

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 434

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO MARRIAGE; AMENDING SECTION 31-3205, IDAHO CODE, TO REMOVE A
2 PROVISION REGARDING A MARRIAGE LICENSE; AMENDING SECTION 32-201, IDAHO
3 CODE, TO REMOVE PROVISIONS REGARDING A MARRIAGE LICENSE AND TO PROVIDE
4 FOR THE FILING OF A MARRIAGE CERTIFICATE; AMENDING SECTION 32-202,
5 IDAHO CODE, TO REMOVE PROVISIONS REGARDING A MARRIAGE LICENSE AND TO
6 PROVIDE FOR VALID MARRIAGE CONTRACTS; AMENDING SECTION 32-302, IDAHO
7 CODE, TO REMOVE A PROVISION REGARDING A MARRIAGE LICENSE; AMENDING
8 SECTION 32-306, IDAHO CODE, TO REVISE A PROVISION REGARDING A CERTIFI-
9 CATE OF MARRIAGE, TO PROVIDE FOR THE FORM OF THE CERTIFICATE, AND TO
10 PROVIDE FOR CERTAIN DUTIES REGARDING A CERTIFICATE; REPEALING SEC-
11 TIONS 32-401, 32-402, 32-403, 32-404, 32-405, 32-406, 32-407, 32-408,
12 32-415, 39-262, AND 39-263, IDAHO CODE, RELATING TO A MARRIAGE LICENSE
13 AND CONTENTS, A CERTIFICATE AND RETURN, APPLICATION FOR AND ISSUANCE OF
14 A LICENSE, ADMINISTRATION OF OATHS, A MINISTER OR OFFICER MAY SOLEMNIZE
15 A MARRIAGE, SOLEMNIZATION WITHOUT A LICENSE AND A PENALTY, A RECORD OF
16 A RETURN OF A LICENSE, FEES FOR ISSUING A LICENSE, VIOLATIONS BEING A
17 MISDEMEANOR, REGISTRATION OF MARRIAGE AND MARRIAGE CERTIFICATES FILED,
18 AND MARRIAGE LICENSE FEES; AMENDING THE HEADING FOR CHAPTER 4, TITLE 32,
19 IDAHO CODE, TO REMOVE REFERENCE TO MARRIAGE LICENSES; AMENDING SECTION
20 39-5210, IDAHO CODE, TO REVISE A PROVISION REGARDING ELIGIBLE PROJECTS;
21 AMENDING SECTION 39-5212, IDAHO CODE, TO REVISE A PROVISION REGARDING
22 ALLOCATION OF FUNDS; AND AMENDING SECTION 39-5213, IDAHO CODE, TO RE-
23 VISE A PROVISION REGARDING CERTAIN FEES.
24

25 Be It Enacted by the Legislature of the State of Idaho:

26 SECTION 1. That Section 31-3205, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 31-3205. RECORDER'S FEES. (1) The county recorder is allowed and may
29 receive for his services the following fees to be paid him by the party
30 procuring his services:

31 (a) Except as otherwise set forth in this section, for recording every
32 instrument, paper or notice, for the first page \$10.00
33 For each additional page \$3.00

34 (b) For recording each of the following types of instruments, provided
35 such instrument is thirty (30) pages or less:

36 (i) Deeds, grants and transfers of title to real prop-
37 erty \$15.00

38 (ii) Trust deeds or mortgages of real property, including fixture
39 filings, security agreements and assignments of leases and rents
40 if contained within the same instrument for recording \$45.00

