CHAPTER NO. 12

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SENATE BILL NO. 33

INTRODUCED BY VAN VALKENBURG

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BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 5, 1979	Introduced and referred to Committee on Judiciary.
	On Motion Senator Van Valkenburg was added as author to the Pre-Filed Bill.
January 13, 1979	Committee recommend bill do pass as amended. Report adopted.
January 15, 1979	Printed and placed on members' desks.
January 16, 1979	Second Reading, do pass.
January 17, 1979	Considered correctly engrossed.
January 18, 1979	Third Reading, passed. Transmitted to Second House.
IN THE HOUSE	
January 19, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill be concurred in. Placed on Consent Calendar.
January 29, 1979	Third Reading, concurred in.
IN THE SENATE	
January 31, 1979	Returned from Second House. Sent to enrolling.
	Reported correctly enrolled.

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1	SENATE BILL NO. 33
2	INTRODUCED BY
з	BY REQUEST OF THE CODE COMMISSIONER
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5	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6	CLARIFY THE LAWS RELATING TO REMEDIES."
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8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9	Section 1. Section 27-1-107, MCA, is amended to read:
10	"27-1-107. Kinds of relief when given. As a general
11	rule, compensation is the relief or remedy provided by the
12	law of this state for the violation of private rights and
13	the means of securing their observance va andspecific
14	<u>Specific</u> and preventive relief may be given innoother
15	casesthanthosespecifiedinports-2+-3+-and-4-of-this
16	ch aptery-27-19-102y-27-1y-103y-28-1-104y-and-parts-16-and-17
17	of-chapter-2-of-Title-20 only_when_specifically_provided_for
18	<u>by_statute</u> ."
19	Section 2. Section 27-1+223, MCA, is amended to read:
20	#27-1-223. Damages for injuries or death inflicted in
21	a duel. If any person slays or permanently disables another
22	person in a duel in this state, the-slayer <u>he</u> must provide
23	for the maintenance of the spouse <u>and minor children</u> of the
24	person slain or permanently disabled andfor-the-minor
25	children in such manner and at such cost, either by

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aggregate compensation in damages to each or by a monthly;
 quarterly, or annual allowance, to be as is determined by
 the courte-if-any-person-sisys-or-disables-another-person-in
 a--duel--in--this-statee-the-sisyer and he is liable for and
 must pay all debts of the person slain or permanently
 disabled."
 Section 3. Section 27-1-303. MCA, is amended to read:

#27-1-303. Limitation of damages for breach of A 9 obligation. Notwithstanding--the--provisions--of--27-1-2044 10 27-1-2224-27-1-223y-and-chis-party-no No person can recover 11 a greater amount in damages for the breach of an obligation 12 than ne could have gained by the full performance thereof on 13 both sides except-in-the-cases-specified-in-27-1-221-through 27-1-223+--27-1-322+--78-16-188+--78-27-287+--884--78-27-288 14 15 unless a ordater recovery is specifically permitted by statute." 10 17 Section 4. Section 27-1-311, NCA, is amended to read:

18 #27-1-311. sreach of contract. For the breach of an 19 obligation arising from contract, the measure of damages, 20 except where when otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for 21 22 all the detriment which was proximately caused thereby or 23 which in the ordinary course of things would be likely to 24 result therefrom. No-damages-con-be-recovered-for-a-breach 25 of--contract Damages which are not clearly ascertainable in

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INTRODUCED BILL

breach of contract.* 2 Section 5. Section 27-1-314. MCA. is amended to read: 3 4 #27-1-314. preach of agreement to convey real . 5 property. The detriment caused by the breach of an agreement to convey an estate in real property is deemed considered to 6 7 be the price paid and the expenses properly incurred in examining the title and preparing the necessary papers, with н interest thereony, but-adding-thereto--in--case--of If__the 9 10 breach was in bad faith and the agreed price was less than the value of the estate, the detriment is also considered to 11 include the difference between the aurged price agreed-to-be 12 poid and the value of the estate spread-to--be--conveyed at 13 the time of the breach and the expenses properly incurred in 14 15 preparing to enter upon the land." Section 6. Section 27-1-320, MCA, is amended to read: 16 "27-1-320. Conversion of personal property. (1) The 17 detriment caused by the wrongful conversion of personal 16 property is presumed to be: 19 20 (a) the value of the property at the time of its 21 conversion with the interest from that time or, where when the action has been prosecuted with reasonable diligence. 22 23 the highest market value of the property at any time between 24 the conversion and the verdict without interest, at the

both their nature and origin cannot be recovered for a

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{b} a fair compensation for the time and money
 properly expended in pursuit of the property.

