

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

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 18, 1979	Committee recommend bill be concurred in as amended. Report adopted.
January 20, 1979	Second reading, be concurred in.
January 22, 1979	Third reading, concurred 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.

1 HOUSE BILL NO. 41
 2 INTRODUCTION BY _____
 3 BY REQUEST OF THE CODE COMMISSIONER

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."

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 witness, to whom any beneficial devise, void
 24 under the preceding section, subsection (3) is made, would
 25 have been entitled to any share of the estate of the

1 testator if the testator had died intestate, such witness
 2 succeeds to so much of the share as would be distributed to
 3 him under intestate succession, not exceeding the devise or
 4 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
 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) With the exception of claims for
 24 taxes and claims founded on torts, ~~all~~ all claims against a
 25 decedent's estate ~~with the exception of claims for taxes and~~

1 ~~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
 6 of limitations, are barred against the estate, the personal
 7 representative, and the heirs and devisees of the decedent,
 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~~1~~₂ 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 tort, 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,
 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 decedent,

1 unless presented as follows:

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.

6 (3) Nothing in this section affects or prevents:

7 (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 "72-3-916. Distribution to trustee -- registration --
 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 for
 18 registration, and that the trustee inform in writing the
 19 current beneficiaries ~~as provided in [section 7-303 of the~~
 20 ~~Uniform Probate Code 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

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)."

14 Section 5. Section 72-5-414, MCA, is amended to read:

15 "72-5-414. Resignation or removal of conservator for
16 cause -- successor conservator. The court may remove a
17 conservator for good cause, upon notice and hearing, or
18 accept the resignation of a conservator. After his death,
19 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
24 protective arrangements or transactions without appointing
25 conservator. (1) If it is established in a proper proceeding

1 that a basis exists as described in 72-5-409 for affecting
2 the property and affairs of a person, the court without
3 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, 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
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

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
 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:

12 "72-5-425. Title by appointment as conservator --
 13 appointment not transfer for certain purposes. (1) The
 14 appointment of a conservator vests in ~~his~~ his title as
 15 trustee to all property of the protected person presently
 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

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

3 Section 8. Section 72-10-101, MCA, is amended to read:

4 "72-10-101. No requirement for orders and judgments to
 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
 8 the jurisdiction of the court or judge may depend, but it
 9 shall is only be necessary that they contain the matters
 10 ordered, except as otherwise provided in ~~chapters 10 through~~
 11 to this title."

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,~~
 15 ~~insane mentally ill,~~ or incompetent person has a guardian of
 16 his estate residing in this state, personal service upon the
 17 guardian 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
 20 ward, and ~~it is the duty of~~ the guardian to shall attend to
 21 the interests of the ward in the matter. Such guardian 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."

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

1 read:

2 "72-10-107. Proceeding in chambers -- jury trial. (1)
3 All orders mentioned in ~~chapters-10-through-16~~ this title
4 and all proceedings in matters of probate may be made or
5 heard either before the court or the judge thereof in
6 chambers.

7 (2) When a jury is needed, the court or judge may
8 order the trial to take place in court as provided in Title
9 25."

10 Section 11. Section 72-10-109, MCA, is amended to
11 read:

12 "72-10-109. Citation -- how issued. The citation may
13 be issued by the clerk, upon the application of any party,
14 without an order of the judge, except in cases in which such
15 order is expressly required by the provisions of ~~chapters-10~~
16 ~~through-16-expressly-required~~ this title."

17 Section 12. Section 72-10-110, MCA, is amended to
18 read:

19 "72-10-110. Citation -- how and when served. (1) The
20 citation must be served in the same manner as a summons in a
21 civil action.

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

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

1 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 ~~chapters-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~~."

18 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:

1 "72-14-101. Short title. Parts 1 through 3 of this
2 chapter are to be known as the "Escheated Property Act"~~and~~
3 ~~it--provides--the--exclusive-method-for-vesting-title-in-the~~
4 ~~state-of-Montana-of-it-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 kin, such title ~~shall vest~~ vests 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-found~~ 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 ~~has been or shall be and remain~~ 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
25 ~~shall escheat~~ escheats to the state."

