

MINUTES OF THE MEETING  
JUDICIAL COMMITTEE  
50TH LEGISLATIVE SESSION  
HOUSE OF REPRESENTATIVES

The meeting of the Judicial Committee was called to order by Chairman Earl Lory on January 15, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL NO. 123: Representative Dorothy Bradley, District No. 79, sponsor of the bill stated that the bill deals with allowing parties in a civil action to hire a retired judge or a qualified member of the state bar to act as a judge. She explained that the courts today are scheduled one and a half or two years ahead. In the waiting game delays come about in getting cases heard and then in getting the opinion in the hand. These two time lags can be a very long waiting proposition. What this bill does is allow private parties at their own desire and their own stipulation and agreement to hire and pay for themselves, any member of the Montana bar association. A hired member would fulfill the requirements to be a district court judge, retired judge or a retired justice. To hire a judge pro tempore is already on the books but as Rep. Bradley points out, she does not think this has ever been used. The present statute does not allow for the private hiring which is part of the purpose of this bill. This sets up an entity which is separate from the district court and would be handled entirely on its own. This is all done with agreement of both parties. A judge pro tempore would not be handling jury trials. All the record keeping and appeals would be done in the same manner. Part of the reason for doing this is to take the load off the district court. A different system is being set up, side by side with the district court and would handle things exactly the same. If there was an appeal, it would not be appealed through the district court. A district court judge would in essence have nothing to do with this. It would be appealed directly to the Supreme Court.

SUPPORTERS: Pat Melby, attorney, representing the State Bar Association of Montana, stated this bill would provide the mechanism for the use of the present section. No set procedure or necessary requirements has been previously set out.

Carl England, representing the Montana Trial Lawyers Association, explained that this bill gives the parties the mechanism whereby they can avoid some of the court delays.

There were no more proponents for this bill and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 123:

Representative Addy stated he questions if they actually are making these judges district court judges. Rep. Bradley answered him by saying it is one shot only.

Rep. Mercer asked Carl England how this would work in joint several cases. Mr. England explained that in third party cases this bill is not applicable. The Court system will always have some control over how disputes are resolved. Rep. Bradley's bill will go a step further and make district court judges for the purpose of the case.

Rep. Eudaily stated that he does not have a problem with the intent of what the bill does but he is concerned with the eligibility for service retirement. He feels there is no limit to the compensation allowed the judge pro tempore and explained that most retirement systems have some kind of limitations one can earn outside the system and still keep the full retirement allowance. Rep. Bradley clarified this point by stating that one day or one weeks work probably would not effect these benefits.

In closing, Rep. Bradley stated that someone had suggested to her that maybe there was a problem with this bill as far as giving special preference for speedy trials to those who could afford it. She stated that those who could afford it, are going to help provide more speedy trials for those who are going to stay in the district court and cannot, and, who at this point are waiting just because of the crowded dockets to try and get their case heard. It can only help everybody if this option is selected.

CONSIDERATION ON HOUSE BILL NO. 70: Representative Joan Miles, District No. 45, sponsor of this bill explained that this bill came out of the interim committee studying liability. It came out of the committee on a unanimous vote. She feels this vote reflected the commitment to try to find some kind of alternative dispute resolution. One way of addressing this problem is to encourage out of court settlements as much as possible. Keeping settlements out of the adversary process of the courts and putting them into an administrative process is another way of lessening the problem. The decision of the arbitrator is not binding. It would be compulsory in any civil cases under \$25,000.00 to go to arbitration before going into court. If either of the parties is dissatisfied with what the arbitrator makes in his or her decision they can request a trial de novo. The intent of the committee was to keep the smaller cases and put those in arbitration first.

SUPPORTERS: Bonnie Tippy, of the Alliance of American Insurers, sees this as an innovative approach to the problem of increased litigation. She went on record to state the American Insurance Association supports this bill.

Roger McGlenn, Independent Insurance Agents Association of Montana, stated he supports the concept of arbitration and all concepts dealing with alternate dispute resolutions. He sees this bill as an effective way to reduce the cost of the civil liability system.

Wendy Curran, Auditor's Office, State of Montana, goes on record to state she supports any effort to reduce the costs of litigation.

OPPONENTS: Carl England, Trial Lawyers Association, explained that this bill has advantages and disadvantages. One good advantage is that it will relieve stress in the court system. It has a disadvantage in that some cases would be more expensive because they may end up being tried twice and many new judges may have to be hired. In order to see if the advantages or disadvantages of arbitration win out he proposed that this bill be sunset and considered again in four years. The court should be required to keep records on arbitration cases and then there would be data upon which to base decisions. His understanding of this bill is that it includes all civil cases under \$25,000.00 and this would probably include divorce cases. Divorce cases should not come under arbitration.

Beate Galda, Attorney, Department of Highways, opposed this bill stating that most civil cases the department of highways handle are cases of eminent domain. There is already a similar procedure under eminent domain for appointing a value commissioner. Ms. Galda submitted written testimony. (Exhibit A). She also requested that the bill be amended to exclude eminent domain proceedings from the provisions. (Exhibit B).

