

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 1, 1993,
at 10:10 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Senator Doherty

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 238
SB 119
Executive Action: NONE

HEARING ON SB 238

Opening Statement by Sponsor:

Senator Crippen, District 45, told the Committee SB 238 would eliminate certain bond requirements for obtaining possible stolen property from a pawnbroker or a dealer, and would repeal a number of sections. Senator Crippen said the legislature created a situation requiring a victim, in order to obtain stolen property, to go through certain procedures. If a victim wants to get back property from a pawnbroker, that was allegedly stolen, the victim has to put up a cash bond double the amount of the property. Senator Crippen said that puts a hardship on the victim.

Proponents' Testimony:

Bill Pleiner, Montana Sheriffs and Peace Officers Association, said the existing statute was requested on behalf of pawnbrokers in the 1989 session. The intent of that law was to protect pawnbrokers from discriminatory unethical activities on behalf of law enforcement. The security bond was requested to protect pawnbrokers against misrepresentation of property by the complainant. Mr. Pleiner said the Montana Sheriffs and Peace Officers Association is requesting a repeal of the statutes dealing with the search warrant and the security bond. Mr. Pleiner urged support for SB 238.

Detective Robert Hetchel, Yellowstone County Sheriffs Department, represents a large number of investigators that deal with the existing statute. The majority of cases deal with stolen property, either theft or burglary. Since the passage of the statute, victims have been incensed about having to post a security bond to get their property back. Detective Hetchel said the current laws penalize crime victims.

Val Highland-Jones told the Committee she was a victim of a burglary. Ms. Highland-Jones told the Committee what she had to go through in order to get her property back. Ms. Highland-Jones urges support of SB 238.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Grosfield asked Senator Crippen about holding the property for 30 days. Senator Crippen said the pawnbroker would hold the property for 30 days after being informed by a peace officer that the property was stolen. Senator Crippen said if the property was sold before the 30 days, there would be no evidence, which was a problem. Senator Crippen said SB 238 would still protect the pawnbroker, but would also protect those people who were victimized.

Senator Grosfield asked Senator Crippen if property could be surrendered before the 30 days waiting period. Senator Crippen referred the question to Mr. Pleiner.

Mr. Pleiner said pawnbrokers could hold the property for 30 days before surrendering it to a peace officer. Mr. Pleiner said most pawnbrokers are willing to turn over stolen property to a peace officer upon receipt of that property. However, if a pawnbroker wanted to hold the property for 30 days he could.

Senator Towe asked Mr. Pleiner if the pawnbrokers would feel they were required to hold the property for 30 days because of the language proposed in SB 238. Mr. Pleiner told the Committee

under the current statute, pawnbrokers could hold the property for 30 days.

Senator Towe asked Mr. Pleiner if he would have an objection to requiring pawnbrokers to hold property for 30 days unless a request was made by a peace officer to surrender the property. Mr. Pleiner said no.

Closing by Sponsor:

Senator Crippen told the Committee SB 238 would still protect the pawnbrokers, but would shift the emphasis of protection to the victims.

HEARING ON SB 119

Opening Statement by Sponsor:

Senator Halligan, District 29, opened.

Proponents' Testimony:

Professor Edwin Eck, University of Montana School of Law, summarized his prepared testimony. (Exhibit #1)
Professor Eck submitted a letter from Ada Harlen. (Exhibit #2)
Professor Eck submitted a copy of Article VI (Exhibit #3),
Article II (Exhibit #4), 1991 Uniform Probate Code (Exhibit #5),
Uniform Statutory Form Power of Attorney Act (Exhibit #6).

Richard Baskett, an attorney in Missoula, explained the revisions in SB 119. The first area of revision deals with the changes in society concerning multiple marriages and how property would be distributed in those instances. The second area of change deals with the distribution of property. The substantive change in the provision would eliminate the definition of who would be the next of kin. The third area of revisions makes changes that reflect a preference as to how a property would be distributed, based on studies done by the American College of Probate Council. Section 13 of the act deals with the definition of representation. The study found per capital representation to be the most preferred type of representation.

Kristen Juras, Montana State Bar, said the Uniform Probate Code greatly simplifies the probate process and reduces cost and attorney fees for people who have to go through the probate process. Ms. Juras told the Committee about the elective share provision. Ms. Juras explained the longer a couple is married, the more money a person would receive upon the death of their spouse.