1 (iii) Reconveyances of trust deeds, reconveyances of trust deeds
2 that include a substitution of trustee if contained within the
3 same instrument for recording, and releases of mortgages . \$15.00
4 (iv) Substitution of a trustee \$10.00
5 (v) Powers of attorney \$25.00
6 For each additional page beyond thirty (30) pages for an instrument
7 listed in this paragraph \$3.00
8 (c) For electronic copies (as defined in subsection (2) of this sec-
9 tion) requested on a recurring basis, for each page or image 5¢
10 (d) For copies of any record or paper, for each page \$1.00
11 (e) For each certificate under seal, when required \$1.00
12 (f) For release or assignment where more than one (1) document is re-
13 leased or assigned in the same instrument, for each additional release
14 or assignment \$1.00
15 (g) For recording every town plat or map, for the first one hundred
16 (100) lots or less \$11.00
17 And for each additional lot 5¢
18 (h) For taking acknowledgments, including seal \$1.00
19 (i) For filing a survey, for each page \$5.00
20 (j) For making a copy of a survey or highway right-of-way plat ... \$4.00
21 (k) For ~~issuing marriage license, filing, recording, and indexing the~~
22 ~~certificate of marriage and taking and filing affidavits required in~~
23 ~~issuance of the license~~ \$11.00
24 (l) For administering an oath, including jurat \$1.00
25 And certifying the same when required, an additional sum of \$1.00
26 (m) For comparing and certifying a prepared copy of a file or record in
27 his office, for each page 50¢
28 (n) For each certificate under seal, there shall be an additional fee
29 of \$1.00
30 (2) Electronic copies shall include copies provided via internet down-
31 load, on a compact disc, zip disc, floppy disc, or other electronic means.
32 The county recorder shall provide electronic copies if the record is main-
33 tained in electronic form and if the person specifically requests an elec-
34 tronic copy.
35 (3) For duplication of recorded documents in paper, microfilm or micro-
36 fiche format requested on a recurring basis in excess of one hundred (100)
37 pages, the fee shall be negotiated between the county recorder and the pur-
38 chaser of records. The fee shall not exceed the costs to the county recorder
39 for the retrieval and duplication of the record. These negotiated fees shall
40 be recommended by the county recorder and approved by the board of county
41 commissioners. Any existing agreements for duplication of paper, microfilm
42 or microfiche documents in excess of one hundred (100) pages are hereby rat-
43 ified and approved. Any negotiated fees shall remain in effect until such
44 time as either party requests a review of the fee.
45 (4) All instruments delivered to the county recorder for record shall
46 be recorded rather than filed with the exception of plats, surveys, corner-
47 stone markers and instruments under the uniform commercial code.
48 (5) For all other services as recorder, not enumerated herein, the fee
49 fixed in the statute requiring the service or the same fee as allowed the
50 clerk of the district court for like service.

1 (6) A page shall not exceed fourteen (14) inches in length nor eight and
 2 one-half (8 1/2) inches in width. Each page shall be typewritten or be in
 3 legible writing. The recording fee to be charged for maps, sketches, draw-
 4 ings or other instruments except plats larger than the size permitted in this
 5 subsection for a page shall be two cents (2¢) per square inch.

6 SECTION 2. That Section 32-201, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 32-201. WHAT CONSTITUTES MARRIAGE -- NO COMMON-LAW MARRIAGE AFTER
 9 JANUARY 1, 1996. (1) Marriage is a personal relation arising out of a civil
 10 contract between a man and a woman, to which the consent of parties capable of
 11 making it is necessary. Consent alone will not constitute marriage; it must
 12 be followed by ~~the issuance of a license and~~ a solemnization as authorized
 13 and provided by law the filing of a marriage certificate with the county
 14 recorder in the county in which the solemnization took place. Marriage cre-
 15 ated by a mutual assumption of marital rights, duties or obligations shall
 16 not be recognized as a lawful marriage.

17 (2) The provisions of subsection (1) of this section requiring ~~the is-~~
 18 ~~suance of a license and~~ a solemnization shall not invalidate any marriage
 19 contract in effect prior to January 1, 1996, created by consenting parties
 20 through a mutual assumption of marital rights, duties or obligations.