3 (2) The presumption declared by subsection (1) cannot 4 be repelled in favor of one whose possession was wrongful 5 from the beginning by his subsequent application of the 6 property to the benefit of the owner without his <u>such</u> 7 owner's consent."

8 Section 7. Section 27-1-501, MCA, is amended to read: #27-1-501. Survival of cause of action or defense --9 death or other disability or transfer of interest. An 10 action, cause of action, or defense shall goes not abate by 11 12 because of the death or other disability of a party or by 13 the transfer of any interest thereins but shally--in--all cases--where-a whenever the cause of action or defense arose 14 15 in favor of such party prior to his death or other 16 disability or transfer of interest therein, survive it survives and may be maintained by his representatives or 17 18 successors in interesting and in-tase-such if the action has 19 not been begun or defense interposed, the action may be begun or defense set--up interposed in the name of his 20 21 representatives or successors in interests. and-in-case If 22 the action has been begun or defense set-up interposed, the court-shally-on-motiony-allow the action or proceeding to 23 24 main and main an successors-in-interesta-in-case-of-any-transfer-of-interesta 25

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option of the injured party; and

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1 the-action-or-proceeding-may-be-continued-in-the-name-of-the
2 original-party-or-the-court-may-allow-the-person-to-whom-the
3 transfer-is--made--to--be--subst+tuted--in--the--setion--of
4 proceeding as provided in dule 25. Ma&siiveP.**

Section 8. Section 27-1-606, MCA, is amended to read: 5 #27-1-606. Criminal penalty. Any person who shall 6 violate violates any of the provisions of this part small-be 7 guilty--of--a--misdemeanor-and is punishable upon conviction R therefor shall-be-punishable by a fine of not less than \$100 9 10 or more than \$1,000 or imprisonment for a term of not less 11 than 1 year or more than 5 years, in the discretion of the 12 court."

Section 9. Section 27-1-701, MCA, is amended to read: 13 #27-1-701. Liability for negligence as well as willful 14 acts. Every--one Everyone is responsible not only for the 15 result results of his willful acts but also for an injury 16 occasioned to another by his want of ordinary care or skill 17 in the management of his property or person except so far as 18 the latter has willfully or ty want of ordinary care orought 19 20 the injury upon himself. The-extent-of--limbility--in--such cases--is--defined--by--parts--2--and--3--of--this--cnaptery 21 subsections--(11--through--(3)--of---69-11-121v---70-16-188v 22 23 78-27-287*-and-78-27-286**

Section 10. Section 27-1-311, MCA, is amended to read:
#27-1-811. When owner of radio station not liable for

1 material broadcast. No person, firm, or corporation owning 2 or operating a radio broadcasting station shall-be is liable 3 under the law of libel-and defamation on account of having 4 made its broadcasting facilities available to any person, 5 whether including but not limited to a candidate for public 6 office or-eny-other-person, for discussion of controversial 7 or eny other subjects in the absence of proof of actual 8 malice on the part of such owner or operator."

Section 11. Section 27-1-813. MCA. is amended to read: Q. #27-1-813. Liability of person broadcasting --10 liability of owner for broadcast prepared by station. 11 12 Nothing in 27-1-811 or 27-1-812 contained--shall may be 13 construed to relieve any person broadcasting over a radio station from liability under the law of libel---and 14 15 defamations--Nor--shell--enything-in-27-1-811-or-27-1-812-be construed or to relieve any person, firm, or corporation 36 owning or operating a radio broadcasting station from 17 liability under the law of libel-and defamation on account 18 of any broadcast prepared or made by any such person, firm, 19 or corporation or by any officer or employee thereof in the 20 course of his employments, and in-ony-case-where-listity 21 22 shall-exist whenever such an owner or operator is liable on 23 account of any a broadcast as-declared-in-the-first-clause 24 of-this-sentencey-in--thet--event--where and two or more broadcasting stations were connected together simultaneously 25

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1 or by transcription, film, metal tape, or other approved or 2 adapted use for joint operation in the making of such the 3 broadcast, such liability shall-be-confined-and is limited 4 solely to the person, firm, or corporation owning or 5 operating the radio station which originated such the 6 broadcast."

