CHAPTER NO. \_6\_\_\_\_

# HOUSE BILL NO. 41

# INTRODUCED BY MARKS

# BY REQUEST OF THE CODE COMMISSIONER

# IN THE HOUSE

January 4, 1979 Introduced and referred to Committee on Judiciary. January 6, 1979 On motion, joint rule 6-6 suspended and Sponsor's signature allowed to be added to Pre-Filed Bill. January 12, 1979 Committee recommend bill do pass. Report adopted. January 13, 1979 On motion rules suspended and bill placed on Second reading this day. Second reading, do pass. On motion rules suspended and bill placed on third reading this day. Third reading, passed. Considered correctly engrossed. Transmitted to Second House. IN THE SENATE Introduced and referred January 15, 1979 to Committee on Judiciary. January 18, 1979 Committee recommend bill be concurred in as amended. Report adopted. Second reading, be concurred January 20, 1979 in. Third reading, concurred January 22, 1979 in as amended.

IN THE HOUSE

January	22,	1979	Returned from Second House. Concurred in as amended.
January	23,	1979	Second reading, amendments adopted.
January	24,	1979	Third reading, amendments adopted.
			Sent to enrolling.
			Report correctly enrolled.

# 46th Legislature

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1	HOUSE BILL ND. 41	
z	INTRODUCED BY	
3	BY REQUEST OF THE CODE CONMISSIONER	
4		
5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	
6	LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY	
7	RELATIONSHIPS; AND REPEALING SECTIONS 91-104.1, 91-104.2.	
8	91-219+ 91-519+ 91-523+ 91-4312+ AND 93-1401-3+ R+C+M+	
9	1947.ª"	
10		
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	
12	Section 1. Section 72-2-305, MCA, is amended to read:	
13	■72-2-305• Who may witness effect of witness by	
14	beneficiary» (1) Any person generally competent to be a	
15	witness may act as a witness to a will.	
16	(2) A will is not invalid because the will is signed	
17	by an interested witness.	
18	(3) All beneficial devises made in any will to a	
19	subscribing witness thereto are void unless there are two	
20	other competent subscribing witnesses to the same, but a	
21	mere charge on the estate of the testator does not prevent	
22	his creditors from being competent witnesses to his will.	
23	(4) If a witnessy to whom any beneficial devisey void	
24	under the preceding section, subsection (3) is made, would	
25	have been entitled to any share of the estate of the	

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testator if the testator had died intestate, such witness
 succeeds to so much of the share as would be distributed to
 him under intestate succession, not exceeding the devise or
 bequest made to him in the will."
 Section 2. Section 72-3-309, MCA, is amended to read:

6 "72-3-309. Testimony of attesting witnesses in contested cases -- presumptions for self-proved will. (1) If 7 evidence concerning execution of an attested will which is 8 9 not self-proved is necessary in contested cases, the 10 testimony of at least one of the attesting witnesses, if 11 within the state and competent and able to testify, is 12 required. Due execution of an attested or unattested will 13 may be proved by other evidence.

14 (2) If the will is self-proved, compliance with 15 signature requirements for execution is conclusively 16 presumed and other requirements of execution are presumed, 17 subject to rebuttal, without the testimony of any witness, 18 upon filing the will and the acknowledgment and affidavits 19 annexed or attached thereto, unless there is proof of fraud 20 or forgery affecting the acknowledgment or affidavit."

21 Section 3. Section 72-3-803. MCA, is amended to read:
22 #72-3-803. Nonclaim -- limitations on presentation of
23 claims -- exceptions. (1) <u>With the exception of claims for</u>
24 <u>taxes and claims founded on torts + +++ all claims against a</u>
25 decedent's estate with the exception of claims for taxes and

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claims-founded-on-tort which arose before the death of the 1 2 decedent, including claims of the state and any subdivision 3 thereof, whether due or to become due, absolute or 4 contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute 5 6 of limitations, are barred against the estate, the personal 7 representative, and the heirs and devisees of the decedenty unless presented as follows: 8

9 (a) within 4 months after the date of the first 10 publication of notice to creditors if notice is given in 11 compliance with 72-3-801<sup>1</sup>/<sub>1</sub> provided, claims barred by the 12 nonclaim statute at the decedent's domicile before the first 13 publication for claims in this state are also barred in this 14 state; or

15 (b) within 3 years after the decedent's death if 16 notice to creditors has not been published.

17 (2) With the exception of claims for taxes and claims 18 founded on torts All claims against a decedent's estate 19 with-the-exception-of-claims-for-taxes-and-claims-founded-on 20 tort which arise at or after the death of the decedent, 21 including claims of the state and any subdivision thereof. 22 whether due or to become due, absolute or contingent. liquidated or unliquidated, founded on contract or other 23 24 legal basis, are barred against the estate, the personal 25 representative, and the heirs and devisees of the decedenty 1 unless presented as follows:

(a) a claim based on a contract with the personal 2 3 representative, within 4 months after performance by the personal representative is due; 4 (b) any other claim, within 4 months after it arises. 5 (3) Nothing in this section affects or prevents: ĥ 7 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or ß 9 (b) to the limits of the insurance protection only. 10 any proceeding to establish liability of the decedent or the 11 personal representative for which he is protected by 12 liability insurance." 13 Section 4. Section 72-3-916, MCA, is amended to read: \*72-3-916. Distribution to trustee -- registration --14 bond. (1) Before distributing to a trustee, the personal 15 representative may require that the trust be registered, if 16 17 the state in which it is to be administered provides for 18 registration, and that the trustee inform in writing the 19 current beneficiaries es-provided-in-fsection-7-303-of-the 20 Uniform--Probate--Eode--as--promulgated--by---the---national 21 conference--of--commissioners-on-uniform-state-laws] and, if 22 possible, one or more persons who under 72-1-303 may 23 represent beneficiaries with future interests of his name 24 and address and provide each with a copy of the terms of the 25 trust which describe or affect his interest and with

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1 relevant information about the assets of the trust and the 2 particulars relating to the administration. з (2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may 4 petition the appropriate court to require that the trustee 5 post bond if he apprehends that distribution might 6 jeopardize the interests of persons who are not able to 7 8 protect themselves, and he may withhold distribution until 9 the court has acted. (3) No inference of negligence on the part of the 10 personal representative shall be drawn from his failure to 11 12 exercise the authority conferred by subsections (1) and 13 (2).\* 14 Section 5. Section 72-5-414, MCA, is amended to read: "72-5-414. Resignation or removal of conservator for 15 16 cause -- successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or 1,7 18 accept the resignation of a conservator. After his death: 29 resignation, or removal, the court may appoint another 20 conservator. A conservator so appointed succeeds to the 21 title and powers of his predecessor." 22 Section 6. Section 72-5-422, MCA, is amended to read: 23 #72-5-422. Power of court to authorize particular

25 conservator. (1) If it is established in a proper proceeding

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that a basis exists as described in 72-5-409 for affecting 1 2 the property and affairs of a persony the court without appointing a conservator may authorize, direct, or ratify 3 4 any transaction necessary or desirable to achieve any 5 security, service, or care arrangement meeting the 6 foreseeable needs of the protected person. Protective 7 arrangements include but are not limited to: 8 (a) payment, delivery, deposit, or retention of funds 9 or property: 10 (b) sale, mortgage, lease, or other transfer of 11 property; 12 (c) entry into an annuity contract, a contract for 13 life care, a deposit contract, or a contract for training 14 and education: or 15 (d) addition to or establishment of a suitable trust. 16 (2) When it has been established in a proper 17 proceeding that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court 18 19 without appointing a conservator may authorize, direct, or 20 ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his 21 22 estate if the court determines that the transaction is in 23 the best interests of the protected person.

24 (3) Before approving a protective arrangement or other

25 transaction under this section, the court shall consider the

protective arrangements or transactions without appointing

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1 interests of creditors and dependents of the protected person and, in view of his disability, whether the protected 2 3 person needs the continuing protection of a conservator. The 4 court may appoint a special conservator to assist in the 5 accomplishment of any protective arrangement or other transaction authorized under this section who, shall-have 6 7 upon appointment, has the authority conferred by the order 8 and serves until discharged by order after report to 9 the court of all matters done pursuant to the order of 10 appointment."

11 Section 7. Section 72-5-425, MCA, is amended to read: 12 #72-5-425. Title by appointment as conservator ---13 appointment not transfer for certain purposes. (1) The appointment of a conservator vests in his him title as 14 trustee to all property of the protected person presently 15 held or thereafter acquired, including title to any property 16 17 theretofore held for the protected person by custodians or 18 attorneys-in-fact.

19 (2) The appointment of a conservator is not a transfer 20 or alienation within the meaning of general provisions of 21 any federal or state statute or regulation, insurance 22 policy, pension plan, contract, will, or trust instrument 23 imposing restrictions upon or penalties for transfer or 24 alienation by the protected person of his rights or 25 interest, but this section does not restrict the ability of 1 persons to make specific provision by contract or 2 dispositive instrument relating to a conservator."

Section 8. Section 72-10-101, NCA, is amended to read: 3 #72-10-101. No requirement for orders and judgments to 4 recite jurisdictional facts. Orders and judgments made by 5 the court or judge in probate proceedings need not recite 6 the existence of facts or the performance of acts upon which 7 the jurisdiction of the court or judge may depend, but it я shall is only be necessary that they contain the matters 9 ordered, except as otherwise provided in chapters-10-through 10

# 11 to this title."

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12 Section 9. Section 72-10-104. MCA, is amended to read: 13 #72-10-104. Service on guardian equivalent to service 14 on ward interested in estate. Whenever an-infant a minor, insome mentally ill, or incompetent person has a quardian of 15 16 his estate residing in this state, personal service upon the 17 quardian of any process, notice, or order of the court or judge concerning the estate of a deceased person in which 18 19 the ward is interested is equivalent to service upon the 20 ward, and it-is-the-duty-of the guardian to shall attend to 21 the interests of the ward in the matter. Such quardian may 22 also appear for his ward and waive any process, notice, or 23 order to show cause which an adult or a person of sound mind 24 might do."

### Section 10. Section 72-10-107, MCA, is amended to

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1	read:	1	read:
2	<pre>"72-10-107. Proceeding in chambers jury trial. (1)</pre>	2	197
	All orders mentioned in <del>chapters-10-through10</del> this title	-	payment
3	• 2	4	through
4	and all proceedings in matters of probate may be made or		
5	heard either before the court or the judge thereof in	5	on appe
6	chambers.	6	any pa
7	(2) When a jury is needed, the court or judge may	7	estate,
8	order the trial to take place in court as provided in Title	8	issue o
9	25 <b>."</b>	9	Se
10	Section 11. Section 72-10-109, MCA, is amended to	10	read:
11	read:	11	•7
12	#72-10-109. Citation how issued. The citation may	12	of fil
23	be issued by the clerk, upon the application of any party,	13	<u>this ti</u>
14	without an order of the judge, except in cases in which such	14	thereof
15	order is <u>expressly required</u> by the provisions of <del>chapters-20</del>	15	notice_
16	through-16-expressly-required this title."	26	for re
17	Section 12. Section 72-10-110, MCA, is amended to	17	content
18	read:	18	Se
19	#72-10-110. Citation how and when served. (1) The	19	read:
20	citation must be served in the same manner as a summons in a	20	*7
21	civil action.	21	adminis
22	(2) When no other time is specifically prescribed in	22	vacancy
23	<del>chopters10-through-16 <u>this title</u>, citations must be served</del>	23	limitat
24	at least 5 days before the return day thereof."	24	Se
25	Section 13. Section 72-10-111, MCA, is amended to	25	read:

# "72-10-111. Costs -- discretion of court in ordering ent. When it is not otherwise prescribed in <del>chapters-10</del> eqn--l6 this\_title, the district court or supreme court ppeal may, in its discretion, order costs to be paid by party to the proceedings or out of the assets of the e, as justice may require. Execution for costs may e out of the district court." Section 14. Section 72-10-202, MCA, is amended to "72-10-202. Recorded order to impart notice from date iling. When it is provided in <del>chapters-10-through-16</del> title that any order of the court or judge or a copy eof must be recorded in the office of the county clerk. ce of its contents, from the time of filing the some it records notice is imparted to all persons--of-the ints-thereof." Section 15. Section 72-12-802, MCA, is amended to #72-12-802. Time limitations -- effect of vacancy in

nistration. The time during which there <del>sholl--be</del> is a ncy in the administration must is not be included in any ations herein prescribed in this title."

Section 16. Section 72-14-101, MCA, is amended to 25 read:

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#72-14-101. Short title. Parts 1 through 3 of this
 chapter are to be known as the "Escheated Property Act"y-ond
 it--provides--the--exclusive-method-for-vesting-title-in-the
 state-of-Montana-of-oll-unclaimed-property."

