

1 *Senate* BILL NO. *223*  
 2 INTRODUCED BY *Romney, Murphy Ryan Ferguson*  
 3 *Lee, Healy, Ward, Boyle, Abel, Aber*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE *Norman*  
 5 TRANSFER OF REAL AND PERSONAL PROPERTY HELD IN JOINT TENANCY *Wiley*  
 6 BY HUSBANDS AND WIVES WITHOUT COURT PROCEDURES; REPEALING *Manly*  
 7 SECTION 91-4321, R.C.M. 1947; AND PROVIDING AN IMMEDIATE *Thurman*  
 8 EFFECTIVE DATE."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Joint tenancy property -- transfer *R. Smith*  
 12 surviving spouse. (1) Title to property held in joint *Manly*  
 13 tenancy by a husband and wife with the right of survivorship *Foster*  
 14 shall, upon the death of one of the spouses, vest in the *Watt*  
 15 surviving spouse provided the requirements of this section  
 16 have been complied with.  
 17 (2) Proof of death of one of the spouses shall be made *Hyller*  
 18 by filing a copy of the death certificate with the *E. Smith*  
 19 department of revenue. *Stevens*  
 20 (3) The surviving spouse shall file an affidavit with *DeVine*  
 21 the department of revenue listing all real and personal *Woodover*  
 22 property owned in joint tenancy with the deceased spouse. *McBallum*  
 23 (4) The surviving spouse shall have an appraisal *Brokens*  
 24 itemize and appraise all the real and personal property *Drumble*  
 25 owned in joint tenancy with the deceased spouse and send a *Wickert*

1 copy of that appraisal to the department of revenue.  
 2 (5) Joint tenancies in property with right of  
 3 survivorship may be created by spouses by deed or by filing  
 4 a form with the county clerk and recorder signed by both  
 5 spouses and attested to by an officer authorized to  
 6 administer oaths.  
 7 (6) Upon submission of copies of the documents  
 8 required in subsections (2), (3), (4), and (5) of this  
 9 section the department of revenue shall determine the  
 10 inheritance tax due and send a certificate of tax due to the  
 11 surviving spouse. If there is no tax due the certificate  
 12 shall be filed with the county clerk and recorder who shall  
 13 then issue a transfer of title for the property to the  
 14 surviving spouse. If there is tax due, upon its payment to  
 15 the county treasurer and filing the receipt therefor with  
 16 the county clerk and recorder, the clerk and recorder shall  
 17 transfer title in the property to the surviving spouse.  
 18 (7) No surviving spouse is required to hire an  
 19 attorney to transfer title in the joint tenancy property.  
 20 If an attorney is hired by the surviving spouse the  
 21 attorney's fees, including expenses, shall not exceed two  
 22 percent (2%) of the value of the interest passing to the  
 23 surviving spouse.  
 24 (8) A joint tenancy in property owned by a married  
 25 couple may be terminated by filing with the county clerk and

*Low* *Deane* *Robert Turvey* *Deely* *Wickert*  
*Brown* *Olson* *Rosell*

INTRODUCED BILL

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1 recorder a document signed by both spouses terminating the  
2 joint tenancy or by conveying the property by deed.

3 Section 2. Section 91A-3-1205, R.C.M. 1947, shall  
4 apply only to the termination of joint tenancies between  
5 unmarried persons.