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

3 "72-15-101. Other 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 18 through~~
8 to this title must govern."

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
14 affairs ~~shall 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 shall be the duty of the~~ The 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
25 investigations, together with specific information and facts

1 as to particular estates, that may seem to require special
2 consideration and attention by the ~~legal~~ department of the
3 state justice; but no information so acquired ~~shall~~ may, in
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
13 investigate the probate and other records for such probable
14 estates without the state and report thereon from time to
15 time to the ~~legal~~ department of the ~~state justice~~ and to the
16 proper district court for appropriate legal action; but no
17 information so acquired ~~shall~~ may, in advance of legal
18 action, be disclosed to anyone except proper officials and
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 ~~department. It shall be the duty of the legal~~ the department
24 ~~of the--state--to~~ justice shall carry out and enforce the
25 recommendations and directions of the department of revenue

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

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

5 "72-16-306. Recording date prima facie date of
6 transfer -- transfers recorded after death. ~~Att--transfers~~
7 Recorded papers evidencing a transfer of property, real,
8 personal, or mixed, or of any interest therein coming within
9 the provisions of ~~[this-section]-shall-be~~ parts 1 through 8
10 are prima facie proof, for the purposes of ~~[this-act]~~ parts
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 recorded, ~~and-att~~ 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~~
16 deemed is considered, for the purposes of taxation under the
17 provisions of ~~[this-act]~~ parts 1 through 3, 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

1 ~~governments~~ within the state for strictly ~~county--city~~
 2 ~~town--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
 6 otherwise, or to any foundation or trust organized and
 7 operated exclusively for religious, charitable, scientific,
 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
 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 within
 19 this state;

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

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

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

6 (B) the laws of the other state, foreign state, or
 7 foreign country contained a reciprocal provision under which
 8 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
 16 organized or existing under the laws of another state of the
 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

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

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

11 "72-16-423. Court order to be delivered and taxes paid
 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
 15 department of revenue, and no final judgment ~~shall~~ may be
 16 entered in such estates until due proof is filed with the
 17 court that such copies have been so delivered or mailed and
 18 receipts are filed with ~~such the~~ court showing the payment
 19 of all such taxes or proof is filed showing that the ~~bond~~
 20 permission for deferral of payment authorized by 72-16-438
 21 has 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

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 ~~a 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 ~~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 neglect, 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

1 paid as required by law, shall issue such citation, ~~and the~~
 2 ~~The~~ service of such citation and the time, manner, and proof
 3 thereof and the hearing and determination thereof shall
 4 conform as near as may be to the provisions of the laws
 5 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 tax; 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 made the~~
 14 ~~duty of~~ the county attorney of the county to shall appear
 15 for and act on behalf of any county treasurer, who ~~shall be~~
 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 thereof,
 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

1 upon any stocks, bonds, mortgages, or other securities
 2 representing property or estate partly within and partly
 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
 6 which the gross estate in Montana or within its jurisdiction
 7 bears to the gross estate both within and without this
 8 state, ~~but no deduction shall be made for any federal~~
 9 ~~estate, inheritance, succession, or transfer taxes paid to~~
 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 be~~ 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,

1 except tangible personal property having an actual situs in
2 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
6 that state were exempted from transfer ~~tax~~ taxes or death
7 taxes of every character in respect of personal property,
8 except tangible personal property having an actual situs in
9 that state, ~~providing~~ provided the state or territory of
10 residence of such nonresident decedent allowed a similar
11 exemption to residents of this state."

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

14 *72-16-906. Required filings. ~~It shall be the duty of~~
15 ~~the~~ the personal representative of the estate of any
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
19 the county in which such estate is being probated and with
20 the department of revenue. He shall also file with such
21 court and with the department a certificate or other
22 evidence from the ~~bureau of~~ service internal revenue showing
23 the amount of the United States estate tax as computed by
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."