5 Section 17. Section 72-14-102, MCA, is amended to 6 read:

#72-14-102. When title to escheated property vests in 7 R state. [1] Whenever the title to any property, either real or personal or mixed, fails for any reason, including want 9 of heirs or next of kin, such title shall-vest yests in the 10 state of Montana immediately upon the death of the owner 11 without an inquest or other <u>similar</u> proceeding in-the-nature 12 13 of-office-foundy and there shall-be is no presumption that such owner died leaving heirs or next of kin. 14

15 (2) In relation to property other than estates, title shell-be is presumed to have failed whenever the owner, 16 beneficial owner, or person entitled to any such property 17 within this state <del>has-been-or-shall-be--and--reasin</del> <u>remains</u> 18 unknown for a period of 20 successive years, and during such 19 period whenever the whereabouts of such owner, beneficial 20 owner; or persons-has-been-or-shall--be--and--remain \_\_person 21 remains unknown and during such period whenever any personal 22 23 property wherever situated hes-been-or-shell-be-end-remain remains unclaimed, then in such event such personal property 24 shall-escheet escheats to the state." 25

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Section 18. Section 72-15-101, MCA, is amended to read:

3 **\*72-15-101.** Uther provisions to supplement chapter. 4 When no direction is given in this chapter for the 5 government or guidance of a public administrator in the 6 discharge of his duties or for the administration of an 7 estate in his hands, the provisions of <del>chapters 10 through</del> 8 **to this title must govern.** 

9 Section 19. Section 72-16-201, MCA, is amended to 10 read:

#72-16-201. Powers of department generally -- duty to 11 supervise administration of tax laws -- reports. (1) The 12 department of revenue in the conduct of inheritance tax 13 affairs sholl-have has the same and--similar powers and 14 gathering information and making 15 authority for investigations as is conferred by law on the department in 16 the performance of its other duties. 17

(2) It--shall--be--the--duty--of-the Ine department to 18 shall supervise the administration of and-to-investigate-and 19 couse--to--be--investigated--the---administration---of the 20 inheritance tax laws and investigate such particular estates 21 22 to which the inheritance tax laws apply throughout the various counties of the state and to cause to be made and 23 filed in its office reports of such investigation 24 investigations, together with specific information and facts 25

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as to particular estates, that may seem to require special
 consideration and attention by the legal department of the
 state justice; but no information so acquired shall may, in
 advance of legal action, be disclosed to anyone except
 proper officials and persons interested in such estate."
 Section 20. Section 72-16-208. MCA. is amended to

#72-16-208. Powers and duties of department as to 8 nonresident estates. The department of revenue shall also 9 gather information and make investigations and reports 10 11 concerning the estates of nonresident decedents within the provisions of the inheritance tax laws and shall especially 12 investigate the probate and other records for such probable 13 estates without the state and report thereon from time to 14 time to the feed department of the state justice and to the 15 proper district court for appropriate legal actionvi but no 16 information so acquired shall may, in advance of legal 17 action, be disclosed to anyone except proper officials and 18 19 persons interested in such estate."

20 Section 21. Section 72-16-210, MCA, is amended to 21 read:

22 "72-16-210. Duty of attorney----general justice
 23 <u>department</u>. it-shall-be-the-duty-of-the-legal <u>Ihe</u> department
 24 of the--state--to justice shall carry out and enforce the
 25 recommendations and directions of the department of revenue

in all matters pertaining to the conduct of inheritance tax
 affairs.#
 Section 22. Section 72-16-306. MCA. is amended to
 read:

#72-16-306. Recording date prima facie date of 5 ~ transfer -- transfers recorded after death. All-transfers 7 Recorded mapers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within 8 9 the provisions of fthis-section-shall-be parts 1 through 8 are prima facie proof. for the purposes of fthis-oct- parts 10 11 1. through 8, to-have-been that it was made as of the date 12 upon which the such papers evidencing-such-transfer-are were 13 recordedya and-all Any such transfers transfer, if recorded 14 after the death of the person or persons making such 15 transfer, whatever the form of such transfer, shall-be deemed is considered, for the purposes of taxation under the 16 17 provisions of fthis-oct] parts 1 through 3+ to have been made by will." 18

19 Section 23. Section 72-16-312, MCA, is amended to 20 read:

21 \*72-16-312. Exemption -- transfers for charitable or
 22 public purposes. (1) The following transfers are totally
 23 exempt:

(a) all property transferred to the state or any of
 its institutions or to municipal--corporations local

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1 governments within the state for strictly county--cityy
2 towny---or---wunicipal local\_government\_or\_other\_public
3 purposes;

(b) all property transferred to any society. 4 5 corporation, institution, or association, in trust or 6 otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, 7 literary, or educational purposes, no part of the net 8 earnings of which inures to the benefit of any private 9 10 stockholder or individual and no substantial part of the 11 activities of which is carrying on propaganda or otherwise 12 attempting to influence legislation, if any of the following 13 conditions is present:

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

18 (ii) the property transferred is limited for use within19 this state;

(iii) the society, corporation, institution,
foundation, trust, or association is organized or existing
under the laws of another state of the United States or of a
foreign state or country and at the date of the decedent's
death any one of the following conditions existed:

25 (A) the other state, foreign state, or foreign country

did not impose a legacy, succession, or death tax of any
 character in respect to property transferred to a similar
 society, corporation, institution, foundation, trust, or
 association organized or existing under the laws of this
 state;

(B) the laws of the other state, foreign state, or 6 foreign country contained a reciprocal provision under which 7 property transferred to a similar society, institution, 8 foundation, trust, or association organized or existing q under the laws of another state of the United States or 10 foreign state or country was exempt from legacy, succession, 11 or death taxes of every character, if the other state of the 12 United States or foreign state or country allowed a similar 13 14 exemption in respect to property transferred to a similar 15 society, institution, foundation, trust, or association organized or existing under the laws of another state of the 16 United States or foreign state or country; 17

18 (C) the society, corporation, institution, foundation, 19 trust. or association owns or operates a hospital for 20 crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted 21 22 children from the state of Montana are without discrimination gratuitously admitted and treated and the 23 24 property transferred is limited for use at such hospital. 25 (2) The tax imposed by 72-16-301 does not apply to

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1 transfers to the-state-of-Kontena-or-sny-of-its-institutions 2 or-to-county-towny-or-suricial--corporations--within--the state--for-strictly-country-town-menicipaly-or-other-public 3 purposes-end corporations of this state organized under its 4 5 laws or voluntary associations, organized solely for religious, charitable, or educational purposes, which shall 6 use the property so transferred exclusively for the purposes 7 8 of their organization within the state.\*

9 Section 24. Section 72-16-423, MCA, is amended to 20 read:

"72-16-423. Court order to be delivered and taxes paid 11 12 before final judgment in estate. A copy of the court order 13 referred to in 72-16-422 shall be delivered or mailed to the 14 county treasurer, the administrator or executor, and the department of revenue, and no final judgment shell may be 15 entered in such estates until due proof is filed with the 16 court that such copies have been so delivered or mailed and 27 receipts are filed with such the court showing the payment 18 19 of all such taxes or proof is filed showing that the bond permission for deferral of payment authorized by 72-16-438 20 has been given." 21

22 Section 25. Section 72-16-437, MCA, is amended to 23 read:

24 \*72-16-437. Personal representative not entitled to
25 closing unless tax paid or bond filed. No personal

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representative or trustee shall-be is entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he shall produce produces such receipt or a certified copy thereof or unless a -bond--shall--have-been--filed-as-prescribed--by permission\_for\_deferral\_of\_payment\_bas\_been\_granted\_as provided\_in 72-16-438.<sup>o</sup>

8 Section 26. Section 72-16-443, MCA, is amended to 9 read:

"72-16-443. Collection of unpaid taxes. (1) If any 10 county treasurer, the state treasurer, or the department of 11 revenue shatt-have has reason to believe that any tax is due 12 13 and unpaid under the provisions of parts 1 through 8+ after the refusal or neglect of any person liable therefor to pay 14 15 the same, he or it shall notify the attorney general in 16 writing of such failure or neglecty; and the attorney 17 general, if he have has probable cause to believe that such 18 tax is due and unpaid, shall apply to the district court for 19 a citation citing the person liable to pay such tax to 20 appear before the court on the day specified, not more than 21 3 months from the date of such citation, and show cause why 22 the tax should not be paid.

23 (2) The judge of the district court, upon such
 24 application and whenever it shall-appear appears to him that
 25 any such tax accruing under parts 1 through 8 has not been

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paid as required by law, shall issue such citation\*<u>a</u> and-the
 <u>Ihe</u> service of such citation and the time, manner, and proof
 thereof and the hearing and determination thereof shall
 conform as near as may be to the provisions of the laws
 governing probate practice of this state.

6 (3) Whenever it shall-appear appears that any such tax 7 is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in soid A 9 such district court, the person or corporation from whom the 10 same is due is hereby made liable to the state for the 11 amount of such taxy: and it--shall-be--the--duty-of the 12 attorney general, in the name of the state, to shall sue for 13 and enforce the collection of such tax, and it-is-mode-the 14 duty-of the county attorney of the county to shall appear 15 for and act on behalf of any county treasurery who shall-be is cited to appear before any district court under the 16 17 provisions of parts 1 through 8.\*

18 Section 27. Section 72-16-704. HCA. is amended to 19 read:

20 \*\*72-16-704. Apportionment of deductions when property 21 partly within and partly without the state. Whenever a tax 22 may-be is due from the estater or the beneficiaries thereinr 23 of any resident or nonresident decedent upon the transfer of 24 any property, when the property or the estate left by such 25 decedent is partly within and partly without this state, or

upon any stocks, bonds, mortgages, or other securities 1 representing property or estate partly within and partly 2 without this state, any beneficiary of such estate shall--be 3 is entitled to deduct only his proper proportion of that 4 portion of the total debts and expenses of administration 5 which the gross estate in Montana or within its jurisdiction 6 bears to the gross estate both within and without this 7 state<del>v-but-no--deduction--shall--be--mode--for--any--federal</del> A 9 estates--inheritances--successions-or-transfer-taxes-paid-to the--United--States. As to his Montana exemption, each 10 beneficiary shall-be is entitled to deduct only that portion 11 represented by the ratio between his interest in the 12 13 property in this state or within its jurisdiction and his interest in the entire estate." 14 Section 28. Section 72-16-801. MCA. is amended to 15

16 read:

17 "72-16-801. Exemption of intangible personal property
18 of nonresident decedent -- when. The tax imposed by parts 3,
19 7. and 9. and this part. in respect of personal property.
20 except tangible personal property having an actual situs in
21 this state. shall is not be payable if:
22 (1) the decedent is a resident of a state or territory

(1) the decedent is a resident of a state or territory
of the United States which at the time of the transfer did
not impose a transfer tax or death tax of any character in
respect of personal property of residents of this state,

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except tangible personal property having an actual situs in
 that state or territory; or

(2) the laws of the state or territory of residence of 3 the nonresident decedent at the time of the transfer 4 contained a reciprocal provision under which nonresidents of 5 that state were exempted from transfer tex taxes or death 6 taxes of every character in respect of personal property, 7 except tangible personal property having an actual situs in 8 that state, providing provided the state or territory of 9 residence of such nonresident decedent allowed a similar 10 exemption to residents of this state.\* 11

12 Section 29. Section 72-16-906, MCA, is amended to 13 read:

\*72-16-906. Required filings. it-shall-be-the-duty--of 14 the The personal representative of the estate of any 15 decedent whose estate may be is subject to the payment of a 16 United States estate tax to shall file duplicates of the 17 United States estate tax returns with the district court of 18 the county in which such estate is being probated and with 19 the department of revenue. He shall also file with such 20 court and with the department a certificate or other 21 evidence from the bureou-of internal revenue service showing 22 the amount of the United States estate tax as computed by 23 24 that department agency."

