

HOUSE BILL NO. 185

INTRODUCED BY MARKS

BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 16, 1979	Introduced and referred to Committee on Judiciary.
January 22, 1979	Committee recommend bill do pass and be placed on Consent Calendar. Report adopted.
January 23, 1979	Printed and placed on members' desks.
January 25, 1979	Third reading Consent Calendar, passed. Transmitted to second house.

IN THE SENATE

January 26, 1979	Introduced and referred to Committee on Judiciary.
February 27, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 1, 1979	Second reading, concurred in.
March 3, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 5, 1979	Returned from second house with amendments.
March 6, 1979	Second reading, amendments adopted.
March 7, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 HOUSE BILL NO. 185  
2 INTRODUCED BY Mack

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY THE LAWS RELATING TO CONTRACTS AND OTHER OBLIGATIONS  
7 AND REPEALING SECTION 28-1-1112, MCA, AND SECTION 64-104,  
8 R.C.M. 1947."

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

11 Section 1. Section 28-1-103, MCA, is amended to read:

12 "28-1-103. What rules govern interpretation of  
13 contracts and other obligations. The rules which govern the  
14 interpretation of contracts are prescribed by chapters ~~2~~ and  
15 ~~3~~ of this title, ~~1-4-202 through 1-4-205~~, and ~~39-2-705~~ Title  
16 1. Other obligations are interpreted by the same rules by  
17 which statutes of a similar nature are interpreted."

18 Section 2. Section 28-1-504, MCA, is amended to read:

19 "28-1-504. When obligation to be interpreted as though  
20 there were a single particular alternative did not exist. If  
21 one of the alternative acts required by an obligation is  
22 such as the law will not enforce or becomes unlawful or  
23 impossible of performance, the obligation is to be  
24 interpreted as though the other or others stood alone."

25 Section 3. Section 28-1-1002, MCA, is amended to read:

1 "28-1-1002. When burden of obligation may be  
2 transferred. The burden of an obligation may be transferred  
3 with the consent of the party entitled to its benefits, but  
4 not otherwise, except as provided by ~~70-17-205~~ Title 70,  
5 chapter 17, part 2."

6 Section 4. Section 28-1-1103, MCA, is amended to read:

7 "28-1-1103. Performance to one of several joint  
8 creditors. An obligation in favor of several persons is  
9 extinguished by performance rendered to any of them, except  
10 in the case of a deposit made by owners in common or in  
11 joint ownership, which is regulated by Title 70, ~~chapters 5~~  
12 ~~and 6 and part 5 of chapter 9, and Title 71, chapter 3, part~~  
13 ~~14~~ chapter 6."

14 Section 5. Section 28-1-1106, MCA, is amended to read:

15 "28-1-1106. Application of performance when there are  
16 several obligations. ~~Where~~ Whenever a debtor under several  
17 obligations to another does an act by way of performance, in  
18 whole or in part, which is equally applicable to two or more  
19 of such obligations, such performance must be applied as  
20 follows:

21 (1) If, at the time of performance, the intention or  
22 desire of the debtor that such performance should be applied  
23 to the extinction of any particular obligation ~~be is~~  
24 manifested to the creditor, it must be so applied.

25 (2) If no such ~~application~~ intention or desire is

1 then ~~made~~ manifested, the creditor, within a reasonable time  
 2 after such performance, may apply it toward the extinction  
 3 of any obligation performance of which was due to him from  
 4 the debtor at the time of such performance, except that if  
 5 similar obligations were due to him, both individually and  
 6 as a trustee, he must, unless otherwise directed by the  
 7 debtor, apply the performance to the extinction of all such  
 8 obligations in equal proportion, ~~and an~~ an application once  
 9 made by the creditor cannot be rescinded without the consent  
 10 of the debtor.

11 (3) ~~If neither party makes such application is not~~  
 12 ~~made as prescribed in subsection (1) or (2) within the time~~  
 13 ~~prescribed herein, the performance must be applied to the~~  
 14 ~~extinction of obligations in the following order and, if~~  
 15 ~~there be is more than one obligation of a particular class,~~  
 16 ~~to the extinction of all in that class, ratably:~~

17 (a) ~~first--of~~ interest due at the time of the  
 18 performance;

19 (b) ~~second--of~~ principal due at that time;

20 (c) ~~third--of~~ the obligation earliest in date of  
 21 maturity;

22 (d) ~~fourth--of~~ an obligation not secured by a lien or  
 23 collateral undertaking;

24 (e) ~~fifth--of~~ an obligation secured by a lien or  
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1 Section 6. Section 28-1-1111, MCA, is amended to read:  
 2 "28-1-1111. Receipt for money, instrument, or property  
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 4 or property is entitled to a written receipt therefor from  
 5 the person to whom the payment or delivery is made and may  
 6 demand a proper signature to such receipt as a condition of  
 7 the payment or delivery.

8 ~~(2) A debtor has a right to require from his creditor~~  
 9 ~~a written receipt for any property delivered in performance~~  
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11 Section 7. Section 28-1-1202, MCA, is amended to read:  
 12 "28-1-1202. Effect of offer. (1) ~~An offer in writing~~  
 13 ~~to pay a particular sum of money or to deliver a written~~  
 14 ~~instrument--or--specific personal property is, if not~~  
 15 ~~accepted, equivalent to the actual production and tender of~~  
 16 ~~the money, instrument, or property."~~

17 (2) An offer of payment or other performance duly  
 18 ~~made, though the title to the thing offered be not~~  
 19 ~~transferred to the creditor, stops the running of interest~~  
 20 ~~on the obligation and has the same effect upon all incidents~~  
 21 ~~of the obligation as a performance thereof, whether or not~~  
 22 ~~the title to anything offered is transferred to the~~  
 23 ~~creditor."~~

24 Section 8. Section 28-1-1205, MCA, is amended to read:  
 25 "28-1-1205. To whom offer must be made. An offer of

1 performance must be made to the creditor, to any one or two  
2 or more joint creditors, or to a person authorized by one or  
3 more of them to receive or collect what is due under the  
4 obligation ~~if such creditor or authorized person is present~~  
5 ~~at the place where the offer may be made and, if not,~~  
6 ~~wherever the creditor may be found."~~

7 Section 9. Section 28-1-1212, MCA, is amended to read:

8 "28-1-1212. Objections to mode of offer -- waiver. All  
9 objections to the mode of an offer of performance which the  
10 creditor has an opportunity to state at the time to the  
11 person making the offer and which could be then ~~be~~ obviated  
12 by him such person are waived by the creditor if not then  
13 stated. If the objection is to the amount of money, the  
14 terms of the instrument, or the amount or kind of property  
15 offered, the creditor must specify the amount, terms, or  
16 kind which he requires."

17 Section 10. Section 28-1-1303, MCA, is amended to  
18 read:

19 "28-1-1303. Effect when performance prevented by other  
20 causes. If full performance of an obligation is prevented by  
21 any cause excusing performance other than the act of the  
22 creditor, the debtor is entitled to a ratable proportion of  
23 the consideration to which he would have been entitled upon  
24 full performance, according to the benefit which the  
25 creditor receives from the actual performance."

1 Section 11. Section 28-2-102, MCA, is amended to read:  
2 "28-2-102. Essential elements of a contract. ~~(1)~~ It is  
3 essential to the existence of a contract that there ~~should~~  
4 be:

5 ~~(a)~~ (1) identifiable parties capable of contracting;

6 ~~(b)~~ (2) their consent;

7 ~~(c)~~ (3) a lawful object; and

8 ~~(d)~~ (4) a sufficient cause or consideration.

