LC 0101

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INTRODUCED BY Polenti Rommy Mc Con 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND 4 SUCCESSION, REPEAL STATUTES ON PROBATE, AND 5 WILLS, GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE 6

7 CODE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Terms to be construed as elective share of 11 surviving spouse. Where in the Revised Codes of Montana the 12 terms "dower" or "curtesy" are used, they mean, unless the 13 context clearly requires otherwise, "elective share of 14 surviving spouse" as defined in the Uniform Probate Code.

15 Section 2. Terms to be construed as a devise. Where in 16 the Revised Codes of Montana the terms "bequest" or "devise" 17 or a combination of such terms are used, they mean, unless 18 the context clearly requires otherwise, a "devise" as 19 defined in section 91A-1-201(8).

20 Section 3. Terms to be construed as a devisee. Where 21 in the Eevised Codes of Montana the terms "legatee", 22 "devisee", or any term referring to persons designated in a 23 will to receive real or personal property pursuant to a 24 testamentary disposition, or a combination of such terms is 25 used, they mean, unless the context clearly requires

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otherwise, a "devisee" as defined in section 91A-1-201(9).

2 Section 4. Terms to be construed as a guardian or 3 'conservator. Where in the Revised Codes of Montana the term 4 "guardian" is used, such term shall mean, unless the context 5 clearly requires otherwise, either a "guardian" or a 6 "conservator" as defined by the Uniform Probate Code, 7 depending upon the context of the section involved.

Section 5. Terms to be construed as letters. Where in R 9 the Revised Codes of Montana the terms "letters of administration", "letters of administration with wi11 10 annexed", "letters testamenatry", or a combination of such 11 terms are used, they shall mean, unless the context clearly 12 requires otherwise. "letters" as defined in section 13 14 91A-1-201(24).

15 Section 6. Section 25-233, R.C.M. 1947, is amended to 16 read as follows:

17 "25-233. Fees of clerk in probate proceedings. At the 18 time of filing the-petition--for--letters--testamentary,--of 19 administration-or-guardianship, an application for informal 20 probate or appointment, a petition for formal probate or 21 appointment, a petition for appointment of a quardian of a 22 minor or acceptance of such appointment, a petition for 23 appointment of a quardian of an incapacitated person or 24 acceptance of such appointment, a petition for appointment 25 of a conservator of the estate of a protected person or

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1 acceptance of such appointment, the clerk shall collect from 2 the petitioner or person accepting such appointment the sum 3 of ten dollars (\$10). 4 For admitting a will to probate and all services connected therewith, in addition to the above, there must be 5. paid to the clerk the sum of ten dollars (\$10). 6 7 If a will is contested, the contestant must pay to the 8 clerk, on filing his grounds of opposition, the sum of ten 9 dollars (\$10). 10 And on the entry of judgment thereon, the prevailing party must pay the sum of five dollars (\$5). 11 12 On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of 13 14 ten dollars (\$10). 15 On entry of judgment thereon, the prevailing party must 16 pay the sum of five dollars (\$5). 17 One-quarter (1/4) of all fees collected by said clerk 18 of the district court must be paid to the secretary of the public employees' retirement system board to be credited to 19 20 the judges' retirement fund." 21 Section 7. Section 25-237, R.C.M. 1947, is amended to 22 read as follows: 23 "25-237. Fees of public administrator. The public

23 25-237. Fees of public administrator. The public
24 administrator is allowed to receive and collect for his own
25 use, for services rendered, the same fees as are allowed

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1 executors-and-administrators personal representatives. 38

2 provided in section 91-3407 91A-3-719."

3 Section 8. Section 45-603, R.C.M. 1947, is amended to
4 read as follows:

5 "45-603, Priority of wages in case of death of employer. In case of the death of any employer, the wages of б · 7 each miner, mechanic, salesman, clerk, servant, and laborer for services rendered within four (4) months next preceding 8 the death of the employer, in the amount actually owed, rank 9 10 in-priority-next-after-the-funeral-expenses,-expenses-of-the 11 last--sicknessy--the--charges--and-expenses-of-administering 12 upon-the-estatey-and-the-allowance-to-the-widow--and--infant children- are preferred debts under section 91A-3-808(1)(e) 13 and must be paid before other claims against the estate ∞ 14 the deceased person." 15 16 Section 9. Section 91-602, R.C.M. 1947, is amended to 17 read as follows: 18 "91-602. Must procure letters of administration--bond and oath. Whenever a public administrator takes charge of an 19 estate, under order of the court, he must, with all 20 convenient dispatch, produce letters of administration 21 thereon, in like manner and on like proceedings as letters 22 23 of administration are issued to other persons. His official 24 bond and oath are in lieu of the-administrator's a personal representative's bond and oath, but when real estate is 25

1 ordered to be sold, another bond must may be required by the 2 court."

3 Section 10. Section 91-614, R.C.M. 1947, is amended to 4 read as follows:

5 "91-614. When to settle with clerk of district court. б The public administrator is required to account -- under-eath-7 and to settle and adjust his accounts, relating to the care 8 and disbursement of money or property belonging to estates 9 in his hands, with the clerk of the district court, on the 10 first Monday of each month, and he must pay to the county 11 treasurer any money remaining in his hands of an estate unclaimed--as-provided-in-sections-91-4103-to-91-4106." 12

13 Section 11. Section 91-628, R.C.M. 1947, is amended to
14 read as follows:

15 "91-628, Compensation of public administrator. The 16 public administrator shall receive as full compensation for 17 his services, including attorney's fees, a-commission-of 18 fifteen-per-cent-(158)-ef-the-totel-amount-ef-money-received 19 by-him-in-any-estate-provided-for-in-this--act the amounts provided for in sections 91A-3-719 and 91A-3-720; provided, 20 21 that in no case shall the compensation be less than 22 twenty-five dollars (\$25)."

23 Section 12. Section 91-629, R.C.M. 1947, is amended to 24 read as follows:

25 *91-629, Retiring public administrator may close

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pending estates. The public administrator, upon the 1 expiration or termination of his term of office, may 2 continue to administer estates not closed by filing and З 4 presenting to the court, a full and complete account 5 pertaining to each estate not closed, securing an order of court granting him letters of general administration and 6 7 qualifying himself as a general--administrator--under--and pursuant--to-sections-91-1701-end-91-17027-and-executing-and 2 filing-a-new-bond-in-such-sum-or-sums-as-may-be-fixed-by-the 9 10 court personal representative." Section 13. Section 91-631, R.C.M. 1947, is amended to 11 12 read as follows: 13 "91-631. Adjustment of compensation. Thereupon the court shall determine and allow such predecessor in office, 14 for his services rendered in connection with estates not 15 16 closed. a compensation based upon the commission new prescribed and allowed by law, in proportion to the services 17 18 necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor 1.9 20 shall thereupon be allowed and paid the balance of such 21 commission allowed by-said-section." Section 14. Section 91-2705, R.C.M. 1947, is amended 22 23 to read as follows: 24 "91-2706. Judge may present claim, and action thereon.