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:

11 (1) to sell real property and apply or dispose of the
12 proceeds in accordance with the instrument creating the
13 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
20 or not, for himself or for his family during the life of
21 such person or for any shorter term, subject to ~~the rates of~~
22 ~~70-1-410, Title 70, chapter 15, part 2, Title 70, chapter~~
23 ~~17, part 1, and 70-27-104 through 70-27-107~~ Title 70,
24 chapter 1, part 4; or

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

1 and to accumulate the same for the purposes and within the
2 limits prescribed by ~~the sections above enumerated~~ Title 70,
3 chapter 1, 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,
11 another adult person (an adult member of the minor's family,
12 a guardian of the minor), or a trust company, followed in
13 substance by the words: "as custodian for ... (name of
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 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 UNIFORM GIFTS TO MINORS ACT
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):

2 (insert insert an appropriate description of the
3 security or securities delivered sufficient to identify it
4 or them)

5 (signature of donor)

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

10 Dated:

11Signature (signature of custodian)"

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 minor, 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

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

5 (4) If the subject ~~to~~ of the gift is a life insurance
6 policy or annuity contract, an adult person may, during his
7 lifetime, make a gift thereof to a person who is a minor on
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 guardian of the minor, or a
12 trust company, followed in substance by the words* "as
13 custodian for (name of minor) under the Montana
14 Uniform Gifts to Minors Act".

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

17 "72-26-402. Designation of successor by custodian or
18 minor. (1) A custodian may designate his successor by
19 executing and dating an instrument of designation before a
20 subscribing witness other than the successor; the instrument
21 of designation may but need not contain the resignation of
22 the custodian. If the custodian does not so designate his
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

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:

8 (a) causes the item, if it is a security which is
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
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

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
 8 (1) by the custodian or, if none, by the minor if he has no
 9 guardian 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 18 years
 20 and if the minor has a guardian, the guardian 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 or his legal
 25 representative, the legal representative of the custodian,

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:

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 corporations, shares in
 18 or obligations of associations, partnerships, or
 19 individuals, and obligations of any government or
 20 subdivision or instrumentality thereof;

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

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

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. 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.

-End-

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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. 72-2-305. In (4), changed "the preceding section" to "subsection (3)" to correct obvious inadvertent error. The preceding section provides the form for a self-proved 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. 72-3-803. 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.

Section 4. 72-3-916. Before insertion of the bracketed material by the code commissioner, this section referred to 91A-7-303, R.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.

Section 5. 72-5-414. 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. 72-5-422. In (1)(c), added "or" to clarify and make grammatically correct.

Section 7. 72-5-425. In (1), changed "...vests in his title..." to "...vests in him 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. 72-10-104. Changed "insane" to "mentally ill" and "infant" to "minor", Title 53, chapter 21 and 72-5-409.

Section 10. 72-10-107. See explanation for section 8.

Section 11. 72-10-109. See explanation for section 8.

Section 12. 72-10-110. See explanation for section 8.

Section 13. 72-10-111. See explanation for section 8.

Section 14. 72-10-202. See explanation for section 8.

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

Section 16. 72-14-101. 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).

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. 72-16-208. See explanation for section 19.

Section 21. 72-16-210. See explanation for section 19.

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

Section 23. 72-16-312. 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. 72-16-423. 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. 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. 72-16-704. 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.

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

Section 29. 72-16-906. 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. 72-20-409. 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) 91-104.1 and 91-104.2, 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).

Approved by Committee
on Judiciary

1 HOUSE BILL NO. 41
2 INTRODUCED BY MARKS
3 BY REQUEST OF THE CODE COMMISSIONER
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."
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 witness to whom any beneficial devise void
24 under the preceding section, subsection (3) is made, would
25 have been entitled to any share of the estate of the

1 testator if the testator had died intestate, such witness
2 succeeds to so much of the share as would be distributed to
3 him under intestate succession, not exceeding the devise or
4 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
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) With the exception of claims for
24 taxes and claims founded on tort. ~~All~~ all claims against a
25 decedent's estate ~~with the exception of claims for taxes and~~

On motion rules suspended,
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1 ~~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
 6 of limitations, are barred against the estate, the personal
 7 representative, and the heirs and devisees of the decedent,
 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~~2~~ 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 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,
 21 including claims of the state and any subdivision thereof,
 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 decedent,

1 unless presented as follows:

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.