6 Section 3. Section 91-4321, R.C.M. 1947, is repealed.

7 Section 4. This act is effective on its passage and  
8 approval.

-End-

Approved by Committee  
on Judiciary

SENATE BILL NO. 223

INTRODUCED BY ROMNEY, MURPHY, REGAN, JERGSON, KOLSTAD,  
LEE, HEALY, WARDEN, BOYLAN, SEIBEL, ABER, HIMSL, BLAYLOCK,  
STORY, ROSKIE, FLYNN, NORMAN, COLBERG, MANLEY, THIESSEN,  
CETRONE, E. SMITH, GALT, CONOVER, MCOMBER, R. SMITH,  
MANNING, FOSTER, WATT, HAZELBAKER, ETCHART, NELSON,  
STEPHENS, FASBENDER, DEVINE, GOODOVER, MCCALLUM,  
GRAHAM, DUNKLE, TOWE, DRAKE, ROBERTS, TURNAGE,  
BROWN, GREELY, OLSON, MEHRENS, ROSELL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
TRANSFER DECLARATION OF REAL AND PERSONAL PROPERTY HELD IN  
JOINT TENANCY BY HUSBANDS AND WIVES WITHOUT COURT  
PROCEDURES; ~~REPEALING--SECTION--91-4321--R.C.M.--1947--AND~~  
~~PROVIDING-AN-IMMEDIATE-EFFECTIVE-DATE~~ TO PROVIDE FOR THE  
DETERMINATION OF INHERITANCE TAX INVOLVING LIFE ESTATES,  
JOINT TENANCIES, AND OTHER TAXABLE INTERESTS WHERE NO  
PERSONAL REPRESENTATIVE IS APPOINTED; AMENDING SECTIONS  
91A-3-1205, 91-4415 AND 91-4418, R.C.M. 1947, RELATING TO  
PAYMENT OF INHERITANCE TAX."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
(Strike everything after the enacting clause and insert:)  
Section 1. Joint tenancy property vesting in surviving  
spouse. (1) Title to property held in joint tenancy by a

husband and wife with the right of survivorship shall, upon  
the death of one of the spouses, vest in the surviving  
spouse.

(2) Declaration of the death and the value of the  
interest held by the deceased spouse shall be made as  
provided in section 91-4469, R.C.M. 1947, for the purpose  
of determination of inheritance tax liability.

(3) Ownership by joint tenancy with the right of  
survivorship may be created or terminated between spouses in  
the following manner:

- (a) in real property by deed;
- (b) in personal property, except motor vehicles, by  
bill of sale;
- (c) in a motor vehicle by transfer of title in  
accordance with section 53-109, R.C.M. 1947;
- (d) in any real or personal property other than a  
motor vehicle in any other manner provided by law.

Documents of title may be filed with the county clerk and  
recorder. Termination, other than by death, shall require  
the consent and joint act or execution of documents by both  
spouses.

Section 2. There is a new R.C.M. section numbered  
91-4469 that reads as follows:

91-4469. Inheritance tax -- joint tenancies -- life  
estates. (1) If a decedent dies, leaving no property which

1 requires the appointment of a personal representative, but:

2 (a) was the owner of a life estate which terminated by  
3 reason of the death of such person; or

4 (b) was the owner with another or others as a joint  
5 tenant with the right of survivorship, and not as a tenant  
6 in common; or

7 (c) was the owner of any other interest in property  
8 requiring the determination of inheritance tax by reason of  
9 the death of such person; then any such remainderman,  
10 surviving joint tenant, or other interested party shall file  
11 with the department of revenue evidence of the instruments  
12 by which each such life estate, joint tenancy, or other  
13 interest was created requiring determination of inheritance  
14 tax, together with a verified application in form prescribed  
15 by the department containing the following information:

16 (i) name, address and interest of applicant;

17 (ii) name, date of death, age, and domicile of decedent  
18 at death;

19 (iii) description and fair market value of decedent's  
20 interest at date of death in property requiring the  
21 determination of inheritance tax including the name,  
22 address, age, and relationship to decedent of all  
23 remaindermen, surviving joint tenants, possessors, or such  
24 other information as shall be required for the determination  
25 of inheritance tax by reason of decedent's death; including

1 an appraisal or other proof of fair market value if required  
2 by the department of revenue;

3 (iv) statement that decedent died leaving no property  
4 requiring appointment of a personal representative;

5 (v) a statement of inheritance tax due to the state of  
6 Montana by reason of decedent's death.

7 (2) Upon receipt of the application, the department of  
8 revenue shall:

9 (a) determine the inheritance tax due, if any, and  
10 issue a certificate of liability or nonliability for  
11 inheritance tax due by reason of death;

12 (b) attach a certificate to the original application  
13 on file with the department of revenue, and attach a  
14 certificate to a true copy of the application and mail it to  
15 the applicant or his attorney.

16 (3) The inheritance tax as determined shall be paid to  
17 the county treasurer for transmittal to the state treasurer  
18 as provided by law. Upon payment of the tax as determined,  
19 the county treasurer shall receipt therefor upon the  
20 certificate of the department of revenue and shall issue and  
21 distribute duplicates thereof as required by law.