25 Any judge of the district court may present a claim against

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1 the estate of a decedent for allowance to the exceutor-or administrator personal representative thereof, and--if--the 2 3 executor--or--administrator--allows--the--claim7--he-must-in writing-designate-some-judge-of-the--district--court--of--an 4 adjoining--county-or-districty-whoy-upon-the-presentation-of 5 such-claim-to-himy-is-vested-with-power-to-allow--or--reject 6 7 it, and the -- judge -- presenting -- such - claim, in case of its 8 rejection by the executor-or-administratory-or-by-such-judge 9 as-shall-have-acted-upon-it, personal representative has the 10 same right to petition or sue in a proper court for its recovery as other persons have when their claims against an 11 12 estate are rejected."

13 Section 15. Section 91-2725, R.C.M. 1947, is amended 14 to read as follows:

15 "91-2725. Payment of debt to stop running of interest. If there be any debt of the decedent bearing interest, 16 17 whether presented or not, the executor -- or -- administrator 18 personal representative may -- by-order-of-the-court-or-judger 19 pay the amount then accumulated and unpaid, or any part 20 thereof, at any time when there are sufficient funds 21 properly applicable thereto, whether said claim be then due 22 or not; and interest shall thereupon cease to accrue upon 23 the amount so paid."

24 Section 16. Section 91-4414, R.C.4. 1947, is amended 25 to read as follows:

1 "91-4414. Exemptions from first \$25,000. The four owing 2 exemptions from the tax are hereby allowed, the exemption 3 allowed to each person, institution, association, 4 corporation and body politic to be taken out of the first 5 twenty-five thousand dollars passing by any such transfer to 6 such person, institution, association, corporation or body . 2 politic:

8 (1)Transfers totally exempt. A11 property 9 transferred to the state or any of its institutions. or to 10 municipal corporations within the state for strictly county. 11 city, town, or municipal purposes, shall be exempt. All transferred to any society, corporation, 12 property 13 institution, or association, in trust or otherwise, or the 14 any foundation or trust, organized and operated exclusively 15 for religious. charitable, scientific, literary, or 16 educational purposes, no part of the net earnings of which 17 inures to the benefit of any private stockholder or individual, and no substantial part of the activities of 18 19 which is carrying on propaganda or otherwise attempting to influence legislation, shall be exempt, if any of the 20 21 following conditions is present:

(a) The society, corporation, institution
foundation, trust, or association is organized solely for
religious, charitable, scientific, literary, or educational
purposes under the laws of this state or of the United

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1 States;

2 (b) The property transferred is limited for use3 within this state;

4 (c) In the event that the society, corporation, 5 institution, foundation, trust, or association is organized 6 or existing under the laws of another state of the United 7 States or of a foreign state or country, at the date of the 8 decedent's death any one of the following conditions 9 existed:

10 (i) The other state, foreign state, or foreign 11 country did not impose a legacy, succession, or death tax of 12 any character in respect to property transferred to a 13 similar society, corporation, institution, foundation, 14 trust, or association organized or existing under the laws 15 of this state;

(ii) The laws of the other state. foreign state. or 16 foreign country contained a reciprocal provision under which 17 property transferred to a similar society, institution, 13 19 foundation, trust, or association organized or existing under the laws of another state of the United States or 20 foreign state or country was exempt from legacy, succession 21 or death taxes of every character, if the other state of the 22 United States or foreign state or country allowed a similar 23 exemption in respect to property transferred to a similar 24 25 society, institution, foundation, trust, or association organized or existing under the laws of another state of the
 United States or foreign state or country;

(iii) The 3 society, corporation, institution, Δ foundation, trust, or association owns or operates a hospital for crippled children within the United States. 5 6 primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without 7 8 discrimination, gratuitously admitted and treated and the 9 property transferred is limited for use at such hospital.

10 \$25,000; \$5,000; \$2,000 exempt, when. Property of (2) 11 the clear value of twenty-five thousand dollars (\$25,000). 12 transferred to the wife or to the husband of the decedent, 13 five thousand dollars (\$5,000) transferred to each minor 14 lineal issue of the decedent, or any minor child adopted as 15 such in conformity with law, or any minor child to whom such decedent for not less than ten (10) years prior to such 16 transfer stood in the mutually acknowledged relation of a 17 13 parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was 19 20 continuous for ten (10) years, or any minor lineal issue of 21 such adopted or mutually acknowledged child, and two 22 thousand dollars (\$2,000) transferred to each of the lineal 23 issue who have attained majority and to each of the other persons who have attained majority described in the first 24 25 subdivision of section 91-4409 shall be exempt, Such

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1 exemption-to-the-wife--or--husband--of--the--decedent--shall 2 include--all--statutory-dowery-curtesy-and-other-allowangest 3 Any child of the decedent shall be entitled to credit for so 4 much of the tax paid by the wife or husband as applied to 5 any property which shall thereafter be transferred by or 6 from such husband or wife to any such child, provided the 7 husband or wife does not survive said decedent to exceed ten 8 years.

9 (3) \$500 exempt, when. Property of the clear value of
10 five hundred dollars transferred to each of the persons
11 described in the second subdivision of section 91-4409 shall
12 be exempt.

13 (4)Property without the state exempt, when. No tax 14 shall be imposed upon any tangible personal property of a 15 resident decedent when such property is located without this 16 state. and when the transfer of such property is subject to 17 an inheritance or transfer tax in the state where located 13 and which tax has actually been paid, secured or ouaranteed, 19 provided such property is not without this state temporarily 20 nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is 21 22 located allow a like exemption in relation to such property 23 left by a resident of that state and located in this state." 24 Section 17. Section 93-2504, R.C.M. 1947, is amended 25 to read as follows:

1 "93-2504. Seizin within five years--when necessary in 2 actions for real property--action-for-dower. No action for the recovery of real property, or for the possession 3 thereof, can be maintained, unless it appear that the 4 plaintiff, his ancestor, predecessor, or grantor, was seized 5 or possessed of the property in question within five years 6 7 before the commencement of the action. No-action-for-the 8 recovery-of-dower-can-be-maintained-by-a--widow--unless--the agtion-is-commenced-within-ten-fl0}-vecrs-after-the-death-of 9 10 her-husband-" Section 18. Section 93-2604, R.C.M. 1947, is amended 11 to read as follows: 12 13 "93-2604. Jithin five years. Within five years: 1. An action upon a contract, account, promise, to 14 15 founded on an instrument in writing. 2---An-action-to-catoblish-a-will-where--the--will--has 16 been--losty--concealedy-or-destroyedy-The-cause-of-action is 17 not-deemed-to-have--secryed--uptil--the--discovery--by--the 18 19 plaintiff,--or-the-person-under-whom-he-claims,-of-the-facts 20 upon-which-its-walidity-desends-21 3:--2, An action upon a judgment or decree rendered in 22 a court not of record. The cause of action is deemed. 23 such case, to have accrued when final judgment was rendered." 24 Section 19. Section 93-1401-3, R.C.M. 1947, is amended 25

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1 to read as follows:

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93-1401-3. Will to be in writing. A last will and testament,--except-a-nuncupative-will, is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.*

8 Section 20. Sections 33-129, 84-4110, 91-103, 91-104, 9 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 10 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 11 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 12 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 13 14 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 15 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 16 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 17 93-1401-4, and 93-6352 through 93-6354 are repealed.

