce or annulment on full and satisfactory evidence.

§ 3.65. Costs

In a divorce or annulment suit, the court may award costs to either party as it deems reasonable. However, costs may not be adjudged against a party against whom a divorce is granted under Section 3.07 of this code.

§ 3.66. Remarriage

Neither party to a divorce may marry a third party for a period of six months immediately following the date the divorce is decreed, but the parties divorced may marry each other at any time. The court granting the divorce, for good cause shown, may at the time of the divorce decree or thereafter waive the prohibition of this section as to either or both parties.

CHAPTER 4. RIGHTS, DUTIES, POWERS, AND LIABILITIES OF SPOUSES

Section 4.01. Persons Married Elsewhere

The law of this state applies to persons married elsewhere who are domiciled in this state.

§ 4.02. Duty to Support

Each spouse has the duty to support his or her minor children. The husband has the duty to support the wife, and the wife has the duty to support the husband when he is unable to support himself. A spouse

who fails to discharge a duty of support is liable to any person who provides necessaries to those to whom support is owed.

§ 4.03. Capacity of Spouses

Except as expressly provided by statute or by the constitution, every person who has been married in accordance with the law of this state, regardless of age, has the power and capacity of an adult, including the capacity to contract.

§ 4.04. Joinder in Civil Suits

(a) A spouse may sue and be sued without the joinder of the other spouse.

(b) When claims or liabilities are joint and several, the spouses may be joined under the rules relating to joinder of parties generally.

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 5. MARITAL PROPERTY

SUBCHAPTER A. SEPARATE AND COMMUNITY PROPERTY

Section 5.01. Marital Property Characterized

(a) A spouse's separate property consists of:

(1) the property owned or claimed by the spouse before marriage;

(2) the property acquired by the spouse during marriage by gift, devise, or descent; and

(3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

(b) Community property consists of the property, other than separate property, acquired by either spouse during marriage.

§ 5.02. Presumption

Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.

§ 5.03. Recordation of Separate Property

A subscribed and acknowledged schedule of a spouse's separate property may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property is located. As to real property, a schedule of a spouse's separate property is void as against a good faith purchaser for value or a creditor without notice unless the instrument is acknowledged and recorded in the county in which the real property is located.

[Sections 5.04–5.20 reserved for expansion]

SUBCHAPTER B. MANAGEMENT, CONTROL AND DISPOSITION OF MARITAL PROPERTY

§ 5.21. Separate Property

Each spouse has the sole management, control, and disposition of his or her separate property.

§ 5.22. Community Property: General Rules

(a) During marriage, each spouse has the sole management, control, and disposition of the community property that he or she would have owned if single, including but not limited to:

(1) personal earnings;

(2) revenue from separate property;

(3) recoveries for personal injuries; and

(4) the increase and mutations of, and the revenue from, all property subject to his or her sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney or other agreement in writing.

(c) Except as provided in Subsection (a) of this section, the community property is subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney or other agreement in writing.

§ 5.23. Earnings of Child

The earnings of an unemancipated minor are subject to the management, control, and disposition of the parent or parents having custody of the minor.

§ 5.24. Presumption

(a) During marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in his or her name, as shown by muniment, contract, deposit of funds, or other evidence of ownership, or if it is in his or her possession and is not subject to such evidence of ownership.

(b) A third person dealing with a spouse is entitled to rely (as against the other spouse or anyone claiming from that spouse) on that spouse's authority to deal with the property if:

(1) the property is presumed to be subject to the sole management, control, and disposition of the spouse; and

(2) the person dealing with the spouse:

(A) is not a party to a fraud upon the other spouse or another person; and

(B) does not have notice of the spouse's lack of authority.

(c) As to personal property, recording of a schedule of separate property under Section 5.03 of this code, or an order under Section 5.25 of this code, or a marital property agreement under Section 5.41 of this

code, or a partition or exchange agreement under Section 5.42 of this code, shall not be deemed constructive notice of the schedule, order, marital property agreement, or partition or exchange agreement for the purposes of Subsection (b)(2)(B) of this section. As to real property, recording of a schedule of separate property under Section 5.03 of this code, or an order under Section 5.25 of this code, or a marital property agreement under Section 5.41 of this code, or a partition or exchange agreement under Section 5.42 of this code, in the deed records of the county in which the real property is located is constructive notice for the purposes of Subsection (b)(2)(B) of this section.

§ 5.25. Unusual Circumstances

(a) If (1) a spouse is unable to manage, control, or dispose of the community property subject to his or her sole or joint management, control, and disposition, (2) a spouse disappears and his or her location remains unknown to the other spouse, (3) a spouse permanently abandons the other, or (4) the spouses are permanently separated, then not less than 60 days thereafter the capable spouse, or the remaining spouse, or the abandoned spouse, or either spouse in the case of permanent separation, may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property (described or defined in the petition) that would otherwise be subject to the sole or joint management, control, and disposition of the other.

(b) The petition shall be filed in a district court of the county in which the petitioning spouse resided at the time the incapacity or separation began, or the abandonment or disappearance occurred. If both spouses are nonresidents of the state at that time, the petition shall be filed in the district court of any county in which any part of the described or defined community property is located.

(c) A notice stating that the petition has been filed and specifying the date of the hearing, accompanied by a copy of the petition, shall be issued and served on the respondent spouse as in other cases.

(d) If the residence of the respondent is unknown, notice shall be published in a newspaper of general circulation published in the county in which the petition was filed. If that county has no newspaper of general circulation, then notice shall be published in a newspaper of general circulation in an adjacent county or in the nearest county in which a newspaper of general ci.. ulation is published. The notice shall be published once a week for two consecutive weeks before the hearing, but the first publication shall not be less than 20 days before the date set for the hearing.

(e) After hearing the evidence, the court, on terms it deems just and equitable, shall enter an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage.

(f) The jurisdiction of the court is continuing, and on motion of either spouse, after notice has been given in the same manner that notice is given under Subsection (c) or (d) of this section, the court shall amend or vacate the original order if:

(1) the incapable spouse's capacity is restored;

(2) the spouse who disappeared reappears; or

(3) the abandonment or permanent separation ends.

(g) An order authorized by Subsection (c) of this section affecting real property is void as against a good faith purchaser for value or

against a creditor without notice unless the order is recorded in the deed records of the county in which the real property is located.

(h) In the exercise of its equity powers, the court may impose any conditions and restrictions it deems necessary to protect the rights of the other spouse. The court may require a bond conditioned on faithful administration of the proceeds or may require payment of all or a portion of the proceeds to the registry of the court, to be disbursed in accordance with the court's further directions.

(i) This section is cumulative of the rights, powers, and remedies otherwise afforded the spouses by law.

[Sections 5.26–5.40 reserved for expansion]

SUBCHAPTER C. PROPERTY AGREEMENTS

§ 5.41. Agreement in Contemplation of Marriage

(a) Before marriage, persons intending to marry may enter into a marital property agreement as they may desire.

(b) The agreement must be in writing and subscribed by all parties.

(c) A minor capable of marrying but not otherwise capable of entering into a binding agreement may enter into a marital property agreement with the subscribed, written consent of the guardian of the minor's estate and with the approval of the probate court after the application, notice, and hearing required in the Probate Code for the sale of a minor's real estate.

(d) A marital property agreement does not prejudice the rights of preexisting creditors.

(e) A marital property agreement may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected or to be affected is located. As to real property, a marital property agreement is void as against a good faith purchaser for value or a creditor without notice unless the instrument is acknowledged and recorded in the county in which the real property is located.

§ 5.42. Partition or Exchange of Community Property

(a) At any time, the spouses may partition between themselves, in severalty or in equal undivided interests, all or any part of their community property. They may exchange between themselves the interest of one spouse in any community property for the interest of the other spouse in other community property. A partition or exchange must be in writing and subscribed by both parties.

(b) Subject to the rules stated in Subsections (c) and (d) of this section, property or a property interest transferred to a spouse under a partition or exchange becomes his or her separate property.

(c) A partition or exchange does not prejudice the rights of preexisting creditors.

(d) A partition or exchange agreement may be recorded in the deed records of the county in which the parties, or one of them, reside and in the county or counties in which the real property affected is located. As to real property, a partition or exchange agreement is void as against a good faith purchaser for value or a creditor without notice unless the in-

strument is acknowledged and recorded in the county in which the real property is located.

[Sections 5.43–5.60 reserved for expansion]

SUBCHAPTER D. MARITAL PROPERTY LIABILITIES

§ 5.61. Rules of Marital Property Liability

(a) A spouse's separate property is not subject to liabilities of the other spouse unless both spouses are liable by other rules of law.

(b) Unless both spouses are liable by other rules of law, the community property subject to a spouse's sole management, control, and disposition is not subject to:

(1) any liabilities that the other spouse incurred before marriage; or

(2) any nontortious liabilities that the other spouse incurs during marriage.

(c) The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by him or her before or during marriage.

(d) All the community property is subject to tortious liability of either spouse incurred during marriage.

§ 5.62. Order in Which Property is Subject to Execution

(a) A judge may determine, as he deems just and equiatable, the order in which particular separate or community property will be subject to execution and sale to satisfy a judgment, if the property subject to liability for a judgment includes any combination of:

(1) a spouse's separate property;

(2) community property subject to a spouse's sole management, control, and disposition;

(3) community property subject to the other spouse's sole management, control, and disposition; and

(4) community property subject to the spouses' joint management, control, and disposition.

(b) In determining the order in which particular property will be subject to execution and sale, the judge shall consider the facts surrounding the transaction or occurrence upon which the suit is based.

[Sections 5.63–5.80 reserved for expansion]

SUBCHAPTER E. HOMESTEAD RIGHTS

§ 5.81. Sale, Conveyance, or Encumbrance of Homestead

Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber it without the joinder of the other spouse except as provided in Section 5.-82, 5.83, 5.84, or 5.85 of this code or by other rules of law.

§ 5.82. Separate Homestead: Incompetent Spouse; Sale Without Joinder

If the homestead is the separate property of a spouse and the other spouse has been judicially declared incompetent, the owner may sell, convey, or encumber it without the joinder of the other spouse.

§ 5.83. Separate Homestead: Unusual Circumstances; Sale Without Joinder

(a) If the homestead is the separate property of a spouse and the other spouse (1) is incompetent (whether judicially declared incompetent or not), (2) disappears and his or her location remains unknown to the owner, (3) permanently abandons the homestead and the owner, or (4) permanently abandons the homestead and the spouses are permanently separated, then not less than 60 days thereafter the owner may file a sworn petition giving a description of the property and stating the facts that make it desirable for the owner to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. Notice shall be issued and served in the manner provided in Subsection (c) or (d) of Section 5.25 of this code.

(c) After hearing the evidence, the court shall enter an order it deems just and equitable with respect to sale, conveyance, or encumbrance of the homestead.

§ 5.84. Community Homestead: Incompetent Spouse; Sale Without Joinder

If the homestead is the community property of the spouses and one spouse has been judicially declared incompetent, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

§ 5.85. Community Homestead: Unusual Circumstances; Sale Without Joinder

(a) If the homestead is the community property of the spouses and if (1) a spouse is incompetent (whether judicially declared incompetent or not), (2) a spouse disappears and his or her location remains unknown to the other spouse, (3) a spouse permanently abandons the homestead and the other spouse, or (4) a spouse permanently abandons the homestead and the spouses are permanently separated, then not less than 60 days thereafter the competent spouse, the remaining spouse, the abandoned spouse, or the spouse who has not abandoned the homestead in a case of permanent separation, who desires to sell, convey, or encumber the community homestead of the spouses, may file a sworn petition giving a description of the property and stating the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse.

(b) The petition shall be filed in a district court of the county in which any portion of the property is located. Notice shall be issued and served in the manner provided in Subsection (c) or (d) of Section 5.25 of this code.

(c) After hearing the evidence, the court shall enter an order granting relief if it appears necessary or advisable, and on terms the court deems advisable.

(d) In the exercise of its equity powers, the court may impose any conditions and restrictions it deems necessary to protect the rights of the other spouse. The court may require a bond conditioned on faithful administration of the proceeds or may require payment of all or a portion of the proceeds to the registry of the court, to be disbursed in accordance with the court's further directions.

§ 5.86. Remedies and Powers Cumulative

The remedies provided by Sections 5.83 and 5.85 of this code, and the powers of a spouse under Sections 5.82 and 5.84 of this code, are cumulative of the rights, powers, and remedies otherwise afforded the spouses by law.

Sec. 2. Article 495, Penal Code of Texas, 1925, is amended to read as follows:

"Article 495. PUNISHMENT FOR INCEST. Persons who are forbidden to marry by Section 2.21 of the Family Code who intermarry or carnally know each other shall be confined in the penitentiary for not less than two years nor more than ten years."

Sec. 3. Article 5460, Revised Civil Statutes of Texas, 1925, as amended by Section 5, Chapter 309, Acts of the 60th Legislature, Regular Session, 1967, is amended to read as follows:

"Article 5460. LIEN ON HOMESTEAD. When material is furnished, labor performed, or improvements as defined in this title are made, or when erections or repairs are made upon homesteads, if the owner thereof is a married man or woman, then to fix and secure the lien upon the same it shall be necessary for the person or persons who furnish the material or perform the labor, before such material is furnished or such labor is performed, to make and enter into a contract in writing, setting forth the terms thereof, which shall be signed by both the husband and wife. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well bound book to be kept for that purpose. When such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contractor or builder."

Sec. 4. Section 17A, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927, as added by Section 2, Chapter 543, Acts of the 59th Legislature, Regular Session, 1965 (Rule 50b, Article 4477, Vernon's Texas Civil Statutes), is amended by adding a Subsection (b–1) to read as follows:

"(b–1) After December 31, 1969, the county clerk of each county shall transmit to the Bureau of Vital Statistics, within 90 days after execution, a copy of each declaration of informal marriage executed under Section 1.92 of the Family Code. The Bureau shall incorporate the information in each declaration in the state-wide alphabetical index established under Subsection (b) of this section, and the information shall be treated as provided in Subsection (c) of this section."

Sec. 5. Title 61, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding an Article 3930a—1 to read as follows:

"Article 3930a—1. COUNTY CLERKS AND COUNTY RECORDERS—OTHER SERVICES. (1) In addition to the fees authorized and required by Article 3930 of this title, as amended, county clerks and county recorders are authorized and required to collect the fees specified by this article for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, and governmental representatives.

Unless otherwise specified, each fee shall be collected at the time the service is rendered.

"(2) A total fee of $5 shall be collected for services rendered in connection with the execution of each declaration of informal marriage under Section 1.92 of the Family Code."

Sec. 6. The following laws are repealed:

(1) Articles 4602 through 4610 inclusive, 4613 through 4615 inclusive, 4617 through 4638 inclusive, 4640, 4641, 6632, and 6647, Revised Civil Statutes of Texas, 1925, as amended;

(2) Section 1, Chapter 114, Acts of the 41st Legislature, Regular Session, 1929 (Article 4604c, Vernon's Texas Civil Statutes); and Chapter 547, Acts of the 51st Legislature, Regular Session, 1949 (Article 4604d, Vernon's Texas Civil Statutes);

(3) Articles 404, 406, 492, 493, 496, and 497, Penal Code of Texas, 1925.

Sec. 7. Any other Act passed at the same session of the legislature prevails over this Act to the extent of any conflict.

Sec. 8. The Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) applies to the construction of the Family Code except to the extent that the context of a provision may otherwise require.

Sec. 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 10. This Act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun, before its effective date.

Sec. 11. This Act takes effect January 1, 1970.

Sec. 12. The importance of this legislation and the crowded condition of the calendar in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and the Rule is hereby suspended; and that this Act take effect and be in force from and after January 1, 1970, and it is so enacted.

Passed by the House on May 16, 1969, by a non-record vote; House concurred in Senate amendments on June 2, 1969, by a non-record vote; passed by the Senate, as amended, on May 31, 1969, by a viva-voce vote.

Approved May 14, 1969.

Effective January 1, 1970.

*

$50,000	2,001 or more

(3) Each health spa shall obtain the bond or letter of credit and furnish a certified copy of the bond or letter of credit to the division prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services. A health spa is considered to be in compliance with this section only if the proof provided to the division shows that the bond or letter of credit is current.

(4) Each health spa shall maintain accurate records of the bond or letter of credit and of any payments made, due, or to become due to the issuer and shall open the records to inspection by the division at any time during normal business hours.

(5) A change in the ownership of a health spa subjects the health spa to the requirements of this section as if it were a new health spa coming into being at the time the health spa changed ownership. The former owner may not release, cancel, or terminate his liability under any bond or letter of credit previously filed with the division, unless:

(a) the new owner has filed a new bond or letter of credit for the benefit of consumers covered under the previous owner's bond or letter of credit; or

(b) the former owner has refunded all unearned payments to consumers.

Section 10. Section Enacted.

Section 13-22-6, Utah Code Annotated 1953, is enacted to read:

13-23-6. Exemptions from bond or letter of credit requirement.

A health spa is exempt from the application of Section 13-22-5 if:

(1) (a) all payments to the health spa for which each consumer is obligated at any one time, including down payments, enrollment fees, membership fees, or any other payments to the health spa do not exceed $100; and

(b) the term of each contract, including any complimentary, compensatory, or other extension does not exceed 90 days; or

(2) (a) each contract contains the following clause: "If this health spa ceases operation and fails to offer an alternate location within 15 miles, no further payments under this contract shall be due to anyone, including any purchaser of any note associated with or contained in this contract.";

(b) all payments due under each contract, including down payments, enrollment fees, membership fees, or any other payments to the health spa, are in equal monthly installments spread over the entire term of the contract; and

(c) the term of each contract is clearly stated and is not capable of being extended.

Section 11. Section Enacted.

Section 13-22-7, Utah Code Annotated 1953, is enacted to read:

13-23-7. Enforcement - Costs and attorney's fees.

The division may, on behalf of any consumer or on its own behalf, file an action for injunctive relief, damages, or both in order to enforce this chapter. In addition to any relief granted, the division is entitled to an award for reasonable attorney's fees, court costs, and reasonable investigative expenses.