25 Section 30. Section 72-20-409, MCA, is amended to

1 read:

2 \*72-20-409. Appeal. The decree so rendered shall-be is 3 a final order from which any party in interest may appeal as 4 in civil actions to the district supreme court of the state 5 of Montana." Section 31. Section 72-24-103, MCA, is amended to 6 7 read: 8 \*72-24-103. For what purposes express trusts may be 9 created. Express trusts may be created for any of the following surposes: 10 (1) to sell real property and apply or dispose of the 11 proceeds in accordance with the instrument creating the 12 13 trust: (2) to mortgage or lease real property for the benefit 14 of annuitants or other legatees or for the purpose of 15 16 satisfying any charge thereon;

17 (3) to receive the rents and profits of real property and pay them to or apply them to the use of any person, 18 19 whether ascertained at the time of the creation of the trust 20 or not, for himself or for his family during the life of such person or for any shorter term, subject to the-rules-of 21 22 70-1-410+-Title-70v-chapter-15v-part-2+--Title--70v--chapter 17+--part--11--and--70-27-104--through--70-27-107 [itle\_70. 23 24 chapter 1. part 4; or

25 (4) to receive the rents and profits of real property

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and to accumulate the same for the purposes and within the
 limits prescribed by the sections above enumerated <u>litle 70s</u>
 <u>chapter 1. part 4.</u>"

Section 32. Section 72-26-201, MCA, is amended to
 read:

6 "72+26-201. Manner of making gift. (1) An adult person
7 may. during his lifetime. make a gift of a security or money
8 to a person who is a minor on the date of the gift:

4a) if the subject of the gift is a security in
registered form, by registering it in the name of the donor.
another adult person (an adult member of the minor's family.
a guardian of the minor). or a trust company. followed in
substance by the words. "as custodian for ... (name of
minor) under the Montana Uniform Gifts to Minors Act";

15 (b) if the subject of the gift is a security not in 16 registered form, by delivering it to an adult person other 17 than the donor (an adult member, other than the donor, of 18 the minor's family, a guardian of the minor) or a trust 19 company, accompanied by a statement of gift in the following 20 form, in substance, signed by the donor and the person 21 designated as custodian:

22 "GIFT UNDER THE MONTANA UNIFURM GIFTS TO MINORS ACT

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23 I, .... (name of donor) hereby deliver to .... (name
24 of custodian) as custodian for .... (name of minor) under
25 the Montana Uniform Gifts to Minors Act, the following

1 security(ies): (Insert insert an appropriate description of the 2 3 security or securities delivered sufficient to identify it 4 or theme) 5 6 ..... (name of custodian) hereby acknowledges receipt 7 of the above-described above-described security(ies) as custodian for the above minor under the Montana Uniform 8 Q Gifts to Ninors Act. 10 Dated: ..... 11 12 (c) if the subject of the gift is money, by paying or 13 delivering it to a broker or a domestic financial 14 institution for a credit to an account in the name of the 15 donor, another adult (an adult member of the minor's family, 16 a guardian of the minor), or a trust company, followed in 17 substance by the words+ "as custodian for .... (name of 18 minor) under the Montana Uniform Gifts to Minors Act". 19 (2) Any gift made in a manner prescribed in subsection 20 (1) may be made to only one minors and only one person may be the custodian. 21 22 (3) A donor who makes a gift to a minor in a manner

(5) a donor who makes a gift to a minor in a manner
prescribed in subsection (1) shall promptly do all things
within his power to put the subject of the gift in the
possession and control of the custodian, but neither the

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donor's failure to comply with this subsection nor his
 designation of an ineligible person as custodian nor
 renunciation by the person designated as custodian affects
 the consummation of the gift.

(4) If the subject to of the gift is a life insurance 5 policy or annuity contract, an adult person may, during his 6 lifetime, make a gift thereof to a person who is a minor on 7 the date of the gift by causing the ownership of the policy 8 or contract to be registered with the issuing insurance 9 company in the name of the donor, another adult, an adult 10 member of the minor's family, a quardian of the minor, or a 11 12 trust company, followed in substance by the words+ "as 13 custodian for ..... (name of minor) under the Montana Uniform Gifts to Minors Act"." 14

15 Section 33. Section 72-26-402. MCA. is amended to 16 read:

#72-26-402. Designation of successor by custodian or 17 minor. (1) A custodian may designate his successor by 18 19 executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument 20 of designation may but need not contain the resignation of 21 the custodian. If the custodian does not so designate his 22 successor before he dies or becomes legally incapacitated Z3 and the minor has attained the age of 14 years, the minor 24 designate a successor custodian by executing an 25 mav.

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1 instrument of designation before a subscribing witness other

2 than the successor.

3 (2) The designation of a successor custodian as 4 provided in subsection (1) takes effect as to each item of 5 the custodial property when the custodian resigns, dies, or 6 becomes legally incapacitated and the custodian or his legal 7 representative:

(a) causes the item, if it is a security which is 8 9 custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with 10 11 the issuing insurance company in the case of a life 12 insurance policy or annuity contract, in the name of the 13 successor custodiany followed in substance by the words# "as 14 custodian for .... (name of minor) under the Montana 15 Uniform Gifts to Minors Act"; and

16 (b) delivers or causes to be delivered to the 17 successor custodian any other item of the custodial 18 property, together with the instrument of designation of the 19 successor custodian or a true copy thereof and any 20 additional instruments required for the transfer thereof to 21 the successor custodian.

(3) A custodian who executes an instrument of
designation of his successor containing the custodian's
resignation as provided in subsection (1) shall promptly do
all things within his power to put each item of the

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1 custodial property in the possession and control of the 2 successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally 3 4 incapacitated shall promotly do all things within his power 5 to put each item of the custodial property in the possession 6 and control of the successor custodian named in an 7 instrument of designation executed as provided in subsection 8 (1) by the custodian or, if none, by the minor if he has no 9 quardian and has attained the age of 14 years or in the 10 possession and control of the guardian of the minor if he 11 has a guardian. If the custodian has executed as provided in 12 subsection (1) more than one instrument of designation, his 13 legal representative shall treat the instrument dated on an 14 earlier date as having been revoked by the instrument dated 15 on a later date.

16 (4) If a person designated as custodian or as 17 successor custodian by the custodian as provided in 18 subsection (1) is not eligible, dies, or becomes legally 19 incapacitated before the minor attains the age of 1d years 20 and if the minor has a quardian, the quardian of the minor 21 shall be successor custodian. If the minor has no guardian 22 and if no successor custodian who is eligible and has not 23 died or become legally incapacitated has been designated as 24 provided in subsection (1), a donor  $\alpha$  his legal 25 representative, the legal representative of the custodian,

or an adult member of the minor\*s family may petition the
 court for the designation of a successor custodian.\*
 Section 34. Section 72-30-204. MCA. is amended to

4 read:

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#72-30-204. Allowable investments -- retention of 5 property. In addition to an investment otherwise authorized 6 by law or by the applicable gift instrument and without 7 restriction to investments a fiduciary may make, the 8 governing board, subject to any specific limitations set 9 forth in the applicable gift instrument or if in the 10 11 applicable law other than law relating to investment by a fiduciary, may: 12

(1) invest and reinvest an institutional fund in any 13 14 real or personal property deemed advisable by the governing 15 board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other 16 17 securities of profit or nonprofit corporationsy: shares in obligations of associations, partnerships, or 18 or 19 individualsy: and obligations of any government or subdivision or instrumentality thereof; 20

(2) retain property contributed by a donor to an
institutional fund for as long as the governing board deems
advisable;

(3) include all or part of any institutional fund inany pooled or common fund maintained by the institution; and

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1 (4) invest all or any part of an institutional fund in 2 any other pooled or common fund available for investment. including shares or interests in regulated investment 3 4 companies, mutual funds, common trust funds, investment 5 partnerships, real estate investment trusts, or similar 6 organizations in which funds are commingled and investment 7 determinations are made by persons other than the governing 8 board."

9 Section 35. Repealer. Sections 91-104.1, 91-104.2,
10 91-219, 91-519, 91-523, 91-4312, and 93-1401-3, R.C.M.
11 1947, are repealed.

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Montana Legislative Council

State Capitol Helena, 59601

(406) 449-3064

LC 0011

1979 Legislature Code Commissioner Bill - Summary

HOUSE Bill No. 41

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. <u>72-2-305</u>. In (4), changed "the preceding section" to "subsection (3)" to correct obvious inadvertent error. The preceding section provides the form for a selfproved will and has nothing to do with void devises, while subsection (3) does relate to void devises and was obviously the intended reference. Subsections (3) and (4) are not part of the Uniform Probate Code.

Section 2. 72-3-309. Added "and" following "state" in (1) to clarify and make grammatically correct.

Section 3. <u>72-3-803</u>. Relocated "With the exception of claims for taxes and claims founded on tort" to the beginning of both subsection (1) and subsection (2) in order to clarify the exceptions. As presently written, language in both subsections relating to whether claims arose before or after death appears to be part of the exceptions, which creates a conflict between subsections (1) and (2) since such language represents the only distinction between the two subsections as to the types of claims to which each subsection applies. If such language is part of the exceptions, the result is that two different periods of limitations apply to the same type of claim. The amendment makes clear that such language is not part of the exceptions and thus avoids the possible conflict.

The exceptions were added in the Montana enactment and a reading of the corresponding U.P.C. section supports the interpretation which is the basis of this amendment. 1C 0011

Section 4. <u>72-3-916</u>. Before insertion of the bracketed material by the code commissioner, this section referred to 91A-7-303, F.C.M., representing U.P.C. 7-303 which was not adopted in Montana. Amended to delete bracketed material and incorporate appropriate language from 7-303 of U.P.C. as promulgated by the National Conference of Commissioners on Uniform State Laws.

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Section 5. <u>72-5-414</u>. The corresponding section in the U.P.C. as promulgated by the National Conference of Commissioners includes a second sentence relating to appointment of a successor conservator. In the Montana enactment, this sentence was apparently inadvertently omitted, rendering the last sentence nonsensical. Amended to insert omitted sentence.

Section 6. <u>72-5-422</u>. In (1)(c), added "or" to clarify and make grammatically correct.

Section 7. <u>72-5-425</u>. In (1), changed "...vests in his title..." to "...vests in <u>him</u> title..." to clarify and correct obvious error.

Section 8. 72-10-101. This section, formerly 91-4301, R.C.M., contained an internal reference to "this title" which was changed through routine recodification to "chapters 10 through 16" of new Title 72, MCA, which chapters comprise old Title 91, R.C.M. provisions. Amended to change back to "this title" so as to reflect obvious intent to refer to all presently applicable law on estates.

Section 9. <u>72-10-104</u>. Changed "insane" to "mentally ill" and "infant" to "minor", Title 53, chapter 21 and 72-5-409.

Section 10.  $\underline{72-10-107}$ . See explanation for section 8. Section 11.  $\underline{72-10-109}$ . See explanation for section 8. Section 12.  $\underline{72-10-110}$ . See explanation for section 8. Section 13.  $\underline{72-10-111}$ . See explanation for section 8. Section 14.  $\underline{72-10-202}$ . See explanation for section 8. Section 15.  $\underline{72-10-202}$ . See explanation for section 8.

Section 15. <u>72-12-802</u>. Changed "herein" to "in this title". Same rationale as for section 8.

Section 16. <u>72-14-101</u>. Deleted "and it provides the exclusive method for vesting title in the state of Montana of all unclaimed property". This statement conflicts with Title 70, chapter 9 (Uniform Disposition of Unclaimed Property Act.).

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Section 17. 72-14-102. Changed "other proceeding in the nature of office found" to "other similar proceeding" to update archaic usage.

Section 18, 75-15-101. See explanation for section 8.

Section 19. 72-16-201. Changed "legal department of the state" to "department of justice" to comport with present usage and 2-15-2001. Also, reworded to correct awkward language.

Section 20.  $\underline{72-16-208}$ . See explanation for section 19.

Section 21.  $\underline{72-16-210}$ . See explanation for section 19.

Section 22. <u>72-16-306</u>. To clarify application, changed "this section" and "this act" (2 places) to "parts 1 through 8". Also reworded for clarity.

Section 23. <u>72-16-312</u>. Subsections (1) and (2) are partially redundant but are not easily merged under normal recodification powers. Amended to avoid redundancy. Also, "municipal corporation" and "county, city, or town" are changed to "local government" to simplify without any change in meaning.

Section 24. <u>72-16-423</u>. The last sentence refers to "the bond authorized by 72-16-438", which section no longer provides for giving of bond but rather for department of revenue discretion. Changed "bond" to "permission for deferral of payment".

Section 25.  $\underline{72-16-437}$ . See explanation for section 24.

Section 26. 72-16-443. Added "the" preceding "state treasurer" to comport with the reality that there is only one state treasurer.

Section 27. <u>72-16-704</u>. Deleted "but no deduction shall be made for any federal estate...or transfer taxes paid to the United States". This language is in conflict with 72-16-308. The language at one time appeared in both 72-16-704 and 72-16-308. It was subsequently deleted from 72-16-704, but by apparent inadvertent omission was not deleted from 72-16-308. Further, this language is ignored by the Department of Revenue because it clearly creates an unreasonable classification (estates with property in 2 or more states) in contravention of the equal protection clause and the right of interstate travel. LC 0011

Section 28. <u>72-16-801</u>. Added "and" preceding "9" in lead-in for clarity and to make grammatically correct.

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Section 29. <u>72-16-906</u>. Changed "bureau of internal revenue" to "internal revenue service" and the last "department" to "agency" to conform to the present name of that federal agency.

Section 30. <u>72-20-409</u>. Changed "district" to "supreme" to correct apparent error causing ambiguity. Without amendment, the section, in context with prior sections, literally refers to appeal from district court to district court.

Section 31. 72-24-103. Amended to simplify cumbersome internal reference. The reference was intended to refer (for cross reference purposes) to the laws limiting accumulations and restraints on power of alienation and prescribing the period within which interests must vest. The amendment narrows the reference to relevant provisions.

Section 32. 72-26-201. Changed "(4) If the subject to the gift" to "(4) If the subject of the gift" to correct obvious error.

