

House BILL NO. 668

INTRODUCED BY *Waldon Ramsey, Edger, Ullrich, Faye Palmer, Elly Hummer, Insurance, Rube Holmes, Frank, Ned, Thurman, Edgerly*

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO HOMESTEADS; AMENDING SECTIONS 33-101, 33-104, 33-105, 33-109, 33-110, 33-113, 33-115, 33-116, 33-117, 33-118, 33-125, 33-126, AND 33-127, R.C.M. 1947; REPEALING SECTIONS 33-107, 33-108, AND 33-124, R.C.M. 1947."

WHEREAS, the present homestead exemption is not available to many needy persons because of their ignorance of the required declaration; and

WHEREAS, the present law needs clarification.

THEREFORE, it is the intent of this bill to provide for a homestead exemption which does not require a declaration and is effective unless explicitly waived.

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

Section 1. Section 33-101, R.C.M. 1947, is amended to read as follows:

"33-101. Homestead ~~of what it consists~~ definition. The homestead consists of the dwelling house in which the claimant resides, all appurtenances thereto, and the land on which the same dwelling house is situated, ~~selected as in this chapter provided,~~ subject to the following limitations:

- (1) The homestead may consist of:
 - (a) a quantity of land not exceeding 320 acres used for agricultural purposes or 5 acres not used for agricultural or commercial purposes; or
 - (b) a quantity of land not exceeding one-fourth acre within a town or city.
- (2) A homestead, in either case, may not exceed \$20,000 in value. In any proceeding instituted to determine the value of such homestead, the assessed value of the appurtenances, if any, and of the dwelling house as appearing on the last completed assessment roll preceding the institution of the proceedings is prima facie evidence of the value of the property claimed as a homestead."

Section 2. Section 33-104, R.C.M. 1947, is amended to read as follows:

"33-104. ~~Exempt--from--forced--sale~~ When homestead exempt. The homestead is exempt from execution or forced sale, except as ~~in this chapter provided~~ in 33-105."

Section 3. Section 33-105, R.C.M. 1947, is amended to read as follows:

"33-105. When subject to execution or forced sale. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

- (a) before July 1, 1977, and before the a declaration of homestead was filed for record, and which

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1 constitute liens upon the premises; ~~but no judgments~~
2 ~~obtained before this code takes effect shall constitute such~~
3 ~~liens;~~

4 ~~2. (2) On~~ on debts secured by mechanics' or vendors'
5 liens upon the premises;

6 ~~3. (3) On~~ on debts secured by purchase money mortgages
7 on the premises, executed and acknowledged by the husband
8 and wife, or by an unmarried claimant;

9 ~~4. (4) On~~ on debts secured by mortgages on the
10 premises, executed and recorded before July 1, 1977, and
11 before the a declaration of homestead was filed for record;

12 (5) on debts secured by mortgages on the premises
13 executed and acknowledged as provided in [section 4]."

14 Section 4. There is a new R.C.M. section that reads as
15 follows:

16 Waiver of homestead exemption for nonpurchase money
17 mortgages. (1) A homestead's exemption from execution and
18 forced sale may be waived for nonpurchase money mortgages by
19 execution of the following waiver of homestead exemption:

20 WAIVER OF HOMESTEAD EXEMPTION FROM
21 EXECUTION AND FORCED SALE

22 I now waive my homestead exemption. I do this knowing
23 my homestead otherwise cannot generally be taken to satisfy
24 my debts. However, upon signing this agreement as head of a
25 household, I realize my homestead may now be sold by forced

1 sale to pay the debt I am now incurring.

2 I, as head of a household, do voluntarily and knowingly
3 waive the exemption of my homestead from execution and
4 forced sale for the following consideration \$.....
5 (amount of loan). The description of the homestead property
6 hereby mortgaged is:

7
8

9 Witness my (our) hand(s) this ... day of, ..
10

11 Authorized Representative of Head of Household
12 Mortgagee

13
14 Head of Household

15 (2) If the head of the household is married, both the
16 husband and wife must sign the above-stated waiver in order
17 for it to be operative. The above-stated waiver must be
18 printed on one side of the document, which document contains
19 no other provisions except the statement of consideration
20 and description of the homestead property. The waiver must
21 be subscribed and sworn before a notary public.

