

CHAPTER NO. 127.

HOUSE BILL NO. 335

INTRODUCED BY RAMIREZ, SCULLY

IN THE HOUSE

January 23, 1979	Introduced and referred to Committee on Judiciary.
February 7, 1979	Committee recommend bill do pass. Report adopted.
February 8, 1979	Printed and placed on members' desks.
February 9, 1979	Second reading, do pass.
February 10, 1979	Considered correctly engrossed.
February 12, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 13, 1979	Introduced and referred to Committee on Judiciary.
March 2, 1979	Committee recommend bill be concurred in. Report adopted.
March 5, 1979	Second reading, concurred in.
March 7, 1979	Third reading, concurred in.

IN THE HOUSE

March 8, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CUSTODY
5 HEARING, IF REQUESTED, UPON THE DEATH OF A CUSTODIAL PARENT;
6 AND AMENDING SECTIONS 40-4-219 AND 40-6-221, MCA."

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

9 NEW SECTION. Section 1. Hearing upon death of
10 custodial parent. Upon the death of a parent granted custody
11 of a child, custody shall pass to the noncustodial parent
12 unless one or more parties named in [section 2] request a
13 custody hearing. The noncustodial parent shall be a party in
14 any proceeding brought under this section.

15 NEW SECTION. Section 2. Parties who may request a
16 hearing. Upon the death of a parent granted custody of a
17 child, any of the following parties may request a custody
18 hearing and seek custody of the child:

- 19 (1) the noncustodial natural parent;
- 20 (2) the surviving spouse of the deceased custodial
21 parent;
- 22 (3) a person nominated by the will of the deceased
23 custodial parent;
- 24 (4) any person nominated by the child if the child is
25 at least 12 years old;

1 (5) any other person if that person has actual
2 physical control over the child;

3 (6) any other party whom, upon showing of good cause,
4 the court permits to intervene as an interested party.

5 NEW SECTION. Section 3. Determination of custody. The
6 hearing and determination of custody shall be governed by
7 [Title 40, chapter 4, part 2].

8 Section 4. Section 40-4-219, MCA, is amended to read:

9 "40-4-219. Modification. (1) No motion to modify a
10 custody decree may be made earlier than 2 years after its
11 date, unless the court permits it to be made on the basis of
12 affidavits that there is reason to believe the child's
13 present environment may endanger seriously his physical,
14 mental, moral, or emotional health.

15 (2) The court shall not modify a prior custody decree
16 unless it finds, upon the basis of facts that have arisen
17 since the prior decree or that were unknown to the court at
18 the time of entry of the prior decree, that a change has
19 occurred in the circumstances of the child or his custodian
20 and that the modification is necessary to serve the best
21 interest of the child. In applying these standards the
22 court shall retain the custodian appointed pursuant to the
23 prior decree unless:

- 24 (a) the custodian agrees to the modification;
- 25 (b) the child has been integrated into the family of

1 the petitioner with consent of the custodian; or

2 (c) the child's present environment endangers
3 seriously his physical, mental, moral, or emotional health
4 and the harm likely to be caused by a change of environment
5 is outweighed by its advantages to him.

6 (3) Attorney fees and costs shall be assessed against
7 a party seeking modification if the court finds that the
8 modification action is vexatious and constitutes harassment.

9 ~~(4) A custody decree may be modified upon the death of~~
10 ~~the custodial parent pursuant to [sections 1 through 3]."~~

11 Section 5. Section 40-6-221, MCA, is amended to read:

12 "40-6-221. Custody, services, and earnings of child.
13 The father and mother of an unmarried minor child are
14 equally entitled to the custody, services, and earnings of
15 the child. If either parent be dead or unable or refuses to
16 take the custody or has abandoned his or her family, the
17 other is entitled to the custody, services, and earnings of
18 the child, ~~unless custody is determined otherwise pursuant~~
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-End-

Approved by Committee
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