

1 SENATE BILL NO. 488

2 INTRODUCED BY D. ZOLNIKOV

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ABOLISHING COMMON-LAW MARRIAGE; REMOVING A MAN

5 AND A WOMAN DEPORTING THEMSELVES AS HUSBAND AND WIFE AS PROOF OF COMMON-LAW

6 MARRIAGE AS A DISPUTABLE PRESUMPTION; PROVIDING FOR INVALIDITY OF COMMON-LAW

7 MARRIAGES CONTRACTED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT; PROVIDING ~~FOR THE~~

8 REGISTRY OF A COMMON-LAW MARRIAGE FOR VALIDITY OF COMMON-LAW MARRIAGES

9 CONTRACTED PRIOR TO THE EFFECTIVE DATE OF THIS ACT IF PROVEN BY A PREPONDERANCE OF

10 THE EVIDENCE; AMENDING SECTIONS 26-1-602 AND 40-1-403, MCA; AND PROVIDING AN IMMEDIATE

11 EFFECTIVE DATE."

12

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

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

16 **"26-1-602. Disputable presumptions.** All other presumptions are "disputable presumptions" and

17 may be controverted by other evidence. The following are of that kind:

- 18 (1) A person is innocent of crime or wrong.
- 19 (2) An unlawful act was done with an unlawful intent.
- 20 (3) A person intends the ordinary consequence of the person's voluntary act.
- 21 (4) A person takes ordinary care of the person's own concerns.
- 22 (5) Evidence willfully suppressed would be adverse if produced.
- 23 (6) More satisfactory evidence would be adverse if weaker and less satisfactory evidence is
- 24 offered and it is within the power of the party to offer more satisfactory evidence.
- 25 (7) Money paid by one to another was due the latter.
- 26 (8) A thing delivered by one to another belonged to the latter.
- 27 (9) When the instrument evidencing an obligation has been delivered to the debtor, the obligation
- 28 has been paid.

- 1 (10) Prior rent or installments have been paid when a receipt for later rent or installments is  
2 produced.
- 3 (11) Things that a person possesses are owned by the person.
- 4 (12) A person is the owner of property if the person exercises acts of ownership over it or there is  
5 common reputation of the person's ownership.
- 6 (13) A person in possession of an order on the person for the payment of money or the delivery of a  
7 thing has paid the money or delivered the thing accordingly.
- 8 (14) A person acting in a public office was regularly appointed to it.
- 9 (15) Official duty has been regularly performed.
- 10 (16) A court or judge acting as such, whether in this state or any other state or country, was acting  
11 in the lawful exercise of the court's or judge's jurisdiction.
- 12 (17) A judicial record, when not conclusive, does still correctly determine or set forth the rights of the  
13 parties.
- 14 (18) All matters within an issue were laid before the jury and passed upon by them, and in like  
15 manner, all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.
- 16 (19) Private transactions have been fair and regular.
- 17 (20) The ordinary course of business has been followed.
- 18 (21) A promissory note or bill of exchange was given or endorsed for a sufficient consideration.
- 19 (22) An endorsement of a negotiable promissory note or bill of exchange was made at the time and  
20 place of making the note or bill.
- 21 (23) A writing is truly dated.
- 22 (24) A letter duly directed and mailed was received in the regular course of the mail.
- 23 (25) There is an identity of persons when there is an identity of names.
- 24 (26) A person not heard from in 5 years is dead.
- 25 (27) Acquiescence followed from a belief that the thing acquiesced in was conformable to the right  
26 or fact.
- 27 (28) Things have happened according to the ordinary course of nature and the ordinary habits of  
28 life.

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

2 (30) A man and a woman ~~reporting themselves as husband and wife have entered into a lawful~~  
3 ~~contract of marriage.~~

4 (31)(30) A child born in lawful wedlock is legitimate.

5 (32)(31) A thing once proved to exist continues as long as is usual with things of that nature.

6 (33)(32) The law has been obeyed.

7 (34)(33) A printed and published book purporting to be printed or published by public authority was so  
8 printed or published.

9 (35)(34) A printed and published book purporting to contain reports of cases adjudged in the tribunals  
10 of the state or country where the book is published contains correct reports of such cases.

11 (36)(35) A trustee or other person whose duty it was to convey real property to a particular person has  
12 actually conveyed the property to the particular person. This presumption applies when it is necessary to  
13 perfect the title of the person or the person's successor in interest.

14 (37)(36) When there has been uninterrupted use by the public of land for a burial ground for 5 years,  
15 with the consent of the owner and without a reservation of rights, the owner intended to dedicate it to the public  
16 for that purpose.

17 (38)(37) There was a good and sufficient consideration for a written contract."  
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19 **Section 2.** Section 40-1-403, MCA, is amended to read:

20 **"40-1-403. ~~Validity~~ Invalidity of common-law marriage ~~—registry of common-law marriage.~~ (1)**

21 ~~Common-law marriages are not invalidated by this chapter~~ contracted on or after [the effective date of this act]  
22 are invalid.

23 (2) Common-law marriages contracted prior to [the effective date of this act] are valid if proven by  
24 a preponderance of the evidence.

25 (2) As proof of the existence of a common-law marriage contracted before [the effective date of  
26 this act], the parties may file with the clerk of the district court in the county of the residence of the parties a  
27 written declaration showing:

28 (a) the names, ages, and residence of the parties;

1           ~~(b) the date on which the parties entered into a common-law marriage; and~~

2           ~~(c) the notarized signatures of both parties.~~

3           (3) Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are

4 not invalidated by this chapter."

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6           NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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- END -

AMENDED