

## HOUSE BILL NO. 607

INTRODUCED BY T. FACEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE REQUIREMENT THAT A MARRIAGE IS  
5 BETWEEN A MAN AND A WOMAN; REMOVING THE PROHIBITION ON MARRIAGES BETWEEN PERSONS  
6 OF THE SAME SEX; REPLACING REFERENCES TO HUSBAND AND WIFE WITH REFERENCES TO  
7 SPOUSE; AND AMENDING SECTIONS 1-1-219, 15-7-307, 15-30-122, 15-30-142, 19-2-802, 19-20-717,  
8 25-5-202, 26-1-602, 26-1-802, 27-1-515, 27-1-601, 28-2-402, 32-2-416, 32-5-310, 33-15-401, 33-22-201,  
9 35-18-311, 35-20-216, 40-1-103, 40-1-401, 40-2-101, 40-2-102, 40-2-105, 40-2-106, 40-2-201, 40-2-206,  
10 40-2-301, 40-2-303, 40-2-311, 40-4-202, 40-4-251, 40-5-175, 40-7-310, 42-1-106, 49-1-103, 50-21-103,  
11 53-6-144, 69-14-1006, 70-1-314, 70-19-102, 70-32-202, 70-32-301, 70-32-302, 72-2-812, AND 72-2-814, MCA."

12

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

14

15 **Section 1.** Section 1-1-219, MCA, is amended to read:

16 **"1-1-219. Relationship by affinity.** (1) Unless the context requires otherwise, in this code "affinity"  
17 means the relation ~~which~~ that one spouse has, by virtue of the marriage, to blood relatives of the other.  
18 Therefore, a person has the same relation by affinity to ~~his~~ the person's spouse's blood relatives as ~~his~~ the  
19 person's spouse has to them by consanguinity and vice versa.

20 (2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by  
21 consanguinity.

22 (3) Notwithstanding subsection (1), the term "affinity" includes the relation of ~~husband and wife~~ spouses.  
23 ~~Husband and wife~~ Spouses are considered to be related by affinity in the first degree."

24

25 **Section 2.** Section 15-7-307, MCA, is amended to read:

26 **"15-7-307. Certificate -- exceptions.** The certificate imposed by this part applies to all transfers.  
27 However, the certificate filed ~~for the following transfers need~~ is not required to disclose the consideration paid  
28 or to be paid for the real estate transferred for the following:

29 (1) an instrument recorded prior to July 1, 1975;

30 (2) the sale of agricultural land when the land is used for agricultural purposes;

- 1 (3) the sale of timberland when the land is used for producing timber;
- 2 (4) the United States of America, this state, or any instrumentality, agency, or subdivision ~~thereof~~ of the
- 3 United States or of this state;
- 4 (5) an instrument ~~which~~ that, (without added consideration), confirms, corrects, modifies, or
- 5 supplements a previously recorded instrument;
- 6 (6) a transfer pursuant to court decree;
- 7 (7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or
- 8 other business entities;
- 9 (8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole
- 10 consideration of the cancellation or surrender of subsidiary stock;
- 11 (9) a transfer of decedents' estates;
- 12 (10) a transfer of a gift;
- 13 (11) a transfer between ~~husband and wife~~ spouses or parent and child with only nominal actual
- 14 consideration ~~therefor~~;
- 15 (12) an instrument the effect of which is to transfer the property to the same party or parties;
- 16 (13) a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action, or mortgage foreclosure;
- 17 (14) a transfer made in contemplation of death."

18

19 **Section 3.** Section 15-30-122, MCA, is amended to read:

20 **"15-30-122. Standard deduction.** (1) A standard deduction equal to 20% of adjusted gross income is

21 allowed if elected by the taxpayer on a return. The standard deduction is in lieu of all deductions allowed under

22 15-30-121. The minimum standard deduction is \$665, as adjusted under the provisions of subsection (2), or 20%

23 of adjusted gross income, whichever is greater, to a maximum standard deduction of \$1,500, as adjusted under

24 the provisions of subsection (2). However, in the case of a single joint return of ~~husband and wife~~ spouses or

25 in the case of a single individual who qualifies to file as a head of household on the federal income tax return,

26 the minimum standard deduction is \$1,330, as adjusted under the provisions of subsection (2), or 20% of

27 adjusted gross income, whichever is greater, to a maximum standard deduction of \$3,000, as adjusted under

28 the provisions of subsection (2). The standard deduction may not be allowed to either ~~the husband or the wife~~

29 spouse if the tax of one of the spouses is determined without regard to the standard deduction. For purposes

30 of this section, the determination of whether an individual is married must be made as of the last day of the tax

1 year unless one of the spouses dies during the tax year, in which case the determination must be made as of  
2 the date of death.

3 (2) By November 1 of each year, the department shall multiply both the minimum and the maximum  
4 standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest  
5 \$10. The minimum and maximum standard deduction for joint returns and qualified head of household returns  
6 must be twice the amount of the minimum and maximum standard deduction for single returns. The resulting  
7 adjusted deductions are effective for that tax year and must be used in calculating the tax imposed in  
8 15-30-103."

9

10 **Section 4.** Section 15-30-142, MCA, is amended to read:

11 **"15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits.** (1) For both  
12 resident and nonresident taxpayers, each single individual and each married individual not filing a joint return  
13 with a spouse and having a gross income for the tax year of more than \$1,500, as adjusted under the provisions  
14 of subsection (7), and married individuals not filing separate returns and having a combined gross income for  
15 the tax year of more than \$3,000, as adjusted under the provisions of subsection (7), are liable for a return to  
16 be filed on forms and according to rules that the department may prescribe. The gross income amounts referred  
17 to in the preceding sentence must be increased by \$800, as adjusted under the provisions of 15-30-112(6), for  
18 each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the  
19 taxpayer's spouse under 15-30-112(3) and (4).