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Approved by Committee on Judiciary

1	SENATE BILL NO. 148
2	INTRODUCED BY ROBERTS, ROMNEY, MC CALLUM
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5	REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND
6	GUARDIANSHIP TO CONFORM NONTANA LAW TO THE UNIFORM PROBATE
7	CODE."
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section-iPerms-to-be-construed-as-elective-shareof
11	surviving-spouseWhere-in-the-Revised-Codes-of-Montana-the
12	terms"dower"or-"curtesy"-are-usedy-they-meany-unless-the
13	contextclearlyrequiresotherwisey"electiveshareof
14	surviving-spouse ¹ -as-defined-in-the-Uniform-Probate-Code.
15	Section-2Perms-to-be-construed-as-adeviseWhere
16	intheRevisedGodesofMontanathe-terms-Mbequest ¹¹ -or
17	"devise"-or-a-combination-of-such-terms-are-used7-they-mean7
18	unless-the-context-elearly-requires-otherwise7-a-"devise"-as
19	defined-in-section-91A-1-201(8).
20	Section-3Terms-to-be-construcd-as-a-deviseeWhere
21	intheRevisedCodesofMontanetheterms1legatec";
22	"devisee",-or-any-term-referring-to-persons-designated-ina
23	willtoreceiverealorpersonal-property-pursuant-to-a
24	testamentary-disposition;-or-a-combination-of-such-termsis
25	usedytheymeanyunlessthecontextclearlyrequires

l	otherwise;-a-"devisee"-as-defined-in-section-91A-1-201(9);
2	Section-4Werms-to-beconstruedasaguardianor
3	conservator;Where-in-the-Revised-Codes-of-Montana-the-term
4	"guardian"-is-used;-such-term-shall-mean;-unless-the-context
5	clearlyrequiresotherwise,eithera#guardian#ora
6	"conservator"asdefinedbytheUniformProbateCode7
7	depending-upon-the-context-of-the-section-involved.
8	Section-5Terms-to-be-construed-as-lettersWhere-in
9	theRevisedCodesofMontanathetermsItettersof
10	administration#,*lettersofadministrationwithwill
11	annexed ² 7- ² letters-testamenatry ² 7-or-a-combinationofsuch
12	termsare-usedy-they-shall-meany-unless-the-context-clearly
13	requiresotherwise7 ⁻¹³ letters ^g asdefinedinsection
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20	probate or appointment, a petition for formal probate or
21	appointment, a petition for appointment of a guardian of a
22	minor or acceptance of such appointment, a petition for
23	appointment of a guardian of an incapacitated person or
24	acceptance of such appointment, a petition for appointment
25	of a conservator of the estate of a protected person or

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1 acceptance of such appointment, the clerk shall collect from 2 the petitioner or person accepting such appointment the sum 3 of ten dollars (\$10). 4 For admitting a will to probate and all services 5 connected therewith, in addition to the above, there must be 6 paid to the clerk the sum of ten dollars (\$10). 7 If a will is contested, the contestant must pay to the я clerk, on filing his grounds of opposition, the sum of ten 9 dollars (\$10). 10 And on the entry of judgment thereon, the prevailing 11 party must pay the sum of five dollars (\$5). 12 On filing a petition to determine heirship or title to 13 an estate, the petitioner must pay to the clerk the sum of ten dollars (\$10). 14 15 On entry of judgment thereon, the prevailing party must 16 pay the sum of five dollars (\$5). 17 One-quarter (1/4) of all fees collected by said clerk 18 of the district court must be paid to the secretary of the 19 public employees' retirement system board to be credited to 20 the judges' retirement fund." 21 Section 2. Section 25-237, R.C.M. 1947, is amended to 22 read as follows: 23 "25-237. Fees of public administrator. The public 24 administrator is allowed to receive and collect for his own 25 use, for services rendered, the same fees as are allowed - 3-SB 148

1 executors--and--administrators personal representatives, as 2 provided in section 91-3467 91A-3-719.* Section 3. Section 45-603, R.C.M. 1947, is amended to 3 4 read as follows: 5 "45-603. Priority of wages in case of death of employer. In case of the death of any employer, the wages of 6 7 each miner, mechanic, salesman, clerk, servant, and laborer 8 for services rendered within four (4) months next preceding 9 the death of the employer, in the amount actually owed, rank 10 in-priofity-next-after-the-funeral-expenses-expenses-of-the 11 last-sicknessy-the-charges--and--expenses--of--administering upon--the--estate;-and-the-allowance-to-the-widow-and-infant 12 children; are preferred debts under section 91A-3-805(1)(e) 13 and must be paid before other claims against the estate of 14 the deceased person." 15 Section 4. Section 91-602, R.C.M. 1947, is amended to 16 read as follows: 17 18 "91-602. Must procure letters of administration-pond 19 and oath. Whenever a public administrator takes charge of an estate, under order of the court, he must, with all 20 21 convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters 22 23 of administration are issued to other persons. His official bond and oath are in lieu of the administrator's a personal 24 representative's bond and oath, but when real estate is 25

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1 ordered to be sold, another bond must <u>may</u> be required by the 2 court."

3 Section <u>5</u>. Section 91-614, R.C.M. 1947, is amended to 4 read as follows:

"91-614. When to settle with clerk of district court. 5 The public administrator is required to account-under-oath; 6 and to settle and adjust his accounts, relating to the care 7 8 and disbursement of money or property belonging to estates in his hands, with the clerk of the district court, on the 9 10 first Monday of each month, and he must pay to the county 11 treasurer any money remaining in his hands of an estate 12 unclaimedy-as-provided-in-sections-91-4103-to-91-4106."

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23 Section <u>7</u>. Section 91-629, R.C.M. 1947, is amended to 24 read as follows:

25 "91-629. Retiring public administrator may close

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expiration or termination of his term of office, may 2 3 continue to administer estates not closed by filing and 4 presenting to the court, a full and complete account 5 pertaining to each estate not closed, securing an order of 6 court granting him letters of general administration and 7 qualifying himself as a general--administrator--under--and 8 pur suant -- to-sections-91-1701-and-91-1702, - and - executing-and 9 filing-a-new-bond-in-such-sum-or-sums-as-may-be-fixed-by-the 10 court personal representative." 11 Section 8. Section 91-631, R.C.M. 1947, is amended to 12 read as follows: 13 "91-631. Adjustment of compensation. Therewoon the 14 court shall determine and allow such predecessor in office. 15 for his services rendered in connection with estates not

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16 closed, a compensation based upon the commission new 17 prescribed and allowed by law, in proportion to the services 18 necessarily rendered and those necessary to be rendered by 19 such successor in closing up such estates. Such successor 20 shall thereupon be allowed and paid the balance of such 21 commission allowed by-said-section."

Section <u>9</u>. Section 91-2706, R.C.M. 1947, is amended to
read as follows:

24 "91-2706. Judge may present claim, and action thereon.
25 Any judge of the district court may present a claim against

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1 the estate of a decedent for allowance to the executor-or 2 administrator personal representative thereof. and -- if -- the 3 executor--or--administrator--allows--the--claim,--he-must-in 4 writing-designate-some-iudge-of-the--district--court--of--an 5 adjoining--county-or-districty-whoy-upon-the-presentation-of such-claim-to-himy-is-vested-with-power-to-aliow--or--reject 6 7 ity and the -- judge -- presenting -- such-claim, in case of its rejection by the executor-or-administratory-or-by-such-judge 8 as-shall-have-acted-upon-it, personal representative has the 9 10 same right to petition or sue in a proper court for its 11 recovery as other persons have when their claims against an 12 estate are rejected."