22 (4) If an interest in real property is involved, a  
23 certified copy of the original application together with (a)  
24 the certificate referred to in subsection (2)(c) above, and  
25 (b) the receipt, if any, referred to in subsection (3)

1 above, shall be filed with the clerk and recorder of the  
2 county in which the real property, or any part thereof, is  
3 located. Additional copies of the application and  
4 attachments certified by the department of revenue shall be  
5 filed in each county within the state of Montana wherein  
6 real property involved is located.

7 (5) The certificate with the receipt, if any, provided  
8 for in subsection (3) above, shall constitute a release of  
9 any lien, for inheritance tax due the state of Montana by  
10 reason of the death of the decedent and shall constitute  
11 prima facie evidence of the termination of such joint  
12 tenancy or other transfer of ownership.

13 (6) If disputes exist as to tax computation, they  
14 shall be resolved as provided under the laws applicable to  
15 the determination of inheritance tax in estates.

16 Section 3. Section 91A-3-1205, R.C.M. 1947, is amended  
17 to read as follows:

18 "91A-3-1205. Procedures for termination of joint  
19 tenancies and life estates in the event of death. ~~{1}-If the~~  
20 ~~inventory in an estate asserts that all or any part of the~~  
21 ~~property listed therein was held by the decedent in joint~~  
22 ~~tenancy or that the decedent held a life estate in any of~~  
23 ~~the property listed, or for any other reason a determination~~  
24 ~~of inheritance tax is required, the personal representative~~  
25 ~~shall file with the department of revenue copies of the~~

1 ~~instruments by which each such joint tenancy or life estate~~  
2 ~~was created or other interest requiring determination of~~  
3 ~~inheritance tax came into being or other evidence of the~~  
4 ~~existence of such joint tenancy or life estate or other~~  
5 ~~property interest requiring the determination of inheritance~~  
6 ~~tax. The department of revenue shall examine the documents~~  
7 ~~and shall determine the existence of each asserted joint~~  
8 ~~tenancy, life estate or other property interest requiring a~~  
9 ~~determination of inheritance tax.~~

10 ~~{2}-If it shall be determined that all of the property~~  
11 ~~listed in the inventory was held in joint tenancy or was~~  
12 ~~held by the decedent as a life estate or requires the~~  
13 ~~determination of inheritance tax or any combination~~  
14 ~~thereof, the department of revenue shall issue its~~  
15 ~~certificate showing that all such property was in joint~~  
16 ~~tenancy or was held as a life estate or requires only the~~  
17 ~~determination of inheritance tax, and stating the names of~~  
18 ~~the surviving owners, remaindermen or possessors thereof or~~  
19 ~~persons entitled to an interest therein. The certificate~~  
20 ~~shall also contain an interlocutory certificate by the~~  
21 ~~department of revenue as to the inheritance tax, if any, due~~  
22 ~~the state of Montana by reason of the death of the decedent.~~  
23 ~~The certificate shall be mailed to the clerk of the~~  
24 ~~appropriate court and to the personal representative, if no~~  
25 ~~dispute exists as to the amount of tax due, if any, the tax~~

~~shall be paid as provided in the inheritance tax laws of this state. Upon the filing of the receipt showing payment of the tax, the clerk of court shall issue a certificate stating that the joint tenancies or life estates are terminated or other interest in property requiring determination of inheritance tax is properly vested, specifically describing the property and designating the surviving owners or possessors, or persons entitled to an interest therein. This certificate may be filed in the office of the clerk and recorder of any county in which any such property is located.~~

~~(3) (1) (a) If not all the property in the inventory was joint tenancy or life estate property or property requiring only the determination of inheritance tax, the department of revenue shall:~~

~~(i) determine the inheritance tax, if any, due to the state of Montana by reason of the death of the decedent and mail its interlocutory certificate to the clerk of the appropriate court and to the personal representative, showing the amount of tax so determined;~~

~~(ii) determine what property listed in the inventory was joint tenancy or life estate property or property requiring only the determination of inheritance tax and mail to the clerk of the appropriate court and to the personal representative its certificate describing such joint tenancy~~

and life estate property or property requiring only the determination of inheritance tax and naming the surviving owners or possessors thereof or persons entitled to an interest therein.

(b) If the value of the property not in joint tenancy or held by the decedent as a life estate or requiring only the determination of inheritance tax does not exceed the maximum for summary administration, the personal representative shall proceed under the summary procedure as to the nonjoint tenancy or life estate property which requires more than just the determination of inheritance tax shall pay any inheritance tax and shall file with the appropriate clerk and recorder a certified copy of the department of revenue's list of joint tenancy property.

