

HOUSE BILL NO. 405

INTRODUCED BY J. ESSMANN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE ENFORCEMENT OF  
PREMARITAL AGREEMENTS; PROVIDING THAT A PARTY'S PHYSICAL OR MENTAL IMPAIRMENT MAY  
RENDER A PREMARITAL AGREEMENT UNENFORCEABLE IN CERTAIN CIRCUMSTANCES; AND  
AMENDING SECTION 40-2-608, MCA."

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

**Section 1.** Section 40-2-608, MCA, is amended to read:

**"40-2-608. Enforcement.** (1) A premarital agreement is not enforceable if the party against whom  
enforcement is sought proves that:

- (a) that party did not execute the agreement voluntarily; or
- (b) the agreement was unconscionable when it was executed and, before execution of the agreement,  
that party:
  - (i) was not provided a fair and reasonable disclosure of the property or financial obligations or of a  
physical or mental impairment of the other party;
  - (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial  
obligations or of a physical or mental impairment of the other party beyond the disclosure provided; and
  - (iii) did not have or reasonably could not have had an adequate knowledge of the property or financial  
obligations or of a physical or mental impairment of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification  
or elimination causes one party to the agreement to be eligible for support under a program of public assistance  
at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require  
the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement must be decided by the court as a matter  
of law.

(4) For the purposes of this section, the term "physical or mental impairment" means a physical or mental  
impairment that substantially limits one or more major life activities and that is expected to last longer than 1 year

1 or result in death. The term includes:

2 (a) a record or past history of an impairment;

3 (b) an impairment that is in remission;

4 (c) an impairment of a major bodily function, including but not limited to disruptions of the immune system  
5 or of neurological or endocrine functions; and

6 (d) an impairment that poses a safety threat."

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8 NEW SECTION. Section 2. Saving clause. [This act] does not affect rights and duties that matured,  
9 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

10 - END -