CHAPTER 106

H. B. No. 139

Passed February 24, 1987
Approved March 16, 1987
Effective April 27, 1987

GROUNDS FOR DIVORCE

By Scott W. Holt

AN ACT RELATING TO DOMESTIC LAW; INCLUDING "IRRECONCILABLE DIFFERENCES" AS A GROUND FOR DIVORCE; AND MAKING TECHNICAL CHANGES.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

30-3-1, AS LAST AMENDED BY CHAPTER 72, LAWS OF UTAH 1969

Be it enacted by the Legislature of the state of Utah:

Section 1. Section Amended.

Section 30-3-1, Utah Code Annotated 1953, as last amended by Chapter 72, Laws of Utah 1969, is amended to read:

30-3-1. Procedure - Residence - Grounds.

(1) Proceedings in divorce [~~shall be~~] are commenced and conducted [~~in the manner~~] as provided by law for proceedings in civil causes, except as [~~hereinafter~~] provided[~~, and the~~] in this chapter.

(2) The court may decree a dissolution of the marriage contract between the plaintiff and defendant on the grounds specified in Subsection (3) in all cases where the plaintiff or defendant [~~shall have~~] has been an actual and bona fide resident of this state and of the county where the action is brought, or [~~as to~~] if members of the armed forces of the United States who are not legal residents of this state, where the plaintiff [~~shall have~~] has been stationed in this state under military orders, for three months next prior to the commencement of the action[~~, for any of the following causes:~~].

(3) Grounds for divorce:

[~~(1)~~] (a) impotency of the defendant at the time of marriage[~~,~~];

[~~(2)~~] (b) adultery committed by the defendant subsequent to marriage[~~,~~];

[(3)] (c) willful desertion of the plaintiff by the defendant for more than one year[.];

[(4)] (d) willful neglect of the defendant to provide for the plaintiff the common necessaries of life[.];

[(5)] (e) habitual drunkeness of the defendant[.];

[(6)] (f) conviction of the defendant for a felon [.];

[(7)] (g) cruel treatment of the plaintiff by the defendant to the extent of causing bodily injury or great mental distress to the plaintiff[.];

(h) irreconcilable differences of the marriage;

(i) incurable insanity; or

[(8)] (j) when the husband and wife have lived [separate and apart] separately under a decree of separate maintenance of any state for three consecutive years without cohabitation[; provided that a].

(4) A decree of divorce granted [upon this ground shall] under Subsection (3) (j) does not affect the liability of either party under any provision for separate [support and] maintenance[, if any, theretofore] previously granted.

[(9)] (5) (a) [Permanent insanity of the defendant; provided, that no] A divorce [shall] may not be granted on the grounds of insanity unless[, (a)]: (i) the defendant [shall have] has been [duly and regularly] adjudged [to be] insane by the [legally constituted] appropriate authorities of this or [some other] another state prior to the commencement of the action[.]; and [unless, (b) it shall appear to the satisfaction of] (ii) the court finds by the testimony of competent witnesses that the insanity of the defendant is incurable.

(b) [In all such actions the] The court shall appoint for the defendant a guardian ad litem, who shall [take such measures as may be necessary and proper to] protect the interests of the defendant[, and a]. A copy of the summons and complaint [must] shall be [duly] served on the defendant in person[,] or by publication, as provided [for] by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county [in which such] where the action is prosecuted.

(c) [It shall be the duty of such] The county attorney [to make an investigation into] shall investigate the merits of the case[,] and[,] if the defendant resides out of this state, [to have a commission issued to] take [such] depositions as [are] necessary [for that purpose], [to] attend the [court upon the trial of the cause] proceedings, and make [such] a defense [therein] as [may be] is just [and proper] to protect the rights of the defendant and the interests of the state.

(d) In all [such] actions the court and judge [thereof shall] have [all powers relative to] jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children [which such], as the courts and judges [may] possess in other actions for divorce.

(e) [Either the] The plaintiff or defendant [shall] may, if the defendant resides in this state, upon [proper] notice, [be entitled to] have the defendant brought into the court [upon the] at trial, or [to] have an examination of the defendant by two or more competent physicians, to determine the mental condition of the defendant[, and for such]. For this purpose either party may have [process] leave from the court to enter any asylum or institution where [such] the defendant may be confined. The costs of court in [such] this action shall be [assessed or] apportioned by the court [according to the equities of the case].

CHAPTER 107

H. B. No. 140

Passed February 23, 1987
Approved March 16, 1987
Effective April 27, 1987

RESTITUTION AMENDMENTS - COURT ASSESSMENT

By Frank R. Pignanelli
Kelly C. Atkinson
Drew Daniels

AN ACT RELATING TO CRIMINAL LAW; CLARIFYING THE RESTITUTION PROCEDURE WHICH ALLOWS THE PROSECUTING ATTORNEY TO COLLECT RESTITUTION OWED A VICTIM; AND PROVIDING ASSESSMENT OF RESTITUTION FOR EXTRADITION COSTS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

76-3-201, AS LAST AMENDED BY CHAPTER 156, LAWS OF UTAH 1986

76-3-201.1, AS ENACTED BY CHAPTER 262, LAWS OF UTAH 1983

77-30-24, AS ENACTED BY CHAPTER 15, LAWS OF UTAH 1980

Be it enacted by the Legislature of the state of Utah:

Section 1. Section Amended.

Section 76-3-201, Utah Code Annotated 1953, as last amended by Chapter 156, Laws of Utah 1986, is amended to read:

76-3-201. Sentences or combination of sentences allowed - Civil penalties - Restitution - Definitions - Resentencing - Aggravation or mitigation of crimes with mandatory sentences.

(1) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of [sentences] them:

(a) to pay a fine;

§ 20-91. Grounds for divorce from bond of matrimony; contents of decree.

A. A divorce from the bond of matrimony may be decreed:

(1) For adultery; or for sodomy or buggery committed outside the marriage;

(2) [Repealed.]

(3) Where either of the parties subsequent to the marriage has been convicted of a felony, sentenced to confinement for more than one year and confined for such felony subsequent to such conviction, and cohabitation has not been resumed after knowledge of such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

(4), (5) [Repealed.]

(6) Where either party has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or willfully deserted or abandoned the other, such divorce may be decreed to the innocent party after a period of one year from the date of such act; or

(7), (8) [Repealed.]

(9) (a) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for one year. In any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when the husband and wife have lived separately and apart without cohabitation and without interruption for six months. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of one year or six months, whichever is applicable, from the commencement of such separation, the grounds for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

(b) This subdivision (9) shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce hereinbefore entered by any court having equity jurisdiction pursuant to this subdivision (9), not appealed to the Supreme Court of Virginia, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

(c) A decree of divorce granted pursuant to this subdivision (9) shall in no way lessen any obligation any party may otherwise have to support the spouse unless such party shall prove that there exists in the favor of such party some other ground of divorce under this section or § 20-95.

B. A decree of divorce shall include each party's social security number, or other control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

(Code 1919, § 5103; 1926, p. 868; 1934, p. 20; 1952, c. 100; 1960, c. 108; 1962, c. 288; 1964, cc. 363, 648; 1970, c. 311; 1975, c. 644; 1982, c. 308; 1986, c. 397; 1988, c. 404; 1997, cc. 794, 898.)

The Vermont Statutes Online

Title 15 : Domestic Relations

Chapter 011 : Annulment And Divorce

Subchapter 002 : Divorce

§ 551. Grounds for divorce from bond of matrimony

A divorce from the bond of matrimony may be decreed:

(1) for adultery in either party;

(2) when either party is sentenced to confinement at hard labor in the State prison in this State for life, or for three years or more, and is actually confined at the time of the bringing of the libel; or when either party being without the State, receives a sentence for an equally long term of imprisonment by a competent court having jurisdiction as the result of a trial in any one of the other states of the United States, or in a federal court, or in any one of the territories, possessions or other courts subject to the jurisdiction of the United States, or in a foreign country granting a trial by jury, and is actually confined at the time of the bringing of the libel;

(3) for intolerable severity in either party;

(4) for wilful desertion or when either party has been absent for seven years and not heard of during that time;

(5) on complaint of either party when one spouse has sufficient pecuniary or physical ability to provide suitable maintenance for the other and, without cause, persistently refuses or neglects so to do;

(6) on the ground of permanent incapacity due to a mental condition or psychiatric disability of either party, as provided for in sections 631-637 of this title;

(7) when a married person has lived apart from his or her spouse for six consecutive months and the Court finds that the resumption of marital relations is not reasonably probable. (Amended 1969, No. 264 (Adj. Sess.), § 1; 1971, No. 39, eff. May 1, 1971; 1971, No. 238 (Adj. Sess.), § 1, eff. April 6, 1972; 1973, No. 201 (Adj. Sess.), § 9; 2013, No. 96 (Adj. Sess.), § 69.)

82.38.180(3).

((~~(c) Within six months from the date the assessment becomes final or within six months from the date of collection, whichever period expires the later, with respect to assessments made by the department under RCW 82.38.170(4) and (5),~~))

(4) Within thirty days after disallowing any claim in whole or in part, the department shall serve written notice of its action on the claimant.

(5) Interest shall be paid upon any refundable amount or credit due under RCW 82.38.180(3) at the rate of one percent per month from the last day of the calendar month following the monthly period for which the refundable amount or credit is due.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the department that a claim may be filed or the date upon which the claim is approved by the department, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

If the department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(6) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected.

Passed the House March 27, 1973.
Passed the Senate April 13, 1973.
Approved by the Governor April 24, 1973.
Filed in Office of Secretary of State April 25, 1973.

CHAPTER 157
[Substitute House Bill No. 392]
MARRIAGE--DISSOLUTION--LEGAL SEPARATION--DECLARATIONS OF INVALIDITY

AN ACT Relating to divorce; adding a new chapter to Title 26 RCW; repealing section 1, chapter 215, Laws of 1949 and RCW 26.08.010; repealing section 2, chapter 215, Laws of 1949, section 1, chapter 15, Laws of 1965 ex. sess. and RCW

26.08.020; repealing section 3, chapter 215, Laws of 1949, section 1, chapter 28, Laws of 1970 ex. sess. and RCW 26.08.030; repealing section 4, chapter 215, Laws of 1949 and RCW 26.08.040; repealing section 5, chapter 215, Laws of 1949 and RCW 26.08.050; repealing section 6, chapter 215, Laws of 1949 and RCW 26.08.060; repealing section 7, chapter 215, Laws of 1949 and RCW 26.08.070; repealing section 8, chapter 215, Laws of 1949, section 1, chapter 21, Laws of 1972 ex. sess. and RCW 26.08.080; repealing section 9, chapter 215, Laws of 1949, section 70, chapter 81, Laws of 1971 and RCW 26.08.090; repealing section 10, chapter 215, Laws of 1949 and RCW 26.08.100; repealing section 11, chapter 215, Laws of 1949 and RCW 26.08.110; repealing section 12, chapter 215, Laws of 1949 and RCW 26.08.120; repealing section 13, chapter 215, Laws of 1949 and RCW 26.08.130; repealing section 14, chapter 215, Laws of 1949 and RCW 26.08.140; repealing section 15, chapter 215, Laws of 1949 and RCW 26.08.150; repealing section 16, chapter 215, Laws of 1949 and RCW 26.08.160; repealing section 17, chapter 215, Laws of 1949 and RCW 26.08.170; repealing section 18, chapter 215, Laws of 1949 and RCW 26.08.180; repealing section 19, chapter 215, Laws of 1949 and RCW 26.08.190; repealing section 20, chapter 215, Laws of 1949 and RCW 26.08.200; repealing section 21, chapter 215, Laws of 1949 and RCW 26.08.210; repealing section 11, chapter 26, Laws of 1967 and RCW 26.08.215; repealing section 22, chapter 215, Laws of 1949 and RCW 26.08.220; and repealing section 1, chapter 135, Laws of 1949 and RCW 26.08.230.

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

NEW SECTION. Section. 1. (1) Except as otherwise specifically provided herein, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled "In re the marriage of ..... and ..... ."

(3) In cases where there has been no prior proceeding in this state involving the marital status of the parties or custody or support obligations, a separate custody or support proceeding shall be entitled "In re the (custody) (support) of ..... ."

(4) The initial pleading in all proceedings for dissolution of marriage under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court.

(5) In this chapter, "decree" includes "judgment".

(6) A decree of dissolution, of legal separation, or a declaration concerning the validity of a marriage shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

NEW SECTION. Sec. 2. (1) A petition in a proceeding for dissolution of marriage, legal separation, or for a declaration concerning the validity of a marriage, shall allege the following:

(a) The last known residence of each party;

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

(c) If the parties are separated the date on which the separation occurred;

(d) The names, ages, and addresses of any child dependent upon either or both spouses and whether the wife is pregnant;

(e) Any arrangments as to the custody, visitation and support of the children and the maintenance of a spouse;

(f) A statement specifying whether there is community or separate property owned by the parties to be disposed of;

(g) The relief sought.

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

NEW SECTION. Sec. 3. When a party who is a resident of this state or who is a member of the armed forces and is stationed in this state, petitions for a dissolution of marriage, and alleges that the marriage is irretrievably broken and when ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

(1) If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution.

(2) If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition.

(3) If the other party denies that the marriage is irretrievably broken the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:

(a) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or

(b) At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for

not more than sixty days for hearing. If the cause is returned from the family court or at the adjourned hearing, the court shall:

(i) Find that the parties have agreed to reconciliation and dismiss the petition; or

(ii) Find that the parties have not been reconciled, and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage.

(4) If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity.

NEW SECTION. Sec. 4. (1) While both parties to an alleged marriage are living, and at least one party is resident in this state or a member of the armed service and stationed in the state, a petition to have the marriage declared invalid may be brought by:

(a) Either or both parties, for any cause specified in subsection (4) of this section; or

(b) Either or both parties, the legal spouse, or a child of either party when it is alleged that the marriage is bigamous.

(2) If the validity of a marriage is denied or questioned at any time, either or both parties to the marriage may petition the court for a judicial determination of the validity of such marriage. The petitioner in such action shall be the person or entity denying or questioning the validity of the marriage.

(3) In a proceeding to declare the invalidity of a marriage, the court shall proceed in the manner and shall have the jurisdiction, including the authority to provide for maintenance, custody, visitation, support, and division of the property of the parties, provided by this chapter.

(4) After hearing the evidence concerning the validity of a marriage, the court:

(a) If it finds the marriage to be valid, shall enter a decree of validity;

(b) If it finds that:

(i) The marriage should not have been contracted because of age of one or both of the parties, lack of required parental or court approval, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage, and that the parties have not ratified their marriage by voluntarily cohabiting after attaining the age of consent, or after attaining

capacity to consent, or after cessation of the force or duress or discovery of the fraud, shall declare the marriage invalid as of the date it was purportedly contracted;

(ii) The marriage should not have been contracted because of any reason other than those above, shall upon motion of a party, order any action which may be appropriate to complete or to correct the record and enter a decree declaring such marriage to be valid for all purposes from the date upon which it was purportedly contracted;

(c) If it finds that a marriage contracted in a jurisdiction other than this state, was void or voidable under the law of the place where the marriage was contracted, and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract or of a subsequent domicile of the parties, shall declare the marriage invalid as of the date of the marriage.

(5) Any child of the parties born or conceived during the existence of a marriage of record is legitimate and remains legitimate notwithstanding the entry of a declaration of invalidity of the marriage.

NEW SECTION. Sec. 5. In entering a decree of dissolution of marriage, legal separation, or declaration of invalidity, the court shall consider, approve, or make provision for child custody and visitation, the support of any child of the marriage entitled to support, the maintenance of either spouse, and the disposition of property and liabilities of the parties.

NEW SECTION. Sec. 6. (1) In a proceeding for:

(a) Dissolution of marriage, legal separation, or a declaration of invalidity; or

(b) Disposition of property or liabilities, maintenance, or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse; either party may move for temporary maintenance or for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

(a) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) Molesting or disturbing the peace of the other party or of

any child;

(c) Entering the family home or the home of the other party upon a showing of the necessity therefor;

(d) Removing a child from the jurisdiction of the court.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(4) The court may issue a temporary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances.

(5) A temporary order or temporary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final decree is entered or when the petition for dissolution, legal separation, or declaration of invalidity is dismissed.

NEW SECTION. Sec. 7. (1) The parties to a marriage, in order to promote the amicable settlement of disputes attendant upon their separation or upon the filing of a petition for dissolution of their marriage, a decree of legal separation, or declaration of invalidity of their marriage, may enter into a written separation contract providing for the maintenance of either of them, the disposition of any property owned by both or either of them, the custody, support, and visitation of their children and for the release of each other from all obligation except that expressed in the contract.

(2) If the parties to such contract elect to live separate and apart without any court decree, they may record such contract and cause notice thereof to be published in a legal newspaper of the county wherein the parties resided prior to their separation. Recording such contract and publishing notice of the making thereof shall constitute notice to all persons of such separation and of the facts contained in the recorded document.

(3) If either or both of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage, for a decree of legal separation, or for a declaration of invalidity of their marriage, the contract, except for those terms providing for the custody, support, and visitation of children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties on their own motion or on request of the court, that the separation contract was unfair at the time of its execution.

(4) If the court in an action for dissolution of marriage, legal separation, or declaration of invalidity finds that the separation contract was unfair at the time of its execution, it may make orders for the maintenance of either party, the disposition of their property and the discharge of their obligations.

(5) Unless the separation contract provides to the contrary, the agreement shall be set forth in the decree of dissolution, legal separation, or declaration of invalidity, or filed in the action or made an exhibit and incorporated by reference, except that in all cases the terms for custody, support, and visitation shall be set out in the decree, and the parties shall be ordered to comply with its terms.

(6) Terms of the contract set forth or incorporated by reference in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt, and are enforceable as contract terms.

(7) When the separation contract so provides, the decree may expressly preclude or limit modification of any provision for maintenance set forth in the decree. Terms of a separation contract pertaining to custody, support, and visitation of children and, in the absence of express provision to the contrary, terms providing for maintenance set forth or incorporated by reference in the decree are automatically modified by modification of the decree.

