

1 Senate BILL NO. 249
 2 INTRODUCED BY Turner, Napolitano, Mathis
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE UNIFORM
 5 PROBATE CODE TO PROVIDE THAT A BOND IS REQUIRED OF A
 6 PERSONAL REPRESENTATIVE, WITH EXCEPTIONS; PROVIDING FOR
 7 RELEASE OF A SURETY; PROVIDING A BOND MAY BE REQUIRED OF A
 8 GUARDIAN; AMENDING SECTION 91A-3-604 AND REPEALING SECTION
 9 91A-3-603, R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. There is a new R.C.M. section numbered
 13 91A-3-603.1 that reads as follows:

14 91A-3-603.1. Bond required -- exceptions. (1) A
 15 bond is required of a personal representative unless:

- 16 (a) The will expressly waives the bond.
- 17 (b) All of the heirs if there is no will, or all of
- 18 the devisees under a will which does not provide for waiver
- 19 of the bond, file with the court a written waiver of the
- 20 bond requirement. A duly appointed guardian or conservator
- 21 may waive on behalf of his ward or protected person unless
- 22 the guardian or conservator is the personal representative.

23 (c) The personal representative is a national banking
 24 association, a holder of a banking permit under the laws of
 25 this state, a title insurance company which is qualified to

1 do business under the laws of the state and maintains the
 2 guarantee fund as required by section 40-3010, or a trust
 3 company which has qualified to engage in trust business
 4 under the laws of this state.

5 (d) The petition for formal or informal appointment
 6 alleges that the probable value of the entire estate will
 7 permit summary proceedings under section 91A-3-1203 and the
 8 surviving spouse, or the nominee of the surviving spouse, is
 9 applying for appointment as personal representative.

10 (2) If a bond is not initially required because the
 11 petition for appointment alleges that the probable value of
 12 the entire estate will permit summary procedures under
 13 section 91A-3-1203, and it later appears from the inventory
 14 and appraisal that the value of the estate will not permit
 15 the use of such procedures, then the personal representative
 16 shall promptly file a bond unless one is not required for
 17 some other reason under subsection (1) of this section.

18 Section 2. Section 91A-3-604, R.C.M. 1947, is amended
 19 to read as follows:

20 "91A-3-604. Bond amount; security; procedure;
 21 reduction; release of surety. (1) If bond is required and
 22 the provisions of the will or order do not specify the
 23 amount, unless stated in his application or petition, the
 24 person qualifying shall file a statement under oath with the
 25 clerk indicating his best estimate of the value of the

SB249

1 personal estate of the decedent and of the income expected
 2 from the personal and real estate during the next year, and
 3 he shall execute and file a bond with the clerk, or give
 4 other suitable security, in an amount not less than the
 5 estimate. The clerk shall determine that the bond is duly
 6 executed by a corporate surety, or one or more individual
 7 sureties whose performance is secured by pledge of personal
 8 property, mortgage on real property or other adequate
 9 security. The clerk may permit the amount of the bond to be
 10 reduced by the value of assets of the estate deposited with
 11 a domestic financial institution (as defined in section
 12 91A-6-101) in a manner that prevents their unauthorized
 13 disposition. On petition of the personal representative or
 14 another interested person the court may excuse a requirement
 15 of bond, increase or reduce the amount of the bond, release
 16 sureties, or permit the substitution of another bond with
 17 the same or different sureties.

18 (2) When a surety of a personal representative desires
 19 to be released from responsibility for future acts, he may
 20 apply to the court for a release. The court shall cause a
 21 citation to be issued to the personal representative,
 22 requiring him to appear at a time and place therein
 23 specified, and to give other security. Notice shall be
 24 given to the personal representative as provided in section
 25 91A-3-602. If new security is given and approved by the

1 judge, he may thereupon order that the surety who applied
 2 for release shall not be liable on his bond for any
 3 subsequent act, default, or misconduct of the personal
 4 representative. If the personal representative neglects or
 5 refuses to give new and sufficient surety on return of the
 6 citation, or within such reasonable time as the judge
 7 allows, unless the surety making the application consents to
 8 an extension of time, the court shall revoke the letters."

9 Section 3. There is a new R.C.M. section numbered
 10 91A-5-207.1 that reads as follows:

11 91A-5-207.1. Bond of guardian. Guardian coming into
 12 the possession or the control of funds or other property of
 13 a minor may be required by the court to furnish a bond in an
 14 amount and under the conditions as set forth for a
 15 conservator in sections 91A-5-411 and 91A-5-412.

16 Section 4. There is a new R.C.M. section numbered
 17 91A-5-303.1 that reads as follows:

18 91A-5-303.1. Bond of guardian. Guardian coming into
 19 the possession or the control of funds or other property of
 20 an incapacitated person may be required by the court to
 21 furnish a bond in an amount and under the conditions as set
 22 forth for a conservator in sections 91A-5-411 and 91A-5-412.

23 Section 5. Section 91A-3-603, R.C.M. 1947, is
 24 repealed.

-End-