Dan McLane, attorney in Billings, told the Committee about the new Article VI provision. Mr. McLane said SB 119 eliminates the problem of creating property rights. This legislation makes it possible for a person to open an account and name someone as a

beneficiary to take over after they die, bypassing the probate process. SB 119 allows a person to open an account and name someone as an agent, without giving them ownership rights. SB 119 would not regulate the banking industry or financial institutions. The provisions deal with property rights, not with the institutions themselves.

Patrick Dougherty, attorney for Worden, Thane, and Haines Law Firm, told the Committee about the revisions to Title 72, Chapter 31, Part 2. (Exhibit #7)

Bob Pyfer, Montana Credit Unions League, told the Committee that credit unions are consumer financial cooperatives owned and controlled by their user members and governed by a volunteer Board of Directors. Section 84 through section 102 of SB 119 would enact comprehensive changes in law relating to accounts. SB 119 would make changes that would have a direct effect on credit union operations. Mr. Pyfer said there were questions that needed to be answered before SB 119 was passed. Mr. Pyfer told the Committee Section 97 and section 101 of SB 119, talk about how the financial institution can pay out money in a multiple party account to any party. The statement which goes to the consumer, does not say that the financial institution would give all the money to anybody who comes in and asks for it. The cards that are provided by the credit union say, "these funds are subject to withdrawal by any of the joint owners, and payment to any of them discharges the credit union from any liability for payment." The second item on page 151, section 92, talks about the alteration of rights. The second sentence states that the type of account may be altered by written notice given by a party to the financial institution to change the type of account or stop payment under the terms of the account. Mr. Pyfer said that would be a basic operation change. Mr. Pyfer said he is concerned for the credit union. There is a joint share account provision in the Federal Credit Union Accounting Manual, which is put out by the federal regulator that says that it should be noted that a person requesting deletion from a joint account can only request his own deletion and not that of any other joint owner. Mr. Pyfer said his concern on page 154, section 97, is how a financial institution would know who to pay the money to because there would be no personal representative acting over the estate. There is a provision in the Uniform Probate Code that provides for disbursement by affidavit for small estates, the only exception is for a personal representative. Mr. Pyfer said that would need to be cleared up because financial institutions should not make the decision as to who are the heirs of an estate. Another concern is on page 155, section 100, regarding the payment to minors. The Montana Uniform Transfers to Minors Act does not provide for payment to minors. Mr. Pyfer asked for a delay in the effective date until after the next session in order to educate credit unions and those people dealing with SB 119. Mr. Pyfer is in favor of SB 119 because it is very helpful on the part of the agencies.

Bruce MacKenzie, D.A. Davidson Company, supports SB 119 and would like to see it enacted as soon as possible.

Opponents' Testimony:

George Bennett, Montana Bankers Association, told the Committee the effective date of SB 119 should be delayed so everyone could be educated on SB 119. Mr. Bennett said if the Montana Bankers Association could be assured that Article VI would fit with the present law, then they would endorse it.

Questions From Committee Members and Responses:

Senator Towe asked Professor Eck about Article 2. Professor Eck said Article 2 deals with the surviving spouse and children from prior marriages. The present law does not deal with prior marriages. The revised Uniform Law Commission recognizes the share of the spouse and stepchildren.

Senator Towe asked Professor Eck why the present law should be changed. Professor Eck said under existing law the surviving spouse receives everything without taking into consideration that there may be children from a previous marriage from the decedent. SB 119 says that if the decedent has assets, the assets would go to all the children when the spouse of the decedent dies.

Senator Towe asked Professor Eck about the distribution of assets to the grandchildren. Professor Eck told the Committee about a survey that focused on how grandparents would want their assets distributed to the grandchildren. The response was they wanted to treat the grandchildren alike.

Senator Blaylock asked Ms. Juras if SB 119 should be delayed. Ms. Juras said no. Ms. Juras said she was satisfied with SB 119, but would like to meet with Mr. Pyfer about his concerns to clarify the bill to his satisfaction.

Senator Towe asked Mr. McLane about multiple family accounts in Article VI. Mr. McLane said in multiple family accounts, if there are three names on the account, the last surviving party would be the beneficiary.

Closing by Sponsor:

Senator Halligan said he would be willing to work with any of the practitioners to make sure SB 119 was workable and consistent.