LeRoy Schramm, Montana Chief Legal Counsel, University System, explained that he sees an omission or an oversight in the way this bill was drafted. It applies to only what you might call legal damages or something you can reduce to dollars and cents. Many cases do not deal with dollars and cents but they do deal with equitable remedies. He requests that a restriction be made to cases that deal with requests for legal damages and exclude that area of equitable remedies.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 70: Rep. Rapp-Svrcek questioned Carl England in regards to binding arbitration and why it was not considered in this process.

Mr. England stated the parties always retain, under the arbitration act passed last session, the ability to agree in binding arbitration. Compulsory binding arbitration could cause problems in terms of depriving someone of their right to trial by jury. Rep. Addy responded to this question stating that he sat in on the committee hearings and that to require a case to go to arbitration is to deprive parties of a constitutional trial.

Rep. Meyers stated that he feels the benefits of this bill are minimal compared to possible liability. Rep. Miles explained the benefits of this bill from research she had done. She stated that once the case is taken out of the adversary process it can be resolved quicker and with less formality. There is also a greater flexibility of remedies and an element of confidentiality. Arbitrators can be chosen with technical expertise in an area that is under dispute and it eases court congestion.

Rep. Bulger wished to clarify a point. He understands the rules will be set by the Supreme Court but is unclear as to where that would leave us. Rep. Miles states that generally these procedures are governed by the rules of procedure and the standards of conduct. Arbitration is not considered mediation nor is it considered a real fact finding process. Mediation is usually where there is a third party who tries to get the two parties to agree. It is basically a mini court procedure.

Rep. Eudaily questioned Rep. Miles regarding sub section two and three, lines 15-19 as to when the arbitration hearing must be conducted. She agreed with Rep. Eudaily that there is not a time frame for at least when the hearing must begin.

Rep. Mercer asked Rep. Miles what the judge would base his opinions on if he felt a submitted case was less than \$25,000.00? She felt this should be answered by someone with more experience in the legal process.

Rep. Mercer questioned Rep. Addy in regards to the arbitrator's award in a law suit filed naming several defendants. Rep. Mercer stated that if some defendants do not come forward and they are defaulted, as a result of the default, would arbitrators award effect them? Rep. Addy stated, this was different from a typical default where there has not been a hearing. We are presupposing there was a hearing that the party was deeply involved in. If they do not appeal that decision for a de novo hearing in district court then this comes into play.

Rep. Gould asked Carl England if it was true that in Federal Court you could sue for a specific amount but in Montana courts you could not state a specific amount. Mr. England answered that a specific amount can be stated. There are actions in Montana for which you can not state the specific amount as in a wrongful death suit.

Rep. Meyers questioned Ms. Galda as to why she wanted the question of eminent domain excluded. She stated that there is already a similar procedure under the eminent domain law. He asked her if she felt this bill was unnecessary and She stated that she did feel it was.

Rep. Miles closed the hearing on this bill.

CONSIDERATION OF HOUSE BILL NO. 95: Rep. Addy, District No. 94, sponsor, explained that this bill reverses action taken in 1983. The whole point of the bill is that it is more appropriate to allow the court by local court rule to require more frequent accountings if they feel it is appropriate. The powers and duties of a guardian of an incapacitated person are those specified in the order appointing the guardian. The guardian shall make provision for the care, comfort and maintenance of his ward and whenever appropriate arrange for his training and education. He shall take reasonable care of his ward's clothing, furnishings, vehicles and other personal effects.

There were no proponents or opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 95: Rep. Gould asked Rep. Addy if what he was saying, was that if someone was going to steal, they were going to steal and this is not going to keep them from stealing anyway. Rep. Addy answered that it is not very consistent if they are going to steal that they are going to tell the truth when they submit the report.

Rep. Addy closed the hearing.

CONSIDERATION OF HOUSE BILL NO. 134: Rep. Addy, District No. 94, sponsor, presented this bill to dispose of the requirements for a minor who is changing his or her name to purchase a space in the legal notices section of the newspaper. Only the parents or legal guardians can bind a minor to a contract.

There were no proponents or opponents and there were no questions.

Rep. Addy closed the hearing on this bill.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 19: Rep. Mercer moved the amendments. (Exhibit C). Rep. Bulger opened discussion on the amendments by stating that if the point of this bill was to protect the homestead for the surviving spouse, can a spouse abandon the homestead and can the \$40,000.00 be kept free and clear from debtors? Rep. Mercer stated that he wanted to expand the option and still protect the \$40,000.00.

Question was called and a voice vote was taken with the amendments being approved unanimously.

Rep. Rapp-Svrcek moved to amend HB #19, the section dealing with tools of trade. (Exhibit D).

Rep. Gould asked Rep. Rapp-Svrcek if tools included the logger and his machinery. Rep. Rapp-Svrcek stated it would be at the court's discretion.

Rep. Bulger stated that he would be willing to support this if the amendment was worded differently.

Rep. Giacometto stated that it would be necessary for a farmer to keep his tractor in order to continue his trade and the wording in the amendment would be opening up too many decisions for the court to make.

Rep. Addy stated the farmer would fall under a different category. He spoke against the amendment by explaining in this area it is better to leave the law the way it is than to come up with non-specific limitations. As he sees it this is the problem with this bill. It is hard to let people know what their rights are so they can conduct their business in that manner. It is either exempt or not exempt.

Rep. Grady also spoke against the amendment and agrees with what Rep. Addy had to say.