6 (3) Nothing in this section affects or prevents:

7 (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 "72-3-916. Distribution to trustee -- registration --
 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 for
 18 registration, and that the trustee inform in writing the
 19 ~~current~~ beneficiaries ~~as provided in [section 7-303 of the~~
 20 ~~Uniform--Probate--Code--as--promulgated--by--the--nationa~~
 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

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)."

14 Section 5. Section 72-5-414, MCA, is amended to read:

15 "72-5-414. Resignation or removal of conservator for
16 cause -- successor conservator. The court may remove a
17 conservator for good cause, upon notice and hearing, or
18 accept the resignation of a conservator. After his death,
19 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
24 protective arrangements or transactions without appointing
25 conservator. (1) If it is established in a proper proceeding

1 that a basis exists as described in 72-5-409 for affecting
2 the property and affairs of a person, the court without
3 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, 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
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

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
 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:

12 "72-5-425. Title by appointment as conservator --
 13 appointment not transfer for certain purposes. (1) The
 14 appointment of a conservator vests in his ~~his~~ title as
 15 trustee to all property of the protected person presently
 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

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

3 Section 8. Section 72-10-101, MCA, is amended to read:

4 "72-10-101. No requirement for orders and judgments to
 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
 8 the jurisdiction of the court or judge may depend, but it
 9 ~~shall~~ is only be necessary that they contain the matters
 10 ordered, except as otherwise provided in ~~chapters 10 through~~
 11 16 this title."

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,
 15 ~~insane~~ mentally ill, or incompetent person has a guardian of
 16 his estate residing in this state, personal service upon the
 17 guardian 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
 20 ward, and ~~it is the duty of~~ the guardian to shall attend to
 21 the interests of the ward in the matter. Such guardian 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."

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

1 read:

2 *72-10-107. Proceeding in chambers -- jury trial. (1)
3 All orders mentioned in ~~chapters-10-through-16~~ this title
4 and all proceedings in matters of probate may be made or
5 heard either before the court or the judge thereof in
6 chambers.

7 (2) When a jury is needed, the court or judge may
8 order the trial to take place in court as provided in Title
9 25."

10 Section 11. Section 72-10-109, MCA, is amended to
11 read:

12 *72-10-109. Citation -- how issued. The citation may
13 be issued by the clerk₂ upon the application of any party₁
14 without an order of the judge, except in cases in which such
15 order is expressly required by the provisions of ~~chapters-10~~
16 ~~through-16-expressly-required~~ this title."

17 Section 12. Section 72-10-110, MCA, is amended to
18 read:

19 *72-10-110. Citation -- how and when served. (1) The
20 citation must be served in the same manner as a summons in a
21 civil action.

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

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

1 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 ~~chapters-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 contents₂ from the time of filing the same ~~it~~
16 for record₁, notice is imparted to all persons--~~of the~~
17 ~~contents--thereof~~."

18 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:

1 "72-14-101. Short title. Parts 1 through 3 of this
2 chapter are to be known as the "Escheated Property Act" and
3 ~~it provides the exclusive method for vesting title in the~~
4 ~~state of Montana 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 kin, such title ~~shall vest~~ vests 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 foundry~~ 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 ~~has been or shall be and remain~~ 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
25 ~~shall escheat~~ escheats to the state."

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

3 "72-15-101. Other 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 ~~16~~ this title must govern."