ADJOURNMENT

Adjournment: 12:01 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-1-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty			X
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE BILL NO. 119

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2-1-93
BILL NO. SB119

E. Edwin Eck
University of Montana
School of Law
Missoula, Montana 59812

243-6534

A. MATTERS COVERED IN SENATE BILL NO. 119 ("THE BILL")

1. Revised Article II of the Uniform Probate Code (Intestacy, Wills, and Donative Transfers (1990)) - [Sections 3 through 72 of the Bill]
2. Revised Chapters 10, 11, 12, and 13 of Title 72 MCA affecting "Supplementary" Provisions on Intestate Succession, Wills, Probate, Administration, and Persons Under Disability - [Sections 76 through 80 of the Bill]
3. Definition of "Stepchild" for the purposes of the Montana Inheritance Tax (MCA section 72-16-313) - [Section 81 of the Bill]
4. Effective Date provision of section 72-36-206 (Montana Trust Code) dealing with conveyances to trusts prior to October 1, 1989 - [Sections 82 and 134 of the Bill]
5. Revised Article VI of the Uniform Probate Code (Nonprobate Transfers on Death (1989)) - [Sections 83 through 112 of the Bill]
6. Uniform Statutory Form Power of Attorney Act - [Sections 113 through 131 of the Bill]

B. HISTORY OF THE UNIFORM PROBATE CODE IN MONTANA

C. REVISED ARTICLE II OF THE UNIFORM PROBATE CODE (INTESTACY, WILLS, AND DONATIVE TRANSFERS (1990)) - [Sections 3 through 72 of the Bill]

1. Intestate Succession. The changes recognize the increasing portion of our population who have been married more than once and who have stepchildren and children by previous marriages. The major provisions can best be summarized by examples:

Example 1. Decedent is survived by a spouse, no parents, and descendants who are also descendants of the surviving spouse. Surviving spouse has no other descendants.

Surviving spouse will receive the entire intestate estate. [No change from existing law.]

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Example 2. Decedent is survived by a spouse, a parent, and no descendants.

Surviving spouse will receive the first \$200,000 plus $\frac{3}{4}$ of the remaining intestate estate. The surviving parent will receive the remainder. [Under existing law, the surviving parent would receive nothing.]

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Example 3. Decedent is survived by a spouse, no parent, and descendants who are also descendants of the surviving spouse. Surviving spouse has other descendants who are not descendants of the decedent.

Surviving spouse will receive the first \$150,000 plus $\frac{1}{2}$ of the remaining intestate estate. The decedent's descendants will receive the remainder. [Under existing law, the decedent's descendants would receive nothing.]

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Example 4. Decedent is survived by a spouse, no parent, and descendants who are not descendants of the surviving spouse.

Surviving spouse will receive the first \$100,000 plus $\frac{1}{2}$ of the remaining intestate estate. The decedent's descendants will receive the remainder. [Under existing law, the surviving spouse would receive $\frac{1}{2}$ of the intestate estate if the decedent had one child (or the issue of one child). The child (or issue) would receive the remainder. If the decedent had more than one child (or the issue of more than one child), the surviving spouse would receive $\frac{1}{3}$ of the intestate estate. The children (or issue) would receive the remainder.]

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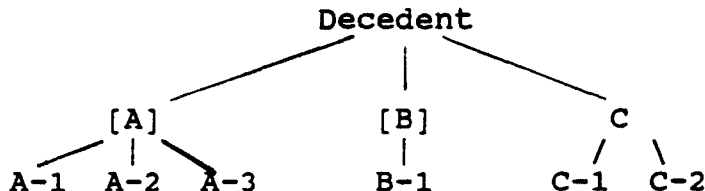
Example 5. Decedent is not survived by any spouse, any descendants, any parents, any siblings, any grandparents, nor any descendants of grandparents. Decedent's only surviving relative is a third cousin (8th degree of relationship).

The intestate estate would pass to the State of Montana. The remote relative ("laughing heir") is excluded. [Under existing law, the third cousin would receive the intestate estate.]

Note: Under the Bill, if the decedent had any surviving grandparents, uncles, aunts, first cousins or descendants of first cousins, those relatives would take before the State of Montana.

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Example 6. Decedent is not survived by any spouse. Two of decedent's children, A and B, predecease the decedent. The decedent's third child, C, survives. A had three children, A-1, A-2, and A-3 who survived the decedent. B had one child, B-1, who survived the decedent. C has two children, C-1 and C-2, who survived the decedent.



C takes 1/3 of the intestate estate. The other two 1/3 shares are combined into a single share (amounting to 2/3 of the estate) and is distributed to A-1, A-2, A-3, and B-1 equally (1/6 apiece). People equally related to the decedent receive the same share.

[Under existing law, A-1, A-2, and A-3 would have received their parent's 1/3 share. Thus, each of them would have received 1/9 of the estate. B-1 would have received his parent's 1/3 share. The decedent's grandchildren would have been treated differently.]

