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*Senate* BILL NO. *148*  
INTRODUCED BY *Roberts Rommy McCall*

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE."

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

Section 1. Terms to be construed as elective share of surviving spouse. Where in the Revised Codes of Montana the terms "dower" or "curtesy" are used, they mean, unless the context clearly requires otherwise, "elective share of surviving spouse" as defined in the Uniform Probate Code.

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

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

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

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

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

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

"25-233. Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary of administration or guardianship, an application for informal probate or appointment, a petition for formal probate or appointment, a petition for appointment of a guardian of a minor or acceptance of such appointment, a petition for appointment of a guardian of an incapacitated person or acceptance of such appointment, a petition for appointment of a conservator of the estate of a protected person or

*3-14-74*

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  
 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 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 7. 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

1 ~~executors-and-administrators~~ personal representatives. as  
 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  
 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~~  
 10 ~~in-priority-next-after-the-funeral-expenses-expenses-of-the~~  
 11 ~~last-sickness--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-3-803(1)(e)  
 14 and must be paid before other claims against the estate of  
 15 the deceased person."

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  
 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  
 22 thereon, in like manner and on like proceedings as letters  
 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

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.  
6 The public administrator is required to account, ~~under oath,~~  
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  
12 unclaimed, ~~as provided in sections 91-4193 to 91-4196."~~

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

25 "91-629. Retiring public administrator may close

1 pending estates. The public administrator, upon the  
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  
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--91-1702,--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 13. 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 ~~now~~  
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 14. Section 91-2706, R.C.M. 1947, is amended  
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

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--judge--of--the--district--court--of--an~~  
 5 ~~adjoining--county--or--district,--who,--upon--the--presentation--of~~  
 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 administrator, 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  
 11 recovery as other persons have when their claims against an  
 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.  
 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 16. Section 91-4414, R.C.M. 1947, is amended  
 25 to read as follows:

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:

8 (1) Transfers totally exempt. All 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  
 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  
 17 inures to the benefit of any private stockholder or  
 18 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:

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

1 States;

2 (b) The property transferred is limited for use  
3 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  
17 foreign country contained a reciprocal provision under which  
18 property transferred to a similar society, institution,  
19 foundation, trust, or association organized or existing  
20 under the laws of another state of the United States or  
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  
25 society, institution, foundation, trust, or association

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

3 (iii) The society, corporation, institution,  
4 foundation, trust, or association owns or operates a  
5 hospital for crippled children within the United States,  
6 primarily practicing orthopedics, to which crippled or  
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 (2) \$25,000; \$5,000; \$2,000 exempt, when. Property of  
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  
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  
24 persons who have attained majority described in the first  
25 subdivision of section 91-4409 shall be exempt. Such

1 ~~exemption to the wife or husband of the decedent shall~~  
 2 ~~include all statutory dower, curtesy and other allowances.~~  
 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  
 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 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  
 3 the recovery of real property, or for the possession  
 4 thereof, can be maintained, unless it appear that the  
 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 18. Section 93-2504, R.C.M. 1947, is amended  
 12 to read as follows:

13 "93-2504. Within five years. Within five years:

14 1. An action upon a contract, account, promise, or  
 15 founded on an instrument in writing.

16 ~~2. An action to establish a will where the will has~~  
 17 ~~been lost, concealed, or destroyed. The cause of action is~~  
 18 ~~not deemed to have accrued until the discovery, by the~~  
 19 ~~plaintiff, or the person under whom he claims, of the facts~~  
 20 ~~upon which its validity depends.~~

21 ~~3. 2.~~ An action upon a judgment or decree rendered by  
 22 a court not of record. The cause of action is deemed, in  
 23 such case, to have accrued when final judgment was  
 24 rendered."

25 Section 19. Section 93-1401-3, R.C.M. 1947, is amended

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 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,  
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,  
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.

-End-

SB 145

Approved by Committee  
on Judiciary

SENATE BILL NO. 148

INTRODUCED BY ROBERTS, ROMNEY, MC CALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE."

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

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~~Section 5. Terms to be construed as letters. Where in the Revised Codes of Montana the terms "letters of administration", "letters of administration with will annexed", "letters testamentary", or a combination of such terms are used, they shall mean, unless the context clearly requires otherwise, "letters" as defined in section 91A-1-201(24).~~

Section 1. Section 25-233, R.C.M. 1947, is amended to read as follows:

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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).

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 8 clerk, on filing his grounds of opposition, the sum of ten  
 9 dollars (\$10).

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 11 party must pay the sum of five dollars (\$5).

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 13 an estate, the petitioner must pay to the clerk the sum of  
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 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."

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 22 read as follows:

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

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 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~~  
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 14 and must be paid before other claims against the estate of  
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 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  
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 24 bond and oath are in lieu of ~~the administrator's~~ a personal  
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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  
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12 unclaimed ~~as provided in sections 91-4103 to 91-4106.~~"

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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)."

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6 court granting him letters of ~~general~~ administration and  
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10 court personal representative."

