

1 *House* BILL NO *343*
 2 INTRODUCED BY *Mr. [Signature]* *Ms. [Signature]*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
 5 91A-1-401, 91A-3-303, 91A-3-403, 91A-3-706, 91A-3-806,
 6 91A-3-1010, AND 91-4468, R.C.M. 1947, RELATING TO THE
 7 MONTANA UNIFORM PROBATE CODE AND REPEALING SECTIONS
 8 91A-6-103, 91A-3-714, 91A-3-715, AND 91-218, R.C.M. 1947."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 91A-1-401, R.C.M. 1947, is amended
 12 to read as follows:

13 *91A-1-401. Notice -- method and time of giving. (1)
 14 If notice of a hearing on any petition is required and
 15 except for specific notice requirements as otherwise
 16 provided, the petitioner shall cause notice of the time and
 17 place of hearing of any petition to be given to any
 18 interested person or his attorney if he has appeared by
 19 attorney or requested that notice be sent to his attorney.
 20 Notice shall be given:

21 (a) by mailing a copy thereof at least fourteen (14)
 22 days before the time set for the hearing by certified,
 23 registered or ordinary first class mail addressed to the
 24 person being notified at the post office address given in
 25 his demand for notice, if any, or at his office or place of

1 residence, if known;
 2 (b) by delivering a copy thereof to the person being
 3 notified personally at least fourteen (14) days before the
 4 time set for the hearing; or
 5 (c) if the address, or identity of any person is not
 6 known and cannot be ascertained with reasonable diligence,
 7 by publishing ~~at least once a week for three (3) consecutive~~
 8 ~~weeks, --- a copy thereof in --- a newspaper having general~~
 9 ~~circulation in the county where the hearing is to be held,~~
 10 ~~the last publication of which is to be at least ten (10)~~
 11 ~~days before the time set for the hearing, in a weekly paper~~
 12 once a week for three (3) consecutive weeks, and if in a
 13 newspaper published more often than once a week, by
 14 publishing on at least three (3) different days of
 15 publication and it shall be so published that there must be
 16 at least ten (10) days from the first to the last day of
 17 publication, both the first and last day being included.

18 (2) The court for good cause shown may provide for a
 19 different method or time of giving notice for any hearing.

20 (3) Proof of the giving of notice shall be made on or
 21 before the hearing and filed in the proceeding."

22 Section 2. Section 91A-3-303, R.C.M. 1947, is amended
 23 to read as follows:

24 *91A-3-303. Informal probate -- proof and findings
 25 required. (1) In an informal proceeding for original probate

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1 of a will, the clerk shall determine whether:

2 (a) the application is complete;

3 (b) the applicant has made oath or affirmation that the

4 statements contained in the application are true to the best

5 of his knowledge and belief;

6 (c) the applicant appears from the application to be an

7 interested person as defined in section 91A-1-201 (21);

8 (d) on the basis of the statements in the application,

9 venue is proper;

10 (e) an original, duly executed and apparently unrevoked

11 will is in the clerk's possession;

12 (f) any notice required by section 91A-3-204 has been

13 given and that the application is not within section

14 91A-3-304; and

15 (g) it appears from the application that the time limit

16 for original probate has not expired.

17 (2) The application shall be denied if it indicates

18 that a personal representative has been appointed in another

19 county of this state or except as provided in subsection (4)

20 below, if it appears that this or another will of the

21 decedent has been the subject of a previous probate order.

22 (3) A will which appears to have the required

23 signatures and which contains an attestation clause showing

24 that requirements of execution under section 91A-2-502,

25 91A-2-503 or 91A-2-506 have been met and--that--it--is

1 self-proved--as--provided--by--section--91A-2-504 shall be

2 probated without further proof. In other cases the clerk

3 shall-admit-the-will-to-probate-on-the-following-proof: may

4 assume execution if the will appears to be properly

5 executed, or he may accept a sworn statement or affidavit of

6 any person having knowledge of the circumstances of

7 execution, whether or not the person was a witness to the

8 will.

9 ~~(a)--on--the--testimony--of--one--of--the--subscribing~~

10 ~~witnesses--that--the--will--was--executed--as--required--by--this~~

11 ~~code--and--that--the--testator--was--of--sound--mind--at--the--time--of~~

12 ~~its--execution;~~

13 ~~(b)--if--it--appears--at--the--time--of--the--filing--of--the~~

14 ~~application--to--have--the--will--informally--admitted--to--probate~~

15 ~~that--none--of--the--subscribing--witnesses--reside--in--the--county~~

16 ~~or--are--capable--of--appearing--and--that--the--sworn--or--affirmed~~

17 ~~statement--of--one--of--the--witnesses--to--the--will--has--been--taken~~

18 ~~or--can--be--taken--within--the--state--within--the--next--ten--(10)~~

19 ~~days,--the--clerk--shall--admit--the--will--to--probate--on--the--sworn~~

20 ~~or--affirmed--written--statement--of--such--witness--that--he--has~~

21 ~~examined--the--original--or--a--photostatic--copy--of--the--will,~~

22 ~~that--he--recognizes--it--as--the--will--of--the--decedent--witnessed~~

23 ~~by--him--on--the--date--stated,--that--the--will--was--executed--in--all~~

24 ~~particulars--as--required--by--law--and--that--the--testator--was--of~~

25 ~~sound--mind--at--the--time;~~

1 ~~{e} if none of the subscribing witnesses reside in the~~
 2 ~~county and are capable of testifying at the time of the~~
 3 ~~application for informal probate and the execution of the~~
 4 ~~will cannot be proved under either of the foregoing~~
 5 ~~subdivisions, the clerk may accept the sworn or affirmed~~
 6 ~~statement or affidavit of any person having knowledge of the~~
 7 ~~circumstances of the execution, and may accept proof of the~~
 8 ~~handwriting of the testator and of the subscribing witnesses~~
 9 ~~or any of them.~~

10 (4) Informal probate of a will which has been
 11 previously probated elsewhere may be granted at any time
 12 upon written application by any interested person, together
 13 with deposit of an authenticated copy of the will and of the
 14 statement probating it from the office or court where it was
 15 first probated.

16 (5) A will from a place which does not provide for
 17 probate of a will after death and which is not eligible for
 18 probate under subsection (1) above, may be probated in this
 19 state upon receipt by the clerk of a duly authenticated copy
 20 of the will and a duly authenticated certificate of its
 21 legal custodian that the copy filed is a true copy and that
 22 the will has become operative under the law of the other
 23 place."

24 Section 3. Section 91A-3-403, R.C.M. 1947, is amended
 25 to read as follows:

1 "91A-3-403. Formal testacy proceeding; notice of
 2 hearing on petition. (1) Upon commencement of a formal
 3 testacy proceeding, the court or clerk shall fix a time and
 4 place of hearing. Notice shall be given in the manner
 5 prescribed by section 91A-1-401 by the petitioner to the
 6 persons herein enumerated and to any additional person who
 7 has filed a demand for notice under section 91A-3-204 of
 8 this code.

9 Notice shall be given to the following persons: the
 10 surviving spouse, children, and other heirs of the decedent,
 11 the devisees and executors named in any will that is being,
 12 or has been, probated, or offered for informal or formal
 13 probate in the county, or that is known by the petitioner to
 14 have been probated, or offered for informal or formal
 15 probate elsewhere, and any personal representative of the
 16 decedent whose appointment has not been terminated. Notice
 17 may be given to other persons. In addition, the petitioner
 18 shall give notice by publication to all unknown persons and
 19 to all known persons whose addresses are unknown who have
 20 any interest in the matters being litigated.

21 (2) If it appears by the petition or otherwise that the
 22 fact of the death of the alleged decedent may be in doubt,
 23 or on the written demand of any interested person, a copy of
 24 the notice of the hearing on said petition shall be sent by
 25 registered mail to the alleged decedent at his last known

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1 address. The court shall direct the petitioner to report the
2 results of, or make and report back concerning, a reasonably
3 diligent search for the alleged decedent in any manner that
4 may seem advisable, including any or all of the following
5 methods:

6 (a) by inserting in one (1) or more suitable
7 periodicals a notice requesting information from any person
8 having knowledge of the whereabouts of the alleged decedent;

9 (b) by notifying law enforcement officials and public
10 welfare agencies in appropriate locations of the
11 disappearance of the alleged decedent;

12 (c) by engaging the services of an investigator. The
13 costs of any search so directed shall be paid by the
14 petitioner if there is no administration or by the estate of
15 the decedent in case there is administration."