(c) If the value of the property not held in joint tenancy or as a life estate and not held as property requiring only a determination of inheritance tax does not permit a summary procedure, the personal representative shall proceed under the applicable statutes for administration and distribution and shall include in his decree or instrument of final distribution the list of such joint tenancy or life estate property or property requiring determination of inheritance tax, listing the surviving owners or possessors thereof or persons entitled to an interest therein. Such decree or instrument of final

1 distribution shall be deemed a termination of the joint  
2 tenancy or life estate or vesting of the property interest.

3 ~~4~~--(2) If disputes exist as to tax computation, they  
4 shall be resolved as provided under the laws applicable to  
5 the determination of inheritance taxes."

6 Section 4. Section 91-4415, R.C.M. 1947, is amended to  
7 read as follows:

8 "91-4415. When payment due -- lien of tax -- liability  
9 for payment -- place of payment -- receipts -- receipt or  
10 bond required before final accounting allowed. All taxes  
11 imposed by this act shall be due and payable at the time of  
12 the death of the decedent, except as hereinafter provided;  
13 and every such tax shall be and remain a lien upon the  
14 property transferred for a period of ten (10) years from the  
15 time of the death of the decedent, whether said death  
16 occurred before or after the effective date of this act,  
17 unless sooner paid, and the person to whom the property is  
18 transferred and the ~~administrators;--executors;~~ personal  
19 representative and trustees of every estate so transferred  
20 shall be personally liable for such tax until its payment.

21 The tax shall be paid to the state department of  
22 revenue for transmittal to the state treasurer or to the  
23 treasurer of the county in which the district court is  
24 situated having jurisdiction as herein provided or to the  
25 treasurer of the county of residence of the decedent if a

1 court proceeding is not involved, and if paid to the county  
2 treasurer said treasurer shall receipt therefor, making five  
3 copies thereof, and distribute said copies as follows:  
4 Original receipt, to the clerk of the district court; first  
5 copy, to the ~~executory;---administrator~~ personal  
6 representative, trustee, or person paying said tax; second  
7 copy, attached to and mailed with the report required by  
8 section 91-4450, as amended, to the state department of  
9 revenue; third copy, to the county clerk and recorder;  
10 fourth copy, retained by the treasurer on file in his  
11 office. The copy of the receipt given to the ~~executory;~~  
12 ~~administratory~~ personal representative or trustee shall be a  
13 proper voucher in the settlement of his accounts.

14 No ~~executory;--administrator;~~ personal representative or  
15 trustee shall be entitled to a final accounting of an  
16 estate, in settlement of which a tax is due under the  
17 provisions of this act, unless he shall produce such receipt  
18 or a certified copy thereof or unless a bond shall have been  
19 filed as prescribed by section 91-4419."

20 Section 5. Section 91-4418, R.C.M. 1947, is amended to  
21 read as follows:

22 "91-4418. Refunding of tax -- when authorized --  
23 manner of refunding -- advance payment of tax for relief  
24 from penalty and interest. If any debt shall be proved  
25 against the estate of the decedent, after the payment of any

1 legacy or distributive share thereof, from which any such  
 2 tax has been deducted, or upon which it has been paid by the  
 3 person entitled to such legacy or distributive share and  
 4 such person is required by the order of the district court  
 5 having jurisdiction of the tax so deducted or paid, to  
 6 refund the amount of such debts or any part thereof, an  
 7 equitable proportion thereof shall be repaid to such person  
 8 by the ~~executor,--administrater~~ personal representative or  
 9 trustee, if the said tax has not been paid to the county  
 10 treasurer or state treasurer, or by them, in the proper  
 11 proportionate shares, if it has been so paid.