11 Section 8. Section 91-631, R.C.M. 1947, is amended to  
12 read as follows:

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14 court shall determine and allow such predecessor in office,  
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25 Any judge of the district court may present a claim against

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 2 ~~administrator~~ personal representative thereof, and ~~if the~~  
 3 ~~executor or administrator allows the claim, he must in~~  
 4 ~~writing designate some judge of the district court of an~~  
 5 ~~adjoining county or district, who, upon the presentation of~~  
 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 administrator, or by such judge~~  
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 10 same right to petition or sue in a proper court for its  
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 16 If there be any debt of the decedent bearing interest,  
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 18 personal representative may, by order of the court or judge,  
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 20 thereof, at any time when there are sufficient funds  
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2 (b) The property transferred is limited for use  
3 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  
17 foreign country contained a reciprocal provision under which  
18 property transferred to a similar society, institution,  
19 foundation, trust, or association organized or existing  
20 under the laws of another state of the United States or  
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  
25 society, institution, foundation, trust, or association

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

3 (iii) The society, corporation, institution,  
4 foundation, trust, or association owns or operates a  
5 hospital for crippled children within the United States,  
6 primarily practicing orthopedics, to which crippled or  
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 (2) \$25,000; \$5,000; \$2,000 exempt, when. Property of  
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  
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  
24 persons who have attained majority described in the first  
25 subdivision of section 91-4409 shall be exempt. Such

1 ~~exemption to the wife or husband of the decedent shall~~  
 2 ~~include all statutory dower, curtesy and other allowances.~~  
 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  
 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:

1 "93-2504. Seizin within five years--when necessary in  
 2 actions for real property--~~action for dower~~. No action for  
 3 the recovery of real property, or for the possession  
 4 thereof, can be maintained, unless it appear that the  
 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  
 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 lost, concealed, or destroyed. The cause of action is~~  
 18 ~~not deemed to have accrued until the discovery, by the~~  
 19 ~~plaintiff, or the person under whom he claims, 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  
 23 such case, to have accrued when final judgment was  
 24 rendered."

25 Section 14. Section 93-1401-3, R.C.M. 1947, is amended

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,  
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,  
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,  
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.

-End-

## SENATE BILL NO. 148

INTRODUCED BY ROBERTS, ROMNEY, MC CALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE."

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

Section 1. Terms to be construed as elective share of surviving spouse. Where in the Revised Codes of Montana the terms "dower" or "curtesy" are used, they mean, unless the context clearly requires otherwise, "elective share of surviving spouse" as defined in the Uniform Probate Code.

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

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

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

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

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

Section 1. Section 25-233, R.C.M. 1947, is amended to read as follows:

"25-233. Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary, of administration or guardianship, an application for informal probate or appointment, a petition for formal probate or appointment, a petition for appointment of a guardian of a minor or acceptance of such appointment, a petition for appointment of a guardian of an incapacitated person or acceptance of such appointment, a petition for appointment of a conservator of the estate of a protected person or

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  
 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 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

1 ~~executors--and--administrators~~ personal representatives, as  
 2 provided in section ~~91-3407~~ 91A-3-719."

3 Section 3. 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~~  
 10 ~~in priority next after the funeral expenses, expenses of the~~  
 11 ~~last sickness, 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)~~  
 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  
 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  
 22 thereon, in like manner and on like proceedings as letters  
 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



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

3 Section 5. 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.  
6 The public administrator is required to account~~, under oath,~~  
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  
12 unclaimed~~, as provided in sections 91-4103 to 91-4106.~~"

13 Section 6. 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 7. Section 91-629, R.C.M. 1947, is amended to  
24 read as follows:

25 "91-629. Retiring public administrator may close

1 pending estates. The public administrator, upon the  
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  
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 91-1702, 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. 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 ~~now~~  
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:

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

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 judge of the district court of an~~  
 5 ~~adjoining county or district, who, upon the presentation of~~  
 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 administrator, 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  
 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:

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 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:

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:

8 (1) Transfers totally exempt. All 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  
 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  
 17 inures to the benefit of any private stockholder or  
 18 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:

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

1 States;

2 (b) The property transferred is limited for use  
3 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  
17 foreign country contained a reciprocal provision under which  
18 property transferred to a similar society, institution,  
19 foundation, trust, or association organized or existing  
20 under the laws of another state of the United States or  
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  
25 society, institution, foundation, trust, or association

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

3 (iii) The society, corporation, institution,  
4 foundation, trust, or association owns or operates a  
5 hospital for crippled children within the United States,  
6 primarily practicing orthopedics, to which crippled or  
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 (2) \$25,000; \$5,000; \$2,000 exempt, when. Property of  
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  
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  
24 persons who have attained majority described in the first  
25 subdivision of section 91-4409 shall be exempt. Such

1 ~~exemption to the wife or husband of the decedent shall~~  
 2 ~~include all statutory dower, curtesy and other allowances.~~  
 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  
 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:

1 "93-2504. Seizin within five years--when necessary in  
 2 actions for real property--~~action for dower~~. No action for  
 3 the recovery of real property, or for the possession  
 4 thereof, can be maintained, unless it appear that the  
 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  
 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 lost, concealed, or destroyed. The cause of action is~~  
 18 ~~not deemed to have accrued until the discovery, by the~~  
 19 ~~plaintiff, or the person under whom he claims, 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  
 23 such case, to have accrued when final judgment was  
 24 rendered."

25 Section 14. Section 93-1401-3, R.C.M. 1947, is amended

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,  
11 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through  
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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.

-End-

## SENATE BILL NO. 148

INTRODUCED BY ROBERTS, ROMNEY, MC CALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE."

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

~~Section 1, Terms to be construed as elective share of surviving spouse. Where in the Revised Codes of Montana the terms "dower" or "curtesy" are used, they mean, unless the context clearly requires otherwise, "elective share of surviving spouse" as defined in the Uniform Probate Code.~~

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

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

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

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

~~Section 5, Terms to be construed as letters. Where in the Revised Codes of Montana the terms "letters of administration", "letters of administration with will annexed", "letters testamentary", or a combination of such terms are used, they shall mean, unless the context clearly requires otherwise, "letters" as defined in section 91A-1-201(24).~~

Section 1. Section 25-233, R.C.M. 1947, is amended to read as follows:

"25-233. Fees of clerk in probate proceedings. At the time of filing the petition for letters testamentary, of administration or guardianship, an application for informal probate or appointment, a petition for formal probate or appointment, a petition for appointment of a guardian of a minor or acceptance of such appointment, a petition for appointment of a guardian of an incapacitated person or acceptance of such appointment, a petition for appointment of a conservator of the estate of a protected person or

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  
 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).

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 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 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."

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 22 read as follows:

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 24 administrator is allowed to receive and collect for his own  
 25 use, for services rendered, the same fees as are allowed

1 ~~executors--and--administrators~~ personal representatives, as  
 2 provided in section ~~91-3407~~ 91A-3-719."

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 4 read as follows:

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 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~~  
 10 ~~in-priority-next-after-the-funeral-expenses,-expenses-of-the~~  
 11 ~~last-sickness,-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)  
 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:

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 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  
 22 thereon, in like manner and on like proceedings as letters  
 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

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

3 Section 5. 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.  
6 The public administrator is required to account~~y-under-oath~~,  
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  
12 unclaimed,~~as provided in sections 91-4103 to 91-4106.~~"

13 Section 6. 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 7. Section 91-629, R.C.M. 1947, is amended to  
24 read as follows:

25 "91-629. Retiring public administrator may close

1 pending estates. The public administrator, upon the  
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  
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 91-1702, 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. 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 ~~now~~  
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:

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



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--judge--of--the--district--court--of--an~~  
 5 ~~adjoining--county--or--district,--who,--upon--the--presentation--of~~  
 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--administrator,--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  
 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:

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--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:

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:

8 (1) Transfers totally exempt. All 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  
 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  
 17 inures to the benefit of any private stockholder or  
 18 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:

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

1 States;

2 (b) The property transferred is limited for use  
3 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  
17 foreign country contained a reciprocal provision under which  
18 property transferred to a similar society, institution,  
19 foundation, trust, or association organized or existing  
20 under the laws of another state of the United States or  
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  
25 society, institution, foundation, trust, or association

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

3 (iii) The society, corporation, institution,  
4 foundation, trust, or association owns or operates a  
5 hospital for crippled children within the United States,  
6 primarily practicing orthopedics, to which crippled or  
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 (2) \$25,000; \$5,000; \$2,000 exempt, when. Property of  
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  
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  
24 persons who have attained majority described in the first  
25 subdivision of section 91-4409 shall be exempt. Such

~~exemption to the wife or husband of the decedent shall include all statutory dower, curtesy and other allowances.~~

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 any property which shall thereafter be transferred by or from such husband or wife to any such child, provided the husband or wife does not survive said decedent to exceed ten years.

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

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 12. Section 93-2504, R.C.M. 1947, is amended to read as follows:

"93-2504. Seizin within five years--when necessary in actions for real property--~~action for dower~~. No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action. ~~No action for the recovery of dower can be maintained by a widow unless the action is commenced within ten (10) years after the death of her husband.~~"

Section 13. Section 93-2604, R.C.M. 1947, is amended to read as follows:

"93-2604. Within five years. Within five years:

1. An action upon a contract, account, promise, not founded on an instrument in writing.

~~2--An action to establish a will where the will has been lost, concealed, or destroyed. The cause of action is not deemed to have accrued until the discovery, by the plaintiff, or the person under whom he claims, of the facts upon which its validity depends.~~

~~3--2.~~ An action upon a judgment or decree rendered in a court not of record. The cause of action is deemed, in such case, to have accrued when final judgment was rendered."

Section 14. Section 93-1401-3, R.C.M. 1947, is amended

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,  
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,  
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,  
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.

-End-