16 Section 4. Section 91A-3-706, R.C.M. 1947, is amended
17 to read as follows:

18 "91A-3-706. Duty of personal representative;
19 supplementary inventory and appraisal; employment of
20 appraiser; copy to department of revenue. Within three (3)
21 months after his appointment, a personal representative, who
22 is not a special administrator or a successor to another
23 representative who has previously discharged this duty,
24 shall prepare and file or mail an inventory, which inventory
25 shall include listing of all property which the decedent

1 owned, had an interest in or control over, individually, in
2 common, or jointly, or otherwise had at the time of his
3 death; or had possessory or dispositive rights over at the
4 time of his death or had disposed of for less than its fair
5 market value within three (3) years of his death; or which
6 was affected by his death for the purpose of inheritance or
7 estate taxes. The inventory shall include a statement of the
8 full and true value of the decedent's interest in every item
9 listed in such inventory. In this connection the personal
10 representative shall appoint ~~at least three (3)~~ one (1) or
11 more qualified and disinterested persons, ~~any two (2) of~~
12 ~~whom may act~~, to assist him in ascertaining the fair market
13 value as of the date of the decedent's death of all assets
14 included in the estate. Different persons may be employed to
15 appraise different kinds of assets included in the estate.
16 The names and addresses of any appraiser shall be indicated
17 on the inventory with the item or items he appraised.

18 The personal representative shall send a copy of the
19 inventory to interested persons who request it, ~~and~~ or he
20 ~~shall~~ may file the original of the inventory with the court.
21 ~~In any event, a copy of the inventory and statement of value~~
22 ~~shall be mailed to the department of revenue."~~

23 Section 5. Section 91A-3-806, R.C.M. 1947, is amended
24 to read as follows:

25 "91A-3-806. Allowance of claims. (1) As to claims

1 presented in the manner described in section 91A-3-804
 2 within the time limit prescribed in 91A-3-803, the personal
 3 representative may mail a notice to any claimant stating
 4 that the claim has been disallowed. If, after allowing or
 5 disallowing a claim, the personal representative changes his
 6 decision concerning the claim, he shall notify the claimant.
 7 The personal representative may not change a disallowance of
 8 a claim after the time for the claimant to file a petition
 9 for allowance or to commence a proceeding on the claim has
 10 run and the claim has been barred. Every claim which is
 11 disallowed in whole or in part by the personal
 12 representative is barred so far as not allowed unless the
 13 claimant files a petition for allowance in the court or
 14 commences a proceeding against the personal representative
 15 not later than sixty (60) days after the mailing of the
 16 notice of disallowance or partial allowance if the notice
 17 warns the claimant of the impending bar. Failure of the
 18 personal representative to mail notice to a claimant of
 19 action on his claim for sixty (60) days after the time for
 20 original presentation of the claim has expired has the
 21 effect of a notice of ~~allowance~~ disallowance.

22 (2) Upon the petition of the personal representative or
 23 of a claimant in a proceeding for the purpose, the court may
 24 allow in whole or in part any claim or claims presented to
 25 the personal representative or filed with the clerk of the

1 court in due time and not barred by subsection (1) of this
 2 section. Notice in this proceeding shall be given to the
 3 claimant, the personal representative and those other
 4 persons interested in the estate as the court may direct by
 5 order entered at the time the proceeding is commenced.

6 (3) A judgment in a proceeding in another court against
 7 a personal representative to enforce a claim against a
 8 decedent's estate is an allowance of the claim.

9 (4) Unless otherwise provided in any judgment in
 10 another court entered against the personal representative,
 11 allowed claims bear interest at the legal rate for the
 12 period commencing sixty (60) days after the time for
 13 original presentation of the claim has expired unless based
 14 on a contract making a provision for interest, in which case
 15 they bear interest in accordance with that provision."

16 Section 6. Section 91A-3-1010, R.C.M. 1947, is amended
 17 to read as follows:

18 "91A-3-1010. Lien of state on estate property for
 19 unpaid inheritance taxes. All property which is affected by
 20 the death of the decedent and on which inheritance, estate
 21 or death taxes are due under the laws of this state is
 22 subject to the lien of the state of Montana until such taxes
 23 have been paid. This lien follows all property sold in the
 24 course of administration or distributed under this code
 25 until such time as all inheritance taxes have been paid and

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1 a receipt showing payment thereof has been filed with the
 2 clerk of court, subject to applicable statutes of
 3 limitations on state inheritance tax liens. The department
 4 of revenue may issue a consent to transfer any real or
 5 personal property in the estate of a decedent free of the
 6 lien for unpaid inheritance taxes upon proper application
 7 and under such rules and regulations as the department shall
 8 prescribe. ~~provided that such transfer shall not jeopardize~~
 9 ~~payment of the inheritance taxes due."~~

10 Section 7. Section 91-4468, R.C.M. 1947, is amended to
 11 read as follows:

12 "91-4468. Personal representative to furnish
 13 information--department to determine tax--appeal. The
 14 personal representative, or should the personal
 15 representative fail to do so, any interested person, shall
 16 make application to the state department of revenue for
 17 determination of any tax due upon the estate of a decedent.
 18 The applicant shall furnish to the department of revenue the
 19 inventory and appraisal required by section 91A-3-706 of
 20 this act and of any supplemental inventory under section
 21 91A-3-707 of this act together with a statement, under oath
 22 or affirmation, of any property owned by the decedent at the
 23 time of his death situated outside of this state and without
 24 its jurisdiction, ~~and, further, shall furnish the~~
 25 ~~department with the final accounting of such personal~~

1 ~~representative as provided by section 91A-3-714 of this act.~~
 2 If the decedent died testate, the personal representative
 3 shall likewise furnish the department with a certified copy
 4 of the last will of the decedent. If the decedent died
 5 intestate, the personal representative shall provide the
 6 department with a sworn statement setting forth the names,
 7 ages, and residences of the heirs at law of decedent. In all
 8 cases, the personal representative shall set forth the
 9 proportion of the entire estate inherited by or devised to
 10 each of said persons, and the relation, if any, which each
 11 devisee, heir, or transferee sustained to the decedent or
 12 person from whom the transfer was made. The information so
 13 provided shall not be binding upon the department in case it
 14 believes the same to be erroneous or untrue. From the
 15 information so furnished the department and such other
 16 information as it may be able to obtain with reference
 17 thereto, the department shall, with reasonable diligence,
 18 proceed to ascertain and determine the amount of tax, if
 19 any, due under the provisions of the inheritance tax laws of
 20 the state of Montana, and a copy of such determination shall
 21 be mailed to the personal representative and to the clerk of
 22 the appropriate district court. If no tax is due, the
 23 department shall likewise so inform the clerk of district
 24 court and the personal representative. ~~Upon receipt of~~
 25 ~~notice from the department of the amount of tax due or that~~

1 ~~no-tax-is-due, the personal representative shall notify all~~
2 ~~persons having a beneficial interest in said estate as~~
3 ~~promptly as may be.~~ Should the personal representative or
4 any person affected by the determination of inheritance tax
5 feel aggrieved by the department's determination, he may,
6 within sixty (60) days after the filing of the copy of such
7 determination with the clerk of district court, appeal the
8 determination to the appropriate district court, by serving
9 upon the department his objections to such determination and
10 by filing such notice, after so serving the same, in the
11 office of the clerk of such court. The court shall set a day
12 for hearing such appeal upon ten (10) days' notice to all
13 interested parties, and at the time and place set shall hear
14 the appeal, upon all papers and records which may be
15 properly presented before it, and shall as soon as possible
16 thereafter issue its order determining the amount of such
17 inheritance tax, if it finds a tax to be due."