9 ~~(2) -- It is essential to the validity of a contract -- not~~  
10 ~~only that the parties should exist but that it should be~~  
11 ~~possible to identify them."~~

12 Section 12. Section 28-2-201, MCA, is amended to read:

13 "28-2-201. Who may contract. All persons are capable  
14 of contracting, except minors, persons of unsound mind, and  
15 persons deprived of civil rights. Minors and persons of  
16 unsound mind have only such capacity as is defined by  
17 ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204~~ this part,  
18 28-10-104, and Title 41, chapter 1, parts 1 through 3,  
19 except 41-1-303."

20 Section 13. Section 28-2-206, MCA, is amended to read:

21 "28-2-206. Assignment of nonnegotiable written  
22 contract. A nonnegotiable written contract for the payment  
23 of money or the delivery of personal property may be  
24 transferred by endorsement ~~in like manner with the same as a~~  
25 negotiable ~~instrument~~ instrument. Such endorsement shall

1 ~~transfer transfers~~ all the rights of the assignor under the  
 2 ~~instrument contract~~ to the assignee, subject to all equities  
 3 and defenses existing in favor of the ~~maker contract debtor~~  
 4 at the time of the endorsement ~~or arising before notice of~~  
 5 ~~the assignment is received by him.~~"

6 Section 14. Section 28-2-403, MCA, is amended to read:

7 "28-2-403. What constitutes menace. Menace consists in  
 8 a threat of:

9 (1) such duress as is specified in subsections (1) and  
 10 (3) of 28-2-402;

11 (2) unlawful and violent injury to the person or  
 12 property of any such person ~~as is specified in circumstances~~  
 13 ~~described~~ in 28-2-402; or

14 (3) injury to the character of any such person."

15 Section 15. Section 28-2-501, MCA, is amended to read:

16 "28-2-501. How consent is communicated. (1) Consent  
 17 can be communicated with effect only by some act or omission  
 18 of the party contracting by which he intends to communicate  
 19 it or which necessarily tends to such communication.

20 (2) If a proposal prescribes any conditions concerning  
 21 the communication of its acceptance, the proposer is not  
 22 bound unless they are conformed to; but in other cases, any  
 23 reasonable and usual mode in conformity with subsection (1)  
 24 may be adopted."

25 Section 16. Section 28-2-502, MCA, is amended to read:

1 "28-2-502. When consent is considered fully  
 2 communicated. Consent is ~~deemed considered~~ to be fully  
 3 communicated between the parties as soon as the party  
 4 accepting a proposal has put his acceptance in the course of  
 5 transmission to the proposer in conformity to ~~with~~  
 6 ~~28-2-501(2)~~ 28-2-501."

7 Section 17. Section 28-2-504, MCA, is amended to read:

8 "28-2-504. Acceptance to be absolute. An acceptance  
 9 must be absolute and unqualified or must include in itself  
 10 an acceptance of that character which the proposer can  
 11 separate from the rest and which will ~~conclude~~ bind the  
 12 person accepting. A qualified acceptance is a new proposal."

13 Section 18. Section 28-2-512, MCA, is amended to read:

14 "28-2-512. How proposal revoked. A proposal is revoked  
 15 by:

16 (1) the communication of notice of revocation by the  
 17 proposer to the other party in the manner prescribed by  
 18 ~~28-2-501(1)~~ 28-2-501 and 28-2-502 before his acceptance has  
 19 been communicated to the former;

20 (2) the lapse of the time prescribed in such proposal  
 21 for its acceptance or, if no time is so prescribed, the  
 22 lapse of a reasonable time without communication of the  
 23 acceptance;

24 (3) the failure of the acceptor to fulfill a condition  
 25 precedent to acceptance; or

1 (4) the death or ~~insanity~~ serious mental illness of  
2 the proposer."

3 Section 19. Section 28-2-707, MCA, is amended to read:

4 "28-2-707. What conditions void. A condition in a  
5 contract the fulfillment of which is impossible or unlawful  
6 within the meaning of part 6 ~~of this chapter and this part~~  
7 or which is repugnant to the nature of the interest created  
8 by the contract is void."

9 Section 20. Section 28-2-722, MCA, is amended to read:

10 "28-2-722. Contracts for personal services limited to  
11 two years. A contract to render personal ~~service other than~~  
12 ~~a contract of apprenticeship as provided in the chapter on~~  
13 ~~apprenticesy~~ services cannot be enforced against the  
14 employee beyond the term of 2 years from the commencement of  
15 service under it, but if the employee voluntarily continues  
16 his service under it beyond that time, the contract may be  
17 referred to as affording a presumptive measure of the  
18 compensation."

19 Section 21. Section 28-2-903, MCA, is amended to read:

20 "28-2-903. What contracts must be in writing. (1) The  
21 following contracts agreements are invalid unless the same  
22 or some note or memorandum thereof be is in writing and  
23 subscribed by the party to be charged or his agent:

24 (a) an agreement that by its terms is not to be  
25 performed within a year from the making thereof;

1 (b) a special promise to answer for the debt, default,  
2 or miscarriage of another, except in the cases provided for  
3 in 28-11-105;

4 (c) an agreement made upon consideration of marriage  
5 other than a mutual promise to marry;

6 (d) an agreement for the leasing for a longer period  
7 than 1 year or for the sale of real property or of an  
8 interest therein. Such agreement, if made by an agent of the  
9 party sought to be charged, is invalid unless the authority  
10 of the agent be is in writing, and subscribed by the party  
11 sought to be charged.

12 (e) an agreement authorizing or employing an agent or  
13 broker to purchase or sell real estate for compensation or a  
14 commission.

15 ~~(2) In the following cases the agreement is invalid~~  
16 ~~unless the same or some note or memorandum thereof be in~~  
17 ~~writing and subscribed by the party charged or by his agent;~~  
18 ~~evidence--therefore, Evidence of the an agreement cannot be~~  
19 ~~received described in subsection (1) is not admissible~~  
20 without the writing or secondary evidence of its contents;

21 ~~(a) an agreement that by its terms is not to be~~  
22 ~~performed within a year from the making thereof;~~

23 ~~(b) a special promise to answer for the debt, default,~~  
24 ~~or miscarriage of another, except in the cases provided for~~  
25 ~~in 28-11-105;~~

~~(c) an agreement made upon consideration of marriage other than a mutual promise to marry~~

~~(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent be in writing, subscribed by the party sought to be charged.~~

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof be in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) shall do not apply to agreements subject to the Uniform Commercial Code."

Section 22. Section 28-2-905, MCA, is amended to read:

"28-2-905. When extrinsic evidence concerning a written agreement may be considered, (1) When whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, ~~and~~ therefore ~~therefore~~, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) where when a mistake or imperfection of the

writing is put in issue by the pleadings;

(b) where when the validity of the agreement is the fact in dispute.

(2) ~~But this~~ this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", for the purposes of this section, includes deeds and wills as well as contracts between parties."

Section 23. Section 28-2-1701, MCA, is amended to read:

"28-2-1701. How contract extinguished. (1) A contract may be extinguished in ~~like~~ the same manner with as any other obligation and also in the manner prescribed by part 16 ~~and this section~~, ~~28-2-1601, 28-2-1602, and 28-2-1702 through 28-2-1713~~ part.

(2) A contract is extinguished by its rescission."

Section 24. Section 28-2-1711, MCA, is amended to read:

"28-2-1711. When party may rescind. A party to a contract may rescind the same in the following cases only:

(1) if the consent of the party rescinding or of any party jointly contracting with him was given by mistake or

1 obtained through duress, menace, fraud, or undue influence  
 2 exercised by or with the connivance of the party as to whom  
 3 he rescinds or of any other party to the contract jointly  
 4 interested with such party;

5 (2) if, through the fault of the party as to whom he  
 6 rescinds, the consideration for his obligation fails in  
 7 whole or in part;

8 (3) if such consideration becomes entirely void from  
 9 any cause;

10 (4) if such consideration, before it is rendered to  
 11 him, fails in a material respect from any cause; or

12 (5) ~~by consent of~~ if all the other parties consent."

13 Section 25. Section 28-3-206, MCA, is amended to read:

14 "28-3-206. Uncertainty to be resolved against party  
 15 causing it. In cases of uncertainty not removed by parts 1  
 16 through 5 of this chapter, the language of a contract should  
 17 be interpreted most strongly against the party who caused  
 18 the uncertainty to exist. The promisor is presumed to be  
 19 such party, except that in the case of a contract between a  
 20 public officer or body, as such, and a private party, ~~in~~  
 21 which it is presumed that all uncertainty was caused by the  
 22 private party."

23 Section 26. Section 28-3-403, MCA, is amended to read:

24 "28-3-403. Evidence of usage to clarify. In conformity  
 25 with the rules of evidence, upon a trial evidence may be

1 given of usage to explain the true character of ~~an act or a~~  
 2 contract ~~where~~ if such true character is not otherwise  
 3 plain, but usage is never admissible except as an instrument  
 4 of interpretation."

5 Section 27. Section 28-3-702, MCA, is amended to read:

6 "28-3-702. Necessary and incidental terms. All things  
 7 that in law or usage are considered as incidental to a  
 8 contract or as necessary to carry it into effect are implied  
 9 therefrom unless some of them are expressly mentioned  
 10 therein, ~~when in which case~~ all other things of the same  
 11 class are ~~deemed~~ considered to be excluded."

12 Section 28. Section 28-10-104, MCA, is amended to  
 13 read:

14 "28-10-104. Who may appoint an agent, who may be an  
 15 agent. Any person having capacity to contract, except a  
 16 minor, may appoint an agent, and any person may be an agent.  
 17 ~~A minor cannot give a delegation of power."~~

18 Section 29. Section 28-10-211, MCA, is amended to  
 19 read:

20 "28-10-211. How agent's act ratified. A ratification  
 21 can be made only in the manner that would have been  
 22 necessary to confer an original authority for the act  
 23 ratified or, ~~where~~ whenever an oral authorization would  
 24 suffice, by knowingly accepting or ~~restraining~~ retaining the  
 25 benefit of the act, ~~with notice thereof.~~



1 Section 30. Section 28-10-301, MCA, is amended to  
2 read:

3 "28-10-301. Agent not to exceed actual authority. An  
4 agent must not exceed the limits of his actual authority as  
5 defined by ~~parts 1v-2v and 4 through 8~~ of this chapter and  
6 parts 5 and 6 of chapter 11 of Title 30."

7 Section 31. Section 28-10-404, MCA, is amended to  
8 read:

9 "28-10-404. When and as to whom agent's authority  
10 restricted. Every agent has actually such authority as is  
11 defined by ~~this part, parts 1v-2v and 5 through 8~~ of this  
12 chapter, and parts 5 and 6 of chapter 11 of Title 30 unless  
13 specially deprived thereof by his principal and has even  
14 then such authority ostensibly except as to persons who have  
15 actual or constructive notice of the restriction upon his  
16 authority."

17 Section 32. Section 28-10-405, MCA, is amended to  
18 read:

19 "28-10-405. Implied powers of agent. An agent has  
20 authority to:

21 (1) do everything necessary and proper and usual, in  
22 the ordinary course of business, for effecting the purpose  
23 of his agency; and

24 (2) make a representation respecting any matter of  
25 fact, ~~not including~~ except the terms of his authority, but

1 upon which his right to use his authority depends and the  
2 truth of which cannot be determined by the use of reasonable  
3 diligence on the part of the person to whom the  
4 representation is made."

5 Section 33. Section 28-10-502, MCA, is amended to  
6 read:

7 "28-10-502. Effect of unauthorized employment of  
8 subagent. If an agent employs a subagent without authority,  
9 the former is a principal and the latter his agent and the  
10 principal of the former has no connection with the latter. A  
11 ~~were agent of an agent is not responsible as such to the~~  
12 ~~principal of the latter."~~

13 Section 34. Section 28-10-703, MCA, is amended to  
14 read:

15 "28-10-703. Responsibility of agent when third person  
16 claims property received for principal. If an agent receives  
17 anything for the benefit of his principal to the possession  
18 of which another person is entitled, he must, on demand,  
19 surrender it to such person, or so much of it as he has  
20 under his control at the time of demand, on being  
21 indemnified for any advance which he has made to his  
22 principal, in good faith, on account of the same, and ~~he~~ is  
23 responsible therefor if, after ~~notice to the owner~~ such  
24 demand, he delivers it to his principal."

25 Section 35. Section 28-10-704, MCA, is amended to

1 read:

2 "28-10-704. Applicability of laws relating to capacity  
3 to contract. The provisions of this part are subject to the  
4 provisions of ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204,~~  
5 Chapter 2, part 2; 28-10-104; and Title 41, chapter 1,  
6 ~~parts 1 through 3, except 41-1-303.~~"

7 Section 36. Repealer. Section 28-1-1112, MCA, and  
8 section 64-104, R.C.M. 1947, are repealed.

-End-

Approved by Committee on Judiciary

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11 joint ownership, which is regulated by Title 70, ~~chapters 5~~  
12 ~~and 6 and part 3 of chapter 9, and Title 72, chapter 3, part~~  
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19 of such obligations, such performance must be applied as  
20 follows:

21 (1) If, at the time of performance, the intention or  
22 desire of the debtor that such performance should be applied  
23 to the extinction of any particular obligation be is  
24 manifested to the creditor, it must be so applied.

25 (2) If no such ~~application be~~ intention or desire is

1 then made ~~manifested~~, the creditor, within a reasonable time  
 2 after such performance, may apply it toward the extinction  
 3 of any obligation performance of which was due to him from  
 4 the debtor at the time of such performance, except that if  
 5 similar obligations were due to him, both individually and  
 6 as a trustee, he must, unless otherwise directed by the  
 7 debtor, apply the performance to the extinction of all such  
 8 obligations in equal proportion, ~~and an~~ an application once  
 9 made by the creditor cannot be rescinded without the consent  
 10 of the debtor.

11 (3) If ~~neither party makes such~~ application is not  
 12 made as prescribed in subsection (1) or (2) within the time  
 13 prescribed herein, the performance must be applied to the  
 14 extinction of obligations in the following order and, if  
 15 there be is more than one obligation of a particular class,  
 16 to the extinction of all in that class, ratably:

17 (a) ~~first of~~ interest due at the time of the  
 18 performance;

19 (b) ~~second of~~ principal due at that time;

20 (c) ~~third of~~ the obligation earliest in date of  
 21 maturity;

22 (d) ~~fourth of~~ an obligation not secured by a lien or  
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 6 demand a proper signature to such receipt as a condition of  
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 14 ~~instrument or specific personal property is, if not~~  
 15 ~~accepted, equivalent to the actual production and tender of~~  
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 19 ~~transferred to the creditor~~ stops the running of interest  
 20 on the obligation and has the same effect upon all incidents  
 21 of the obligation as a performance thereof, whether or not  
 22 the title to anything offered is transferred to the  
 23 creditor."

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 25 "28-1-1205. To whom offer must be made. An offer of

1 performance must be made to the creditor, to any one or two  
2 or more joint creditors, or to a person authorized by one or  
3 more of them to receive or collect what is due under the  
4 obligation ~~if such creditor or authorized person is present~~  
5 ~~at the place where the offer may be made and, if not,~~  
6 ~~wherever the creditor may be found."~~

7 Section 9. Section 28-1-1212, MCA, is amended to read:

8 "28-1-1212. Objections to mode of offer -- waiver. All  
9 objections to the mode of an offer of performance which the  
10 creditor has an opportunity to state at the time to the  
11 person making the offer and which could be then ~~be~~ obviated  
12 by ~~him~~ such person are waived by the creditor if not then  
13 stated. If the objection is to the amount of money, the  
14 terms of the instrument, or the amount or kind of property  
15 offered, the creditor must specify the amount, terms, or  
16 kind which he requires."

17 Section 10. Section 28-1-1303, MCA, is amended to  
18 read:

19 "28-1-1303. Effect when performance prevented by other  
20 causes. If full performance of an obligation is prevented by  
21 any cause excusing performance other than the act of the  
22 creditor, the debtor is entitled to a ratable proportion of  
23 the consideration to which he would have been entitled upon  
24 full performance, according to the benefit which the  
25 creditor receives from the actual performance."

1 Section 11. Section 28-2-102, MCA, is amended to read:  
2 "28-2-102. Essential elements of a contract. ~~It~~ It is  
3 essential to the existence of a contract that there should  
4 be:

5 ~~(1)~~ (1) identifiable parties capable of contracting;

6 ~~(2)~~ (2) their consent;

7 ~~(3)~~ (3) a lawful object; and

8 ~~(4)~~ (4) a sufficient cause or consideration.

9 ~~(2) -- It is essential to the validity of a contract not~~  
10 ~~only that the parties should exist but that it should be~~  
11 ~~possible to identify them."~~

12 Section 12. Section 28-2-201, MCA, is amended to read:

13 "28-2-201. Who may contract. All persons are capable  
14 of contracting, except minors, persons of unsound mind, and  
15 persons deprived of civil rights. Minors and persons of  
16 unsound mind have only such capacity as is defined by  
17 ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204~~ this part,  
18 28-10-104, and Title 41, chapter 1, parts 1 through 3,  
19 except 41-1-303."

20 Section 13. Section 28-2-206, MCA, is amended to read:

21 "28-2-206. Assignment of nonnegotiable, written  
22 contract. A nonnegotiable written contract for the payment  
23 of money or the delivery of personal property may be  
24 transferred by endorsement ~~in like manner with the same as a~~  
25 negotiable instruments instrument. Such endorsement shall

1 transfer ~~transfers~~ all the rights of the assignor under the  
 2 instrument ~~contract~~ to the assignee, subject to all equities  
 3 and defenses existing in favor of the maker ~~contract debtor~~  
 4 at the time of the endorsement or arising before notice of  
 5 the assignment is received by him."

6 Section 14. Section 28-2-403, MCA, is amended to read:

7 "28-2-403. What constitutes menace. Menace consists in  
 8 a threat of:

9 (1) such duress as is specified in subsections (1) and  
 10 (3) of 28-2-402;

11 (2) unlawful and violent injury to the person or  
 12 property of any such person ~~as is specified in circumstances~~  
 13 described in 28-2-402; or

14 (3) injury to the character of any such person."

15 Section 15. Section 28-2-501, MCA, is amended to read:

16 "28-2-501. How consent is communicated. (1) Consent  
 17 can be communicated with effect only by some act or omission  
 18 of the party contracting by which he intends to communicate  
 19 it or which necessarily tends to such communication.

20 (2) If a proposal prescribes any conditions concerning  
 21 the communication of its acceptance, the proposer is not  
 22 bound unless they are conformed to; but in other cases, any  
 23 reasonable and usual mode in conformity with subsection (1)  
 24 may be adopted."

25 Section 16. Section 28-2-502, MCA, is amended to read:

1 "28-2-502. When consent is considered fully  
 2 communicated. Consent is ~~deemed~~ considered to be fully  
 3 communicated between the parties as soon as the party  
 4 accepting a proposal has put his acceptance in the course of  
 5 transmission to the proposer in conformity ~~to~~ with  
 6 ~~28-2-501(2)~~ 28-2-501."

7 Section 17. Section 28-2-504, MCA, is amended to read:

8 "28-2-504. Acceptance to be absolute. An acceptance  
 9 must be absolute and unqualified or must include in itself  
 10 an acceptance of that character which the proposer can  
 11 separate from the rest and which will ~~conclude~~ bind the  
 12 person accepting. A qualified acceptance is a new proposal."

13 Section 18. Section 28-2-512, MCA, is amended to read:

14 "28-2-512. How proposal revoked. A proposal is revoked  
 15 by:

16 (1) the communication of notice of revocation by the  
 17 proposer to the other party in the manner prescribed by  
 18 ~~28-2-501(1)~~ 28-2-501 and 28-2-502 before his acceptance has  
 19 been communicated to the former;

20 (2) the lapse of the time prescribed in such proposal  
 21 for its acceptance or, if no time is so prescribed, the  
 22 lapse of a reasonable time without communication of the  
 23 acceptance;

24 (3) the failure of the acceptor to fulfill a condition  
 25 precedent to acceptance; or

1 (4) the death or ~~insanity~~ serious mental illness of  
2 the proposer."

3 Section 19. Section 28-2-707, MCA, is amended to read:

4 "28-2-707. What conditions void. A condition in a  
5 contract the fulfillment of which is impossible or unlawful  
6 within the meaning of part 6 ~~of this chapter and this part~~  
7 or which is repugnant to the nature of the interest created  
8 by the contract is void."

9 Section 20. Section 28-2-722, MCA, is amended to read:

10 "28-2-722. Contracts for personal services limited to  
11 two years. A contract to render personal service ~~other than~~  
12 ~~a contract of apprenticeship as provided in the chapter on~~  
13 ~~apprentices, services~~ cannot be enforced against the  
14 employee beyond the term of 2 years from the commencement of  
15 service under it, but if the employee voluntarily continues  
16 his service under it beyond that time, the contract may be  
17 referred to as affording a presumptive measure of the  
18 compensation."

19 Section 21. Section 28-2-903, MCA, is amended to read:

20 "28-2-903. What contracts must be in writing. (1) The  
21 following contracts agreements are invalid unless the same  
22 or some note or memorandum thereof be is in writing and  
23 subscribed by the party to be charged or his agent:

24 (a) an agreement that by its terms is not to be  
25 performed within a year from the making thereof;

1 (b) a special promise to answer for the debt, default,  
2 or miscarriage of another, except in the cases provided for  
3 in 28-11-105;

4 (c) an agreement made upon consideration of marriage  
5 other than a mutual promise to marry;

6 (d) an agreement for the leasing for a longer period  
7 than 1 year or for the sale of real property or of an  
8 interest therein. Such agreement, if made by an agent of the  
9 party sought to be charged, is invalid unless the authority  
10 of the agent be is in writing and subscribed by the party  
11 sought to be charged.

12 (e) an agreement authorizing or employing an agent or  
13 broker to purchase or sell real estate for compensation or a  
14 commission.

15 ~~(2) In the following cases the agreement is invalid~~  
16 ~~unless the same or some note or memorandum thereof be in~~  
17 ~~writing and subscribed by the party charged or by his agent;~~  
18 ~~evidence; therefore, Evidence of the an agreement cannot be~~  
19 ~~received described in subsection (1) is not admissible~~  
20 without the writing or secondary evidence of its contents;

21 ~~(a) an agreement that by its terms is not to be~~  
22 ~~performed within a year from the making thereof;~~

23 ~~(b) a special promise to answer for the debt, default,~~  
24 ~~or miscarriage of another, except in the cases provided for~~  
25 ~~in 28-11-105;~~

1 ~~(c) an agreement made upon consideration of marriage~~  
2 ~~other than a mutual promise to marry;~~

3 ~~(d) an agreement for the leasing for a longer period~~  
4 ~~than 1 year or for the sale of real property or of an~~  
5 ~~interest therein. Such agreement, if made by an agent of the~~  
6 ~~party sought to be charged, is invalid unless the authority~~  
7 ~~of the agent be in writing, subscribed by the party sought~~  
8 ~~to be charged.~~

9 (3) No evidence is admissible to charge a person upon  
10 a representation as to the credit of a third person unless  
11 such representation or some memorandum thereof be in in  
12 writing and either subscribed by or in the handwriting of  
13 the party to be charged.

14 (4) Subsections (1) and (2) shall do not apply to  
15 agreements subject to the Uniform Commercial Code."

16 Section 22. Section 28-2-905, MCA, is amended to read:

17 "28-2-905. When extrinsic evidence concerning a  
18 written agreement may be considered, (1) ~~When whenever~~ the  
19 terms of an agreement have been reduced to writing by the  
20 parties, it is to be considered as containing all those  
21 terms, ~~and therefore therefore~~, there can be between the  
22 parties and their representatives or successors in interest no  
23 evidence of the terms of the agreement other than the  
24 contents of the writing except in the following cases:

25 (a) where when a mistake or imperfection of the

1 writing is put in issue by the pleadings;

2 (b) where when the validity of the agreement is the  
3 fact in dispute.

4 (2) ~~But this~~ this section does not exclude other  
5 evidence of the circumstances under which the agreement was  
6 made or to which it relates, as defined described in  
7 1-4-102, or other evidence to explain an extrinsic ambiguity  
8 or to establish illegality or fraud.

9 (3) The term "agreement", for the purposes of this  
10 section, includes deeds and wills as well as contracts  
11 between parties."

12 Section 23. Section 28-2-1701, MCA, is amended to  
13 read:

14 "28-2-1701. How contract extinguished. (1) A contract  
15 may be extinguished in ~~like the same~~ manner with as any  
16 other obligation and also in the manner prescribed by part  
17 16 and this section, ~~28-2-1601, 28-2-1602, and 28-2-1702~~  
18 ~~through 28-2-1719~~ part.

19 (2) A contract is extinguished by its rescission."

20 Section 24. Section 28-2-1711, MCA, is amended to  
21 read:

22 "28-2-1711. When party may rescind. A party to a  
23 contract may rescind the same in the following cases only:

24 (1) if the consent of the party rescinding or of any  
25 party jointly contracting with him was given by mistake or



1 obtained through duress, menace, fraud, or undue influence  
 2 exercised by or with the connivance of the party as to whom  
 3 he rescinds or of any other party to the contract jointly  
 4 interested with such party;

5 (2) if, through the fault of the party as to whom he  
 6 rescinds, the consideration for his obligation fails in  
 7 whole or in part;

8 (3) if such consideration becomes entirely void from  
 9 any cause;

10 (4) if such consideration, before it is rendered to  
 11 him, fails in a material respect from any cause; or

12 (5) ~~by-consent-of~~ if all the other parties consent."

13 Section 25. Section 28-3-206, MCA, is amended to read:

14 "28-3-206. Uncertainty to be resolved against party  
 15 causing it. In cases of uncertainty not removed by parts 1  
 16 through 5 of this chapter, the language of a contract should  
 17 be interpreted most strongly against the party who caused  
 18 the uncertainty to exist. The promisor is presumed to be  
 19 such party, except ~~that~~ in the case of a contract between a  
 20 public officer or body, as such, and a private party, in  
 21 which it is presumed that all uncertainty was caused by the  
 22 private party."

23 Section 26. Section 28-3-403, MCA, is amended to read:

24 "28-3-403. Evidence of usage to clarify. In conformity  
 25 with the rules of evidence, upon a trial evidence may be

1 given of usage to explain the true character of ~~an act or a~~  
 2 contract ~~where~~ if such true character is not otherwise  
 3 plain, but usage is never admissible except as an instrument  
 4 of interpretation."

5 Section 27. Section 28-3-702, MCA, is amended to read:

6 "28-3-702. Necessary and incidental terms. All things  
 7 that in law or usage are considered as incidental to a  
 8 contract or as necessary to carry it into effect are implied  
 9 therefrom unless some of them are expressly mentioned  
 10 therein, when in which case all other things of the same  
 11 class are deemed considered to be excluded."

12 Section 28. Section 28-10-104, MCA, is amended to  
 13 read:

14 "28-10-104. Who may appoint an agent, who may be an  
 15 agent. Any person having capacity to contract, except a  
 16 minor, may appoint an agent, and any person may be an agent.  
 17 ~~A minor cannot give a delegation of powers."~~

18 Section 29. Section 28-10-211, MCA, is amended to  
 19 read:

20 "28-10-211. How agent's act ratified. A ratification  
 21 can be made only in the manner that would have been  
 22 necessary to confer an original authority for the act  
 23 ratified or, where whenever an oral authorization would  
 24 suffice, by knowingly accepting or restraining retaining the  
 25 benefit of the act, ~~with notice thereof.~~"

1 Section 30. Section 28-10-301, MCA, is amended to  
2 read:

3 "28-10-301. Agent not to exceed actual authority. An  
4 agent must not exceed the limits of his actual authority as  
5 defined by ~~parts 1v-2v and 4 through 8~~ of this chapter and  
6 parts 5 and 6 of chapter 11 of Title 30."

7 Section 31. Section 28-10-404, MCA, is amended to  
8 read:

9 "28-10-404. When and as to whom agent's authority  
10 restricted. Every agent has actually such authority as is  
11 defined by ~~this part, parts 1v-2v and 5 through 8~~ of this  
12 chapter and parts 5 and 6 of chapter 11 of Title 30 unless  
13 specially deprived thereof by his principal and has even  
14 then such authority ostensibly except as to persons who have  
15 actual or constructive notice of the restriction upon his  
16 authority."

17 Section 32. Section 28-10-405, MCA, is amended to  
18 read:

19 "28-10-405. Implied powers of agent. An agent has  
20 authority to:

21 (1) do everything necessary and proper and usual, in  
22 the ordinary course of business, for effecting the purpose  
23 of his agency; and

24 (2) make a representation respecting any matter of  
25 fact, ~~not including~~ except the terms of his authority, but

1 upon which his right to use his authority depends and the  
2 truth of which cannot be determined by the use of reasonable  
3 diligence on the part of the person to whom the  
4 representation is made."

5 Section 33. Section 28-10-502, MCA, is amended to  
6 read:

7 "28-10-502. Effect of unauthorized employment of  
8 subagent. If an agent employs a subagent without authority,  
9 the former is a principal and the latter his agent and the  
10 principal of the former has no connection with the latter. ~~A  
11 mere agent of an agent is not responsible as such to the  
12 principal of the latter.~~"

13 Section 34. Section 28-10-703, MCA, is amended to  
14 read:

15 "28-10-703. Responsibility of agent when third person  
16 claims property received for principal. If an agent receives  
17 anything for the benefit of his principal to the possession  
18 of which another person is entitled, he must, on demand,  
19 surrender it to such person, or so much of it as he has  
20 under his control at the time of demand, on being  
21 indemnified for any advance which he has made to his  
22 principal, in good faith, on account of the same, and ~~he~~ is  
23 responsible therefor if, after ~~notice to the owner~~ such  
24 demand, he delivers it to his principal."

25 Section 35. Section 28-10-704, MCA, is amended to

1 read:

2 "28-10-704. Applicability of laws relating to capacity  
3 to contract. The provisions of this part are subject to the  
4 provisions of ~~27-1-511, 27-1-711, 28-1-202 through 28-2-204,~~  
5 ~~chapter 2, part 2;~~ 28-10-104, i and Title 41, chapter 1,  
6 parts ~~1 through 3~~ except ~~41-1-303.~~"

7 Section 36. Repealer. Section 28-1-1112, MCA, and  
8 section 64-104, R.C.M. 1947, are repealed.

-End-

HB 185

1 HOUSE BILL NO. 185  
 2 INTRODUCED BY MARKS  
 3 BY REQUEST OF THE CODE COMMISSIONER  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY THE LAWS RELATING TO CONTRACTS AND OTHER OBLIGATIONS  
 7 AND REPEALING SECTION ~~28-1-1112, MCA, AND SECTION~~ 64-104,  
 8 R.C.M. 1947."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 Section 1. Section 28-1-103, MCA, is amended to read:  
 12 "28-1-103. What rules govern interpretation of  
 13 contracts and other obligations. The rules which govern the  
 14 interpretation of contracts are prescribed by ~~chapters 2 and~~  
 15 ~~3 of this title, 1-4-202 through 1-4-205, and 39-2-705 Title~~  
 16 ~~1. Other obligations are interpreted by the same rules by~~  
 17 ~~which statutes of a similar nature are interpreted."~~  
 18 Section 2. Section 28-1-504, MCA, is amended to read:  
 19 "28-1-504. When obligation to be interpreted as though  
 20 ~~there were a single particular alternative did not exist. If~~  
 21 ~~one of the alternative acts required by an obligation is~~  
 22 ~~such as the law will not enforce or becomes unlawful or~~  
 23 ~~impossible of performance, the obligation is to be~~  
 24 ~~interpreted as though the other or others stood alone."~~  
 25 Section 3. Section 28-1-1002, MCA, is amended to read:

1 "28-1-1002. When burden of obligation may be  
 2 transferred. The burden of an obligation may be transferred  
 3 with the consent of the party entitled to its benefits, but  
 4 not otherwise, except as provided by ~~70-17-205 Title 70,~~  
 5 ~~chapter 17, part 2."~~  
 6 Section 4. Section 28-1-1103, MCA, is amended to read:  
 7 "28-1-1103. Performance to one of several joint  
 8 creditors. An obligation in favor of several persons is  
 9 extinguished by performance rendered to any of them, except  
 10 in the case of a deposit made by owners in common or in  
 11 joint ownership, which is regulated by Title 70, ~~chapters 5~~  
 12 ~~and 6 and part 5 of chapter 9, and Title 71, chapter 3, part~~  
 13 ~~14 chapter 6."~~  
 14 Section 5. Section 28-1-1106, MCA, is amended to read:  
 15 "28-1-1106. Application of performance when there are  
 16 several obligations. ~~Where~~ ~~Whenever~~ a debtor under several  
 17 obligations to another does an act by way of performance, in  
 18 whole or in part, which is equally applicable to two or more  
 19 of such obligations, such performance must be applied as  
 20 follows:  
 21 (1) If, at the time of performance, the intention or  
 22 desire of the debtor that such performance should be applied  
 23 to the extinction of any particular obligation be is  
 24 manifested to the creditor, it must be so applied.  
 25 (2) If no such ~~application be intention or desire is~~

1 then made ~~manifested~~, the creditor, within a reasonable time  
 2 after such performance, may apply it toward the extinction  
 3 of any obligation performance of which was due to him from  
 4 the debtor at the time of such performance, except that if  
 5 similar obligations were due to him, both individually and  
 6 as a trustee, he must, unless otherwise directed by the  
 7 debtor, apply the performance to the extinction of all such  
 8 obligations in equal proportions, ~~and an~~ an application once  
 9 made by the creditor cannot be rescinded without the consent  
 10 of the debtor.

11 (3) ~~If neither party makes such application is not~~  
 12 ~~made as prescribed in subsection (1) or (2)~~ within the time  
 13 prescribed herein, the performance must be applied to the  
 14 extinction of obligations in the following order and, if  
 15 there be is more than one obligation of a particular class,  
 16 to the extinction of all in that class, ratably:

- 17 (a) ~~first--of~~ interest due at the time of the  
 18 performance;
- 19 (b) ~~second--of~~ principal due at that time;
- 20 (c) ~~third--of~~ the obligation earliest in date of  
 21 maturity;
- 22 (d) ~~fourth--of~~ an obligation not secured by a lien or  
 23 collateral undertaking;
- 24 (e) ~~fifth--of~~ an obligation secured by a lien or  
 25 collateral undertaking."

1 Section 6. Section 28-1-1111, MCA, is amended to read:  
 2 "28-1-1111. Receipt for money, instrument, or property  
 3 delivered. ~~It~~ Whoever pays money or delivers an instrument  
 4 or property is entitled to a written receipt therefor from  
 5 the person to whom the payment or delivery is made and may  
 6 demand a proper signature to such receipt as a condition of  
 7 the payment or delivery.

8 ~~(2)--A--debtor--has--a--right--to--require--from--his--creditor~~  
 9 ~~a--written--receipt--for--any--property--delivered--in--performance~~  
 10 ~~of--his--obligations"~~

11 Section 7. Section 28-1-1202, MCA, is amended to read:  
 12 "28-1-1202. Effect of offer. ~~It~~ An offer in writing  
 13 to pay a particular sum of money or to deliver a written  
 14 instrument--or--specific--personal--property--is--if--not  
 15 accepted, equivalent to the actual production and tender of  
 16 the money, instrument, or property. (1) AN OFFER IN WRITING  
 17 TO PAY A PARTICULAR SUM OF MONEY OR TO DELIVER A WRITTEN  
 18 INSTRUMENT OR SPECIFIC PERSONAL PROPERTY IS, IF NOT  
 19 ACCEPTED, EQUIVALENT TO THE ACTUAL PRODUCTION AND TENDER OF  
 20 THE MONEY, INSTRUMENT, OR PROPERTY.

21 ~~(2)~~ (2) An offer of payment or other performance duly  
 22 made ~~---though--the--title--to--the--thing--offered--be--not~~  
 23 ~~transferred--to--the--creditor,~~ stops the running of interest  
 24 on the obligation and has the same effect upon all incidents  
 25 of the obligation as a performance thereof, whether or not

1 ~~the title to anything offered is transferred to the~~  
 2 ~~creditor."~~

3 Section 8. Section 28-1-1205, MCA, is amended to read:

4 "28-1-1205. To whom offer must be made. An offer of  
 5 performance must be made to the creditor, to any one or two  
 6 or more joint creditors, or to a person authorized by one or  
 7 more of them to receive or collect what is due under the  
 8 obligation ~~if such creditor or authorized person is present~~  
 9 ~~at the place where the offer may be made and, if not~~  
 10 ~~wherever the creditor may be found."~~

11 Section 9. Section 28-1-1212, MCA, is amended to read:

12 "28-1-1212. Objections to mode of offer -- waiver. All  
 13 objections to the mode of an offer of performance which the  
 14 creditor has an opportunity to state at the time to the  
 15 person making the offer and which could be then ~~be~~ obviated  
 16 by him such person are waived by the creditor if not then  
 17 stated. ~~If the objection is to the amount of money, the~~  
 18 ~~terms of the instrument, or the amount or kind of property~~  
 19 ~~offered, the creditor must specify the amount, terms, or~~  
 20 ~~kind which he requires."~~

21 Section 10. Section 28-1-1303, MCA, is amended to  
 22 read:

23 "28-1-1303. Effect when performance prevented by other  
 24 causes. If full performance of an obligation is prevented by  
 25 any cause excusing performance other than the act of the

1 creditor, the debtor is entitled to a ratable proportion of  
 2 the consideration to which he would have been entitled upon  
 3 full performance, according to the benefit which the  
 4 creditor receives from the actual performance."

5 Section 11. Section 28-2-102, MCA, is amended to read:

6 "28-2-102. Essential elements of a contract. ~~(1)~~ It is  
 7 essential to the existence of a contract that there ~~should~~  
 8 be:

- 9 ~~(1)~~ (1) identifiable parties capable of contracting;
- 10 ~~(2)~~ (2) their consent;
- 11 ~~(3)~~ (3) a lawful object; and
- 12 ~~(4)~~ (4) a sufficient cause or consideration.

13 ~~(2) -- it is essential to the validity of a contract not~~  
 14 ~~only that the parties should exist but that it should be~~  
 15 ~~possible to identify them."~~

16 Section 12. Section 28-2-201, MCA, is amended to read:

17 "28-2-201. Who may contract. All persons are capable  
 18 of contracting, except minors, persons of unsound mind, and  
 19 persons deprived of civil rights. Minors and persons of  
 20 unsound mind have only such capacity as is defined by  
 21 ~~27-1-511, 27-1-711, 28-2-202 through 28-2-204~~ this part,  
 22 ~~28-10-104, and Title 41, chapter 1, parts 1 through 3,~~  
 23 ~~except 41-1-303."~~

24 Section 13. Section 28-2-206, MCA, is amended to read:

25 "28-2-206. Assignment of nonnegotiable written

1 contract. A nonnegotiable written contract for the payment  
 2 of money or the delivery of personal property may be  
 3 transferred by endorsement ~~in like manner with the same as a~~  
 4 negotiable instruments instrument. Such endorsement shall  
 5 transfer ~~transfers~~ all the rights of the assignor under the  
 6 instrument contract to the assignee, subject to all equities  
 7 and defenses existing in favor of the maker ~~contract--debtor~~  
 8 MAKER at the time of the endorsement or arising before  
 9 notice of the assignment is received by him."

10 Section 14. Section 28-2-403, MCA, is amended to read:

11 "28-2-403. What constitutes menace. Menace consists in  
 12 a threat of:

13 (1) such duress as is specified in subsections (1) and  
 14 (3) of 28-2-402;

15 (2) unlawful and violent injury to the person or  
 16 property of any such person ~~as is specified~~ in circumstances  
 17 described in 28-2-402; or

18 (3) injury to the character of any such person."

19 Section 15. Section 28-2-501, MCA, is amended to read:

20 "28-2-501. How consent is communicated. (1) Consent  
 21 can be communicated with effect only by some act or omission  
 22 of the party contracting by which he intends to communicate  
 23 it or which necessarily tends to such communication.

24 (2) If a proposal prescribes any conditions concerning  
 25 the communication of its acceptance, the proposer is not

1 bound unless they are conformed to; but in other cases, any  
 2 reasonable and usual mode in conformity with subsection (1)  
 3 may be adopted."

4 Section 16. Section 28-2-502, MCA, is amended to read:

5 "28-2-502. When consent is considered fully  
 6 communicated. Consent is ~~deemed considered~~ to be fully  
 7 communicated between the parties as soon as the party  
 8 accepting a proposal has put his acceptance in the course of  
 9 transmission to the proposer in conformity to ~~with~~  
 10 ~~28-2-501(2)~~ 28-2-501."

11 Section 17. Section 28-2-504, MCA, is amended to read:

12 "28-2-504. Acceptance to be absolute. An acceptance  
 13 must be absolute and unqualified or must include in itself  
 14 an acceptance of that character which the proposer can  
 15 separate from the rest and which will conclude ~~bind~~ the  
 16 person accepting. A qualified acceptance is a new proposal."

17 Section 18. Section 28-2-512, MCA, is amended to read:

18 "28-2-512. How proposal revoked. A proposal is revoked  
 19 by:

20 (1) the communication of notice of revocation by the  
 21 proposer to the other party in the manner prescribed by  
 22 ~~28-2-501(1)~~ 28-2-501 and 28-2-502 before his acceptance has  
 23 been communicated to the former;

24 (2) the lapse of the time prescribed in such proposal  
 25 for its acceptance or, if no time is so prescribed, the

1 lapse of a reasonable time without communication of the  
2 acceptance;

3 (3) the failure of the acceptor to fulfill a condition  
4 precedent to acceptance; or

5 (4) the death or insanity serious mental illness of  
6 the proposer."

7 Section 19. Section 28-2-707, MCA, is amended to read:

8 "28-2-707. What conditions void. A condition in a  
9 contract the fulfillment of which is impossible or unlawful  
10 within the meaning of part 6 of this chapter ~~and this part~~  
11 or which is repugnant to the nature of the interest created  
12 by the contract is void."

13 Section 20. Section 28-2-722, MCA, is amended to read:

14 "28-2-722. Contracts for personal services limited to  
15 two years. A contract to render personal ~~service other than~~  
16 ~~a contract of apprenticeship as provided in the chapter on~~  
17 ~~apprenticesy~~ services cannot be enforced against the  
18 employee beyond the term of 2 years from the commencement of  
19 service under it, but if the employee voluntarily continues  
20 his service under it beyond that time, the contract may be  
21 referred to as affording a presumptive measure of the  
22 compensation."

23 Section 21. Section 28-2-903, MCA, is amended to read:

24 "28-2-903. What contracts must be in writing. (1) The  
25 following ~~contracts~~ agreements are invalid unless the same

1 or some note or memorandum thereof be is in writing and  
2 subscribed by the party to be charged or his agent:

3 (a) an agreement that by its terms is not to be  
4 performed within a year from the making thereof;

5 (b) a special promise to answer for the debt, default,  
6 or miscarriage of another, except in the cases provided for  
7 in 28-11-105;

8 (c) an agreement made upon consideration of marriage  
9 other than a mutual promise to marry;

10 (d) an agreement for the leasing for a longer period  
11 than 1 year or for the sale of real property or of an  
12 interest therein. Such agreement, if made by an agent of the  
13 party sought to be charged, is invalid unless the authority  
14 of the agent be is in writing and subscribed by the party  
15 sought to be charged.

16 (e) an agreement authorizing or employing an agent or  
17 broker to purchase or sell real estate for compensation or a  
18 commission.

19 (2) ~~In the following cases the agreement is invalid~~  
20 ~~unless the same or some note or memorandum thereof be in~~  
21 ~~writing and subscribed by the party charged or by his agent~~  
22 ~~evidence, therefore Evidence of the an agreement cannot be~~  
23 ~~received described in (A) THROUGH (D) OF subsection (1) is~~  
24 ~~not admissible~~ without the writing or secondary evidence of  
25 its contents.



1        ~~(e) an agreement that by its terms is not to be~~  
 2        ~~performed within a year from the making thereof;~~

3        ~~(b) a special promise to answer for the debt, default,~~  
 4        ~~or miscarriage of another, except in the cases provided for~~  
 5        ~~in 28-2-105;~~

6        ~~(c) an agreement made upon consideration of marriage~~  
 7        ~~other than a mutual promise to marry;~~

8        ~~(d) an agreement for the leasing for a longer period~~  
 9        ~~than a year or for the sale of real property or of an~~  
 10        ~~interest therein. Such agreement, if made by an agent of the~~  
 11        ~~party sought to be charged, is invalid unless the authority~~  
 12        ~~of the agent be in writing, subscribed by the party sought~~  
 13        ~~to be charged.~~

14        (3) No evidence is admissible to charge a person upon  
 15        a representation as to the credit of a third person unless  
 16        such representation or some memorandum thereof be is in  
 17        writing and either subscribed by or in the handwriting of  
 18        the party to be charged.

19        (4) Subsections (1) and (2) shall ~~do~~ not apply to  
 20        agreements subject to the Uniform Commercial Code."

21        Section 22. Section 28-2-905, MCA, is amended to read:

22        "28-2-905. When extrinsic evidence concerning a  
 23        written agreement may be considered. (1) When ~~whenever~~ the  
 24        terms of an agreement have been reduced to writing by the  
 25        parties, it is to be considered as containing all those

1        terms, and therefore ~~therefore~~, there can be between the  
 2        parties and their representatives or successors in interest no  
 3        evidence of the terms of the agreement other than the  
 4        contents of the writing except in the following cases:

5        (a) where ~~when~~ a mistake or imperfection of the  
 6        writing is put in issue by the pleadings;

7        (b) where ~~when~~ the validity of the agreement is the  
 8        fact in dispute.

9        (2) But ~~this~~ this section does not exclude other  
 10        evidence of the circumstances under which the agreement was  
 11        made or to which it relates, as defined described in  
 12        1-4-102, or other evidence to explain an extrinsic ambiguity  
 13        or to establish illegality or fraud.

14        (3) The term "agreement" for the purposes of this  
 15        section includes deeds and wills as well as contracts  
 16        between parties."

17        Section 23. Section 28-2-1701, MCA, is amended to  
 18        read:

19        "28-2-1701. How contract extinguished. (1) A contract  
 20        may be extinguished in ~~like the same~~ manner with as any  
 21        other obligation and also in the manner prescribed by part  
 22        16 and this section ~~28-2-1601, 28-2-1602, and 28-2-1702~~  
 23        ~~through 28-2-1703 part.~~

24        (2) A contract is extinguished by its rescission."

25        Section 24. Section 28-2-1711, MCA, is amended to

1 read:

2 "28-2-1711. When party may rescind. A party to a  
3 contract may rescind the same in the following cases only:

4 (1) if the consent of the party rescinding or of any  
5 party jointly contracting with him was given by mistake or  
6 obtained through duress, menace, fraud, or undue influence  
7 exercised by or with the connivance of the party as to whom  
8 he rescinds or of any other party to the contract jointly  
9 interested with such party;

10 (2) if, through the fault of the party as to whom he  
11 rescinds, the consideration for his obligation fails in  
12 whole or in part;

13 (3) if such consideration becomes entirely void from  
14 any cause;

15 (4) if such consideration, before it is rendered to  
16 him, fails in a material respect from any cause; or

17 (5) ~~by--consent--of~~ if all the other parties ~~consent~~."

18 Section 25. Section 28-3-206, MCA, is amended to read:

19 "28-3-206. Uncertainty to be resolved against party  
20 causing it. In cases of uncertainty not removed by parts 1  
21 through 5 of this chapter, the language of a contract should  
22 be interpreted most strongly against the party who caused  
23 the uncertainty to exist. The promisor is presumed to be  
24 such party, except ~~that~~ in the case of a contract between a  
25 public officer or body, as such, and a private party, in

1 when it is presumed that all uncertainty was caused by the  
2 private party."

3 Section 26. Section 28-3-403, MCA, is amended to read:

4 "28-3-403. Evidence of usage to clarify. In conformity  
5 with the rules of evidence, upon a trial evidence may be  
6 given of usage to explain the true character of ~~enact-or~~ a  
7 contract where if such true character is not otherwise  
8 plain, but usage is never admissible except as an instrument  
9 of interpretation."

10 Section 27. Section 28-3-702, MCA, is amended to read:

11 "28-3-702. Necessary and incidental terms. All things  
12 that in law or usage are considered as incidental to a  
13 contract or as necessary to carry it into effect are implied  
14 therefrom unless some of them are expressly mentioned  
15 therein, when in which case all other things of the same  
16 class are deemed ~~considered~~ to be excluded."

17 Section 28. Section 28-10-104, MCA, is amended to  
18 read:

19 "28-10-104. Who may appoint an agent, who may be an  
20 agent. Any person having capacity to contract, ~~except~~ a  
21 ~~minor~~ may appoint an agent, and any person may be an agent.  
22 ~~A minor cannot give a delegation of power.~~"

23 Section 29. Section 28-10-211, MCA, is amended to  
24 read:

25 "28-10-211. How agent's act ratified. A ratification

1 can be made only in the manner that would have been  
 2 necessary to confer an original authority for the act  
 3 ratified or, where ~~whenever~~ an oral authorization would  
 4 suffice, by ~~knowingly~~ accepting or ~~restraining~~ retaining the  
 5 benefit of the act ~~with notice thereof.~~"

6 Section 30. Section 28-10-301, MCA, is amended to  
 7 read:

8 "28-10-301. Agent not to exceed actual authority. An  
 9 agent must not exceed the limits of his actual authority as  
 10 defined by ~~parts 1v-2v and 4 through 8~~ of this chapter and  
 11 parts 5 and 6 of chapter 11 of Title 30."

12 Section 31. Section 28-10-404, MCA, is amended to  
 13 read:

14 "28-10-404. When and as to whom agent's authority  
 15 restricted. Every agent has actually such authority as is  
 16 defined by ~~this part~~ ~~parts 1v-2v and 5 through 8~~ of this  
 17 chapter, and parts 5 and 6 of chapter 11 of Title 30 unless  
 18 specially deprived thereof by his principal and has even  
 19 then such authority ostensibly except as to persons who have  
 20 actual or constructive notice of the restriction upon his  
 21 authority."

22 Section 32. Section 28-10-405, MCA, is amended to  
 23 read:

24 "28-10-405. Implied powers of agent. An agent has  
 25 authority to:

1 (1) do everything necessary and proper and usual, in  
 2 the ordinary course of business, for effecting the purpose  
 3 of his agency; and

4 (2) make a representation respecting any matter of  
 5 fact, ~~not including~~ ~~except~~ the terms of his authority, but  
 6 upon which his right to use his authority depends and the  
 7 truth of which cannot be determined by the use of reasonable  
 8 diligence on the part of the person to whom the  
 9 representation is made."

10 ~~Section 33. Section 28-10-502, MCA, is amended to~~  
 11 ~~read:~~

12 ~~"28-10-502. Effect of unauthorized employment of~~  
 13 ~~subagent. If an agent employs a subagent without authority,~~  
 14 ~~the former is a principal and the latter his agent and the~~  
 15 ~~principal of the former has no connection with the latter. A~~  
 16 ~~mere agent of an agent is not responsible as such to the~~  
 17 ~~principal of the latter."~~

18 Section 33. Section 28-10-703, MCA, is amended to  
 19 read:

20 "28-10-703. Responsibility of agent when third person  
 21 claims property received for principal. If an agent receives  
 22 anything for the benefit of his principal to the possession  
 23 of which another person is entitled, he must, on demand,  
 24 surrender it to such person, or so much of it as he has  
 25 under his control at the time of demand, on being

1 indemnified for any advance which he has made to his  
2 principal, in good faith, on account of the same, and he is  
3 responsible therefor if, after notice--to--the--owner such  
4 demand, he delivers it to his principal."

5 Section 34. Section 28-10-704, MCA, is amended to  
6 read:

7 "28-10-704. Applicability of laws relating to capacity  
8 to contract. The provisions of this part are subject to the  
9 provisions of ~~27-1-511; 27-1-711; 28-2-202 through 28-2-204;~~  
10 chapter 2, part 2; 28-10-104; and Title 41, chapter 1,  
11 ~~parts 1 through 3, except 41-1-303."~~

12 Section 35. Repealer. Section ~~28-1-1112; MCA;~~ and  
13 ~~section 64-104, R.C.M. 1947,~~ are IS repealed.

-End-

February 27, 1979

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 185 be amended as follows:

1. Title, line 7.

Strike: "28-1-1112, MCA, AND SECTION"

2. Page 4, line 16.

Following: "~~property~~."

Insert: "(1) An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

(2)"

3. Page 7, line 3.

Following: "~~maker~~"

Strike: "contract debtor"

Insert: "maker"

4. Page 10, line 19.

Following: "in"

Insert: "(a) through (d) of"

5. Page 16, lines 5 through 12.

Strike: section 33 in its entirety

Renumber: all subsequent sections

6. Page 17, lines 7 and 8.

Strike: "28-1-1112, MCA, and section"

7. Page 17, line 8.

Following: "1947,"

Strike: "are"

Insert: "is"