

1 HOUSE BILL NO. 368

2 INTRODUCED BY S. GREEF

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM PREMARITAL AND MARITAL
5 AGREEMENTS ACT; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR THE VALIDITY AND
6 ENFORCEABILITY OF A PREMARITAL OR MARITAL AGREEMENT; REPEALING THE UNIFORM
7 PREMARITAL AGREEMENT ACT; AMENDING SECTIONS 40-4-202 AND 72-2-1005, MCA; REPEALING
8 SECTIONS 40-2-601, 40-2-602, 40-2-603, 40-2-604, 40-2-605, 40-2-606, 40-2-607, 40-2-608, 40-2-609, AND
9 40-2-610, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

10

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

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13 NEW SECTION. Section 1. Short title. [Sections 1 through 12] may be cited as the Uniform
14 Premarital and Marital Agreements Act.

15

16 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 12], the following definitions
17 apply:

18 (1) "Amendment" means a modification or revocation of a premarital agreement or marital agreement.

19 (2) "Marital agreement" means an agreement between spouses who intend to remain married that
20 affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution,
21 death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an
22 amendment, signed after the spouses marry, of a premarital agreement or marital agreement.

23 (3) "Marital dissolution" means the ending of a marriage by court decree. The term includes a divorce,
24 dissolution, and declaration of invalidity.

25 (4) "Marital right or obligation" means any of the following rights or obligations arising between
26 spouses because of their marital status:

27 (a) spousal support;

28 (b) a right to property, including characterization, management, and ownership;

1 (c) responsibility for a liability;

2 (d) a right to property and responsibility for liabilities at separation, marital dissolution, or death of a
3 spouse; or

4 (e) award and allocation of attorney's fees and costs.

5 (5) "Premarital agreement" means an agreement between individuals who intend to marry that
6 affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution,
7 death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an
8 amendment, signed before the individuals marry, of a premarital agreement.

9 (6) "Property" means anything that may be the subject of ownership, whether real or personal,
10 tangible or intangible, legal or equitable, or any interest therein.

11 (7) "Record" means information that is inscribed on a tangible medium or that is stored in an
12 electronic or other medium and is retrievable in perceivable form.

13 (8) "Sign" means with present intent to authenticate or adopt a record:

14 (a) to execute or adopt a tangible symbol; or

15 (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

16 (9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
17 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

18

19 **NEW SECTION. Section 3. Scope.** (1) [Sections 1 through 12] apply to:

20 (a) a premarital agreement or marital agreement signed on or after [the effective date of sections 1
21 through 12]; and

22 (b) an amendment signed on or after [the effective date of sections 1 through 12] to a premarital
23 agreement or marital agreement signed before [the effective date of sections 1 through 12].

24 (2) [Sections 1 through 12] do not affect any right, obligation, or liability arising under a premarital
25 agreement or marital agreement signed before [the effective date of sections 1 through 12].

26 (3) [Sections 1 through 12] do not apply to:

27 (a) an agreement between spouses that affirms, modifies, or waives a marital right or obligation and
28 requires court approval to become effective; or

1 (b) an agreement between spouses who intend to obtain a marital dissolution or court-decreed
2 separation that resolves their marital rights or obligations and is signed when a proceeding for marital
3 dissolution or court-decreed separation is anticipated or pending.

4 (4) [Sections 1 through 12] do not affect adversely the rights of a bona fide purchaser for value to the
5 extent that [sections 1 through 12] apply to a waiver for a marital right or obligation in a transfer or conveyance
6 of property by a spouse to a third party.

7 (5) A premarital agreement or marital agreement that is valid and enforceable under [sections 1
8 through 12] supersedes the provisions of Title 40, chapter 4.

9

10 **NEW SECTION. Section 4. Governing law.** The validity, enforceability, interpretation, and
11 construction of a premarital agreement or marital agreement are determined:

12 (1) by the law of the jurisdiction designated in the agreement if the jurisdiction has a significant
13 relationship to the agreement or either party and the designated law is not contrary to a fundamental public
14 policy of this state; or

15 (2) absent an effective designation described in subsection (1), by the law of this state, including the
16 choice of law rules of this state.

17

18 **NEW SECTION. Section 5. Principles of law and equity.** Unless displaced by a provision of
19 [sections 1 through 12], principles of law and equity supplement [sections 1 through 12].

20

21 **NEW SECTION. Section 6. Formation requirements.** A premarital agreement or marital agreement
22 must be in a record and signed by both parties. The agreement is enforceable without consideration.

23

24 **NEW SECTION. Section 7. When agreement effective.** A premarital agreement is effective on
25 marriage. A marital agreement is effective on signing by both parties.