Rep. Rapp-Svrcek commented on a few points. He stated that in regard to the tractor, it is a secured interest in most cases and would not be covered. Tools on the other hand are very important for a person's means of support. This bill allows a court to take tools away. A person should not have to go out and borrow more money in order to buy new tools. He stated that it appears there is too much protection and support given to the lenders without regard for the people who are borrowing money.

John MacMaster explained that this amendment allows a person to continue in his present trade. A logger will be given a

certain amount of tools for his trade but the court says he must start all over from scratch.

Rep. Mercer supports what Rep. Addy says and states it is not a case between the big guy against the smaller guy. A person is given a minimum amount of things to hang on to but a line has to be drawn.

Rep. Daily supports Rep. Rapp-Svrcek's idea but states we do not have enough information to go on and the interim committee probably did.

Question was called and a voice vote was taken. All members except four voted against the amendment. The amendment failed.

Rep. Mercer pointed out that the amendment on page one of the original bill needed to be cleaned up. He asked that the word "in" be inserted in front of household furnishings. A voice vote was taken on this amendment and it carried unanimously.

Rep. Cobb requested that section four also be cleaned up by inserting the word "feed" between the words animals and crops. Question was called and a voice vote was taken and carried unanimously.

Rep. Grady moves to pass the amendments submitted by Bob Pyfer of the Montana Credit Union League. (Exhibit E). Rep. Mercer read the amendments and Chairman Earl Lory requested that the committee take each amendment one by one. Rep. Grady stated that he feels we have gone too liberal. The figures can be argued but there seems to be a bad management problem in businesses today and lending institutions must tighten up.

Rep. Hannah opposed these limitations. He stated that the whole idea behind the bankruptcy laws is to try and establish that we do not have a debtor's prison here in America. To strip everything from a person is like putting him in prison.

Rep. Brown agreed with Rep. Hannah's arguments.

Rep. Bulger stated that the exemptions may seem liberal but pointed out the homestead act had been cut in half at the last legislation.

Question was called and a voice vote was taken on the first two sections of the amendments submitted by Mr. Pyfer and the motion failed.

The motion was moved by Rep. Addy on section five. Rep. Mercer opposed the amendment. A voice vote was taken on the motion and two members voted in favor and all other members opposed. The motion failed.

Chairman Earl Lory called for a roll call vote on the amendments. (See roll call vote.) The amendments failed 6-12.

Rep. Cobb moved Do Pass on HB #19. Question was called and a voice vote was taken. Motion was approved by all members with the exception of four members who opposed. House Bill No. 19 DO PASS WITH AMENDMENTS.

ACTION ON HOUSE BILL #95: Rep. Addy moved Do Pass. Question was called and a voice vote was taken and HB #95 was unanimously passed.

ACTION ON HOUSE BILL #134: Rep. Addy moved Do Pass. Rep. Mercer moved that an amendment be made to the bill on page one, line 23, following the word "consent", insert: "in writing". A voice vote was taken to move as amended. Motion carried unanimously.

ADJOURN: A motion having been made and having been seconded, the meeting adjourned at 11:45 a.m.

  
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REP. EARL LORY, Chairman



DAILY ROLL CALL  
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 15, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

# STANDING COMMITTEE REPORT

January 12<sup>15</sup> 1987

## JUDICIARY

Mr. Speaker: We, the committee on  
report **on House Bill No. 19**

do pass  
 do not pass  
 be concurred in  
 be not concurred in  
 as amended  
 statement of intent attached

Chairman

### Amendments to HB 19

1. Title, line 7.  
Following: "25-13-614,"  
Insert: "70-32-103,"  
Following: "70-32-104,"  
Insert: "70-32-106,"
2. Title, line 8.  
Following: "70-32-214,"  
Insert: "70-32-302,"
3. Page 2, line 21.  
Following: "property,"  
Insert: "in"
4. Page 2, line 23.  
Following: "books,"  
Insert: "firearms and other sporting goods,"  
Following: "animals,"  
Insert: "feed,"
5. Page 8, line 17.  
Following: "spouse to"  
Strike: "the homestead"  
Following: ~~"allowance"~~  
Strike: ", "
6. Page 8, line 18.  
Following: "property"  
Strike: ", "
7. Page 9, line 1.  
Following: "share,"  
Strike: "homestead"  
Following: "allowance"  
Strike: ", "

AMENDMENTS TO HOUSE BILL NO. 19  
JANUARY 15, 1987

8. Page 9, line 11.  
Following: "of"  
Strike: "homestead"  
Following: "allowance"  
Strike: ", "
9. Page 9, line 12.  
Following: "property"  
Strike: ", "
10. Page 10, line 9.  
Following: "to"  
Strike: "homestead "
11. Page 10, line 10.  
Following: "allowance"  
Strike: ", "  
Following: "property"  
Strike: ", "
12. Page 10, line 15.  
Following: "expenses,"  
Strike: "homestead"  
Following: "allowance"  
Strike: ", "
13. Page 14, line 3.  
Following: "allowance"  
Insert: "election"
14. Page 14, line 10 through line 1 on page 15,  
Strike: subsection (1) in its entirety  
Insert: "(1) If the spouse or a minor or dependent child survive the decedent by 120 hours the personal representative may declare a homestead on behalf of the decedent's estate pursuant to Title 70, chapter 32."
15. Page 15, lines 2 and 3.  
Strike: " has" on line 2 through "all" on line 3  
Insert: "is exempt from all unsecured "
16. Page 15, line 3.  
Following: "and"  
Strike: "is exempt"
17. Page 15, lines 5 through 9.  
Strike: subsection (3) in its entirety
18. Page 15, lines 11 and 12.  
Following: "(1)"  
Strike: "In addition to the homestead"