18 Section 8. Sections 91A-6-103, 91A-3-714, 91A-3-715,
19 and 91-218, R.C.M. 1947, are repealed.

-End-

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Approved by Committee
on Judiciary

1 *House* BILL NO *343*
2 INTRODUCED BY *Mr. [unclear]*

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
5 91A-1-401, 91A-3-303, 91A-3-403, 91A-3-706, 91A-3-806,
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 91A-1-401, R.C.M. 1947, is amended
12 to read as follows:

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14 If notice of a hearing on any petition is required and
15 except for specific notice requirements as otherwise
16 provided, the petitioner shall cause notice of the time and
17 place of hearing of any petition to be given to any
18 interested person or his attorney if he has appeared by
19 attorney or requested that notice be sent to his attorney.
20 Notice shall be given:

21 (a) by mailing a copy thereof at least fourteen (14)
22 days before the time set for the hearing by certified,
23 registered or ordinary first class mail addressed to the
24 person being notified at the post office address given in
25 his demand for notice, if any, or at his office or place of

1 residence, if known;

2 (b) by delivering a copy thereof to the person being
3 notified personally at least fourteen (14) days before the
4 time set for the hearing; or

5 (c) if the address, or identity of any person is not
6 known and cannot be ascertained with reasonable diligence,
7 by publishing ~~at least once a week for three (3) consecutive~~
8 ~~weeks, --- a --- copy --- thereof --- in --- a --- newspaper --- having --- general~~
9 ~~circulation in the county where the hearing is to be held,~~
10 ~~the last publication of which is to be at least ten (10)~~
11 ~~days before the time set for the hearing; in a weekly paper~~
12 once a week for three (3) consecutive weeks, and if in a
13 newspaper published more often than once a week, by
14 publishing on at least three (3) different days of
15 publication and it shall be so published that there must be
16 at least ten (10) days from the first to the last day of
17 publication, both the first and last day being included.

18 (2) The court for good cause shown may provide for a
19 different method or time of giving notice for any hearing.

20 (3) Proof of the giving of notice shall be made on or
21 before the hearing and filed in the proceeding."

22 Section 2. Section 91A-3-303, R.C.M. 1947, is amended
23 to read as follows:

24 "91A-3-303. Informal probate -- proof and findings
25 required. (1) In an informal proceeding for original probate

1 of a will, the clerk shall determine whether:

2 (a) the application is complete;

3 (b) the applicant has made oath or affirmation that the
4 statements contained in the application are true to the best
5 of his knowledge and belief;

6 (c) the applicant appears from the application to be an
7 interested person as defined in section 91A-1-201 (21);

8 (d) on the basis of the statements in the application,
9 venue is proper;

10 (e) an original, duly executed and apparently unrevoked
11 will is in the clerk's possession;

12 (f) any notice required by section 91A-3-204 has been
13 given and that the application is not within section
14 91A-3-304; and

15 (g) it appears from the application that the time limit
16 for original probate has not expired.

17 (2) The application shall be denied if it indicates
18 that a personal representative has been appointed in another
19 county of this state or except as provided in subsection (4)
20 below, if it appears that this or another will of the
21 decedent has been the subject of a previous probate order.

22 (3) A will which appears to have the required
23 signatures and which contains an attestation clause showing
24 that requirements of execution under section 91A-2-502,
25 91A-2-503 or 91A-2-506 have been met ~~and--that--it--is~~

1 ~~self-proved--as--provided--by--section--91A-2-504~~ shall be
2 probated without further proof. In other cases the clerk
3 ~~shall-admit-the-will-to-probate-on-the-following-proof:~~ may
4 assume execution if the will appears to be properly
5 executed, or he may accept a sworn statement or affidavit of
6 any person having knowledge of the circumstances of
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8 will.

9 ~~(a)--on--the--testimony--of--one--of--the--subscribing~~
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20 ~~or--affirmed--written--statement--of--such--witness--that--he--has~~
21 ~~examined--the--original--or--a--photostatic--copy--of--the--will,~~
22 ~~that--he--recognizes--it--as--the--will--of--the--decedent--witnessed~~
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24 ~~particulars--as--required--by--law--and--that--the--testator--was--of~~
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 11 previously probated elsewhere may be granted at any time
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 13 with deposit of an authenticated copy of the will and of the
 14 statement probating it from the office or court where it was
 15 first probated.

16 (5) A will from a place which does not provide for
 17 probate of a will after death and which is not eligible for
 18 probate under subsection (1) above, may be probated in this
 19 state upon receipt by the clerk of a duly authenticated copy
 20 of the will and a duly authenticated certificate of its
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1 address. The court shall direct the petitioner to report the
2 results of, or make and report back concerning, a reasonably
3 diligent search for the alleged decedent in any manner that
4 may seem advisable, including any or all of the following
5 methods:

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23 representative who has previously discharged this duty,
24 shall prepare and file or mail an inventory, which inventory
25 shall include listing of all property which the decedent

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22 ~~shall be mailed to the department of revenue."~~

23 Section 5. Section 91A-3-806, R.C.M. 1947, is amended
24 to read as follows:

25 "91A-3-806. Allowance of claims. (1) As to claims

1 presented in the manner described in section 91A-3-804
 2 within the time limit prescribed in 91A-3-803, the personal
 3 representative may mail a notice to any claimant stating
 4 that the claim has been disallowed. If, after allowing or
 5 disallowing a claim, the personal representative changes his
 6 decision concerning the claim, he shall notify the claimant.
 7 The personal representative may not change a disallowance of
 8 a claim after the time for the claimant to file a petition
 9 for allowance or to commence a proceeding on the claim has
 10 run and the claim has been barred. Every claim which is
 11 disallowed in whole or in part by the personal
 12 representative is barred so far as not allowed unless the
 13 claimant files a petition for allowance in the court or
 14 commences a proceeding against the personal representative
 15 not later than sixty (60) days after the mailing of the
 16 notice of disallowance or partial allowance if the notice
 17 warns the claimant of the impending bar. Failure of the
 18 personal representative to mail notice to a claimant of
 19 action on his claim for sixty (60) days after the time for
 20 original presentation of the claim has expired has the
 21 effect of a notice of ~~allowance~~ disallowance.

22 (2) Upon the petition of the personal representative or
 23 of a claimant in a proceeding for the purpose, the court may
 24 allow in whole or in part any claim or claims presented to
 25 the personal representative or filed with the clerk of the

1 court in due time and not barred by subsection (1) of this
 2 section. Notice in this proceeding shall be given to the
 3 claimant, the personal representative and those other
 4 persons interested in the estate as the court may direct by
 5 order entered at the time the proceeding is commenced.

6 (3) A judgment in a proceeding in another court against
 7 a personal representative to enforce a claim against a
 8 decedent's estate is an allowance of the claim.

9 (4) Unless otherwise provided in any judgment in
 10 another court entered against the personal representative,
 11 allowed claims bear interest at the legal rate for the
 12 period commencing sixty (60) days after the time for
 13 original presentation of the claim has expired unless based
 14 on a contract making a provision for interest, in which case
 15 they bear interest in accordance with that provision."

16 Section 6. Section 91A-3-1010, R.C.M. 1947, is amended
 17 to read as follows:

18 "91A-3-1010. Lien of state on estate property for
 19 unpaid inheritance taxes. All property which is affected by
 20 the death of the decedent and on which inheritance, estate
 21 or death taxes are due under the laws of this state is
 22 subject to the lien of the state of Montana until such taxes
 23 have been paid. This lien follows all property sold in the
 24 course of administration or distributed under this code
 25 until such time as all inheritance taxes have been paid and

1 a receipt showing payment thereof has been filed with the
 2 clerk of court, subject to applicable statutes of
 3 limitations on state inheritance tax liens. The department
 4 of revenue may issue a consent to transfer any real or
 5 personal property in the estate of a decedent free of the
 6 lien for unpaid inheritance taxes upon proper application
 7 and under such rules and regulations as the department shall
 8 prescribe, ~~provided that such transfer shall not jeopardize~~
 9 ~~payment of the inheritance taxes due.~~"

10 Section 7. Section 91-4468, R.C.M. 1947, is amended to
 11 read as follows:

12 "91-4468. Personal representative to furnish
 13 information--department to determine tax--appeal. The
 14 personal representative, or should the personal
 15 representative fail to do so, any interested person, shall
 16 make application to the state department of revenue for
 17 determination of any tax due upon the estate of a decedent.
 18 The applicant shall furnish to the department of revenue the
 19 inventory and appraisal required by section 91A-3-706 of
 20 this act and of any supplemental inventory under section
 21 91A-3-707 of this act together with a statement, under oath
 22 or affirmation, of any property owned by the decedent at the
 23 time of his death situated outside of this state and without
 24 its jurisdiction, ~~and, further, shall furnish the~~
 25 ~~department with the final accounting of such personal~~