(8) If at any time the parties to the separation contract by mutual agreement elect to terminate the separation contract they may do so without formality unless the contract was recorded as in subsection (2) of this section, in which case a statement should be filed terminating the contract.

NEW SECTION. Sec. 8. In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage; and

(4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse having custody of any children.

NEW SECTION. Sec. 9. (1) In a proceeding for dissolution of

marriage, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance.

NEW SECTION. Sec. 10. In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for his support.

NEW SECTION. Sec. 11. The court may appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county.

NEW SECTION. Sec. 12. (1) The court may, upon its own motion or upon motion of either party, order support or maintenance payments to be made to:

(a) The person entitled to receive the payments; or

(b) The department of social and health services pursuant to chapters 74.20 and 74.20A RCW; or

(c) The clerk of court as trustee for remittance to the person entitled to receive the payments.

(2) If payments are made to the clerk of court:

(a) The clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order; and

(b) The parties affected by the order shall inform the clerk of the court of any change of address or of other conditions that may affect the administration of the order; and

(c) The clerk of the court shall, if the party fails to make required payment, send by first class mail notice of the arrearage to the obligor. If payment of the sum due is not made to the clerk of the court within ten days after sending notice, the clerk of the court shall certify the amount due to the prosecuting attorney.

NEW SECTION. Sec. 13. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person or agency entitled to receive the payments: PROVIDED, That the provisions of RCW 7.33.280 in regard to exemptions in garnishment proceedings shall apply to such assignments. The assignment is binding on the employer, trustee or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

NEW SECTION. Sec. 14. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his name.

NEW SECTION. Sec. 15. A decree of dissolution of marriage, legal separation, or declaration of invalidity is final when entered, subject to the right of appeal. An appeal which does not challenge the finding that the marriage is irretrievably broken or was invalid, does not delay the finality of the dissolution or declaration of

invalidity and either party may remarry pending such an appeal.

No earlier than six months after entry of a decree of legal separation, on motion of either party, the court shall convert the decree of legal separation to a decree of dissolution of marriage. The clerk of court shall complete the certificate as provided for in RCW 70.58.200 on the form provided by the department of social and health services. On or before the tenth day of each month, the clerk of the court shall forward to the state registrar of vital statistics the certificate of each decree of divorce, dissolution of marriage, annulment, or separate maintenance granted during the preceding month.

Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order a former name restored and may, on motion of either party, for just and reasonable cause, order the wife to assume a name other than that of the husband.

NEW SECTION. Sec. 16. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended, but he may move the court to grant an appropriate order.

NEW SECTION. Sec. 17. Except as otherwise provided in subsection (7) of section 7 of this 1973 act, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

NEW SECTION. Sec. 18. (1) A child custody proceeding is commenced in the superior court:

(a) By a parent:

(i) By filing a petition for dissolution of marriage, legal separation or declaration of invalidity; or

(ii) By filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found; or

(b) By a person other than a parent, by filing a petition

seeking custody of the child in the county where the child is permanently resident or where he is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.

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

NEW SECTION. Sec. 19. The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

(1) The wishes of the child's parent or parents as to his custody and as to visitation privileges;

(2) The wishes of the child as to his custodian and as to visitation privileges;

(3) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(4) The child's adjustment to his home, school, and community; and

(5) The mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed guardian that does not affect the welfare of the child.

NEW SECTION. Sec. 20. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in section 27 of this 1973 act. The court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

If a custody proceeding commenced in the absence of a petition for dissolution of marriage, legal separation, or declaration of invalidity, (subsection (1) of section 18 of this 1973 act) is dismissed, any temporary order is vacated.

NEW SECTION. Sec. 21. The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation privileges. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel

whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court.

NEW SECTION. Sec. 22. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodian arrangements for the child. The investigation and report may be made by the staff of the juvenile court or other professional social service organization experienced in counseling children and families.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of twelve, unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

NEW SECTION. Sec. 23. Custody proceedings shall receive priority in being set for hearing.

Either party may petition the court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the court deems necessary to determine the best interests of the child.

The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and

legitimate interest in the work of the court.

If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

NEW SECTION. Sec. 24. A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The court may order visitation rights for any person when visitation may serve the best interest of the child.

The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health.

NEW SECTION. Sec. 25. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.

If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the court at any time upon petition by either party.

NEW SECTION. Sec. 26. (1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custodian established by the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the custodian; or

(c) The child's present environment is detrimental to his physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a

change to the child.

(2) If the court finds that a motion to modify a prior custody order has been brought in bad faith, the court shall assess the attorney's fees and court costs of the custodian against the petitioner.

NEW SECTION. Sec. 27. A party seeking a temporary custody order or modification of a custody decree shall submit together with his motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

NEW SECTION. Sec. 28. Hereafter every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered in any dissolution or legal separation or declaration concerning the validity of a marriage in relation to the care, custody, control, support, or maintenance of the minor children of the marriage may be brought in the county where said minor children are then residing, or in the county where the parent or other person who has the care, custody, or control of the said children is then residing.

NEW SECTION. Sec. 29. Whenever either of the parties in a divorce action is, under the law, entitled to a final judgment, but by mistake, negligence, or inadvertence the same has not been signed, filed, or entered, if no appeal has been taken from the interlocutory order or motion for a new trial made, the court, on the motion of either party thereto or upon its own motion, may cause a final judgment to be signed, dated, filed, and entered therein granting the divorce as of the date when the same could have been given or made by the court if applied for. The court may cause such final judgment to be signed, dated, filed, and entered nunc pro tunc as aforesaid, even though a final judgment may have been previously entered where by mistake, negligence or inadvertence the same has not been signed, filed, or entered as soon as such final judgment, the parties to such action shall be deemed to have been restored to the status of single persons as of the date affixed to such judgment, and any marriage of either of such parties subsequent to six months after the granting of the interlocutory order as shown by the minutes of the court, and after the final judgment could have been entered under the law if applied for, shall be valid for all purposes as of the date affixed to such final judgment, upon the filing thereof.

NEW SECTION. Sec. 30. The following acts or parts of acts

are each repealed:

(1) Section 1, chapter 215, Laws of 1949 and RCW 26.08.010;

(2) Section 2, chapter 215, Laws of 1949, section 1, chapter 15, Laws of 1965 ex. sess. and RCW 26.08.020;

(3) Section 3, chapter 215, Laws of 1949, section 1, chapter 28, Laws of 1970 ex. sess. and RCW 26.08.030;

(4) Section 4, chapter 215, Laws of 1949 and RCW 26.08.040;

(5) Section 5, chapter 215, Laws of 1949 and RCW 26.08.050;

(6) Section 6, chapter 215, Laws of 1949 and RCW 26.08.060;

(7) Section 7, chapter 215, Laws of 1949 and RCW 26.08.070;

(8) Section 8, chapter 215, Laws of 1949, section 1, chapter 21, Laws of 1972 ex. sess. and RCW 26.08.080;

(9) Section 9, chapter 215, Laws of 1949, section 70, chapter 81, Laws of 1971 and RCW 26.08.090;

(10) Section 10, chapter 215, Laws of 1949 and RCW 26.08.100;

(11) Section 11, chapter 215, Laws of 1949 and RCW 26.08.110;

(12) Section 12, chapter 215, Laws of 1949 and RCW 26.08.120;

(13) Section 13, chapter 215, Laws of 1949 and RCW 26.08.130;

(14) Section 14, chapter 215, Laws of 1949 and RCW 26.08.140;

(15) Section 15, chapter 215, Laws of 1949 and RCW 26.08.150;

(16) Section 16, chapter 215, Laws of 1949 and RCW 26.08.160;

(17) Section 17, chapter 215, Laws of 1949 and RCW 26.08.170;

(18) Section 18, chapter 215, Laws of 1949 and RCW 26.08.180;

(19) Section 19, chapter 215, Laws of 1949 and RCW 26.08.190;

(20) Section 20, chapter 215, Laws of 1949 and RCW 26.08.200;

(21) Section 21, chapter 215, Laws of 1949 and RCW 26.08.210;

(22) Section 11, chapter 26, Laws of 1967 and RCW 26.08.215;

(23) Section 22, chapter 215, Laws of 1949 and RCW 26.08.220; and

(24) Section 1, chapter 135, Laws of 1949 and RCW 26.08.230.

NEW SECTION. Sec. 31. Sections 1 through 29 of this 1973 act shall constitute a new chapter in Title 26 RCW.

Passed the House April 12, 1973.
Passed the Senate April 9, 1973.
Approved by the Governor April 24, 1973.
Filed in Office of Secretary of State April 25, 1973.

CHAPTER 158
[House Bill No. 420]
UNEMPLOYMENT COMPENSATION

AN ACT Relating to unemployment compensation; amending section 39, chapter 35, Laws of 1945 as amended by section 9, chapter 215,

Washington - 10\1\1889

Article 2.0 [Last Modified: 1/1/2003]

ARTICLE II LEGISLATIVE DEPARTMENT

Section 41.0 0 [Last Modified: 1/1/2003]

No Section Text

Amendment 31

Art.2 Section 41 LAWS, EFFECTIVE DATE. INITIATIVE, REFERENDUM - AMENDMENT ORREPEAL. No act, law, or bill subject to referendum shall take effect until NINETY DAYS after theadjournment of the session at which it was enacted. No act, law or bill approved by a majorityof the electors voting thereon shall be amended or repealed by the legislature within a periodof two years following such enactment: Provided, That any such act, law or bill may be amendedwithin two years after such enactment at any regular or special session of the legislature bya vote of two-thirds of all the members elected to each house with full compliance with section12, Article III, of the Washington Constitution, and no amendatory law adopted in accordancewith this provision shall be subject to referendum. But such enactment may be amendedor repealed at any general regular or special election by direct vote of the people thereon.These provisions supersede the provisions of subsection (c) of section 1 of this article as amendedby the seventh amendment to the Constitution of this state. ApprovedNovember 4, 1952.

1973

SESSION LAWS

OF THE

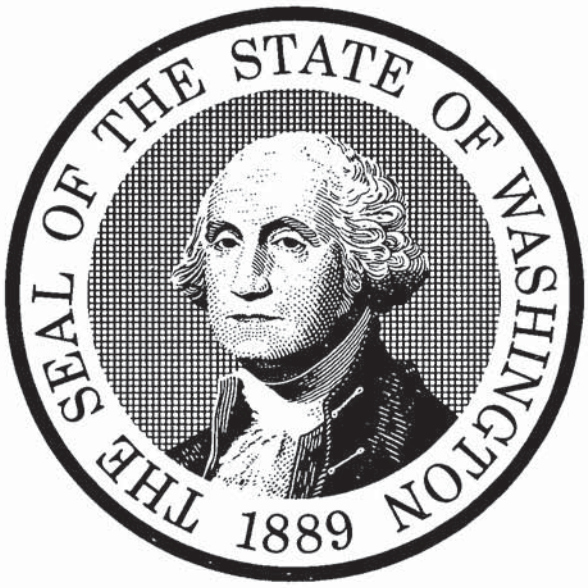
STATE OF WASHINGTON

REGULAR SESSION
FORTY-THIRD LEGISLATURE

Convened January 8, 1973. Adjourned March 8, 1973.

1st EXTRAORDINARY SESSION
FORTY-THIRD LEGISLATURE

Convened March 9, 1973. Adjourned April 15, 1973.



Published at Olympia by the Statute Law Committee pursuant to Chapter 6, Laws of 1969.

RICHARD O. WHITE
Code Reviser

the estimate of the gross business of the corporation to be transacted in this state in the following year and adding the same to the value of its property to be located or to be acquired in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of the estimate of its total gross business for said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. For the purposes of this section, the estimate of the business to be transacted and the property to be located or to be acquired in the state shall cover the period when it is estimated the corporation will commence business in this state to and including December 31 of that year. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he or she may deem proper in order to determine the accuracy of the report submitted~~; the additional information so obtained shall not be a public record~~.

SECTION 2. 180.833 (1) (k) of the statutes is amended to read:

180.833 (1) (k) The proportion of the capital represented in this state by its property located and business transacted therein during the preceding year. The proportion of capital employed in the state shall be computed by taking the gross business of the corporation in the state and adding the same to the value of its property located in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of its total gross business of said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he or she may deem proper in order to determine the accuracy of the report submitted~~; the additional information so obtained shall not be a public record~~;

1977 Assembly Bill 100 Date published: **October 15, 1977**

CHAPTER 105, Laws of 1977

AN ACT to repeal 247.02, 247.03 (2), 247.055 to 247.066, 247.101, 247.11, 247.15, 247.18, 247.232, 247.33, 247.34, 247.37 (4) and 247.375; to renumber 247.03 (1) and (3) and 247.19; to renumber and amend 247.12, 247.24 (1) (c) and (2) and 247.32; to amend 59.42 (2) (b), 245.12 (1), 247.02 (1) (f) and (g) as renumbered, 247.045, 247.08 (1), 247.082, 247.10, 247.125, 247.14, 247.22 (1), 247.23 (1) and (2), 247.30, 247.37 (title) and (1) to (3), 247.38, 251.72 (1) and 801.05 (11); to repeal and recreate 247.05, 247.07, 247.081, 247.085, 247.09, 247.21, 247.24 (title) and (1) (a) and (b), 247.245, 247.25, 247.26 and 247.265; and to create 245.105, 247.02 (1) (i), (j) and (k), 247.03, 247.083, 247.12 (2), 247.19 (2), 247.24 (1) (c) and (d) and (1m), 247.255, 247.261, 247.262, 247.263, 247.27, 247.275, 247.305, 247.32 (3) and 632.895 of the statutes, relating to revision of laws applicable to actions affecting marriage.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. **Purpose.** (1) It is the intent of the legislature to emphasize the present and future needs of the parties to actions affecting marriage and of their children, if any; to move away from assigning blame for a marriage failure; and to promote the settlement of financial and custodial issues in a way which will meet the real needs of all concerned persons as nearly as possible.

(2) It is the intent of the legislature that a spouse who has been handicapped socially or economically by his or her contributions to a marriage shall be compensated

for such contributions at the termination of the marriage, insofar as this is possible, and may receive additional education where necessary to permit the spouse to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage. It is further the intent of the legislature that the standard of living of any minor children of the parties be maintained at the level the children would have enjoyed had the marriage not ended, so that insofar as is possible, the children will not suffer economic hardship. It is the intent of the legislature to recognize children's needs for close contact with both parents, to encourage joint parental responsibility for the welfare of minor children and to promote expanded visitation.

(3) It is the intent of the legislature that maintenance payments shall have the same effect for tax purposes as did alimony as provided for in chapter 247, 1975 statutes.

(4) This act is not intended to make a divorce, annulment or legal separation easier to obtain. Its sole purpose is to promote an equitable and reasonable adjudication of the economic and custodial issues involved in marriage relationships.

SECTION 2. 59.42 (2) (b) of the statutes is amended to read:

59.42 (2) (b) All special proceedings independent of an action taken at the instance and for the benefit of one party without notice to or contest by any person adversely interested; and any proceeding under s. 245.10 or 245.105 for court permission to marry, $4.

SECTION 3. 245.105 of the statutes is created to read:

245.105 Permission of court required for certain remarriages. (1) No Wisconsin resident having minor issue of a prior marriage not in his or her custody and which he or she is under obligation to support by any court order or judgment, may remarry, in this state or elsewhere, without the order of either the court of this state which granted the judgment or support order, or the court having divorce jurisdiction in the county of this state where the minor issue resides or where the marriage license application is made. No marriage license may be issued to any such resident except upon court order. The court, within 5 days after permission is sought by verified petition in a special proceeding, shall direct a court hearing to be held in the matter to allow the petitioner to submit proof of compliance with the previous court obligation. No such order may be granted, or hearing held, unless both parties to the intended marriage appear, and unless the person, agency, institution, welfare department or other entity having the legal or actual custody of the minor issue is given notice of the proceeding by personal service of a copy of the petition at least 5 days prior to the hearing, except that such appearance or notice may be waived by the party affected or by the court upon good cause shown. A 5-day notice of the hearing shall be given to the family court commissioner of the county where permission is sought, who shall attend the hearing, and to the family court commissioner of the court which granted the divorce order or judgment. If the divorce order or judgment was granted in a foreign court, service shall be made on the clerk of that court. Upon the hearing, if the petitioner submits proof of compliance with all such previous court obligations the court shall grant the order, a copy of which shall be filed in any previous marital court action of such petitioner in this state affected thereby; otherwise permission for a license shall be withheld until such proof is submitted, but any court order withholding such permission is an appealable order. Any hearing under this section may be waived by the court if the court is satisfied from an examination of the court records in the case and the family support records in the office of the clerk of court as well as from disclosure by the petitioner of all financial resources that the petitioner has complied with previous court orders or judgments applicable to the support of minor children. No county clerk in this state shall issue such license to any person required to comply with this section unless a certified copy of a court order permitting the marriage is filed with said county clerk.

(2) No nonresident of this state, having minor issue of a prior marriage not in his or her custody and which he or she is under obligation to support by order or judgment

of any court in this state or elsewhere, may marry in this state unless he or she has complied with the requirements of sub. (1).

(3) The requirements of subs. (1) and (2) shall establish a rebuttable statutory presumption that a remarriage by any parent who is obligated by court order or judgment to provide support for any child not in his or her custody may substantially affect that child's right of support. Such presumption may be overcome by sufficient contrary proof submitted to the court. Notwithstanding subs. (1) and (2), permission to remarry may likewise be granted to any petitioner who submits clear and convincing proof to the court that for reasonable cause he or she was not able to comply with a previous court obligation for child support.

(4) If a Wisconsin resident having such support obligations of a minor, as stated in sub. (1), wishes to marry in another state, the resident must, prior to such marriage, obtain permission of the court under sub. (1), except that in a hearing ordered or held by the court, the other party to the proposed marriage, if domiciled in another state, need not be present at the hearing. If such other party is not present at the hearing, the judge shall within 5 days send a copy of the order of permission to marry, stating the obligations of support, to such party not present.

(5) This section shall have extraterritorial effect outside the state; and s. 245.04 (1) and (2) are applicable hereto. Any marriage contracted without compliance with this section, where such compliance is required, shall be void, whether entered into in this state or elsewhere.

