

HOUSE BILL 882

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Taxation.
February 20, 1979	Committee recommend bill, do pass.
February 22, 1979	Second reading, as amended.
February 23, 1979	Considered correctly engrossed. Third reading, passed.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Taxation.
March 31, 1979	Committee recommend bill, not concurrred.

IN THE HOUSE

April 2, 1979	Returned from Senate, not concurrred.
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1 ~~House~~ BILL NO. 882
 2 INTRODUCED BY Kenneth Holmes VINCENT Metcalf

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE HOMESTEAD
 5 EXEMPTION; PROVIDING FOR AUTOMATIC HOMESTEAD STATUS;
 6 AMENDING SECTIONS 70-32-101 THROUGH 70-32-104 AND 70-32-202,
 7 MCA; REPEALING SECTIONS 70-32-105 AND 70-32-106, MCA."

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

10 Section 1. Section 70-32-101, MCA, is amended to read:

11 "70-32-101. Of what homestead consists. The homestead
 12 consists of the dwelling house or mobile home and all
 13 appurtenances thereto in which the claimant resides and the
 14 land, if any, on which the same is situated, selected as in
 15 this chapter provided."

16 Section 2. Section 70-32-102, MCA, is amended to read:

17 "70-32-102. Head of family household defined. The
 18 phrase "head of a family household" as used in this chapter
 19 includes within its meaning:

20 (1) ~~the a husband and or wife acting-together-or~~
 21 ~~either-one-of-them-if-they-do-not-join-in-the-particular~~
 22 ~~transaction--in-any-given-transaction-which-requires-action~~
 23 ~~by-the-head-of-a-family--the-spouse-who-undertakes-the~~
 24 ~~transaction--shall-be-deemed-head-of-the-family-in-regard-to~~
 25 ~~that-particular-transaction;~~ ;

1 (2) every person who has attained the age of 60 years
 2 and who actually resides on the premises;

3 (3) every person who has residing on the premises with
 4 him or her and under his or her care and maintenance either:

5 (a) his or her minor child or the minor child of his
 6 or her wife or husband or former wife or husband;

7 (b) a minor grandchild, brother or sister, or minor
 8 child of a brother or sister;

9 (c) a father, mother, grandfather, or grandmother;

10 (d) the father, mother, grandfather, or grandmother of
 11 a husband or wife or former husband or wife;

12 (e) an unmarried sister, brother, or any other of the
 13 relatives mentioned in this section, who have attained the
 14 age of majority and are unable to take care of or support
 15 themselves;

16 ~~(4) any unmarried person residing on the premises~~
 17 ~~either alone or with other persons."~~

18 Section 3. Section 70-32-103, MCA, is amended to read:

19 "70-32-103. From whose property it may be selected. If
 20 the claimant be married, the homestead may be selected from
 21 the property of either spouse. When the claimant is not
 22 married but is head of a family household within the meaning
 23 of 70-32-102, the homestead may be selected from any of his
 24 or her property."

25 Section 4. Section 70-32-104, MCA, is amended to read:

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 INTRODUCED BILL

1 "70-32-104. Limitations on quantity and value which
2 may be selected. (1) Homesteads may be selected and claimed:

3 (a) consisting of any quantity of land not exceeding
4 320 acres used for agricultural purposes and the dwelling
5 house or mobile home thereon and its appurtenances and not
6 included in any ~~town-plot-city-or-village~~ municipality; or

7 (b) a quantity of land not exceeding in amount
8 ~~one-fourth-of-an~~ 1 acre ~~being-within-a-town-plot-city-or~~
9 ~~village~~ and the dwelling house or mobile home thereon and
10 its appurtenances; or

11 (c) consisting of a mobile home and its appurtenances
12 alone if the claimant does not own the land where the mobile
13 home is situated.

14 (2) Such homestead, in either case, shall not exceed
15 in ~~assessed~~ value the sum of ~~\$20,000~~ \$30,000. However, in
16 any proceedings instituted to determine the value of such
17 homestead, the assessed value of such land with included
18 appurtenances, if any, and of such dwelling house as appears
19 on the last completed assessment roll preceding the
20 institution of such proceedings shall be prima facie
21 evidence of the value of the property claimed as a
22 homestead."

23 Section 5. Section 70-32-202, MCA, is amended to read:

24 "70-32-202. Execution allowed under certain judgments.
25 The homestead is subject to execution or forced sale in

1 satisfaction of judgments obtained:

2 (1) before July 1, 1979, and before the declaration of
3 homestead was filed for record and which constitute liens
4 upon the premises;

5 (2) on debts secured by mechanics' or vendors' liens
6 upon the premises;

7 (3) on debts secured by purchase money mortgages on
8 the premises, executed and acknowledged by the husband and
9 wife or by an unmarried claimant;

10 (4) on debts secured by mortgages on the premises,
11 executed and recorded before July 1, 1979, and before the
12 declaration of homestead was filed for record.

13 (5) on debts secured by mortgages on the premises
14 executed and acknowledged as provided for in [section 6]."

15 **NEW SECTION.** Section 6. Waiver of homestead exemption
16 for nonpurchase money mortgages. (1) A homestead's exemption
17 from execution and forced sale may only be waived for
18 nonpurchase money mortgages by execution of the following
19 waiver of homestead exemption:

20 Waiver of Homestead Exemption

21 From Execution and Forced Sale

22 I now waive my homestead exemption. I do this knowing
23 my homestead otherwise cannot generally be taken to satisfy
24 my debts. However, upon signing this agreement as head of a
25 household, I realize my homestead may now be sold by forced

1 sale to pay the debt I am now incurring.

