



2021 Session

Additional Documents

May include the following:

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
 - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

The original exhibit/items are on file at the Montana Historical Society and may be viewed there.

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
67th LEGISLATURE - REGULAR SESSION**

HOUSE JUDICIARY COMMITTEE

Date: Thursday, February 18, 2021

Place: Capitol

Time: 8:00 AM

Room: 137

BILLS and RESOLUTIONS HEARD:

HB 333 - Generally revise laws related to sexual and violent offenders - Rep. Barry Usher (R)

HB 368 - Adopt Uniform Premarital and Marital Agreements Act - Rep. Sharon Greef (R)

HB 401 - Revising property rental laws - Rep. Steven Galloway (R)

HB 402 - Generally revise property rental laws - Rep. Steven Galloway (R)

HB 428 - Generally revise civil liability laws related to state and local government - Rep. Bill Mercer (R)

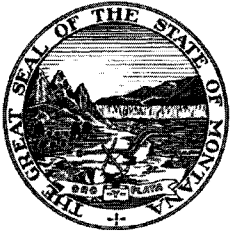
EXECUTIVE ACTION TAKEN:

None

Comments:



REP. Barry Usher, Chair



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE: 2/18/21

NAME	PRESENT	ABSENT/EXCUSED
REP. USHER, CHAIR		✓
REP. AMY REGIER, VICE CHAIR	✓	
REP. KELKER, VICE CHAIR	✓	
REP. BERGLEE	✓	
REP. BISHOP	✓	
REP. CARLSON	✓	
REP. FARRIS-OLSEN	✓	
REP. FLEMING	✓	
REP. FRANCE		✓
REP. GILLETTE		✓
REP. HAWK	✓	
REP. JEDEDIAH HINKLE	✓	
REP. LENZ	✓	
REP. LER		✓
REP. PHALEN	✓	
REP. SKEES	✓	
REP. STAFMAN	✓	
REP. STROMSWOLD	✓	
REP. TENENBAUM	✓	

19 MEMBERS

WITNESS STATEMENTS

**The following is an assortment of
documents that are
witness statements.**

**[A witness statement is a signed
document recording the evidence of a
witness.**

**A definition “a written statement
signed by a person which contains the
evidence which that person would be
allowed to give orally”.]**

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Tuesday, February 16, 2021 5:12 PM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-368: Adopt Uniform Premarital and Marital Agreements Act 2021-02-18 08:00 AM - (H) Judiciary Successfully Submitted on 02-16-21 17:11

Details:

Bill: HB-368: Adopt Uniform Premarital and Marital Agreements Act 2021-02-18 08:00 AM - (H) Judiciary

Position: Proponent

Representing an Entity/Another Person: Yes

Organization: Montana State Bar Family Law Section

Name: Ryan Alane Phelan

Email: Ryan@CSBLawOffice.com

Phone: (406) 721-7772

City, State: Missoula, MT

Written Statement: HB 368 is an update to the Uniform Premarital Agreement Act (40-2-601 to 610, of the Montana Code), which has existed in Montana since 1987. The current law is lacking in several ways, most notable that it has no provision for marital agreements (those signed after a couple are married), and it lacks specificity regarding the requirements for knowingly entering into a premarital agreement, and for enforcing one. The result is that parties who enter into a premarital agreement cannot be fully confident that the Court will (or will not) uphold the Agreement. The updated Act, which is HB 368, clarifies these items, and requires a disclosure by the parties before they enter the agreement (unless they knowingly waive the disclosure). It also requires that both parties have the opportunity to access an attorney before they enter a premarital or marital agreement. This is a Uniform Act. I believe it is important that Montana adopt this updated Act, to provide more clarity to the parties who wish to enter into a premarital, or a marital, agreement.

Files:

Testify via Zoom: Yes

Zoom Method: Computer

Testimony HB 368

Before House Judiciary Committee

February 8, 2021

By Gail H. Goheen (Proponent)

Thank you Chairman Usher and Members of the Judiciary Committee, for allowing me to appear before you today. My name is Gail Goheen (G-O-H-E-E-N), and like some of the other Bill proponents here today, I am a member of the Legislative Committee of the Family Law Section of the Montana State Bar. I have been an attorney in Hamilton, Montana for over 40 years. During most of that time I have primarily specialized in the practice of family law, representing a wide range of Montanans--from pro bono clients to wealthy folks (probably about equally men and women)—throughout a number of judicial districts in this state. Over the years, I have drafted and reviewed several “prenuptial agreements,” and as well have dealt with clients who have been affected by them. My goal in appearing here today is to improve the law relating to the creation and enforcement of both premarital agreements and marital agreements.

In my testimony, I hope to provide you with a little more detail about what this Bill is designed to do. As noted, HB 368--would standardize provisions applicable to both premarital and marital agreements going forward. Keep in mind that even if there are some overlapping provisions in the HB 368 and the existing Uniform Premarital Agreement Act (UPAA), the existing Act doesn’t affect marital agreements. In addition, there are several more “fairness” safeguards built into HB 368, both as to procedures relating to the creation of the affected agreements, in addition to enforcement limitations.