Section 33. 72-26-402. In (4), added ", the legal representative" following "representative". These words were inadvertently omitted from the Montana enactment of the Uniform Gifts to Minors Act and are necessary to the sense of the sentence.

Section 34. 72-30-204. Changed "if" to "in" in introductory sentence to correct obvious error.

Section 35. Repealer. (1) <u>91-104.1</u> and <u>91-104.2</u>, R.C.M. 1947 -- These sections, relating to construction and application, were dependent on 91-104 for any meaning. Section 91-104, relating to who may take by will, was repealed by Section 15, Chapter 263, Laws of 1975.

(2) 91-219, R.C.M. 1947 -- This section relates to the interpretation of words listed in 91-218. Section 91-218 was repealed by Section 10, Chapter 516, Laws of 1975.

(3) 91-519 and 91-523, R.C.M. 1947 -- These sections relate to the definition of "person" for purposes of and the disposition of money received under 91-520 through 91-522 (conditions on inheritance by aliens). Sections 91-520 through 91-522 were repealed by Section 2, Chapter 365, Laws of 1974.

(4) 91-4312, R.C.M. 1947 -- This section deals with the applicability of general procedural provisions to probate proceedings. Section 72-1-207 covers this same subject and in a much more up-to-date fashion.

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(5) 93-1401-3, R.C.M. 1947 -- This section requires wills to be in writing. It also requires that the will or secondary evidence of its contents be produced. These subjects are covered by 72-2-302, 72-3-203(1)(a), and 72-3-301(1)(c).

#### 46th Legislature

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HB 0041/02

### HB 0041/02

Approved by Committee on Judiciary

1	HOUSE BILL NO. 41
z	INTRODUCED BY MARKS
3	BY REQUEST OF THE CODE COMMISSIONER
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5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6	LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY
7	RELATIONSHIPS; AND REPEALING SECTIONS 91-104+1+ 91-104+2+
8	91-219, 91-519, 91-523, 91-4312, AND 93-1401-3, R.C.M.
9	1947 • *
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-2-305, MCA, is amended to read: M72-2-305. Who may witness -- effect of witness by beneficiary. (1) Any person generally competent to be a witness may act as a witness to a will.

16 (2) A will is not invalid because the will is signed
17 by an interested witness.

18 (3) All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

23 (4) If a witnessy to whom any beneficial devisey void 24 under the-preceding-section subsection (3) is madey would 25 have been entitled to any share of the estate of the

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testator if the testator had died intestate, such witness
 succeeds to so much of the share as would be distributed to
 him under intestate succession, not exceeding the devise or
 bequest made to him in the will."

5 Section 2. Section 72-3-309, MCA, is amended to read: 6 "72-3-309. Testimony of attesting witnesses in 7 contested cases -- presumptions for self-proved will. (1) If 8 evidence concerning execution of an attested will which is 9 not self-proved is necessary in contested cases, the 10 testimony of at least one of the attesting witnesses, if within the state and competent and able to testify, is 11 12 required. Due execution of an attested or unattested will 13 may be proved by other evidence.

14 (2) If the will is self-proved, compliance with 15 signature requirements for execution is conclusively 16 presumed and other requirements of execution are presumed, 17 subject to rebuttal, without the testimony of any witness, 18 upon filing the will and the acknowledgment and affidavits 19 annexed or attached thereto, unless there is proof of fraud 20 or forgery affecting the acknowledgment or affidavit."

21 Section 3. Section 72-3-803, MCA, is amended to read:
22 "72-3-803. Nonclaim -- limitations on presentation of
23 claims -- exceptions. (1) <u>With the exception of claims for</u>
24 <u>taxes and claims founded on torts All all claims against a</u>
25 decedent's estate with the exception of claims for taxes and

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1 claims-founded-on-tort which arose before the death of the decedent, including claims of the state and any subdivision 2 thereof, whether due or to become due, absolute or 3 contingent, liquidated or unliquidated, founded on contract 4 5 or other legal basis, if not barred earlier by other statute 6 of limitations, are barred against the estate, the personal 7 representative, and the heirs and devisees of the decedenty 8 unless presented as follows:

9 (a) within 4 months after the date of the first 10 publication of notice to creditors if notice is given in 11 compliance with 72-3-801ts providedy claims barred by the 12 nonclaim statute at the decedent's domicile before the first 13 publication for claims in this state are also barred in this 14 state; or

15 {b} within 3 years after the decedent's death if 16 notice to creditors has not been published.

17 (2) With the exception of claims for taxes and claims 16 founded on tort. All all claims against a decedent's estate 19 with-the-exception-of-claims-for-taxes-and-claims-founded-on 20 tort which arise at or after the death of the decedent. including claims of the state and any subdivision thereof. 21 22 whether due or to become due, absolute or contingent, 23 liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal 24 representative, and the heirs and devisees of the decedenty 25

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unless presented as follows: 1 (a) a claim based on a contract with the personal 2 representative, within 4 months after performance by the 3 personal representative is due; 4 (b) any other claim, within 4 months after it arises. 5 (3) Nothing in this section affects or prevents: 6 7 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or A (b) to the limits of the insurance protection only. 9 10 any proceeding to establish liability of the decedent or the personal representative for which he is protected by 11 12 liability insurance." 13 Section 4. Section 72-3-916. MCA. is amended to read: 14 #72-3-916. Distribution to trustee -- registration -bond. (1) Before distributing to a trustee, the personal 15 representative may require that the trust be registered, if 16 the state in which it is to be administered provides for 17 18 registrations and that the trustee inform in writing the 19 <u>current</u> beneficiaries es-provided-in-fsection-7-303-of-the 20 Uniform--Probate--Eode--as--promutgated--by---the---nationat conference--of--commissioners-on-uniform-state-laws] and ... if 21 22 possible, one or more persons who under 72-1-303 may 23 represent beneficiaries with future interests of his name

24 and address and provide each with a copy of the terms of the

25 trust\_which\_describe\_or\_affect\_his\_interest\_and\_with

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# 1 relevant\_information\_about\_the\_assets\_of\_the\_trust\_and\_the 2 particulars\_relating\_to\_the\_administration.

3 (2) If the trust instrument does not excuse the 4 trustee from giving bond, the personal representative may 5 petition the appropriate court to require that the trustee 6 post bond if he apprehends that distribution might 7 jeopardize the interests of persons who are not able to 8 protect themselves, and he may withhold distribution until 9 the court has acted.

10 (3) No inference of negligence on the part of the 11 personal representative shall be drawn from his failure to 12 exercise the authority conferred by subsections (1) and 13 (2)."

Section 5. Section 72-5-414, MCA, is amended to read: 14 #72-5-414, Resignation or removal of conservator for 15 cause -- successor conservator. The court may remove a 16 17 conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his deaths 18 resignation, or removal, the court may appoint another 19 conservator. A conservator so appointed succeeds to the 20 Z1 title and powers of his predecessor."

22 Section 6. Section 72-5-422+ MCA+ is amended to read:
23 #72-5-422. Power of court to authorize particular
24 protective arrangements or transactions without appointing
25 conservator. (1) If it is established in a proper proceeding

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that a basis exists as described in 72-5-409 for affecting the property and affairs of a person, the court without appointing a conservator may authorize, direct, or ratify

4 any transaction necessary or desirable to achieve any 5 security, service, or care arrangement meeting the 6 foreseeable needs of the protected person. Protective 7 arrangements include but are not limited to:

8 (a) payment. delivery. deposit. or retention of funds
9 or property;

10 (b) sale, mortgage, lease, or other transfer of 11 property;

12 (c) entry into an annuity contract, a contract for
13 life care, a deposit contract, <u>or</u> a contract for training
14 and education; or

(d) addition to or establishment of a suitable trust. 15 16 (2) When it has been established in a proper 17 proceeding that a basis exists as described in 72-5-409 for 18 affecting the property and affairs of a person, the court 19 without appointing a conservator may authorize, direct, or 20 ratify any contract, trust, or other transaction relating to 21 the protected person's financial affairs or involving his 22 estate if the court determines that the transaction is in 23 the best interests of the protected person.

24 (3) Before approving a protective arrangement or other
 25 transaction under this section, the court shall consider the

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1 interests of creditors and dependents of the protected S person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The 3 4 court may appoint a special conservator to assist in the 5 accomplishment of any protective arrangement or other 6 transaction authorized under this section who, shall-have 7 upon appointment, has the authority conferred by the order 8 and serve serves until discharged by order after report to 9 the court of all matters done pursuant to the order of 10 appointment."

11 Section 7. Section 72-5-425, MCA, is amended to read: #72-5-425. Title by appointment as conservator --12 13 appointment not transfer for certain purposes. (1) The appointment of a conservator vests in his him title as 14 trustee to all property of the protected person presently 15 16 held or thereafter acquired, including title to any property 17 theretofore held for the protected person by custodians or 18 attorneys-in-fact.

19 (2) The appointment of a conservator is not a transfer 20 or alienation within the meaning of general provisions of 21 any federal or state statute or regulation, insurance 22 policy, pension plan, contract, will, or trust instrument 23 imposing restrictions upon or penalties for transfer or 24 alienation by the protected person of his rights or 25 interest, but this section does not restrict the ability of

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persons to make specific provision by contract or
 dispositive instrument relating to a conservator."

Э Section 8. Section 72-10-101, MCA, is amended to read: "72-10-101. No requirement for orders and judgments to 4 5 recite jurisdictional facts. Orders and judgments made by 6 the court or judge in probate proceedings need not recite 7 the existence of facts or the performance of acts upon which the jurisdiction of the court or judge may depend, but it 8 9 shelf is only be necessary that they contain the matters ordered, except as otherwise provided in chapters-10-through 10 to this title." 11

12 Section 9. Section 72-10-104, MCA, is amended to read: #72-10-104. Service on guardian equivalent to service 13 14 on ward interested in estate. Whenever an-infant a minor. insome mentally\_ill, or incompetent person has a guardian of 15 16 his estate residing in this state, personal service upon the 17 quardian of any process, notice, or order of the court or 18 judge concerning the estate of a deceased person in which 19 the ward is interested is equivalent to service upon the ward, and it-is-the-duty-of the guardian to shall attend to 20 21 the interests of the ward in the matter. Such guardian may 27 also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind 23 24 might do." 25 Section 10. Section 72-10-107. MCA: is amended to

Section ID+ Section (2-10-10)+ MCK+ is amended to

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1 read: Ł read: #72-10-107. Proceeding in chambers -- jury trial. (1) 2 "72-10-111. Costs -- discretion of court in ordering 2 All orders mentioned in chapters-t0-through--t6 this\_title payment. When it is not otherwise prescribed in chapters--10 ٦ 3 and all proceedings in matters of probate may be made or 4 through--16 this title, the district court or supreme court 4 5 heard either before the court or the judge thereof in on appeal may, in its discretion, order costs to be paid by 5 6 chambers. 6 any party to the proceedings or out of the assets of the (2) When a jury is needed, the court or judge may 7 7 estate, as justice may require. Execution for costs may order the trial to take place in court as provided in Title 8 issue out of the district court." 8 9 25.\* Section 14. Section 72-10-202. MCA. is amended to 9 10 Section 11. Section 72-10-109, MCA, is amended to 10 read: 11 read: 11 #72-10-202. Recorded order to impart notice from date "72-10-109. Citation -- how issued. The citation may 12 12 of filing. When it is provided in chapters-10-through-16 be issued by the clerk, upon the application of any party, 13 13 this title that any order of the court or judge or a copy without an order of the judge, except in cases in which such thereof must be recorded in the office of the county clerk. 14 14 order is expressly required by the provisions of chapters-10 15 15 notice of its contents, from the time of filing the-same it through-16-expressly-required this title." 16 16 for records notice is imparted to all persons--of-the Section 12. Section 72-10-110. MCA, is amended to contents-thereof." 17 17 18 Section 15. Section 72-12-802, MCA, is amended to 18 read: 19 \*72-10-110. Citation -- how and when served. (1) The 19 read: citation must be served in the same manner as a summons in a 20 \*72-12-802. Time limitations -- effect of vacancy in 20 civil action. 21 21 administration. The time during which there shall-be is a (2) When no other time is specifically prescribed in 22 vacancy in the administration must is not be included in any 22 23 chopters--10-through-16 this\_title, citations must be served 23 limitations herein prescribed in this title." at least 5 days before the return day thereof." 24 Section 16. Section 72-14-101, MCA, is amended to 24 25 read: 25 Section 13. Section 72-10-111, MCA, is amended to

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#72-14-101. Short title. Parts 1 through 3 of this
 chapter are to be known as the "Escheated Property Act"v-and
 it--provides--the--exclusive-method-for-vesting-title-in-the
 state-of-Montone-of-all-unclaimed-property."