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
14 affairs ~~shall 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 shall be the duty of the~~ the 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
25 investigations, together with specific information and facts

1 as to particular estates, that may seem to require special
 2 consideration and attention by the ~~legat~~ department of the
 3 state justice; but no information so acquired ~~shall~~ may, in
 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
 13 investigate the probate and other records for such probable
 14 estates without the state and report thereon from time to
 15 time to the ~~legat~~ department of the ~~state~~ justice and to the
 16 proper district court for appropriate legal action; but no
 17 information so acquired ~~shall~~ may, in advance of legal
 18 action, be disclosed to anyone except proper officials and
 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 ~~department. It shall be the duty of the legat~~ the department
 24 of the ~~state~~ to justice shall carry out and enforce the
 25 recommendations and directions of the department of revenue

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

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

5 "72-16-306. Recording date prima facie date of
 6 transfer -- transfers recorded after death. ~~Att--transfers~~
 7 Recorded papers evidencing a transfer of property, real,
 8 personal, or mixed, or of any interest therein coming within
 9 the provisions of ~~[this-section]-shall be parts 1 through 8~~
 10 are prima facie proof, for the purposes of ~~[this-act] parts~~
 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 recorded, ~~and at~~ 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~~
 16 deemed is considered, for the purposes of taxation under the
 17 provisions of ~~[this-act] 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

1 ~~GOVERNMENTS~~ within the state for strictly county--city
 2 ~~town--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
 6 otherwise, or to any foundation or trust organized and
 7 operated exclusively for religious, charitable, scientific,
 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
 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 within
 19 this state;

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

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

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

6 (B) the laws of the other state, foreign state, or
 7 foreign country contained a reciprocal provision under which
 8 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
 16 organized or existing under the laws of another state of the
 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

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

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

11 "72-16-423. Court order to be delivered and taxes paid
 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
 15 department of revenue, and no final judgment shall ~~may~~ be
 16 entered in such estates until due proof is filed with the
 17 court that such copies have been so delivered or mailed and
 18 receipts are filed with such ~~the~~ court showing the payment
 19 of all such taxes or proof is filed showing that the bond
 20 permission for deferral of payment authorized by 72-16-438
 21 has 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

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 a 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 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 neglect, 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

1 paid as required by law, shall issue such citation, and the
 2 the service of such citation and the time, manner, and proof
 3 thereof and the hearing and determination thereof shall
 4 conform as near as may be to the provisions of the laws
 5 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 ~~and~~
 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 tax, 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 made the~~
 14 ~~duty of~~ the county attorney of the county to shall appear
 15 for and act on behalf of any county treasurer, who ~~shall be~~
 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 therein,
 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

1 upon any stocks, bonds, mortgages, or other securities
 2 representing property or estate partly within and partly
 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
 6 which the gross estate in Montana or within its jurisdiction
 7 bears to the gross estate both within and without this
 8 state, ~~but no deduction shall be made for any federal~~
 9 ~~estate, inheritance, succession, or transfer taxes paid to~~
 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,

1 except tangible personal property having an actual situs in
2 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
6 that state were exempted from transfer tax ~~taxes~~ or death
7 taxes of every character in respect of personal property,
8 except tangible personal property having an actual situs in
9 that state, ~~providing~~ provided the state or territory of
10 residence of such nonresident decedent allowed a similar
11 exemption to residents of this state."

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

14 "72-16-906. Required filings. ~~It shall be the duty of~~
15 the ing personal representative of the estate of any
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
19 the county in which such estate is being probated and with
20 the department of revenue. He shall also file with such
21 court and with the department a certificate or other
22 evidence from the ~~bureau of~~ internal revenue service showing
23 the amount of the United States estate tax as computed by
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."