7 Section 12. Section 27-2-101. MCA, is amended to read: 8 #27-2-101. Definition of action. The word "action", as 9 used in this chapter, 7-7-105(1),-7-32-4121,-17-5-1001,--and 10 20-9-465, is to be construed, whenever it is necessary to do 11 so to--do, as including a special proceeding of a civil 12 nature."

13 Section 13. Section 27-2-102, NCA, is amended to read: 14 "27-2-102. When action commenced. An <u>For_the_purpuses</u> 15 <u>of_statutes_relating_to_the_time_within_which_an_action_must</u> 16 <u>be_commenceds_an</u> action is commencedy-within-the-meaning-of 17 <u>[this-chapterjy</u> when the complaint is filed."

Section 14. Section 27-2-103. MCA, is amended to read: #27-2-103. Actions by state subject to limitations. The limitations prescribed in 27-2-201-through-27-2-204. 21 27-2-207.27-2-209-through-c7-2-21tt21.-and-27-2-212-through 22 27-2-215 part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties."

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Section 15. Section 27-2-105, MCA+ is amended to read:

1	#27-2-105. Periods of limitation. The <u>All_civil</u>
z	actions must be commenced within the periods prescribed for
з	thecommencement-of-actionsy-other-than-for-the-recovery-of
4	real-propertys-are-as-follows in part 2 except when gnother
5	<u>statute specifically provides a different limitation."</u>
6	Section 16. Section 27-2-202, MCA, is amended to read:
7	#27-2-202. Actions besed on cntract or other
8	obligation. (1) The period prescribed for the commencement
9	of an action upon any contract, obligation, or liability
10	founded upon an instrument in writing is within 8 years.
11	(2) The period proscribed for the commencement of an
12	action upon a contract, account, <u>or</u> promise not founded on
13	an instrument in writing is within 5 years.
14	(3) The period prescribed for the commencement of an
15	action upon an obligation or liability <u>e other than a</u>
16	<u>contracts accounts or promises</u> not founded upon an
17	instrument in writing yother-than-a-contracty-accounty-or
18	promisev is within 3 years."
19	Section 17. Section 27-2-204. MCA, is amended to read:
20	#27-2-204. Tort actions general and personal
21	injury. (1) The period prescribed for the commencement of an
22	action upon en-obligation-or a liability not founded upon an
23	instrument in writing yother-than-a-contracty-accounty-or
24	promisev is within a years.
25	(2) The period prescribed for the commencement of an

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action to recover damages for the death of one caused by the 1 wronoful act or neulect of another is within 3 years. 2 (3) The period prescribed for the commencement of an 3 action for libel, slander, assault, battery, falsa -4 imprisonment, or seduction is within 2 years." 5 Section 18. Section 27-2-211, MCA, is amended to read: 6 #27-2-211. Actions to enforce penalty or forfeiture or 7 other statutory liability. (1) Within 2 years is the period 8 prescribed for the commencement of an action upon: 9 10 (a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the 11 12 states except when the statute imposing it prescribes a 13 different limitation; (b) a statute or an undertaking in a criminal action 14 for a forfeiture or penalty to the state; 15 (c) a liability created by statute other than a 16 penalty or forfeiture. 17 (2) The period prescribed for the commencement of an 18 action by a municipal corporation for the violation of any 19 city or town ordinance is within 1 year. 20 21 (3) {Sections--93-2401--to--93-2720]--do--not---affect Notwithstanding any other provision of this chapter, actions 22 against directors or stocknolders of a corporation to 23 recover a penalty or forfaiture imposed or to enforce a 24 liability created by lawy-but-such-actions must be prought 25