(6) This section shall not apply to any party described in sub. (1) or (2) who applies for a license to remarry the parent of the child or children whom that party is under court obligation to support, provided said party is not likewise under court obligation to support any other child.

(7) Any person who obtains a marriage license contrary to or in violation of this section, whether such license is obtained by misrepresentation or otherwise, or whether such marriage is entered into in this state or elsewhere, shall be fined not less than $200 nor more than $1,000, or imprisoned not more than one year in the county jail, or both.

(8) This section is independent of s. 245.10 and shall be enforced only when the provisions of s. 245.10 and utilization of the procedures thereunder are stayed or enjoined by the order of any court.

SECTION 4. 245.12 (1) of the statutes is amended to read:

245.12 (1) If ss. 245.02, 245.05, 245.06, 245.08, 245.09, and 245.10 or 245.105 where applicable, are complied with, and if there is no prohibition against or legal objection to the marriage, the county clerk shall issue a marriage license; but after the application for such license ~~said~~ the clerk shall, upon the sworn statement of either of the applicants, correct any erroneous, false or insufficient statement in such license or in the application therefor which shall come to ~~his~~ the clerk's attention prior to the marriage and shall show the corrected statement as soon as reasonably possible to the other applicant.

SECTION 6. 247.02 of the statutes is repealed.

SECTION 6m. 247.02 (1) (i), (j) and (k) of the statutes are created to read:

247.02 (1) (i) To modify a judgment in an action affecting marriage granted in this state or elsewhere.

(j) For periodic family support payments.

(k) To seek court permission to remarry under s. 245.105.

SECTION 7. 247.03 (1) and (3) of the statutes are renumbered 247.02 (1) and (2), and 247.02 (1) (f) and (g), as renumbered, are amended to read:

247.02 (1) (f) For child support.

(g) For ~~alimony~~ maintenance payments.

SECTION 8. 247.03 (2) of the statutes is repealed.

SECTION 9. 247.03 of the statutes is created to read:

247.03 Annulment. No marriage may be annulled or held void except pursuant to judicial proceedings. No marriage may be annulled after the death of either party to the marriage. A court may annul a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of age, 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. Suit may be brought by either party, or by the legal representative of a party lacking the capacity to consent, no later than one year after the petitioner obtained knowledge of the described condition.

(2) A party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity. Suit may be brought by either party no later than one year after the petitioner obtained knowledge of the incapacity.

(3) A party was 16 or 17 years of age and did not have the consent of his or her parent or guardian or judicial approval, or a party was under 16 years of age. Suit may be brought by the underaged party or a parent or guardian at any time prior to the party's attaining the age of 18 years, but a parent or guardian must bring suit within one year of obtaining knowledge of the marriage.

(4) The marriage is prohibited by the laws of this state. Suit may be brought by either party within 10 years of the marriage, except that the 10-year limitation shall not apply where the marriage is prohibited because either party has another spouse living at the time of the marriage and the impediment has not been removed under s. 245.24.

SECTION 10. 247.045 of the statutes is amended to read:

247.045 Guardian ad litem for minor children. In any action for an annulment, divorce, legal separation, or ~~otherwise~~ other action affecting marriage, when the court has reason for special concern as to the future welfare of the minor children, and in all actions affecting marriage where the custody of such children is contested, the court shall appoint a guardian ad litem to represent such children as to custody, support and visitation. The guardian ad litem shall be an advocate for the child and consider the factors under s. 247.24. If a guardian ad litem is appointed, the court shall direct either or both parties to pay the fee of the guardian ad litem, the amount of which fee shall be approved by the court. In the event of ~~indigency~~ inability to pay on the part of either or both parties the court, in its discretion, may direct that the fee of the guardian ad litem, in whole or in part, be paid by the county of venue, and may direct either party to reimburse the county, in whole or in part, for such payment.

SECTION 11. 247.05 of the statutes is repealed and recreated to read:

247.05 Procedures. (1) JURISDICTION. A court of this state having jurisdiction to hear actions affecting marriage may exercise jurisdiction as provided under ch. 801.

(1m) RESIDENCE. No action under s. 247.02 (1) (a) or (b) may be brought unless at least one of the parties has been a bona fide resident of the county in which the action is brought for not less than 30 days next preceding the commencement of the action, or unless the marriage has been contracted within this state within one year prior to the commencement of the action. No action under s. 247.02 (1) (c) or (d) may be brought unless at least one of the parties has been a bona fide resident of the county in which the action is brought for not less than 30 days next preceding the commencement of the action. No action under s. 247.02 (1) (c) may be brought unless at least one of the parties has been a bona fide resident of this state for not less than 6 months next preceding the commencement of the action.

(2) ACTIONS FOR CUSTODY OF CHILDREN. Subject to ch. 822, the question of a child's custody may be determined as an incident of any action affecting marriage or in an independent action for custody. The effect of any determination of a child's custody shall not be binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under ch. 801.

(3) PARTIES. The party initiating an action affecting marriage shall be denominated the petitioner. The party responding to the action shall be denominated the respondent. All references to "plaintiff" in chs. 801 to 807 shall apply to the petitioner, and all references to "defendant" in chs. 801 to 807 shall apply to the respondent.

(4) PETITION. All references to a "complaint" in chs. 801 to 807 shall apply to petitions under s. 247.085.

(5) TITLE OF ACTIONS. An action affecting marriage under ch. 247.02 (1) (a) to (d) and (f) to (k) shall be entitled "In re the marriage of A.B. and C.D.". A child custody action shall be entitled "In re the custody of A.B.". In all other respects, the general provisions of chs. 801 and 802 respecting the content and form of the summons and pleadings shall apply.

SECTION 12. 247.055 to 247.066 of the statutes are repealed.

SECTION 13. 247.07 of the statutes is repealed and recreated to read:

247.07 Judgment of divorce or legal separation. A court of competent jurisdiction shall grant a judgment of divorce or legal separation if:

(1) The requirements of this chapter as to residence and marriage assessment counseling have been complied with;

(2) The court finds that the marriage is irretrievably broken under s. 247.12 (2); and

(3) To the extent it has jurisdiction to do so, the court has considered, approved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse, the support of the family under s. 247.261 and the disposition of property.

SECTION 14. 247.08 (1) of the statutes is amended to read:

247.08 (1) If either spouse fails or refuses, without lawful or reasonable excuse, to provide for the support and maintenance of the other spouse or minor children, the other spouse may commence an action in any court having jurisdiction in actions for divorce to compel the spouse to provide such support and maintenance as may be legally required. The court, in such action, ~~may~~ shall, after consideration of the factors enumerated in ss. 247.25 and 247.26 where appropriate, determine and adjudge the amount, if any, the spouse should reasonably contribute to the support and maintenance of the other spouse or children and how such sum should be paid. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either spouse upon sufficient evidence. Such determination may be enforced by contempt proceedings, a wage assignment, or other enforcement mechanisms as provided under s. 247.30. In any such support action there shall be no filing fee, suit tax or other costs taxable to the other spouse, but after the action has been commenced and filed the court in its discretion may direct that any part of or all fees and costs incurred shall be paid by the spouse.

SECTION 15. 247.081 of the statutes is repealed and recreated to read:

247.081 Counseling for marriage assessment, divorce and separation. In every action for annulment, divorce or legal separation, the family court commissioner shall inform the parties of the availability of counseling for marriage assessment, divorce and separation and referral services offered by the family court commissioner or the family court conciliation department. In this section, "counseling for marriage assessment, divorce and separation" means counseling to explore the possibility of reconciliation, to enable the parties to adjust to the status of being unmarried persons, to prepare the

parties to live separate lives and to assist the parties in planning for the needs of their minor children, if any.

(1) In every action for divorce or legal separation, the family court commissioner shall require the petitioner and, if personally served within this state, the respondent to participate in such counseling which shall be provided either through the commissioner's efforts or the efforts of a family court conciliation department if it exists or through referrals of the parties to a suitable counseling source, including a county mental health or guidance clinic, a member of the clergy, or, if there are minor children of the parties' marriage, a child welfare agency licensed under ss. 48.66 to 48.73. No person so consulted may disclose any statement made by either party without the consent of that party.

(2) The family court commissioner shall arrange for such counseling on a voluntary basis for parties to an action for annulment who request such counseling and who are not required to participate in such counseling under sub. (1). Such counseling shall be provided as under sub. (1). No person consulted for counseling may disclose any statement made by either party without the consent of that party.

SECTION 16. 247.082 of the statutes is amended to read:

247.082 Suspension of proceedings to effect reconciliation. During the pendency of any action for divorce or legal separation, the court may, upon written stipulation of both parties that they desire to attempt a reconciliation, enter an order suspending any and all orders and proceedings for such period, not exceeding 90 days, as the court determines advisable so as to permit the parties to attempt a reconciliation without prejudice to their respective rights. During the period of suspension the parties may resume living together as husband and wife and their acts and conduct shall not constitute ~~condonation of prior misconduct or a defense to existing grounds for divorce or legal separation~~ an admission that the marriage is not irretrievably broken or a waiver of the ground that the parties have voluntarily lived apart continuously for 12 months or more immediately prior to the commencement of the action if such is the case. Suspension may be revoked upon motion of either party by order of the court. If the parties become reconciled, the court shall dismiss the action. If the parties are not reconciled after the period of suspension, the action shall proceed as though no reconciliation period was attempted.

SECTION 17. 247.083 of the statutes is created to read:

247.083 Requirements for trial: counseling information; waiting period. (1) COUNSELING INFORMATION. No petition for annulment, divorce or legal separation may be brought to trial until the family court commissioner has certified to the court that the parties have been informed of counseling and referral services available and the moving party has met the counseling requirement, if any, under s. 247.081. The certification by the family court commissioner shall be filed and entered in the court record.

(2) WAITING PERIOD. No petition for divorce or legal separation may be brought to trial until the happening of whichever of the following events occurs first:

(a) The expiration of 120 days after service of the summons and petition upon the respondent; or

(b) An order by the court, after consideration of the recommendation of the family court commissioner, directing an immediate hearing on the petition for the protection of the health or safety of either of the parties or of any child of the marriage or for other emergency reasons consistent with the policies of this chapter. The court shall upon granting such order specify the grounds therefor.

SECTION 18. 247.085 of the statutes is repealed and recreated to read:

247.085 Petition and response. (1) CONTENTS. In any action affecting marriage, the petition shall state:

(a) The name and birthdate of the parties, the social security numbers of the husband and wife and their occupations, the date and place of marriage and the facts relating to the residence of both parties.

(b) The name and birthdate of each minor child of the parties and each other child born to the wife during the marriage, and whether the wife is pregnant.

(c) That the marriage is irretrievably broken, or, alternatively, that both parties agree that the marriage is irretrievably broken.

(d) Whether or not an action for divorce or legal separation by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge thereof, in this state or elsewhere, and if either party was previously married, and if so the manner in which such marriage was terminated, and if terminated by court judgment, the name of the court in which the judgment was granted and the time and place the judgment was granted, if known.

(e) Whether the parties have entered into any written agreements as to support, custody, and visitation of the children, maintenance of either party, and property division; and if so, the written agreement shall be attached.

(f) The relief requested. When the relief requested is a legal separation, the petition shall state the specific reason for requesting such relief.

(2) INITIATION OF ACTION. Either or both of the parties to the marriage may initiate the action.

(3) SERVICE. If only one party initiates the action, the other shall be served under ch. 801 and may serve a response or counterclaim within 20 days after the date of service, except that questions of jurisdiction may be raised at any time prior to judgment. Service shall be made upon the petitioner and upon the family court commissioner as provided in s. 247.14, and the original copy of the response shall be filed in court. If the parties together initiate the action, service shall be made upon the family court commissioner as provided in s. 247.14.

(4) DEFENSES ABOLISHED. Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

SECTION 19. 247.09 of the statutes is repealed and recreated to read:

247.09 Power of court in divorce and legal separation actions. (1) When a party requests a legal separation rather than a decree of divorce, the court shall grant the decree in that form unless the other party requests a divorce, in which case the court shall hear and determine which decree shall be granted. A decree of separation shall provide that in case of a reconciliation at any time thereafter, the parties may apply for a revocation of the judgment. Upon such application the court shall make such orders as may be just and reasonable.

(2) By stipulation of both parties, or upon motion of either party not earlier than one year after entry of a decree of legal separation, the court shall convert the decree to a decree of divorce.

SECTION 20. 247.10 of the statutes is amended to read:

247.10 (title) **Stipulation and property division.** ~~No judgment of~~ The parties in an action for an annulment, divorce or legal separation ~~shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, and no judgment of divorce or legal separation shall be granted if it likewise appears that the plaintiff has procured or connived at the offense charged, or has condoned it; but the parties~~ may, subject to the approval of the court, stipulate for a division of estate, for ~~alimony~~ maintenance payments, ~~or~~ for the support of children, for periodic family support payments under s. 247.261 or for custody and visitation, in case a divorce or legal separation is granted or a marriage annulled.

SECTION 21. 247.101 and 247.11 of the statutes are repealed.

SECTION 22. 247.12 of the statutes is renumbered 247.12 (1) and amended to read:

247.12 (1) (title) PROCEEDINGS. In actions affecting marriage, all hearings and trials to determine whether judgment shall be granted shall be before the court ~~except that actions for divorce or legal separation on the ground of adultery must be tried by a jury unless jury trial is waived~~. The testimony shall be taken by the reporter and shall be written out and filed with the record if so ordered by the court. Custody proceedings shall receive priority in being set for hearing.

SECTION 23. 247.12 (2) of the statutes is created to read:

247.12 (2) IRRETRIEVABLE BREAKDOWN. (a) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or if the parties have voluntarily lived apart continuously for 12 months or more immediately prior to commencement of the action and one party has so stated, the court, after hearing, shall make a finding that the marriage is irretrievably broken.

(b) If the parties have not voluntarily lived apart for at least 12 months immediately prior to commencement of the action and if only one party has stated under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation.

1. If the court finds no reasonable prospect of reconciliation, it shall make a finding that the marriage is irretrievably broken; or

2. If the court finds that there is a reasonable prospect of reconciliation, it shall continue the matter for further hearing not fewer than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court, at the request of either party or on its own motion, may order counseling. At the adjourned hearing, if either party states under oath or affirmation that the marriage is irretrievably broken, the court shall make a finding whether the marriage is irretrievably broken.

SECTION 24. 247.125 of the statutes is amended to read:

247.125 Order for appearance of litigants. Unless nonresidence in the state is shown by competent evidence, ~~or unless~~ service is by publication, or the court shall for other good cause otherwise order, both parties in actions affecting marriage shall be required to appear upon the trial. An order of the court or family court commissioner to that effect shall accordingly be procured by the moving party ~~seeking the judgment~~, and shall be served upon the ~~opposite~~ nonmoving party ~~personally~~ before the trial.

SECTION 25. 247.14 of the statutes is amended to read:

247.14 Service on and appearance by family court commissioner. In any action affecting marriage, ~~the plaintiff and defendant~~ each party shall, either within 20 days after making service on the opposite party of any petition or pleading or before filing such petition or pleading in court, serve a copy of the same upon the family court commissioner of the county in which the action is begun, whether such action is contested or not. No judgment in any such action shall be granted unless this section is complied with~~, or unless the parties have responded to the family court commissioner's inquiries under s. 247.15~~ except when otherwise ordered by the court. Such commissioner ~~shall~~ may appear in ~~the action when the defendant fails to answer or withdraws his answer before trial; also, when the defendant interposes a counterclaim and the plaintiff thereupon neither supports his complaint nor opposes the counterclaim by proof~~ an action under this chapter when appropriate; and shall appear when ~~otherwise~~ requested by the court.

SECTION 26. 247.15 of the statutes is repealed.

SECTION 27. 247.18 of the statutes is repealed.

SECTION 28. 247.19 of the statutes is renumbered 247.19 (1).

SECTION 29. 247.19 (2) of the statutes is created to read:

247.19 (2) The court may on its own motion, or on motion of any party to an action affecting marriage, exclude from the courtroom all persons other than the parties, their attorneys and any guardians ad litem.

SECTION 30. 247.21 of the statutes is repealed and recreated to read:

247.21 Full faith and credit; comity. (1) ACTIONS IN COURTS OF OTHER STATES. Full faith and credit shall be given in all courts of this state to a judgment in any action affecting marriage, except an action relating to child custody, by a court of competent jurisdiction in another state, territory or possession of the United States, when both spouses personally appear or when the respondent has been personally served.

(2) ACTIONS IN COURTS OF FOREIGN COUNTRIES. Any court of this state may recognize a judgment in any action affecting marriage involving Wisconsin domiciliaries, except an action relating to child custody, by a court of competent jurisdiction in a foreign country, in accordance with the principles of international comity.

(3) CHILD CUSTODY ACTIONS. All matters relating to the effect of the judgment of another court concerning child custody shall be governed by ch. 822.

SECTION 31. 247.22 (1) of the statutes is amended to read:

247.22 (1) A divorce obtained in another jurisdiction shall be of no force or effect in this state, if the court in such other jurisdiction lacks subject matter jurisdiction to hear the case because both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

SECTION 32. 247.23 (1) and (2) of the statutes are amended to read:

247.23 (1) Except as provided in ch. 822, in every action affecting marriage, the court or family court commissioner may, during the pendency thereof, make such temporary orders concerning the care, custody and suitable maintenance of the minor children, requiring either party to pay such sums for the support of the other party and enabling the other party to carry on or ~~defend~~ respond to the action, and requiring either party or both to pay such sums for the support of the minor children, to order temporary family support under s. 247.261 or wage assignments under s. 247.265 and in relation to the persons or property of the parties as in its discretion shall be deemed just and reasonable in light of all circumstances, including the ~~incomes and estates of the parties,~~ factors set forth in ss. 247.25 and 247.26; may require counseling of either party; and may prohibit either spouse from imposing any restraint on the personal liberty of the other. The award of custody of a child under this subsection shall give to the custodian: ~~a)~~ the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for such child where there is no existing guardian for the child appointed under ch. 48 or 880; and ~~b)~~ the right to give or withhold consent for such child to marry under s. 245.02 (2), in addition to the consent of the parents or guardian of such child required therein. Any such order may be based upon the written stipulation of the parties, subject to the approval of the family court commissioner or the court.