1 ~~representative as provided by section 91A-3-714 of this act.~~
 2 If the decedent died testate, the personal representative
 3 shall likewise furnish the department with a certified copy
 4 of the last will of the decedent. If the decedent died
 5 intestate, the personal representative shall provide the
 6 department with a sworn statement setting forth the names,
 7 ages, and residences of the heirs at law of decedent. In all
 8 cases, the personal representative shall set forth the
 9 proportion of the entire estate inherited by or devised to
 10 each of said persons, and the relation, if any, which each
 11 devisee, heir, or transferee sustained to the decedent or
 12 person from whom the transfer was made. The information so
 13 provided shall not be binding upon the department in case it
 14 believes the same to be erroneous or untrue. From the
 15 information so furnished the department and such other
 16 information as it may be able to obtain with reference
 17 thereto, the department shall, with reasonable diligence,
 18 proceed to ascertain and determine the amount of tax, if
 19 any, due under the provisions of the inheritance tax laws of
 20 the state of Montana, and a copy of such determination shall
 21 be mailed to the personal representative and to the clerk of
 22 the appropriate district court. If no tax is due, the
 23 department shall likewise so inform the clerk of district
 24 court and the personal representative. ~~Upon receipt of~~
 25 ~~notice from the department of the amount of tax due or that~~

1 ~~no-tax-is-due,-the-personal-representative-shall-notify--all~~
2 ~~persons--having-a--beneficial--interest--in--said-estate-as~~
3 ~~promptly-as-may-be~~ Should the personal representative or
4 any person affected by the determination of inheritance tax
5 feel aggrieved by the department's determination, he may,
6 within sixty (60) days after the filing of the copy of such
7 determination with the clerk of district court, appeal the
8 determination to the appropriate district court, by serving
9 upon the department his objections to such determination and
10 by filing such notice, after so serving the same, in the
11 office of the clerk of such court. The court shall set a day
12 for hearing such appeal upon ten (10) days' notice to all
13 interested parties, and at the time and place set shall hear
14 the appeal, upon all papers and records which may be
15 properly presented before it, and shall as soon as possible
16 thereafter issue its order determining the amount of such
17 inheritance tax, if it finds a tax to be due."

18 Section 8. Sections 91A-6-103, 91A-3-714, 91A-3-715,
19 and 91-218, R.C.M. 1947, are repealed.

-End-

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Haun BILL NO *343*
As Amended

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 91A-1-401, 91A-3-303, 91A-3-403, 91A-3-706, 91A-3-806, 91A-3-1010, AND 91-4468, R.C.M. 1947, RELATING TO THE MONTANA UNIFORM PROBATE CODE AND REPEALING SECTIONS 91A-6-103, 91A-3-714, 91A-3-715, AND 91-218, R.C.M. 1947."

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

Section 1. Section 91A-1-401, R.C.M. 1947, is amended to read as follows:

"91A-1-401. Notice -- method and time of giving. (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney.

Notice shall be given:

(a) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of

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residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing ~~at least once a week for three (3) consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten (10) days before the time set for the hearing,~~ in a weekly paper once a week for three (3) consecutive weeks, and if in a newspaper published more often than once a week, by publishing on at least three (3) different days of publication and it shall be so published that there must be at least ten (10) days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding."

Section 2. Section 91A-3-303, R.C.M. 1947, is amended to read as follows:

"91A-3-303. Informal probate -- proof and findings required. (1) In an informal proceeding for original probate

1 of a will, the clerk shall determine whether:

- 2 (a) the application is complete;
- 3 (b) the applicant has made oath or affirmation that the
4 statements contained in the application are true to the best
5 of his knowledge and belief;
- 6 (c) the applicant appears from the application to be an
7 interested person as defined in section 91A-1-201 (21);
- 8 (d) on the basis of the statements in the application,
9 venue is proper;
- 10 (e) an original, duly executed and apparently unrevoked
11 will is in the clerk's possession;
- 12 (f) any notice required by section 91A-3-204 has been
13 given and that the application is not within section
14 91A-3-304; and
- 15 (g) it appears from the application that the time limit
16 for original probate has not expired.
- 17 (2) The application shall be denied if it indicates
18 that a personal representative has been appointed in another
19 county of this state or except as provided in subsection (4)
20 below, if it appears that this or another will of the
21 decedent has been the subject of a previous probate order.
- 22 (3) A will which appears to have the required
23 signatures and which contains an attestation clause showing
24 that requirements of execution under section 91A-2-502,
25 91A-2-503 or 91A-2-506 have been met ~~and that it is~~

1 ~~self-proved as provided by section 91A-2-504~~ shall be
2 probated without further proof. In other cases the clerk
3 ~~shall admit the will to probate on the following proof:~~ may
4 assume execution if the will appears to be properly
5 executed, or he may accept a sworn statement or affidavit of
6 any person having knowledge of the circumstances of
7 execution, whether or not the person was a witness to the
8 will.

9 ~~(a) on the testimony of one of the subscribing~~
10 ~~witnesses that the will was executed as required by this~~
11 ~~code and that the testator was of sound mind at the time of~~
12 ~~its execution;~~

13 ~~(b) if it appears at the time of the filing of the~~
14 ~~application to have the will informally admitted to probate~~
15 ~~that none of the subscribing witnesses reside in the county~~
16 ~~or are capable of appearing and that the sworn or affirmed~~
17 ~~statement of one of the witnesses to the will has been taken~~
18 ~~or can be taken within the state within the next ten (10)~~
19 ~~days, the clerk shall admit the will to probate on the sworn~~
20 ~~or affirmed written statement of such witness that he has~~
21 ~~examined the original or a photostatic copy of the will,~~
22 ~~that he recognizes it as the will of the decedent witnessed~~
23 ~~by him on the date stated, that the will was executed in all~~
24 ~~particulars as required by law and that the testator was of~~
25 ~~sound mind at the time;~~

1 ~~(c) If none of the subscribing witnesses reside in the~~
 2 ~~county and are capable of testifying at the time of the~~
 3 ~~application for informal probate and the execution of the~~
 4 ~~will cannot be proved under either of the foregoing~~
 5 ~~subdivisions, the clerk may accept the sworn or affirmed~~
 6 ~~statement or affidavit of any person having knowledge of the~~
 7 ~~circumstances of the execution, and may accept proof of the~~
 8 ~~handwriting of the testator and of the subscribing witnesses~~
 9 ~~or any of them.~~

10 (4) Informal probate of a will which has been
 11 previously probated elsewhere may be granted at any time
 12 upon written application by any interested person, together
 13 with deposit of an authenticated copy of the will and of the
 14 statement probating it from the office or court where it was
 15 first probated.

16 (5) A will from a place which does not provide for
 17 probate of a will after death and which is not eligible for
 18 probate under subsection (1) above, may be probated in this
 19 state upon receipt by the clerk of a duly authenticated copy
 20 of the will and a duly authenticated certificate of its
 21 legal custodian that the copy filed is a true copy and that
 22 the will has become operative under the law of the other
 23 place."

24 Section 3. Section 91A-3-403, R.C.M. 1947, is amended
 25 to read as follows:

1 "91A-3-403. Formal testacy proceeding; notice of
 2 hearing on petition. (1) Upon commencement of a formal
 3 testacy proceeding, the court or clerk shall fix a time and
 4 place of hearing. Notice shall be given in the manner
 5 prescribed by section 91A-1-401 by the petitioner to the
 6 persons herein enumerated and to any additional person who
 7 has filed a demand for notice under section 91A-3-204 of
 8 this code.

9 Notice shall be given to the following persons: the
 10 surviving spouse, children, and other heirs of the decedent,
 11 the devisees and executors named in any will that is being,
 12 or has been, probated, or offered for informal or formal
 13 probate in the county, or that is known by the petitioner to
 14 have been probated, or offered for informal or formal
 15 probate elsewhere, and any personal representative of the
 16 decedent whose appointment has not been terminated. Notice
 17 may be given to other persons. In addition, the petitioner
 18 shall give notice by publication to all unknown persons and
 19 to all known persons whose addresses are unknown who have
 20 any interest in the matters being litigated.