13 Section 10. Section 91-2725, R.C.M. 1947, is amended 14 to read as follows:

"91-2725. Payment of debt to stop running of interest. 15 16 If there be any debt of the decedent bearing interest, 17 whether presented or not, the executor -- or -- administrator 18 personal representative may -- by-order-of-the-court-or-judge; 19 pay the amount then accumulated and unpaid, or any part 20 thereof, at any time when there are sufficient funds 21 properly applicable thereto, whether said claim be then due 22 or not; and interest shall thereupon cease to accrue upon 23 the amount so paid."

24 Section 11. Section 91-4414, R.C.M. 1947, is amended 25 to read as follows:

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*91-4414. Exemptions from first \$25,000. The following 1 exemptions from the tax are hereby allowed, the exemption 2 3 allowed to each person, institution, association. corporation and body politic to be taken out of the first 4 twenty-five thousand dollars passing by any such transfer to 5 such person. institution, association, corporation or body Б 7 politic:

8 (1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to 9 10 municipal corporations within the state for strictly county, 11 city, town, or municipal purposes, shall be exempt. All 12 property transferred to any society. corporation. institution. or association. in trust or otherwise, or to 13 14 any foundation or trust, organized and operated exclusively 15 for religious, charitable, scientific, literary, or 16 educational purposes, no part of the net earnings of which 17 inures to the benefit of any private stockholder or individual, and no substantial part of the activities of 18 which is carrying on propaganda or otherwise attempting to 19 20 influence legislation, shall be exempt, if any of the 21 following conditions is present:

22 (a) The society, corporation, institution. 23 foundation, trust, or association is organized solely for 24 religious, charitable, scientific, literary, or educational 25 purposes under the laws of this state or of the United -8-SB 148

1 States;

2 (b) The property transferred is limited for use3 within this state;

4 (c) In the event that the society, corporation, 5 institution, foundation, trust, or association is organized 6 or existing under the laws of another state of the United 7 States or of a foreign state or country, at the date of the 8 decedent's death any one of the following conditions 9 existed:

10 (i) The other state, foreign state, or foreign 11 country did not impose a legacy, succession, or death tax of 12 any character in respect to property transferred to a 13 similar society, corporation, institution, foundation, 14 trust, or association organized or existing under the laws 15 of this state:

16 (ii) The laws of the other state, foreign state, or foreign country contained a reciprocal provision under which 17 property transferred to a similar society, institution, 18 foundation, trust, or association organized or existing 19 under the laws of another state of the United States or 20 foreign state or country was exempt from legacy, succession 21 22 or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar 23 exemption in respect to property transferred to a similar 24 society, institution, foundation, trust, or association 25

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organized or existing under the laws of another state of the
 United States or foreign state or country;

3 (iii) The society, corporation, institution. foundation, trust, or association owns or operates a 4 hospital for crippled children within the United States. 5 6 primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without 7 8 discrimination, gratuitously admitted and treated and the 9 property transferred is limited for use at such hospital.

10 \$25,000; \$5,000; \$2,000 exempt, when. Property of (2) 11 the clear value of twenty-five thousand dollars (\$25,000), 12 transferred to the wife or to the husband of the decedent. 13 five thousand dollars (\$5,000) transferred to each minor 14 lineal issue of the decedent, or any minor child adopted as 15 such in conformity with law, or any minor child to whom such 16 decedent for not less than ten (10) years prior to such 17 transfer stood in the mutually acknowledged relation of a 18 parent, provided, however, such relationship began at or 19 before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of 20 adopted or mutually acknowledged child, and two 21 such 22 thousand dollars (\$2,000) transferred to each of the lineal issue who have attained majority and to each of the other 23 persons who have attained majority described in the first 24 subdivision of section 91-4409 shall be exempt. Such 25 SB 148 -101 exemption-to-the-wife--or--husbond--of--the--decedent--shell 2 include--all--statutory-dowerz-curtesy-and-other-allowances-3 Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to 4 5 any property which shall thereafter be transferred by or 6 from such husband or wife to any such child, provided the 7 husband or wife does not survive said decedent to exceed ten 8 years.

9 (3) \$500 exempt, when. Property of the clear value of 10 five hundred dollars transferred to each of the persons 11 described in the second subdivision of section 91-4409 shall 12 be exempt.

13 Property without the state exempt, when. No tax (4) 14 shall be imposed upon any tangible personal property of a 15 resident decedent when such property is located without this 16 state, and when the transfer of such property is subject to 17 an inheritance or transfer tax in the state where located 18 and which tax has actually been paid, secured or guaranteed, 19 provided such property is not without this state temporarily 20 nor for the sole purpose of deposit or safekeeping; and 21 provided the laws of the state where such property is 22 located allow a like exemption in relation to such property 23 left by a resident of that state and located in this state." 24 Section 12. Section 93-2504, R.C.M. 1947, is amended 25 to read as follows:

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1 "93-2504. Seizin within five years--when necessary in actions for real property -- action-for-dower. No action for 2 3 the recovery of real property, or for the possession 4 thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized 5 or possessed of the property in question within five years 6 7 before the commencement of the action. No-action-for-the recovery-of-dower-con-be-maintained-by-a--widow--unless--the Q 9 action-is-commenced-within-ten-(18)-years-after-the-death-of her-husband-" 10 Section 13. Section 93-2604, R.C.M. 1947. is amended 11 12 to read as follows: 13 "93-2604. Within five years. Within five years: 14 1. An action upon a contract, account, promise, not 15 founded on an instrument in writing. 16 2.--An-action-to-establish-a-will-where--the--will--has 17 been--losty--concealedy-or-destroyedy-The-cause-of-action-is 18 not-deemed-to-have--accrued--until--the--discovery,--by--the 19 plaintiffy--or-the-person-under-whom-he-claimsy-of-the-facts 20 upon-which-its-validity-depends-21 3---2. An action upon a judgment or decree rendered in 22 a court not of record. The cause of action is deemed, in such case. to have accrued when final judgment was 23 24 rendered."

25 Section 14. Section 93-1401-3, R.C.H. 1947, is amended SB 148 -121 to read as follows:

.

2 "93-1401-3. Will to be in writing. A last will and 3 testament;--except-a-nuncupative-will; is invalid; unless it 4 be in writing and executed with such formalities as are 5 required by law. When, therefore, such a will is to be 6 shown, the instrument itself must be produced, or secondary 7 evidence of its contents be given."

8 Section 15. Sections 33-129, 84-4110, 91-103, 91-104, 9 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 10 11 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 12 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 13 14 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 15 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 16 17 93-1401-4, and 93-6352 through 93-6354 are repealed.

