

HOUSE BILL NO. 515

INTRODUCED BY W. CURDY

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA UNIFORM PROBATE CODE; CLARIFYING THE PRIORITY OF PERSONS WHO MAY BE APPOINTED AS A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE; CLARIFYING WHEN A FORMER SPOUSE MAY BE APPOINTED AS A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE; AND AMENDING SECTIONS 72-2-812, 72-2-814, 72-3-501, 72-3-502, 72-3-504, AND 72-3-505, MCA."

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

Section 1. Section 72-2-812, MCA, is amended to read:

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

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

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

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

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

(3) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled may not serve as the decedent's personal representative and does not have priority for appointment as the decedent's personal representative under 72-3-501 through 72-3-508, unless the decedent executes a will subsequent to the divorce or annulment in which the decedent nominates the decedent's former spouse as the

1 decedent's personal representative.

2 (4) Nothing in this section revokes a former spouse's right to object to the appointment of the decedent's
 3 personal representative if the former spouse has been appointed as the conservator or the guardian of the
 4 decedent's minor or incapacitated heirs."

5

6 **Section 2.** 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 benefit
 10 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 is not a divorce for purposes of this section.

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

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

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

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

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

29 (a) revokes any revocable:

30 (i) disposition or appointment of property made by a divorced individual to the individual's former spouse

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

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

5 (iii) nomination in a governing instrument or provision in a statute that nominates or creates a priority in
6 a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any
7 fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent,
8 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~~ and the records are relied ~~upon~~ on, in the ordinary course of transactions
16 involving such 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 effects a
24 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, and the nature of the payment or item of property or other benefit; and must include a statement that a
6 dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice
7 of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third
8 party's main office or home by certified mail, return receipt requested, or served upon the payor or other third
9 party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment,
10 or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property
11 held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or,
12 if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating
13 to 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. If
15 probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of
16 the written notice received by the payor or other third party, with the payment of funds or the 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 of
18 amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds
19 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 relative
29 of a former spouse, or any other person who, not for value, received a payment, item of property, or other benefit
30 to which that person is not entitled under this section is obligated to return the payment, item of property, or

1 benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the
2 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 a 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."

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11 **Section 3.** Section 72-3-501, MCA, is amended to read:

12 **"72-3-501. Who may not be personal representative.** No person is qualified to serve as a personal
13 representative who is:

- 14 (1) under the age of 18;
- 15 (2) a former spouse of the decedent, except that a former spouse may serve if the decedent nominated
16 the former spouse in the decedent's will that the decedent executed after the dissolution of the decedent's
17 marriage to the applicant or petitioner; or
- 18 (3) a person whom the court finds unsuitable in formal proceedings."

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20 **Section 4.** Section 72-3-502, MCA, is amended to read:

21 **"72-3-502. Priorities for appointment.** Whether the proceedings are formal or informal, persons who
22 are not disqualified have priority for appointment in the following order:

- 23 (1) the person with priority as determined by a probated will, including a person nominated by a power
24 conferred in a will;
- 25 (2) the surviving spouse of the decedent who is a devisee of the decedent;
- 26 (3) the custodial parent of a minor decedent;
- 27 (4) other devisees of the decedent;
- 28 (5) the surviving spouse of the decedent;
- 29 (6) the surviving parents of an adult decedent;
- 30 (7) other heirs of the decedent;