- As mentioned, to be enforceable, HB 368 would require a party’s consent must have been both voluntary and not under duress. A party can challenge enforceability if he/she did not have access to independent legal representation when the agreement was signed (and that would include reasonable time to decide whether to retain independent representation as well as locate such an attorney and obtain and consider such advice). [All too often, one party pulls out the proposed premarital agreement after the invitations to the wedding are sent out and often near in time to being on the courthouse/church steps.] If a party can’t afford an independent attorney and the other party has an attorney, then that other party must pay the legal fees for party without adequate monies to pay for an attorney.
- Unless a party had independent legal representation, to be enforceable, the agreement would need to conspicuously include a notice specifically warning a party of the rights they may be waiving or obligations they may otherwise be assuming if they sign the agreement.

- Before signing an agreement, to be enforceable, a party must receive a “financial disclosure” from the other party, setting out his/her assets, liabilities, and income; be reasonably aware of the same; or sign a waiver of the right to a financial disclosure;
- HB 368 also allows a court to refuse to enforce a term of a premarital or marital agreement, if in the context of the agreement taken as a whole, the term was unconscionable at the time of its signing, or the enforcement would result in a substantial hardship for a party because of a material change in circumstances arising after the agreement was signed. Although “unconscionability” is a question left for the court to determine, presumably it would be of a nature that is extremely unjust, overwhelmingly one-sided in favor of the party who has the superior bargaining power, or contrary to good conscience. It is especially noteworthy that under current law, a premarital agreement can be enforceable even if it is unconscionable when signed, provided certain advance disclosure are made or waived. Also under the existing law , there are no exceptions for substantial hardship resulting from a material change in circumstances after an agreement is signed.
- A premarital agreement or marital agreement eliminating or modifying spousal support is unenforceable to the extent it would cause a party to be eligible for public assistance. Provisions affecting child support are also forbidden.
- Agreements in anticipation of a divorce or legal separation are not authorized by this Act.
- The UPMAA clearly disallows provisions in a premarital or marital agreement that: restrict remedies available to domestic violence victims; purport to modify the grounds for separation or marital dissolution; penalize a party for initiating a legal proceeding for separation or marital dissolution; or that define the rights or duties of the parties regarding custody/parenting responsibilities for children. Existing law on these matters relating to premarital agreements is MUCH more vague.

There are other provisions of HB 368 that clarify the effect of marital and premarital agreements which I won't go into further, but with that, I'll open myself up for any questions you may have. I urge you to support HB 368, and thank you for allowing me to testify before you today.

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Wednesday, February 17, 2021 11:10 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-368: Adopt Uniform Premarital and Marital Agreements Act
2021-02-18 08:00 AM - (H) Judiciary Successfully Submitted on 02-17-21 11:09

Details:

Bill: HB-368: Adopt Uniform Premarital and Marital Agreements Act 2021-02-18 08:00 AM - (H) Judiciary

Position: Proponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Amy K. Lord

Email: amy@lordlawoffice.com

Phone: (406) 493-5538

City, State: Missoula, Montana

Written Statement: I am the Chair of the Family Law Section of the State Bar of Montana. We are a group of 164 family law attorneys in Montana and we are asking the Legislature to adopt the Uniform Marital and Premarital Agreement Act. We believe this Uniform law will benefit Montanans and the Court system. Prior to requesting the Legislature to adopt this law, we asked our Section members to comment on it and we have their support. In addition, we consulted with the Judges Association and the State Bar Board of Trustees.

Files:

Testify via Zoom: Yes

Zoom Method: Computer

Testimony in Support of HB 368

Mr. Chairman, member of the Committee:

I'm Mars Scott. My last name is spelled SCOTT. I've practiced law in Montana for over 40 years. I'm the Chairperson of the Legislative Subcommittee of the Family Law Section of the State Bar of Montana. Our Committee's goals, our Mission Statement if you will, is to work on and support legislation that makes the overall practice of family law in Montana more predictable, more understandable, and less expensive for parties.

Our committee strongly supports passage of HB 368 because if it were to become law, it will set standards for the judges to interpret premarital agreements made by parties before they marry, and to interpret post marital agreements which are made by husbands and wives after they marry. A lot of people don't realize that there can be serious business discussions after marriage between husbands and wives for a lot of reasons such as managing inheritances, developing businesses, or living apart while still staying married. Currently, we have few decisions by the Montana Supreme Court on how to interpret prenuptial agreements, and we have virtually no Supreme Court decisions on how to interpret post nuptial agreements. There are 47 district court judges in Montana—and each of them is vested with their own discretion on how to interpret these agreements. What that means to Montanans is that the outcome of their case may very well depend upon which judge they draw when they file the case, or said another way, under the current state of the law, you have 47 judges with their own interpretations of the meaning of the language in these agreements, so you can have different outcomes with the same facts, making outcomes unpredictable, which is untenable. Under the current state of the law, it takes years for the Supreme Court to sort out these issues depending upon the different cases that might be appealed. And not only does it take years, but it also requires litigants to spend thousands of dollars paying attorneys to prosecute or defend these cases in order to develop the law. That is also untenable.

