

1 INTRODUCTION BY Senate BILL NO. 225
2 Halligan

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM
5 PREMARITAL AGREEMENT ACT; AMENDING SECTIONS 40-2-312 THROUGH
6 40-2-314 AND 40-4-202, MCA; AND PROVIDING AN APPLICABILITY
7 DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Short title. [Sections 1
11 through 10] may be cited as the "Uniform Premarital
12 Agreement Act".

13 NEW SECTION. Section 2. Application and construction.
14 [Sections 1 through 10] must be applied and construed to
15 effectuate its general purpose to make uniform the law with
16 respect to the subject of [sections 1 through 10] among the
17 states enacting it.

18 NEW SECTION. Section 3. Definitions. As used in
19 [sections 1 through 10], the following definitions apply:

20 (1) "Premarital agreement" means an agreement between
21 prospective spouses made in contemplation of marriage and to
22 be effective upon marriage.

23 (2) "Property" means an interest, present or future,
24 legal or equitable, vested or contingent, in real or
25 personal property, including income and earnings.

1 NEW SECTION. Section 4. Formalities. A premarital
2 agreement must be in writing and signed by both parties. It
3 is enforceable without consideration.

4 NEW SECTION. Section 5. Content. (1) Parties to a
5 premarital agreement may contract with respect to:

6 (a) the rights and obligations of each of the parties
7 in any of the property of either or both of them, whenever
8 and wherever acquired or located;

9 (b) the right to buy, sell, use, transfer, exchange,
10 abandon, lease, consume, expend, assign, create a security
11 interest in, mortgage, encumber, dispose of, or otherwise
12 manage and control property;

13 (c) the disposition of property upon separation,
14 marital dissolution, death, or the occurrence or
15 nonoccurrence of any other event;

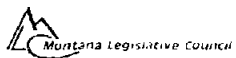
16 (d) the modification or elimination of spousal
17 support;

18 (e) the making of a will, trust, or other arrangement
19 to carry out the provisions of the agreement;

20 (f) the ownership rights in and disposition of the
21 death benefit from a life insurance policy;

22 (g) the choice of law governing the construction of
23 the agreement; and

24 (h) any other matter, including their personal rights
25 and obligations, not in violation of public policy or a



1 statute imposing a criminal penalty.

2 (2) The right of a child to support may not be
3 adversely affected by a premarital agreement.

4 NEW SECTION. Section 6. When agreement becomes
5 effective. A premarital agreement becomes effective upon
6 marriage.

7 NEW SECTION. Section 7. Amendment -- revocation.
8 After marriage, a premarital agreement may be amended or
9 revoked only by a written agreement signed by both parties.
10 The amended agreement or the revocation is enforceable
11 without consideration.

12 NEW SECTION. Section 8. Enforcement. (1) A premarital
13 agreement is not enforceable if the party against whom
14 enforcement is sought proves that:

15 (a) that party did not execute the agreement
16 voluntarily; or

17 (b) the agreement was unconscionable when it was
18 executed and, before execution of the agreement, that party:

19 (i) was not provided a fair and reasonable disclosure
20 of the property or financial obligations of the other party;

21 (ii) did not voluntarily and expressly waive, in
22 writing, any right to disclosure of the property or
23 financial obligations of the other party beyond the
24 disclosure provided; and

25 (iii) did not have or reasonably could not have had an

1 adequate knowledge of the property or financial obligations
2 of the other party.

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

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

13 NEW SECTION. Section 9. Enforcement when marriage
14 void. If a marriage is declared invalid, an agreement that
15 would otherwise have been a premarital agreement is
16 enforceable only to the extent necessary to avoid an
17 inequitable result.

18 NEW SECTION. Section 10. Limitation of actions. Any
19 statute of limitations applicable to an action asserting a
20 claim for relief under a premarital agreement is tolled
21 during the marriage of the parties to the agreement.
22 However, equitable defenses limiting the time for
23 enforcement, including laches and estoppel, are available to
24 either party.

25 Section 11. Section 40-2-312, MCA, is amended to read:

1 "40-2-312. Marriage settlement contracts -- how
2 executed. ~~All~~ Except as provided in [sections 1 through 10],
3 all contracts for marriage settlements must be in writing
4 and executed and acknowledged or proved in like manner as a
5 grant of land is required to be executed and acknowledged or
6 proved."

7 Section 12. Section 40-2-313, MCA, is amended to read:

8 "40-2-313. Contract to be acknowledged and recorded.
9 ~~When~~ Except as provided in [sections 1 through 10], if such
10 contract is acknowledged or proved, it must be recorded in
11 the office of the county clerk of every county in which any
12 real estate which is granted or affected by such contract
13 may be situated."

14 Section 13. Section 40-2-314, MCA, is amended to read:

15 "40-2-314. Effect of recording. ~~The~~ Except as provided
16 in [sections 1 through 10], the recording or nonrecording of
17 such contract has a like effect as the recording or
18 nonrecording of a grant of real property."