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within 3 years after the discovery by the aggrieved party of 1 2 the facts upon which the penalty of forfeiture attached or а. the liability was created." Section 19. Section 27-2-213. MCA. is amended to read: 4 5 #27-2-213. Actions against banks. To [1] Except as provided in subsection (2), there are no time limitations on 6 7 the commencement of actions brought to recover money or other property deposited with any bank, banker, trust а 9 company, or savings and loan corporation, association, or 10 society-there-are-no-limitations. 11 121_Howevery--ony Any action to obtain, set aside, or 12 question in any manner any stated or settled account Detween any banky bankery trust companyy or savings or and loan 13 corporation, association, or society and any depositor or 14 depositors with such bank, banker, trust company, or savings 15 or and loan corporation, association, or society must be 16 commenced within 5 years from the date of the statement of 17 18 such account. Any action based upon or arising from the payment of by any bank, banker, tryst company, or savings 19 20 and loan corporation, association, or society of a forged, 21 raised, or otherwise altered check, order, or promissory 22 note out of the deposit, money, or property of the plaintiff 23 shall must be brought commenced within 3 years from the day 24 on which the plaintiffy or his agent, assignee, or personal 25 representative shall-have-been was notified of such payment

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order, or note marked "paid"." 2 3 Section 20. Section 27-2-215, MCA, is amended to read: #27-2-215. Uther actions. An action for relief not 4 . 5 hereinbefore otherwise provided for must be commenced within 5 years after the cause of action shall--have-accrued 6 1 accrues.... 8 Section 21. Section 27-2-303, MCA, is amended to read: #27-2-303. Actions for waste, trespass, or injury 9 committed during mining work or exploration, when waste, 10 trespasse or injury is committed by reason of underground 11 12 work upon any mining claim or seismic exploration, location, spacing, drilling, equipping, producing, or other operation 13 14 related to exploration or production of oily gas, water, geothermal resources, or other minerals, the cause of action 15 shall is not be-deemed considered to have accrued until the 16 discovery by the aggrieved party of the facts constituting 17 such waste, trespass, or injury." 18 Section 22. Section 27-2-304, MCA, is amended to read: 19 20 #27-2-304+ Actions involving personal property 21 accruing after death and before issuance of letters of administration. For--the--purpose-of-computing-the The time 22 23 within which an action must be commenced in-a-court-of--this 24 state by an executor or auministrator to recover personal

or on--which--he--or--they--shall-have received such check,

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property taken after the death of a testator or intestate

1	and before the issuing of letters-testamentary-or letters of
2	administration or to recover damages for taking, detaining,
3	or injuring personal property within the same periodsthe
4	łettersore-deemed-to-have-been-issued-within-5-years-sftef
5	the-death-of-the-testator-or-intestator <u>shall_be_computed</u>
6	from:
7	<pre>[1] thm time of issuing such letters if they are</pre>
8	<u>issued_withio_5_years_of_toe_leath:</u>
9	121.5 vents after the death if the letters have not
10	then been issued."
11	Section 23. Section 21-2-401, MCA, is amended to read:
12	#27-2-401, when person entitled to bring action is
13	under a disability. (1) If a person entitled to bring an
14	action mentioned in part 2, except 27-2-211(3), be is, at
15	the time the cause of action accrued <u>accrues</u> , either within
16	theage-of-acjority a_minor, insent seriously_mentally_ill,
17	or imprisoned on a criminal charge or in-execution under the
18	<u>a</u> sentence of-a-criminal-court for a term less than for
19	life, the time of such disability is not a part of the time
20	limited in-193-2401-to-93-27203 for commencing the actiony
21	except-thet. However the time so limited cannot be extended
22	more than 5 years by any such disability except infency
23	ainority or in any case. more than 1 year after the
24	disability cesses.

25 (2) where if an action is barred by 27-2-304, any of

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the next-of-kin heirs, legatees devisees, or creditors whom 1 at the time of the transaction upon which it the action 2 might have been founded, was within--the--ode--of--mojority, 3 insoney--or-imprisoned-on-a-criminal-charge under one of the 4 disabilities mentioned in subsection (1) may, within 5 years 5 after the cessation of such disability, maintain an action 6 7 to recover damages by--reason--thereofy in-which, in such action he may recover such sum or the value of such property 8 9 as he would have received upon the final distribution of the estate if an action had been seasonably commenced by the 10 11 executor or administrator.

12 (3) No person con <u>may</u> avail himself of a disability 13 unless it existed when his right of action or entry accrued. 14 (4) When two or more disabilities coexist at the time 15 the right of action or entry accrues, the limitation does 16 not attach until they are poth removed."