12 Any person from whom such tax is or may be due may make  
 13 an estimate of and pay the same to the ~~clerk-of-court~~ county  
 14 treasurer, who shall receipt therefor, at any time before  
 15 the same is determined by the ~~court~~ department of revenue,  
 16 and shall thereupon be relieved from any interest or penalty  
 17 upon the amount so paid in the same manner as if the tax  
 18 were then determined. In the event the person making payment  
 19 has done so in accordance with the provisions of section  
 20 91-4416, pertaining to the allowance of a five per cent (5%)  
 21 discount, the person making payment shall be relieved from  
 22 any interest or penalty and shall be allowed the five per  
 23 cent (5%) discount upon the amount which he so declared due  
 24 as his inheritance tax liability. The tax may be declared to  
 25 be due by ~~the-filing-with-the-clerk-of-court-of-a-statement~~

1 ~~of-such-declaration-or-by~~ paying the amount estimated by the  
 2 taxpayer to ~~be-due~~ the county treasurer. The money shall be  
 3 paid to the ~~clerk-of-the-district-court~~ county treasurer who  
 4 must deposit same with the state department of revenue. The  
 5 ~~clerk--of--the-district-court~~ county treasurer shall pay the  
 6 collections to the state department of revenue on or before  
 7 the fifth day of the month following the collection.

8 As soon as the correct amount of inheritance tax has  
 9 been determined, any excess so paid shall be refunded to the  
 10 person so paying or entitled thereto by the state department  
 11 of revenue ~~based-upon-the-filing-of--a--properly--documented~~  
 12 ~~claim-by-the-clerk-of-court.~~"

-End-



## SENATE BILL NO. 223

INTRODUCED BY ROMNEY, MURPHY, REGAN, JERGESON, KOLSTAD,  
 LEE, HEALY, WARDEN, BOYLAN, SEIBEL, ABER, HIMSL, BLAYLOCK,  
 STORY, ROSKIE, FLYNN, NORMAN, COLBERG, MANLEY, THIESSEN,  
 CETRONE, E. SMITH, GALT, CONOVER, MCOMBER, R. SMITH,  
 MANNING, FOSTER, WATT, HAZELBAKER, ETCHART, NELSON,  
 STEPHENS, FASBENDER, DEVINE, GOODOVER, MCCALLUM,  
 GRAHAM, DUNKLE, TOWE, DRAKE, ROBERTS, TURNAGE,  
 BROWN, GREELY, OLSON, MEHRENS, ROSELL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
~~TRANSFER DECLARATION~~ TRANSFER OF REAL AND PERSONAL PROPERTY  
 HELD IN JOINT TENANCY BY HUSBANDS AND WIVES WITHOUT COURT  
 PROCEDURES; ~~REPEALING--SECTION--91-4321--R.C.M.--1947--AND~~  
~~PROVIDING--AN--IMMEDIATE--EFFECTIVE--DATE~~ ~~TO--PROVIDE--FOR--THE~~  
~~DETERMINATION--OF--INHERITANCE--TAX--INVOLVING--LIFE--ESTATES,~~  
~~JOINT--TENANCIES,~~ ~~AND--OTHER--TAXABLE--INTERESTS--WHERE--NO~~  
~~PERSONAL--REPRESENTATIVE--IS--APPOINTED,~~ ~~AMENDING--SECTIONS~~  
~~91A-3-1205, 91-4415 AND 91-4418, R.C.M., 1947, RELATING--TO~~  
~~PAYMENT--OF--INHERITANCE--TAX~~ REPEALING SECTION 91-4321, R.C.M.  
 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 (Strike everything after the enacting clause, Second  
 Reading, and insert Original Bill:)

Section 1. Joint tenancy property -- transfer to  
 surviving spouse. (1) Title to property held in joint  
 tenancy by a husband and wife with the right of survivorship  
 shall, upon the death of one of the spouses, vest in the  
 surviving spouse provided the requirements of this section  
 have been complied with.

(2) Proof of death of one of the spouses shall be made  
 by filing a copy of the death certificate with the  
 department of revenue.

(3) The surviving spouse shall file an affidavit with  
 the department of revenue listing all real and personal  
 property owned in joint tenancy with the deceased spouse.

(4) The surviving spouse shall have an appraiser  
 itemize and appraise all the real and personal property  
 owned in joint tenancy with the deceased spouse and send a  
 copy of that appraisal to the department of revenue.

(5) Joint tenancies in property with right of  
 survivorship may be created by spouses by deed or by filing  
 a form with the county clerk and recorder signed by both  
 spouses and attested to by an officer authorized to  
 administer oaths.

(6) Upon submission of copies of the documents  
 required in subsections (2), (3), (4), and (5) of this  
 section the department of revenue shall determine the  
 inheritance tax due and send a certificate of tax due to the

1 surviving spouse. If there is no tax due the certificate  
2 shall be filed with the county clerk and recorder who shall  
3 then issue a transfer of title for the property to the  
4 surviving spouse. If there is tax due, upon its payment to  
5 the county treasurer and filing the receipt therefor with  
6 the county clerk and recorder, the clerk and recorder shall  
7 transfer title in the property to the surviving spouse.