22 Section 5. Section 33-109, R.C.M. 1947, is amended to
23 read as follows:

24 "33-109. Proceedings on execution against homestead.
25 When an execution for the enforcement of a judgment obtained

1 in a case not within the classes enumerated in ~~section~~
 2 33-105 is levied upon the homestead or where the homestead
 3 is part of a larger tract or tracts of land and no selection
 4 of the homestead has been made, the judgment creditor may
 5 apply to the district court of the county in which the
 6 homestead is situated, or a judge thereof, for the
 7 appointment of persons to appraise the value thereof or
 8 determine the boundaries of the homestead, or both."

9 Section 6. Section 33-110, R.C.M. 1947, is amended to
 10 read as follows:

11 "33-110. Application for appraisal or determination
 12 of boundaries. The application must be made upon a verified
 13 petition, showing:

14 1-(1) ~~The~~ the fact that an execution has been levied
 15 upon the homestead;

16 2-(2) ~~The~~ the name of the claimant;

17 3-(3) ~~That either that~~ the value of the homestead
 18 exceeds the amount of the homestead exemption or that the
 19 homestead is part of a larger tract or tracts of land and no
 20 selection of a homestead has been made, or both."

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23 "33-113. Appointment of appraisers. At the hearing the
 24 judge may, upon proof of the service of a copy of the
 25 petition and notice, and of the facts stated in the

1 petition, appoint three disinterested residents and
 2 freeholders of the county to appraise the value or to
 3 determine the boundaries of the homestead. If a claimant
 4 makes a voluntary selection at any time before the
 5 appointment of the appraisers, it shall be effective, but
 6 after their appointment, the determination of the court
 7 shall be binding with regard to the execution in question."

8 Section 8. Section 33-115, R.C.M. 1947, is amended to
 9 read as follows:

10 "33-115. Duty of appraisers. They must view the
 11 premises and appraise the value thereof, and if the
 12 appraised value exceeds the homestead exemption or if the
 13 homestead is part of a larger tract or tracts, they must
 14 determine whether the land claimed can be divided without
 15 material injury."

16 Section 9. Section 33-116, R.C.M. 1947, is amended to
 17 read as follows:

18 "33-116. Report of appraisers -- contents. Within
 19 ~~fifteen~~ 15 days after their appointment, they must ~~make to~~
 20 ~~the judge~~ a report in writing to the judge, which report
 21 must show the appraised value, the boundaries of the tract
 22 where the homestead lies if it is larger than the homestead,
 23 and their determination upon the matter of a division of the
 24 land claimed."

25 Section 10. Section 33-117, R.C.M. 1947, is amended to

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2 "33-117. Setting apart homestead. If, from the report,
3 it appears to the judge that the land claimed can be divided
4 without material injury, he must, by an order, direct the
5 appraisers to set off to the claimant so much of the land,
6 including the residence, as will amount in value or in size
7 to the homestead exemption, and the execution may be
8 enforced against the remainder of the land."

9 Section 11. Section 33-118, R.C.M. 1947, is amended to
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11 "33-118. Order directing sale — when to be made. If,
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15 that it cannot be divided, he must make an order directing
16 its sale under execution."

17 Section 12. Section 33-125, R.C.M. 1947, is amended to
18 read as follows:

19 "33-125. ~~"Head of family" defined~~ Who may claim the
20 homestead exemption. The homestead exemption, as set forth
21 in this chapter may be claimed by any "head of a household".
22 The phrase "head of a family household" as used in this
23 chapter, ~~includes within its meaning~~ means a person who fits
24 one or more of the following criteria:

25 1-(1). ~~The a husband and or wife, acting together or~~

1 ~~either one of them if they do not join in the particular~~
2 ~~transaction. In any given transaction which requires action~~
3 ~~by the "head of a family" the spouse who undertakes the~~
4 ~~transaction shall be deemed "head of the family" in regard~~
5 ~~to that particular transaction.~~

6 2-(2) ~~Every~~ every person who has attained the age of
7 ~~sixty~~ 60 years and who actually resides on the premises;

8 3-(3) ~~Every~~ every person who has residing on the
9 premises with him or her, and under his or her care and
10 maintenance, either:

11 ~~First, (a) His~~ his or her minor child, or the minor
12 child of his or her wife or husband, or former wife or
13 husband;

14 ~~Second, (b) A~~ a minor grandchild, brother or sister,
15 or minor child of a brother or sister;

16 ~~Third, (c) A~~ a father, mother, grandfather, or
17 grandmother;

18 ~~Fourth, (d) The~~ the father, mother, grandfather, or
19 grandmother, of a husband or wife, or former husband or
20 wife;

21 ~~Fifth, (e) An~~ an unmarried sister, brother, or any
22 other of the relatives mentioned in this section, who have
23 attained the age of majority and are unable to take care of
24 or support themselves."

25 Section 13. Section 33-126, R.C.M. 1947, is amended to

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2 "33-126. ~~Mode of selection~~ Selection of homestead from
 3 larger tract. When the homestead is part of a larger tract
 4 or tracts of land than is exempt from forced sale as such
 5 homestead, the head of a household may select and set apart
 6 the homestead to which the household is entitled. In order
 7 to select and set apart a homestead, the ~~husband or other~~
 8 head of a ~~family~~ household must execute and acknowledge, in
 9 the same manner as a grant of real property is acknowledged,
 10 a declaration of homestead, and file the same for record."

11 Section 14. Section 33-127, R.C.M. 1947, is amended to
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13 "33-127. Declaration of homestead — must contain
 14 what. The declaration of homestead must contain:

15 1. ~~1~~ 1 A statement showing that the person making it
 16 is the head of a ~~family~~ household. If both spouses join in
 17 the declaration, this fact shall be stated.

18 2. ~~2~~ 2 A statement that the person making it is
 19 residing on the premises, and claims them as a homestead;

20 3. ~~3~~ 3 A description of the premises;

21 4. ~~4~~ 4 An estimate of their actual cash value."

22 Section 15. There is a new R.C.M. section that reads
 23 as follows:

24 Effect of declaration. A declaration and setting apart
 25 of the homestead by the claimant or by the court operates as

1 a relinquishment of all right of homestead in excess of land
 2 so partitioned from the homestead and shall be binding on
 3 the claimant and all others in privity with him. The
 4 claimant may, at any time after the homestead has been
 5 designated and set apart in either of the modes pointed out
 6 in this title, change the boundaries of the homestead by an
 7 instrument as in cases of setting apart the homestead, but
 8 no such change may impair the rights of parties acquired
 9 prior to such change.

10 Section 16. Repealer. Sections 33-107, 33-108, and
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Approved by Committee
on Labor & Employment
Relations

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which the same dwelling house is situated, ~~selected as in this chapter provided~~, subject to the following limitations:

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(b) a quantity of land not exceeding one-fourth acre within a town or city.

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15 of boundaries. The application must be made upon a verified
16 petition, showing:

17 1. The fact that an execution has been levied
18 upon the homestead;

19 2. The name of the claimant;

20 3. That either that the value of the homestead
21 exceeds the amount of the homestead exemption or that the
22 homestead is part of a larger tract or tracts of land and no
23 selection of a homestead has been made, or both."

24 Section 7. Section 33-113, R.C.M. 1947, is amended to
25 read as follows:

1 "33-113. Appointment of appraisers. At the hearing the
2 judge may, upon proof of the service of a copy of the
3 petition and notice, and of the facts stated in the
4 petition, appoint three disinterested residents and
5 freeholders of the county to appraise the value or to
6 determine the boundaries of the homestead. If a claimant
7 makes a voluntary selection at any time before the
8 appointment of the appraisers, it shall be effective, but
9 after their appointment, the determination of the court
10 shall be binding with regard to the execution in question."

11 Section 8. Section 33-115, R.C.M. 1947, is amended to
12 read as follows:

13 "33-115. Duty of appraisers. They must view the
14 premises and appraise the value thereof, and if the
15 appraised value exceeds the homestead exemption or if the
16 homestead is part of a larger tract or tracts, they must
17 determine whether the land claimed can be divided without
18 material injury."

19 Section 9. Section 33-116, R.C.M. 1947, is amended to
20 read as follows:

21 "33-116. Report of appraisers -- contents. Within
22 ~~fifteen~~ 15 days after their appointment, they must ~~make to~~
23 ~~the judge~~ a report in writing to the judge, which report
24 must show the appraised value, the boundaries of the tract
25 where the homestead lies if it is larger than the homestead,

1 and their determination upon the matter of a division of the
2 land claimed."