-End-

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SENATE BILL NO. 148 1 2 INTRODUCED BY ROBERTS, ROMNEY, MC CALLUM 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND AND 5 REPEAL STATUTES ON WILLS, SUCCESSION. PROBATE, GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE 6 CODE. " 7 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 Section-1--- Terms-to-be-construed-as-elective-share--of 10 surviving-spouser--Where-in-the-Revised-Godes-of-Montana-the 11 12 terms--- dower -- or-- curtesy -- are-usedy-they-meany-unless-the 13 context--clearly--requires--otherwisey--Lelective--share--of 14 surviving-spouse"-as-defined-in-the-Uniform-Probate-Code-Section-2---Terms-to-be-construed-as-a--devise----Where 15 in--the--Revised--Codes--of--Montana--the-terms-EbequestE-or 16 Idevise -or-a-combination-of-such-terms-are-used; -they-mean; 17 unless-the-context-clearly-requires-otherwisey-a-adevise1-as 18 19 defined-in-section-91A-1-201(8); Section-3---Terms-to-be-construed-as-a-devisec----Where 20 in--the--Revised--Codes--of--Montana--the--terms--"legatee", 21 #deviace -or-any-term-referring-to-persons-designated-in--a 22 will--to--receive--real--or--personal-property-pursuant-to-a 23 testamentary-disposition, or-a-combination-of-such-terms--is 24 used ---- they -- mean --- unless -- the -- context -- clearly -- requires 25

THIRD READING

1	otherwise,-a-"devisee"-as-defined-in-section-91A-1-201(9).
2	Section-4Terms-to-beconstruedasaguardianor
3	conservatorWhere-in-the-Revised-Sodes-of-Montana-the-term
4	"guardian"-is-used;-such-term-shall-mean;-unless-the-context
5	clearlyrequiresotherwise,eithera#guardian#ora
6	<pre>sconservatorsasdefinedbytheUniformProbateCoder</pre>
7	depending-upon-the-context-of-the-section-involved.
8	Section-5Terms-to-be-construed-as-lettersWhere-in
9	theRevisedCodesofNontanatheterms#lettersof
10	administration",
11	annexed#7-#letters-testamenatry#7-or-a-combinationofsuch
12	termsare-usedy-they-shall-meany-unless-the-context-clearly
13	requiresotherwisey#letters#asdefinedinsection
14	91A-1-201(24).
15	Section 1. Section 25-233, R.C.M. 1947, is amended to
1 6	read as follows:
17	25-233. Fees of clerk in probate proceedings. At the
18	time of filing thepetition-for-letters-testamentary7-of
19	administration-or-guardianship, an application for informal
20	probate or appointment, a petition for formal probate or
21	appointment, a petition for appointment of a guardian of a
22	minor or acceptance of such appointment, a petition for
23	appointment of a guardian of an incapacitated person or
24	acceptance of such appointment, a petition for appointment
25	of a conservator of the estate of a protected person or

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acceptance of such appointment, the clerk shall collect from
 the petitioner or person accepting such appointment the sum
 of ten dollars (\$10).

4 For admitting a will to probate and all services 5 connected therewith, in addition to the above, there must be 6 paid to the clerk the sum of ten dollars (\$10).

7 If a will is contested, the contestant must pay to the 8 clerk, on filing his grounds of opposition, the sum of ten 9 dollars (\$10).

And on the entry of judgment thereon, the prevailing
party must pay the sum of five dollars (\$5).

12 On filing a petition to determine heirship or title to 13 an estate, the petitioner must pay to the clerk the sum of 14 tem dollars (\$10).

15 On entry of judgment thereon, the prevailing party must 16 pay the sum of five dollars (\$5).

17 One-quarter (1/4) of all fees collected by said clerk 18 of the district court must be paid to the secretary of the 19 public employees' retirement system board to be credited to 20 the judges' retirement fund."

21 Section 2. Section 25-237, R.C.M. 1947, is amended to 22 read as follows:

23 *25-237. Fees of public administrator. The public
 24 administrator is allowed to receive and collect for his own
 25 use, for services rendered, the same fees as are allowed
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1 executors--and--administrators personal representatives, as provided in section 91-3407 91A-3-719." 2 Section 3. Section 45-603, R.C.M. 1947, is amended to 3 4 read as follows: 5 "45-603. Priority of wages in case of death of 6 employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, and laborer 7 for services rendered within four (4) months next preceding 8 the death of the employer, in the amount actually owed, rank 9 10 im-prist sty-next-after-the-funeral-expenses, -cxpenses-of-the 11 tast-sickaessy-the-charges--and--expenses--of--administering 12 upon-the--estate--and-the-allowance-to-the-widow-and-infant 13 children, are preferred debts under section 91A-3-805(1)(e) and must be paid before other claims against the estate of 14 15 the deceased person." 16 Section 4. Section 91-602, R.C.M. 1947, is amended to 17 read as follows: 18 *91-602. Must procure letters of administration--bond 19 and oath. Whenever a public administrator takes charge of an 20 estate, under order of the court, he must, with all 21 convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters 22 23 of administration are issued to other persons. His official 24 bond and oath are in lieu of the administrator's a personal 25 representative's bond and oath, but when real estate is

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1

the

upon

- 1 ordered to be sold, another bond must may be required by the
 2 court."
- 3 Section <u>5</u>. Section 91-614, R.C.M. 1947, is amended to 4 read as follows:

"91-614. When to settle with clerk of district court. 5 The public administrator is required to account--under-oath-6 and to settle and adjust his accounts, relating to the care 7 and disbursement of money or property belonging to estates 8 9 in his hands, with the clerk of the district court, on the 10 first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate 11 unclaimed -- as-provided-in-sections-91-4103-to-91-4106." 12

13 Section <u>6</u>. Section 91-628, R.C.M. 1947, is amended to 14 read as follows:

"91-628. Compensation of public administrator. The 15 public administrator shall receive as full compensation for 16 17 his services, including attorney's fees, a--commission--of fifteen-per-cent-(15%)-of-the-total-amount-of-money-received 18 by--him--in--any-estate-provided-for-in-this-act the amounts 19 provided for in sections 91A-3-719 and 91A-3-720; provided, 20 that in no case shall the compensation be less than 21 22 twenty-five dollars (\$25)."

23 Section <u>7</u>. Section 91-629, R.C.M. 1947, is amended to 24 read as follows:

25 "91-629. Retiring public administrator may close

2 expiration or termination of his term of office, may 3 continue to administer estates not closed by filing and 4 presenting to the court, a full and complete account pertaining to each estate not closed, securing an order of 5 6 court granting him letters of general administration and 7 qualifying himself as a general--administrator--under--and pur sugnt -- to-sections-91-1701-and-91-17027-and-executing-and 8 9 filing-a-new-bond-in-such-sum-or-sums-as-may-be-fixed-by-the 10 court personal representative." 11 Section 8. Section 91-631, R.C.M. 1947, is amended to 12 read as follows: 13 "91-631. Adjustment of compensation. Thereupon the 14 court shall determine and allow such predecessor in office. 15 for his services rendered in connection with estates not 16 closed, a compensation based upon the commission new 17 prescribed and allowed by law, in proportion to the services 18 necessarily rendered and those necessary to be rendered by 19 such successor in closing up such estates. Such successor 20 shall thereupon be allowed and paid the balance of such 21 commission allowed by-said-section." 22 Section 9. Section 91-2706, R.C.M. 1947, is amended to 23 read as follows:

pending estates. The public administrator.