21 SECTION 3. That Section 32-202, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 32-202. PERSONS WHO MAY MARRY. Any unmarried male of the age of eigh-
 24 teen (18) years or older, and any unmarried female of the age of eighteen (18)
 25 years or older, and not otherwise disqualified, are capable of consenting
 26 to and consummating marriage. Provided that if the male party to the con-
 27 tract is under the age of eighteen (18) and not less than sixteen (16) years
 28 of age, or if the female party to the contract is under the age of eighteen
 29 (18) and not less than sixteen (16) years of age, ~~the license a marriage con-~~
 30 ~~tract shall not be issued valid~~ except upon the consent in writing duly ac-
 31 knowledged and sworn to by the father, mother or guardian of any such person
 32 if there be either, and provided further, that no such license may contract
 33 shall be issued valid, if the male be under eighteen (18) years of age and the
 34 female under eighteen (18) years of age, unless each party to the contract
 35 submits to the county recorder his or her original birth certificate, or cer-
 36 tified copy thereof or other proof of age acceptable to the county recorder.
 37 Provided further, that where the female is under the age of sixteen (16), or
 38 the male is under the age of sixteen (16), ~~the license a marriage contract~~
 39 ~~shall not issue be valid~~ except upon the consent in writing duly acknowledged
 40 or sworn to by the father, mother or guardian of such person if there be any
 41 such, and upon order of the court. Such order shall be secured upon petition
 42 of any interested party which petition shall show that the female minor un-
 43 der the age of sixteen (16), or the male minor under the age of sixteen (16),
 44 is physically and/or mentally so far developed as to assume full marital and
 45 parental duties, and/or that it is to the best interest of society that the
 46 marriage be permitted. A hearing shall be had on such petition forthwith or
 47 at such time and upon such notice as the court may designate. The judge shall

1 secure from a physician his opinion as an expert as to whether said person
 2 is sufficiently developed mentally and physically to assume full marital du-
 3 ties. If said court is satisfied from the evidence that such person is capa-
 4 ble of assuming full marital duties and/or that it is to the best interest of
 5 society, said court shall make an order to that effect, and a certified copy
 6 of said order shall be filed with the county recorder preliminary to ~~the is-~~
 7 ~~suance~~ recognition of a valid marriage license contract for the marriage of
 8 such person and ~~said order of the court shall be the authority for the county~~
 9 ~~recorder to issue such license.~~

10 SECTION 4. That Section 32-302, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 32-302. DUTY OF PERSON OFFICIATING. All persons herein authorized to
 13 solemnize marriages must ~~first require the presentation of the marriage li-~~
 14 ~~icense and must~~ ascertain and be assured of:

- 15 1. The identity of the parties.
- 16 2. Their real and full names and places of residence.
- 17 3. That they are of sufficient age to be capable of contracting mar-
 18 riage.
- 19 4. If either the male or the female is under the age of eighteen (18),
 20 the consent of the father, mother or guardian, if any such, is given, or that
 21 such underaged person has been previously but is not at the time married; and
 22 that the parties applying for the rites of marriage, and making such con-
 23 tract, have a legal right so to do.

24 SECTION 5. That Section 32-306, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 32-306. CERTIFICATE TO PARTIES. (1) When a marriage has been solem-
 27 nized the person solemnizing the same must give to each of the parties, ~~if~~
 28 ~~required,~~ a certificate thereof.

29 (2) The form of certificate shall be as follows:

30 I, , a , residing at , in the county of , in the state of
 31 Idaho, do certify that, I did on this day of , in the year , at
 32 , in the county of , in the state of Idaho, solemnize the rights of
 33 matrimony between , of , in the county of , of the state of ,
 34 and , of , of the county of , of the state of , in the presence
 35 of and

36 Witness my hand and seal at the county aforesaid, this day
 37 of ,

38 In the presence of [Seal]

39 (3) The certificate, duly executed by the minister or officer who shall
 40 have solemnized the marriage, shall be filed by him to the office of the
 41 recorder of the county wherein the solemnization occurred within thirty (30)
 42 days from the date of solemnizing the marriage.