5 Section 17. Section 72-14-102, MCA, is amended to 6 read:

7 \*72-14-102. when title to escheated property vests in 8 state. (1) Whenever the title to any property. either real 9 or personal or mixed, fails for any reason, including want 10 of heirs or next of kine such title shall-vest vests in the state of Montana immediately upon the death of the owner 11 12 without an inquest or other similar proceeding in-the-nature 13 of-office-foundy and there shall-be is no presumption that such owner died leaving heirs or next of kin. 14

15 (2) In relation to property other than estates, title shell-be is presumed to have failed whenever the owner. 16 17 beneficial owner, or person entitled to any such property 18 within this state has-been-or-shall-be--and--remains 19 unknown for a period of 20 successive years, and during such 20 period whenever the whereabouts of such owner, beneficial 21 owner, or persons-has-been-or-shall--be--and--remain person 22 remains unknown and during such period whenever any personal 23 property wherever situated has-been-or-shall-be-and-remain 24 remains unclaimed, then in such event such personal property shall-escheat escheats to the state." 25

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1 Section 18. Section 72-15-101, MCA, is amended to 2 read:

3 "72-15-101. Uther provisions to supplement chapter.
4 When no direction is given in this chapter for the
5 government or guidance of a public administrator in the
6 discharge of his duties or for the administration of an
7 estate in his hands. the provisions of chapters-10-through
8 He this title must govern."

9 Section 19. Section 72-16-201. NCA. is amended to 10 read:

#72-16-201. Powers of department generally -- duty to 11 12 supervise administration of tax laws -- reports. (1) The department of revenue in the conduct of inheritance tax 13 14 affairs sholl-have has the same and--similar powers and 15 authority for gathering information and making 16 investigations as is conferred by law on the department in 17 the performance of its other duties.

18 (2) it--shail--be--the--duty--of-the Ibe department to 19 shall supervise the administration of and-to-investigate-and 20 cause--to--be--investigated--the---administration---of the 21 inheritance tax laws and investigate such particular estates 22 to which the inheritance tax laws apply throughout the 23 various counties of the state and to cause to be made and 24 filed in its office reports of such investigation investigations, together with specific information and facts 25

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as to particular estates, that may seem to require special
 consideration and attention by the legal department of the
 state justice; but no information so acquired shall may. in
 advance of legal action. be disclosed to anyone except
 proper officials and persons interested in such estate."
 Section 20. Section 72-16-208. MCA. is amended to

and a second second

7 read:

#72-16-208. Powers and duties of department as to 8 nonresident estates. The department of revenue shall also 9 gather information and make investigations and reports 10 concerning the estates of nonresident decedents within the 11 provisions of the inheritance tax laws and shall especially 12 investigate the probate and other records for such probable 13 estates without the state and report thereon from time to 14 time to the legal department of the-state justice and to the 15 proper district court for appropriate legal actionvi but no 16 information so acquired shell may, in advance of legal 17 action, be disclosed to anyone except proper officials and 18 persons interested in such estate." 19

20 Section 21. Section 72-16-210, MCA, is amended to 21 read:

22 #72-16-210. Juty of attorney----general justice 23 <u>department</u>. It-shell-be-the-duty-of-the-legel <u>The</u> department 24 of the--state--to justice\_shall carry out and enforce the 25 recommendations and directions of the department of revenue

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in all matters pertaining to the conduct of inheritance tax
 affairs."

3 Section 22. Section 72-16-306, MCA, is amended to 4 read:

#72-16-306. Recording date prima facie date of 5 transfer -- transfers recorded after death. \*\*\*--transfers 6 7 Recorded papers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within 8 the provisions of fthis-section]-shall-be parts 1 through 8 9 are prime facie proof, for the purposes of fthis-act; parts 10 11 1 through 8. to-have-been that it was made as of the date upon which the such papers evidencing-such-transfer-are were 12 13 recordedy. and-all Any such transfers transfer, if recorded 14 after the death of the person or persons making such transfer, whatever the form of such transfer, shall-be 15 deemed is considered, for the purposes of taxation under the 16 17 provisions of Fthis-eetl parts 1 through 8+ to have been 18 made by will."

19 Section 23. Section 72-16-312, MCA, is amended to 20 read:

21 \*72~16-312• Exemption -- transfers for charitable or 22 public purposes• (1) The following transfers are totally 23 exempt:

24 (a) all property transferred to the state or any of ^
 25 its institutions or to municipal-corporations local

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1 governments within the state for strictly countyv--cityv
2 townv--or--municipal local\_government\_or\_other\_public
3 purposes;

4 (b) all property transferred to any society 5 corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and 6 7 operated exclusively for religious, charitable, scientific, R literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private 9 10 stockholder or individual and no substantial part of the 11 activities of which is carrying on propaganda or otherwise 12 attempting to influence legislation, if any of the following 13 conditions is present:

14 (i) the society, corporation, institution, foundation,
15 trust, or association is organized solely for religious,
16 charitable, scientific, literary, or educational purposes
17 under the laws of this state or of the United States;

18 (ii) the property transferred is limited for use within19 this state;

(iii) the society, corporation, institution,
foundation, trust, or association is organized or existing
under the laws of another state of the United States or of a
foreign state or country and at the date of the decedent's
death any one of the following conditions existed:

25 (A) the other state, foreign state, or foreign country

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did not impose a legacy. Succession. or death tax of any
 character in respect to property transferred to a similar
 society. corporation. institution. foundation. trust. or
 association organized or existing under the laws of this
 state;

6 (B) the laws of the other state, foreign state, or 7 foreign country contained a reciprocal provision under which R property transferred to a similar society. institution. 9 foundation, trust, or association organized or existing 10 under the laws of another state of the United States or 11 foreign state or country was exempt from legacy, succession, 12 or death taxes of every character, if the other state of the 13 United States or foreign state or country allowed a similar 14 exemption in respect to property transferred to a similar 15 society, institution, foundation, trust, or association organized or existing under the laws of another state of the 16 17 United States or foreign state or country;

18 (C) the society, corporation, institution, foundation, 19 trust, or association owns or operates a hospital for 20 crippled children within the United States, primarily 21 practicing orthopedics, to which crippled or afflicted 22 children from the state of Montana are without 23 discrimination gratuitously admitted and treated and the 24 property transferred is limited for use at such hospital. 25 (2) The tax imposed by 72-16-301 does not apply to

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transfers to the state-of-Montana-or-ony-of-its-institutions 1 or-to-countyy-towny-or--municipal--corporations--within--the 2 state--for-strictly-countyy-towny-municipaly-or-other-public з surpases-and corporations of this state organized under its 4 laws or voluntary associations, organized solely for 5 religious, charitable, or educational purposes, which shall 6 use the property so transferred exclusively for the purposes 7 of their organization within the state." 8

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9 Section 24. Section 72-16-423. MCA. is amended to 10 read:

#72-16-423. Court order to be delivered and taxes paid 11 12 before final judgment in estate. A copy of the court order referred to in 72-16-422 shall be delivered or mailed to the 13 county treasurer, the administrator or executor, and the 14 department of revenue, and no final judgment shall may be 15 16 entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed and 17 receipts are filed with such the court showing the payment 18 of all such taxes or proof is filed showing that the bond 19 permission for deferral of payment authorized by 72-16-438 20 has been given." 21

22 Section 25. Section 72-16-437. MCA. is amended to 23 read:

24 \*72-16-437. Personal representative not entitled to 25 closing unless tax paid or bond filed. No personal

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1 representative or trustee shall-be is entitled to a final 2 accounting of an estate in settlement of which a tax is due 3 under the provisions of parts 1 through 8 unless he shall 4 produce produces such receipt or a certified copy thereof or 5 unless e--bond--shall--have--been--filed--as--prescribed--by 6 permission\_for\_deferral\_of\_payment\_has\_been\_granted\_as 7 provided\_in 72-16-438-\*

8 Section 26. Section 72-16-443, MCA, is amended to 9 read:

10 \*72-16-443. Collection of unpaid taxes. (1) If any 11 county treasurer, the state treasurer, or the department of 12 revenue shell-heve has reason to believe that any tax is due 13 and unpaid under the provisions of parts 1 through 8, after 14 the refusal or neglect of any person liable therefor to pay the same, he or it shall notify the attorney general in 15 16 writing of such failure or neglecty: and the attorney 17 general. if he have has probable cause to believe that such 18 tax is due and unpaid, shall apply to the district court for 19 a citation citing the person liable to pay such tax to 20 appear before the court on the day specified, not more than 3 months from the date of such citation, and show cause why 21 22 the tax should not be paid.

(2) The judge of the district court, upon such
application and whenever it shell-appear appears to him that
any such tax accruing under parts 1 through 8 has not been

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paid as required by law, shall issue such citationvs end-the
 <u>Ihe</u> service of such citation and the time, manner, and proof
 thereof and the hearing and determination thereof shall
 conform as near as may be to the provisions of the laws
 governing probate practice of this state.

6 (3) Whenever it shall-appear appears that any such tax 7 is due and payable and the payment thereof cannot be 8 enforced under the provisions of parts 1 through 8 in said 9 such district court, the person or corporation from whom the 10 same is due is hereby made liable to the state for the 11 amount of such taxy: and it--shail--be--the--duty--of the 12 attorney general, in the name of the state, to shall sue for 13 and enforce the collection of such tax, and it-is-made-the 14 dety-of the county attorney of the county to shall appear for and act on behalf of any county treasurery who shall-be 15 16 is cited to appear before any district court under the 17 provisions of parts 1 through 8."

18 Section 27. Section 72-16-704, MCA, is amended to 19 read:

20 "72-16-704. Apportionment of deductions when property 21 partly within and partly without the state. Whenever a tax 22 may-be is due from the estate or the beneficiaries thereins 23 of any resident or nonresident decedent upon the transfer of 24 any property, when the property or the estate left by such 25 decedent is partly within and partly without this state, or

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1 upon any stocks, bonds, mortgages, or other securities representing property or estate partly within and partly 2 3 without this state, any beneficiary of such estate shall--be 4 is entitled to deduct only his proper proportion of that 5 portion of the total debts and expenses of administration ٨ which the gross estate in Montana or within its jurisdiction 7 bears to the gross estate both within and without this R state-but-no--deduction--shall--be--made--for--ony--federal 9 10 the--United--States. As to his Montana exemption, each 11 beneficiary shall-be is entitled to deduct only that portion 12 represented by the ratio between his interest in the 13 property in this state or within its jurisdiction and his 14 interest in the entire estate." 15 Section 28. Section 72-16-801. MCA. is amended to 16 read: 17 #72-16-801. Exemption of intangible personal property 18 of nonresident decedent -- when. The tax imposed by parts 3.

19 7. and 9. and this part. in respect of personal property.
20 except tangible personal property having an actual situs in
21 this state. shall is not be payable if:
22 (1) the decedent is a resident of a state or territory

23 of the United States which at the time of the transfer did 24 not impose a transfer tax or death tax of any character in 25 respect of personal property of residents of this state,

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except tangible personal property having an actual situs in
 that state or territory; or

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(2) the laws of the state or territory of residence of 3 the nonresident decedent at the time of the transfer 4 contained a reciprocal provision under which nonresidents of 5 that state were exempted from transfer tex taxes or death 6 7 taxes of every character in respect of personal property. except tangible personal property having an actual situs in 8 that state, providing provided the state or territory of 9 residence of such nonresident decedent allowed a similar 10 exemption to residents of this state." 11

12 Section 29. Section 72-16-906. MCA. is amended to 13 read:

#72-16-906. Required filings. Ht-shell-be-the-duty--of 14 the The personal representative of the estate of any 15 decedent whose estate may-be is subject to the payment of a 16 United States estate tax to shall file duplicates of the 17 United States estate tax returns with the district court of 18 the county in which such estate is being probated and with 19 20 the department of revenue. He shall also file with such court and with the department a certificate or other 21 evidence from the bureau-of internal revenue service showing 22 the amount of the United States estate tax as computed by 23 that depertment agency." 24

25 Section 30. Section 72-20-409, MCA, is amended to

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1 read:

2 "72-20-409. Appeal. The decree so rendered shall-be is
3 a final order from which any party in interest may appeal as
4 in civil actions to the district supreme court of the state
5 of Montana."