26

27 **NEW SECTION. Section 8. Void marriage.** If a marriage is determined to be void, a premarital
28 agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable result.

- 1
- 2 **NEW SECTION. Section 9. Enforcement.** (1) A premarital agreement or marital agreement is
- 3 unenforceable if a party against whom enforcement is sought proves:
- 4 (a) the party's consent to the agreement was involuntary or the result of duress;
- 5 (b) the party did not have access to independent legal representation under subsection (2);
- 6 (c) unless the party had independent legal representation at the time the agreement was signed, the
- 7 agreement did not include a notice of waiver of rights under subsection (3) or an explanation in plain language
- 8 of the marital rights and obligations being modified or waived in the agreement; or
- 9 (d) before signing the agreement, the party did not receive adequate financial disclosure under
- 10 subsection (4).
- 11 (2) A party has access to independent legal representation if:
- 12 (a) before signing a premarital or marital agreement, the party has a reasonable time to:
- 13 (i) decide whether to retain a lawyer to provide independent legal representation; and
- 14 (ii) locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and
- 15 consider the advice provided; and
- 16 (b) the other party is represented by a lawyer and the party has the financial ability to retain a lawyer
- 17 or the other party agrees to pay the reasonable fees and expenses of independent legal representation.
- 18 (3) A notice of waiver of rights under this section requires language, conspicuously displayed,
- 19 substantially similar to the following, as applicable to the premarital agreement or marital agreement:
- 20 "If you sign this agreement, you may be:
- 21 giving up your right to be supported by the person you are marrying or to whom you are married;
- 22 giving up your right to ownership or control of money and property;
- 23 agreeing to pay bills and debts of the person you are marrying or to whom you are married;
- 24 giving up your right to money and property if your marriage ends or the person to whom you are
- 25 married dies; or
- 26 giving up your right to have your legal fees paid."
- 27 (4) A party has adequate financial disclosure under this section if the party:
- 28 (a) receives a reasonably accurate description and good faith estimate of value of the property,

1 liabilities, and income of the other party;

2 (b) expressly waives, in a separate signed record, the right to financial disclosure beyond the
3 disclosure provided; or

4 (c) has adequate knowledge or a reasonable basis for having adequate knowledge of the information
5 described in subsection (4)(a).

6 (5) If a premarital agreement or marital agreement modifies or eliminates spousal support and the
7 modification or elimination causes a party to the agreement to be eligible for support under a program of public
8 assistance at the time of separation or marital dissolution, a court, on request of that party, may require the
9 other party to provide support to the extent necessary to avoid that eligibility.

10 (6) A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the
11 context of the agreement taken as a whole:

12 (a) the term was unconscionable at the time of signing; or

13 (b) enforcement of the term would result in a substantial hardship for a party because of a material
14 change in circumstances arising after the agreement was signed.

15 (7) The court shall decide a question of unconscionability or substantial hardship under subsection (6)
16 as a matter of law.

17
18 **NEW SECTION. Section 10. Unenforceable terms.** (1) In this section, "parenting responsibility"
19 means physical or legal custody, parenting time, access, visitation, or other parenting right or duty with respect
20 to a child.

21 (2) A term in a premarital agreement or marital agreement is not enforceable to the extent that it:

22 (a) adversely affects a child's right to support;

23 (b) limits or restricts a remedy available to a victim of domestic violence under law of this state other
24 than [sections 1 through 12];

25 (c) purports to modify the grounds for a court-decreed separation or marital dissolution available
26 under law of this state other than [sections 1 through 12]; or

27 (d) penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital
28 dissolution.

1 (3) A term in a premarital agreement or marital agreement that defines the rights or duties of the
2 parties regarding parenting responsibility is not binding on the court.

3
4 **NEW SECTION. Section 11. Limitation of action.** A statute of limitations applicable to an action
5 asserting a claim for relief under a premarital agreement or marital agreement is tolled during the marriage of
6 the parties to the agreement, but the equitable defenses limiting the time for enforcement, including laches and
7 estoppel, are available to either party.

8
9 **NEW SECTION. Section 12. Relation to electronic signatures in global and national commerce**
10 **act.** [Sections 1 through 12] modify, limit, or supersede the Electronic Signatures in Global and National
11 Commerce Act, 15 U.S.C. 7001, et seq., but do not modify, limit, or supersede section 101(c) of that act, 15
12 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15
13 U.S.C. 7003(b).