43 SECTION 6. That Section 32-401, Idaho Code, be, and the same is hereby
 44 repealed.

1 SECTION 7. That Section [32-402](#), Idaho Code, be, and the same is hereby
2 repealed.

3 SECTION 8. That Section [32-403](#), Idaho Code, be, and the same is hereby
4 repealed.

5 SECTION 9. That Section [32-404](#), Idaho Code, be, and the same is hereby
6 repealed.

7 SECTION 10. That Section [32-405](#), Idaho Code, be, and the same is hereby
8 repealed.

9 SECTION 11. That Section [32-406](#), Idaho Code, be, and the same is hereby
10 repealed.

11 SECTION 12. That Section [32-407](#), Idaho Code, be, and the same is hereby
12 repealed.

13 SECTION 13. That Section [32-408](#), Idaho Code, be, and the same is hereby
14 repealed.

15 SECTION 14. That Section [32-415](#), Idaho Code, be, and the same is hereby
16 repealed.

17 SECTION 15. That Section [39-262](#), Idaho Code, be, and the same is hereby
18 repealed.

19 SECTION 16. That Section [39-263](#), Idaho Code, be, and the same is hereby
20 repealed.

21 SECTION 17. That the Heading for Chapter 4, Title 32, Idaho Code, be,
22 and the same is hereby amended to read as follows:

23 CHAPTER 4

24 ~~MARRIAGE LICENSES, CERTIFICATES, AND RECORDS~~

25 SECTION 18. That Section 39-5210, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 39-5210. ELIGIBLE PROJECTS. To be eligible for domestic violence
28 grants pursuant to this chapter, a project must provide a safe house or
29 refuge and a crisis line, except in the case of a project providing services
30 to batterers. No funds may be granted to batterer programs from the domestic
31 violence project account, which are derived from ~~marriage license or divorce~~
32 fees. Other services which may be provided include, but are not limited to:

33 (1) Counseling;

34 (2) Educational services for community awareness, for prevention of
35 domestic violence and for the care, treatment and rehabilitation of parties
36 to domestic violence;

37 (3) Support groups;

38 (4) Assistance in obtaining legal, medical, psychological or voca-
39 tional services.

1 SECTION 19. That Section 39-5212, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 39-5212. DOMESTIC VIOLENCE PROJECT ACCOUNT. There is hereby created
4 in the state operating fund the domestic violence project account. Moneys
5 received from the fees imposed by section 39-5213, Idaho Code, and section
6 39-6312, Idaho Code, shall be credited to the account and shall be perpetu-
7 ally appropriated to the council on domestic violence and victim assistance
8 for grants for domestic violence projects and to meet the costs of maintain-
9 ing the operation of the council.

10 Eligible projects shall be given priority by the council based upon
11 an allocation of funds to projects in the ~~seven~~ six (76) substate regions
12 established pursuant to section 39-104, Idaho Code, in the proportion that
13 ~~marriage licenses~~ divorce actions are filed in each region.

14 SECTION 20. That Section 39-5213, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 39-5213. FEE IMPOSED. (1) In addition to the fee due to the county
17 recorder of each county of this state under the provisions of section
18 31-3205, Idaho Code, for the ~~issuance filing, recording, and indexing of a~~
19 certificate of marriage license, the recorder shall collect ~~upon presenta-~~
20 ~~tion of proper identification by the applicants~~ an additional fee of fifteen
21 dollars (\$15.00) for each ~~license issued~~ such certificate, which additional
22 fee shall be ~~remitted to the state treasurer for credit to the~~ "expended
23 solely and exclusively by the county for domestic violence projects account"
24 ~~created in section 39-5212, Idaho Code.~~

25 (2) In addition to any other fee imposed for filing an action for di-
26 vorce in the district court, there shall be collected a fee of twenty dollars
27 (\$20.00) for each divorce action, separately identified, which additional
28 fee shall be remitted to the state treasurer for credit to the domestic vio-
29 lence project account created in section 39-5212, Idaho Code.