Section 24. Section 21-2-404, MCA, is amended to read: 17 #27-2-404. When a party dies before action commenced. 18 (1) If a person entitled to bring an action or against whom 19 an action may be brought dies before the expiration of the 20 time limited for the commencement thereof and the cause of 21 action survives, an action may be commenced by or actionst 22 his representatives after--the-expiration-of-that-time-and 23 within-l-year-from-his-death as provided in the Uniform 24 Probate Code. 25

f2+--if-s-person-against-whos-on-action-sev-be--brought 1 2 dies--before--the--expiration--of--the--time-limited-for-the 3 compareneent-thereof-and-the-cause-of--action--survives---an action--may--be--companed-against-his-representatives-after 4 the-expiration-of-that-time-ong--within--t--year--ofter--the 5 issuing--of--letters-testagentary-or-of-administrations-if-a 6 person-against-whom-a-cause-of-action--exists--dies--without 7 8 the--statey-the-time-which-etapses-between-his-death-and-the 9 expiration-of-1-u-ar-after-the-issuing-within-the--state--of 10 letters--testamentery--or-letters-of-administration-is-not-a 11 part-of-the-time-timited-for-the-commencement-of--an--action 12 therefor-against-his-executor-or-administrator." Section 25. Section 27-2-408. MCA. is amended to read: 13 14 #27-2-408. Effect on counterclaim of termination of 15 action. where Whenever a defendant in an action has 16 interposed an answer in support of which he would be 17 entitled to rely at the trial upon a defense or counterclaim 18 then existing in his favory the remedy upon which, at the 19 time of the commencement of the action, was not barred by 20 the-provisions-of-193-2401-to-93-2720] any provision of this 21 code and the complaint is dismissed or the action is 22 discontinued or abates in-consequence because of the 23 plaintiff's death, the time which--intervened between the 24 commencement and the termination of the action is not a part 25 of the time limited for the commencement of an action by the

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defendant to recover for the cause of action so interposed
 as a defense or to interpose the same defense in another
 action prought by the same plaintiff or a person deriving
 title from or under nim."

+ 5 Section 26. Section 27-2-409. MCA. is amended to read: 6 #27-2-409. Acknowledgment of debt or part payment. No 7 acknowledgeent or promise is sufficient evidence of a new or continuing contract by--wnich--to-take-the-case-out-of-the 6 9 operation-of-f93-2401-to-93-27201 sufficient_to_cause_the 10 relevant_statute_of_ligitations_to_begin_running_anew unless the same is contained in some writing signed by the party to 11 12 be charged thereby. But Howevers this section does not alter 13 the effect of any payment of principal or interest; which payment is equivalent to a new promise in writing, duly 14 15 signed, to pay the residue of the debt."

16 Section 27. Section 27-5-303. MCA. is amended to read: #27-5-303. When award has effect of a judgment. After 17 the expiration of 5 days from the filing of the award, woon 18 19 the application of a party-and-on-filing who also files an affidavit showing that notice of filing the award has been 20 21 served on the adverse party or his attorney at least 4 days 22 prior to such application and that no order staying the 23 entry of judgment has been served, the clerk must enter the award sust-be-entered-by-the-clerk in the judgment book and 24 25 thereupon it has the effect of a judgment."

Section 28. Section 27-6-402, MCA. is amended to read:
 "27-6-402. Selection of panelists. (1) Application for
 review shall be promptly transmitted by the director to the
 directors of the health care provider's state professional
 society or association and the state bar, which shall each
 select three panelists within 30 days from the date of
 transmittal of the application.

(2) If no state professional society or association 8 exists or if the nealth care provider does not belong to q such a society or association, the director shall transmit 10 11 the application to the health care provider's state licensing board, which shall in turn select three persons 12 13 from the health care provider's professiony and, where 14 applicable, to from persons specializing in the same field 15 or discipline as the health care provider."

16 Section 29. Section 27-6-503, MCA, is amended to read: 17 #27-6-503. Conclusion of hearing -- supplemental hearing, (1) At the conclusion of the hearing, the panel may 18 19 take the case under advisement or may request that 20 additional facts, records, withesses, or other information 21 be obtained and presented to it at a supplemental hearing, 22 which shall be set for a date and time certain. not longer 23 than 30 days from the date of the original hearing unless the sttorney-bringing-the-motter-for-review claimant or_ bis 24 25 attorney consents in writing to a longer period.