24 "91-2706. Judge may present claim, and action thereon.
25 Any judge of the district court may present a claim against

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the estate of a decedent for allowance to the executor or 1 2 administrator personal representative thereof, and -- if -- the 3 writing-designate-some-indge-of-the--district--court--of--on 4 5 6 such-claim-to-him-is-vested-with-power-to-allow--or--reject 7 it; and the -- judge-- presenting--such-claim; in case of its 8 rejection by the executor or administratory or by such judge as shall have acted upon ity personal representative has the 9 10 same right to petition or sue in a proper court for its recovery as other persons have when their claims against an 11 12 estate are rejected."

13 Section <u>10</u>. Section 91-2725, R.C.M. 1947, is amended
14 to read as follows:

15 "91-2725. Payment of debt to stop running of interest. 16 If there be any debt of the decedent bearing interest, 17 whether presented or not, the executor-or-administrator 18 personal representative may - by order of the court or induct 19 pay the amount then accumulated and unpaid, or any part 20 thereof, at any time when there are sufficient funds 21 properly applicable thereto, whether said claim be then due 22 or not; and interest shall thereupon cease to accrue upon 23 the amount so paid."

24 Section <u>11</u>. Section 91-4414, R.C.M. 1947, is amended 25 to read as follows:

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*91-4414. Exemptions from first \$25,000. The following 1 2 exemptions from the tax are hereby allowed, the exemption 3 allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to 5 such person, institution, association, corporation or body 6 politic: 7

Transfers totally 8 (1)exempt. A11 property transferred to the state or any of its institutions, or to 9 10 municipal corporations within the state for strictly county, 11 city, town, or municipal purposes, shall be exempt. All 12 property transferred to any society, corporation, 13 institution, or association, in trust or otherwise, or to 14 any foundation or trust, organized and operated exclusively 15 for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which 16 17 inures to the benefit of any private stockholder or 1:8 individual, and no substantial part of the activities of 19 which is carrying on propaganda or otherwise attempting to 20 influence legislation, shall be exempt, if any of the 21 following conditions is present:

(a) The society, corporation, institution,
foundation, trust, or association is organized solely for
religious, charitable, scientific, literary, or educational
purposes under the laws of this state or of the United
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States: 1

(b) The property transferred is limited for use 2 3 within this state;

In the event that the society, corporation, 4 (c) institution, foundation, trust, or association is organized 5 or existing under the laws of another state of the United 6 States or of a foreign state or country, at the date of the 7 death any one of the following conditions decedent's 8 existed: 9

The other state, foreign state, or foreign 10 (i) country did not impose a legacy, succession, or death tax of 11 any character in respect to property transferred to a 12 similar society, corporation, institution, foundation, 13 trust, or association organized or existing under the laws 14 15 of this state;

(ii) The laws of the other state, foreign state, or 16 foreign country contained a reciprocal provision under which 17 property transferred to a similar society, institution, 18 foundation, trust, or association organized or existing 19 under the laws of another state of the United States or 20 foreign state or country was exempt from legacy, succession 21 or death taxes of every character, if the other state of the 22 United States or foreign state or country allowed a similar 23 exemption in respect to property transferred to a similar 24 society, institution, foundation, trust, or association 25 SB 148 -9SB 0148/02

1 organized or existing under the laws of another state of the 2 United States or foreign state or country;

З institution, (iii) The society. corporation. 4 foundation, trust, or association owns or operates a hospital for crippled children within the United States, 5 primarily practicing orthopedics. to which crippled or б 7 afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the 8 9 property transferred is limited for use at such hospital.

10 \$25,000; \$5,000; \$2,000 exempt, when, Property of (2) 11 the clear value of twenty-five thousand dollars (\$25,000), transferred to the wife or to the husband of the decedent, 12 13 five thousand dollars (\$5.000) transferred to each minor 14 lineal issue of the decedent, or any minor child adopted as such in conformity with law, or any minor child to whom such 15 16 decedent for not less than ten (10) years prior to such 17 transfer stood in the mutually acknowledged relation of a 18 parent, provided, however, such relationship began at or 19 before the child's fifteenth (15) birthday, and was 20 continuous for ten (10) years, or any minor lineal issue of 21 adopted or mutually acknowledged child, and two such 22 thousand dollars (\$2,000) transferred to each of the lineal 23 issue who have attained majority and to each of the other 24 persons who have attained majority described in the first 25 subdivision of section 91-4409 shall be exempt. Such. -10-

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1 exemption-to-the-wife--or--husband--of--the--decedent--shell 2 include--all--statutory-dowery-curtesy-and-other-allowances-3 Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to 4 5 any property which shall thereafter be transferred by or 6 from such husband or wife to any such child, provided the 7 husband or wife does not survive said decedent to exceed ten 8 years.

9 (3) \$500 exempt, when. Property of the clear value of 10 five hundred dollars transferred to each of the persons 11 described in the second subdivision of section 91-4409 shall 12 be exempt.

13 (4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a 14 15 resident decedent when such property is located without this 16 state. and when the transfer of such property is subject to 17 an inheritance or transfer tax in the state where located 18 and which tax has actually been paid, secured or guaranteed, 19 provided such property is not without this state temporarily 20 nor for the sole purpose of deposit or safekeeping; and 21 provided the laws of the state where such property is 22 located allow a like exemption in relation to such property 23 left by a resident of that state and located in this state." Section 12. Section 93-2504, R.C.M. 1947, is amended 24 25 to read as follows:

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1 "93-2504. Seizin within five years--when necessary in actions for real property--action-for-dower. No action for 2 the recovery of real property, or for the possession 3 thereof, can be maintained, unless it appear that the 4 5 plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years б before the commencement of the action. No-action-for-the 7 8 recovery-of-dover-con-be-mainteined-by-a--widow--unless--the action-is-commenced-within-ten-fit-vears-after-the-death-of 9 her-husband-" 10 11 Section 13. Section 93-2604, R.C.M. 1947, is amended 12 to read as follows: 13 *93-2604. Within five years. Within five years: 14 1. An action upon a contract, account, promise, not 15 founded on an instrument in writing. 16 21--An-action-to-establish-a-will-where--the--will--has 17 been--losty--conceledy-or-destroyedy-The-cause-of-action-is 18 not-deemed-to-have--assryed--until--the--discovery--by--the 19 plaintiffy--or-the-person-under-whom-he-claimsy-of-the-facts 20 upon-which-its-validity-depender 21 37--2. An action upon a judgment or decree readered in a court not of record. The cause of action is deemed, in 22 to have accrued when final judgment was 23 such case, 24 rendered." 25 Section 14. Section 93-1401-3, R.C.M. 1947, is amended

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1 to read as follows:

2 "93-1401-3. Will to be in writing. A last will and 3 testament;--except-a-nuncupative-will; is invalid; unless it 4 be in writing and executed with such formalities as are 5 required by law. When, therefore, such a will is to be 6 shown, the instrument itself must be produced, or secondary 7 evidence of its contents be given."

8 Section 15. Sections 33-129, 84-4110, 91-103, 91-104, 9 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 10 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 11 12 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 13 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 14 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 15 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 16 17 93-1401-4, and 93-6352 through 93-6354 are repealed.