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:

11 (1) to sell real property and apply or dispose of the
12 proceeds in accordance with the instrument creating the
13 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
20 or not, for himself or for his family during the life of
21 such person or for any shorter term, subject to the ~~rules of~~
22 ~~70-1-4101-Fite-70v-chapter-15v-part-21-Fite-70v-chapter~~
23 ~~17v-part-11-end-70-27-104--through--70-27-107~~ Title 70,
24 chapter 1, part 4; or

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

1 and to accumulate the same for the purposes and within the
2 limits prescribed by the ~~sections above enumerated~~ Title 70,
3 chapter 1, 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,
11 another adult person (an adult member of the minor's family,
12 a guardian of the minor), or a trust company, followed in
13 substance by the words: "as custodian for ... (name of
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 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 UNIFORM GIFTS TO MINORS ACT

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):

2 (insert ~~insert~~ an appropriate description of the
3 security or securities delivered sufficient to identify it
4 or them)

5 (signature of donor)

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

10 Dated:

11Signature (signature of custodian)"

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 minor, 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

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

5 (4) If the subject of the gift is a life insurance
6 policy or annuity contract, an adult person may, during his
7 lifetime, make a gift thereof to a person who is a minor on
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 guardian of the minor, or a
12 trust company, followed in substance by the words: "as
13 custodian for (name of minor) under the Montana
14 Uniform Gifts to Minors Act".

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

17 "72-26-402. Designation of successor by custodian or
18 minor. (1) A custodian may designate his successor by
19 executing and dating an instrument of designation before a
20 subscribing witness other than the successor; the instrument
21 of designation may but need not contain the resignation of
22 the custodian. If the custodian does not so designate his
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

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:

8 (a) causes the item, if it is a security which is
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
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

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
 8 (1) by the custodian or, if none, by the minor if he has no
 9 guardian 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 18 years
 20 and if the minor has a guardian, the guardian 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, or his legal
 25 representative, the legal representative of the custodian,

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:

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 corporations, shares in
 18 or obligations of associations, partnerships, or
 19 individuals; and obligations of any government or
 20 subdivision or instrumentality thereof;

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

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

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. 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.

-End-

1 HOUSE BILL NO. 41

2 INTRODUCED BY MARKS

3 BY REQUEST OF THE CODE COMMISSIONER

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, AND 91-4312, AND ~~93-1401-3~~ R.C.M.
9 1947."

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 witness to whom any beneficial devise void
24 under ~~the preceding section~~ subsection (3) is made, would
25 have been entitled to any share of the estate of the

1 testator if the testator had died intestate, such witness
2 succeeds to so much of the share as would be distributed to
3 him under intestate succession, not exceeding the devise or
4 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
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) ~~With the exception of claims for~~
24 ~~taxes and claims founded on tort, all~~ all claims against a
25 decedent's estate ~~with the exception of claims for taxes and~~

1 ~~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
 6 of limitations, are barred against the estate, the personal
 7 representative, and the heirs and devisees of the decedent
 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~~2~~ 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 tort.~~ All claims against a decedent's estate
 19 ~~with the exception of claims for taxes and estates 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,
 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 decedent

1 unless presented as follows:

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.

6 (3) Nothing in this section affects or prevents:

7 (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 "72-3-916. Distribution to trustee -- registration --
 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 for
 18 registration, and that the trustee inform in writing the
 19 current beneficiaries ~~as provided in [section 7-303 of the~~
 20 ~~Uniform--Probate--Code--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

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)."

14 Section 5. Section 72-5-414, MCA, is amended to read:

15 "72-5-414. Resignation or removal of conservator for
 16 cause -- successor conservator. The court may remove a
 17 conservator for good cause, upon notice and hearing, or
 18 accept the resignation of a conservator. After his death,
 19 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
 24 protective arrangements or transactions without appointing
 25 conservator. (1) If it is established in a proper proceeding

1 that a basis exists as described in 72-5-409 for affecting
 2 the property and affairs of a person, the court without
 3 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, 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
 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

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
 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:

12 "72-5-425. Title by appointment as conservator --
 13 appointment not transfer for certain purposes. (1) The
 14 appointment of a conservator vests in his ~~him~~ title as
 15 trustee to all property of the protected person presently
 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

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

3 Section 8. Section 72-10-101, MCA, is amended to read:

4 "72-10-101. No requirement for orders and judgments to
 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
 8 the jurisdiction of the court or judge may depend, but it
 9 ~~shall is~~ only be necessary that they contain the matters
 10 ordered, except as otherwise provided in ~~chapters 10 through~~
 11 ~~16 this title.~~"

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,~~
 15 ~~insane mentally ill,~~ or incompetent person has a guardian of
 16 his estate residing in this state, personal service upon the
 17 guardian of any process, notice, or order of the court o
 18 judge concerning the estate of a deceased person in which
 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 guardian 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."