8 (7) No surviving spouse is required to hire an  
9 attorney to transfer title in the joint tenancy property.  
10 If an attorney is hired by the surviving spouse the  
11 attorney's fees, including expenses, shall not exceed two  
12 percent (2%) of the value of the interest passing to the  
13 surviving spouse.

14 (8) A joint tenancy in property owned by a married  
15 couple may be terminated by filing with the county clerk and  
16 recorder a document signed by both spouses terminating the  
17 joint tenancy or by conveying the property by deed.

18 Section 2. Section 91A-3-1205, R.C.M. 1947, shall  
19 apply only to the termination of joint tenancies between  
20 unmarried persons.

21 Section 3. Section 91-4321, R.C.M. 1947, is repealed.

22 Section 4. This act is effective on its passage and  
23 approval.

-End-

HOUSE OF REPRESENTATIVES

March 20, 1975

HOUSE COMMITTEE ON JUDICIARY AMENDMENT TO SENATE BILL 223

That Senate Bill No. 223, third reading, be amended as follows:

- 1 Amend title, page 1, lines 20 and 21.  
Following: "~~FAX~~"  
Strike: "REPEALING SECTION 91-4321, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
2. Amend page 2, section 1, subsection (2), line 7.  
Following: "spouses"  
Strike: "shall"  
Insert: "may"
3. Amend page 2, section 1, subsection (3), line 10.  
Following: "affidavit"  
Insert: "in form prescribed by the department of revenue"
4. Amend page 2, section 1, subsection (3), line 11.  
Following: "all"  
Insert: "interests in"
5. Amend page 2, section 1, subsection (3), line 12.  
Following: "property"  
Strike: "owned"  
Insert: "held"
6. Amend page 2, section 1, subsection (4), lines 13, 14, and 15.  
Following: "shall"  
Strike: "have an appraiser itemize and appraise all the real and personal property owned"  
Insert: "send a list of all properties or interest therein (and the value thereof as of the date of the deceased spouse's death) held"
7. Amend page 2, section 1, subsection (4), lines 15 and 16.  
Following: "spouse"  
Strike: "and send a copy of that appraisal"
8. Amend page 2, section 1, subsection (5), line 17.  
Following: "in"  
Insert: "real"
9. Amend page 2, section 1, subsection (5), line 21.  
Following: "oaths."  
Insert: "Proof of creation of joint tenancies in personal property may be made by submitting to the department of revenue copies, or other evidence, of any documents which created such joint tenancies."
10. Amend page 3, section 1, subsection (6), line 3.  
Following: "title for"  
Strike: "the"  
Insert: "any real"

(Continued on page 2)

11. Amend page 3, section 1, subsection (6), line 3.  
Following: "property"  
Insert: "involved"
12. Amend page 3, section 1, subsection (6), line 7.  
Following: "in the "  
Insert: "real"
13. Amend page 3, section 1, subsection (6), line 7.  
Following: "spouse."  
Insert: "The certificate of no tax due from the department of Revenue or the receipt from the county treasurer for taxes paid is sufficient for the surviving spouse to transfer title to any personal property involved."
14. Amend page 3, section 1, subsection (8), lines 14 through 17.  
Strike: Subsection (8) in its entirety.
15. Amend page 3, sections 3 and 4, lines 21 through 23.  
Strike: Sections 3 and 4 in their entirety.

AS SO AMENDED

BE CONCURRED IN

SENATE BILL NO. 223

INTRODUCED BY ROMNEY, MURPHY, REGAN, JERGESON, KOLSTAD, LEE, HEALY, WARDEN, BOYLAN, SEIBEL, ABER, HIMSL, BLAYLOCK, STORY, ROSKIE, FLYNN, NORMAN, COLBERG, MANLEY, THIESSEN, CETRONE, E. SMITH, GALT, CONOVER, MCOMBER, R. SMITH, MANNING, FOSTER, WATT, HAZELBAKER, ETCHART, NELSON, STEPHENS, FASBENDER, DEVINE, GOODOVER, MCCALLUM, GRAHAM, DUNKLE, TOWE, DRAKE, ROBERTS, TURNAGE, BROWN, GREELY, OLSON, MEHRENS, ROSELL