20 (2) In accordance with instructions set forth by the department, each taxpayer who is married and living  
21 with ~~husband or wife~~ the taxpayer's spouse and is required to file a return may, at the taxpayer's option, file a  
22 joint return with ~~husband or wife~~ the spouse even though one of the spouses has neither gross income nor  
23 deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability  
24 with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file  
25 separate returns after the time for filing the return of either has expired unless the department consents.

26 (3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized  
27 agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

28 (4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241,  
29 shall compute the amount of income tax payable and shall, at the time of filing the return required by this  
30 chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld,

1 as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in  
2 15-30-241. However, the tax computed must be greater by \$1 than the amount withheld and paid by estimated  
3 return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by  
4 more than \$1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

5 (5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

6 (6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the  
7 taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added  
8 as provided in 15-1-216. In that case, there may not be a penalty because of the understatement if the deficiency  
9 is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

10 (7) By November 1 of each year, the department shall multiply the minimum amount of gross income  
11 necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective  
12 for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to  
13 file a return.

14 (8) Individual income tax forms distributed by the department for each tax year must contain instructions  
15 and tables based on the adjusted base year structure for that tax year."

16

17 **Section 5.** Section 19-2-802, MCA, is amended to read:

18 **"19-2-802. Effect of no designation or no surviving designated beneficiary.** (1) If a statutory or  
19 designated beneficiary does not survive the member or payment recipient, the estate of the member or payment  
20 recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the  
21 member's or payment recipient's death. If the estate would not be probated but for the amount due from the  
22 retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of  
23 the deceased or the guardians of the survivor's estate, share and share alike.

24 (2) Payment must be made in the same order in which the following groups are listed:

25 (a) ~~husband or wife~~ spouse;

26 (b) children;

27 (c) father and mother;

28 (d) grandchildren;

29 (e) brothers and sisters; or

30 (f) nieces and nephews.

1           (3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at  
2 the date of payment there is a living person in any of the groups preceding the group of which the person is a  
3 member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied  
4 by the board, that there are no living individuals in the groups preceding the group of which the person is a  
5 member and that the estate of the deceased will not be probated.

6           (4) The payment must be in full and complete discharge and acquittance of the board and system on  
7 account of the member's or payment recipient's death."

8

9           **Section 6.** Section 19-20-717, MCA, is amended to read:

10           **"19-20-717. Effect of no designation or no surviving beneficiary.** (1) If a beneficiary is not  
11 designated or if no designated beneficiary survives the payment recipient, the estate of the payment recipient  
12 is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior  
13 to the death of the payment recipient. If the estate would not be probated but for the amount due from the  
14 retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of  
15 the deceased or to the guardians of the survivor's estate, share and share alike.

16           (2) Payment must be made in the same order in which the following groups are listed:

17           (a) ~~husband or wife~~ spouse;

18           (b) children;

19           (c) father and mother;

20           (d) grandchildren;

21           (e) brothers and sisters; or

22           (f) nieces and nephews.

23           (3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at  
24 the date of payment there is a living person in any of the groups preceding the group of which the person is a  
25 member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied  
26 by the system, that there are no living individuals in the groups preceding the group of which the person is a  
27 member and that the estate of the deceased will not be probated.

28           (4) The payment must be in full and complete discharge and acquittance of the board and system on  
29 account of the member's or payment recipient's death."

30

1           **Section 7.** Section 25-5-202, MCA, is amended to read:

2           **"25-5-202. Who may defend when spouse sued.** If a husband and wife be spouses are sued together,  
3 each spouse may defend for his or her that spouse's own right, and if the other spouse ~~neglect to~~ does not  
4 defend, the spouse who does choose to defend may defend for the other spouse's right ~~also~~."

5

6           **Section 8.** Section 26-1-602, MCA, is amended to read:

7           **"26-1-602. Disputable presumptions.** All other presumptions are "disputable presumptions" and may  
8 be controverted by other evidence. The following are of that kind:

9           (1) A person is innocent of crime or wrong.

10          (2) An unlawful act was done with an unlawful intent.

11          (3) A person intends the ordinary consequence of the person's voluntary act.

12          (4) A person takes ordinary care of the person's own concerns.

13          (5) Evidence willfully suppressed would be adverse if produced.

14          (6) More satisfactory evidence would be adverse if weaker and less satisfactory evidence is offered and  
15 it is within the power of the party to offer more satisfactory evidence.

16          (7) Money paid by one to another was due the latter.

17          (8) A thing delivered by one to another belonged to the latter.

18          (9) When the instrument evidencing an obligation has been delivered to the debtor, the obligation has  
19 been paid.

20          (10) Prior rent or installments have been paid when a receipt for later rent or installments is produced.

21          (11) Things that a person possesses are owned by the person.

22          (12) A person is the owner of property if the person exercises acts of ownership over it or there is  
23 common reputation of the person's ownership.

24          (13) A person in possession of an order on the person for the payment of money or the delivery of a  
25 thing has paid the money or delivered the thing accordingly.

26          (14) A person acting in a public office was regularly appointed to it.

27          (15) Official duty has been regularly performed.

28          (16) A court or judge acting as ~~such a court or judge~~, whether in this state or any other state or country,  
29 was acting in the lawful exercise of the court's or judge's jurisdiction.

30          (17) A judicial record, when not conclusive, does still correctly determine or set forth the rights of the

1 parties.

2 (18) All matters within an issue were ~~laid before~~ submitted to the jury and passed upon by ~~them~~ the jury,  
3 and in ~~like the same~~ manner, all matters within ~~a submission to an~~ arbitration proceeding were ~~laid before~~  
4 submitted to the arbitrators and passed upon by ~~them~~ the arbitrators.

5 (19) Private transactions have been fair and regular.

6 (20) The ordinary course of business has been followed.

7 (21) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.

8 (22) An endorsement of a negotiable promissory note or bill of exchange was made at the time and  
9 place of making the note or bill.

10 (23) A writing is truly dated.

11 (24) A letter ~~duy~~ directed and mailed was received in the regular course of the mail.

12 (25) There is an identity of persons when there is an identity of names.