2 I, as head of a household, do voluntarily and knowingly
3 waive the exemption of my homestead from execution and
4 forced sale for the following consideration \$... (amount of
5 loan). The description of the homestead property hereby
6 mortgaged is:

7
8

9 Witness my (our) hand(s) this ... day of 19....

10

11 Authorized Representative Head of Household
12 of Mortgagee
13 Head of Household

14 (2) If the head of the household is married, both the
15 husband and wife must sign the above-stated waiver in order
16 for it to be operative. The above-stated waiver must be
17 printed on one side of the document, which document contains
18 no other provisions except the statement of consideration
19 and description of the homestead property. The waiver must
20 be subscribed and sworn before a notary public.

21 NEW SECTION. Section 7. Automatic homestead
22 exemption. Any dwelling home, mobile home, appurtenances
23 thereto, and the land, if any, where such structures are
24 situated shall automatically become the homestead of the
25 head of the household upon his signing the contract for deed

1 to the property or upon his purchase of the property as
2 evidenced by receipt of the deed to such property.

3 Section 8. Repealer. Sections 70-32-105 and 70-32-106,
4 MCA, are repealed.

-End-

HB 882

HOUSE BILL NO. 882

INTRODUCED BY KEMMIS, HOLMES, VINCENT, METCALF

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE HOMESTEAD EXEMPTION; PROVIDING FOR AUTOMATIC HOMESTEAD STATUS; AMENDING SECTIONS 70-32-101 THROUGH 70-32-104 AND 70-32-202, MCA; REPEALING SECTIONS 70-32-105 AND 70-32-106, MCA."

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Section 1. Section 70-32-101, MCA, is amended to read:

"70-32-101. Of what homestead consists. The homestead consists of the dwelling house or mobile home and all appurtenances thereto in which the claimant resides and the lands, if any, on which the same is situated, selected as in this chapter provided."

Section 2. Section 70-32-102, MCA, is amended to read:

"70-32-102. Head of family household defined. The phrase "head of a family household" as used in this chapter includes within its meaning:

- (1) ~~the a husband and or wife acting-together-or either-one-of-them-if-they-do-not-join-in-the-particular transactions--in-any-given-transaction-which-requires-action by-the-head-of-a-family--the-spouse-who-undertakes--the transaction--shall-be-deemed-head-of-the-family-in-regard-to that-particular-transaction;~~

~~(2)--every-person-who-has-attained-the-age-of-60--years and-who-actually-resides-on-the-premises;~~

~~(3)--every-person-who-has-residing-on-the-premises-with him-or-her-and-under-his-or-her-care-and-maintenance-either:~~

~~(a)--his--or--her-minor-child-or-the-minor-child-of-his or-her-wife-or-husband-or-former-wife-or-husband;~~

~~(b)--a-minor-grandchild,-brother-or--sister--or--minor child-of-a-brother-or-sister;~~

~~(c)--a-father,-mother,-grandfather,-or-grandmother;~~

~~(d)--the-father,-mother,-grandfather,-or-grandmother-of a-husband-or-wife-or-former-husband-or-wife;~~

~~(e)--an--unmarried-sister,-brother,-or-any-other-of-the relatives-mentioned-in-this-section-who-have--attained--the age--of--majority--and-are-unable-to-take-care-of-or-support themselves;~~

~~(2) any unmarried person WHO HAS ATTAINED THE AGE OF MAJORITY residing on the premises either alone or with other persons.~~

Section 3. Section 70-32-103, MCA, is amended to read:

"70-32-103. From whose property it may be selected. If the claimant be married, the homestead may be selected from the property of either spouse. When the claimant is not married but is head of a family household within the meaning of 70-32-102, the homestead may be selected from any of his or her property."

1 Section 4. Section 70-32-104, MCA, is amended to read:

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3 may be selected. (1) Homesteads may be selected and claimed:

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7 included in any town-plot-city-or-village municipality; or

8 (b) a quantity of land not exceeding in amount
9 one-fourth-of-an 1 acre being-within-a-town-plot-city-or
10 village and the dwelling house or mobile home thereon and
11 its appurtenances; or

12 (c) consisting of a mobile home and its appurtenances
13 alone if the claimant does not own the land where the mobile
14 home is situated.

15 (2) Such homestead, in either case, shall not exceed
16 in assessed MARKEI value the sum of \$20,000 ~~\$30,000~~ \$50,000.
17 However, in any proceedings instituted to determine the
18 value of such homestead, the assessed value of such land
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17 for it to be operative. The above-stated waiver must be
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21 be subscribed and sworn before a notary public.

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3 evidenced by receipt of the deed to such property.

4 Section 8. Repealer. Sections 70-32-105 and 70-32-106,
5 NCA, are repealed.

-End-

STATE OF MONTANA

Request No. 473-79

FISCAL NOTE

Form BD-15

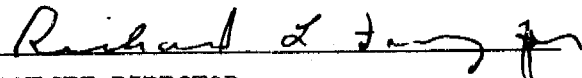
In compliance with a written request received March 9, 1979, there is hereby submitted a Fiscal Note for House Bill 882 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

This proposed bill would expand the homestead exemption; providing for automatic homestead status.

FISCAL IMPACT:

None.


BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 3/13/79