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1 (2) Any supplemental hearing shall be held in the same 2 manner as the original hearing, and the parties concerned 3 and their attorneys may be present.[#]

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Section 30. Section 27-6-605, MCA, is amended to read: 4 #27-6-605. Decision to be filed and copies sent to 5 parties, attorneys, and licensing board. The decision shall ٨ be communicated in writing to the parties and attorneys 7 concerned, and a copy thereof shall be retained in the я permanent files of the panel. The A copy of the report 9 decision shall be sent to the health care provider's 10 professional licensing board." 11

12 Section 31. Section 27-6-704, MCA, is amended to read: 13 #27-6-704. Panel proceedings and report decision 14 privileged from disclosure in court actions. (1) No panel 15 member may be called to testify in any proceeding concerning 16 the deliberations, discussions, decisions, and internal 17 proceedings of the panel.

18 (2) No statement made by any person during a hearing 19 before the panel may be used as impeaching evidence in 20 court. The report decision of the medical review panel is 21 not admissible as evidence in any action subsequently 22 brought in any court of law.*

23 Section 32. Section 27-7-103. MCA, is amended to read:
 24 #27-7-103. Entry of judgment -- costs. Judgment must
 25 be entered in the judgment book as in other cases but

without costs for any proceeding prior to the trial. The
 casey-the-submissiony-and-a-copy-of-the-judgment-constitute
 the-judgment-rollw^N
 Section 33. Section 27-8-204. MCA, is amended to read:

5 #27-8-204. Declarations concerning administration of 6 trusts and estates. Any person interested as or through an 7 executor, administrator, trustee, quardian, or other R fiduciary, creditor, devisee, legateey heir, next-of-kiny or cestui que trust in the administration of a trust or of the 9 estate of a decedent, infont ainor, functic seriously 10 mentally ill merson, or insolvent may have a declaration of 11 rights or legal relations in respect thereto: 12

13 (1) to ascertain any class of creditors, devisees.

14 legateesy heirs, next-of-kiny or others;

15 (2) to direct the executors, administrators, or
16 trustees to do or abstain from doing any particular act in
17 their fiduciary capacity; or

 18 (3) to determine any question arising in the *i* 19 administration of the estate or trust, including questions
 20 of construction of wills and other writings.⁴⁰

21 Section 34. Section 27-9-101. MCA, is amended to read: 22 #27-9-101. When and in what courts judgment may be 23 confessed. A <u>Subject to 28-2-709. a</u> judgment by confession 24 may be entered without action, either for money due or to 25 become due or to secure any person against contingent

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liability on behalf of the defendant, or both, in the manner 1 2 prescribed by this chapter. Such judgment may be entered in 3 any court having jurisdiction for like amounts, judgment upon confession may be entered up in any justice's court 4 specified in the confession, as provided in this chapter." 5 Section 35. Section 27-9-103, NCA, is amended to read: 6 #27-9-103. Filing and costs -- district court. The 7 statement must be filed with the clerk of the court in which R 9 the judgment is to be enteredy who sust shall endorse upon it and enter in the judgment book a judgment of such court 10 for the amount confessed, with \$10 costs. The-statement-and 11 affidavity-with-the-judgment-endorsed-thereony--becomes--the 12 iudqment-roll+* 13 14 Section 36+ Section 27-9-104+ MEA+ is amended to read: 15 #27-9-104. Filling and costs -- justice's court. In a justice's court where the court which has authority to enter 16 the judgment, the statement may be filed with the justice. 17 18 who may shall thereupon enter in his docket a judgment of 19 his court for the amount confessed, with \$5 costs in--the 20 district---court--and--\$3--in--the--justice*s--court. If a transcript of such judgment be is filed with the clerk of 21 22 the__district__court. a copy of the statement must be filed

23 with it."

24 Section 37. Section 27-15-102, MCA, is amended to 25 read:

#27-15-102. Availability of provisional remedies to ÷ 2 defendent interposing counterclain. where where the 3 defendant: interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, his right to a 6 provisional remedy is the same as it would be in an action 5 brought by him against the plaintiff for the cause of action ٨ stated in the counterclaim and demanding the same undomente. 7 end--for Equ the purpose of applying to such a case the æ provisions of chapters 15 through 20 forcapt-part-10--of-9 10 11 chapter-18; of this title and chapter 8 of Title 25, chapter-12 By the defendant is deemed considered the plaintiff, the 13 plaintiff is deemed considered the defendant, and the 14 counterclaim so set forth in the answer is deemed considered 15 the complaint." 16 Section 38+ Section 27-16-101, HEA+ is amended to read: 17 18 #27-16-101. Exclusive procedure for <u>prejudgeent</u> arrest 19 in civil action. No person shall may be arrested before 20 judgeent in a civil action except as prescribed by this 21 chapter."