13 (26) A person not heard from in 5 years is dead.

14 (27) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right or  
15 fact.

16 (28) Things have happened according to the ordinary course of nature and the ordinary habits of life.

17 (29) Persons acting as partners have entered into a contract of partnership.

18 (30) ~~A man and a woman~~ Individuals deporting themselves as ~~husband and wife~~ spouses have entered  
19 into a lawful contract of marriage.

20 (31) A child born in lawful wedlock is legitimate.

21 (32) A thing once proved to exist continues as long as is usual with things of that nature.

22 (33) The law has been obeyed.

23 (34) A printed and published book purporting to be printed or published by public authority was ~~so~~  
24 printed or published by public authority.

25 (35) A printed and published book purporting to contain reports of cases adjudged in the tribunals of the  
26 state or country where the book is published contains correct reports of ~~such~~ the cases.

27 (36) A trustee or other person whose duty it was to convey real property to a particular person has  
28 actually conveyed the property to the particular person. This presumption applies when it is necessary to perfect  
29 the title of the person or the person's successor in interest.

30 (37) When there has been uninterrupted use by the public of land for a burial ground for 5 years, with

1 the consent of the owner and without a reservation of rights, the owner intended to dedicate it to the public for  
2 that purpose.

3 (38) There was a good and sufficient consideration for a written contract."  
4

5 **Section 9.** Section 26-1-802, MCA, is amended to read:

6 **"26-1-802. Spousal privilege.** ~~A husband~~ An individual cannot be examined for or against ~~his wife~~ the  
7 individual's spouse without ~~her~~ the spouse's consent or ~~a wife for or against her husband~~ without his consent,  
8 ~~nor can either~~ Either spouse, during the marriage or afterward, may not be, without the consent of the other, be  
9 examined as to any communication made by one to the other during the marriage; ~~but this~~ This exception does  
10 not apply to a civil action or proceeding by one spouse against the other or to a criminal action or proceeding  
11 for a crime committed by one spouse against the other."  
12

13 **Section 10.** Section 27-1-515, MCA, is amended to read:

14 **"27-1-515. Protection of personal relations -- abduction.** The rights of personal relations forbid:

- 15 (1) the abduction of a parent from a child;  
16 (2) the abduction or enticement of a ~~wife from her husband or a husband~~ spouse from ~~his wife~~ the other  
17 spouse, of a child from a parent or from a guardian entitled to ~~its~~ the child's custody, or of a servant from a  
18 master."  
19

20 **Section 11.** Section 27-1-601, MCA, is amended to read:

21 **"27-1-601. Cause of action for alienation of affections abolished.** All civil causes of action for  
22 alienation of affections of ~~husband or wife~~ a spouse are ~~hereby~~ abolished."  
23

24 **Section 12.** Section 28-2-402, MCA, is amended to read:

25 **"28-2-402. What constitutes duress.** Duress consists in:

- 26 (1) unlawful confinement of the person of the party, of the ~~husband or wife~~ spouse of ~~such~~ the party,  
27 or of an ancestor, descendant, or adopted child of ~~such~~ the party, ~~husband,~~ or ~~wife~~ spouse;  
28 (2) unlawful detention of the property of any ~~such~~ person enumerated in subsection (1); or  
29 (3) confinement of ~~such~~ a person, lawful in form but fraudulently obtained or fraudulently made unjustly  
30 harassing or oppressive."



1

2 **Section 13.** Section 32-2-416, MCA, is amended to read:

3 **"32-2-416. Joint ownership.** Any building and loan association may issue savings certificates and  
4 shares to or in the name of two or more persons, whether ~~husband and wife~~ spouses or otherwise;. A  
5 withdrawal by any one of ~~such the~~ the persons and the receipt or acquittance of any one of ~~such the~~ the persons ~~shall~~  
6 ~~be is~~ is valid and constitutes sufficient release and discharge to the association for ~~such the~~ the withdrawals,  
7 regardless of the death or disability of any other ~~such~~ joint shareholder or certificate holder."

8

9 **Section 14.** Section 32-5-310, MCA, is amended to read:

10 **"32-5-310. Wage assignments -- limitations.** (1) The payment in money, credit, goods, or things in  
11 action as consideration for any sale or assignment of or order for the payment of wages, salary, commission,  
12 or other compensation for services, whether earned or to be earned, ~~shall must~~, for the purpose of regulation  
13 under this chapter, be considered a loan secured by ~~such the~~ the assignment; ~~and the~~ The amount by which the  
14 assigned compensation exceeds the amount of the consideration actually paid ~~shall must~~, for the purposes of  
15 regulation under this chapter, be considered interest or charges upon the loan from the date of payment to the  
16 date the compensation is payable. ~~Such~~ Wage assignment transactions ~~shall must~~ be governed by and ~~be are~~  
17 subject to the provisions of this chapter.

18 (2) ~~(a) Any~~ Subject to subsection (2)(b), an assignment or other transfer to a licensee or for the benefit  
19 of a licensee of salary, wages, commissions, or other compensation for services must be limited to an amount  
20 not exceeding 10% of ~~such the~~ the salary, wages, commissions, or other compensation owing at the time of the  
21 notice to the debtor's employer and ~~thereafter to become owing~~ that become owed.

22 ~~(b) (i) However, no such~~ Except as provided in subsection (2)(b)(ii), an assignment or order is not valid  
23 unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person  
24 by both ~~husband and wife~~ spouses;

25 ~~(ii) provided that~~ The written assent of a spouse is not required when ~~husband and wife~~ the spouses  
26 have been and are living separate and apart when ~~such an~~ an assignment or order is made.