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2. Elective Share of Surviving Spouse. The Elective Share provisions of the Uniform Probate Code protect a surviving spouse from disinheritance by the decedent spouse. The Bill continues this protection but recognizes a partnership (or marital-sharing) theory of marriage. As a result, the Bill would increase the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were disproportionately titled in the decedent's name. The Bill would decrease or even eliminate the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were more or less equally titled or disproportionately titled in the surviving spouse's name. Further, the Bill would decrease or even eliminate the entitlement of a surviving spouse in a short-term, later-in-life, marriage in which neither spouse contributed much, if anything, to the acquisition of the other's wealth. However, a special supplemental elective-share amount is provided in cases in which the surviving spouse would otherwise be left without sufficient funds for support.

The elective share is increased to one-half (50 percent) for marriages that last 15 years or longer. However, in the short-term marriage, the elective share is decreased. For example, a marriage of one year entitles a spouse to an elective share of only 3 percent. For each year up to 15 years, the percentages increases. At year 15, the surviving spouse's share reaches a full 50 percent. This staged increase signifies the increased contribution by the surviving spouse in the accumulation of property by the deceased spouse. It also recognizes the fact of second marriages in which there may be other familial obligations with a better claim upon the deceased spouse's property until the marriage has sufficient longevity to merit a full 50 percent share for the surviving spouse.

The augmented estate has been modified as well. Unlike existing law, the augmented estate takes the net assets of the surviving spouse into account, instead of just the property that the surviving spouse receives from the decedent. In order to determine the elective share, all of the assets in the marriage must be included.

These revised elective share provisions have been endorsed by the Assembly of the National Association of Women Lawyers on the unanimous recommendation of its Executive Board.

3. Spouse and Children Unprovided For in Wills. These provisions continue the protection of existing law to a spouse who marries after the decedent has executed a will. Similar protection is provided for children who were born or adopted after the execution of the will. The new provisions include only refinements of existing law.
4. Exempt Property and Allowances. These provisions continue the homestead, exempt property, and family allowances of existing law. Some amounts are increased where dollar limits are imposed.
5. Wills, Will Contracts, and Custody and Deposit of Wills. A will is a formally executed document that establishes who will have a person's property at death. But for the entitlements inherent in the family noted above, the law favors wills and honors the intent of the person who makes one. The consistent policy of the Uniform Probate Code is to validate testamentary documents and to eliminate technical determinations of invalidity, where and when possible. The holographic will (carried over from the original to the revised Uniform Probate Code) is a primary example of this policy.

The revised Uniform Probate Code develops this liberal policy even further. A new provision permits a document (or writing added upon a document) that is not executed in accordance with the rules of execution for wills, to be given testamentary effect if it can be established by clear and convincing evidence that it was intended to be a will or intended to modify in some way a pre-existing will. In other words, this provision reduces formalistic court decisions which discard attempts at will making and will modification.

6. Rules of Construction Applicable Only to Wills. There is a need for rules of construction because the drafting of wills does not always take into account every contingency - even when drafting is careful and proper. There are some underlying principles that commonly link these rules of construction. One such principle is the principle of the testator's intent. In so far as possible, wills are construed to carry out the intent of the persons who make them.

An important rule of construction provides for lapsed devises. A lapsed devise is one to a person who predeceases the person who makes the will. The law has struggled with the problem of terminating such a devise (as opposing to saving it) by extending it to the next surviving generation. Generally, the debate has been resolved in the favor of statutory antilapse provisions for devises within a family that preserve the devise in the favor of those who are descendants of the deceased devisee.

The original Uniform Probate Code had an antilapse provision. The revised Uniform Probate Code contains a major effort to resolve the problems of antilapse statutes. The resolution includes both individual devises and class devises. If an individual devise is to a grandparent, a descendant of a grandparent, or a stepchild of the testator, then predeceasing the testator means that the devise will carry to the next generation of descendants of the devisee who live. For class gifts, which are gifts to unnamed but described common group, the prior death of a class member allows descendants of that class member to succeed to the class member's share.

Of course, the preceding presupposes that there is no express substitute devisee in the will. If an express substitute devisee is named in the will, the substitute will take the gift if there is a lapse.

7. Rules of Construction Applicable to Wills and Other Governing Instruments. Construction rules, such as antilapse provisions, are extended beyond wills in the revised Uniform Probate Code. This, perhaps, is the most important innovation to be found in the revised Uniform Probate Code. There are rules of construction for other donative instruments -- i.e. trusts, insurance contracts, POD provisions in account contracts, and TOD provisions on investment securities. An enormous quantity of property passes in transfers which are nonprobate in character.
8. General Provisions Concerning Probate and Nonprobate Transfers. Rules relating to disclaimers and the effect of divorce and the effect of homicide on gratuitous transfers have been refined and expanded to cover nonprobate transfers.