19. Page 15, line 12.  
Following: "allowance"  
Strike: ", the"  
Insert: "The"
20. Page 16, line 4.  
Following: "the"  
Strike: "homestead"
21. Page 16, line 5.  
Following: "allowance"  
Strike: "and"
22. Page 16, line 12.  
Following: "to"  
Strike: "A homestead"  
Following: "allowance"  
Strike: "and"
23. Page 17, line 6.  
Following: "claims"  
Strike: "but not over the homestead"
24. Page 17, line 18.  
Following: "rights to" on line 17  
Strike: "homestead and" on line 18
25. Page 17, line 21.  
Following: "as"  
Strike: "the homestead"  
Following: "allowance"  
Strike: "and"
26. Page 18, line 3.  
Following: line 2  
Strike: "the homestead" on line 3  
Following: "allowance"  
Strike: "or"
27. Page 19, line 6.  
Following: "to"  
Strike: "the homestead"
28. Page 19, line 7.  
Following: "allowance"  
Strike: ", "  
Following: "property"  
Strike: ", "
29. Page 19, line 17.  
Strike: "homestead"  
Following: "allowance"  
Strike: ", "  
Following: "exemption"

Strike:

30. Page 20, line 6.  
Following: "allowance"  
Insert: "election"
31. Page 21, line 3,  
Following: "allowance"  
Insert: "election"
32. Page 21. following line 21.  
Insert:

"Section 23. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property homestead may be selected -- declaration on behalf of decedent. (1) If the claimant ~~be~~ is married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.

(2) For purposes of this chapter, the term "claimant" ~~includes a personal representative of a decedent's estate who under 72-2-801 declares a homestead on behalf of the estate.~~

Section 24. Section 70-32-106, MCA. is amended to read:

"70-32-106. Contents of delaration. (1) The delaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

(2) If the declaration of homestead is made by the personal representative on behalf of a decedent's estate under 72-2-801, it must contain:

(a) a description of the premises;  
(b) a statement that the surviving spouse or minor or dependent child was residing on the premises at the time of the decedent's death; and

(c) a declaration that the personal representative is claiming the premises as a homestead."

Section 25. Section 70-32-302, MCA, is amended to read:

"70-32-302. How abandoned -- declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by: (1) the husband and wife if the claimant is married;

(2) the claimant if unmarried, <sup>strike the period.</sup> or

(3) the personal representative if a declaration

is made on behalf of a decedent's estate under 72-2-801.

Renumber: subsequent sections

7016e/c:Jeanna2\WP:jj

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE 1-15-87 BILL NO. 19 <sup>AMENDMENTS</sup> TIME \_\_\_\_\_

NAME	EXCUSED	AYE	NAY
JOHN MERCER			✓
LEO GIACOMETTO			✓
BUDD GOULD			✓
AL MEYERS		✓	
JOHN COBB			✓
ED GRADY		✓	
PAUL RAPP-SVRCEK			✓
VERNON KELLER		✓	
RALPH EUDAILY		✓	
TOM BULGER			✓
JOAN MILES		✓	
FRITZ DAILY			✓
TOM HANNAH			✓
BILL STRIZICH			✓
PAULA DARKO		✓	
KELLY ADDY			✓
DAVE BROWN			✓
EARL LORY			✓

TALLY

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*Ann D. Adell*  
Secretary

*Raymond Earl Lory*  
Chairman

MOTION: AMENDMENTS

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# STANDING COMMITTEE REPORT

January 15,

87  
19

Mr. Speaker: We, the committee on JUDICIARY

report House Bill No. 95

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

REP. EARL LORY

Chairman

*MS*  
**FIRST**

reading copy ( WHITE )  
color



# STANDING COMMITTEE REPORT

January 15,

1987

**JUDICIARY**

Mr. Speaker: We, the committee on  
report **House Bill No. 134**

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

**REP. EARL LORY**

Chairman

1. Page 1, line 23.  
Following: "consent"  
Insert: "in writing"

*MS*  
**FIRST**

**WHITE**

reading copy ( \_\_\_\_\_ )  
color

EXHIBIT A  
DATE 1-15-87  
HB # 70

WITNESS STATEMENT

NAME Beate Galda H. BILL NO. 70  
ADDRESS 2701 Prospect Ave. Helena DATE 1-15-87  
WHOM DO YOU REPRESENT? Dept. of Highways  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

H.B. 70 would require mandatory, non-binding arbitration in all civil cases filed in district court if the amount in controversy is less than \$25,000. Once the arbitration decision has been made and filed with the clerk of court, a party may request a trial de novo in district court.