19 Section 14. Section 40-4-202, MCA, is amended to read:

20 "40-4-202. Division of property. (1) In a proceeding
21 for dissolution of a marriage, legal separation, or division
22 of property following a decree of dissolution of marriage or
23 legal separation by a court which lacked personal
24 jurisdiction over the absent spouse or lacked jurisdiction
25 to divide the property, the court, without regard to marital

1 misconduct, shall, and in a proceeding for legal separation
2 may, finally equitably apportion between the parties the
3 property and assets belonging to either or both, however and
4 whenever acquired and whether the title thereto is in the
5 name of the husband or wife or both. In making
6 apportionment, the court shall consider the duration of the
7 marriage and prior marriage of either party; ~~antenuptial~~
8 premarital agreement of the parties; the age, health,
9 station, occupation, amount and sources of income,
10 vocational skills, employability, estate, liabilities, and
11 needs of each of the parties; custodial provisions; whether
12 the apportionment is in lieu of or in addition to
13 maintenance; and the opportunity of each for future
14 acquisition of capital assets and income. The court shall
15 also consider the contribution or dissipation of value of
16 the respective estates and the contribution of a spouse as a
17 homemaker or to the family unit. In dividing property
18 acquired prior to the marriage; property acquired by gift,
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22 increased value of property acquired prior to marriage; and
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24 separation, the court shall consider those contributions of
25 the other spouse to the marriage, including:

1 (a) the nonmonetary contribution of a homemaker;

2 (b) the extent to which such contributions have
3 facilitated the maintenance of this property; and

4 (c) whether or not the property division serves as an
5 alternative to maintenance arrangements.

6 (2) In a proceeding, the court may protect and promote
7 the best interests of the children by setting aside a
8 portion of the jointly and separately held estates of the
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11 dependent, or incompetent children of the parties.

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

18 (4) The division and apportionment of marital property
19 caused by or incident to a decree of dissolution, a decree
20 of legal separation, or a declaration of invalidity is not a
21 sale, exchange, transfer, or disposition of or dealing in
22 property but is a division of the common ownership of the
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24 (a) the property laws of this state;

25 (b) the income tax laws of this state; and

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2 NEW SECTION. Section 15. Codification instruction.
3 Sections 1 through 10 are intended to be codified as an
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7 this act is invalid, all valid parts that are severable from
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9 invalid in one or more of its applications, the part remains
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11 the invalid applications.

12 NEW SECTION. Section 17. Applicability. This act
13 applies to premarital agreements executed on or after
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APPROVED BY COMMITTEE
ON JUDICIARY

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16 respect to the subject of [sections 1 through 10] among the
17 states enacting it.

18 NEW SECTION. Section 3. Definitions. As used in
19 [sections 1 through 10], the following definitions apply:

20 (1) "Premarital agreement" means an agreement between
21 prospective spouses made in contemplation of marriage and to
22 be effective upon marriage.

23 (2) "Property" means an interest, present or future,
24 legal or equitable, vested or contingent, in real or
25 personal property, including income and earnings.

1 NEW SECTION. Section 4. Formalities. A premarital
2 agreement must be in writing and signed by both parties. It
3 is enforceable without consideration.

4 NEW SECTION. Section 5. Content. (1) Parties to a
5 premarital agreement may contract with respect to:

6 (a) the rights and obligations of each of the parties
7 in any of the property of either or both of them, whenever
8 and wherever acquired or located;

9 (b) the right to buy, sell, use, transfer, exchange,
10 abandon, lease, consume, expend, assign, create a security
11 interest in, mortgage, encumber, dispose of, or otherwise
12 manage and control property;

13 (c) the disposition of property upon separation,
14 marital dissolution, death, or the occurrence or
15 nonoccurrence of any other event;

16 (d) the modification or elimination of spousal
17 support;

18 (e) the making of a will, trust, or other arrangement
19 to carry out the provisions of the agreement;

20 (f) the ownership rights in and disposition of the
21 death benefit from a life insurance policy;

22 (g) the choice of law governing the construction of
23 the agreement; and

24 (h) any other matter, including their personal rights
25 and obligations, not in violation of public policy or a



1 statute imposing a criminal penalty.

2 (2) The right of a child to support may not be
3 adversely affected by a premarital agreement.

4 NEW SECTION. Section 6. When agreement becomes
5 effective. A premarital agreement becomes effective upon
6 marriage.

7 NEW SECTION. Section 7. Amendment -- revocation.
8 After marriage, a premarital agreement may be amended or
9 revoked only by a written agreement signed by both parties.
10 The amended agreement or the revocation is enforceable
11 without consideration.