14
15 **Section 13.** Section 40-4-202, MCA, is amended to read:

16 **"40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation, or
17 division of property following a decree of dissolution of marriage or legal separation by a court that lacked
18 personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without
19 regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion
20 between the parties the property and assets belonging to either or both, however and whenever acquired and
21 whether the title to the property and assets is in the name of the husband or wife or both. In making
22 apportionment, the court shall consider the duration of the marriage and prior marriage of either party, the age,
23 health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities,
24 and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to
25 maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall
26 also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse
27 as a homemaker or to the family unit. In dividing property acquired prior to the marriage, property acquired by
28 gift, bequest, devise, or descent, property acquired in exchange for property acquired before the marriage or in

1 exchange for property acquired by gift, bequest, devise, or descent, the increased value of property acquired
 2 prior to marriage, and property acquired by a spouse after a decree of legal separation, the court shall consider
 3 those contributions of the other spouse to the marriage, including:

- 4 (a) the nonmonetary contribution of a homemaker;
- 5 (b) the extent to which the contributions have facilitated the maintenance of the property; and
- 6 (c) whether or not the property division serves as an alternative to maintenance arrangements.

7 (2) In a proceeding, the court may protect and promote the best interests of the children by setting
 8 aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the
 9 support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the
 10 parties.

11 (3) Each spouse is considered to have a common ownership in marital property that vests
 12 immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested
 13 interest must be determined and made final by the court pursuant to this section.

14 (4) The division and apportionment of marital property caused by or incident to a decree of
 15 dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or
 16 disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

- 17 (a) the property laws of this state;
- 18 (b) the income tax laws of this state; and
- 19 (c) the federal income tax laws.

20 ~~(5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.~~

21 ~~(6)~~(5) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the
 22 Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan
 23 administrator of the plan for which benefits are being distributed by the order, the child support enforcement
 24 division, the parties, and each party's counsel of record."

25

26 **Section 14.** Section 72-2-1005, MCA, is amended to read:

27 **"72-2-1005. Exclusions from statutory rule against perpetuities.** Section 72-2-1002 does not
 28 apply to:

- 1 (1) a nonvested property interest or a power of appointment arising out of a nondonative transfer,
2 except a nonvested property interest or a power of appointment arising out of a:
- 3 (a) premarital or ~~postmarital~~ marital agreement;
 - 4 (b) separation or divorce settlement;
 - 5 (c) spouse's election;
 - 6 (d) similar arrangement arising out of a prospective, existing, or previous marital relationship between
7 the parties;
 - 8 (e) contract to make or not to revoke a will or trust;
 - 9 (f) contract to exercise or not to exercise a power of appointment;
 - 10 (g) transfer in satisfaction of a duty of support; or
 - 11 (h) reciprocal transfer;
- 12 (2) a fiduciary's power relating to the administration or management of assets, including the power of
13 a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;
- 14 (3) the power to appoint a fiduciary;
 - 15 (4) a discretionary power of a trustee to distribute principal before termination of a trust to a
16 beneficiary having an indefeasibly vested interest in the income and principal;
 - 17 (5) a nonvested property interest held by a charity, government, or governmental agency or
18 subdivision if the nonvested property interest is preceded by an interest held by another charity, government, or
19 governmental agency or subdivision;
 - 20 (6) a nonvested property interest in or a power of appointment with respect to a trust or other property
21 arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income
22 deferral, or other current or deferred benefit plan for one or more employees or independent contractors, or
23 their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the
24 benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other
25 property arrangement, except a nonvested property interest or a power of appointment that is created by an
26 election of a participant or a beneficiary or spouse; or
 - 27 (7) a property interest, power of appointment, or arrangement that was not subject to the common-law
28 rule against perpetuities or is excluded by another statute of this state."

1

2 **NEW SECTION. Section 15. Repealer.** The following sections of the Montana Code Annotated are

3 repealed:

4 40-2-601. Short title.

5 40-2-602. Application and construction.

6 40-2-603. Definitions.

7 40-2-604. Formalities.

8 40-2-605. Content.

9 40-2-606. When agreement becomes effective.

10 40-2-607. Amendment -- revocation.

11 40-2-608. Enforcement.

12 40-2-609. Enforcement when marriage void.

13 40-2-610. Limitation of actions.

14

15 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through 12] are intended to be
16 codified as an integral part of Title 40, chapter 2, part 6, and the provisions of Title 40, chapter 2, part 6, apply
17 to [sections 1 through 12].

18

19 **NEW SECTION. Section 17. Effective date -- applicability.** (1) [This act] is effective October 1,
20 2021, and applies to:

21 (a) premarital agreements or marital agreements signed on or after October 1, 2021; and

22 (b) amendments signed on or after October 1, 2021, to premarital agreements or marital agreements
23 signed before October 1, 2021.

24 (2) The Uniform Premarital Agreement Act, Chapter 189, Laws of 1987, applies to premarital
25 agreements and amendments to or revocations of premarital agreements that were executed on or after
26 October 1, 1987, through September 30, 2021.

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- END -