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

1 read:

2 "72-10-107. Proceeding in chambers -- jury trial. (1)
3 All orders mentioned in ~~chapters--10-through--16~~ this title
4 and all proceedings in matters of probate may be made or
5 heard either before the court or the judge thereof in
6 chambers.

7 (2) When a jury is needed, the court or judge may
8 order the trial to take place in court as provided in Title
9 25."

10 Section 11. Section 72-10-109, MCA, is amended to
11 read:

12 "72-10-109. Citation -- how issued. The citation may
13 be issued by the clerk, upon the application of any party,
14 without an order of the judge, except in cases in which such
15 order is expressly required by the provisions of ~~chapters--10~~
16 ~~through--16-expressly-required~~ this title."

17 Section 12. Section 72-10-110, MCA, is amended to
18 read:

19 "72-10-110. Citation -- how and when served. (1) The
20 citation must be served in the same manner as a summons in a
21 civil action.

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

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

1 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 ~~chapters--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~~."

18 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:

1 "72-14-101. Short title. Parts 1 through 3 of this
2 chapter are to be known as the "Escheated Property Act"~~and~~
3 ~~it--provides--the--exclusive-method-for-vesting-title-in-the~~
4 ~~state-of-Montana-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 kin, such title ~~shall-vest~~ vests 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-found~~, 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 ~~has-been-or-shall-be--and--remain~~ 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
25 ~~shall-escheat~~ escheats to the state."

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

3 "72-15-101. Other 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-18-through~~
8 to this title must govern."

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
14 affairs ~~shall-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--shall--be--the--duty--of-the~~ the 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
25 investigations, together with specific information and facts

1 as to particular estates, that may seem to require special
 2 consideration and attention by the ~~legal~~ department of the
 3 state ~~justice~~; but no information so acquired ~~shall~~ ~~may~~, in
 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
 13 investigate the probate and other records for such probable
 14 estates without the state and report thereon from time to
 15 time to the ~~legal~~ department of the ~~state~~ ~~justice~~ and to the
 16 proper district court for appropriate legal action; but no
 17 information so acquired ~~shall~~ ~~may~~, in advance of legal
 18 action, be disclosed to anyone except proper officials and
 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 ~~department. It shall be the duty of the legal~~ ~~the~~ department
 24 of the ~~state~~ ~~to~~ ~~justice~~ ~~shall~~ carry out and enforce the
 25 recommendations and directions of the department of revenue

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

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

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,
 8 personal, or mixed, or of any interest therein coming within
 9 the provisions of ~~[this section] shall be~~ ~~parts 1 through 8~~
 10 ~~are~~ prima facie proof, for the purposes of ~~[this act]~~ ~~parts~~
 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 recorded, ~~and~~ ~~at~~ ~~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~~
 16 ~~deemed is considered~~, for the purposes of taxation under the
 17 provisions of ~~[this act]~~ ~~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~~

1 ~~governments~~ within the state for strictly county--city
 2 ~~town--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
 6 otherwise, or to any foundation or trust organized and
 7 operated exclusively for religious, charitable, scientific,
 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
 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 within
 19 this state;

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

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

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

6 (B) the laws of the other state, foreign state, or
 7 foreign country contained a reciprocal provision under which
 8 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
 16 organized or existing under the laws of another state of the
 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