(2) Notice of motion for an order or order to show cause under sub. (1) may be served at the time the action is commenced or at any time thereafter and shall be accompanied by an affidavit stating the basis for the request for relief. ~~If the action is commenced by service of a summons without the complaint, the relief sought shall be based upon an affidavit of the party seeking the relief the affidavit shall not set forth any of the grounds for divorce or any details which form the basis for such grounds, but shall state only that it is necessary and for the best interests of the affiant and any minor children of the parties that the relief specified in the affidavit be granted.~~

SECTION 33. 247.232 of the statutes is repealed.

SECTION 34. 247.24 (title) and (1) (a) and (b) of the statutes are repealed and recreated to read:

247.24 (title) **Judgment; care, custody and education of children.** (1) In rendering a judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 247.02 (1) (e), the court shall make such provisions as it deems just and reasonable concerning the care, custody and education of the minor children of the parties, if any, according to the following provisions:

(a) The court may give the care and custody of such children to one of the parties to the action.

(b) The court may give the care and custody of such children to the parties jointly if the parties so agree and if the court finds that a joint custody arrangement would be in the best interest of the child or children. Joint custody under this paragraph means that both parties have equal rights and responsibilities to the minor child and neither party's rights are superior.

SECTION 35. 247.24 (1) (c) of the statutes is renumbered 247.245 (4) and amended to read:

247.245 (4) ~~Grant~~ The court may grant reasonable visitation privileges to a grandparent or greatgrandparent of any minor child upon the grandparent's or greatgrandparent's petition to the court with notice to the parties if the court determines that it is in the best interests and welfare of the child and issue any necessary order to enforce the same.

SECTION 36. 247.24 (1) (c) and (d) of the statutes are created to read:

247.24 (1) (c) If the interest of any child demands it, and if the court finds either that the parents are unable to care for such children adequately or are not fit and proper persons to have the care and custody of such children, the court may declare any such child a dependent and give the care and custody of such child to a relative of the child, as defined in ch. 48; to a county agency specified in s. 48.56 (1); to a licensed child welfare agency; or to the department of health and social services. The charges for such care shall be pursuant to the procedure under s. 48.27.

(d) The award of custody of a child under this section shall give to the custodian the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for the child where there is no existing guardian for the child appointed under ch. 48 or 880; and the right to give or withhold consent for the child to marry under s. 245.02 (2), in addition to the consent of the parents or guardian of the child required therein.

SECTION 37. 247.24 (1m) of the statutes is created to read:

247.24 (1m) In making a custody determination, the court shall consider all facts in the best interest of the child and shall not prefer one potential custodian over the other on the basis of the sex of the custodian. The court shall consider reports of appropriate professionals where admitted into evidence when custody is contested. The court may consider the wishes of the child as to his or her custodian. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents as to custody;

(b) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest;

(c) The child's adjustment to the home, school, religion and community;

(d) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household;

(e) The availability of public or private child care services; and

(f) Such other factors as the court may in each individual case determine to be relevant.

SECTION 38. 247.24 (2) of the statutes is renumbered 247.32 (2) and amended to read:

247.32 (2) Whenever the welfare of any such child will be promoted thereby, the court granting such judgment shall always have the power to change the care and custody of any such child, either by giving it to or taking it from ~~such~~ any parent, relative or agency~~, provided that no~~. No order changing the custody of any child shall be entered until after notice of such application has been given the parents of such child, if they can be found, and also to the relative or agency that then has the custody of such child. The court may order custody transferred to the department of health and social services only in those cases where the department agrees to accept custody. ~~The award of custody of a child under this section shall give to the custodian; a) the power and duty to authorize necessary medical, surgical, hospital, dental, institutional or psychiatric care for such child where there is no existing guardian for the child appointed under ch. 48 or 880; and b) the right to give or withhold consent for such child to marry under s. 245.02 (2), in addition to the consent of the parents or guardian of such child required therein.~~ Any modification of a custody order which removes a child from the care of a parent having custody of the child shall be based on a finding that such removal is necessary to the child's best interest as shown by substantial evidence supporting a change in custody under s. 247.24 (1m).

SECTION 39. 247.245 of the statutes is repealed and recreated to read:

247.245 Visitation. (1) A parent is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical, mental or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not terminate a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental or emotional health.

(3) Visitation may not be denied for failure to meet financial obligations to the child or former spouse, nor shall visitation be granted for meeting such obligations.

(5) A parent denied visitation rights under this section may not have or exercise the rights of a parent or guardian under s. 118.125 with regard to the pupil records of the child as to whom visitation rights are denied.

(6) Whenever the court grants visitation rights to a parent, it shall order the child's custodian to obtain written approval of the parent having visitation rights or permission of the court in order to establish legal residence outside this state or to remove the child from this state for a period of time exceeding 90 days. Such court permission may be granted only after notice to the parent having visitation rights and after opportunity for hearing. Violation of a court order under this subsection may be deemed a change of circumstances under s. 247.32, allowing the court to modify the judgment with respect to custody, child support and visitation rights so as to permit withholding of a portion of the support payments to defray the added expense to the parent with visitation rights of exercising such rights or to modify a custody order.

(7) Any person whose visitation rights are violated or interfered with may notify the family court commissioner of such fact. The family court commissioner shall refer the matter for investigation by the department of family conciliation or, if such department does not exist within the county, to another appropriate social service agency.

SECTION 40. 247.25 of the statutes is repealed and recreated to read:

247.25 Child support. (1) Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 247.02 (1) (f) or (j), the court may order either or both parents to pay an amount reasonable or necessary for support of a child, after considering:

(a) The financial resources of the child.

(b) The financial resources of both parents as determined under s. 247.255.

(c) The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

(d) The desirability that the custodian remain in the home as a full-time parent.

(e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

(f) The physical and emotional health needs of the child.

(g) The child's educational needs.

(h) The tax consequences to each party.

(i) Such other factors as the court may in each individual case determine to be relevant.

(2) The court may protect and promote the best interests of the minor children by setting aside a portion of the child support which either party is ordered to pay in a separate fund or trust for the support, education and welfare of such children.

SECTION 41. 247.255 of the statutes is created to read:

247.255 Property division. Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 247.02 (1) (h), the court shall divide the property of the parties and divest and transfer the title of any such property accordingly. A certified copy of the portion of the judgment which affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated. The court may protect and promote the best interests of the children by setting aside a portion of the property of the parties in a separate fund or trust for the support, maintenance, education and general welfare of any minor children of the parties. Any property inherited by either party prior to or during the course of the marriage shall remain the property of such party and may not be subjected to a property division under this section except upon a finding that refusal to divide such property will create a hardship on the other party or on the children of the marriage, and in that event the court may divest the party of such property in a fair and equitable manner. The court shall presume that all other property except inherited property is to be divided equally between the parties, but may alter this distribution without regard to marital misconduct after considering:

(1) The length of the marriage.

(2) The property brought to the marriage by each party.

(3) The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

(4) The age and physical and emotional health of the parties.

(5) The contribution by one party to the education, training or increased earning power of the other.

(6) The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

(7) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having custody of any children.

(8) The amount and duration of an order under s. 247.26 granting maintenance payments to either party, any order for periodic family support payments under s. 247.261 and whether the property division is in lieu of such payments.

(9) Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

(10) The tax consequences to each party.

(11) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.

(12) Such other factors as the court may in each individual case determine to be relevant.

SECTION 42. 247.26 of the statutes is repealed and recreated to read:

247.26 Maintenance payments. (1) Upon every judgment of annulment, divorce or legal separation, or in rendering a judgment in an action under s. 247.02 (1) (g) or (j), the court may grant an order requiring maintenance payments to either party for a limited or indefinite length of time after considering:

(a) The length of the marriage.

(b) The age and physical and emotional health of the parties.

(c) The distribution of property made under s. 247.255.

(d) The educational level of each party at the time of marriage and at the time the action is commenced.

(e) The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

(f) The feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.

(g) The tax consequences to each party.

(h) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.

(i) Such other factors as the court may in each individual case determine to be relevant.

SECTION 43. 247.261 to 247.263 of the statutes are created to read:

247.261 Family support. The court may make a financial order designated "family support" as a substitute for child support orders under s. 247.25 and maintenance payment orders under s. 247.26.

247.262 Award of attorney's fees. The court, after considering the financial resources of both parties, may order either party to pay a reasonable amount for the cost to the other party of maintaining or responding to an action affecting marriage and for attorney's fees to either party, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his or her name. The court may not order payment of costs under this section by the state or any county which may be a party to the action.

247.263 Notice of change of employer and change of address. Each order for child support or maintenance payments shall include an order that the payer and payee notify the clerk of court of any change of employer or change of address within 10 days of such change.

SECTION 44. 247.265 of the statutes is repealed and recreated to read:

247.265 Wage assignment. (1) Each order for child support under s. 247.23 or 247.25, for maintenance payments under s. 247.23 or 247.26, for family support under s. 247.261, for support by a spouse under s. 247.02 (1) (f) or for maintenance payments under s. 247.02 (1) (g) shall include an order directing the payer to assign such salary due or to be due in the future from his or her employer or successor employers to the clerk of the court where judgment was granted, as will be sufficient to meet the maintenance payments, child support payments or family support payments imposed by the court for the support of the spouse or minor children or both. The wage assignment shall take effect upon application of the person receiving payments which states that the payer has failed to make in full a payment as established by the court within 20 days of the date the payment was due, and when the requirement of sub. (2) has been satisfied, or, at the court's discretion, may take effect immediately.

(2) The family court commissioner, upon application of the person receiving payments, shall send a notice by certified mail to the last-known address of any payer who has failed to make a required maintenance payment or child support payment within 20 days of its due date. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the recipient that the wage assignment shall go into effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, request a hearing on the issue of whether the wage assignment should take effect, in which case the wage assignment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that extraordinary circumstances prevented fulfillment of the maintenance payment or child support obligation and that such circumstances are beyond the control of the payer, the family court commissioner may direct that the wage assignment be delayed until such time, within 12 months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, go into effect if, within the following 12 months, the payer fails to make in full any payment within 20 days of its due date. Either party may, within 15 working days of the date of the decision by the family court commissioner under this section, appeal to the court which issued the original support or maintenance order.

(3) An assignment made under this section shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail, until further order of the court. For each payment the employer shall receive $1 which shall be deducted from the money to be paid the employe. Section 241.09 shall not apply to assignments under this section. The employer may not use such assignments as a basis for the discharge of an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe in violation of this subsection may be fined not more than $200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

SECTION 45. 247.27 and 247.275 of the statutes are created to read:

247.27 Disclosure of assets required. (1) In any action affecting marriage, except an action to affirm marriage under s. 247.02 (1) (a), the court shall require each party to furnish, on such standard forms as the court may require, full disclosure of all assets owned in full or in part by either party separately or by the parties jointly. Such disclosure may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but shall not be limited to, real estate, savings accounts, stocks and bonds, mortgages and notes, life insurance, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested, and any other financial interest or source.

The court shall also require each party to furnish, on the same standard form, information pertaining to all debts and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure constitutes perjury. The court may on its own initiative and shall at the request of either party require the parties to furnish copies of all state and federal income tax returns filed by them for the past 2 years, and may require copies of such returns for prior years.

(2) Disclosure forms required under this section shall be filed no earlier than 60 days prior to final hearing and no later than 30 days prior to such hearing. Information contained on such forms shall be updated to the date of hearing on the record.

(3) Information disclosed under this section shall be confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting marriage of the disclosing parties.

(4) Failure by either party timely to file a complete disclosure statement as required by this section shall authorize the court to accept the statement of the other party as accurate.

(5) If any party deliberately or negligently fails to disclose information required by sub. (1) and in consequence thereof any asset or assets with a fair market value of $500 or more is omitted from the final distribution of property, the party aggrieved by such nondisclosure may at any time petition the court granting the annulment, divorce or legal separation to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, said trust to include such terms and conditions as the court may determine. The court shall grant the petition upon a finding of a failure to disclose such assets as required under sub. (1).

247.275 Disposition of assets prior to action. In any action affecting marriage, except an action to affirm marriage under s. 247.02 (1) (a), any asset with a fair market value of $500 or more which would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties within one year prior to the filing of the petition or the length of the marriage, whichever is shorter, shall be rebuttably presumed to be part of the estate for the purposes of s. 247.255 and shall be subject to the disclosure requirement of s. 247.27. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth.

SECTION 46. 247.30 of the statutes is amended to read:

247.30 (title) **Enforcement of maintenance payment and child support orders.** In all cases where ~~alimony or other allowance shall be adjudged to either party or for the support or education of the children~~ child support payments under s. 247.25, maintenance payments under s. 247.26, family support payments under s. 247.261 or attorney's fees under s. 247.262 are ordered, the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment; and upon neglect or refusal to give such security or upon the failure to pay such ~~alimony or allowance~~ payments or fees the court may enforce the payment thereof, including past due payments, by execution ~~or~~, under s. 295.02, by money judgment for past due payments, by satisfaction under s. 811.23 out of any property attached under ch. 811 or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

SECTION 47. 247.305 of the statutes is created to read:

247.305 Enforcement; contempt proceedings. In all cases where a party has incurred a financial obligation under s. 247.25, 247.255, 247.26, 247.261 or 247.262 and has failed within a reasonable time or as ordered by the court to satisfy such obligation, and where the wage assignment proceeding under s. 247.265 is inapplicable, impractical or unfeasible, the court may on its own initiative, and shall on the application of the receiving party, issue an order requiring the payer to show cause at some reasonable time therein specified why he or she should not be punished for such misconduct as provided in s. 295.02.

SECTION 48. 247.32 of the statutes is renumbered 247.32 (1) and amended to read:

247.32 (1) After a judgment providing for ~~alimony or other allowance for a spouse and children, or either of them,~~ child support under s. 247.25, maintenance payments under s. 247.26 or family support payments under s. 247.261, or for the appointment of trustees ~~as aforesaid~~ under s. 247.31 the court may, from time to time, on the petition of either of the parties and upon notice to the family court commissioner, revise and alter such judgment respecting the amount of such ~~alimony or allowance~~ maintenance or child support and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of ~~the~~ said matters which such court might have made in the original action, except that a judgment which ~~either fails to provide alimony~~ waives maintenance payments for either party ~~or provides alimony for either party for a limited period only under s. 247.26~~ shall not thereafter be revised or altered in ~~either~~ that respect nor shall the provisions of a judgment with respect to final division of property be subject to revision or modification. Any change in child support because of alleged change in circumstances shall take into consideration each parent's earning capacity and total economic circumstances. In any action under this section, a substantial change in the cost of living by either party or as measured by the federal bureau of labor statistics may be sufficient to justify a revision of judgment.

SECTION 49. 247.32 (3) of the statutes is created to read:

247.32 (3) After a final judgment requiring maintenance payments has been rendered and the payee has remarried, the court shall, on application of the payer with notice to the payee and upon proof of remarriage, vacate the order requiring such payments.

SECTION 50. 247.33 and 247.34 of the statutes are repealed.

SECTION 51. 247.37 (title) and (1) to (3) of the statutes is amended to read:

247.37 (title) **Effect of judgment.** (1) (a) ~~When a judgment of divorce is granted it shall not be effective so far as it affects the marital status of the parties until the expiration of 6 months from the date of the granting of such judgment, except that it shall immediately bar the parties from cohabitation together and except that it may be reviewed on appeal during said period. But in case either party dies within said period, such judgment, unless vacated or reversed, shall be deemed to have entirely severed the marriage relation immediately before such death. The written judgment shall include the substance of the preceding language; and if~~ In any action affecting marriage, if the court orders ~~alimony~~ maintenance payments or other allowances for a party or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable under s. 295.02 by commitment to the county jail or house of correction until such judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged, according to law. The findings of fact and conclusions of law and the written judgment shall be drafted by the attorney for the ~~prevailing~~ moving party, and shall be submitted to the court and filed with the clerk of the court within 30 days after judgment is granted; but if the ~~action has been uncontested~~ respondent has been represented by counsel, ~~they~~ the findings, conclusions and judgment shall first be submitted to ~~opposing~~ respondent's counsel~~, if any,~~ for

approval and if the family court commissioner has appeared ~~in~~ at the trial of the action, such ~~original~~ papers~~, together with copies thereof,~~ shall also be sent to the family court commissioner for ~~examination before submission of the same~~ approval. After any necessary approvals are obtained, the findings of fact, conclusions of law and judgment shall be submitted to the court. Final stipulations of the parties may be appended to the judgment and incorporated by reference therein.

(b) When a judgment of divorce is granted, the written judgment of divorce shall state, in a separate paragraph, that where either party to the marriage being so dissolved is obligated under such judgment or by other judgment or court order to support any minor issue of the marriage not in his or her custody, he or she is prohibited by s. 245.10 or 245.105 from marrying again in this state or elsewhere after such judgment becomes final unless permission to marry is granted by order of either the court of this state which granted such judgment or support order, or the court having divorce jurisdiction in the county of this state where such minor issue resides or where the marriage license application is made.

(c) At the time of filing any judgment for ~~a~~ an annulment, divorce or legal separation, the attorney for the ~~prevailing~~ moving party shall present to the clerk of court 2 true copies thereof in addition to the original judgment, and until such copies are presented the clerk may refuse to accept such judgment for filing. After the judgment is filed, the clerk shall mail a copy forthwith to each party to the action at ~~his last known~~ the last-known address, and the court record shall show such mailing.