Proceedings in eminent domain are civil cases and many of them involve sums under \$25,000. It, therefore, appears that H.B. 70, unless amended, would be applicable to eminent domain proceedings. The Montana statutes relating to eminent domain provide that the issue of just compensation be determined by value commissioners. See Sections 70-30-301 through 70-30-304, MCA. These commissioners are paid \$250 per proceeding. Once their report is filed then either party may appeal and there is a trial de novo on the issue of just compensation.

If this bill were to pass it appears that it might conflict with the provisions of the eminent domain statutes. Therefore, it is respectfully requested that the bill be amended to exclude eminent domain proceedings from its provisions.

*Bruce J. Galda*  
*Department of Highways*

DATE B  
DATE 1-15-87  
HB #70

1. Page 1, Line 17

Following: "case"

Insert: "except proceedings brought under Chapter  
30 of Title 70,"

Submitted by Beate Galda, Department of Highways, 444-6097

50th Legislature LC 0281/01

HB BILL NO. 19  
INTRODUCED BY REP HERCER

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS  
A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION; AMENDING SECTIONS 25-13-614, 70-32-103, 70-32-104, 70-32-106, 70-32-213, 70-32-214, 70-32-302, 72-2-102, 72-2-205, 72-2-704, 72-2-705, 72-2-801 THROUGH 72-2-804, 72-3-101, 72-3-911, 72-3-1103, AND 72-3-1104, MCA; AND REPEALING SECTIONS 25-13-611 THROUGH 25-13-613, 25-13-616, AND 25-13-617, MCA."

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

NEW SECTION. Section 1. Protection of property of residents. A resident of this state is entitled to the exemptions provided in this part.

NEW SECTION. Section 2. Claim enforceable against exempt property. Notwithstanding any other provision of this part, a creditor may levy against exempt property to enforce a claim for:  
(1) the purchase price of the property; or  
(2) a loan made for the express purpose of enabling the judgment debtor to purchase the property and used for that purpose.

NEW SECTION. Section 3. Property exempt without limitation. A judgment debtor is entitled to exemption from execution of the following:  
(1) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;  
(2) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation;  
(3) veterans' benefits;  
(4) disability or illness benefits;  
(5) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;  
(6) maintenance and child support; and  
(7) a burial plot for the judgment debtor and his family.

NEW SECTION. Section 4. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:  
(1) the judgment debtor's interest, not to exceed \$6,000 in aggregate value, to the extent of a value not exceeding \$600 in any item of property, household furnishings and goods, appliances, jewelry, wearing apparel, books, animals, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed \$3,500 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed \$3,000 in value, in any implements, professional books, or tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

(4) the judgment debtor's interest, not to exceed \$4,000 in value, in any unmaturing life insurance contracts owned by him.

NEW SECTION. Section 5. Tracing exempt personal property.

(1) If money or other property exempt under [sections 3 and 4] has been sold or has been lost, damaged, or destroyed and the judgment debtor has been indemnified for it, he is entitled for 6 months to an exemption of proceeds that are traceable (for example, in a bank or savings account).

(2) Earnings exempt under 25-13-614 remain exempt for 45 days after receipt by and while in the possession of the judgment debtor in a form into which the exempt earnings are traceable (for example, in a bank or savings account).

(3) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

NEW SECTION. Section 6. Tracing homestead proceeds. (1)

If property or a part thereof that could have been claimed as an exempt homestead has been sold or taken by condemnation or has been lost, damaged, or destroyed and the owner has been indemnified for it, he is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

Section 7. Section 25-13-614, MCA, is amended to read:

~~"25-13-614. Earnings of judgment debtor. (1) Except as provided in subsection (2), the earnings of the judgment debtor for his personal services rendered during the 45-day period prior to the levy of execution or attachment are exempt to the extent such earnings are necessary for the support of his family.~~

~~(2) (a) No earnings are exempt unless the judgment debtor complies with 25-13-411.~~

~~(b) Earnings are exempt under this section from judgments or orders for maintenance or child support only to the extent allowed by 15-U.S.C. 1673.~~

~~(c) One-half of earnings are not exempt for debts incurred by the judgment debtor or his family for gasoline and the common necessities of life.~~

~~(3) The words "his family" as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:~~

~~(a) the judgment debtor's spouse;~~

~~(b) every person who resides with the judgment debtor under his care or maintenance and who is:~~

~~(i) a minor child of the judgment debtor or of his spouse or former spouse;~~

~~(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;~~

~~(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;~~

~~(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself.~~

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction, or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in (4)(a)(i) may be 55% and the amount stated in (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672."

Section 8. Section 70-32-104, MCA, is amended to read:

"70-32-104. Limitations Limitation on quantity and value which may be selected. (1) Homesteads may be selected and claimed consisting of:

~~(a) a quantity of land not exceeding 320 acres used for agricultural purposes and the dwelling house or mobile home thereon and its appurtenances and not included in any municipality;~~

~~(b) a quantity of land not in a municipality, not exceeding~~

~~1-acre and not used for agricultural or commercial purposes, and the dwelling house or mobile home thereon and its appurtenances, or~~

~~(c) a quantity of land within a municipality, not exceeding one-fourth of an acre, and the dwelling house or mobile home thereon and its appurtenances;~~

~~(2) Such A homestead, in either case, shall may not exceed in value the sum of \$40,000. However, in In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.~~

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, he is limited to an exemption amount proportional to his undivided interest."