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

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

11 "72-16-423. Court order to be delivered and taxes paid
 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
 15 department of revenue, and no final judgment ~~shall~~ may be
 16 entered in such estates until due proof is filed with the
 17 court that such copies have been so delivered or mailed and
 18 receipts are filed with such ~~the~~ court showing the payment
 19 of all such taxes or proof is filed showing that the ~~bond~~
 20 permission for deferral of payment authorized by 72-16-438
 21 has 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

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 ~~a 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 ~~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 neglect; 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

1 paid as required by law, shall issue such citation, ~~and the~~
 2 ~~the~~ service of such citation and the time, manner, and proof
 3 thereof and the hearing and determination thereof shall
 4 conform as near as may be to the provisions of the laws
 5 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 tax; 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 made the~~
 14 ~~duty of~~ the county attorney of the county to shall appear
 15 for and act on behalf of any county treasurer, who shall be
 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 therein,
 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

1 upon any stocks, bonds, mortgages, or other securities
 2 representing property or estate partly within and partly
 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
 6 which the gross estate in Montana or within its jurisdiction
 7 bears to the gross estate both within and without this
 8 state, but no deduction shall be made for any federal
 9 estate, inheritance, succession, or transfer taxes paid to
 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,

1 except tangible personal property having an actual situs in
2 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
6 that state were exempted from transfer tax ~~taxes~~ or death
7 taxes of every character in respect of personal property,
8 except tangible personal property having an actual situs in
9 that state, ~~providing~~ provided the state or territory of
10 residence of such nonresident decedent allowed a similar
11 exemption to residents of this state."

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

14 "72-16-906. Required filings. ~~it shall be the duty of~~
15 ~~the~~ the personal representative of the estate of any
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
19 the county in which such estate is being probated and with
20 the department of revenue. He shall also file with such
21 court and with the department a certificate or other
22 evidence from the ~~bureau of~~ service internal revenue showing
23 the amount of the United States estate tax as computed by
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."

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:

11 (1) to sell real property and apply or dispose of the
12 proceeds in accordance with the instrument creating the
13 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
20 or not, for himself or for his family during the life of
21 such person or for any shorter term, subject to ~~the rules of~~
22 ~~70-1-410, Title 70, chapter 15, part 2, Title 70, chapter~~
23 ~~17, part 1, and 70-27-104 through 70-27-107~~ Title 70,
24 chapter 1, part 4; or

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

1 and to accumulate the same for the purposes and within the
2 limits prescribed by the ~~sections above enumerated~~ Title 70,
3 Chapter 1, 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,
11 another adult person (an adult member of the minor's family,
12 a guardian of the minor), or a trust company, followed in
13 substance by the words: "as custodian for ... (name of
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 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 UNIFORM GIFTS TO MINORS ACT
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):
2 (insert ~~insert~~ an appropriate description of the
3 security or securities delivered sufficient to identify it
4 or them.)

5 (signature of donor)

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

10 Dated:
11Signature (signature of custodian)"

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 minor, 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

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

5 (4) If the subject of the gift is a life insurance
6 policy or annuity contract, an adult person may, during his
7 lifetime, make a gift thereof to a person who is a minor on
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 guardian of the minor, or a
12 trust company, followed in substance by the words+ "as
13 custodian for (name of minor) under the Montana
14 Uniform Gifts to Minors Act".

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

17 "72-26-402. Designation of successor by custodian or
18 minor. (1) A custodian may designate his successor by
19 executing and dating an instrument of designation before a
20 subscribing witness other than the successor; the instrument
21 of designation may but need not contain the resignation of
22 the custodian. If the custodian does not so designate his
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

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:

8 (a) causes the item, if it is a security which is
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
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

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
 8 (1) by the custodian or, if none, by the minor if he has no
 9 guardian 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 18 years
 20 and if the minor has a guardian, the guardian 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 or his legal
 25 representative, ~~the legal representative~~ of the custodian,

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:

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 corporations, shares in
 18 or obligations of associations, partnerships, or
 19 individuals, and obligations of any government or
 20 subdivision or instrumentality thereof;

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

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

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. Repealer. 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 repealed.

-End-

January 18, 1979

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,"