(2) So far as ~~said~~ a judgment of divorce affects the marital status of the parties the court has the power to vacate or modify the same for sufficient cause shown, upon its own motion, or upon the application of ~~either party~~ both parties to the action, at any time within 6 months from the granting of such judgment~~, provided both parties are then living~~. But no such judgment shall be vacated or modified without service of notice of motion~~, or order to show cause~~ on the family court commissioner~~, and on the parties to the action if they are found~~. The court may direct the family court commissioner or appoint some other attorney, to bring appropriate proceedings for the vacation of ~~said~~ the judgment. The compensation of the family court commissioner when not on a salaried basis or other attorney for performing such services shall be at the rate of $50 per day, which shall be paid out of the county treasury upon order of the presiding judge and the certificate of the clerk of the court. If the judgment is vacated it shall restore the parties to the marital relation that existed before the granting of such judgment. If after vacation of the judgment either of the parties shall bring an action in this state for divorce against the other the court may order the ~~plaintiff~~ petitioner in such action to reimburse the county the amount paid by it to the family court commissioner or other attorney in connection with such vacation proceedings. Whenever a judgment of divorce is set aside ~~pursuant to~~ under this subsection, the court shall order the record in the action impounded without regard to s. 247.19; and thereafter neither the record nor any part thereof shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under ss. 52.21 to 52.45 or by special order of any court of record upon a showing of necessity to clear title to real estate.

(3) When a judgment of divorce is granted it shall be effective immediately except as provided in s. 245.03 (2). Every judge who grants a judgment of divorce shall inform the parties appearing in court that the judgment~~, so far as it affects the marital status of the parties except to bar cohabitation, will not become~~ is effective ~~until 6 months from the date when such judgment is granted; and where either party to the marriage being so dissolved is obligated under such judgment or by other judgment or court order to support any minor issue of the marriage not in the party's custody, the judge shall inform the party that the party is prohibited from marrying again in this state or elsewhere unless permission to marry is granted by order of either the court of this state which granted such judgment or support order, or the court having divorce~~

~~jurisdiction in the county of this state where such minor issue resides or where the marriage license application is made~~ immediately except as provided in s. 245.03 (2).

SECTION 53m. 247.37 (4) of the statutes is repealed.

SECTION 54. 247.375 of the statutes is repealed.

SECTION 55. 247.38 of the statutes is amended to read:

247.38 Judgment revoked on remarriage. When a judgment of divorce has been granted and the parties shall afterwards intermarry, the court, upon their joint application and upon satisfactory proof of such marriage, ~~may~~ shall revoke all judgments and any orders ~~of divorce, alimony and subsistence~~ which will not affect the right of ~~third~~ 3rd persons and order the record impounded without regard to s. 247.19; and thereafter neither the record nor any part thereof shall be offered or admitted into evidence in any action or proceeding except by special order of the court of jurisdiction upon good cause shown in any paternity proceedings under ss. 52.21 to 52.45 or by special order of any court of record upon a showing of necessity to clear title to real estate. ~~After a final judgment of divorce has been rendered, the court, upon the application of the party paying alimony, on notice to, and on proof of the marriage, after such final judgment, of the party receiving such alimony, shall by order modify such final judgment and any orders made with respect thereto, by annulling the provisions of such final judgment or orders, or of both, directing layment of such alimony.~~

SECTION 56. 251.72 (1) of the statutes is amended to read:

251.72 (1) In actions affecting marriage pending in this court, no allowance for suit money, counsel fees or disbursements in this court, nor for temporary ~~alimony or~~ maintenance ~~of either~~ payments to the spouse or the children during the pendency of the appeal will be made in this court.

SECTION 57. 632.895 of the statutes is created to read:

632.895 Conversion privileges for insured former spouse required. (1) No policy of accident and health insurance providing coverage of hospital or medical expense on either an expense incurred basis or other than an expense incurred basis, which in addition to covering the insured also provides coverage to the spouse of the insured, may contain a provision for termination of coverage for a spouse covered under the policy solely as a result of a break in the marital relationship except by reason of an entry of a valid decree of divorce between the parties.

(2) Every such policy which contains a provision for termination of coverage of the spouse upon divorce shall contain a provision to the effect that upon the entry of a valid decree of divorce between the insured parties the divorced spouse shall be entitled to have issued to him or her, without evidence of insurability, upon application made to the company within 60 days following the entry of such decree, and upon the payment of the appropriate premium, an individual policy of accident and health insurance. Such policy shall provide the coverage then being issued by the insurer which is most nearly similar to such terminated coverages. Any and all probationary or waiting periods set forth in such policy shall be considered as being met to the extent coverage was in force under the prior policy.

SECTION 58. 801.05 (11) of the statutes is amended to read:

801.05 (11) (title) MARITAL ACTIONS. In any action ~~to determine a question of status under s. 247.05 (1), (2) and (3), or in an independent action for support, alimony or property division~~ affecting marriage in which a personal claim is asserted against the respondent commenced in the county in which the ~~plaintiff~~ petitioner resides at the commencement of the action when the ~~defendant~~ respondent resided in this state in marital relationship with the ~~plaintiff~~ petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action, and after the ~~defendant~~ respondent left the state the ~~plaintiff~~ petitioner continued to reside in this state, and the ~~defendant cannot be served under s. 247.06 but~~ respondent is served ~~under s. 247.062 (1)~~ personally under s. 801.11. The effect of any

determination of a child's custody shall not be binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under ch. 801 or has been notified under s. 822.05 as provided in s. 822.12.

SECTION 59. **Change of terminology.** Wherever the word "alimony" appears in the following sections of the statutes, the term "maintenance payments" is substituted: 45.37 (9) (g), 49.47 (4) (c) 1, 59.395, 59.42 (10) (b), 69.52 (2), 71.09 (7) (a) 1, 247.29, 247.39 and 898.14 (2).

SECTION 60. **Cross reference changes.** In the sections listed in column A below, the cross references in column B are changed to the cross references in column C.

A	B	C
Statute sections	Old cross references	New cross references
52.055 (2m)	247.03	247.02
59.39 (9m)	247.26, 247.265	247.25 to 247.265
247.36	247.26	247.255 or 247.26

SECTION 61. **Wage assignments in pending or granted annulments, legal separations and divorces.** (1) The court shall order a wage assignment, upon application of the person receiving payments, in any action affecting marriage commenced prior to the effective date of this act which includes an order for child support, alimony or periodic payments, when the requirements of subs. (2) and (3) have been met.

(2) The person receiving payments may make application to the family court commissioner which states that the payer has failed to make in full a payment as established by the court within 20 days of the date the payment was due. Such application shall be made within 6 months from the date of the last missed payment.

(3) The family court commissioner, upon application of the person receiving payments, shall send a notice by certified mail to the last-known address of any payer who has failed to make a required payment within 20 days of its due date. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the recipient that a wage assignment shall be ordered, to take effect 10 days after the date on which the notice was sent. The payer may, within that 10-day period, request a hearing on the issue of whether the wage assignment should be ordered, in which case the wage assignment shall be held in abeyance pending the outcome of the hearing. The family court commissioner shall hold a hearing requested under this section within 10 working days after the date of the request. If at the hearing the payer establishes that extraordinary circumstances prevented fulfillment of the support obligation and that such circumstances are beyond the control of the payer, the family court commissioner may direct that the wage assignment be delayed until such time, within 12 months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, be ordered if, within the following 12 months, the payer fails to make in full any payment within 20 days of its due date. Either party may, within 15 working days of the date of the decision by the family court commissioner under this section, appeal to the court which issued the original support or maintenance order.

(4) An assignment made under this section shall be binding upon the employer and successor employers one week after service upon the employer of a true copy of the assignment signed by the employe and annexed to a copy of the order, by personal service or by registered or certified mail, until further order of the court. For each payment the employer shall receive $1 which he shall deduct from the money to be paid the employe. Section 241.09 of the statutes shall not apply to assignments under this section. The employer may not use such assignments as a basis for the discharge of an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe in violation of this subsection may be fined not more than $200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Compliance by an employer with the order

operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

SECTION 62. **Effective date.** (1) This act applies to all actions affecting marriage, and to all actions for modification or enforcement of previously entered orders in actions affecting marriage, which are commenced on and after the effective date of this act.

(2) This act shall take effect on the first day of the 4th month after its publication.

1977 Assembly Bill 556 Date published: **October 21, 1977**

CHAPTER 106, Laws of 1977

AN ACT to amend 94.71 (2) and l40.77 (1); to repeal and recreate 20.115 (1) (i), 94.67, 94.676, 94.68, 94.70 (1), (2) (c) and (3) and 94.71 (1); and to create 94.69 (11) and (12), 94.70 (2) (e), 94.705, 94.706 and 94.71 (3) (c) of the statutes, relating to certifying applicators of restricted-use pesticides, licensing manufacturers and labelers of pesticides, granting rule-making authority and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. **Statement of purpose.** The legislature finds the need to update the regulation of the use and application of pesticides. It is the intent of the legislature that the state's regulations shall not exceed any federal standards adopted under the federal insecticide, fungicide, and rodenticide act or regulations issued under that act.

SECTION 2. 20.115 (1) (i) of the statutes is repealed and recreated to read:

20.115 (1) (i) *Pesticide control.* All moneys received under s. 94.68 for licensing manufacturers and labelers and s. 94.705 (1) (d) and (4) (c) for licensing certified commercial applicators under ss. 94.67 to 94.71.

SECTION 3. 94.67 of the statutes is repealed and recreated to read:

94.67 Pesticides; definitions. In ss. 94.67 to 94.71:

(1) "Active ingredient" means any ingredient which will:

(a) Prevent, destroy, repel or mitigate pests;

(b) Accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product of the plants through physiological action;

(c) Cause the leaves or foliage to drop from a plant; or

(d) Artificially accelerate the drying of plant tissue.

(2) "Agriculture commodity" means any plant or part of a plant, animal or animal product produced by a person primarily for sale, consumption, propagation or other use by humans or animals.

(3) "Animal" means all vertebrate and invertebrate species, including but not limited to persons and other mammals, birds, fish and shellfish.

(4) "Certified applicator" means a person certified by the department to use or supervise the use of restricted-use pesticides as a private or commercial applicator.

(5) "Certified commercial applicator" means a person, whether or not a certified private applicator with respect to some uses, certified to use or supervise the use of

a provision for disclaimer contained in the will making a specific alternative disposition of such property, and, in the absence of any such provision said devise or bequest shall pass as if the person so disclaiming had immediately predeceased the testator.

Any heir at law or distributee under the laws of descent and distribution who is sui juris, shall have the right, within six months of the date of death of the decedent, to disclaim such real or personal property in whole or in part. The property so disclaimed shall pass by the laws of descent and distribution of this state as if the person so disclaiming had immediately predeceased the decedent.

Any such disclaimer shall be made by a writing signed by the person so disclaiming and acknowledged in such manner as would authorize a deed to be admitted to record and shall be filed and recorded in the office of the clerk of the county commission by which the will is admitted to probate or, in the event of intestacy, in the office of the clerk of the county commission in which the decedent's estate is administered; and in either event, such disclaimer shall be recorded with fiduciary orders or probate documents, or both. Said gift or property so disclaimed shall be considered as never having vested in any manner whatsoever in the person so disclaiming.

CHAPTER 84

(Com. Sub. for H. B. 806—By Mr. Damron and Mr. O'Neal)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, thirteen and fourteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to divorce; adding additional grounds for divorce; shortening times for abandonment and living separate and apart as grounds

for divorce; maintenance of spouse and children during pendency of action and clarifying instances when a divorce shall not be granted.

Be it enacted by the Legislature of West Virginia:

That sections four, thirteen and fourteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-4. Grounds for divorce.

(a) A divorce may be ordered:

(1) For adultery; or

(2) When either of the parties subsequent to the marriage has, in or out of this state, been convicted for the commission of a crime which is a felony, and such conviction has become final; or

(3) To the party abandoned, when either party willfully abandons or deserts the other for six months; or

(4) For cruel or inhuman treatment, or reasonable apprehension of bodily hurt, and false accusation of adultery or homosexuality by either party against the other shall be deemed cruel treatment within the meaning of this subdivision; cruel and inhuman treatment shall also be deemed to exist when the treatment by one spouse of another, or the conduct thereof, is such as to destroy or tend to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable and under no circumstances whatever shall it be necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce; or

(5) For habitual drunkenness of either party subsequent to the marriage; or

(6) For the addiction of either party, subsequent to the marriage, to the habitual use of any narcotic drug or drugs or dangerous drug or drugs as those terms are defined in this code; or

(7) Where the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year, whether such separation was the voluntary act of one of the parties or by the mutual consent of the parties; and a plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party's obtaining a divorce on this ground. If alimony is sought under the provisions of section fifteen of this article, the court may inquire into the question of who is the party at fault and may award such alimony according to the right of the matter and such determination shall not affect the right of either party to obtain a divorce on this ground; or

(8) For permanent and incurable insanity. No divorce shall be granted on the ground of insanity unless such permanently incurable insane person shall have been confined in a mental hospital or other similar institution for a period of not less than three consecutive years next preceding the filing of the complaint; nor shall a divorce be granted on these grounds unless the court shall have heard competent medical testimony that such insanity is permanently incurable. The court granting a divorce under this subdivision may in its discretion order support and maintenance for such permanently incurable insane party by the other. Where an insane person, within the meaning of this section, is a plaintiff in an action for divorce or annulment, the defendant shall not enter a plea of recrimination which is based upon the insanity of the plaintiff; or

(9) For abuse of a child of the parties or of one of the parties or for neglect of a child for which the neglecting party has the legal responsibility. For purposes of this subdivision, "abuse" means any physical injury including, but not limited to, sexual molestation, or mental injury inflicted on such child; and "neglect" means willful failure to provide, by one of the parties who is legally responsible for the care and maintenance

of a child, the proper or necessary support, education as required by law, or medical, surgical or other care necessary for the well-being of a child. No divorce shall be granted upon this ground except upon clear and convincing evidence sufficient to justify permanently depriving the offending party of his or her parental rights to the custody and control of said abused or neglected child; or

(10) If one party to a marriage shall file a verified complaint, for divorce, against the other, alleging that irreconcilable differences have arisen between the parties, and stating the names of the dependent children of the parties or of either of them, and if the defendant shall file a verified answer to the complaint and admit or aver that irreconcilable differences exist between the parties, the court may grant a divorce, but no order of divorce entered pursuant to the provisions of this subdivision shall be entered unless sixty days shall have elapsed after the filing of the complaint. In such case no corroboration of the grounds for divorce shall be required. The court may make such order for alimony, for the custody, support and maintenance of children, and for visitation rights as may be just and equitable, or may approve, modify, or reject any agreement between the parties pertaining to alimony, the custody, maintenance and support of children, or visitation rights; such provision shall not affect the right to obtain a divorce upon the ground of irreconcilable differences between the parties to a marriage.

(b) It shall not be necessary to allege the facts constituting the ground or grounds relied upon, and a complaint or counter complaint shall be sufficient if any one of the grounds is alleged in the language of such ground as set forth in subsection (a) of this section.

§48-2-13. Maintenance of spouse and children pendente lite; control of property.

The court may, at any time after commencement of the action and reasonable notice to the other party, make any order that may be proper to compel either party to pay any sum necessary for the maintenance of the other party and to enable him or her to carry on or defend the action in the trial

court and on appeal should one be taken, or to prevent either party from imposing any restraint on the personal liberty of the other, or to provide for the custody and maintenance of the minor children of the parties, during the pendency of the action, or to preserve the estate of either party, so that it be forthcoming to meet any order which may be made in the action, or to compel either party to give security to abide such order, or to compel either party to deliver to the other any of his or her separate estate which may be in the possession or control of the other, or to prevent either from interfering with the separate estate of the other, or to grant exclusive use and occupancy of the marital home to one of the parties during the pendency of the action.

At any time after a party is abandoned or deserted or after the parties to a marriage have lived separate and apart in separate places of abode without any cohabitation, the party abandoned or either party living separate and apart may apply for relief pursuant to this section by instituting an action for divorce as provided in section ten of this article, alleging that the plaintiff reasonably believes that the period of abandonment or of living separate and apart will continue for the period prescribed by the applicable provisions of section four of this article. If the period of abandonment or living separate and apart continues for the period prescribed by the applicable provision of section four of this article, the divorce action may proceed to a hearing as provided in sections twenty-four and twenty-five of this article without a new complaint being filed: *Provided,* That the party desiring to proceed to a hearing shall give the opposing party at least twenty days' notice of the time, place and purpose of the hearing, such notice to be served in the same manner as a complaint, regardless of whether the opposing party has appeared or answered.

§48-2-14. When a divorce not to be granted.

No divorce for adultery shall be granted on the uncorroborated testimony of a prostitute, or a particeps criminis, or when it appears that the parties voluntarily cohabited after the knowledge of the adultery, or that it occurred more than three years before the institution of the action; nor shall a divorce be granted for any cause when it appears that the offense

charged has been condoned, or was committed by the procurement or connivance of the plaintiff, or that the plaintiff has, within three years before the institution of action, been guilty of adultery not condoned, but such exception shall not be applicable to causes of action brought pursuant to subdivisions (7) and (10), subsection (a), section four of this article. The defense of collusion shall not be pleaded as a bar to a divorce.

CHAPTER 85

(S. B. 563—By Mr. Brotherton, Mr. President, Mr. Palumbo and Mr. Hamilton)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to repeal article nine, chapter five; to amend article one, chapter five by adding thereto a new section, designated section twenty-seven; to amend and reenact sections two and three, article seventeen, chapter five; to amend and reenact section three, article thirteen, chapter seven; to amend and reenact sections one and two, article twenty-six, chapter eight; to amend and reenact sections two and eight, article eight, chapter twenty-one; to amend and reenact section one, article seventeen, chapter twenty-nine; and to amend and reenact section four, article eighteen, chapter thirty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing a statement of legislative policy and purpose; creating an office of economic and community development in the office of the governor; providing for the appointment of a director of such office; specifying effective date; providing for functions, duties, responsibilities, programs and personnel; abolishing former department of commerce; providing for annual reports; providing for transferring of records and property of former department of commerce; providing for continuation of contracts and obligations; relating to the composition of the West Virginia commission on energy, economy and environment; providing for the

9-252. Duties generally; report; records to be kept; publication of reports, maps, etc.