-End-

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SB 0148/02

1	SENATE BILL NO. 148
2	INTRODUCED BY ROBERTS, ROMNEY, MC CALLUM
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5	REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND
6	GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE
7	CODE."
8	
9	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10	Section-1Verms-to-be-construed-as-elective-shareof
11	surviving-sponserWhere-in-the-Revised-Codes-of-Montana-the
12	terms"dower"or-"curtesy"-are-used7-they-mean7-unless-the
13	contextelearlyrequiresotherwise, [#] electiveshareof
14	surviving-spouse ¹ -as-defined-in-the-Uniform-Probate-Code.
15	Section-2
16	intheRevisedCodesofMontanathe-terms-"bequest"-or
17	"devise"-or-a-combination-of-such-terms-are-usedy-they-meany
18	unless-the-context-clearly-requires-otherwisey-a-#devise#-as
19	defined-in-section-91A-1-201(8);
20	Section-3Terms-to-be-construed-as-a-deviseeWhere
21	intheRevisedCodesofMontana-theterms"legatee"7
22	"devises",-or-any-term-referring-to-persons-designated-ina
23	willtoreceiverealorpersonal-property-pursuant-to-a
24	testamentary-disposition-or-a-combination-of-such-termsis
25	usedytheymeanyunlessthecontextclearlyrequires

1	stherwisey-a-"devisee"-as-defined-in-section-91A-1-281(9);
2	Section-4Terms-to-beconstruedasaguardianer
3	conservatorWhere-in-the-Revised-Codes-of-Montana-the-term
4	[#] guardian [#] -is-used;-such-term-shall-mean;-unless-the-context
5	clearlyrequiresotherwiseyeitheraguardian ¹¹ ora
6	"conservator"asdefinedbytheUniformProbateCode;
7	depending-upon-the-context-of-the-section-involved.
8	Section-5,Terms-te-be-construed-as-letters,Where-in
9	theRevisedCodesofMontanathetermsf
10	administration#y#lettersofadministrationwithwill
11	annexed ¹¹ 7- ¹¹ letters-testamenatry ¹¹ 7-or-a-combinationofsuch
12	termsare-used7-they-shall-mean7-unless-the-context-clearly
13	requires-otherwise,Sletters-asdefinedinsection
14	91A-1-201(24)-
15	Section 1. Section 25-233, R.C.M. 1947, is amended to
16	read as follows:
17	"25-233. Fees of clerk in probate proceedings. At the
18	time of filing thepetition-for-letters-testamentary,-of
19	administration-or-guardianship, an application for informal
20	probate or appointment, a petition for formal probate or
21	appointment, a petition for appointment of a guardian of a
22	minor or acceptance of such appointment, a petition for
23	appointment of a guardian of an incapacitated person or
24	acceptance of such appointment, a petition for appointment
25	of a conservator of the estate of a protected person or
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REFERENCE BILL

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1

2

acceptance of such appointment, the clerk shall collect from
 the petitioner or person accepting such appointment the sum

3 of ten dollars (\$10).

4 For admitting a will to probate and all services 5 connected therewith, in addition to the above, there must be 6 paid to the clerk the sum of ten dollars (\$10).

7 If a will is contested, the contestant must pay to the 8 clerk, on filing his grounds of opposition, the sum of ten 9 dollars (\$10).

10 And on the entry of judgment thereon, the prevailing 11 party must pay the sum of five dollars (\$5).

12 On filing a petition to determine heirship or title to 13 an estate, the petitioner must pay to the clerk the sum of 14 ten dollars (\$10).

15 On entry of judgment thereon, the prevailing party must16 pay the sum of five dollars (\$5).

17 One-quarter (1/4) of all fees collected by said clerk 18 of the district court must be paid to the secretary of the 19 public employees' retirement system board to be credited to 20 the judges' retirement fund."

21 Section 2. Section 25-237, R.C.M. 1947, is amended to 22 read as follows:

23 "25-237. Fees of public administrator. The public
 24 administrator is allowed to receive and collect for his own
 25 use, for services rendered, the same fees as are allowed
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executors--and--administrators personal representatives, as provided in section 91-3407 91A-3-719."

3 Section <u>3</u>. Section 45-603, R.C.M. 1947, is amended to 4 read as follows:

5 "45-603. Priority of wages in case of death of 6 employer. In case of the death of any employer, the wages of 7 each miner, mechanic, salesman, clerk, servant, and laborer 8 for services rendered within four (4) months next preceding 9 the death of the employer, in the amount actually owed, rank in-priority-next-after-the-funeral-expenses-expenses-of-the 10 11 last-sicknessy-the-charges--and--expenses--of--administering 12 upon--the--estate;-and-the-allowonce-to-the-widow-and-infant 13 childreny are preferred debts under section 91A-3-805(1)(e) 14 and must be paid before other claims against the estate of 15 the deceased person." 16 Section 4. Section 91-602, R.C.M. 1947, is amended to 17 read as follows: 18 "91-602, Must procure letters of administration--bond and oath. Whenever a public administrator takes charge of an 19 estate, under order of the court, he must, with all 20 convenient dispatch, procure letters of administration 21 22 thereon, in like manner and on like proceedings as letters 23 of administration are issued to other persons. His official bond and oath are in lieu of the-administrator's a personal 24 representative's bond and oath, but when real estate is 25

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1 ordered to be sold, another bond must may be required by the 2 court."

3 Section <u>5</u>. Section 91-614, R.C.M. 1947, is amended to
4 read as follows:

*91-614. When to settle with clerk of district court. 5 6 The public administrator is required to accounty-under-eathy and to settle and adjust his accounts, relating to the care 7 and disbursement of money or property belonging to estates 8 in his hands, with the clerk of the district court, on the 9 first Monday of each month, and he must pay to the county 10 11 treasurer any money remaining in his hands of an estate unclaimed,-as-provided-in-sections-91-4103-to-91-4106." 12

13 Section <u>6</u>. Section 91-628, R.C.M. 1947, is amended to 14 read as follows:

15 "91-628. Compensation of public administrator. The 16 public administrator shall receive as full compensation for 17 his services, including attorney's fees, a-commission-of 18 fifteen-per-cent-(15%)-of-the-total-amount-of-money-received 19 by--him--in--any-estate-provided-for-in-this-act the amounts 20 provided for in sections 91A-3-719 and 91A-3-720; provided, 21 that in no case shall the compensation be less than 22 twenty-five dollars (\$25)."

23 Section <u>7</u>. Section 91-629, R.C.M. 1947, is amended to 24 read as follows:

25 "91-629. Retiring public administrator may close -5- SB 148

1 pending estates. The public administrator, upon the expiration or termination of his term of office. 2 may 3 continue to administer estates not closed by filing and 4 presenting to the court, a full and complete account 5 pertaining to each estate not closed, securing an order of 6 court granting him letters of general administration and 7 qualifying himself as a general--administrator--under--and 8 pursuant--to-sections-91-1701-and-91-17027-and-executing-and 9 filing-a-new-bond-in-such-sum-or-sums-as-may-be-fixed-by-the 10 court personal representative." 11 Section 8. Section 91-631, R.C.M. 1947, is amended to 12 read as follows: 13 "91-631. Adjustment of compensation. Thereupon the 14 court shall determine and allow such predecessor in office, 15 for his services rendered in connection with estates not 16 closed, a compensation based upon the commission new prescribed and allowed by law, in proportion to the services 17 18 necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor 19 20 shall thereupon be allowed and paid the balance of such 21 commission allowed by-said-section." Section 9. Section 91-2706, R.C.M. 1947, is amended to 22 23 read as follows: 24 "91-2706. Judge may present claim, and action thereon. 25 Any judge of the district court may present a claim against

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1 the estate of a decedent for allowance to the executor-or 2 administrator personal representative thereof, and -- if -- the 3 executor -- or -- administrator -- aliows -- the -- claim -- he-must-in 4 writing-designate-some-indge-of-the--district--court--of--an 5 adjoining--county-cr-districty-whoy-upon-the-presentation-of 6 such-claim-to-himy-is-vested-with-power-to-allow--or--reject 7 it, and the -- judge -- presenting -- such - claim, in case of its 8 rejection by the executor-or-administrator-or-by-such-indee 9 as-shall-have-asted-upon-it, personal representative has the 10 same right to petition or sue in a proper court for its 11 recovery as other persons have when their claims against an 12 estate are rejected."

Section <u>10</u>. Section 91-2725, R.C.M. 1947, is amended
to read as follows:

15 "91-2725. Payment of debt to stop running of interest. If there be any debt of the decedent bearing interest, 16 17 whether presented or not, the executor-or-administrator 18 personal representative may,-by-order-of-the-court-or-judge; 19 pay the amount then accumulated and unpaid, or any part 20 thereof, at any time when there are sufficient funds 21 properly applicable thereto, whether said claim be then due 22 or not; and interest shall thereupon cease to accrue upon 23 the amount so paid."

24 Section <u>11</u>. Section 91-4414, R.C.M. 1947, is amended 25 to read as follows:

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1 "91-4414. Exemptions from first \$25,000. The following 2 exemptions from the tax are hereby allowed, the exemption 3 allowed to each person, institution, association. 4 corporation and body politic to be taken out of the first 5 twenty-five thousand dollars passing by any such transfer to 6 such person, institution, association, corporation or body 7 politic:

R (1)Transfers totally exempt. A11 property 9 transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, 10 11 city, town, or municipal purposes, shall be exempt. All 12 property transferred to any society, corporation, 13 institution, or association, in trust or otherwise, or to 14 any foundation or trust, organized and operated exclusively 15 for religious, charitable, scientific, literary, or 16 educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or 17 individual, and no substantial part of the activities of 18 which is carrying on propaganda or otherwise attempting to 19 20 influence legislation, shall be exempt, if any of the 21 following conditions is present:

(a) The society, corporation, institution,
foundation, trust, or association is crganized solely for
religious, charitable, scientific, literary, or educational
purposes under the laws of this state or of the United
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1 States;

2 (b) The property transferred is limited for use3 within this state;

4 (c) In the event that the society, corporation, 5 institution, foundation, trust, or association is organized 6 or existing under the laws of another state of the United 7 States or of a foreign state or country, at the date of the 8 decedent's death any one of the following conditions 9 existed:

10 (i) The other state, foreign state, or foreign 11 country did not impose a legacy, succession, or death tax of 12 any character in respect to property transferred to a 13 similar society, corporation, institution, foundation, 14 trust, or association organized or existing under the laws 15 of this state;

(ii) The laws of the other state, foreign state, or 16 17 foreign country contained a reciprocal provision under which 18 property transferred to a similar society, institution, foundation, trust, or association organized or existing 19 under the laws of another state of the United States or 20 21 foreign state or country was exempt from legacy, succession 22 or death taxes of every character, if the other state of the 23 United States or foreign state or country allowed a similar 24 exemption in respect to property transferred to a similar society, institution, foundation, trust, or association 25

organized or existing under the laws of another state of the
 United States or foreign state or country;

3 (iii) The society. corporation. institution. foundation, trust, or association owns or operates a 4 hospital for crippled children within the United States, 5 primarily practicing orthopedics, to which crippled or 6 7 afflicted children from the state of Montana are, without 8 discrimination, gratuitously admitted and treated and the 9 property transferred is limited for use at such hospital.

10 \$25,000; \$5,000; \$2,000 exempt, when. Property of (2) 11 the clear value of twenty-five thousand dollars (\$25,000), 12 transferred to the wife or to the husband of the decedent, 13 five thousand dollars (\$5,000) transferred to each minor lineal issue of the decedent, or any minor child adopted as 14 such in conformity with law, or any minor child to whom such 15 decedent for not less than ten (10) years prior to such 16 17 transfer stood in the mutually acknowledged relation of a 18 parent, provided, however, such relationship began at or 19 before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of 20 adopted or mutually acknowledged child, and two 21 such thousand dollars (\$2,000) transferred to each of the lineal 22 23 issue who have attained majority and to each of the other persons who have attained majority described in the first 24 subdivision of section 91-4409 shall be exempt. Such 25 SB 148 -10-

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exemption-to-the-wife--or--hasband--of--the--decedent--shall 1 include--all--statutory-dowery-curtesy-and-other-allowances, 2 3 Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to 4 5 any property which shall thereafter be transferred by or С from such husband or wife to any such child, provided the 7 husband or wife does not survive said decedent to exceed ten 8 years.

9 (3) \$500 exempt, when. Property of the clear value of 10 five hundred dollars transferred to each of the persons 11 described in the second subdivision of section 91-4409 shall 12 be exempt.

13 (4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a 14 15 resident decedent when such property is located without this 16 state, and when the transfer of such property is subject to 17 an inheritance or transfer tax in the state where located 18 and which tax has actually been paid, secured or guaranteed, 19 provided such property is not without this state temporarily 20 nor for the sole purpose of deposit or safekeeping; and 21 provided the laws of the state where such property is 22 located allow a like exemption in relation to such property 23 left by a resident of that state and located in this state." 24 Section 12. Section 93-2504, R.C.M. 1947, is amended to read as follows: 25

2 actions for real property--action-for-dower. No action for 3 the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the 4 5 plaintiff, his ancestor, predecessor, or grantor, was seized 6 or possessed of the property in question within five years 7 before the commencement of the action. No-action-for-the 8 recovery-of-dower-can-be-maintained-by-a--widow--unless--the 9 action-is-commenced-within-ten-(10)-years-after-the-death-of 10 her-husband-" 11 Section 13. Section 93-2604, R.C.M. 1947, is amended to read as follows: 12 13 "93-2604. Within five years. Within five years: 1. An action upon a contract, account, promise, not 14 15 founded on an instrument in writing. 16 2---An-action-to-establish-a-will-where--the--will--has 17 been--losty--concealedy-or-destroyedy-The-cause-of-action-is 18 not-deemed-to-have--accrued--until--the--discovery;--by--the plaintiffy--or-the-person-under-whom-he-claimsy-of-the-facts 19 20 upon-which-its-validity-depends: 3---2. An action upon a judgment or decree rendered in 21 a court not of record. The cause of action is deemed, in 22 such case, to have accrued when final judgment was 23

"93-2504. Seizin within five years--when necessary in

25 Section <u>14</u>. Section 93-1401-3, R.C.M. 1947, is amended -12- SB 148

rendered."

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1 to read as follows:

93-1401-3. Will to be in writing. A last will and testament,--except-a-nuncupative-will, is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given."

8 Section 15. Sections 33-129, 84-4110, 91-103, 91-104, 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 9 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 10 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 11 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 12 13 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 14 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 15 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 16 17 93-1401-4, and 93-6352 through 93-6354 are repealed.

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