The Revised Article II has received the endorsement of American Association of Retired Persons. For more information contact:

Melissa B. Burkholder
Consumer Issues Team Leader
AARP State Legislation Department
601 E Street, N.W.
Washington, DC 20049
(202) 434-3050

D. REVISED CHAPTERS 10, 11, 12, AND 13 OF TITLE 72 MCA AFFECTING "SUPPLEMENTARY" PROVISIONS ON INTESTATE SUCCESSION, WILLS, PROBATE, ADMINISTRATION, AND PERSONS UNDER DISABILITY - [Sections 76 through 80 of the Bill]

The bulk of these sections were adopted by our Territorial Legislature in 1877. With occasional amendments, these provisions have been continued over the years.

The provisions were continued after Montana adopted the Uniform Probate Code in 1974. In many instances the provisions of Chapters 10, 11, 12, and 13 are unnecessary because the subject matter is covered by the Uniform Probate Code. In some instances, the provisions are inconsistent with the Uniform Probate Code. Thus the Bill simply repeals most of the provisions of Chapters 10, 11, 12, and 13.

In a few instances, the provisions remain valuable portions of statutory law. However, some of those provisions needed rewriting in "twentieth century" English. Thus, for example, the sections on determining degrees of relationship (MCA sections 72-11-101 through 72-11-104) have been rewritten and are found in Sections 76 through 79 of the Bill.

E. DEFINITION OF "STEPCHILD" FOR THE PURPOSES OF THE MONTANA INHERITANCE TAX (MCA SECTION 72-16-313) - [Section 81 of the Bill]

In 1991, the inheritance tax exemption for transfers to stepchildren was expanded. MCA section 72-16-313(2)(b) included a reference to a "stepparent" but did not include a definition of the term. Section 81 of the Bill incorporates the definition found in revised Article II of the Uniform Probate Code.

F. EFFECTIVE DATE PROVISION OF SECTION 72-36-206 (MONTANA TRUST CODE) DEALING WITH CONVEYANCES TO TRUSTS PRIOR TO OCTOBER 1, 1989 - [Sections 82 and 134 of the Bill]

In 1991, subsection (8) was added to section 72-36-206 to rectify title issues which could arise when a deed purports to make a transfer to a named trust, rather than to a designated trustee. Unfortunately, subsection (1) contained language indicating that the section did not affect conveyances recorded prior to October 1, 1989 (the effective date of the Montana Trust Code). Arguably the benefits of subsection (8) were limited to those deeds recorded after October 1, 1989.

Section 82 of the Bill eliminates this date restriction and Section 134 of the Bill applies this modification retroactively.

G. REVISED ARTICLE VI OF THE UNIFORM PROBATE CODE (NONPROBATE TRANSFERS ON DEATH (1989)) - [Sections 83 through 112 of the Bill]

The original Uniform Probate Code promulgated by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1969 included an Article VI relating to Nonprobate Transfers on Death. To date, over one-half of all the states have adopted the multiple party accounts provisions of Article VI even though some of those states have not adopted the Uniform Probate Code in its entirety. However, Montana has yet to adopt the provisions relating to multiple party accounts.

In 1989, the National Conference of Commissioners revised Article VI and included new provisions for the Transfer on Death (TOD) of securities.

1. Multiple-Person Accounts. Sections 84 through 102 deal with accounts at financial institutions (banks, savings and loan associations, credit unions, etc.). Checking accounts, savings accounts, certificates of deposit, and share accounts are covered by these provisions.

- a. Forms. Section 87 of the Bill provides convenient forms which financial institutions may utilize.

These forms enable a person establishing a multiple-party account to state expressly whether there are to be survivorship rights between the parties.

The significant consumer benefit of these provisions is that a depositor is forced to consciously address the issue of whether or not

another individual is to receive survivorship benefits in an account. More than occasionally, litigation arises after the death of a depositor concerning the depositor's "intent" to provide a survivorship benefit to another. Perhaps the depositor did not realize that the language concerning survivorship benefits was buried in the form creating the account. Perhaps one of several children was named on a "joint" account form because a parent wanted a nearby child to handle some transactions with the account. Perhaps the depositor's estate plan will be upset if a survivorship condition is imposed. A depositor who uses a form provided by the Uniform Probate Code has a clear choice whether or not to create a right of survivorship.