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE TRANSFER ~~DECLARATION~~ TRANSFER OF REAL AND PERSONAL PROPERTY HELD IN JOINT TENANCY BY HUSBANDS AND WIVES WITHOUT COURT PROCEDURES, ~~REPEALING SECTION 91-4321, R.C.M. 1947, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE TO PROVIDE FOR THE DETERMINATION OF INHERITANCE TAX INVOLVING LIFE ESTATES, JOINT TENANCIES, AND OTHER TAXABLE INTERESTS WHERE NO PERSONAL REPRESENTATIVE IS APPOINTED, AMENDING SECTIONS 91A-3-1205, 91-4415 AND 91-4418, R.C.M. 1947, RELATING TO PAYMENT OF INHERITANCE TAX REPEALING SECTION 91-4321, R.C.M. 1947, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: (Strike everything after the enacting clause, Second Reading, and insert Original Bill:)

Section 1. Joint tenancy property -- transfer to surviving spouse. (1) Title to property held in joint tenancy by a husband and wife with the right of survivorship shall, upon the death of one of the spouses, vest in the surviving spouse provided the requirements of this section have been complied with.

(2) Proof of death of one of the spouses shall ~~shall~~ MAY be made by filing a copy of the death certificate with the department of revenue.

(3) The surviving spouse shall file an affidavit IN FORM PRESCRIBED BY THE DEPARTMENT OF REVENUE with the department of revenue listing all INTERESTS IN real and personal property ~~owned~~ HELD in joint tenancy with the deceased spouse.

(4) The surviving spouse shall ~~have an appraiser itemize and appraise all the real and personal property owned~~ SEND A LIST OF ALL PROPERTIES OR INTEREST THEREIN (AND THE VALUE THEREOF AS OF THE DATE OF THE DECEASED SPOUSE'S DEATH) HELD in joint tenancy with the deceased spouse ~~and send a copy of that appraisal~~ to the department of revenue.

(5) Joint tenancies in REAL property with right of survivorship may be created by spouses by deed or by filing a form with the county clerk and recorder signed by both spouses and attested to by an officer authorized to administer oaths. PROOF OF CREATION OF JOINT TENANCIES IN

1 PERSONAL PROPERTY MAY BE MADE BY SUBMITTING TO THE  
2 DEPARTMENT OF REVENUE COPIES, OR OTHER EVIDENCE, OF ANY  
3 DOCUMENTS WHICH CREATED SUCH JOINT TENANCIES.

4 (6) Upon submission of copies of the documents  
5 required in subsections (2), (3), (4), and (5) of this  
6 section the department of revenue shall determine the  
7 inheritance tax due and send a certificate of tax due to the  
8 surviving spouse. If there is no tax due the certificate  
9 shall be filed with the county clerk and recorder who shall  
10 then issue a transfer of title for the ANY REAL property  
11 INVOLVED to the surviving spouse. If there is tax due, upon  
12 its payment to the county treasurer and filing the receipt  
13 therefor with the county clerk and recorder, the clerk and  
14 recorder shall transfer title in the REAL property to the  
15 surviving spouse. THE CERTIFICATE OF NO TAX DUE FROM THE  
16 DEPARTMENT OF REVENUE OR THE RECEIPT FROM THE COUNTY  
17 TREASURER FOR TAXES PAID IS SUFFICIENT FOR THE SURVIVING  
18 SPOUSE TO TRANSFER TITLE TO ANY PERSONAL PROPERTY INVOLVED.

19 (7) No surviving spouse is required to hire an  
20 attorney to transfer title in the joint tenancy property.  
21 If an attorney is hired by the surviving spouse the  
22 attorney's fees, including expenses, shall not exceed two  
23 percent (2%) of the value of the interest passing to the  
24 surviving spouse.

25 ~~(8) A joint tenancy in property owned by a married~~

1 ~~couple may be terminated by filing with the county clerk and~~  
2 ~~recorder a document signed by both spouses terminating the~~  
3 ~~joint tenancy or by conveying the property by deed.~~

4 Section 2. Section 91A-3-1205, R.C.M. 1947, shall  
5 apply only to the termination of joint tenancies between  
6 unmarried persons.

7 ~~Section 3 and Section 91-4321, R.C.M., 1947, is repealed.~~  
8 ~~Section 4. This act is effective on its passage and~~  
9 ~~approval.~~

-End-