Section 9. Section 70-32-213, MCA, is amended to read:

"70-32-213. Sale proceeds equal to exemption protected. The money paid to the claimant is entitled, for the period of 6 18 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead."

Section 10. Section 70-32-214, MCA, is amended to read:

"70-32-214. Compensation of appraisers. The court must fix the a reasonable amount as compensation of for the appraisers, ~~not to exceed \$3 per day each for the time actually engaged.~~"

Section 11. Section 72-2-102, MCA, is amended to read:

"72-2-102. Waiver of rights by spouse. The right of election of a surviving spouse and the rights of the surviving spouse to ~~the homestead allowance~~, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, ~~homestead allowance~~, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement."

Section 12. Section 72-2-205, MCA, is amended to read:

"72-2-205. Requirement that heir survive decedent by one hundred twenty hours. Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of ~~homestead allowance~~, exempt property, and intestate succession, and the decedent's heirs are determined



accordingly. If the time of death of the decedent or of the person who would otherwise be an heir or the times of death of both cannot be determined and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under 72-2-207."

Section 13. Section 72-2-704, MCA, is amended to read:

"72-2-704. Effect of election on benefits by will or statute. (1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under 72-2-706(2), as if the surviving spouse had predeceased the testator.

(2) A surviving spouse is entitled to ~~homestead allowance~~ exempt property, and family allowance whether or not he elects to take an elective share."

Section 14. Section 72-2-705, MCA, is amended to read:

"72-2-705. Augmented estate. The augmented estate means the estate, reduced by funeral and administration expenses, ~~homestead allowance~~, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) the value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of or right to income from the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade, or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made to a donee within 2 years of death of the decedent to the extent that the aggregate transfers to any one donee in any of the years exceed \$3,000;

(2) any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate

any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.

(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser."

Section 15. Section 72-2-801, MCA, is amended to read:  
"72-2-801. Homestead allowance ~~election.~~ ~~(1)-A-surviving~~

~~spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of \$20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$20,000, divided by the number of minor and dependent children of the decedent.~~

~~(1) (a) The personal representative may exercise the right to claim a homestead on behalf of a surviving spouse. If there is no surviving spouse, the personal representative may exercise the right on behalf of any minor child and any dependent child of the decedent, divided by the number of minor and dependent children of the decedent.~~

~~(b) (i) The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the decedent resided and the land, if any, on which the residence is located.~~

~~(ii) The homestead may not exceed in value \$40,000. In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings is be prima facie evidence of the value of the property claimed as a homestead.~~

~~(1) If the spouse or a minor or dependent child survive the decedent by 120 hours, the personal representative may declare a homestead on behalf of the decedent's estate pursuant to Title 70, chapter 32.~~

~~(2) The homestead allowance is exempt from and has priority over all is exempt from all unsecured claims against the estate and is exempt from execution as provided in Title 70, chapter 32, part 2.~~

~~(3) Homestead allowance The homestead is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."~~

Section 16. Section 72-2-802, MCA, is amended to read:

"72-2-802. Exempt property. (1) ~~In addition to the homestead allowance, the~~ The surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding \$3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$3,500 or if there is not \$3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$3,500 value.

(2) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of the homestead allowance and family

allowance.

(3) These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 17. Section 72-2-803, MCA, is amended to read:

"72-2-803. Family allowance. (1) In addition to the right to ~~a homestead allowance and~~ exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

(2) It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody and partially to the spouse, as their needs may appear.

(3) The family allowance is exempt from and has priority over all claims ~~but not over the homestead allowance.~~

(4) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

(5) The death of any person entitled to family allowance terminates his right to allowances not yet paid."

Section 18. Section 72-2-804, MCA, is amended to read:

"72-2-804. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to ~~homestead and~~ exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as ~~the homestead allowance and~~ exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as ~~the homestead allowance or~~ exempt property. He may determine the family allowance in a lump sum not exceeding \$6,000 or periodic installments not exceeding \$500 per month for 1 year and may disburse funds of the estate in payment of the family allowance ~~and any part of the homestead allowance payable in cash.~~

(2) The personal representative or any interested person aggrieved by any selection, determination, payment, proposed

payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined."

Section 19. Section 72-3-101, MCA, is amended to read:

"72-3-101. Devolution of estate at death -- restrictions.

(1) The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.

(2) Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates or, in the absence of testamentary disposition, to his heirs or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to ~~the homestead allowance~~, exempt property, and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration."

Section 20. Section 72-3-911, MCA, is amended to read:

"72-3-911. Successors' rights if no administration. (1) In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession.

(2) Devisees may establish title by the probated will to devised property. Persons entitled to property by ~~homestead allowance~~, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent.

(3) Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children and subject to the rights of others resulting from abatement, retainer, advancement, and ademption."

Section 21. Section 72-3-1103, MCA, is amended to read:

"72-3-1103. Summary procedure for disbursement and distribution. If it appears from the inventory and appraisal that the value of the net distributable estate does not exceed \$7,500 or the value of the entire estate, less liens and encumbrances, does not exceed the homestead allowance election, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104."