22 Section 39. Section 27-16-102, MGA, is amended to 23 read:

24 *27-16-102. When defendant may be arrested. The
25 defendant way be arrested in the following.cases:

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1 (1) in an action for the recovery of money or damages 2 on a cause of action arising upon contract, express or 3 implied, when the defendant is about to depart from the 4 state with intent to defraud his creditors;

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5 (2) when the in an action is for willful injury to 6 persony to <u>or</u> charactery or to property -- knowing -- the 7 property-to-belong which the defendant knew belonged to 8 another;

9 (3) in an action for a fine or penalty or for money or property fraudulently misapplied or converted to his own use 10 11 by a public officer, an officer of a corporation, or an 12 attorney, factor, broker, agent, or clerk, in the course of 13 his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or 14 in a professional employment; or for a willful violation of 15 duty; 16

17 (4) in an action to recover possession of personal
18 property unjustly obtained, when the property or any part
19 thereof has been concealed, removed, or disposed of so that
20 it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in
contracting the debty--in or incurring the obligation for
which the action is broughty or in concealing or disposing
of the property or for the taking, detention, or conversion
of which the action is brought;

(6) when the defendant has removed or disposed of his
 property or is about to do so with intent to defraud his
 creditors."

4 Section 40+ Section 27-18-102, NCA+ is amended to 5 read:

"27-18-102. What property subject to attachment. (1) 6 The Except as provided in subsection (2). the rights or 7 shares which the defendant mey-have has in the stock of any А 9 corporation or company, together with the interest and 10 profits thereon, all debts due such the defendant, and all 11 other property in this state of such the defendant not 12 exempt from execution may be attached and, if judgment be is recovered, sold to satisfy the judgment and execution. 13

14 Property exempt from execution is exempt from attachment.

15 (2) In any action where in_which the amount sued for 16 is \$10 or less, no-writ-of-attachment-shall-be-issued-and 17 levied-upon-or-against the wages or and earnings of the 18 debtor or defendant for his personal services rendered at 19 any time within 30 days next---preceding hefore the 20 commencement of the actiony-and-in-any-such-case-or-action 21 such-wages-and-earnings are exempt from attachment."

22 Section 41. Section 27-18-301, MCA, is amended to 23 read:

24 "27-18-301. Form and content of writ -- defendant's
25 undertaking to prevent levy. <u>[1]</u> The writ must be directed

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to the sheriff of any county in which property of such
 defendant may be and must require him to:

3 (m) attach and safely keep all the property of such 4 defendant within his county, not exempt from execution , 5 <u>attachment</u>, or so much thereof as may be sufficient to 6 satisfy the plaintiff's demand, the amount of which must be 7 stated in conformity with the complainty or

8 (b) unless if the defendant give <u>uives</u> him security by 9 the undertaking of at least two sufficient sureties, in an 10 amount sufficient to satisfy such demand, besides costs, or 11 in an amount equal to the value of the property which has 12 been or is about to be attached, in-which-casey-to take such 13 undertaking.

14 <u>121</u> Suen The undertaking is--to must be to the 15 plaintiff or--plaintiffs in the action and shell must be 16 approved in writing on the back thereof by the plaintiff or 17 plaintiffs or his or-their attorney or-attorneys or, upon 18 their refusal, by the judge of the district court of the 19 same county as the residence of the sherift."