Further, a depositor can simply name another who will acquire ownership rights only upon the death of the depositor. Such is known as a Pay on Death (POD) account.

Finally, a depositor can designate an agent under a power of attorney designation. The agent has no ownership rights but can make account transactions.

b. Rights of Creditors and Others. Section 94 of the Bill makes it clear that a transfer resulting from a right of survivorship or a POD designation is liable to the estate of the decedent depositor to discharge any remaining unpaid claims against the estate and any unpaid family, homestead, and exempt property allowances.

c. Protection of Financial Institutions. Sections 96 through 102 of the Bill provide substantial protections for the financial institution. For example, Section 99 protects a financial institution that makes a payment pursuant to an account with an agency designation, even though the agency may have been terminated at the time of payment due to disability, incapacity, or death of the principal.

2. TOD Security Registration Act. Sections 103 through 112 deal with securities, including stocks, mutual fund shares, and accounts maintained by brokers and others to reflect a customer's holdings of securities ("street accounts").

- a. Registration in "Beneficiary Form". Section 105 permits registration in "beneficiary form". Under the definition of Section 103(1), "beneficiary form" means a registration of a security that indicates both the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner. Such can be accomplished by using the words "transfer on death", "TOD", "pay on death", and "POD".
- b. Rights of Creditors. Section 111(2) of the Bill makes it clear that a transfer resulting at death does not limit the rights of creditors of security owners.
- c. Protection of Registering Entity. Section 110 of the Bill provides protection to the registering entity which registers a transfer in good faith.

These TOD provisions received the official endorsement of the Securities Industry Association (SIA). The SIA is the trade association representing more than 600 securities firms headquartered throughout the United States and Canada.

Nothing in Article VI of the Uniform Probate Code (UPC) is inconsistent with the Uniform Commercial Code (UCC). In fact the Commissioners' comments under several sections of Article VI of the UPC include references to related sections in the UCC.

As noted, the revised Uniform Probate Code has received the endorsement of American Association of Retired Persons.

H. UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT - [Sections 113 through 131 of the Bill]

The Uniform Statutory Power of Attorney Act provides legislative sanction to a statutory form that can be used instead of individually-drafted forms. The use of the statutory form (Section 113 of the Bill) is supported by the expressed authority of the State.

In 1991, a similar provision was enacted in Montana. That provision was based upon an earlier version of Minnesota law. To a great extent, the Uniform Act and the Minnesota statute are similar. However, the Uniform Act is superior in the following respects:

1. Uniformity. The Uniform Act has the benefits of uniformity, including the benefit of case law from other jurisdictions.

2. Fraud. The Uniform Act reduces the possibility of a fraudulent increase in the powers granted an agent. To grant a power under the Uniform Act, the principal must sign his (her) initials on a line in front of the specified power. Existing law merely requires the placement of an "X".
3. Commodity Transactions. Under the Uniform Act a principal may grant an agent authority to engage in stock and bond transactions but not grant the agent authority to engage in more risky commodity and option transactions. Existing law lumps all of these transactions together.
4. Government Benefits. The Uniform Act provides express authority to engage in transactions concerning benefits from social security, medicare, medicaid, and other governmental programs. Existing law does not have express authority to engage in such transactions.
5. Indemnification. The Uniform Act includes indemnification provisions to anyone who has relied upon the power of attorney. Existing law does not include similar provisions. Thus third parties are less likely to recognize powers of attorney executed under existing law.
6. Retirement Benefits. The Uniform Act provides express authority to engage in transactions concerning retirement benefits. Existing law does not include similar provisions.
7. Concise. The Uniform Act is more concise than existing law. Section 115 of the Bill includes several provisions relating to the construction of powers. Existing law repeats similar construction provisions in 10 separate sections.
8. Gifts. The Uniform Act does not include provisions authorizing the agent to make gifts. Existing law includes express provisions for gifts. Since the Power of Attorney is likely to be signed without the assistance of counsel, the dangers of granting such an express power is not likely to be apparent to the principal.

LAW OFFICES OF
HARLEN, THOMPSON & PARISH, P.C.
800 SIXTH AVENUE
HELENA, MONTANA 59601

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 2-1-93

BILL NO. SB119

ADA J. HARLEN
SHAUN R. THOMPSON
RICHARD L. PARISH
THOMAS K. HARLEN

February 1, 1993

TELEPHONE: (406) 443-0360

FAX: (406) 443-0362

Senator William Yellowtail
Chairman, Senate Judiciary Committee
State Capitol
Helena, MT 59620

Re: Senate Bill #119

Dear Senator Yellowtail:

I was scheduled to appear before your committee today concerning Senate Bill No. 119. A prior business commitment has prevented me from doing so. Please accept this letter in lieu of my testimony.