(b) The state geologist shall:

(i) Perform all other acts as are provided by the laws of Wyoming relating to mineral deposits;

(ii) Make valuation surveys, investigations, appraisements and reports on the mineral resources of the state;

(iii) Have authority to designate and supervise mining operations on state and school lands in the interest of economic development;

(iv) Have authority to cooperate with the United States government, departments of the state of Wyoming, University of Wyoming or private corporations in the matter of geological, topographic, soil and mineral surveys, also industrial investigations and examinations that may bring about further economic development of the mineral resources of the state. The cooperative activities of his office may be accomplished on whatever basis he may determine but in no case shall the cost to the state exceed fifty percent (50%) thereof;

(v) As required by W.S. 9-2l, report to the governor covering the activities of his office and include therein suggestions as to the enactment of laws relating to the mineral resources of the state;

(vi) Keep in his office full and complete records of all work done by him or under his supervision, all of which shall be the property of the state; and

(vii) Publish all reports, maps and data as he considers advisable and of public interest, and distribute the reports, maps and data to the public upon request either free or at a price he deems reasonable.

Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

Approved March 2, 1977.

CHAPTER 152

Original Senate File No. 76

TITLE 20 REVISION

AN ACT to amend W.S. 20-1 through 20-167 and renumber as W.S. 20-1-101 through 20-5-125 relating to domestic relations; revising and renumbering all of the statutes in Title 20 of the Wyoming Statutes; defining the procedures, requirements and qualifications for creating the marriage relationship; providing grounds for divorce or annulment of the marriage; deleting certain specific grounds for divorce; providing irreconcilable differences as grounds for divorce; removing the requirement of corroboration of witnesses; defining the powers and duties of the courts with regard to the marriage relationship, child custody and property settlement; providing for the enforcement of orders for child custody or support; providing for penalties; and

providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 20-1 through 20-167 are amended and renumbered as 20-1-101 through 20-5-125 to read:

CHAPTER I

HUSBAND AND WIFE

ARTICLE I

CREATION OF MARRIAGE

20-1-101. Marriage a civil contract. Marriage is a civil contract between a male and a female person to which the consent of the parties capable of contracting is essential.

20-1-102. Minimum marriageable age; exception; parental consent.

(a) At the time of marriage the parties shall be at least sixteen (16) years of age except as otherwise provided.

(b) All marriages involving a person under sixteen (16) years of age are prohibited and voidable, unless before contracting the marriage a judge of a court of record in Wyoming approves the marriage and authorizes the county clerk to issue a license therefor.

(c) When either party is a minor, no license shall be granted without the verbal consent, if present, and written consent, if absent, of the father, mother, guardian or person having the care and control of the minor. Written consent shall be proved by the testimony of at least one (1) competent witness.

20-1-103. License; required.

(a) Before solemnization of any marriage in this state, a marriage license shall be obtained from a Wyoming county clerk.

(b) Application for a marriage license shall be made by one (1) of the parties to the marriage before the license is issued. Upon receipt of an application, the county clerk shall ascertain by the testimony of a competent witness and the applicant, the names, residences and ages of the parties and whether there is any legal impediment to the parties entering into the marriage contract according to the laws of the state of their residence. The clerk shall enter the facts ascertained in a book kept by him for that purpose. He may issue a license to marry and shall date the license on the date of issuance except as otherwise provided.

(c) Unless there is an order to waive the requirements of this section by a judge of a court of record in the county pursuant to W.S. 20-1-105, the clerk shall refuse to issue a license if:

(i) Either of the parties is legally incompetent to enter into a marriage contract according to the law of this state; or

(ii) There is any legal impediment; or

(iii) Either party is a minor and the consent of a parent or guardian has not been given.

20-1-104. Health certificate to be secured before marriage; contents; serological tests; physician's statement in lieu of certificate.

(a) Every person securing a marriage license shall produce a certificate dated within thirty (30) days before the date of application for the license from a physician licensed to practice in any state or territory of the United States, or the District of Columbia, or by a commissioned medical officer on active duty with the armed forces of the United States or with the public health service, showing applicant to be free from any venereal disease in a communicable stage. The certificate shall include or be accompanied by a report of a standard approved serological test for syphilis from a laboratory authorized for this purpose by the Wyoming department of health and social services or the corresponding public health authority having jurisdiction in the area where the tests are performed. The certificate shall include or be accompanied by the report of a laboratory examination for other venereal disease as indicated by the physical examination.

(b) A physician, duly licensed and engaged in practice in Wyoming, may submit to the county clerk, in lieu of a certificate, a statement over the physician's signature that the female applicant for the license is near the termination of her pregnancy or the death of one (1) or both applicants is imminent and that he has taken blood samples adequate for serological testing from the applicant or applicants and forwarded the samples to the Wyoming department of health laboratory, in which case a certificate is not required of an applicant prior to issuance of a license.

(c) It is unlawful for any person to contract marriage within this state if that person has syphilis, gonococcus infection or chancroid in an infectious stage, or has syphilis in a stage whereby the disease could be transmitted to the issue of the infected person. Any person who violates the provisions of this section, or who willfully or knowingly makes any misstatements or false certificate under this section, upon conviction, shall be punished by a fine not to exceed one thousand dollars ($1,000.00), imprisonment not to exceed one (1) year, or both.

20-1-105. Judge may order license issued.

(a) If any county clerk refuses to issue a license to marry, or in case of circumstances arising which would necessitate the waiver of any one (1) or more of the requirements of W.S. 20-1-102 and 20-1-103(b) and (c), either applicant for the license may apply to the district court of the county for the issuance of a license without compliance with one (1) or more of those requirements. If the judge finds that a license should be issued, or such circumstances exist that it is proper that any one (1) or more of the requirements, excluding health certificate, should be waived, the judge may order in writing the issuance of the

license. Upon the order of the judge being filed with the county clerk, the county clerk shall issue the license at the time specified in the order. No fee or court costs shall be charged or taxed for the order.

(b) If either party is under sixteen (16) years of age, the parents or guardians may apply to any judge of a court of record in the county of residence of the minor for an order authorizing the marriage and directing the issuance of a marriage license. If the judge believes it advisable, he shall enter an order authorizing the marriage and directing the county clerk to issue a license. Upon filing of a certified copy of the order with the county clerk, the county clerk shall issue a license and endorse thereon the fact of the issuance of the order. No person authorized to perform marriage ceremonies in Wyoming shall perform any marriage ceremony if either party is under the age specified by this subsection unless the license contains the endorsement.

(c) Before issuing the order provided by this section the judge may require affidavits or other proof of the competency of the parties or of any other facts necessitating or making the order advisable. The order may be in substantially the following form:

I ...., the undersigned ...., a judge of the .... court, a court of record in and for .... County, Wyoming, hereby order that a marriage license may issue to .... of .... (address) and .... of .... (address) on the .... day of ...., 19... Date: .....

20-1-106. Who may solemnize marriage; form of ceremony.

(a) Every district or county court judge or commissioner, justice of the peace, and every licensed or ordained minister of the gospel, may perform the ceremony of marriage in this state.

(b) In the solemnization of marriage no particular form is required, except that the parties shall solemnly declare in the presence of the person performing the ceremony and at least two (2) attending witnesses that they take each other as husband and wife.

20-1-107. Certificate of marriage.

(a) When a marriage is solemnized, the person performing the ceremony shall give one of the parties a certificate under his hand and signed by the witnesses to the marriage, specifying the names, ages and place of residence of the parties married, the names and residences of at least two (2) witnesses who were present at the marriage, and the time and place thereof.

(b) The county clerk of each county in the state shall record all returns of marriages in a book kept for that purpose within one (1) month after receipt.

(c) The original certificate and record of marriage made by the person performing the ceremony and the record thereof or a certified copy of the certificate or record is admissible in all courts and places as presumptive evidence of the fact of the marriage.

20-1-108. Offenses relating to marriage generally. If the county clerk neglects to record a marriage certificate, or if any person performs a marriage

ceremony knowing that he is not legally authorized to do so or knowing of any legal impediment to the proposed marriage, he is guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment for not exceeding one (1) year.

20-1-109. When marriage solemnized by unauthorized person valid. No marriage solemnized before any person professing to be a justice of the peace or a minister of the gospel, shall be deemed or adjudged to be void, nor is the validity of the marriage in any way affected because of a lack of jurisdiction or authority in the supposed justice or minister if the marriage is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

20-1-110. Marriage ceremony according to rites and customs of religious societies or assemblies. Any religious society or religious assembly may perform the ceremony of marriage in this state according to the rites and customs of the society or assembly. The clerk or keeper of the minutes, proceedings or other book of the society or assembly wherein the marriage occurs, or if none then the moderator or person presiding in the society or assembly, shall make out and transmit to the county clerk of the county a certificate of the marriage.

20-1-111. Foreign marriages. All marriage contracts which are valid by the laws of the country in which contracted are valid in this state.

ARTICLE 2

RIGHTS AND LIABILITIES

20-1-201. Separate estate of real and personal property; not subject to control of spouse; exceptions. All property belonging to a married person as his separate property which he owns at the time of his marriage or which during marriage he acquires in good faith from any person by descent or otherwise, together with all rents, issues, increase and profits thereof, is during marriage his sole and separate property under his sole control and may be held, owned, possessed and enjoyed by him the same as though he were single. Such property is not subject to the disposal, control or interference of his spouse and is exempt from execution or attachment for the debts of his spouse if the property was not conveyed to him by his spouse in fraud of his creditors. The necessary expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, for which they may be sued jointly or separately.

20-1-202. Power to convey, etc., and to contract, etc.

(a) Any married person may transfer his separate property in the same manner and to the same extent as if he were unmarried and he may make contracts and incur obligations and liabilities, all of which may be enforced against him to the same extent and in the same manner as if he were unmarried.

(b) Any person may, while married, sue and be sued in all matters having relation to his property, person or reputation, in the same manner as if he were single.

(c) When a married person sues or is sued alone, proceedings shall be had and judgment rendered and enforced as if he were unmarried. His separate property and estate is liable for any judgment against him but he is entitled to the benefit of all exemptions for heads of families.

(d) When any person against whom liabilities exist marries and has or acquires lands, judgment on the liability may be rendered against her, to be levied on the lands only.

(e) A person is not liable for the debts and liabilities of his spouse contracted before marriage without an assumption thereof in writing.

CHAPTER 2

DISSOLUTION OF MARRIAGE

ARTICLE 1

BASIS AND PROCEDURE

20-2-101. Void and voidable marriages defined; annulments.

(a) Marriages contracted in Wyoming are void without any decree of divorce:

(i) When either party has a husband or wife living at the time of contracting the marriage;

(ii) When either party is mentally incompetent at the time of contracting the marriage;

(iii) When the parties stand in the relation to each other of parent and child, grandparent and grandchild, brother and sister of half or whole blood, uncle and niece, aunt and nephew, or first cousins; whether either party is illegitimate. This paragraph does not apply to persons not related by consanguinity.

(b) A marriage is voidable if solemnized when either party was under the age of legal consent unless a judge gave consent, if they separated during nonage and did not cohabit together afterwards, or if the consent of one (1) of the parties was obtained by force or fraud and there was no subsequent voluntary cohabitation of the parties.

(c) Either party may file a petition in the district court of the county where the parties or one (1) of them reside, to annul a marriage for reasons stated in subsections (a) and (b) of this section and proceedings shall be held as in the case of a petition for divorce except as otherwise provided. Upon due proof the marriage shall be declared void by a decree of nullity.

(d) An action to annul a marriage on the ground that one of the parties was under the age of legal consent provided by W.S. 20-1-102 (a) may be filed by the parent or guardian entitled to the custody of the minor. The marriage may not be annulled on the application of a party who was of the age of legal

consent at the time of the marriage nor when it appears that the parties, after they had attained the age of consent, had freely cohabited as man and wife.

(e) An action to annul a marriage on the grounds of mental incompetency may be commenced on behalf of a mentally incompetent person by his guardian or next friend. A mentally incompetent person restored to competency may maintain an action of annulment, but no decree may be granted if the parties freely cohabited as husband and wife after restoration of competency.

(f) An action to annul a marriage on the grounds of physical incapacity may only be maintained by the injured party against the party whose incapacity is alleged and may only be commenced within two (2) years from the solemnization of the marriage.

20-2-102. Petition by wife for support. When the husband and wife are living separately, or when they are living together but the husband does not support the wife or children within his means, and no proceeding for divorce is pending, the wife in behalf of herself or minor children may institute a proceeding for support. Upon five (5) days notice to the husband, if he can be served personally with notice in the state, the judge may hear the petition and grant such order concerning the support of the wife or children as he might grant were it based on a proceeding for divorce. If the husband cannot be personally served within this state but has property within the jurisdiction of the court, or debts owing to him, the court may order such constructive service as appears sufficient and proper and may cause an attachment of the property. Upon completion of constructive service the court may grant relief as if personal service was had.

20-2-103. Petition to affirm marriage. When the validity of any marriage is denied by either party, the other party may file a petition for affirming the marriage. Upon due proof of the validity thereof, it shall be declared valid by a decree of the court which is conclusive upon all persons concerned.

20-2-104. Causes for divorce generally; venue generally. A divorce may be decreed by the district court of the county in which either party resides on the complaint of the aggrieved party on the grounds of irreconcilable differences in the marital relationship.

20-2-105. Divorce action for insanity; when permitted; conditions to bringing action; liability for support.

(a) A divorce may be granted when either party has become incurably insane and the insane person has been confined in a mental hospital of this state or of another state or territory for at least two (2) years immediately preceding the commencement of the action for divorce.

(b) Upon the filing of a verified complaint showing that a cause of action exists under this section, the district court shall appoint some person to act as guardian of the insane person in the action. The summons and complaint in the action shall be served upon the defendant by delivering a copy of the summons and complaint to the guardian and to the county attorney of the county in which the action is brought.

(c) The county attorney upon whom the summons and complaint is served shall appear for and defend the defendant in the action. No divorce shall be granted under this section except in the presence of the county attorney.

(d) In any action brought under this section, the district courts possess all the powers relative to the payment of alimony, the distribution of property and the care and custody of the children of the parties as in other actions for divorce.

(e) Costs in the action, as well as the actual expenses of the county attorney and the expenses and fees of the guardian, shall be paid by the plaintiff. The expenses of the county attorney and expenses and fees of the guardian shall be fixed and allowed by the court, and the court may make such order as to the payment of fees and expenses as may seem proper.

20-2-106. Judicial separation; when proceedings may be instituted; petition to live separate and apart.

(a) When circumstances are such that grounds for a divorce exist, the aggrieved party may institute a proceeding by complaint in the same manner as if petitioner were seeking a decree of divorce, but praying instead to be allowed to live separate and apart from the offending party.

(b) No separation by decree entered hereunder shall be grounds for a divorce on the grounds of desertion or two-year separation unless those grounds existed at the time of petitioning for judicial separation. A decree of divorce may be granted after the decree of judicial separation is entered upon proper grounds arising thereafter.

(c) The procedure for judicial separation is the same as though petitioner were seeking a decree of divorce. The court may make such orders and decrees as appear just, including custody of the children, provision for support, disposition of the properties of the parties, alimony, restraint of the husband during litigation and restraint of disposition of property. The court may impose a time limitation on the decree or render a perpetual separation. The parties may at any time move the court to be discharged from the decree.

(d) All defenses available in an action for divorce are available under this section.

20-2-107. Residential requirements generally for plaintiffs.

(a) No divorce shall be granted unless the plaintiff has resided in this state for sixty (60) days immediately preceding the time of filing the complaint, or the marriage was solemnized in this state and the plaintiff has resided in this state from the time of the marriage until the filing of the complaint.

(b) A married woman who at the time of filing a complaint for divorce resides in this state, is a resident although her husband may reside elsewhere.

20-2-108. Action conducted as civil action. Actions to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as civil actions, and the court may decree costs and enforce its decree as in other cases,

except a divorce decree shall not be entered less than twenty (20) days from the date the complaint is filed.

20-2-109. Restraining orders concerning property, etc., during litigation. If after filing a complaint for divorce it appears probable to the court that either party is about to do any act that would defeat or render less effective any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof and such process issued as the court deems necessary or proper.

20-2-110. Restraint during litigation. After the filing of a complaint for divorce or to annul a marriage, on the petition of either party the court may prohibit the other party from imposing any restraint upon his personal liberty during the pendency of the action.

20-2-111. Temporary alimony during pendency of action; allowances for prosecution, etc., of action; costs. In every action brought for divorce, the court may require either party to pay any sum necessary to enable the other to carry on or defend the action and for support and the support of the children of the parties during its pendency. The court may decree costs against either party and award execution for the costs, or it may direct costs to be paid out of any property sequestered, in the power of the court, or in the hands of a receiver. The court may also direct payment to either party for such purpose of any sum due and owing from any person.

20-2-112. Examination concerning property interests; subsequent court orders; security for obedience to orders; custody of children.

(a) In a proceeding for divorce, the court may cause the attendance of either party and compel an answer under oath concerning his property, rights or interests, or money that he may have or money due or to become due to him from others, and make such order thereon as is just and equitable. To enforce its orders concerning alimony, temporary or permanent, or property or pecuniary interests, the court may require security for obedience thereto, or may enforce the orders by attachment, commitment, injunction or by other means.

(b) On the application of either party, the court may make such order concerning the care and custody of the minor children of the parties and their suitable maintenance during the pendency of the action as is proper and necessary and may enforce its order and decree in the manner provided in subsection (a) of this section.

20-2-113. Disposition and provision for children in decree.

(a) In granting a divorce or annulment of a marriage, the court may make such disposition of the children as appears most expedient and beneficial for the well-being of the children. The court shall consider the relative competency of both parents and no award of custody shall be made solely on the basis of gender of the parent. On the petition of either of the parents, the court may revise the decree concerning the care, custody and maintenance of the children as the circumstances of the parents and the benefit of the children requires.

(b) If there is issue of a marriage annulled on the ground of force or fraud, the court shall award their custody to the innocent person, and may also provide for their education and maintenance out of the estate and property of the guilty party.

20-2-114. Disposition of property to be equitable; factors; alimony generally. In granting a divorce, the court shall make such disposition of the property of the parties as appears just and equitable, having regard for the respective merits of the parties and the condition in which they will be left by the divorce, the party through whom the property was acquired, and the burdens imposed upon the property for the benefit of either party and children. The court may decree to the wife reasonable alimony out of the estate of the other having regard for his ability and may order so much of his real estate or the rents and profits thereof as is necessary be assigned and set out to either party for life, or may decree a specific sum be paid by him.