12 NEW SECTION. Section 8. Enforcement. (1) A premarital
13 agreement is not enforceable if the party against whom
14 enforcement is sought proves that:

15 (a) that party did not execute the agreement
16 voluntarily; or

17 (b) the agreement was unconscionable when it was
18 executed and, before execution of the agreement, that party:

19 (i) was not provided a fair and reasonable disclosure
20 of the property or financial obligations of the other party;

21 (ii) did not voluntarily and expressly waive, in
22 writing, any right to disclosure of the property or
23 financial obligations of the other party beyond the
24 disclosure provided; and

25 (iii) did not have or reasonably could not have had an

1 adequate knowledge of the property or financial obligations
2 of the other party.

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

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

13 NEW SECTION. Section 9. Enforcement when marriage
14 void. If a marriage is declared invalid, an agreement that
15 would otherwise have been a premarital agreement is
16 enforceable only to the extent necessary to avoid an
17 inequitable result.

18 NEW SECTION. Section 10. Limitation of actions. Any
19 statute of limitations applicable to an action asserting a
20 claim for relief under a premarital agreement is tolled
21 during the marriage of the parties to the agreement.
22 However, equitable defenses limiting the time for
23 enforcement, including laches and estoppel, are available to
24 either party.

25 Section 11. Section 40-2-312, MCA, is amended to read:

1 "40-2-312. Marriage settlement contracts -- how
2 executed. ~~All Except as provided in [sections 1 through 10],~~
3 all contracts for marriage settlements must be in writing
4 and executed and acknowledged or proved in like manner as a
5 grant of land is required to be executed and acknowledged or
6 proved."

7 ~~Section 12. Section 40-2-313, MCA, is amended to read:~~
8 ~~"40-2-313. Contract to be acknowledged and recorded.~~
9 ~~When Except as provided in [sections 1 through 10], if such~~
10 ~~contract is acknowledged or proved, it must be recorded in~~
11 ~~the office of the county clerk of every county in which any~~
12 ~~real estate which is granted or affected by such contract~~
13 ~~may be situated."~~

14 Section 12. Section 40-2-314, MCA, is amended to read:

15 "40-2-314. Effect of recording. The Except as provided
16 in [sections 1 through 10], the recording or nonrecording of
17 such contract has a like effect as the recording or
18 nonrecording of a grant of real property."

19 Section 13. Section 40-4-202, MCA, is amended to read:

20 "40-4-202. Division of property. (1) In a proceeding
21 for dissolution of a marriage, legal separation, or division
22 of property following a decree of dissolution of marriage or
23 legal separation by a court which lacked personal
24 jurisdiction over the absent spouse or lacked jurisdiction
25 to divide the property, the court, without regard to marital

1 misconduct, shall, and in a proceeding for legal separation
2 may, finally equitably apportion between the parties the
3 property and assets belonging to either or both, however and
4 whenever acquired and whether the title thereto is in the
5 name of the husband or wife or both. In making
6 apportionment, the court shall consider the duration of the
7 marriage and prior marriage of either party; ~~antenuptial~~
8 premarital ~~agreement of the parties;~~ the age, health,
9 station, occupation, amount and sources of income,
10 vocational skills, employability, estate, liabilities, and
11 needs of each of the parties; custodial provisions; whether
12 the apportionment is in lieu of or in addition to
13 maintenance; and the opportunity of each for future
14 acquisition of capital assets and income. The court shall
15 also consider the contribution or dissipation of value of
16 the respective estates and the contribution of a spouse as a
17 homemaker or to the family unit. In dividing property
18 acquired prior to the marriage; property acquired by gift,
19 bequest, devise, or descent; property acquired in exchange
20 for property acquired before the marriage or in exchange for
21 property acquired by gift, bequest, devise, or descent; the
22 increased value of property acquired prior to marriage; and
23 property acquired by a spouse after a decree of legal
24 separation, the court shall consider those contributions of
25 the other spouse to the marriage, including:

1 (a) the nonmonetary contribution of a homemaker;

2 (b) the extent to which such contributions have
3 facilitated the maintenance of this property; and

4 (c) whether or not the property division serves as an
5 alternative to maintenance arrangements.

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

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

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

24 (a) the property laws of this state;

25 (b) the income tax laws of this state; and

1 (c) the federal income tax laws.

2 (5) PREMARITAL AGREEMENTS MUST BE ENFORCED AS PROVIDED
3 IN [SECTIONS 1 THROUGH 10]."

4 NEW SECTION. SECTION 14. REPEALER. SECTION 40-2-31J,
5 MCA, IS REPEALED.

6 NEW SECTION. Section 15. Codification instruction.
7 Sections 1 through 10 are intended to be codified as an
8 integral part of Title 40, chapter 2, and the provisions of
9 Title 40, chapter 2, apply to sections 1 through 10.

10 NEW SECTION. Section 16. Severability. If a part of
11 this act is invalid, all valid parts that are severable from
12 the invalid part remain in effect. If a part of this act is
13 invalid in one or more of its applications, the part remains
14 in effect in all valid applications that are severable from
15 the invalid applications.

16 NEW SECTION. Section 17. Applicability. This act
17 applies to premarital agreements executed on or after
18 October 1, 1987.

-End-