I was one of the initial committee members responsible for the implementing and adoption of the Montana Uniform Probate Code in 1975, and the only female committee member. Montana did not adopt the Uniform Probate Code in total and in retrospect perhaps we should have done just that, since as we continue to work with it on a daily basis, we realize it needs updating.

Senate Bill #119 deals with Article II (concerning Intestacy Provisions) and Article VI (concerning Nonprobate Transfers) of the Uniform Probate Code. Nonprobate transfers deal with joint tenancy accounts, payable on death accounts and trust accounts.

The avoidance of probate is a high priority of my clients' concerns in estate planning. Montana is long overdue in adopting the provisions of Senate Bill No. 119. Clarifying the treatment of nonprobate assets would be a benefit to every Montanan.

If I can provide any further information, please let me know. Thank you for our consideration.

Sincerely,



(Mrs.) Ada J. Harlen

cc: Members of Senate Judiciary Committee

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la.App. 1

where notary public who drafted deed testified that grantor told him she wanted to leave real estate to grandson but that she wanted security for herself, and grandson lived with grantor prior to grantor's death and made repairs, lived in, and paid taxes on house. *Vigil v. Sandoval*, App.1987, 741 P.2d 836, 106 N.M. 233.

ter testified that she had viewed letter as proposal containing ideas which had to be reviewed with other family members before they became effective. *Butler v. Hardy*, Me.1990, 576 A.2d 202.

Party].

5. Letter of intent

Letter of intent as to distribution of father's estate, entered into by daughter and son, did not constitute binding contract; although letter recited that parties intended to take steps necessary to obtain the equitable distribution spelled out therein, no further steps were taken and daugh-

6. Sale agreement

Evidence supported conclusion that sale agreement, under which daughter agreed to sell her inheritance from father to son in return for \$650 previously loaned by son and his agreement to pay all inheritance taxes, was valid; agreement was unambiguous, written by daughter in her own hand, was duly signed and witnessed, and recited consideration for promise. *Butler v. Hardy*, Me.1990, 576 A.2d 202.

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ARTICLE VI

NONPROBATE TRANSFERS ON DEATH (1989)

Historical Notes

A Revised Article VI of the Uniform Probate Code [Nonprobate Transfers on Death (1989)], was approved by the National Conference of Commissioners on Uniform State Laws in 1989. The complete text of the revised article, as well as the prefatory note and comments, are set forth in this supplement.

See material relating to the prior Article VI, supra, this supplement.

Adoption of Uniform Multiple-Person Accounts Act and Uniform TOD Security Registration Act

Note that Parts 2 and 3 of Revised Article 6 have also been adopted as the free-standing Uniform Multiple-Person Accounts Act and Uniform TOD Security Registration Act, respectively. See the supplement to Volume 8A.

Committees

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Probate Code Article VI—Nonprobate Transfers on Death—(1989) was as follows:

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Godfrey L. Munter, Suite 400, 4801 Massachusetts Avenue, N.W., Washington, DC 20016
Willis E. Sullivan, III, P.O. Box 359, Boise, ID 83701
Richard V. Wellman, University of Georgia, School of Law, Athens, GA 30602

Review Committee

Thomas L. Jones, University of Alabama, School of Law, P.O. Box 5557, Tuscaloosa, AL 35486, *Chairman*
Timothy J. Cronin, Jr., New England School of Law, 154 Stuart Street, Boston, MA 02116
Alvin J. Meiklejohn, Jr., Suite 1600, 1625 Broadway, Denver, CO 80202

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Henry M. Kittleson, P.O. Box 32092, 92 Lake Wire Drive, Lakeland, FL 33802 *Chairman, Division D*

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 2-1-93
BILL NO. SB119

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NO. 4
DATE 2-1-93
BILL NO. SB119

UNIFORM PROBATE CODE

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS (1990)

(With Revised Article 1, Sections 1-107 and 1-201)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-NINTH YEAR
IN MILWAUKEE, WISCONSIN
JULY 13 - 20, 1990



WITH PREFATORY NOTE AND COMMENTS

JUDICIARY
NO. 4
2-1-93
BILL NO. SB119

UNIFORM PROBATE CODE

ARTICLE II

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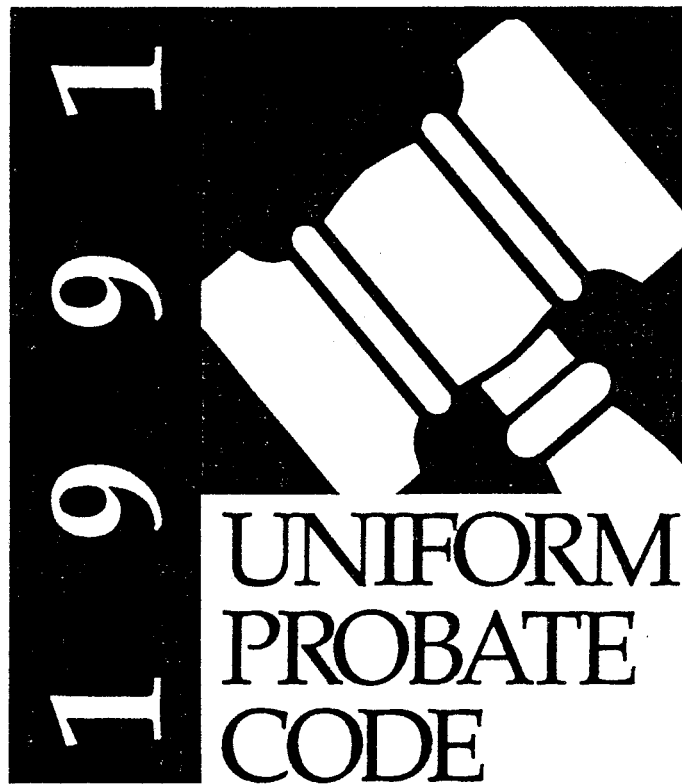
WITH PREFATORY NOTE AND COMMENTS

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 2-1-93

BILL NO. SB119



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UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

EXHIBIT NO. 6

at its

DATE 2-1-93
BILL NO. SB119

ANNUAL CONFERENCE
MEETING IN ITS NINETY-SEVENTH YEAR
IN WASHINGTON, D.C.
JULY 29 - AUGUST 5, 1988



WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Honolulu, Hawaii, August 9, 1989

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Roberts Street, Helena, MT 59620-1201. The phone number is
444-2694.

UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Senate Bill No. 119----Sections 113-130

Modifications and revisions to existing Title 72, Chapter 31,
Part 2--"Statutory Short Form Power of Attorney.

1. Elimination of the term "short"--13 separate categories of powers.
2. Adoption of Uniform Act--Advantage of uniformity of application and construction.
3. Adoption of Uniform Act--Interpretation by other jurisdictions will further aid explanation and construction.
4. Section 113. Powers granted are indicated by insertion of grantor's initials rather than with an "x".
5. Section 114. Allows for durable power--powers granted will continue to be effective if grantor becomes disabled, incapacitated or incompetent.
6. Section 116. Construction of powers generally--One section covers general powers and eliminates repetitious and redundant language in each category section.
7. Elimination of the following categories of powers:
 - a) Gift transactions
 - b) Fiduciary transactions
 - c) "Records, Reports, and Statements"
 - d) "All Other Matters"
8. Addition of the following categories of powers:
 - a) Social Security, Medicare, Medicaid, and other governmental programs.
 - b) Retirement plan transactions.
 - c) Tax Matters.
9. Expansion of power for Family Maintenance to Personal and Family Maintenance.
10. Separation of power on Stock and Bond Transactions from Commodity Transactions.

Summary prepared by:
Patrick Dougherty
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2-1-93

NAME GEORGE T. BENNETT
ADDRESS 111 No. MAIN ARCADE 3-I HELENA
HOME PHONE 442-9855 WORK PHONE 442-3691 5960
REPRESENTING MONTANA BANKERS ASSOCIATION
APPEARING ON WHICH PROPOSAL? SB119
DO YOU: SUPPORT _____ OPPOSE X AMEND X

COMMENTS:

EFFECTIVE DATE SHOULD BE
DELAYED TO ALLOW MORE
PUBLIC STUDY AND COMMENT.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Feb 1, 1993

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 119 Halligan
S.B. 238 Crippen

Name	Representing	Bill No.	Check One Support Oppose	
E. Edwards Ed	U of M Trans	119	✓	
PATRICK DOUGHERTY	MT STATE BAR	119	✓	
Kristen Juras	MT State Bar	119	✓	
Richard M. Baeskett	Self	119	✓	
Raz Childs	MARS	153	✓	
John R Vceller	U of M	119	✓	
Bob Dyser	MT Prolet Union League	119	✓	
Bruce A. MacKenzie	Securities Industry Assoc DADCO	119	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY