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 SEN	ATE
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 HOU	SE
March 8, 1979		Returned from second house. Concurred in. Sent to enrolling.
		Reported correctly enrolled.

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CUSTODY HEARING. IF REQUESTED. UPON THE DEATH OF A CUSTODIAL PARENT: AND AMENDING SECTIONS 40-4-219 AND 40-6-221. MCA.*

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

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

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

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

- (5) any other person if that person has actual 1 physical control over the child;
- (6) any other party whom, upon showing of good cause. the court permits to intervene as an interested party.
- NEW SECTION. Section 3. Determination of custody. The hearing and determination of custody shall be governed by [Title 40, chapter 4, part 2].
 - Section 4. Section 40-4-219, MCA, is amended to read: #40-4-219. Modification. (1) No motion to modify a custody decree may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.
 - (2) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:
 - (a) the custodian agrees to the modification;
 - (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.
 - (3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.
- 9 141. 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
- 13 the child, unless custody is determined otherwise oursuant
- 19 to [sections 1 through 3].*

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Approved by Committee on Judiciary

INTRODUCED BY AMERICAN

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- (5) any other person if that person has actual physical control over the child;
- (6) any other party whome upon showing of good causeethe court permits to intervene as an interested party.
- 5 <u>MEN SECTION.</u> Section 3. Determination of custody. The 6 hearing and determination of custody shall be governed by 7 [Title 40, chapter 4, part 2].
- Section 4. Section 40-4-219, MCA, is amended to read:

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 custody decree may be made earlier than 2 years after its

 date, unless the court permits it to be made on the basis of

 affidavits that there is reason to believe the child's

 present environment may endanger seriously his physical,

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 - (2) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:
 - (a) the custodian agrees to the modification;
- 25 (b) the child has been integrated into the family of

the petitioner with consent of the custodian; or

- (c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.
- (3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.
- 14) A custody decree may be modified upon the death of
 the custodial parent pursuant to [sections 1 through 3].*

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

"40-6-221. Custody, services, and earnings of child.

The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the childs unless custody is determined otherwise pursuant to [sections | 1 through 3]."

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2	INTRODUCED BY Kannes
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- 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 equally entitled to the custody, services, and earnings of 14 the child. If either parent be dead or unable or refuses to 15 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 19 to [sections 1 through 3].*

-End-

46th Legislature HB 0335/02

1	HOUSE BILL NO. 335
2	INTRODUCED BY RAMIREZ. SCULLY
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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;
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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.
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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:
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20	(2) the surviving spouse of the deceased custodial
21	parent;
2?	(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:

HB 0335/02

- 3 (6) any other party whom, upon showing of good cause,4 the court permits to intervene as an interested party.
- 5 <u>MEM_SECTIONs</u> Section 3. Determination of custody. The 6 hearing and determination of custody shall be governed by 7 [Title 40, chapter 4, part 2].

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14) A custody decree may be modified upon the death of

10 the custodial parent pursuant to [sections 1 through 31a*

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

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The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the childs unless custody is determined otherwise pursuant to [sections 1 through 31."

-End-

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