21 (2) If it appears by the petition or otherwise that the
 22 fact of the death of the alleged decedent may be in doubt,
 23 or on the written demand of any interested person, a copy of
 24 the notice of the hearing on said petition shall be sent by
 25 registered mail to the alleged decedent at his last known

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1 address. The court shall direct the petitioner to report the
2 results of, or make and report back concerning, a reasonably
3 diligent search for the alleged decedent in any manner that
4 may seem advisable, including any or all of the following
5 methods:

6 (a) by inserting in one (1) or more suitable
7 periodicals a notice requesting information from any person
8 having knowledge of the whereabouts of the alleged decedent;

9 (b) by notifying law enforcement officials and public
10 welfare agencies in appropriate locations of the
11 disappearance of the alleged decedent;

12 (c) by engaging the services of an investigator. The
13 costs of any search so directed shall be paid by the
14 petitioner if there is no administration or by the estate of
15 the decedent in case there is administration."

16 Section 4. Section 91A-3-706, R.C.M. 1947, is amended
17 to read as follows:

18 "91A-3-706. Duty of personal representative;
19 supplementary inventory and appraisal; employment of
20 appraiser; copy to department of revenue. Within three (3)
21 months after his appointment, a personal representative, who
22 is not a special administrator or a successor to another
23 representative who has previously discharged this duty,
24 shall prepare and file or mail an inventory, which inventory
25 shall include listing of all property which the decedent

1 owned, had an interest in or control over, individually, in
2 common, or jointly, or otherwise had at the time of his
3 death; or had possessory or dispositive rights over at the
4 time of his death or had disposed of for less than its fair
5 market value within three (3) years of his death; or which
6 was affected by his death for the purpose of inheritance or
7 estate taxes. The inventory shall include a statement of the
8 full and true value of the decedent's interest in every item
9 listed in such inventory. In this connection the personal
10 representative shall appoint ~~at least three (3)~~ one (1) or
11 more qualified and disinterested persons, ~~any two (2) of~~
12 ~~whom may act~~, to assist him in ascertaining the fair market
13 value as of the date of the decedent's death of all assets
14 included in the estate. Different persons may be employed to
15 appraise different kinds of assets included in the estate.
16 The names and addresses of any appraiser shall be indicated
17 on the inventory with the item or items he appraised.

18 The personal representative shall send a copy of the
19 inventory to interested persons who request it, ~~and~~ or he
20 ~~shall~~ may file the original of the inventory with the court.
21 ~~In any event, a copy of the inventory and statement of value~~
22 ~~shall be mailed to the department of revenue."~~

23 Section 5. Section 91A-3-806, R.C.M. 1947, is amended
24 to read as follows:

25 "91A-3-806. Allowance of claims. (1) As to claims

1 presented in the manner described in section 91A-3-804
 2 within the time limit prescribed in 91A-3-803, the personal
 3 representative may mail a notice to any claimant stating
 4 that the claim has been disallowed. If, after allowing or
 5 disallowing a claim, the personal representative changes his
 6 decision concerning the claim, he shall notify the claimant.
 7 The personal representative may not change a disallowance of
 8 a claim after the time for the claimant to file a petition
 9 for allowance or to commence a proceeding on the claim has
 10 run and the claim has been barred. Every claim which is
 11 disallowed in whole or in part by the personal
 12 representative is barred so far as not allowed unless the
 13 claimant files a petition for allowance in the court or
 14 commences a proceeding against the personal representative
 15 not later than sixty (60) days after the mailing of the
 16 notice of disallowance or partial allowance if the notice
 17 warns the claimant of the impending bar. Failure of the
 18 personal representative to mail notice to a claimant of
 19 action on his claim for sixty (60) days after the time for
 20 original presentation of the claim has expired has the
 21 effect of a notice of ~~allowance~~ disallowance.

22 (2) Upon the petition of the personal representative or
 23 of a claimant in a proceeding for the purpose, the court may
 24 allow in whole or in part any claim or claims presented to
 25 the personal representative or filed with the clerk of the

1 court in due time and not barred by subsection (1) of this
 2 section. Notice in this proceeding shall be given to the
 3 claimant, the personal representative and those other
 4 persons interested in the estate as the court may direct by
 5 order entered at the time the proceeding is commenced.

6 (3) A judgment in a proceeding in another court against
 7 a personal representative to enforce a claim against a
 8 decedent's estate is an allowance of the claim.

9 (4) Unless otherwise provided in any judgment in
 10 another court entered against the personal representative,
 11 allowed claims bear interest at the legal rate for the
 12 period commencing sixty (60) days after the time for
 13 original presentation of the claim has expired unless based
 14 on a contract making a provision for interest, in which case
 15 they bear interest in accordance with that provision."

16 Section 6. Section 91A-3-1010, R.C.M. 1947, is amended
 17 to read as follows:

18 "91A-3-1010. Lien of state on estate property for
 19 unpaid inheritance taxes. All property which is affected by
 20 the death of the decedent and on which inheritance, estate
 21 or death taxes are due under the laws of this state is
 22 subject to the lien of the state of Montana until such taxes
 23 have been paid. This lien follows all property sold in the
 24 course of administration or distributed under this code
 25 until such time as all inheritance taxes have been paid and

1 a receipt showing payment thereof has been filed with the
 2 clerk of court, subject to applicable statutes of
 3 limitations on state inheritance tax liens. The department
 4 of revenue may issue a consent to transfer any real or
 5 personal property in the estate of a decedent free of the
 6 lien for unpaid inheritance taxes upon proper application,
 7 and under such rules and regulations as the department shall
 8 prescribe. ~~provided that such transfer shall not jeopardize~~
 9 ~~payment of the inheritance taxes due."~~

10 Section 7. Section 91-4468, R.C.M. 1947, is amended to
 11 read as follows:

12 "91-4468. Personal representative to furnish
 13 information--department to determine tax--appeal. The
 14 personal representative, or should the personal
 15 representative fail to do so, any interested person, shall
 16 make application to the state department of revenue for
 17 determination of any tax due upon the estate of a decedent.
 18 The applicant shall furnish to the department of revenue the
 19 inventory and appraisement required by section 91A-3-706 of
 20 this act and of any supplemental inventory under section
 21 91A-3-707 of this act together with a statement, under oath
 22 or affirmation, of any property owned by the decedent at the
 23 time of his death situated outside of this state and without
 24 its jurisdiction, ~~and further, shall furnish the~~
 25 ~~department with the final accounting of such personal~~

1 ~~representative as provided by section 91A-3-714 of this act.~~
 2 If the decedent died testate, the personal representative
 3 shall likewise furnish the department with a certified copy
 4 of the last will of the decedent. If the decedent died
 5 intestate, the personal representative shall provide the
 6 department with a sworn statement setting forth the names,
 7 ages, and residences of the heirs at law of decedent. In all
 8 cases, the personal representative shall set forth the
 9 proportion of the entire estate inherited by or devised to
 10 each of said persons, and the relation, if any, which each
 11 devisee, heir, or transferee sustained to the decedent or
 12 person from whom the transfer was made. The information so
 13 provided shall not be binding upon the department in case it
 14 believes the same to be erroneous or untrue. From the
 15 information so furnished the department and such other
 16 information as it may be able to obtain with reference
 17 thereto, the department shall, with reasonable diligence,
 18 proceed to ascertain and determine the amount of tax, if
 19 any, due under the provisions of the inheritance tax laws of
 20 the state of Montana, and a copy of such determination shall
 21 be mailed to the personal representative and to the clerk of
 22 the appropriate district court. If no tax is due, the
 23 department shall likewise so inform the clerk of district
 24 court and the personal representative. ~~Upon receipt of~~
 25 ~~notice from the department of the amount of tax due or that~~

1 ~~no tax is due, the personal representative shall notify all~~
2 ~~persons having a beneficial interest in said estate as~~
3 ~~promptly as may be.~~ Should the personal representative or
4 any person affected by the determination of inheritance tax
5 feel aggrieved by the department's determination, he may,
6 within sixty (60) days after the filing of the copy of such
7 determination with the clerk of district court, appeal the
8 determination to the appropriate district court, by serving
9 upon the department his objections to such determination and
10 by filing such notice, after so serving the same, in the
11 office of the clerk of such court. The court shall set a day
12 for hearing such appeal upon ten (10) days' notice to all
13 interested parties, and at the time and place set shall hear
14 the appeal, upon all papers and records which may be
15 properly presented before it, and shall as soon as possible
16 thereafter issue its order determining the amount of such
17 inheritance tax, if it finds a tax to be due."