27 (3) Only if the debtor defaults in payment of the whole or some part of the loan for which ~~such an~~ an  
28 assignment or transfer is security ~~shall may~~ notice be given to the debtor's employer of ~~such an~~ an assignment or  
29 transfer. ~~Such~~ The notice must be served on the employer or a managing agent of ~~such the~~ the employer, must be  
30 verified by the oath of the licensee or ~~his~~ the licensee's agent, and must include:

- 1 (a) a correct copy of the assignment;
- 2 (b) a statement of the amount of ~~such the~~ loan and the amount due and unpaid ~~thereon on the loan~~;
- 3 and
- 4 (c) a copy of this section.
- 5 ~~(3)~~(4) The acceptance and honoring of any assignment ~~shall~~ must be at the option of the employer."
- 6

7 **Section 15.** Section 33-15-401, MCA, is amended to read:

8 **"33-15-401. Application required -- life and disability insurance.** ~~No~~ A life or disability insurance  
 9 contract upon an individual, except a contract of group life insurance or of group or blanket disability insurance,  
 10 ~~shall~~ may not be made or effectuated unless at the time of the making of the contract the individual insured,  
 11 being of competent legal capacity to contract, applies ~~therefor~~ for or has consented ~~thereto~~ to the contract in  
 12 writing, except in the following cases:

13 (1) A spouse may effectuate ~~such~~ insurance upon the other spouse.

14 (2) Any person having an insurable interest in the life of a minor or any person upon whom a minor is  
 15 dependent for support and maintenance may effectuate insurance upon the life of or pertaining to ~~such the~~  
 16 minor.

17 (3) Family policies insuring any two or more members of a family may be issued on an application  
 18 signed by either parent, a stepparent, or by a ~~husband or wife~~ spouse."

19

20 **Section 16.** Section 33-22-201, MCA, is amended to read:

21 **"33-22-201. Format and content.** An individual policy of disability insurance may not be delivered or  
 22 issued for delivery to any person in this state unless it otherwise complies with this code and complies with the  
 23 following:

24 (1) The entire amount of money and other considerations for the policy must be expressed in the policy.

25 (2) The time when the insurance takes effect and terminates must be expressed in the policy.

26 (3) The policy may insure only one person, except that a policy may insure, originally or by subsequent  
 27 amendment, upon the application of an adult member of a family who is the policyholder, any two or more  
 28 eligible members of that family, including ~~husband, wife~~ a spouse, dependent children or any children under a  
 29 specified age that may not exceed 25 years, and any other person dependent upon the policyholder.

30 (4) The style, arrangement, and overall appearance of the policy may not give undue prominence to

1 any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached  
2 papers must be plainly printed in lightfaced type of a style in general use, the size of which must be uniform and  
3 not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

4 (5) The "text" must include all printed matter except the name and address of the insurer, name or title  
5 of the policy, the brief description, if any, and captions and subcaptions.

6 (6) The exceptions and reductions of indemnity must be set forth in the policy and, other than those  
7 contained in 33-22-204 through 33-22-215 and 33-22-221 through 33-22-231, must be printed, at the insurer's  
8 option, either included with the benefit provision to which they apply or under an appropriate caption such as  
9 "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only  
10 to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit  
11 provision to which it applies.

12 (7) The policy may not contain a provision purporting to make any portion of the charter, rules,  
13 constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except  
14 in the case of the incorporation of or reference to a statement of rates or classification of risks or short-rate table  
15 filed with the commissioner."  
16

17 **Section 17.** Section 35-18-311, MCA, is amended to read:

18 **"35-18-311. Board of trustees -- number -- qualifications -- removal -- compensation -- husband**  
19 **and wife spouse.** (1) The business and affairs of a cooperative must be managed by a board of not less than  
20 five trustees, each of whom must be a member of the cooperative or of another cooperative that is a member  
21 of the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those  
22 provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of  
23 successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide for  
24 the removal of trustees from office and for the election of their successors.

25 (2) Without approval of the membership, trustees:

26 (a) may not receive any salaries for their services as trustees, except trustees may receive the same  
27 insurance coverage provided to cooperative employees; and

28 (b) except in emergencies, may not be employed by the cooperative in any capacity involving  
29 compensation.

30 (3) The bylaws may provide that the board of trustees may establish a fixed sum, including expenses

1 of attendance, if any, to be allowed for:

2 (a) attendance at each meeting of the board of trustees or any committee of the board of trustees; or

3 (b) representing the cooperative at any meeting or on any business whenever representation has been

4 approved by the board.

5 (4) If ~~a husband and wife~~ spouses hold joint membership in a cooperative, either ~~one spouse~~ but not  
6 both may be elected as a trustee.

7 (5) The policies of the cooperative may provide that benefits provided to employees may be extended  
8 to trustees."

9

10 **Section 18.** Section 35-20-216, MCA, is amended to read:

11 **"35-20-216. Inalienability of lots.** (1) Whenever the lands of ~~such an~~ a cemetery association are laid  
12 out in lots and ~~the lots or any of them~~ the lots or portions of lots are transferred to individual proprietors and there  
13 has been an interment in a lot ~~so transferred~~, that lot from the time of ~~such~~ interment ~~shall forever be~~ is  
14 inalienable and ~~shall~~ must, upon the death of the proprietor, descend to ~~his~~ the proprietor's heirs. However, any  
15 ~~one or more of those heirs~~ heir may release to any other of the heirs ~~his or their~~ that heir's interest in the lot. A  
16 copy of the release ~~shall~~ must be filed with the secretary of the association or with the county clerk and recorder  
17 of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the  
18 body of a deceased person may not be interred in that lot unless it is the body of:

19 (a) a person having an interest in that lot at the time of ~~his decease~~ death;

20 (b) a relative of some person having ~~such an~~ an interest;

21 (c) the ~~wife or husband~~ spouse of ~~such a person~~ having an interest; or

22 (d) a relative of ~~such husband or wife~~ a spouse.

23 (2) However, the person or persons in whom the title to ~~such a~~ a lot or lots ~~or part thereof~~ is vested may  
24 at any time sell, convey, and release the lot or lots ~~or parts thereof~~ to the cemetery association maintaining the  
25 cemetery in which the lots are situated. A copy of the instruments of ~~such~~ conveyance ~~shall~~ must be filed in the  
26 same manner provided for release from one heir to another. The cemetery association may use any funds under  
27 its control for ~~such cemetery~~ cemetery purposes and shall hold and may convey ~~such lots or parts thereof~~ of lots to other  
28 purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots.  
29 This ~~provised~~ section does not allow or authorize the conveyance to the cemetery association of a piece of ground  
30 in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted

1 conveyance."

2

3 **Section 19.** Section 40-1-103, MCA, is amended to read:

4 **"40-1-103. Formalities.** Marriage is a personal relationship between ~~a man and a woman~~ two  
5 individuals arising out of a civil contract to which the consent of the parties is essential. A marriage licensed,  
6 solemnized, and registered as provided in this chapter is valid in this state. A marriage may be contracted,  
7 maintained, invalidated, or dissolved only as provided by the law of this state."

8

9 **Section 20.** Section 40-1-401, MCA, is amended to read:

10 **"40-1-401. Prohibited marriages -- contracts.** (1) The following marriages are prohibited:

11 (a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

12 (b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the  
13 relationship is by the half or the whole blood, or between first cousins;

14 (c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the  
15 relationship is by the half or the whole blood;

16 ~~—— (d) a marriage between persons of the same sex.~~

17 (2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are  
18 lawfully married as of the date of the removal of the impediment.

19 (3) Children born of a prohibited marriage are legitimate.

20 (4) A contractual relationship entered into for the purpose of achieving a civil relationship that is  
21 prohibited under subsection (1) is void as against public policy."

22

23 **Section 21.** Section 40-2-101, MCA, is amended to read:

24 **"40-2-101. Mutual obligations of husband and wife spouses.** ~~Husband and wife~~ Spouses contract  
25 toward each other obligations of mutual respect, fidelity, and support."

26

27 **Section 22.** Section 40-2-102, MCA, is amended to read:

28 **"40-2-102. Duties of husband and wife spouses as to support.** Insofar as each is able, ~~the husband~~  
29 ~~and wife~~ spouses shall support each other out of their property and labor. As used in this section, the word  
30 "support" includes the nonmonetary support provided by a spouse as homemaker."

1

2 **Section 23.** Section 40-2-105, MCA, is amended to read:

3 **"40-2-105. Husband and wife Spouses as joint tenants.** ~~A husband and wife~~ Spouses may hold real  
4 or personal property together, jointly, or in common."

5

6 **Section 24.** Section 40-2-106, MCA, is amended to read:

7 **"40-2-106. Liability for acts or debts of spouse.** ~~Neither husband nor wife, as such, A spouse is not~~  
8 answerable for the acts of the other or liable for the debts contracted by the other; ~~provided, however~~ However,  
9 ~~that the~~ expenses for ~~necessaries of~~ necessities for the family and of the education of the children are  
10 chargeable upon the property of both ~~husband and wife~~ spouses, or either of them, and in relation ~~thereto~~ to  
11 those expenses they may be sued jointly or separately."

12

13 **Section 25.** Section 40-2-201, MCA, is amended to read:

14 **"40-2-201. When husband's and wife's spouse's interests separate.** ~~Neither husband nor wife has~~  
15 A spouse does not have any interest in the property of the other spouse, except as ~~mentioned~~ provided in  
16 40-2-102, but neither spouse can be excluded from the other's dwelling unless enjoined by a court."

17

18 **Section 26.** Section 40-2-206, MCA, is amended to read:

19 **"40-2-206. Same Earnings and accumulations -- when separated.** (1) ~~The~~ Except as provided in  
20 subsection (2), the earnings and accumulations of a married person and of ~~his~~ the person's minor children living  
21 with ~~him~~ the person or in ~~his~~ the person's custody, while ~~he~~ the person is living separate from ~~his~~ the person's  
22 spouse, are the individual property of ~~such~~ that person.

23

(2) ~~except that, to~~ To the extent that a mutual duty of support between the ~~husband and wife~~ spouses  
24 as established by 40-2-102 still exists, ~~such~~ the earnings and accumulations of a married person are liable for  
25 debts incurred for ~~necessary articles~~ necessities procured for the use and benefit of the married person, ~~his~~ or  
26 the person's spouse, or minor children."

27

28 **Section 27.** Section 40-2-301, MCA, is amended to read:

29 **"40-2-301. Husband and wife Spouse may contract.** Either ~~husband or wife~~ spouse may enter into  
30 any engagement or transaction with the other spouse or with any other person ~~respecting~~ concerning property

1 ~~which that~~ either ~~might~~ spouse could enter into, if unmarried; ~~subject in transactions~~ Transactions between  
 2 ~~themselves~~ spouses are subject to the general rules ~~which that~~ control the actions of persons occupying  
 3 confidential relations with each other, as defined by the ~~provisions of this code relative~~ statutes applicable to  
 4 trusts."

5

6 **Section 28.** Section 40-2-303, MCA, is amended to read:

7 **"40-2-303. Alteration of legal relation by contract -- separation agreement.** A ~~husband and wife~~  
 8 spouse cannot by any contract with ~~each the~~ other spouse alter their legal relation, except as to property and  
 9 except that they may agree, in writing, to an immediate separation and may make provision for the support of  
 10 ~~either of them~~ the other spouse and of their children during ~~such the~~ separation."

11

12 **Section 29.** Section 40-2-311, MCA, is amended to read:

13 **"40-2-311. Rights of ~~husband and wife~~ spouses -- how governed.** The property rights of the  
 14 ~~husband and wife~~ spouses are governed by parts 1 through 3 of this chapter, unless there is a marriage  
 15 settlement containing stipulations contrary ~~thereto~~ to the provisions of parts 1 through 3 of this chapter."

16

17 **Section 30.** Section 40-4-202, MCA, is amended to read:

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

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

- 4 (a) the nonmonetary contribution of a homemaker;
- 5 (b) the extent to which such contributions have facilitated the maintenance of this 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 aside  
 8 a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support,  
 9 maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

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

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

- 16 (a) the property laws of this state;
  - 17 (b) the income tax laws of this state; and
  - 18 (c) the federal income tax laws.
- 19 (5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6."  
 20

21 **Section 31.** Section 40-4-251, MCA, is amended to read:

22 **"40-4-251. Definitions.** As used in 40-4-251 through 40-4-258, the following definitions apply:

23 (1) "Asset" includes but is not limited to any real or personal property of any nature however and  
 24 whenever acquired, whether the property is tangible or intangible, whether the property is currently existing or  
 25 contingent, and whether the title is in the name of ~~the husband or wife~~, an individual spouse or both spouses.

26 (2) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a marital  
 27 settlement agreement.

28 (3) "Earnings and accumulations" includes income from any source.

29 (4) "Expenses" includes but is not limited to all personal living expenses, but does not include  
 30 business-related expenses.



1 (5) "Liability" includes but is not limited to any debt or obligation, however and whenever acquired,  
2 whether the debt or obligation is currently existing or contingent or is in the name of ~~the husband or wife~~, an  
3 individual spouse or both spouses.

4 (6) "Marital estate" includes all assets and liabilities."  
5

6 **Section 32.** Section 40-5-175, MCA, is amended to read:

7 **"40-5-175. Special rules of evidence and procedure.** (1) The physical presence of the petitioner in  
8 a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support  
9 order or for the rendition of a judgment determining parentage.

10 (2) A verified petition, affidavit, or document substantially complying with federally mandated forms and  
11 a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person,  
12 is admissible in evidence if given under oath by a party or witness residing in another state.

13 (3) A copy of the record of child support payments certified as a true copy of the original by the  
14 custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it  
15 and is admissible to show whether payments were made.

16 (4) Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and  
17 child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount  
18 of the charges billed and that the charges were reasonable, necessary, and customary.

19 (5) Documentary evidence transmitted from another state to a tribunal of this state by telephone,  
20 telecopier, or other means that do not provide an original writing may not be excluded from evidence on an  
21 objection based on the means of transmission.

22 (6) In a proceeding under this part, a tribunal of this state may permit a party or witness residing in  
23 another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a  
24 designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other  
25 states in designating an appropriate location for the deposition or testimony.

26 (7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may  
27 be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

28 (8) A privilege against disclosure of communications between spouses does not apply in a proceeding  
29 under this part.

30 (9) The defense of immunity based on the relationship of ~~husband and wife~~ spouses or parent and child

1 does not apply in a proceeding under this part."

2

3 **Section 33.** Section 40-7-310, MCA, is amended to read:

4 **"40-7-310. Hearing and order.** (1) Unless the court issues a temporary emergency order pursuant to  
5 40-7-204, upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court  
6 shall order the child delivered to the petitioner unless the respondent establishes that:

7 (a) the child custody determination has not been registered and confirmed under 40-7-305 and that:

8 (i) the issuing court did not have jurisdiction under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and  
9 part 2 of this chapter;

10 (ii) the child custody determination for which enforcement is sought has been vacated, stayed, or  
11 modified by a court of a state having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112,  
12 and part 2 of this chapter or federal law; or

13 (iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of  
14 40-7-106, in the proceedings before the court that issued the order for which enforcement is sought; or

15 (b) the child custody determination for which enforcement is sought was registered and confirmed under  
16 40-7-305, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under  
17 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and part 2 of this chapter or federal law.

18 (2) The court shall award the fees, costs, and expenses authorized under 40-7-312 and may grant  
19 additional relief, including a request for the assistance of law enforcement officials, and may set a further hearing  
20 to determine whether additional relief is appropriate.

21 (3) If a party called to testify refuses to answer on the ground that the testimony may be  
22 self-incriminating, the court may draw an adverse inference from the refusal.

23 (4) A privilege against disclosure of communications between spouses and a defense of immunity  
24 based on the relationship of ~~husband and wife~~ spouses or parent and child may not be invoked in a proceeding  
25 under this part."

26

27 **Section 34.** Section 42-1-106, MCA, is amended to read:

28 **"42-1-106. Who may adopt.** The following individuals who otherwise meet the requirements of this title  
29 are eligible to adopt a child:

30 (1) ~~a husband and wife spouses~~ spouses jointly or either ~~the husband or wife spouse~~ spouse if the other spouse is a

1 parent of the child;

2 (2) an unmarried individual who is at least 18 years of age; or

3 (3) a married individual at least 18 years of age who is legally separated from the other spouse or  
4 whose spouse has judicially been declared incompetent."

5

6 **Section 35.** Section 49-1-103, MCA, is amended to read:

7 **"49-1-103. Right to use force.** Any necessary force may be used to protect from wrongful injury the  
8 person or property of one's self, of a ~~wife, husband~~ spouse, child, parent, or other relative or member of one's  
9 family, or of a ward, servant, master, or guest."

10

11 **Section 36.** Section 50-21-103, MCA, is amended to read:

12 **"50-21-103. Limitations on right to perform autopsy or dissection.** The right to perform an autopsy,  
13 dissect a human body, or make any postmortem examination involving dissection of any part of a body is limited  
14 to cases in which:

15 (1) specifically authorized by law;

16 (2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize  
17 dissection or autopsy;

18 (3) authorized by a written statement of the deceased, whether the statement is of a testamentary  
19 character or otherwise;

20 (4) authorized by the ~~husband, wife,~~ spouse or next of kin responsible by law for burial to determine the  
21 cause of death and then only to the extent authorized;

22 (5) the decedent died in a hospital operated by the United States department of veterans affairs, the  
23 Montana school for the deaf and blind, or an institution in the department of corrections or the department of  
24 public health and human services, leaving no surviving ~~husband, wife,~~ spouse or next of kin responsible by law  
25 for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority  
26 on order of the district court to determine the cause of death and then only to the extent authorized by court  
27 order;

28 (6) the decedent died in the state, was a resident, but left no surviving ~~husband, wife,~~ spouse or next  
29 of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district  
30 court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order

1 after it has been shown that the physician made diligent search for the next of kin responsible by law for burial."

2

3 **Section 37.** Section 53-6-144, MCA, is amended to read:

4 **"53-6-144. Relative's responsibility.** Except as otherwise provided in 53-6-167 through 53-6-169,  
5 53-6-171 through 53-6-189, and the provisions of other parts of this title, the only relatives that may be held  
6 responsible for payment of medical assistance under the program are the ~~husband or wife~~ spouse of the  
7 individual, the parents of children under 18 years of age, and the parents of blind or disabled persons over 18  
8 years of age."

9

10 **Section 38.** Section 69-14-1006, MCA, is amended to read:

11 **"69-14-1006. Liability for death or injury to railroad employees.** (1) ~~Every~~ A person or corporation  
12 operating a railroad in this state ~~shall be~~ is liable in damages to any person suffering injury while ~~he~~ the person  
13 is employed by ~~such~~ the person or corporation ~~so~~ operating ~~any such~~ the railroad or, in case of the death of ~~such~~  
14 an employee, instantaneously or otherwise, to ~~his or her~~ the employee's personal representative, for the benefit  
15 of the surviving ~~widow or husband~~ spouse and children of ~~such~~ the employee, ~~and, if none,~~ If the employee did  
16 not have a surviving spouse or children, then the railroad is liable to the ~~of such~~ employee's parents and, if none,  
17 then ~~of~~ to the next of kin dependent upon ~~such~~ the employee; for ~~such~~ injury or death resulting in whole or in part  
18 from the negligence of any of the officers, agents, or employees of ~~such~~ the person or corporation ~~so~~ operating  
19 ~~such the~~ the railroad; The liability in this subsection must relate to ~~in or about~~ the handling, movement, or operation  
20 of any train, engine, or car on or over ~~such~~ the railroad or by reason of any defect or insufficiency, due to ~~its~~ the  
21 railroad's negligence; in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other  
22 equipment.

23 (2) (a) In all actions brought against ~~any such~~ a person or corporation ~~so~~ operating ~~such~~ a railroad,  
24 under or by virtue of any of the provisions of this section, the fact that the employee may have been guilty of  
25 contributory negligence ~~shall~~ does not bar a recovery, but the damages ~~shall~~ must be diminished by the jury in  
26 proportion to the amount of negligence attributable to ~~such~~ the employee; ~~provided~~ However, ~~that no such an~~  
27 employee who ~~may be~~ is injured or killed ~~shall~~ may not be held to have been guilty of contributory negligence  
28 in any case ~~where~~ in which the violation by ~~such~~ the person or corporation; ~~so~~ operating ~~such the~~ the railroad; or  
29 any statute enacted for the safety of employees contributed to the injury or death of ~~such~~ the employee.

30 (b) An employee of ~~any such~~ a person or corporation ~~so~~ operating ~~such~~ a railroad ~~shall~~ may not be

1 ~~deemed~~ considered to have assumed any risk incident to his employment when ~~such~~ the risk arises by reason  
2 of the negligence of his the employer or of any person in the service of ~~such~~ the employer.

3 (3) Any contract, rule, or device ~~whatsoever~~, the purpose or intent of which ~~shall be~~ is to enable ~~any~~  
4 ~~such a~~ person or corporation ~~so~~ operating ~~such a~~ railroad to exempt itself from any liability created by this  
5 section, ~~shall, to that extent, be~~ is void. In any action brought against ~~any such a~~ person or corporation ~~so~~  
6 operating ~~such a~~ railroad, under or by virtue of any of the provisions of this section, ~~such person or corporation~~  
7 the person or railroad may set off ~~therein~~ any sum ~~it that the person or corporation~~ has contributed or paid to any  
8 insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled  
9 ~~thereto~~ to payment on account of the injury or death for which ~~said~~ the action is brought."

10

11 **Section 39.** Section 70-1-314, MCA, is amended to read:

12 **"70-1-314. Interest in common -- how created.** Every interest created in favor of several persons in  
13 their own right, including ~~husband and wife~~ spouses, is an interest in common unless acquired by them in  
14 partnership for partnership purposes or unless declared in its creation to be a joint interest, as provided in  
15 70-1-307."

16

17 **Section 40.** Section 70-19-102, MCA, is amended to read:

18 **"70-19-102. Action affecting title or possession -- filing as constructive notice.** (1) In an action  
19 affecting the title or right of possession of real property or in an action between ~~husband and wife~~ spouses, the  
20 plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his the answer, when  
21 affirmative relief is claimed in ~~such~~ the answer, or at any time afterward, may file in the office of the clerk and  
22 recorder of the county in which the property is situated a notice of the pendency of the action containing the  
23 names of the parties, ~~and~~ the object of the action or defense, and a description of the property in that county  
24 affected ~~thereby~~ by the action.

25 (2) From the time of filing of ~~such~~ the notice only ~~shall~~ a purchaser or encumbrancer of the property  
26 affected ~~thereby~~ be deemed by the action is considered to have constructive notice of the pendency of the action  
27 and only of its pendency against parties designated by their real names."

28

29 **Section 41.** Section 70-32-202, MCA, is amended to read:

30 **"70-32-202. Execution allowed under certain judgments.** The homestead is subject to execution or

1 forced sale in satisfaction of judgments obtained:

2 (1) on debts secured by construction or vendors' liens upon the premises;

3 (2) on debts secured by mortgages on the premises, executed and acknowledged by the ~~husband and~~  
4 ~~wife spouses~~ or by an unmarried claimant; or

5 (3) on debts secured by mortgages on the premises, executed and recorded before the declaration of  
6 homestead was filed for record."

7

8 **Section 42.** Section 70-32-301, MCA, is amended to read:

9 **"70-32-301. How conveyed or encumbered -- instrument.** The homestead of a married person  
10 cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed  
11 and acknowledged by both ~~husband and wife spouses~~."

12

13 **Section 43.** Section 70-32-302, MCA, is amended to read:

14 **"70-32-302. How abandoned -- declaration.** A homestead can be abandoned only by a declaration  
15 of abandonment or a grant ~~thereof~~ of abandonment executed and acknowledged by:

16 (1) ~~the husband and wife~~ both spouses if the claimant is married;

17 (2) the claimant if unmarried."

18

19 **Section 44.** Section 72-2-812, MCA, is amended to read:

20 **"72-2-812. Effect of divorce dissolution of marriage, annulment, or decree of separation.** (1) An  
21 individual ~~who is divorced from~~ whose marriage to the decedent is dissolved or whose marriage to the decedent  
22 has been annulled is not a surviving spouse unless by virtue of a subsequent marriage the individual is married  
23 to the decedent at the time of death. A decree of separation that does not terminate the status of ~~husband and~~  
24 ~~wife spouse~~ is not a ~~divorce~~ dissolution of marriage for purposes of this section.

25 (2) For purposes of chapter 2, parts 1 through 4, and of 72-3-501 through 72-3-508, a surviving spouse  
26 does not include:

27 (a) an individual who obtains or consents to a final decree or judgment of ~~divorce~~ dissolution of marriage  
28 from the decedent or an annulment of their marriage, ~~which if the~~ decree or judgment is not recognized as valid  
29 in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other  
30 or live together as ~~husband and wife spouses~~;

1 (b) an individual who, following an invalid decree or judgment of ~~divorce~~ dissolution or annulment of  
2 marriage obtained by the decedent, participates in a marriage ceremony with a third individual; or

3 (c) an individual who was a party to a valid proceeding concluded by an order purporting to terminate  
4 all marital property rights."  
5

6 **Section 45.** Section 72-2-814, MCA, is amended to read:

7 **"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other**  
8 **changes of circumstances.** (1) As used in this section, the following definitions apply:

9 (a) "Disposition or appointment of property" includes a transfer of an item of property or any other  
10 benefit to a beneficiary designated in a governing instrument.

11 (b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of  
12 a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of  
13 separation that does not terminate the status of ~~husband and wife~~ spouse is not a divorce for purposes of this  
14 section.

15 (c) "Divorced individual" includes an individual whose marriage has been annulled.

16 (d) "Governing instrument" means a governing instrument executed by the divorced individual before  
17 the divorce or annulment of the individual's marriage to the individual's former spouse.

18 (e) "Relative of the divorced individual's former spouse" means an individual who is related to the  
19 divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is  
20 not related to the divorced individual by blood, adoption, or affinity.

21 (f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under  
22 which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under  
23 the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's  
24 relative, whether or not the divorced individual was then empowered to designate the divorced individual in place  
25 of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced  
26 individual then had the capacity to exercise the power.

27 (2) Except as to a retirement system established in Title 19 or as provided by the express terms of a  
28 governing instrument, a court order, or a contract relating to the division of the marital estate made between the  
29 divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

30 (a) revokes any revocable:

1 (i) disposition or appointment of property made by a divorced individual to the individual's former spouse  
2 in a governing instrument and any disposition or appointment created by law or in a governing instrument to a  
3 relative of the divorced individual's former spouse;

4 (ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the  
5 divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

6 (iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a  
7 relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including  
8 a personal representative, executor, trustee, conservator, agent, or guardian; and

9 (b) severs the interests of the former spouses in property held by them at the time of the divorce or  
10 annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into  
11 tenancies in common.

12 (3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for  
13 value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless  
14 a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind  
15 and location of the property, which records are relied upon, in the ordinary course of transactions involving such  
16 property, as evidence of ownership.

17 (4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the  
18 former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a  
19 fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately  
20 before the divorce or annulment.

21 (5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the  
22 former spouse or by a nullification of the divorce or annulment.

23 (6) No change of circumstances other than as described in ~~this section and in 72-2-813~~ and this section  
24 effects a revocation.

25 (7) (a) A payor or other third party is not liable for having made a payment or transferred an item of  
26 property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,  
27 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the  
28 governing instrument, before the payor or other third party received written notice of the divorce, annulment, or  
29 remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital  
30 relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital



1 relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual  
2 receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions  
3 taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

4 (b) The written notice must indicate the name of the decedent, the name of the person asserting an  
5 interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution,  
6 annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce,  
7 annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office  
8 or home by certified mail, return receipt requested, or served upon the payor or other third party in the same  
9 manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage,  
10 a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to  
11 or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no  
12 proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to  
13 decedents' estates located in the county of the decedent's residence. In addition to the actions available under  
14 this section, the payor or other third party may take any action authorized by law or the governing instrument.  
15 If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy  
16 of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit  
17 of property. The court may not charge a filing fee to the payor or other third party for the payment to the court  
18 of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the  
19 funds or item of property and, upon its determination under this section, shall order disbursement or transfer in  
20 accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon  
21 disbursement either to the recipient or against the funds or property on deposit with the court. Payments,  
22 transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the  
23 value of amounts paid to or items of property transferred to or deposited with the court.

24 (8) (a) A bona fide purchaser who purchases property from a former spouse, a relative of a former  
25 spouse, or any other person or who receives from a former spouse, a relative of a former spouse, or any other  
26 person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is  
27 neither obligated under this section to return the payment, item of property, or benefit nor liable under this section  
28 for the amount of the payment or the value of the item of property or benefit. However, a former spouse, a  
29 relative of a former spouse, or any other person who, not for value, received a payment, item of property, or  
30 other benefit to which that person is not entitled under this section is obligated to return the payment, item of

1 property, or benefit; or is personally liable for the amount of the payment or the value of the item of property or  
2 benefit; to the person who is entitled to it under this section.

3 (b) If this section or any part of this section is preempted by federal law, other than the federal Employee  
4 Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any  
5 other benefit covered by this section, a former spouse, a relative of the former spouse, or any other person who,  
6 not for value, received a payment, item of property, or other benefit to which that person is not entitled under this  
7 section is obligated to return that payment, item of property, or benefit; or is personally liable for the amount of  
8 the payment or the value of the item of property or benefit; to the person who would have been entitled to it were  
9 this section or part of this section not preempted."

10 - END -