

HOUSE BILL NO. 537

INTRODUCED BY W. CURDY

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIFORM PROBATE CODE; PROVIDING THAT PROVISIONS REGARDING THE REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE APPLY TO TESTATE AND INTESTATE ESTATES; AND AMENDING SECTION 72-2-814, MCA."

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

**Section 1.** Section 72-2-814, MCA, is amended to read:

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

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

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

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

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

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

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

(2) Except as to a retirement system established in Title 19 or as provided by the express terms of a



1 governing instrument, a court order, or a contract relating to the division of the marital estate made between the  
2 divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

3 (a) revokes any revocable:

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

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

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

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

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

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

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

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

28 (7) (a) A payor or other third party is not liable for having made a payment or transferred an item of  
29 property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,  
30 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the

1 governing instrument, before the payor or other third party received written notice of the divorce, annulment, or  
2 remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital  
3 relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital  
4 relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual  
5 receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions  
6 taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

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

27 (8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse,  
28 or any other person or who receives from a former spouse, relative of a former spouse, or any other person a  
29 payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither  
30 obligated under this section to return the payment, item of property, or benefit nor liable under this section for the

1 amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a  
2 former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which  
3 that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is  
4 personally liable for the amount of the payment or the value of the item of property or benefit, to the person who  
5 is entitled to it under this section.

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

13 (9) The provisions of this section apply to testate and intestate estates, and in the event of a conflict  
14 between the provisions of this section and those provided in chapters 1 through 5 and chapter 16, part 6, of this  
15 title, the provisions of this section shall control. This subsection does not apply if a divorced individual designates  
16 a former spouse as personal representative of the estate subsequent to the divorce."

17 - END -