The beauty of a uniform act is that it is developed by a large array of smart people who care about advancing the law through legislative efforts, as opposed to developing the law by long, drawn out expensive court cases.

This bill sets out the parameters that all judges in the State of Montana would follow in interpreting and deciding issues related to prenuptial agreements and postnuptial agreements. If it became law, it would save a tremendous amount of time and resources for parties and the courts, and it would clarify the law on prenuptial and post nuptial agreements thus making the law in this area more understandable and more predictable. This law can only be good for Montanans.

We strongly support passage of this bill.

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Wednesday, February 17, 2021 11:47 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-402: Generally revise property rental laws 2021-02-18 08:00 AM - (H) Judiciary Successfully Submitted on 02-17-21 11:47

Details:

Bill: HB-402: Generally revise property rental laws 2021-02-18 08:00 AM - (H) Judiciary

Position: Proponent

Representing an Entity/Another Person: Yes

Organization: Montana Landlords Association

Name: Robert Smaus, Western Vice-President MLA

Email: smaus@cybernet1.com

Phone: (406) 544-8901

City, State: Hamilton

Written Statement: I comment in Support of HB402, as it provides for Clarification as to what Constitutes Unconscionability in and the Termination of Rental Agreements. This has been needed for quite some time and will aid Landlords greatly in certain conditions. Thank you so much.

Files:

Testify via Zoom: No

Zoom Method: N/A

WITNESS STATEMENT

LEG Committee-House Judiciary testimony

From: leg-noreply@mt.gov
Sent: Wednesday, February 17, 2021 11:41 AM
To: LEG Applications Email Backup; LEG Committee-House Judiciary testimony
Subject: Public Comment for Bill HB-401: Revising property rental laws 2021-02-18 08:00 AM - (H) Judiciary Successfully Submitted on 02-17-21 11:40

Details:

Bill: HB-401: Revising property rental laws 2021-02-18 08:00 AM - (H) Judiciary

Position: Proponent

Representing an Entity/Another Person: Yes

Organization: Montana Landlords Association

Name: Robert Smaus, Western Vice-President MLA

Email: smaus@cybernet1.com

Phone: (406) 544-8901

City, State: Hamilton

Written Statement: I comment in support of HB401, as the provided clarification of current statute regarding Security Deposit as necessary for proper procedure in Residential Rental Law is vital concerning both Landlord and Tenant. I strongly urge your support. Thank you.

Files:

Testify via Zoom: No

Zoom Method: N/A

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Thursday, February 18, 2021

HB 402 - Generally revise property rental laws

Sponsor: **Rep. Steven Galloway (R)**

PLEASE PRINT

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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Thursday, February 18, 2021

HB 428 - Generally revise civil liability laws related to state and local government

Sponsor: Rep. Bill Mercer (R)

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[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Thursday, February 18, 2021

HB 401 - Revising property rental laws

Sponsor: Rep. Steven Galloway (R)

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[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Thursday, February 18, 2021

HB 333 - Generally revise laws related to sexual and violent offenders

Sponsor: Rep. Barry Usher (R)

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[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Thursday, February 18, 2021

HB 368 - Adopt Uniform Premarital and Marital Agreements Act

Sponsor: Rep. Sharon Greef (R)

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[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

House Judiciary Zoom Testimony 02.18.2021

Bill	Name	Location	Email	Position	Affiliation
HB-368	Proponents				
HB-368	P. Mars Scott	Missoula, Montana	pmarsscott@pmarsscott.com	Proponent	Family Law Section, State Bar
HB-368	Amy Lord	Missoula, Montana	amy@lordlawoffice.com	Proponent	
HB-368	Gail Goheen	Corvallis, Montana	gail@goheenlaw.com	Proponent	Family Law Section of the MT State Bar
HB-368	Ryan Phelan	Missoula, Montana	ryan@csblawoffice.com	Proponent	MT State Bar Family Law Section
HB-401	Proponents				
HB-401	Mitch Brainard	Great Falls, Montana	mitch@msn.com	Proponent	
HB-401	Jeffrey Brainard	Great Falls, Montana	jabrainard@hotmail.com	Proponent	
HB-401	Gail Brainard	Great Falls, Montana	gailjean17@gmail.com	Proponent	
HB-401	Bill Brainard	Great Falls, Montana	brainard@in-tch.com	Proponent	
HB-402	Proponents				
HB-402	Mitch Brainard	Great Falls, Montana	mitch@msn.com	Proponent	
HB-402	Jeffrey Brainard	Great Falls, Montana	jabrainard@hotmail.com	Proponent	
HB-402	Gail Brainard	Great Falls, Montana	gailjean17@gmail.com	Proponent	
HB-402	Bill Brainard	Great Falls, Montana	brainard@in-tch.com	Proponent	
HB-402	Opponents				
HB-402	Kempenaar Pahre	Bozeman, Montana	kempenaarless@gmail.com	Opponent	
HB-428	Opponent				
HB-428	Kelly Lynch	Helena, Montana	kelly.lynch@mtleague.net	Opponent	MT League of Cities and Towns