20-2-115. Court may appoint trustees to manage amount set aside for children. Upon every divorce when provision is made for the children, the court may order any amount set apart for them to be paid to a trustee or trustees appointed by the court, upon trust to invest the same and to apply the income thereof to the support of the children in such manner as the court directs.

20-2-116. Revision of alimony. After a decree for alimony or other allowance for a party or children and after a decree for the appointment of trustees to receive and hold any property for the use of a party or children, the court may from time to time, on the petition of either of the parties, revise and alter the decree respecting the amount of the alimony or allowance or the payment thereof and respecting the appropriation and payment of the principal and income of the property so held in trust and may make any decree respecting any of the matters which the court might have made in the original action.

20-2-117. Legitimacy of children presumed.

A dissolution of a marriage shall not affect the legitimacy of the issue of the marriage. In every case the legitimacy of all children conceived or born before the commencement of the action is presumed until the contrary is shown.

CHAPTER 3

DESERTION OF WIFE OR CHILDREN

20-3-101. Desertion generally; penalty; public welfare funds no excuse for nonsupport; prisoner's earnings may be diverted to support of family.

(a) Any husband who, without just cause or lawful excuse, deserts his wife or fails or refuses to provide adequately for her support and maintenance and who at the time of his leaving, failure or refusal is or thereafter becomes in necessitous circumstances, or any parent who without just cause or lawful excuse deserts, or fails or refuses to provide adequately for the care, support and maintenance of his child or children under the age of eighteen (18) years, is guilty of a crime, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars ($500.00), imprisonment in the state penitentiary

not exceeding three (3) years or both. Support of wife, child or children by public welfare funds or from any source other than from the husband or father, as the case may be, is not just cause or lawful excuse for the husband or father to fail to provide support. If a person is committed to the penitentiary under this section, the state board of charities and reform may divert the earnings of the person to the use and benefit of the wife and any minor child or children as provided by W.S. 7-370 through 7-378.

(b) Proceedings under this section may be instituted upon verified complaint by any person against any person guilty of the offenses.

(c) At any time before trial, upon petition of the complainant and notice to the defendant, the court may enter a temporary order providing for the support of the deserted wife or children or both, pendente lite, and may punish for violation of the order as for contempt.

20-3-102. Ordering of payments for support in lieu of penalty; when authorized; term; release of defendant on probation; entering of recognizance; conditions of recognizance. Before trial with the consent of the defendant, or on entry of a plea of guilty or after conviction, instead of the penalty provided by W.S. 20-3-101(a) or in addition thereto, the court having regard to the circumstances and the financial ability or earning capacity of the defendant, may enter an order directing the defendant to pay a certain sum for not exceeding two (2) years, to the wife or the guardian or custodian of the minor child or children or to an organization or individual approved by the court as trustee. The court may release the defendant on probation for the period so fixed, upon a recognizance with or without surety in such sum as the court may order, conditioned that if the defendant appears in court whenever ordered and complies with the terms of the order of support or any modification thereof, the recognizance shall be void.

20-3-103. Same; violation of order; trial; sentence; forfeiture of recognizance; disposition of sum recovered. If the court finds at any time during the period of probation the defendant has violated the terms of the order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her or enforce a suspended sentence under the original plea or conviction. In case of the forfeiture of recognizance, or enforcement thereof by execution, the sum recovered may be paid in whole or in part to the wife or to the guardian, custodian or trustee of the minor child or children.

20-3-104. Evidence required to prove marriage and parenthood; husband and wife as competent witnesses; disclosure of confidential communications; desertion, etc., as prima facie evidence of willful neglect, etc. No other or greater evidence is required to prove the marriage of a husband and wife or that the defendant is the father or mother of a child or children than is required to prove such facts in a civil action. In a prosecution under this act no statute or rule of law prohibiting the disclosure of confidential communications between husband and wife shall apply. Both husband and wife are competent witnesses to testify against each other to any relevant matters including the fact of marriage and the parentage of the child or children but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of the wife, child or children in destitute or necessitous circumstances,

or of the neglect or refusal to provide for the support and maintenance of the wife, child or children is prima facie evidence that the desertion, neglect or refusal is willful.

CHAPTER 4

RECIPROCAL ENFORCEMENT OF SUPPORT

20-4-101. Purpose. The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support.

20-4-102. Definitions.

(a) As used in this act:

(i) "Court" means the district court of this state and when the context requires means the court of any other state as defined in a substantially similar reciprocal law;

(ii) "Duty of support" means a duty of support imposed or imposable by law, order, decree or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance or otherwise, and includes the duty to pay arrearages of support past due and unpaid;

(iii) "Governor" means any person performing the functions of governor or the executive authority of any state covered by this act;

(iv) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced;

(v) "Law" means both common and statutory law;

(vi) "Obligee" means a person, state or political subdivision to whom a duty of support is owed, or that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance;

(vii) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced;

(viii) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person;

(ix) "Register" means to file in the registry of foreign support orders;

(x) "Registering court" means any court of this state in which a support order of a rendering state is registered;

(xi) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state;

(xii) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced;

(xiii) "State" includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect;

(xiv) "Support order" means any judgment, decree or order of support in favor of an obligee whether temporary or final or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

20-4-103. Remedies are cumulative. The remedies herein provided are in addition to and not in substitution for any other remedies.

20-4-104. Duties of support binding regardless of residency. Duties of support arising under the law of this state, when applicable under W.S. 20-4-107, bind the obligor present in this state regardless of the presence or residence of the obligee.

20-4-105. Reciprocal surrender of person failing to support.

(a) The governor of this state may:

(i) Demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(ii) Surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person.

(b) Provisions for extradition of criminals not inconsistent with this act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, oath and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

20-4-106. Prerequisites to demand for surrender of obligor.

(a) Before making demand upon the governor of another state for surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to show that at least sixty (60) days prior thereto the

obligee initiated proceedings for support under this act or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the governor of another state makes a demand upon the governor of this state for surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein, the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

20-4-107. Duties of support applicable under act; presumption. Duties of support are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

20-4-108. Action for reimbursement by state furnishing support. If a state or political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

20-4-109. Proceeding for enforcement; limitation on defense. All duties of support are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

20-4-110. Jurisdiction of proceeding for enforcement. Jurisdiction of any proceeding under this act is vested in the district court.

20-4-111. Complaint; contents; filing.

(a) The complaint shall be verified and shall state the name, and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor.

(b) The complaint may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support

order in some other proceeding and has retained jurisdiction for its enforcement.

20-4-112. Representation of obligee. If this state is acting as an initiating state the prosecuting attorney upon the request of the court, the state department of health and social services, a county commissioner, an overseer of the poor or other public assistance director shall represent the obligee, in any proceeding under this act. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

20-4-113. Same; minor. A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

20-4-114. Complaint forwarded to responding state. If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three (3) copies of the complaint and its certificate and one (1) copy of this act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

20-4-115. Payment of fees and costs. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

20-4-116. Obligor may be detained; conditions.

(a) If the court of this state believes that the obligor may flee it may:

(i) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(ii) As a responding court, obtain the body of the obligor by appropriate process, and may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

20-4-117. Attorney general's office designated state information agency; duties.

(a) The attorney general's office is designated as the state information agency under this act. It shall:

(i) Compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit it to the state information agency of every other state which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other state information agencies;

(ii) Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this act; and

(iii) Forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources.

(c) After the deposit of three (3) copies of the complaint and certificate and one (1) copy of the act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the attorney general who may undertake the representation.

20-4-118. Case docketed in responding state; duty of prosecuting attorney.

(a) After the responding court receives copies of the complaint, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

20-4-119. Duty to locate obligor; forward complaint to another court.

(a) The prosecuting attorney shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall

inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

20-4-120. Continuance of hearing; taking of depositions; conditions. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

20-4-121. Obligor may be compelled to testify; immunity from criminal prosecution; exception. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

20-4-122. Privilege of husband and wife inapplicable. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter including marriage and parentage.

20-4-123. Proceedings governed by rules of evidence and civil action. In any hearing for the civil enforcement of this act the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

20-4-124. Property of obligor subject to order for support; order may be forwarded to another county for enforcement. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement

therefor and subject the property of the obligor to the order. Support orders shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

20-4-125. Copy of support order forwarded to initiating state. The responding court shall cause a copy of all support orders to be sent to the initiating court.

20-4-126. Court may impose conditions to assure compliance.

(a) In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(i) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(ii) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(iii) Punish under the power of contempt the obligor who violates any order of the court.

20-4-127. Paternity in question; adjudication. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

20-4-128. Duties of responding court.

(a) A responding court has the following duties which may be carried out through the clerk of the court:

(i) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(ii) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

20-4-129. Receipt and disbursement of payments by initiating court. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through

the clerk of the court.

20-4-130. Responding court not to stay proceeding or refuse hearing; order of support pendente lite. A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court shall conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

20-4-131. Support order not superseded by order of another court. A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

20-4-132. Enforcement of support within Wyoming.

(a) The method of enforcement of duties of support provided in this act is applicable as nearly as possible if both the obligee and obligor are in Wyoming but in different counties.

(b) If the appropriate court of the county in which the petition for support is filed finds that the obligor owes a duty of support and that a court of another county may obtain jurisdiction over the obligor or his property, the clerk of court shall send the petition and a certificate of findings to the court of the county in which the obligor or his property is found. An initiating or responding court and the clerk of court have the duties and powers provided in this act in enforcing this section.

20-4-133. Attorney general may appeal or cause an appeal in public interest.

(a) If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(i) Perfect an appeal to the proper appellate court if the support order was issued by a court of this state; or

(ii) If the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

20-4-134. Registration of foreign support orders; prosecuting attorney to assist obligee.

(a) If the duty of support is based on a foreign support order, the obligee may register the foreign support order in a court of this state in the manner, with the effect and for the purposes herein provided.

(b) The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

(c) If this state is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court, a state department of welfare or other local welfare official shall represent the obligee in proceedings under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

20-4-135. Same; supporting documents required for registration; notice to obligor.

(a) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court three (3) certified copies of the order with all modifications thereof, one (1) copy of the reciprocal enforcement of support act of the state in which the order was made, and a statement verified and signed by the obligee showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this act.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

20-4-136. Foreign support order subject to same defenses and proceedings as order from this state.

(a) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If the obligor shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

20-4-137. Interpretation of act. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

20-4-138. Citation of act. This act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

CHAPTER 5

CHILD CUSTODY ACT

20-5-101. Title. This act may be cited as the Uniform Child Custody Jurisdiction Act.

20-5-102. Purpose.

(a) The general purposes of this act are:

(i) To avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(ii) To promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(iii) To assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(iv) To discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(v) To deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(vi) To avoid relitigation of custody decisions of other states in this state insofar as feasible;

(vii) To facilitate the enforcement of custody decrees of other states;

(viii) To promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(ix) To make uniform the law of those states which enact it.

(b) The provisions of this act shall be construed to promote the general purposes stated in this section.

20-5-103. Definitions.

(a) As used in this act:

(i) "Contestant" means a person who claims a right to custody or visitation rights with respect to a child;

(ii) "Custody determination" means a court order and instructions providing for the custody of a child including visitation rights, but does not include a decision relating to child support or any other monetary obligation of any person;

(iii) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(iv) "Decree" or "custody decree" means a custody determination contained in a judicial decree made in a custody proceeding, and includes an initial decree and a modification decree;

(v) "Home state" means the state in which the child immediately preceding the time involved has lived with his parents, a parent or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child has lived since birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six month or other period;

(vi) "Initial decree" means the first custody decree concerning a particular child;

(vii) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(viii) "Physical custody" means actual possession and control of a child;

(ix) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a

court or claims a right to custody;

(x) "State" means any state, territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia;

(xi) "This act" means W.S. 20-5-101 through 20-5-125.

20-5-104. Jurisdiction to make child custody determination.

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

(i) This state is the home state of the child at the time of commencement of the proceeding, or was the child's home state within six (6) months before commencement of the proceeding and the child is absent from the state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(ii) It is in the best interest of the child that a court of this state assume jurisdiction because the child and his parents, or the child and at least one (1) contestant, have a significant connection with the state and there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships;

(iii) The child is physically present in this state and has been abandoned or if it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(iv) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (i), (ii) or (iii) of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child and it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (a)(iii) and (iv) of this section, physical presence in this state of the child or of the child and one (1) of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

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

20-5-105. Notice before decree. Before making a decree under this act reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of the child. If any of these persons are outside this state notice and opportunity to be heard shall be given pursuant to W.S. 20-5-106.

20-5-106. Notice for exercise of jurisdiction over person outside this state; time; service; exception.

(a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(i) By personal delivery outside this state in the manner prescribed for service of process within this state;

(ii) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(iii) By any form of mail addressed to the person to be served and requesting a receipt; or

(iv) As directed by the court including publication if other means of notification are ineffective.

(b) Notice under this section shall be served, mailed, delivered or last published at least twenty (20) days before any hearing in this state.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the court.

20-5-107. Exercise of jurisdiction by court in this state; proceedings in other states.

(a) A court of this state shall not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the same child was pending in a court of another state exercising jurisdiction substantially in conformity with this act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under W.S. 20-5-110 and shall consult the child custody registry established under W.S. 20-5-117 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state the court shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(c) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before this court assumed jurisdiction, the court shall stay the proceeding and

communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with W.S. 20-5-120 through 20-5-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of this fact. If the court is informed that a proceeding was commenced in another state after this court assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the most appropriate forum.

20-5-108. Court may decline to exercise jurisdiction.

(a) A court which has jurisdiction under this act to make an initial decree or a modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon a court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In order to determine whether it is an inconvenient forum, the court shall consider whether it is in the interest of the child that another state assume jurisdiction and for this purpose may take into account the following factors, among others:

(i) Whether another state is or recently was the child's home state;

(ii) Whether another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(iii) Whether substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state;

(iv) Whether the parties have agreed on another forum which is no less appropriate; and

(v) Whether the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in W.S. 20-5-102.

(d) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the most appropriate court and that a forum will be available to the parties.

(e) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon the condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper including the condition that a moving party

stipulate his consent and submission to the jurisdiction of the other forum.

(f) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or other proceeding, while retaining jurisdiction over the divorce or other proceeding.

(g) Whenever it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses including attorneys' fees incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(j) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction in the case the court of this state shall inform the original court of this fact.

20-5-109. Wrongful or improper removal of a child from another state.

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court in its discretion may decline to exercise jurisdiction.

(b) Unless required in the interest of the child and subject to W.S. 20-5-115 (a), the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner without consent of the person entitled to custody has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court in its discretion and subject to W.S. 20-5-115 (a) may decline to exercise jurisdiction.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel expenses and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

20-5-110. Custody proceeding; required information.

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath:

(i) Whether he has participated in any capacity in any other litigation concerning the custody of the same child in this or any other state;

(ii) Whether he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(iii) Whether he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

20-5-111. Person having custody to be joined as a party. Whenever the court learns that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state he shall be served with process or otherwise notified in accordance with W.S. 20-5-106.

20-5-112. Court may order party to proceeding to appear.

(a) The court may order any party to the proceeding who is in the state to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the court is outside the state with or without the child, the court may order that the notice given under W.S. 20-5-106 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside the state is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child.

20-5-113. Custody decree binding on all parties. A custody decree rendered by a court of this state which had jurisdiction under W.S. 20-5-104 binds all parties who have been served in this state or notified in accordance with W.S. 20-5-106 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made until that determination is modified pursuant to

law.

20-5-114. Recognition and enforcement of initial or modification decree made by court of another state. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act, or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

20-5-115. Modifying custody decree made by court of another state.

(a) If a court of another state has made a custody decree a court of this state shall not modify that decree unless it appears that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree, and the court of this state has jurisdiction.

(b) If a court of this state is authorized under subsection (a) of this section and W.S. 20-5-109 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with W.S. 20-5-123.

20-5-116. Effect of custody decree made by court of another state.

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(b) A person violating a custody decree of another state making it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses including attorneys' fees incurred by the party entitled to the custody or his witnesses.

20-5-117. Clerk of district court to maintain registry; contents.

(a) The clerk of each district court shall maintain a registry in which he shall enter:

(i) Certified copies of custody decrees of other states received for filing;

(ii) Communications as to the pendency of custody proceedings in other states;

(iii) Communications concerning a finding of inconvenient forum by a court of another state; and

(iv) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

20-5-118. Forwarding copy of decree. At the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, the clerk of the district court of this state shall certify and forward a copy of the decree to that court or person.

20-5-119. Testimony of witnesses; method of obtaining. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses including parties and the child by deposition or otherwise in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

20-5-120. Requesting court of another state to adduce evidence; order party to appear.

(a) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state, and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or if necessary, ordered paid by the county.

(b) A court of this state may request the appropriate court of another state to order a party to custody proceeding pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

20-5-121. Request from courts of another state.

(a) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(b) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

20-5-122. Preserving records of custody proceeding. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies and other pertinent documents until the child reaches twenty-one (21) years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

20-5-123. Custody proceeding; record from another state. Whenever a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state, upon taking jurisdiction of the case, shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in W.S. 20-5-122.

20-5-124. Policies of act applicable to international area. The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard was given to all affected persons.

20-5-125. Priority of custody proceeding raising question of jurisdiction. Upon request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this act, the case shall be given calendar priority and handled expeditiously.

Section 2. This act is effective May 27, 1977.

Approved March 4, 1977.

CHAPTER 153

Original House Bill No. 373

DISTRIBUTION OF MINERAL ROYALTIES

AN ACT to create W.S. 9-577.1; and to repeal W.S. 9-577, 9-578, 9-579, 9-580.1, 9-580.2 and 9-580.3 relating to receipt, distribution and use of federal government royalties and bonuses; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 9-577.1 is created to read:

9-577.1. Distribution and use of federal government royalties.

(a) All monies received by the state of Wyoming from the secretary of the treasury of the United States under the provisions of the act of congress of February 25, 1920 (41 Stat. 437, 450; 10 U. S. C. 181, 191), as amended, shall be deposited in the trust and agency fund and shall be distributed by the state treasurer as follows: