

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 26, 1993, at 7:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Dave Brown (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: SB 119
Executive Action: SB 9, SB 23, SB 323, SB 119,
SB 409, SB 351, SB 78

HEARING ON SB 119

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, Senate District 29, Missoula, stated that SB 119 is an act generally revising the law concerning estates, wills, and donative transfers. **SEN. HALLIGAN** distributed

testimony which explains the intent of SB 119. EXHIBIT 1

Proponents' Testimony:

E. Edwin Eck, Professor of Law, University of Montana School of Law, Missoula, presented written testimony. EXHIBITS 2, 3, 4, 5, and 6

Kristen Juras, probate attorney, Great Falls, focused on the proposed changes of the spouses' elected share. In Montana children can be disinherited but spouses cannot be. A spouse has the right, under current law, to take one-third of the estate. Attorneys believe long marriages are similar to an economic partnership and that partner is entitled to 50 percent.

Dan McLean, trial attorney, Billings and Helena, addressed Article 6, Non-probate Transfers on Death Act and said the typical situation is parents putting their children's names on accounts, which is done much too often. When opening an account, they should make a conscious decision whether this is going to be a multiple party account or a single party account and whether there's going to be a table of death (TOD) designation. He said this is a consumer bill.

Bruce MacKenzie, attorney, representing Securities Industry Association and D.A. Davidson Company, testified in support of Sections 1, 2, 3 and 12 specifically. The state of Montana says the transfer on death provisions aren't applicable. He explained the difference between a trust fund and a trust account.

Joel Nemo, Montana Credit Union Network, stated that the Montana Credit Union Network supports SB 119.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. RUSSELL, a Native American who lives on the Crow Reservation, said all Native American money is held in trust; there are no wills. REP. RUSSELL referred to page 3, example 5 of Professor Eck's exhibit and said the relationships of Indian people are so extended; she wondered whether, if this law passes, some relationships would be excluded. Professor Eck clarified what "relatives" means. Relatives exempted would be any grandparent or a descendent of a grandparent, first cousins, first cousins once-removed, grandchildren, great-grandchildren, etc. The thought behind this is someone very remotely connected should not benefit unless so stated in the will.

REP. RICE referred to the sliding scale on the spouses' elective share in section 60 of the bill, and asked if that is part of the

uniform language. Ms. Juras confirmed that is part of the uniform language.

REP. WHALEN asked Professor Eck if anything has been done with regard to preference for plaintiff for personal representatives in the event an individual dies intestate, and if so, what those changes would be. Professor Eck said those provisions are found in Article 3 of the Uniform Probate, and nothing in this bill relates to that.

REP. RUSSELL said it is Indian tradition that grandparents raise their grandchildren as their own, but existing law does not recognize that. She asked if current law recognizes Native American cultural differences, and if there is a difference between legally adopted children and a natural child.

Professor Eck said legally adopted children are treated the same as natural children.

Closing by Sponsor: None

EXECUTIVE ACTION ON SB 9

Motion: REP. WHALEN moved an amendment to reinsert the language which was stricken on page 3, lines 8 and 9.

Discussion:

REP. WHALEN stated that the purpose of this amendment is because of the nature of small claims court. In the level of courts, the lowest possible court is the small claims court, the next level being justice court. The next level would be municipal courts and state district courts.

REP. VOGEL asked REP. WHALEN why he wouldn't want to allow a resident living in a county other than Yellowstone, for example, to have someone served with a claim when that person has damaged another's property. REP. WHALEN said that resident would have available justice court jurisdiction and, in fact, justice court judges serve as small claims court judges. He added that the small claims court has jurisdiction over very small amounts, and the small claims court in Shelby shouldn't have jurisdiction over someone in Alzada.

Vote: REP. WHALEN'S amendment to reinsert language on page 3 failed on a vote of 5-12 with CHAIRMAN FAGG, REPS. VOGEL, BROWN, BIRD, BERGMAN, BROOKE, CLARK, GRIMES, SAYLES, SMITH, TASH, and WINSLOW voting no. REP. MCCULLOCH did not vote.

Motion: REP. TOOLE MOVED SB 9 BE TABLED.

Discussion:

REP. TOOLE believed the committee made a mistake by not raising the amounts for small claims court.

REP. RICE supports the motion. He said, in a way, the legislature would be giving small claims courts more power than district courts.

CHAIRMAN FAGG said he likes the jurisdiction amounts but asked REP. TOOLE how this bill could be saved. REP. TOOLE said that Mr. Hoppe, Montana Magistrates Association, had pointed out that the \$2,500 is wrong and current law is \$3,000. The Senate considered raising that to \$5,000. REP. TOOLE thinks the courts do an excellent job in counties with claims at least that size, if not larger. However, he doesn't agree with changing it to \$5,000. CHAIRMAN FAGG asked Mr. Hoppe if, by letting small claims courts pull in defendants from far away counties, that could pose real problems. Mr. Hoppe said the Senate and the magistrates' association supports providing services of small claims court outside the county, just as civil court has that jurisdiction. It is the magistrates' belief that in keeping with this concept, small claims courts should have the same jurisdiction.

Vote: SB 9 BE TABLED. Motion carried 15-3 with CHAIRMAN FAGG, REPS. VOGEL and CLARK voting no.

EXECUTIVE ACTION ON SB 23

Motion: REP. WHALEN MOVED SB 23 BE CONCURRED IN.

Motion: REP. WHALEN moved an amendment stating that criminal charges must be filed against the parents within 20 days or the child returned to the parents.

Discussion:

REP. WHALEN said these proceedings can start whether or not the child is removed from the home. A petition is filed, and they go to court and ask for a temporary investigative authority (TIA). The court automatically grants that TIA for a period of 60 or 90 days, and oftentimes, grant an extension of the TIA to the social worker of the county for another 90 days. People who remove children from the home, oftentimes, have very little justification. This amendment would state if the matter is so serious that the child is removed from the home, then there must be serious enough grounds that criminal charges be filed or the child must be returned to the parents. This amendment will not prevent the county, following the investigation, from moving to terminate the parent/child relationship or filing criminal charges at a later date. The amendment says the child must be returned unless criminal charges have been filed within 20 days.

REP. MCCULLOCH spoke against the amendment. He said it seems as though anyone can come in and take the children at any time. The agency is understaffed and overworked as it is.

Motion: REP. BROWN MOVED A SUBSTITUTE MOTION SB 23 BE TABLED

Discussion:

REP. WYATT supports the table motion and objects to a third party questioning the child. REP. GRIMES supports the videotape issue of having a third party in the room but believes the bill needs some housekeeping review.

REP. RUSSELL said social workers have tremendous work loads and must have substantial evidence to take children from the home. She added it's very difficult to videotape children, especially involving sexual abuse cases.

Vote: SB 23 BE TABLED FAILED. Motion failed 11-7 with CHAIRMAN FAGG, REPS. VOGEL, BIRD, BERGMAN, CLARK, GRIMES, RICE, SMITH, TASH, TOOLE, and WHALEN voting no.

REP. WHALEN clarified that his amendments don't take authority away from the Department of Family Services (DFS) to remove children from the home. All of that remains intact and can be done without notifying the parents. The amendment says DFS must do one of two things within 20 days: either file criminal charges or return that child to the home. This doesn't impact the right of DFS to remove children from the home, and it does not impact their right to have investigative authority to investigate these cases.

Vote: REP. WHALEN'S amendment to press charges within 20 days failed 17-1 with CHAIRMAN FAGG, REPS. VOGEL, BROWN, BIRD, BERGMAN, BROOKE, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, SMITH, TASH, TOOLE, WINSLOW, and WYATT voting no.

Motion: REP. BROOKE moved an amendment to strike lines 19-24 on page 5 which would remove the third person from the interview.

Discussion:

REP. BROOKE asked the committee to stay focused on the fact that the issue is protecting children, and anyone involved in these cases knows how intimidating and difficult it can be for children to go through this process. She believes a third party removes the level of comfort for children and there are many ways to acquire the reality of testimony other than having a third party present. If a third party is to be involved, there must be criteria to involve the third party. It is imperative that the child be protected. She believes the section should be removed.

REP. WHALEN said DFS agreed to include a third person. He opposed the amendment and said there must be some assurance that

these interviews are being conducted in an appropriate manner. That section doesn't provide for any input; it just provides they be allowed in the room to observe. He didn't think that was unreasonable.

REP. VOGEL said that, having participated in interviews with children who have been sexually abused, it's best if one person builds a relationship with that child. Others in the room can be distracting and cause distrust on the part of the child. He supports the amendment.

Vote: REP. BROOKE'S amendment to strike lines 19-24 on page 5 carried 17-1 with REP. WHALEN voting no.

Mr. MacMaster said page 8 of HB 127 has a minor conflict with statute 41-3-403. The minor change would be to "youth" instead of "child." He further explained the bill refers to child abuse, and HB 127 added a new provision to the section using "youth."

Motion/Vote: REP. BROWN moved a coordination instruction for HB 127 and SB 23. Motion carried unanimously.

Motion/Vote: CHAIRMAN FAGG MOVED SB 23 BE CONCURRED IN AS AMENDED. Motion carried 12-6 with REPS. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, and WYATT voting no.

EXECUTIVE ACTION ON SB 323

Motion: CHAIRMAN FAGG MOVED SB 323 BE CONCURRED IN.

Discussion:

CHAIRMAN FAGG strongly supports this bill because he thinks this program builds self-esteem, motivation, and gives these young men a chance to show they can do something with their lives. It's a tough program; it's disciplined; and it has been demonstrated that when they complete the program, these people have accomplished something. A great many young people have never accomplished anything in their lives, and this program gives them that chance. It's completely voluntary, it's for 120 days, and it will get them out of prison and into a different environment.

REP. WYATT personally objects to the terminology "shock" as it gives negative connotations and it's a misnomer. She will offer an amendment to change the word from "shock" to "boot camp".

REP. RICE spoke with Mickey Gamble, Administrator, Department of Corrections (DOC), about changing the name. He wasn't opposed to changing the name, but he did explain that "shock" is a natural thing that does happen to these people once they start the program, and it is the terminology used in the corrections field.

Motion/Vote: REP. WYATT moved the amendment to change "shock" to "boot camp". Amendment carried unanimously. EXHIBIT 7

REP. BIRD asked if the committee addressed the issue of allowing minors in the camp, and REP. SAYLES answered per Mr. Gamble, that by law, juveniles would not be allowed in the camp. They need different types of rehabilitation. Eighteen years of age would be the minimum age.

CHAIRMAN FAGG distributed Senate amendments striking "youthful." Apparently, these amendments were adopted in the Senate and should have been included in the bill but for some reason were not. EXHIBIT 8

Motion/Vote: REP. BIRD moved an amendment requested by SEN. CHRISTIAENS to strike "youthful." Amendment carried unanimously.

Motion/Vote: REP. RUSSELL moved an amendment to replace the word "youthful" with "women" on line 18, page 1 to read: "for female and male offenders." Amendment carried unanimously.

Mr. Pomroy, Department of Corrections and Human Services, said that the recidivism rate for those coming out of boot camp is less than those who haven't gone through it. They also go to pre-release centers.

Motion/Vote: SB 323 BE CONCURRED IN AS AMENDED. Motion carried 15-3 with REPS. WINSLOW, BROWN, AND McCULLOCH voting no.

EXECUTIVE ACTION ON SB 119

Motion: REP. TOOLE MOVED SB 119 BE CONCURRED IN.

Motion/Vote: REP. TOOLE moved an amendment to let grandchildren take an equal share in the inheritance or assets so they don't have to go to court. Mr. MacMaster will assist in drafting the amendment. Motion carried 17-1 with REP. VOGEL voting no.

REP. RUSSELL discussed the possibility of applying the Crow Indian's cultural law into state law that grandparents raise their grandchildren as their own, and these children would be considered heirs. She explained that tribes are subject to state law, and cultural relationships have been considered in the past. In the hearing, she discussed how Indian children are raised by their grandparents and in their culture they are considered their children. This had not been drafted into an amendment or a concept amendment.

Vote: SB 119 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with REP. BROWN voting no.

Mr. Richard M. Baskett, Datsopoulos, MacDonald & Lind, P.C., Attorneys at Law, Missoula, distributed a letter supporting SB 119. EXHIBIT 9

EXECUTIVE ACTION ON SB 409

Motion: REP. BROWN MOVED SB 409 BE CONCURRED IN.

Motion/Vote: REP. SAYLES moved amendments proposed by SEN. HOCKETT. Motion carried 17-1 with REP. BIRD voting no. EXHIBIT 10

Motion: REP. TOOLE moved an amendment to remove Section 3 from the bill. He doesn't feel immunity is necessary in this bill.

Discussion:

REP. BIRD agreed with REP. TOOLE and said she believes immunity is unnecessary. REP. SAYLES stands in opposition to the amendment. He believes the department is going for immunity, and in order to save Section 3, it can be rewritten. REP. TASH said Section 3 is drafted to offer a certain amount of immunity and the section is needed in the bill. He stated the section is needed to protect and guarantee that people have that level of volunteers, especially in the areas that are underserved by professional EMTs.

Mr. MacMaster explained that Section 3 provides immunity to a member of a quality assurance committee. SB 409 includes such committees in both the private and public sectors formed by the Department of Health and Environmental Sciences (DHES). If immunity is going to be given to the members of DHES on this committee, a section should be added to the bill stating it requires a two-thirds vote. The Montana Constitution states local and state governments have no immunity without a two-thirds vote of each house of the legislature.

Vote: REP. TOOLE'S amendment to strike Section 3 from the bill failed 9-8 with CHAIRMAN FAGG, REPS. VOGEL, BROWN, BERGMAN, CLARK, GRIMES, SAYLES, SMITH, and TASH voting no. REP. WINSLOW did not vote.

Motion: REP. VOGEL MOVED SB 409 BE CONCURRED IN AS AMENDED.

Discussion:

REP. VOGEL believes the bill is directed toward the actual care of the patient at the time. REP. SAYLES stated that peer groups do monitor their activities and upgrade the level of skills provided to their patients.

REP. BIRD asked Mr. MacMaster to clarify the language "doctor/patient" privilege on page 2, line 16 and asked if it was needed.

Mr. MacMaster said it is much the same as the attorney/client privilege. He said throughout this bill there are numerous provisions that say the DHES data and information are confidential, which means they are privileged. SEN. HOCKETT'S amendments say they can't discover or introduce this as evidence, and to Mr. MacMaster, this clearly violates the "Right to Know" provision of the Montana Constitution.

Motion/Vote: REP. SAYLES MADE A SUBSTITUTE MOTION SB 409 BE TABLED. Motion carried 15-3 with CHAIRMAN FAGG, REPS. BROWN and VOGEL voting no.

EXECUTIVE ACTION ON SB 351

Motion/Vote: CHAIRMAN FAGG MOVED SB 351 BE TABLED. Motion carried 14-4 with REPS. BROOKE, BROWN, MCCULLOCH, and SAYLES voting no.

EXECUTIVE ACTION ON SB 78

Motion: CHAIRMAN FAGG MOVED SB 78 BE CONCURRED IN.

Motion/Vote: CHAIRMAN FAGG moved the amendments on page 2, line 5. EXHIBIT 11 Motion carried 12-6 with REPS. BROWN, BROOKE, GRIMES, SAYLES, SMITH, and WYATT voting no.

Vote: SB 78 BE CONCURRED IN AS AMENDED. Motion carried 13-5 with REPS. BROWN, WYATT, MCCULLOCH, BROOKE AND SAYLES voting no.

ADJOURNMENT

Adjournment: 12:00 p.m.


REP. RUSSELL FAGG, Chairman


BETH MIKSCHKE, Secretary

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3/26/93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE STANDING COMMITTEE REPORT

March 27, 1993

Page 1. of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 78 (third reading copy -- blue) be concurred in as
amended .

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Fagg

1. Page 2, line 5.

Following: "~~the~~ ."

Insert: "If the county attorney and the city attorney cannot
agree on who will represent the state, the county attorney
shall represent the state."

-END-

Committee Vote:
Yes 13, No 5.

690949SC.Hss

HOUSE STANDING COMMITTEE REPORT

March 30, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 119 (third reading copy -- blue) be concurred in as amended.

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Jim Rice

1. Page 40, line 10.

Following: line 9

Insert: "(5) (a) if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection (5) (b), if more than one person is of that closest degree, those persons share equally.

(b) If more than one person is of the closest degree as provided in subsection (5) (a) but they claim through different ancestors, those who claim through the nearer ancestor shall receive to the exclusion of those claiming through a more remote ancestor."

2. Page 41, lines 12 through 16.

Following: "." on line 12

Strike: remainder of line 12 through "." on line 16

Insert: "The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

3. Page 42, lines 6 through 10.

Following: "." on line 6

Strike: remainder of line 6 through "." on line 10

Insert: "The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

4. Page 121, line 11.

Strike: "an applicable statute or"

Committee Vote: 17
Yes 17, No 1.

710844SC.Hss

5. Page 121, lines 12 and 13.

Following: "distributed" on line 12

Strike: remainder of line 12 through "or" on line 13

6. Page 122, line 1.

Following: "If"

Insert: "an applicable statute or"

7. Page 122, line 2.

Following: "distributed"

Insert: "'by representation" or"

-END-

HOUSE STANDING COMMITTEE REPORT

March 27, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 323 (third reading copy -- blue) be concurred in as amended .

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Fagg

1. Title, line 5.

Strike: "SHOCK"

Insert: "BOOT CAMP"

Strike: "YOUTHFUL"

2. Page 1, line 15.

Page 2, lines 9, 14, and 17.

Page 3, lines 1, 13, 22, and 25.

Strike: "shock"

Insert: "boot camp"

3. Page 1, line 18.

Strike: "youthful"

Insert: "male and female"

4. Page 2, line 5.

Strike: "youthful"

5. Page 2, line 12.

Strike: "Shock"

Insert: "Boot camp"

6. Page 2, line 14

Strike: "youthful"

7. Page 2, line 18.

Strike: "5 years"

Insert: "1 year"

8. Page 2, line 21.

Strike: "25"

Insert: "35"

Committee Vote:

Yes 15, No 3.

690953SC.Hss

March 27, 1993
Page 2 of 2

9. Page 2, lines 22 and 23.

Strike: "(c)" on line 22 through ";" on line 23

Renumber: subsequent subsection

-END-

256/9
FCC
11111111
▲

3/27/93
10:10

HOUSE STANDING COMMITTEE REPORT

March 27, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 23 (third reading copy -- blue) be concurred in as amended .

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Grimes

1. Title, lines 17 through 19.

Strike: "REQUIRING" on line 17 through "INVESTIGATION;" on line 19

2. Page 5, lines 19 through 24.

Strike: subsection (c) in its entirety

Renumber: subsequent subsection

3. Page 10, line 21.

Following: line 20

Insert: "NEW SECTION. Section 6. Coordination instruction. If House Bill No. 127 is passed and approved and if it amends 41-3-403 by inserting a reference or references to a "youth", then each reference to the word "youth" in those amendments is changed to the word "child"."

Renumber: subsequent section

-END-

Committee Vote:
Yes 12, No 6.

690951SC.Hdd

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3/24 BILL NO. 5B9 NUMBER 17MOTION: Rep. Whalen's amendment Failed 12-5

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman		✓
Rep. Vivian Brooke		✓
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch	NO	VOTE
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles		✓
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	5	12

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-26-93 BILL NO. SB 119 NUMBER 18MOTION: SB 119 be concurred as amended

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	17	1

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-26-93 BILL NO. SB 23 NUMBER 18
 MOTION: SB23 Be Tabled failed 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird		✓
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice		✓
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	7	11

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-26-93 BILL NO. SB 9 NUMBER 18

MOTION:

SB 9 Be Tabled 15-3

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	✓	

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3/26/93 BILL NO. SB 409 NUMBER 17

MOTION: Rep. Toole's amendment to delete section 3
from the bill failed. 9-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles		✓
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	NO	VOTE
Rep. Diana Wyatt	✓	
	8	9

The University of
Montana

EXHIBIT 1
DATE 3-29-93
SB 119

School of Law
The University of Montana
Missoula, Montana 59812-1071
(406) 243-4311

March 22, 1993

House Judiciary Committee
State Capitol
Helena, Montana 59620

Re: Senate Bill 119

Dear Committee Members:

I am writing you in support of the Senate Bill 119 which is scheduled for a hearing before you on Friday, March 26.

Scope of the Bill. The Bill primarily consists of four distinct parts:

- a. Revised Article II of the Uniform Probate Code;
- b. Revised Article VI of the Uniform Probate Code;
- c. Uniform Statutory Form Power of Attorney Act; and
- d. a repeal of most of Chapters 10, 11, 12, and 13 of Title 72 MCA -- "Supplementary" provisions on probate, administration, and persons under disability.

Summary of the Bill.

a. Revised Article II of the Uniform Probate Code. The Uniform Probate Code (UPC) was first proposed by the Conference of Commissioners on Uniform State Laws (Conference) in 1969. It has since been the model for most of the states in the country. The UPC was designed to simplify and shorten the probate process.

In those states which have adopted the Code, the probate process has been streamlined. However after over 20 years of working with the Code, the Conference concluded that improvements could be made. Thus, in 1990 the Conference proposed a revised Article II.

This proposal reflects years of hearings which afforded consumers, academics, and professionals the opportunity to shape a revised Article II. This "second generation" of the Uniform Probate Code has been endorsed by the American Association of Retired Persons.

Revised Article II includes changes in the intestacy statutes to bring them in touch with the current American family; it updates the rights of a surviving spouse on the death of a decedent spouse;

and it updates and expands rules of construction to cover trusts and a variety of instruments in addition to wills.

b. Revised Article VI of the Uniform Probate Code. When Montana adopted the UPC in 1974, it did not adopt the original version of Article VI of the UPC. Over one-half of the states did adopt Article VI. Since then, the Conference has had the benefit of twenty years of experience and completed its revision of this Article in 1989.

The non-probate transfers on death provisions focus on multiple party accounts with banking institutions and on transfers of securities at death by stock brokers. The bill includes convenient forms which financial institutions may utilize. Those forms expressly indicate whether there are to be survivorship rights between the parties. Thus, some of the litigation concerning a dead depositor's intent should be eliminated. Further, a depositor has the option to name another person who will acquire ownership rights only upon the death of the depositor. While it is my understanding that the Montana Bankers Association initially had some reservations about these provisions, George Bennett advises me that the Association has dropped its opposition.

Securities dealers favor the legislation because it provides a convenient way for their investors to designate successor owners without post death administration.

c. Uniform Statutory Form Power of Attorney Act. In 1991 Montana adopted a "form power of attorney act" based upon Minnesota law. This Bill reflects the national Uniform Act. As with all uniform acts, it has the advantage of thoughtful input and uniform construction from the courts of other states. The Bill simply amends the existing Montana law to bring it in conformance with the uniform act.

d. Repeal of most of Chapters 10, 11, 12, and 13 of Title 72 MCA. These so called "Supplementary" provisions on probate, administration, and persons under disability were adopted by our Territorial Legislature in 1877. In many instances these provisions 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.

Montana Activity on the Bill. In early 1992 Gary Bjelland, a Great Falls attorney, appointed a committee of the Trust, Estate, Tax, and Business Law Section of the State Bar of Montana to examine the changes to the national Uniform Probate Code and to consider other advisable changes to Montana's estate laws. The following attorneys participated in that Committee's review: Richard Baskett

House Judiciary Committee
March 22, 1993
Page 3

EXHIBIT #1
DATE 3-29-93
SB119

(Missoula), Pat Dougherty (Missoula), W. Bjarne Johnson (Great Falls), Kristen G. Juras (Great Falls), Dan McLean (Billings), David Niklas (Helena), and James W. Thompson (Billings). After several meetings and much debate, Senate Bill 119 has emerged. Last month we worked with Bob Pyfer of the Montana Credit Union Network. As the result, some changes were made in Article VI. We think this legislation will continue to serve the consumer -- i.e. the people of Montana.

Conclusion. Again, I urge your approval of this balanced bill which is designed to update a variety of Montana laws dealing with probate and related matters.

Sincerely,



E. EDWIN ECK
Professor

cc: Senator Mike Halligan

EXHIBIT 2

DATE 3-26-93

SB 119

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

THE ORIGINAL IS STORED AT THE HISTORICAL SOCIETY AT 225 NORTH ROBERTS STREET, HELENA, MT
59620-1201. THE PHONE NUMBER IS 444-2694.

SENATE BILL NO. 119

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.]

-

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.]

-

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.]

-

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.]

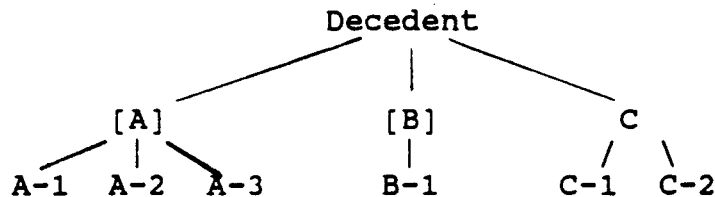
-

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.

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.]

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.

EXHIBIT #3
DATE 3-26-93
X SB-119

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.

EXHIBIT 4
DATE 3-26-93
SB 119

**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**

at its

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

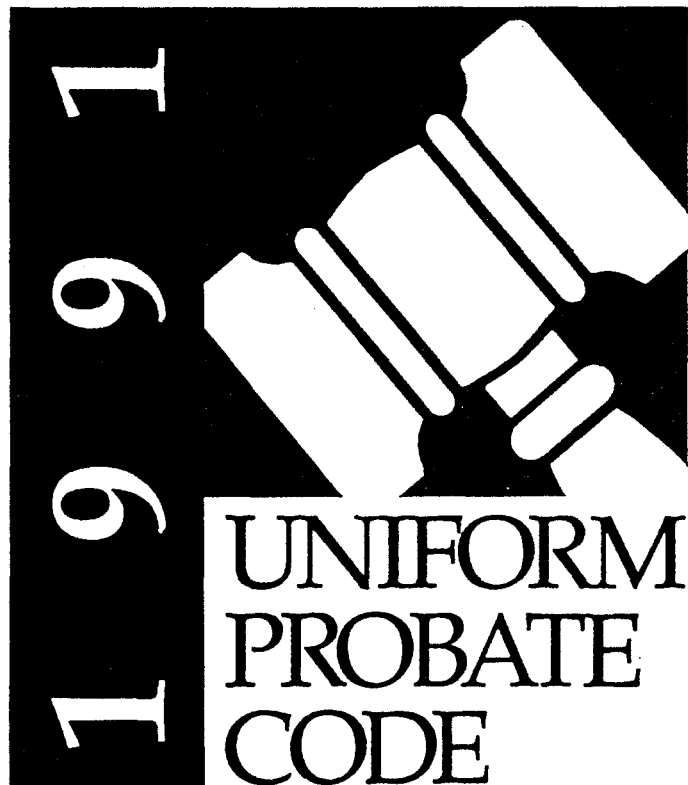


WITH PREFATORY NOTE AND COMMENTS

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

The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 5
DATE 3-26-93
SB 119



The original is stored at the Historical Society at 225 North Roberts Street,
Helena, MT 59620-1201. The phone number is 444-2694.

The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 6
DATE 3-26-93
SB 119

PROBATE CODE

NONPROBATE TRANSFERS (1989)

was no longer viable
Jackson, Fla.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.

of One 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.

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:

William S. Arnold, P.O. Drawer A, Crossett, AR 71635, *Chairman*
John H. DeMouilly, Law Revision Commission, Suite D-2, 4000 Middlefield Road, Palo Alto, CA 94303, *Drafting Liaison*
Clarke A. Gravel, P.O. Box 1049, 76 St. Paul Street, Burlington, VT 05402
Maurice A. Hartnett, III, Chambers, Court of Chancery, 45 The Green, Dover, DE 19901
William E. Kretschmar, P.O. Box 36, 211 West Main Street, Ashley, ND 58413
John H. Langbein, University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637
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

Ex-Officio

Michael P. Sullivan, P.O. Box 35286, 5701 Green Valley Drive, Minneapolis, MN 55435, *President, NCCUSL*
William J. Pierce, University of Michigan Law School, Ann Arbor, MI 48109, *Executive Director, NCCUSL*
Henry M. Kittleson, P.O. Box 32092, 92 Lake Wire Drive, Lakeland, FL 33802 *Chairman, Division D*

First Federal Sav.
1 267, 298 S.C. 85.

multiple signatories
of deposit account,
to act pursuant to
shown below, in any
authorized assignment
signatories, without
Federal Sav. and
298 S.C. 85.

contract between
as subject to laws
v. Northwest Bank
1, 221 Neb. 222.

A Proposal To
C. Amado. 72

1987, 741 P.2d

sequent designa-
unt. Foulds v.
103 N.M. 361.
survivorship as

in which their
not extinguish
right to quar-
antation of her
oh, 1986, 392

erty to grant-
mentary in
ure to comply
ation of will

Amendments to Senate Bill No. 323
Third Reading Copy

Requested by Rep. Wyatt
For the Committee on the Judiciary

Prepared by John MacMaster
March 17, 1993

1. Title, line 5.

Strike: "SHOCK"

Insert: "BOOT CAMP"

2. Page 1, line 15.

Page 2, lines 9, 14, and 17.

Page 3, lines 1, 13, 22, and 25.

Strike: "shock"

Insert: "boot camp"

3. Page 2, line 12.

Strike: "Shock"

Insert: "Boot camp"

EXHIBIT 8

DATE 3-17-93

SB 323

Amendments to Senate Bill No. 323
Third Reading Copy

Requested by Rep. Christiaens
For the Committee on the Judiciary

Prepared by John MacMaster
March 17, 1993

1. Title, line 5.
Strike: "YOUTHFUL"

2. Page 1, line 18.
Page 2, line 14.
Strike: "youthful"

3. Page 2, line 5.
Strike: "youthful"

4. Page 2, line 18.
Strike: "5 years"
Insert: "1 year"

5. Page 2, line 21.
Strike: "25"
Insert: "35"

6. Page 2, lines 22 and 23.
Strike: "(c)" on line 22 through ";" on line 23
Renumber: subsequent subsection

EXHIBIT 9
DATE 3-26-93
SB 119**Datsopoulos, MacDonald & Lind, P.C.**

Attorneys at Law

Central Square Building
201 West Main Street
Missoula, Montana 59802
(406) 728-0810
FAX: (406) 543-0134

Milton Datsopoulos
Ronald B. MacDonald
Dennis E. Lind
Christopher B. Swarley
Edward A. Murphy
William K. VanCanagan
Rebecca L. Summerville
Daria J. Keck
Richard M. Baskett
Cynthia D. Brooks

March 26, 1993

BY FACSIMILE

Honorable Russell Fagg, Chairman, and
Members of the House Judiciary Committee
Montana Capitol
Helena, MT 59624

Re: Senate Bill 119 - Revisions to Uniform Probate Code


Dear Representative Fagg and Members of the House Judiciary Committee:

As a member of the sub-committee of the Montana State Bar that was responsible for drafting the proposed revisions to the Uniform Probate Code, I was hoping to attend today's hearing on Senate Bill 119 to testify in support of it. Scheduling conflicts, however, prevent me from appearing. I still wish to submit my written support for this important legislation. The proposed revisions are designed to modernize the probate code, in part by recognizing changes in social conditions. For example, there is greater recognition of second and third marriages and the problems created when each spouse has children of prior marriages. Although this is not the sole purpose of the revisions, it is a common thread running through many of the changes. For example, changes are proposed to the amount that a spouse can elect against the share of a decedent. Under present law there is a flat percentage that can be elected, regardless of the length of the marriage. The revised code would provide for an increasing percentage for each year of marriage, until after 15 years the surviving spouse would have a 50 percent elective share amount.

I will leave the more detailed explanation of the changes to Professor Eck and the other members of the sub-committee who will be testifying at today's hearing. I do hope you will give close consideration to their comments and will vote favorably on their recommendation that this legislation be enacted.

Very truly yours,

DATSOPOULOS, MacDONALD & LIND, P.C.



Richard M. Baskett

RMB/jmc

AMENDMENTS TO SENATE BILL 409
Introduction by Senator Hockett
March 24, 1993

1. Page 2, lines 17 through 19.
Following: COMMITTEE
Delete: "THROUGH on line 17 through "COMMITTEE" on line 19
Insert: "applicable, and are not subject to discovery or introduction into evidence in any other judicial or administrative proceeding."
2. Page 3, line 2.
Following: "PRIVILEGED"
Insert: "to the committee and the members of the committee and are not subject to discovery or introduction into evidence in any other judicial or administrative proceeding."
3. Page 4, line 2.
Following: "ARE"
Insert: "confidential and".
4. Page 4, lines 3 through 5.
Following: "MEMBERS"
Delete: "AS" through "COMMITTEE" on line 5
Insert: "and are not subject to discovery or introduction into evidence in any other judicial or administrative proceeding."

Amendments to Senate Bill No. 78
Third Reading Copy

Requested by Rep. Fagg
For the Committee of the Whole

Prepared by John MacMaster
March 16, 1993

1. Page 2, line 5.

Following: "~~the~~."

Insert: "If the county attorney and the city attorney cannot
agree on who will represent the state, the county attorney
shall represent the state."

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 119
DATE March 26, 1993 SPONSOR(S) Mr. Halligan
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bruce MacKinnon	Securities Industry Assoc.	✓	
Joan Hines	MT Credit Union League	✓	
EO Eck	Unifan Lp (owner)	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.