6 Section 31. Section 72-24-103, MCA, is amended to 7 read:

8 #72-24-103. For what purposes express trusts may be
 9 created. Express trusts may be created for any of the
 10 following purposes:

(1) to sell real property and apply or dispose of the
 proceeds in accordance with the instrument creating the
 trust;

14 (2) to mortgage or lease real property for the benefit
15 of annuitants or other legatees or for the purpose of
16 satisfying any charge thereon;

17 (3) to receive the rents and profits of real property 18 and pay them to or apply them to the use of any person. 19 whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of 20 21 such person or for any shorter term, subject to the-rules-of 22 70-1-4101-Fitle-70y-chapter-15y-part-21--Fitle--70y--chapter 23 24 chapter 1, part 4; or

25 (4) to receive the rents and profits of real property

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1 and to accumulate the same for the purposes and within the limits prescribed by the-sections-above-enumerated <u>Title 70.</u> 2 3 chapter\_ls\_part\_4.\* 4 Section 32. Section 72-26-201, MCA, is amended to 5 read: 6 "72-26-201. Manner of making gift. (1) An adult person 7 may, during his lifetime, make a gift of a security or money 8 to a person who is a minor on the date of the gift: 9 (a) if the subject of the gift is a security in 10 registered form, by registering it in the name of the donor, another adult person (an adult member of the minor's family, 11 12 a guardian of the minor), or a trust company, followed in substance by the words+ "as custodian for ... (name of 13 14 minor) under the Montana Uniform Gifts to Minors Act"; 15 (b) if the subject of the gift is a security not in 16 registered form, by delivering it to an adult person other 17 than the donor (an adult member, other than the donor, of 18 the minor's family, a quardian of the minor) or a trust 19 company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person 20 21 designated as custodian:

22 #GIFT UNDER THE NONTANA UNIFORM GIFTS TO MINORS ACT

I, .... (name of donor) hereby deliver to .... (name
of custodian) as custodian for .... (name of minor) under
the Montana Uniform Gifts to Minors Act, the following

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1 security(ies):

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2 (insert insert an appropriate description of the security or securities delivered sufficient to identify it 3 4 or theaw) ..... (signature of donor) 5 6 ..... (name of custodian) hereby acknowledges receipt 7 of the above-described above-described security(ies) as custodian for the above minor under the Montana Uniform A 9 Gifts to Minors Act. 10 Dated: ..... 11 12 (c) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial 13 14 institution for a credit to an account in the name of the donor, another adult (an adult member of the minor's family, 15 a guardian of the minor), or a trust company, followed in 16 17 substance by the words+ "as custodian for .... (name of minor) under the Montana Uniform Gifts to Minors Act\*. 18 19 (2) Any gift made in a manner prescribed in subsection 20 (1) may be made to only one minors and only one person may 21 be the custodian. 22 (3) A donor who makes a gift to a minor in a manner 23 prescribed in subsection (1) shall promptly do all things 24 within his power to put the subject of the gift in the 25 possession and control of the custodian, but neither the

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donor's failure to comply with this subsection nor his
 designation of an ineligible person as custodian nor
 renunciation by the person designated as custodian affects
 the consummation of the gift.

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(4) If the subject to of the gift is a life insurance 5 policy or annuity contract, an adult person may, during his 6 7 lifetime, make a gift thereof to a person who is a minor on the date of the gift by causing the ownership of the policy 8 or contract to be registered with the issuing insurance 9 company in the name of the donor, another adult, an adult 10 member of the minor's family, a guardian of the minor, or a 11 trust company, followed in substance by the words+ "as 12 custodian for .... (name of minor) under the Montana 13 Uniform Gifts to Minors Act\*.\* 14

15 Section 33. Section 72-26-402, MCA. is amended to 16 read:

#72-26-402. Designation of successor by custodian or 17 minor. (1) A custodian may designate his successor by 18 executing and dating an instrument of designation before a 19 subscribing witness other than the successor; the instrument 20 of designation may but need not contain the resignation of 21 the custodian. If the custodian does not so designate his 27 successor before he dies or becomes legally incapacitated 23 and the minor has attained the age of 14 years, the minor 24 may designate a successor custodian by executing an 25

instrument of designation before a subscribing witness other
 than the successor.

3 (2) The designation of a successor custodian as
4 provided in subsection (1) takes effect as to each item of
5 the custodial property when the custodian resigns, dies, or
6 becomes legally incapacitated and the custodian or his legal
7 representative:

(a) causes the item, if it is a security which is 8 9 custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with 10 11 the issuing insurance company in the case of a life 12 insurance policy or annuity contract, in the name of the 13 successor custodian, followed in substance by the words+ "as 14 custodian for .... (name of minor) under the Montana 15 Uniform Gifts to Minors Act"; and

16 (b) delivers or causes to be delivered to the 17 successor custodian any other item of the custodial 18 property, together with the instrument of designation of the 19 successor custodian or a true copy thereof and any 20 additional instruments required for the transfer thereof to 21 the successor custodian.

22 (3) A custodian who executes an instrument of 23 designation of his successor containing the custodian\*s 24 resignation as provided in subsection (1) shall promptly do 25 all things within his power to put each item of the

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1 custodial property in the possession and control of the 2 successor custodian named in the instrument. The legal 3 representative of a custodian who dies or becomes legally 4 incapacitated shall promptly do all things within his power 5 to put each item of the custodial property in the possession 6 and control of the successor custodian named in an 7 instrument of designation executed as provided in subsection (1) by the custodian or, if none, by the minor if he has no 8 9 quardian and has attained the age of 14 years or in the 1.9 possession and control of the quardian of the minor if he has a guardian. If the custodian has executed as provided in 11 12 subsection (1) more than one instrument of designation, his 13 legal representative shall treat the instrument dated on an 14 earlier date as having been revoked by the instrument dated 15 on a later date.

(4) If a person designated as custodian or as 16 successor custodian by the custodian as provided in 17 18 subsection (1) is not eligible, dies, or becomes legally 19 incapacitated before the minor attains the age of 18 years and if the minor has a quardian, the quardian of the minor 20 shall be successor custodian. If the minor has no guardian 21 and if no successor custodian who is eligible and has not 22 23 died or become legally incapacitated has been designated as 24 provided in subsection (1), a donory or his legal 25 representative<u>, the legal representative</u> of the custodian,

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or an adult member of the minor's family may petition the court for the designation of a successor custodian."

3 Section 34. Section 72-30-204. MCA, is amended to 4 read:

5 "72-30-204. Allowable investments -- retention of 6 property. In addition to an investment otherwise authorized by law or by the applicable gift instrument and without 7 restriction to investments a fiduciary way make. the 8 9 governing board, subject to any specific limitations set 10 forth in the applicable gift instrument or if in the 11 applicable law other than law relating to investment by a 12 fiduciary, may:

13 (1) invest and reinvest an institutional fund in any 14 real or personal property deemed advisable by the governing 15 board, whether or not it produces a current return, 16 including mortgages, stocks, bonds, debentures, and other 17 securities of profit or nonprofit corporationsyi shares in 18 obligations of associations, partnerships, or or 19 individuals vi and obligations of any government or 20 subdivision or instrumentality thereof;

(2) retain property contributed by a domor to an
institutional fund for as long as the governing board deems
advisable;

24 (3) include all or part of any institutional fund in
25 any pooled or common fund maintained by the institution; and

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1 (4) invest all or any part of an institutional fund in 2 any other pooled or common fund available for investment. 3 including shares or interests in regulated investment companies, mutual funds, common trust funds, investment 4 partnerships, real estate investment trusts, or similar 5 organizations in which funds are commingled and investment 6 determinations are made by persons other than the governing 7 board." 8

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9 Section 35. Repeater. Sections 91-104.1, 91-104.2,
10 91-219, 91-519, 91-523, 91-4312, and 93-1401-3, R.C.M.
11 1947, are repeated.

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HOUSE BILL NO. 41 1 INTRODUCED BY MARKS 2 BY REQUEST OF THE CODE COMMISSIONER ٦ 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 6 LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCTARY RELATIONSHIPS: AND REPEALING SECTIONS 91-104-1, 91-104-2, 7 91-219, 91-519, 91-523, AND 91-4312, AND--93-1401-34 R.C.M. 8 9 1947." 10 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NONTANA: 12 Section 1. Section 72-2-305: MCA, is amended to read: #72-2-305. Who may witness -- effect of witness by 13 beneficiary. (1) Any person generally competent to be a 14 15 witness may act as a witness to a will. 16 (2) A will is not invalid because the will is signed 17 by an interested witness. (3) All beneficial devises made in any will to a 13 subscribing witness thereto are void unless there are two 19 20 other competent subscribing witnesses to the same, but a 21 mere charge on the estate of the testator does not prevent 22 his creditors from being competent witnesses to his will. 23 (4) If a witnessy to whom any beneficial devisey void 24 under the preceding-section subsection [3] is made would 25 have been entitled to any share of the estate of the

testator if the testator had died intestate, such witness
 succeeds to so much of the share as would be distributed to
 him under intestate succession, not exceeding the devise or
 bequest made to him in the will."

5 Section 2. Section 72-3-309, MCA, is amended to read: ĸ "72-3-309. Testimony of attesting witnesses in 7 contested cases -- presumptions for self-proved will. (1) If evidence concerning execution of an attested will which is A not self-proved is necessary in contested cases, the 9 10 testimony of at least one of the attesting witnesses, if 11 within the state and competent and able to testify, is required. Due execution of an attested or unattested will 12 13 may be proved by other evidence.

14 (2) If the will is self-proved, compliance with 15 signature requirements for execution is conclusively 16 presumed and other requirements of execution are presumed. 17 subject to rebuttal, without the testimony of any witness, 18 upon filing the will and the acknowledgment and affidavits 19 annexed or attached thereto, unless there is proof of fraud 20 or forgery affecting the acknowledgment or affidavit."

 21
 Section 3. Section 72-3-803. MCA, is amended to read:

 22
 M72-3-803. Nonclaim -- limitations on presentation of

 23
 claims -- exceptions. (1) <u>With the exception of claims for</u>

 24
 taxes\_and\_claims\_founded\_on\_torts All all claims against a

 25
 decedent's estate with-the-exception-of-claims-for-taxes-and

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ł claims-founded-on-tort which arose before the death of the 2 decedent, including claims of the state and any subdivision 3 thereof, whether due or to become due, absolute or 4 contingent, liquidated or unliquidated, founded on contract 5 or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal 6 representative, and the heirs and devisees of the decedenty 7 8 unless presented as follows:

9 (a) within 4 months after the date of the first 10 publication of notice to creditors if notice is given in 11 compliance with 72-3-801<u>91</u> provided<del>y</del> claims barred by the 12 nonclaim statute at the decedent\*s domicile before the first 13 publication for claims in this state are also barred in this 14 state; or

15 (b) within 3 years after the decedent's death if 16 notice to creditors has not been published.

17 (2) <u>Hith the exception of claims for taxes and claims</u> 18 founded on tort: All claims against a decedent's estate with-the-exception-of-claims-for-taxes-and-claims-founded-on 19 20 tort which arise at or after the death of the decedent. including claims of the state and any subdivision thereof, 21 22 whether due or to become due, absolute or contingent, 23 liquidated or unliquidated, founded on contract or other 24 legal basis, are barred against the estate, the personal 25 representative, and the heirs and devisees of the decedenty

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unless presented as follows:

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2	(a) a claim based on a contract with the personal
3	representative: within 4 months after performance by the
4	personal representative is due;
5	(b) any other claim, within 4 months after it arises.
5	(3) Nothing in this section affects or prevents:
1	(a) any proceeding to enforce any mortgage, pledge, or
8	other lien upon property of the estate; or
9	(b) to the limits of the insurance protection only.
10	any proceeding to establish liability of the decedent or the
11	personal representative for which he is protected by
12	liability insurance."
13	Section 4. Section 72-3-916, MCA, is amended to read:
14	<pre>"72-3-916. Distribution to trustee registration</pre>
15	bond. (1) Before distributing to a trustee, the personal
16	representative may require that the trust be registered. if
17	the state in which it is to be administered provides fo
18	registration, and that the trustee inform $\underline{in}$ writing the
19	<u>Current</u> beneficiarles as-provided-in-faction-7-303-of-the
20	UniformProbateEodeaspromutgatedbythenational
21	conferenceofcommissioners-on-uniform-state-laws] <u>and*_if</u>
22	possibles one or more persons who under 72-1-303 may
23	represent_beneficiaries_with_future_interests_of_his_name
24	and_address_and_provide_eacb_with_a_copy_of_the_terms_of_the
25	trust_which_describe_or_affect_bis_interest_and_with

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particulars relating to the administration. 3 (2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may 4 5 petition the appropriate court to require that the trustee 6 post bond if he apprehends that distribution might 7 leopardize the interests of persons who are not able to 8 protect themselves, and he may withhold distribution until 0 the court has acted. (3) No inference of negligence on the part of the 10 personal representative shall be drawn from his failure to 11 12 exercise the authority conferred by subsections (1) and 13 (2) .\* Section 5. Section 72-5-414, MCA, is amended to read: 14

relevant information about the assets of the trust and the

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15 #72-5-414. Resignation or removal of conservator for 16 cause -- successor conservator. The court may remove a conservator for good cause, upon notice and hearing, or 17 18 accept the resignation of a conservator. After his deaths resignation, or removal, the court may appoint another 19 conservator. A conservator so appointed succeeds to the 20 21 title and powers of his predecessor."