18 Section 8. Sections 91A-6-103, 91A-3-714, 91A-3-715,
19 and 91-218, R.C.M. 1947, are repealed.

-End-

HB 393

March 17, 1975

SENATE COMMITTEE ON JUDICIARY
AMENDMENTS TO HOUSE BILL NO. 393

That House Bill No. 393, third reading, be amended as follows:

1. Amend title, line 5.
Following: "91A-1-401,"
Strike: "91A-3-303,"
2. Amend title, lines 7 and 8.
Following: "CODE"
Strike: "AND REPEALING SECTIONS 91A-6-103, 91A-3-714,
91A-3-715, AND 91-218, R.C.M. 1947"
3. Amend page 2, section 2, lines 21 through line 23 on page 5.
Following: line 21
Strike: section 2 in its entirety
Renumber: All subsequent sections
4. Amend page 8, section 4, line 19.
Following: "it,"
Strike: "or"
Insert: "and"
5. Amend page 8, section 4, line 20.
Following: "~~shall~~"
Strike: "may"
Insert: "shall"
6. Amend page 8, section 4, line 20.
Following: line 20
Insert: "In any event, a copy of the inventory and
statement of value shall be mailed to the
department of revenue."
7. Amend page 11, section 7, line 24.
Following: "jurisdiction."
Insert: "The applicant shall, upon request of the
department, furnish the department with the final
accounting of such personal representative."
8. Amend page 13, section 8, lines 17 through 19.
Following: line 17
Strike: section 8 in its entirety

HOUSE BILL NO. 393

INTRODUCED BY JAMES MOORE, MCKITTRICK

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 91A-1-401, ~~91A-3-303~~, 91A-3-303, 91A-3-403, 91A-3-706, 91A-3-806, 91A-3-1010, AND 91-4468, R.C.M. 1947, RELATING TO THE MONTANA UNIFORM PROBATE CODE ~~AND--REPEALING--SECTIONS 91A-6-103, 91A-3-714, 91A-3-715, AND 91-218, R.C.M. 1947~~ AND REPEALING SECTIONS 91A-6-103, 91A-3-714, 91A-3-715, AND 91-218, R.C.M. 1947."

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

Section 1. Section 91A-1-401, R.C.M. 1947, is amended to read as follows:

"91A-1-401. Notice -- method and time of giving. (1)

If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the

person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing ~~at least once a week for three (3) consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten (10) days before the time set for the hearing.~~ in a weekly paper once a week for three (3) consecutive weeks, and if in a newspaper published more often than once a week, by publishing on at least three (3) different days of publication and it shall be so published that there must be at least ten (10) days from the first to the last day of publication, both the first and last day being included.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding."

~~Section 2, Section 91A-3-303, R.C.M. 1947 is amended to read as follows:~~

4/15/75

1 ~~91A-3-303;---informal-probate-----proof--and--findings~~
2 ~~required.---(1)--in--an--informal--proceeding--for--original~~
3 ~~probate-of-a-will, the clerk shall determine whether:~~

4 ~~(a) the application is complete;~~
5 ~~(b) the applicant has made oath or affirmation that the~~
6 ~~statements contained in the application are true to the best~~
7 ~~of his knowledge and belief;~~

8 ~~(c) the applicant appears from the application to be an~~
9 ~~interested person as defined in section 91A-1-201 (2);~~

10 ~~(d) on the basis of the statements in the application,~~
11 ~~venue is proper;~~

12 ~~(e) an original, duly executed and apparently unrevoked~~
13 ~~will is in the clerk's possession;~~

14 ~~(f) any notice required by section 91A-3-204 has been~~
15 ~~given and that the application is not within section~~
16 ~~91A-3-304; and~~

17 ~~(g) it appears from the application that the time limit~~
18 ~~for original probate has not expired;~~

19 ~~(2) The application shall be denied if it indicates~~
20 ~~that a personal representative has been appointed in another~~
21 ~~county of this state or except as provided in subsection (4)~~
22 ~~below, if it appears that this or another will of the~~
23 ~~decendent has been the subject of a previous probate order;~~

24 ~~(3) A will which appears to have the required~~
25 ~~signatures and which contains an attestation clause showing~~

1 ~~that requirements of execution under section 91A-2-502,~~
2 ~~91A-2-503 or 91A-2-506 have been met and that it is~~
3 ~~self-proved as provided by section 91A-2-504 shall be~~
4 ~~probated without further proof. In other cases the clerk~~
5 ~~shall admit the will to probate on the following proof: may~~
6 ~~assume execution if the will appears to be properly~~
7 ~~executed, or he may accept a sworn statement or affidavit of~~
8 ~~any person having knowledge of the circumstances of~~
9 ~~execution, whether or not the person was a witness to the~~
10 ~~will.~~

11 ~~(a) on the testimony of one of the subscribing~~
12 ~~witnesses that the will was executed as required by this~~
13 ~~code and that the testator was of sound mind at the time of~~
14 ~~its execution;~~

15 ~~(b) if it appears at the time of the filing of the~~
16 ~~application to have the will informally admitted to probate~~
17 ~~that none of the subscribing witnesses reside in the county~~
18 ~~or are capable of appearing and that the sworn or affirmed~~
19 ~~statement of one of the witnesses to the will has been taken~~
20 ~~or can be taken within the state within the next ten (10)~~
21 ~~days, the clerk shall admit the will to probate on the sworn~~
22 ~~or affirmed written statement of such witness that he has~~
23 ~~examined the original or a photostatic copy of the will,~~
24 ~~that he recognizes it as the will of the decendent witnessed~~
25 ~~by him on the date stated, that the will was executed in all~~

1 particulars-as-required-by-law-and-that-the-testator-was--of
2 sound-mind-at-the-time;

3 {c}--if-none-of-the-subscribing-witnesses-reside-in-the
4 county-and-are-capable-of-testifying--at--the--time--of--the
5 application--for--informal--probate-and-the-execution-of-the
6 will--cannot--be--proved--under--either--of--the--foregoing
7 subdivisions,--the--clerk--may--accept-the-sworn-or-affirmed
8 statement-or-affidavit-of-any-person-having-knowledge-of-the
9 circumstances-of-the-execution,--and--may--accept--proof--of--the
10 handwriting-of-the-testator-and-of-the-subscribing-witnesses
11 or-any-of-them;

12 {4}--Informal--probate--of--a--will--which--has--been
13 previously--probated--elsewhere--may--be--granted--at--any--time
14 upon-written-application-by-any-interested-person,--together
15 with-deposit-of-an-authenticated-copy-of-the-will-and-of-the
16 statement-probating-it-from-the-office-or-court-where-it-was
17 first-probated;

18 {5}--A-will-from-a-place--which--does--not--provide--for
19 probate--of--a--will--after--death--and--which--is--not--eligible--for
20 probate-under-subsection-(1)--above,--may--be--probated--in--this
21 state-upon-receipt-by-the-clerk-of-a-duly-authenticated-copy
22 of--the--will--and--a--duly-authenticated-certificate-of-its
23 legal-custodian-that-the-copy-filed-is-a-true-copy-and--that
24 the--will--has--become--operative-under-the-law-of-the-other
25 place.^h

1 SECTION 2. SECTION 91.1-3-303, R.C.M. 1947, IS AMENDED
2 TO READ AS FOLLOWS:

3 "91.1-3-303. (91A-3-303). Informal probate; proof and
4 findings required. (1) In an informal proceeding for
5 original probate of a will, the clerk shall determine
6 whether:

7 (a) the application is complete;
8 (b) the applicant has made oath or affirmation that the
9 statements contained in the application are true to the best
10 of his knowledge and belief;

11 (c) the applicant appears from the application to be an
12 interested person as defined in section 91A-1-201 (21);

13 (d) on the basis of the statements in the application,
14 venue is proper;

15 (e) an original, duly executed and apparently unrevoked
16 will is in the clerk's possession;

17 (f) any notice required by section 91A-3-304 has been
18 given and that the application is not within section
19 91A-3-304; and

20 (g) it appears from the application that the time limit
21 for original probate has not expired.