Section 22. Section 72-3-1104, MCA, is amended to read:

"72-3-1104. Closing by sworn statement of personal representative -- termination of appointment. (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the net distributable estate did not exceed \$7,500 or the value of the entire estate, less liens and encumbrances, did not exceed the homestead allowance election, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 23. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property homestead may be selected -- declaration of homestead on behalf of decedent. (1) If the claimant be is married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.

(2) For purposes of this chapter, the term "claimant" includes a personal representative of a decedent's estate who under 72-2-801 declares a homestead on behalf of the estate."

Section 24. Section 70-32-106, MCA, is amended to read:

"70-32-106. Contents of declaration. (1) The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

(2) If the declaration of homestead is made by the personal representative on behalf of a decedent's estate under 72-2-801, it must contain:

(a) a description of the premises;

(b) a statement that the surviving spouse or minor or dependent child was residing on the premises at the time of the

EMEND C

DATE 1-15-87

HB. #19

decedent's death; and

(c) a delaration that the personal representative is claiming the premises as a homestead."

Section 25. Section 70-32-302, MCA, is amended to read:

"70-32-302. How abandoned -- declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by:

(1) the husband and wife if the claimant is married;

(2) the claimant if unmarried; or

(3) the personal representative if a delaration is made on behalf of a decedent's estate under 72-2-801."

NEW SECTION. Section 26. Repealer. Sections 25-13-611 through 25-13-613, 25-13-616, and 25-13-617, MCA, are repealed.

NEW SECTION. Section 27 . Codification instruction. (1) Sections 1 through 5 are intended to be codified as an integral part of Title 25, chapter 13, part 6, and the provisions of Title 25, chapter 13, part 6, apply to sections 1 through 5.

(2) Section 6 is intended to be codified as an integral part of Title 70, chapter 32, part 2, and the provisions of Title 70, chapter 32, part 2, apply to section 6.

NEW SECTION. Section 28. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

NEW SECTION. Section 29. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

Merrett

Amendments to HB 19

EXHIBIT C  
DATE 1-15-87  
HB #19

1. Title, line 7.  
Following: "25-13-614,"  
Insert: "70-32-103,"  
Following: "70-32-104,"  
Insert: "70-32-106,"
2. Title, line 8.  
Following: "70-32-214,"  
Insert: "70-32-302,"
3. Page 8, line 17.  
Following: "spouse to"  
Strike: "the homestead"  
Following: "allowance"  
Strike: ", "
4. Page 8, line 18.  
Following: "property"  
Strike: ", "
5. Page 9, line 1.  
Following: "share,"  
Strike: "homestead"  
Following: "allowance"  
Strike: ", "
6. Page 9, line 11.  
Following: "of"  
Strike: "homestead"  
Following: "allowance"  
Strike: ", "
7. Page 9, line 12.  
Following: "property"  
Strike: ", "
8. Page 10, line 9.  
Following: "to"  
Strike: "homestead "
9. Page 10, line 10.  
Following: "allowance"  
Strike: ", "  
Following: "property"  
Strike: ", "
10. Page 10, line 15.  
Following: "expenses,"  
Strike: "homestead"  
Following: "allowance"



EXHIBIT C  
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# 19

- Following: "rights to" on line 17  
Strike: "homestead and" on line 18
23. Page 17, line 21.  
Following: "as"  
Strike: "the homestead"  
Following: "~~allowance~~"  
Strike: "and"
24. Page 18, line 3.  
Following: line 2  
Strike: "the homestead" on line 3  
Following: "~~allowance~~"  
Strike: "or"
25. Page 19, line 6.  
Following: "to"  
Strike: "the homestead"
26. Page 19, line 7.  
Following: "~~allowance~~"  
Strike: ", "  
Following: "property"  
Strike: ", "
27. Page 19, line 17.  
Strike: "homestead"  
Following: "~~allowance~~"  
Strike: ", "  
Following: "exemption"  
Strike: ", "
28. Page 20, line 6.  
Following: "~~allowance~~"  
Insert: "election"
29. Page 21, line 3,  
Following: "~~allowance~~"  
Insert: "election"
30. Page 21. following line 21.  
Insert:

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Strike: ",,"

11. Page 14, line 3.  
Following: "~~allowance~~"  
Insert: "election"
  
12. Page 14, line 10 through line 1 on page 15,  
Strike: subsection (1) in its entirety  
Insert: "(1) If the spouse or a minor or dependent child survives the decedent by 120 hours, the personal representative may declare a homestead on behalf of the decedent's estate pursuant to Title 70, chapter 32."
  
13. Page 15, lines 2 and 3.  
Strike: " has" on line 2 through "all" on line 3  
Insert: "is exempt from all unsecured "
  
14. Page 15, line 3.  
Following: "and"  
Strike: "is exempt"
  
15. Page 15, lines 5 through 9.  
Strike: subsection (3) in its entirety
  
16. Page 15, lines 11 and 12.  
Following: "(1)"  
Strike: "In addition to the homestead"
  
17. Page 15, line 12.  
Following: "~~allowance~~"  
Strike: ", the"  
Insert: "The"
  
18. Page 16, line 4.  
Following: "the"  
Strike: "homestead"
  
19. Page 16, line 5.  
Following: "~~allowance~~"  
Strike: "and"
  
20. Page 16, line 12.  
Following: "to"  
Strike: "a homestead"  
Following: "~~allowance~~"  
Strike: "and"
  
21. Page 17, line 6.  
Following: "claims"  
Strike: "but not over the homestead"
  
22. Page 17, line 18.

Section 23. Section 70-32-103, MCA, is amended to read:  
"70-32-103. From whose property homestead may be selected --  
declaration on behalf of decedent. (1) If the claimant ~~be~~  
is married, the homestead may be selected from the property of  
either spouse. When the claimant is not married, the homestead  
may be selected from any of his or her property.  
(2) For purposes of this chapter, the term "claimant" includes a  
personal representative of a decedent's estate who under 72-2-801  
declares a homestead on behalf of the estate."

Section 24. Section 70-32-106, MCA, is amended to read:  
"70-32-106. Contents of declaration. (1) The declaration of  
homestead must contain a statement that the person making it is  
residing on the premises and claims them as a homestead and a  
description of the premises.  
(2) If the declaration of homestead is made by the personal  
representative on behalf of a decedent's estate under 72-2-801,  
it must contain:  
(a) a description of the premises;  
(b) a statement that the surviving spouse or minor or  
dependent child was residing on the premises at the time of the  
decedent's death; and  
(c) a declaration that the personal representative is  
claiming the premises as a homestead."

Section 25. Section 70-32-302, MCA, is amended to read:  
"70-32-302. How abandoned -- declaration. A homestead can be  
abandoned only by a declaration of abandonment or a grant thereof  
executed and acknowledged by:  
(1) the husband and wife if the claimant is married;  
(2) the claimant if unmarried; or  
(3) the personal representative if a declaration is made on  
behalf of a decedent's estate under 72-2-801."

Renumber: subsequent sections

EXHIBIT D  
DATE 1-15-87  
HB #19

Not PASSED

AMENDMENT TO HB 19, INTRODUCED COPY, PROPOSED BY REP.  
RAPP-SVRCEK.

1. Page 3, line 1.  
Strike: "not" through "value" on line 2  
Insert: "to the extent found necessary by the court to continue  
his trade"

AMBIT E  
DATE 1-15-87  
HB #19

House Bill No. 19  
Proposed Amendments

DO NOT PASS  
12-6

1. Page 2, line 20.  
Following: line 19  
Strike: "\$6,000"  
Insert: "\$4,500"
2. Page 2, line 21.  
Following: "exceeding"  
Strike: "\$600"  
Insert: "\$400"
3. Page 2, line 25.  
Following: line 24  
Strike: "\$3,500"  
Insert: "\$1,200"
4. Page 3, line 2.  
Following: line 1  
Strike: "\$3,000"  
Insert: "\$1,100"
5. Page 3, line 6.  
Following: line 5  
Strike: "\$4,000"  
Insert: "\$2,000"
6. Page 7, line 15.  
Following: "~~sum of~~"  
Strike: "\$40,000"  
Insert: "\$30,000"
7. Page 14, line 20.  
Following: "value"  
Strike: "\$40,000"  
Insert: "\$30,000"

WITNESS STATEMENT

NAME Pat Melby H BILL NO. 123  
ADDRESS 723 Gilbert DATE 1-15-86  
WHOM DO YOU REPRESENT? State Bar of Montana  
SUPPORT  OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITOR'S REGISTER

JUDICIARY

COMMITTEE

AGENCY(S) \_\_\_\_\_

DATE January <sup>15</sup> 1987

DEPARTMENT \_\_\_\_\_

PLEASE PRINT.....

NAME	REPRESENTING	SUP-PORT	OP-POSE
Beate Galda	Dept. of Highways		HB 70 Amend
Pat Melby	State Bar	HB 123	
Chris Volunsky	DD	<del>195</del>	
Bonnie Tapp	Alliance of Am Insurers	HB 2	
Roger McGLENN	INDEPENDENT INSURANCE AGENTS ASSOC OF MT	HB 70	
Wendy Curran	State Auditor's Office	HB 70	
<del>Raymond</del>	<del>MNA</del>		
<del>Kathleen Chapman</del>	<del>MNA</del>	<del>HB 31</del>	
<del>JUDY CHRIST</del>	<del>Montana Student Nurses</del>	<del>HB 31</del>	
<del>Shirley Koster</del>	<del>MNA</del>	<del>HB 31</del>	
<del>Emily J. Smith</del>	<del>MNA</del>	<del>HB 31</del>	
<del>Raymond</del>	<del>usu student nurse</del>	<del>HB 31</del>	
<del>Ruth Vandenberg</del>	<del>MNA</del>	<del>HB 31</del>	
<del>Sheryl Malinowski</del>	<del>MSNA</del>	<del>HB 30</del>	
<del>Maureen Dietz</del>	<del>Self</del>	<del>HB 31</del>	
<del>Janet K. Russell</del>	<del>Self</del>	<del>HB 31</del>	
<del>Stephanie M. Johnson</del>	<del>Self</del>	<del>HB 31</del>	
<del>Randi Rumbach</del>	<del>MNA</del>	<del>HB 56</del>	
<del>Charles A. Cole</del>	<del>MNA</del>	<del>HB 31</del>	
<del>Carolyn Hamer</del>	<del>MNA</del>	<del>HB 31</del>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.  
IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.