Section 6. Section 72-5-422. MCA. is amended to read: 22 23 \*72-5-422. Power of court to authorize particular 24 protective arrangements or transactions without appointing 25 conservator. (1) If it is established in a proper proceeding

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that a basis exists as described in 72-5-409 for affecting 1 the property and affairs of a person, the court without 2 appointing a conservator may authorize, direct, or ratify 3 any transaction necessary or desirable to achieve any 4 5 security, service, or care arrangement meeting the 6 foreseeable needs of the protected person. Protective 7 arrangements include but are not limited to: 8 (a) payment, delivery, deposit, or retention of funds Q. or property: 10 (b) sale, mortgage, lease, or other transfer of 11 property; 12 (c) entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training 13 and education; or 14 15 (d) addition to or establishment of a suitable trust. 16 (2) when it has been established in a proper 17 proceeding that a basis exists as described in 72-5-409 for 18 affecting the property and affairs of a person, the court 19 without appointing a conservator may authorize, direct, or ratify any contract, trust, or other transaction relating to 20 21 the protected person's financial affairs or involving his 22 estate if the court determines that the transaction is in 23 the best interests of the protected person. 24 (3) Before approving a protective arrangement or other transaction under this section, the court shall consider the 25

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1 interests of creditors and dependents of the protected 2 person and, in view of his disability, whether the protected 3 person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the 4 5 accomplishment of any protective arrangement or other transaction authorized under this section who, shall-have 6 upon\_appointment: has the authority conferred by the order 7 and serve serves until discharged by order after report to А 9 the court of all matters done pursuant to the order of 10 appointment."

Section 7. Section 72-5-425, MCA, is amended to read: 11 \*72-5-425. Title by appointment as conservator --12 13 appointment not transfer for certain purposes. (1) The appointment of a conservator vests in his him title as 14 trustee to all property of the protected person presently 15 16 held or thereafter acquired, including title to any property 17 theretofore held for the protected person by custodians or 18 attorneys-in-fact.

19 (2) The appointment of a conservator is not a transfer 20 or alienation within the meaning of general provisions of 21 any federal or state statute or regulation, insurance 22 policy, pension plan, contract, will, or trust instrument 23 imposing restrictions upon or penalties for transfer or 24 alienation by the protected person of his rights or 25 interest, but this section does not restrict the ability of

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persons to make specific provision by contract or 1 dispositive instrument relating to a conservator." Ζ Section 8. Section 72-10-101, NCA, is amended to read: 3 #72-10-101. No requirement for orders and judgments to 4 recite jurisdictional facts. Orders and judgments made by 5 the court or judge in probate proceedings need not recite 6 the existence of facts or the performance of acts upon which 7 the jurisdiction of the court or judge may depend, but it 8 shall is only be necessary that they contain the matters 9

10 ordered, except as otherwise provided in chapters-10-through 11 16 this\_title.\*

Section 9. Section 72-10-104, MCA, is amended to read: 12 13 \*72-10-104. Service on guardian equivalent to service 14 on ward interested in estate. Whenever en-infant a minor+ 15 insame mentally\_ill, or incompetent person has a quardian of 16 his estate residing in this state, personal service upon the 17 guardian of any process, notice, or order of the court o judge concerning the estate of a deceased person in which 18 the ward is interested is equivalent to service upon the 19 20 ward. and it-is-the-duty-of the quardian to shall attend to 21 the interests of the ward in the matter. Such quardian may 22 also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind 23 24 might do."

25 Section 10+ Section 72-10-107+ MCA, is amended to

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#### 1 read: 1 2 "72-10-107. Proceeding in chambers -- jury trial. (1) 2 3 All orders mentioned in chapters-10-through--16 this title 3 and all proceedings in matters of probate may be made or 4 4 heard either before the court or the judge thereof in 5 5 chambers. 6 6 (2) When a jury is needed, the court or judge may 7 7 8 order the trial to take place in court as provided in Title 8 9 25." 9 10 Section 11. Section 72-10-109. MCA. is amended to 10 11 read: 11 12 "72-10-109. Citation -- how issued. The citation may 12 13 be issued by the clerky upon the application of any party, 13 14 without an order of the judge, except in cases in which such 14 order is expressly required by the provisions of chapters-i8 15 15 16 through-16-expressiv-required this title.\* 16 Section 12. Section 72-10-110, MCA, is amended to 17 17 19 read: 19 "72-10-110. Citation -- how and when served. (1) The 10 19 citation must be served in the same manner as a summons in a 20 20

(2) When no other time is specifically prescribed in
 chapters--10-through-16 this title, citations must be served
 at least 5 days before the return day thereof."

25 Section 13. Section 72-10-111. MCA. is amended to

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civil action.

read:

2 "72-10-111. Costs -- discretion of court in ordering 3 payment. When it is not otherwise prescribed in chapters--10 4 through--16 this\_title. the district court or supreme court 5 on appeal may. in its discretion. order costs to be paid by 6 any party to the proceedings or out of the assets of the 7 estate, as justice may require. Execution for costs may 8 issue out of the district court."

9 Section 14. Section 72-10-202, MCA, is amended to 10 read:

11 "72-10-202. Recorded order to impart notice from date 12 of filing. When it is provided in chepters-10-through-16 13 this title that any order of the court or judge or a copy 14 thereof must be recorded in the office of the county clerk. 15 notice of its contents, from the time of filing the-same it 16 for record, notice is imparted to all persons--of-the 17 contents-thereof."

19 Section 15. Section 72-12-802, MCA, is amended to 19 read:

20 "72-12-802. Time limitations -- effect of vacancy in
21 administration. The time during which there shall--be is a
22 vacancy in the administration must is not be included in any
23 limitations herein prescribed in this title."

24 Section 16. Section 72-14-101, MCA, is amended to 25 read:

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1 #72-14-101. Short title. Parts 1 through 3 of this 2 chapter are to be known as the "Escheated Property Act"y-and it--provides--the--exclusive-method-for-vesting-title-in-the 3 4 state-of-Montona-of-oll-unclaimed-property."

5 Section 17. Section 72-14-102. MCA. is amended to 6 read:

7 #72-14-102. When title to escheated property yests in 8 state. (1) Whenever the title to any property. either real 9 or personal or mixed, fails for any reason, including want 10 of heirs or next of kin, such title shall-vest yests in the 11 state of Montana immediately upon the death of the owner 12 without an inquest or other similar proceeding in-the-nature 13 of-office-foundy and there shall-be is no presumption that 14 such owner died leaving heirs or next of kin-

15 (2) In relation to property other than estates, title 16 shall-be is presumed to have failed whenever the owner. 17 beneficial owner, or person entitled to any such property 18 within this state hes-been-or-shell-be--end--remains 19 unknown for a period of 20 successive years, and during such 20 period whenever the whereabouts of such owner, beneficial 21 owner, or persons-hos-been-or-shall--be--and--remain person 22 remains unknown and during such period whenever any personal 23 property wherever situated hes-been-or-shall-be-and-remain 24 remains unclaimed, then in such event such personal property 25 shall-escheat escheats to the state."

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1 Section 18. Section 72-15-101, MCA, is amended to 2 read:

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3 #72-15-101. Gther provisions to supplement chapter. 4 When no direction is given in this chapter for the government or guidance of a public administrator in the 5 ۴ discharge of his duties or for the administration of an estate in his hands, the provisions of chapters-10-through 7 16 this title must govern." R

9 Section 19. Section 72-16-201. MCA, is amended to 10 read:

11 #72-16-201. Powers of department generally -- duty to 12 supervise administration of tax laws -- reports. (1) The 13 department of revenue in the conduct of inheritance tax affairs shall-have has the same and--similar powers and 14 15 outhority for gathering information and making 16 investigations as is conferred by law on the department in 17 the performance of its other duties.

18 (2) it--shall--be--the--duty--of-the Ihe department to 19 shall supervise the administration of and-to-investigate-and 20 cause--to--be--investigated--the---administration---of the 21 inheritance tax laws and investigate such particular estates 22 to which the inheritance tax laws apply throughout the 23 various counties of the state and to cause to be made and 24 filed in its office reports of such investigation investigations, together with specific information and tacts 25

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as to particular estates, that may seem to require special 1 consideration and attention by the PegaP department of the 2 state justice; but no information so acquired shall may, in 3 4 advance of legal action, be disclosed to anyone except 5 proper officials and persons interested in such estate."

6 Section 20. Section 72-16-208, MCA, is amended to 7 read:

8 #72-16-208. Powers and duties of department as to 9 nonresident estates. The department of revenue shall also 10 gather information and make investigations and reports 11 concerning the estates of nonresident decedents within the 12 provisions of the inheritance tax laws and shall especially investigate the probate and other records for such probable 13 14 estates without the state and report thereon from time to 15 time to the legal department of the state justice and to the proper district court for appropriate legal action; but no 16 17 information so acquired shall may, in advance of legal action, be disclosed to anyone except proper officials and 18 19 persons interested in such estate."

20 Section 21. Section 72-16-210, MCA, is amended to 21 read:

22 \*72-16-210. Duty of attorney----general iustice 23 department. ft-shell-be-the-duty-of-the-legel Ine department 24 of the--state--to justice\_shall carry out and enforce the 25 recommendations and directions of the department of revenue

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in all matters pertaining to the conduct of inheritance tax 1 affairs."

Section 22. Section 72-16-306, MCA, is amended to 1 read: 4

5 #72-16-306. Recording date prima facie date of 6 transfer -- transfers recorded after death. All--transfers 7 Recorded papers evidencing a transfer of property, real, personal, or mixed, or of any interest therein coming within A the provisions of fthis-section]-shall-be parts\_1\_through\_8 9 10 are prima facie proof, for the purposes of fthis-act] parts 1 through 8, to-have-been that it was made as of the date 11 12 upon which the such papers evidencing-such-transfer-are were recordedya and-all Any such transfers transfer, if recorded 13 14 after the death of the person or persons making such 15 transfer, whatever the form of such transfer, shall-be deemed is considered, for the purposes of taxation under the 16 17 provisions of <a href="http://www.en.words.com">this</a> been been 18 made by will."

19 Section 23. Section 72-16-312, MCA, is amended to 20 read:

\*72-16-312. Exemption -- transfers for charitable or 21 public purposes. (1) The following transfers are totally 22 23 exempt:

(a) all property transferred to the state or any of 24 its institutions or to municipal--corporations local 25

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1 governments within the state for strictly county--eity-2 towny---or---municipel local\_government\_or\_other\_public 3 purposes;

4 (b) all property transferred to any society, 5 corporation, institution, or association, in trust or 6 otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, 7 8 literary, or educational purposes, no part of the net 9 earnings of which inures to the benefit of any private 10 stockholder or individual and no substantial part of the 11 activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following 12 13 conditions is present:

14 (i) the society, corporation, institution, foundation,
15 trust, or association is organized solely for religious,
16 charitable, scientific, literary, or educational purposes
17 under the laws of this state or of the United States;

18 (ii) the property transferred is limited for use within 19 this state;

(iii) the society, corporation, institution;
foundation, trust, or association is organized or existing
under the laws of another state of the United States or of a
foreign state or country and at the date of the decedent's
death any one of the following conditions existed:

25 (A) the other state, foreign state, or foreign country

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did not impose a legacy. succession. or death tax of any
 character in respect to property transferred to a similar
 society. corporation. institution. foundation. trust. or
 association organized or existing under the laws of this
 state:

(b) the laws of the other state, foreign state, or 6 7 foreign country contained a reciprocal provision under which property transferred to a similar society, institution, 8 foundation, trust, or association organized or existing 9 under the laws of another state of the United States or 10 foreign state or country was exempt from legacy, succession, 11 or death taxes of every character, if the other state of the 12 United States or foreign state or country allowed a similar 13 exemption in respect to property transferred to a similar 14 15 society, institution, foundation, trust, or association organized or existing under the laws of another state of the 16 17 United States or foreign state or country;

16 (C) the society, corporation, institution, foundation, 19 trust, or association owns or operates a hospital for crippled children within the United States, primarily 20 practicing orthopedics, to which crippled or afflicted 21 children from the state of Montana are without 22 discrimination gratuitously admitted and treated and the 23 property transferred is limited for use at such hospital. 24 (2) The tax imposed by 72-16-301 does not apply to 25

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1 transfers to the-state-of-Montana-or-any-of-its-institutions 2 or-to-countyy-towny-or--municipsi--corporations--within--the з state--for-strictly-county-towny-municipaly-or-other-public purposes-and corporations of this state organized under its 4 laws or voluntary associations, organized solely for 5 6 religious, charitable, or educational purposes, which shall 7 use the property so transferred exclusively for the purposes of their organization within the state." 8

9 Section 24. Section 72-16-423, MCA, is amended to 10 read:

"72-16-423. Court order to be delivered and taxes paid 11 12 before final judgment in estate. A copy of the court order 13 referred to in 72-16-422 shall be delivered or mailed to the 14 county treasurer, the administrator or executor, and the department of revenue, and no final judgment shall may be 15 entered in such estates until due proof is filed with the 16 court that such copies have been so delivered or mailed and 17 receipts are filed with such the court showing the payment 18 19 of all such taxes or proof is filed showing that the bond permission for deferral of payment authorized by 72-16-438 20 21 nas been given.\*

22 Section 25. Section 72-16-437, MCA, is amended to 23 read:

24 "72-16-437. Personal representative not entitled to 25 closing unless tax paid or bond filed. No personal

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representative or trustee shall-be is entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of parts 1 through 8 unless he shall produce produces such receipt or a certified copy thereof or unless e-bond-shall-heve-been-filed-as-prescribed-by permission\_for\_deferral\_of\_payment\_bas\_been\_granted\_as provided\_in 72-16-438.\*\*

, \* **,** \* \*

8 Section 26. Section 72-16-443. MCA, is amended to 9 read:

10 #72-16-443. Collection of unpaid taxes. (1) If any 11 county treasurer, the state treasurer, or the department of 12 revenue shall-have has reason to believe that any tax is due 13 and unpaid under the provisions of parts 1 through 8, after 14 the refusal or neglect of any person liable therefor to pay 15 the same, he or it shall notify the attorney general in 16 writing of such failure or neglecty: and the attorney general. if he have has probable cause to believe that such 17 19 tax is due and unpaid, shall apply to the district court for 19 a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than 20 21 3 months from the date of such citation, and show cause why 22 the tax should not be paid.