22 (2) The application shall be denied if it indicates
23 that a personal representative has been appointed in another
24 county of this state or except as provided in subsection (4)
25 below, if it appears that this or another will of the

1 decedent has been the subject of a previous probate order.

2 (3) A will which appears to have the required
3 signatures and which contains an attestation clause showing
4 that requirements of execution under section 91A-2-502,
5 91A-2-503 or 91A-2-506 have been met ~~and--that--it--is~~
6 ~~self-proved--as--provided--by--section--91A-2-504~~ shall be
7 probated without further proof. In other cases the clerk
8 ~~shall admit the will to probate on the following proof:~~ may
9 assume execution if the will appears to be properly
10 executed, or he may accept a sworn statement or affidavit of
11 any person having knowledge of the circumstances of
12 execution, whether or not the person was a witness to the
13 will.

14 ~~(a) --on--the--testimony--of--one--of--the--subscribing~~
15 ~~witnesses--that--the--will--was--executed--as--required--by--this~~
16 ~~code--and--that--the--testator--was--of--sound--mind--at--the--time--of~~
17 ~~its--execution;~~

18 ~~(b) --if--it--appears--at--the--time--of--the--filing--of--the~~
19 ~~application--to--have--the--will--informally--admitted--to--probate~~
20 ~~that--none--of--the--subscribing--witnesses--reside--in--the--county~~
21 ~~or--are--capable--of--appearing--and--that--the--sworn--or--affirmed~~
22 ~~statement--of--one--of--the--witnesses--to--the--will--has--been--taken~~
23 ~~or--can--be--taken--within--the--state--within--the--next--ten--(10)~~
24 ~~days;--the--clerk--shall--admit--the--will--to--probate--on--the--sworn~~
25 ~~or--affirmed--written--statement--of--such--witness--that--he--has~~

1 ~~examined--the--original--or--a--photostatic--copy--of--the--will;~~
2 ~~that--he--recognizes--it--as--the--will--of--the--decedent--witnessed~~
3 ~~by--him--on--the--date--stated;--that--the--will--was--executed--in--all~~
4 ~~particulars--as--required--by--law--and--that--the--testator--was--of~~
5 ~~sound--mind--at--the--time;~~

6 ~~(c) --if--none--of--the--subscribing--witnesses--reside--in--the~~
7 ~~county--and--are--capable--of--testifying--at--the--time--of--the~~
8 ~~application--for--informal--probate--and--the--execution--of--the~~
9 ~~will--cannot--be--proved--under--either--of--the--foregoing~~
10 ~~subdivisions;--the--clerk--may--accept--the--sworn--or--affirmed~~
11 ~~statement--or--affidavit--of--any--person--having--knowledge--of--the~~
12 ~~circumstances--of--the--execution;--and--may--accept--proof--of--the~~
13 ~~handwriting--of--the--testator--and--of--the--subscribing--witnesses~~
14 ~~or--any--of--them;~~

15 (4) Informal probate of a will which has been
16 previously probated elsewhere may be granted at any time
17 upon written application by any interested person, together
18 with deposit of an authenticated copy of the will and of the
19 statement probating it from the office or court where it was
20 first probated.

21 (5) A will from a place which does not provide for
22 probate of a will after death and which is not eligible for
23 probate under subsection (1) above, may be probated in this
24 state upon receipt by the clerk of a duly authenticated copy
25 of the will and a duly authenticated certificate of its

1 legal custodian that the copy filed is a true copy and that
2 the will has become operative under the law of the other
3 place."

4 Section 3. Section 91A-3-403, R.C.M. 1947, is amended
5 to read as follows:

6 "91A-3-403. Formal testacy proceeding; notice of
7 hearing on petition. (1) Upon commencement of a formal
8 testacy proceeding, the court or clerk shall fix a time and
9 place of hearing. Notice shall be given in the manner
10 prescribed by section 91A-1-401 by the petitioner to the
11 persons herein enumerated and to any additional person who
12 has filed a demand for notice under section 91A-3-204 of
13 this code.

14 Notice shall be given to the following persons: the
15 surviving spouse, children, and other heirs of the decedent,
16 the devisees and executors named in any will that is being,
17 or has been, probated, or offered for informal or formal
18 probate in the county, or that is known by the petitioner to
19 have been probated, or offered for informal or formal
20 probate elsewhere, and any personal representative of the
21 decedent whose appointment has not been terminated. Notice
22 may be given to other persons. In addition, the petitioner
23 shall give notice by publication to all unknown persons and
24 to all known persons whose addresses are unknown who have
25 any interest in the matters being litigated.

1 (2) If it appears by the petition or otherwise that the
2 fact of the death of the alleged decedent may be in doubt,
3 or on the written demand of any interested person, a copy of
4 the notice of the hearing on said petition shall be sent by
5 registered mail to the alleged decedent at his last known
6 address. The court shall direct the petitioner to report the
7 results of, or make and report back concerning, a reasonably
8 diligent search for the alleged decedent in any manner that
9 may seem advisable, including any or all of the following
10 methods:

11 (a) by inserting in one (1) or more suitable
12 periodicals a notice requesting information from any person
13 having knowledge of the whereabouts of the alleged decedent;

14 (b) by notifying law enforcement officials and public
15 welfare agencies in appropriate locations of the
16 disappearance of the alleged decedent;

17 (c) by engaging the services of an investigator. The
18 costs of any search so directed shall be paid by the
19 petitioner if there is no administration or by the estate of
20 the decedent in case there is administration."

21 Section 4. Section 91A-3-706, R.C.M. 1947, is amended
22 to read as follows:

23 "91A-3-706. Duty of personal representative;
24 supplementary inventory and appraisal; employment of
25 appraiser; copy to department of revenue. Within three (3)

1 months after his appointment, a personal representative, who
 2 is not a special administrator or a successor to another
 3 representative who has previously discharged this duty,
 4 shall prepare and file or mail an inventory, which inventory
 5 shall include listing of all property which the decedent
 6 owned, had an interest in or control over, individually, in
 7 common, or jointly, or otherwise had at the time of his
 8 death; or had possessory or dispository rights over at the
 9 time of his death or had disposed of for less than its fair
 10 market value within three (3) years of his death; or which
 11 was affected by his death for the purpose of inheritance or
 12 estate taxes. The inventory shall include a statement of the
 13 full and true value of the decedent's interest in every item
 14 listed in such inventory. In this connection the personal
 15 representative shall appoint ~~at least three (3)~~ one (1) or
 16 more qualified and disinterested persons, ~~any two (2) of~~
 17 ~~whom may act,~~ to assist him in ascertaining the fair market
 18 value as of the date of the decedent's death of all assets
 19 included in the estate. Different persons may be employed to
 20 appraise different kinds of assets included in the estate.
 21 The names and addresses of any appraiser shall be indicated
 22 on the inventory with the item or items he appraised.

23 The personal representative shall send a copy of the
 24 inventory to interested persons who request it, and or AND
 25 OR he shall may SHALL MAY file the original of the inventory

1 with the court. IN ANY EVENT, A COPY OF THE INVENTORY AND
 2 STATEMENT OF VALUE SHALL BE MAILED TO THE DEPARTMENT OF
 3 REVENUE. In any event, a copy of the inventory and statement
 4 of value shall be mailed to the department of revenue."