3 Section 10. Section 33-117, R.C.M. 1947, is amended to
4 read as follows:

5 "33-117. Setting apart homestead. If, from the report,
6 it appears to the judge that the land claimed can be divided
7 without material injury, he must, by an order, direct the
8 appraisers to set off to the claimant so much of the land,
9 including the residence, as will amount in value or in size
10 to the homestead exemption, and the execution may be
11 enforced against the remainder of the land."

12 Section 11. Section 33-118, R.C.M. 1947, is amended to
13 read as follows:

14 "33-118. Order directing sale -- when to be made. If,
15 from the report, it appears to the judge that the land
16 claimed exceeds in value the amount of the homestead
17 exemption, or that the land exceeds the maximum acreage and
18 that it cannot be divided, he must make an order directing
19 its sale under execution."

20 Section 12. Section 33-125, R.C.M. 1947, is amended to
21 read as follows:

22 "33-125. "Head-of-family" defined who may claim the
23 homestead exemption. The homestead exemption, as set forth
24 in this chapter may be claimed by any "head of a household".
25 The phrase "head of a ~~family~~ household" as used in this

1 chapter, ~~includes within its meaning means a person who fits~~
2 one or more of the following criteria:

3 ~~1. (1) The a husband and or wife; acting together or~~
4 ~~either one of them if they do not join in the particular~~
5 ~~transaction. In any given transaction which requires action~~
6 ~~by the "head of a family" the spouse who undertakes the~~
7 ~~transaction shall be deemed "head of the family" in regard~~
8 ~~to that particular transaction.~~

9 ~~2. (2) Every every~~ person who has attained the age of
10 ~~sixty 60~~ years and who actually resides on the premises;

11 ~~3. (3) Every every~~ person who has residing on the
12 premises with him or her, and under his or her care and
13 maintenance, either:

14 ~~First, (a) His his~~ or her minor child, or the minor
15 child of his or her wife or husband, or former wife or
16 husband;

17 ~~Second, (b) A a~~ minor grandchild, brother or sister,
18 or minor child of a brother or sister;

19 ~~Third, (c) A a~~ father, mother, grandfather, or
20 grandmother;

21 ~~Fourth, (d) The the~~ father, mother, grandfather, or
22 grandmother, of a husband or wife, or former husband or
23 wife;

24 ~~Fifth, (e) An an~~ unmarried sister, brother, or any
25 other of the relatives mentioned in this section, who have

1 attained the age of majority and are unable to take care of
2 or support themselves."

3 Section 13. Section 33-126, R.C.M. 1947, is amended to
4 read as follows:

5 "~~33-126. Mode of selection~~ Selection of homestead from
6 larger tract. When the homestead is part of a larger tract
7 or tracts of land than is exempt from forced sale as such
8 homestead, the head of a household may select and set apart
9 the homestead to which the household is entitled. In order
10 to select and set apart a homestead, the ~~husband or other~~
11 head of a ~~family~~ household must execute and acknowledge, in
12 the same manner as a grant of real property is acknowledged,
13 a declaration of homestead, and file the same for record."

14 Section 14. Section 33-127, R.C.M. 1947, is amended to
15 read as follows:

16 "~~33-127. Declaration of homestead — must contain~~
17 what. The declaration of homestead must contain:

18 ~~1-~~ 1 A a statement, showing that the person making it
19 is the head of a family household. If both spouses join in
20 the declaration, this fact shall be stated,

21 ~~2-~~ 2 A a statement that the person making it is
22 residing on the premises, and claims them as a homestead;

23 ~~3-~~ 3 A a description of the premises;

24 ~~4-~~ 4 An an estimate of their actual cash value."

25 Section 15. There is a new R.C.M. section that reads

1 as follows:

2 Effect of declaration. A declaration and setting apart
3 of the homestead by the claimant or by the court operates as
4 a relinquishment of all right of homestead in excess of land
5 so partitioned from the homestead and shall be binding on
6 the claimant and all others in privity with him. The
7 claimant may, at any time after the homestead has been
8 designated and set apart in either of the modes pointed out
9 in this title, change the boundaries of the homestead by an
10 instrument as in cases of setting apart the homestead, but
11 no such change may impair the rights of parties acquired
12 prior to such change.

13 Section 16. Repealer. Sections 33-107, 33-108, and
14 33-124, R.C.M. 1947, are repealed.

-End-