23 {2} The judge of the district court, upon such 24 application and whenever it shall-appear <u>appears</u> to him that 25 any such tax accruing under parts 1 through 8 has not been

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1 paid as required by law, shall issue such citations, and-the 2 The service of such citation and the time, manner, and proof 3 thereof and the hearing and determination thereof shall conform as near as may be to the provisions of the laws 4 governing probate practice of this state. 5

6 (3) whenever it shall-appear appears that any such tax 7 is due and payable and the payment thereof cannot be enforced under the provisions of parts 1 through 8 in soid 8 such district court, the person or corporation from whom the 9 sake is due is hereby made liable to the state for the 10 amount of such taxy: and it--shall--be--the--duty--of the 11 attorney general, in the name of the state, to shall sue for 12 13 and enforce the collection of such tax, and it-is-made-the duty-of the county attorney of the county to shall appear 14 for and act on behalf of any county treasurery who shall-be 15 is cited to appear before any district court under the 16 17 provisions of parts 1 through 8.\*

Section 27. Section 72-16-704. MCA: is amended to 18 19 read:

20 #72-16-704. Apportionment of deductions when property partly within and partly without the state. Whenever a tax 21 22 may-be is due from the estater or the beneficiaries therein: of any resident or nonresident decedent upon the transfer of 23 any property, when the property or the estate left by such 24 decedent is partly within and partly without this statew or 25

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representing property or estate partly within and partly without this state, any beneficiary of such estate shall-be з. is entitled to deduct only his proper proportion of that 4 ς. portion of the total debts and expenses of administration 6 which the gross estate in Montana or within its jurisdiction 7 bears to the gross estate both within and without this state-but-no--deduction--shall--be--mode--for--ony--federal 8 9 the--United--States. As to his Montana exemption, each 10 beneficiary shall-be is entitled to deduct only that portion 11 represented by the ratio between his interest in the 12 property in this state or within its jurisdiction and his 13 interest in the entire estate." 14 Section 28. Section 72-16-801, MCA, is amended to 15 16 read: "72-16-801. Exemption of intangible personal propert 17 18 of nonresident decedent -- when. The tax imposed by parts 3+ 7. and 9. and this party in respect of personal property. 19 except tangible personal property having an actual situs in 20 21 this state, shall is not be payable if:

upon any stocks, bonds, mortgages, or other securities

(1) the decedent is a resident of a state or territory 12 of the United States which at the time of the transfer did 13 not impose a transfer tax or death tax of any character in 14 respect of personal property of residents of this state. 15

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except tangible personal property having an actual situs in
 that state or territory; or

3 (2) the laws of the state or territory of residence of 4 the nonresident decedent at the time of the transfer 5 contained a reciprocal provision under which nonresidents of that state were exempted from transfer tex taxes or death 6 7 taxes of every character in respect of personal property, except tangible personal property having an actual situs in 8 that state, providing provided the state or territory of 9 10 residence of such nonresident decedent allowed a similar exemption to residents of this state." 11

12 Section 29. Section 72-16-906, MCA, is amended to 13 read:

14 "72-16-906. Required filings. it-shell-be-the-duty--of the The personal representative of the estate of any 15 16 decedent whose estate may-be is subject to the payment of a 17 United States estate tax to shall file duplicates of the 18 United States estate tax returns with the district court of the county in which such estate is being probated and with 19 the department of revenue. He shall also file with such 20 court and with the department a certificate or other 21 evidence from the bureau-of internal revenue service showing 22 the amount of the United States estate tax as computed by 23 24 that department agency."

25 Section 30. Section 72-20-409, NCA, is amended to

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1 read: 2 #72-20-409. Appeal. The decree so rendered shall-be is з. a final order from which any party in interest may appeal as in civil actions to the district supreme court of the state 5 of Hontana." Section 31. Section 72-24-103, MCA, is amended to 6 7 read: "72-24-103. For what purposes express trusts may be A 9 created. Express trusts may be created for any of the 10 following purposes: 11 (1) to sell real property and apply or dispose of the 12 proceeds in accordance with the instrument creating the 13 trust; (2) to mortgage or lease real property for the benefit 14 15 of annuitants or other legatees or for the purpose of 15 satisfying any charge thereon; 17 (3) to receive the rents and profits of real property 13 and pay them to or apply them to the use of any person. 19 whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of 20 such person or for any shorter term, subject to the-rules-of 21 78-1-418+-fitle-78y-chapter-15y-part-2t--fitle--78y--chapter 22 23 24 chapter\_lipart\_4; or 25 (4) to receive the rents and profits of real property

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1 and to accumulate the same for the purposes and within the limits prescribed by the-sections-above-enumerated <u>litle\_70.</u> chapter\_l+\_part\_4+"

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Section 32. Section 72-26-201. MCA. is amended to 4 5 read:

"72-26-201. Manner of making gift. (1) An adult person 6 7 may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift: 8

9 (a) if the subject of the gift is a security in 10 registered form, by registering it in the name of the donor, another adult person (an adult member of the minor's family. 11 12 a quardian of the minor) + or a trust company + followed in 13 substance by the words+ "as custodian for ... (name of minor) under the Montana Uniform Gifts to Minors Act#; 14

(b) if the subject of the gift is a security not in 15 16 registered form, by delivering it to an adult person other 17 than the donor (an adult member, other than the donor, of 18 the minor's family, a guardian of the minor) or a trust company, accompanied by a statement of gift in the following 19 form, in substance, signed by the donor and the person 20 21 designated as custodian:

"GIFT UNDER THE NONTANA UNIFORM GIFTS TO MINORS ACT 22 23 Is ..... (name of donor) thereby deliver to .... (name 24 of custodian) as custodian for .... (name of minor) under 25 the Montana Uniform Gifts to Minors Act, the following

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(Insert insert an appropriate description of the security or securities delivered sufficient to identify it

security(ies):

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..... (name of custodian) hereby acknowledges receipt 6 of the **above--described** above-described security(ies) as 7 custodian for the above minor under the Montana Uniform 8 Gifts to Minors Act. 9

10 Dated: ......

11 12 (c) if the subject of the gift is money. by paying or 13 delivering it to a broker or a domestic financial 14 institution for a credit to an account in the name of the 15 donor, another adult (an adult member of the minor's family, 16 a guardian of the minor), or a trust company, followed in 17 substance by the words+ "as custodian for .... (name o minor} under the Montana Uniform Gifts to Minors Act\*. 18

(2) Any gift made in a manner prescribed in subsection 19 (1) may be made to only one minors and only one person may 20 21 be the custodian.

(3) A donor who makes a gift to a minor in a manner 22 prescribed in subsection (1) shall promptly do all things 23 within his power to put the subject of the gift in the 24 65 possession and control of the custodian, but neither the

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1 donor's failure to comply with this subsection nor his 2 designation of an ineligible person as custodian nor renunciation by the person designated as custodian affects 3 the consummation of the gift. 4

5 (4) If the subject to of the gift is a life insurance policy or annuity contract, an adult person may, during his 6 lifetime, make a gift thereof to a person who is a minor on 7 8 the date of the gift by causing the ownership of the policy 9 or contract to be registered with the issuing insurance 10 company in the name of the donor, another adult, an adult 11 member of the minor's family, a quardian of the minor, or a 12 trust company, followed in substance by the words+ "as custodian for .... (name of minor) under the Montana 13 Uniform Gifts to Minors Act\*.\* 14

Section 33. Section 72-26-402, MCA, is amended to 15 16 read:

17 #72-26-402. Designation of successor by custodian or minor. (1) A custodian may designate his successor by 15 19 executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument 20 21 of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his 22 23 successor before he dies or becomes legally incapacitated 24 and the minor has attained the age of 14 years, the minor 25 may designate a successor custodian by executing an

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instrument of designation before a subscribing witness other 1 than the successor.

(2) The designation of a successor custodian as ۹. provided in subsection (1) takes effect as to each item of 4 the custodial property when the custodian resigns, dies, or 5 becomes legally incapacitated and the custodian or his legal ĸ 7 representative:

(a) causes the item, if it is a security which is R 9 custodial property and in registered form or a life 10 insurance policy or annuity contract, to be registered, with 11 the issuing insurance company in the case of a life 12 insurance policy or annuity contract, in the name of the 13 successor custodian, followed in substance by the words+ "as custodian for .... (name of minor) under the Montana 14 15 Uniform Gifts to Minors Act#: and

16 (b) delivers or causes to be delivered to the 17 successor custodian any other item of the custodial 18 property, together with the instrument of designation of the 19 successor custodian or a true copy thereof and any 20 additional instruments required for the transfer thereof to 21 the successor custodian.

22 (3) A custodian who executes an instrument of 23 designation of his successor containing the custodian's 24 resignation as provided in subsection (1) shall promptly do all things within his power to put each item of the 25

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custodial property in the possession and control of the 1 2 successor custodian named in the instrument. The legal 3 representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power 4 5 to put each item of the custodial property in the possession 6 and control of the successor custodian named in an 7 instrument of designation executed as provided in subsection (1) by the custodian or, if none, by the minor if he has no 8 9 quardian and has attained the age of 14 years or in the possession and control of the guardian of the minor if he 10 11 has a guardian. If the custodian has executed as provided in 12 subsection (1) more than one instrument of designation, his 13 legal representative shall treat the instrument dated on an 14 earlier date as having been revoked by the instrument dated 15 on a later date.

16 (4) If a person designated as custodian or as 17 successor custodian by the custodian as provided in 18 subsection (1) is not eligible, dies, or becomes legally incapacitated before the minor attains the age of 18 years 19 20 and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian 21 22 and if no successor custodian who is eligible and has not 23 died or become legally incapacitated has been designated as provided in subsection (1), a donory or his legal 24 25 representative: the legal representative of the custodian.

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1 or an adult member of the minor's family may petition the 2 court for the designation of a successor custodian."

3 Section 34. Section 72-30-204. MCA. is amended to 4 read:

5 #72-30-204. Allowable investments -- retention of 6 property. In addition to an investment otherwise authorized 7 by law or by the applicable gift instrument and without 8 restriction to investments a fiduciary may make, the 9 governing board, subject to any specific limitations set 10 forth in the applicable gift instrument or if in the 11 applicable law other than law relating to investment by a 12 fiduciary. may:

(1) invest and reinvest an institutional fund in any 13 real or personal property deemed advisable by the governing 14 board, whether or not it produces a current return, 15 including mortgages, stocks, bonds, debentures, and other 16 securities of profit or nonprofit corporationsvi shares i 17 of associations, partnerships, or obligations 18 or individualsy; and obligations of any government or 19 subdivision or instrumentality thereof; 20

(2) retain property contributed by a donor to an
 institutional fund for as long as the governing board deems
 advisable;

(3) include all or part of any institutional fund inany pooled or common fund maintained by the institution; and

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1 (4) invest all or any part of an institutional fund in 2 any other pooled or common fund available for investment. 3 including shares or interests in regulated investment 4 companies, mutual funds, common trust funds, investment 5 partnerships, real estate investment trusts, or similar 6 organizations in which funds are commingled and investment 7 determinations are made by persons other than the governing 8 board."

9 Section 35. Repeater. Sections 91-104.1, 91-104.2,
10 91-219, 91-519, 91-523, AND 91-4312, and 93-1401-3, R.C.M.
11 1947, are repeated.

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# SENATE STANDING COMMITTEE REPORT

That House Bill No. 41 be amended as follows:

1. 1. Title, line 8. Following: "91-523," Insert: "AND" 2. Title, line 8. Strike: "AND 93-1401-3," 3. Page 29, line 10. Following: "91-523," Insert: "and" 4. Page 29, line 10. Strike: "and 93-1401-3,"

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