5 SECTION 5. THERE IS A NEW R.C.M. SECTION NUMBERED
 6 91A-3-1012 WHICH READS AS FOLLOWS:

7 91A-3-1012. FINAL ACCOUNTING TO CLOSE ESTATE. BEFORE
 8 AN ESTATE MAY BE FINALLY CLOSED AND THE PERSONAL
 9 REPRESENTATIVE RELIEVED OF HIS DUTIES AND OBLIGATIONS, HE
 10 SHALL EITHER FILE WITH THE COURT OR DELIVER TO ALL
 11 INTERESTED PERSONS AN ACCOUNTING UNDER OATH SHOWING THE
 12 AMOUNT OF MONEY RECEIVED AND EXPENDED BY HIM, THE AMOUNT OF
 13 ALL CLAIMS PRESENTED AGAINST THE ESTATE AND THE NAMES OF THE
 14 CLAIMANTS AND ALL OTHER MATTERS NECESSARY TO SHOW THE STATE
 15 OF ITS AFFAIRS. ANY INTERESTED PERSON AT ANY TIME DURING
 16 THE COURSE OF THE ADMINISTRATION OF AN ESTATE MAY FOR GOOD
 17 CAUSE SHOWN REQUIRE FURTHER ACCOUNTINGS. IF THE PERSONAL
 18 REPRESENTATIVE IS THE SOLE BENEFICIARY OF THE ESTATE NO
 19 ACCOUNTING NEED BE MADE.

20 SECTION 6. THERE IS A NEW R.C.M. SECTION THAT READS AS
 21 FOLLOWS:

22 ESTATE SALES -- INVENTORY REQUIRED -- EXCEPTION. SAVE
 23 UPON AN ORDER OF COURT OBTAINED AFTER NOTICE AND HEARING IN
 24 A SUPERVISED PROCEEDING OR FORMAL PROBATE, NO PROPERTY OF
 25 THE ESTATE MAY BE SOLD UNLESS AN INVENTORY AND STATEMENT OF

1 VALUE HAS BEEN DELIVERED TO THE STATE DEPARTMENT OF REVENUE.

2 Section 7. Section 91A-3-806, R.C.M. 1947, is amended
3 to read as follows:

4 "91A-3-806. Allowance of claims. (1) As to claims
5 presented in the manner described in section 91A-3-804
6 within the time limit prescribed in 91A-3-803, the personal
7 representative may mail a notice to any claimant stating
8 that the claim has been disallowed. If, after allowing or
9 disallowing a claim, the personal representative changes his
10 decision concerning the claim, he shall notify the claimant.

11 The personal representative may not change a disallowance of
12 a claim after the time for the claimant to file a petition
13 for allowance or to commence a proceeding on the claim has
14 run and the claim has been barred. Every claim which is
15 disallowed in whole or in part by the personal
16 representative is barred so far as not allowed unless the
17 claimant files a petition for allowance in the court or
18 commences a proceeding against the personal representative
19 not later than sixty (60) days after the mailing of the
20 notice of disallowance or partial allowance if the notice
21 warns the claimant of the impending bar. Failure of the
22 personal representative to mail notice to a claimant of
23 action on his claim for sixty (60) days after the time for
24 original presentation of the claim has expired has the
25 effect of a notice of ~~allowance~~ disallowance.

1 (2) Upon the petition of the personal representative or
2 of a claimant in a proceeding for the purpose, the court may
3 allow in whole or in part any claim or claims presented to
4 the personal representative or filed with the clerk of the
5 court in due time and not barred by subsection (1) of this
6 section. Notice in this proceeding shall be given to the
7 claimant, the personal representative and those other
8 persons interested in the estate as the court may direct by
9 order entered at the time the proceeding is commenced.

10 (3) A judgment in a proceeding in another court against
11 a personal representative to enforce a claim against a
12 decedent's estate is an allowance of the claim.

13 (4) Unless otherwise provided in any judgment in
14 another court entered against the personal representative,
15 allowed claims bear interest at the legal rate for the
16 period commencing sixty (60) days after the time for
17 original presentation of the claim has expired unless based
18 on a contract making a provision for interest, in which case
19 they bear interest in accordance with that provision."

20 Section 8. Section 91A-3-1010, R.C.M. 1947, is amended
21 to read as follows:

22 "91A-3-1010. Lien of state on estate property for
23 unpaid inheritance taxes. All property which is affected by
24 the death of the decedent and on which inheritance, estate
25 or death taxes are due under the laws of this state is

1 subject to the lien of the state of Montana until such taxes
 2 have been paid. This lien follows all property sold in the
 3 course of administration or distributed under this code
 4 until such time as all inheritance taxes have been paid and
 5 a receipt showing payment thereof has been filed with the
 6 clerk of court, subject to applicable statutes of
 7 limitations on state inheritance tax liens. The department
 8 of revenue may issue a consent to transfer any real or
 9 personal property in the estate of a decedent free of the
 10 lien for unpaid inheritance taxes upon proper application
 11 and under such rules and regulations as the department shall
 12 prescribe. ~~provided-that-such-transfer-shall-not-jeopardize~~
 13 ~~payment-of-the-inheritance-taxes-due."~~

14 Section 9. Section 91-4468, R.C.M. 1947, is amended to
 15 read as follows:

16 "91-4468. Personal representative to furnish
 17 information--department to determine tax--appeal. The
 18 personal representative, or should the personal
 19 representative fail to do so, any interested person, shall
 20 make application to the state department of revenue for
 21 determination of any tax due upon the estate of a decedent.
 22 The applicant shall furnish to the department of revenue the
 23 inventory and appraisal required by section 91A-3-706 of
 24 this act and of any supplemental inventory under section
 25 91A-3-707 of this act together with a statement, under oath

1 or affirmation, of any property owned by the decedent at the
 2 time of his death situated outside of this state and without
 3 its jurisdiction. THE APPLICANT SHALL, UPON REQUEST OF THE
 4 DEPARTMENT, FURNISH THE DEPARTMENT WITH THE FINAL ACCOUNTING
 5 OF SUCH PERSONAL REPRESENTATIVE. ~~and further shall~~
 6 ~~furnish-the-department-with-the--final--accounting--of--such~~
 7 ~~personal--representative-as-provided-by-section-91A-3-714-of~~
 8 ~~this--act.~~ If the decedent died testate, the personal
 9 representative shall likewise furnish the department with a
 10 certified copy of the last will of the decedent. If the
 11 decedent died intestate, the personal representative shall
 12 provide the department with a sworn statement setting forth
 13 the names, ages, and residences of the heirs at law of
 14 decedent. In all cases, the personal representative shall
 15 set forth the proportion of the entire estate inherited by
 16 or devised to each of said persons, and the relation, if
 17 any, which each devisee, heir, or transferee sustained to
 18 the decedent or person from whom the transfer was made. The
 19 information so provided shall not be binding upon the
 20 department in case it believes the same to be erroneous or
 21 untrue. From the information so furnished the department and
 22 such other information as it may be able to obtain with
 23 reference thereto, the department shall, with reasonable
 24 diligence, proceed to ascertain and determine the amount of
 25 tax, if any, due under the provisions of the inheritance tax

1 laws of the state of Montana, and a copy of such
 2 determination shall be mailed to the personal representative
 3 and to the clerk of the appropriate district court. If no
 4 tax is due, the department shall likewise so inform the
 5 clerk of district court and the personal representative.
 6 ~~Upon receipt of notice from the department of the amount of~~
 7 ~~tax due or that no tax is due, the personal representative~~
 8 ~~shall notify all persons having a beneficial interest in~~
 9 ~~said estate as promptly as may be.~~ Should the personal
 10 representative or any person affected by the determination
 11 of inheritance tax feel aggrieved by the department's
 12 determination, he may, within sixty (60) days after the
 13 filing of the copy of such determination with the clerk of
 14 district court, appeal the determination to the appropriate
 15 district court, by serving upon the department his
 16 objections to such determination and by filing such notice,
 17 after so serving the same, in the office of the clerk of
 18 such court. The court shall set a day for hearing such
 19 appeal upon ten (10) days' notice to all interested parties,
 20 and at the time and place set shall hear the appeal, upon
 21 all papers and records which may be properly presented
 22 before it, and shall as soon as possible thereafter issue
 23 its order determining the amount of such inheritance tax, if
 24 it finds a tax to be due."

25 ~~Section 72 Sections 91A-6-103, 91A-3-714, 91A-3-715,~~

1 ~~and 91-218, R.C.M. 1947, are repealed.~~

2 SECTION 10. SECTIONS 91A-6-103, 91A-3-714, 91A-3-715,

3 AND 91-218, R.C.M. 1947, ARE REPEALED.

-End-