20 Section 42. Section 27-18-304, MLA, is amended to 21 read:

22 #27-18-304. When sheriff may require written 23 specification of property to be levied upon. No written 24 specification of property to be levied upon must may be 25 required by the sheriff, except as to property referred to 1 in 27-18-403 and 27-18-405(2).**

2 Section 43. Section 27-18-410, MCA, is amended to 3 read:

4 #27-18-410. Corporate stock -- service on secretary of state. In addition to the method prescribed in 27-18-409 for 5 attaching stocks tock or shares or interest therein of any ٨ corporation or company, it the president or other head of 7 the same or the secretary, :ashier, or other managing agent .8 thereof does not live or cannot be found in Nontana of 9 10 connot--be--found--within-the-soid-state and an affidavit is filed in the office of the clerk of the court in which the 11 12 action is pending setting forth that the--above-nemed officers-or--menoging such officer or agent of---said 13 14 corporation does not live or cannot be found within the state in Montana, the clerk of-the-court shall make an order 15 16 directing the writ to be served upon the secretary of state of Montana or, in his absence from his office, upon the 17 18 deputy secretary of state. When such order has been made, the writ of attachment shall be served upon the secretary of 19 20 state ory-in-his-absencey-upon-the deputy secretary of state 21 by leaving with him a copy of said the writ and a notice Z2 that the stock or shares or interest therein of such 23 corporation or company belonging to the defendant is attached in pursuance of such the writ." 24 Section 44. Section 27-18-413, MCA, is amended to 25

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1 read:

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#27-18-413. Personal property subject to a security 2 3 interest. Personal property subject to a security interest 4 may be taken on attachment issued at the suit of a creditor (other than the secured warty) of the debtor under the 5 security agreement; but before the property is so taken, the 6 officer levying the writ must pay or tender to the secured 7 party the amount of the security agreement debt and interest 8 or must deposit the same with the county treasurer of the 9 county in which the financing statement covering the 10 security agreement is filedy if such statement is filed with 11 a county clerk and recordery or if such statement is filed 12 with another filing officer pursuant to law, then with such 13 other filing officer, payable to the order of the secured 14 party.* 15

16 Section 45. Section 27-18-1504. MCA, is amended to
17 read:

18 "27-18-1504. Form and content of writ -- defendant's undertaking to prevent levy. (1) The writ may be directed to 20 the sheriff or any constable of the county or the sheriff of 21 any other county and must require him to:

22 (a) attach and safely keep all the property of the 23 defendant in his county, not exempt from execution 24 <u>attachment</u>, or so much thereof as may be sufficient to 25 satisfy the plaintiff's demand, the amount of which must be

stated in conformity with the complainty: or 1 ib) unloss if the defendant has--given gives him 2 security by the undertaking of two sufficient sureties in an 3 amount sufficient to satisfy such demand, besides costs. in 4 which-cose-to take such undertaking. 5 ٨ 12) Such The undertaking is--to must be to the 7 plaintiff or-plaintiffs-in-the-section and shall gust be approved in writing on the back thereof by the plaintiff or 8 pleintiffs or his or-their attorney or-attorneys or, upon 9 10 their refusal, by the justice issuing such the writ." 11 Section 46+ Section 27-18-1506, MCA+ is amended to 12 read: "27-18-1506. Applicability of procedure in district 13 14 court. Part 1y--except-27-18-207, 27-18-207, 27-18-303y 15 27-18-304y-27-18-306 through 27-18-308; parts 4, 5, and 6y except--27-16-406; 27-18-711 through 27-18-713, 27-18-721 16 17 through 27-18-732; and parts 8 and 9, except 27-18-901, are applicable to attachments issued in justices! courts, the 18 word "constable" being substituted for the word "sheriff" 19 2υ whenever the writ is directed to a constable, and the word 21 "justice" substituted for "judge"." 22 Section 47. Section 27-19-204. MCA. is amended to 23 read:

24 #27-19-204. Issuance without bond. Said The injunction

25 provided for in 27-19-202 shall issue es-in-cases-of-equity

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1 without bond, upon the application of the county attarney of 2 the county in which such the action is pending or upon the application of the attorney general in the name of the state - 4 of Montana, upon a prime facie showing that an action--eivit 4 or-criminaly described in 27-19-202 has been so instituted . 5 6 and is so pendingy--charging--such--person--or--personsy 7 corporation-or-corporationsy-foreign-or-domesticy-with--such 8 violasias."

9 Section 48. Section 27-19-303, MCA, is amended to 10 read:

11 #27-19-303. Time of granting injunction, evidence required. The injunction order may be granted at the time of 12 13 issuing the summons upon the complaint or at any time afterward before judgment upon affidavits. In the one case, 14 15 the complaint, with or without affidavits to support it, 16 and, in the other, the affidavits shell must Show 17 satisfactorily that sufficient grounds exist therefor for 18 the order. An injunction order shall may not be granted on 19 the complaint alone unless:

20 (1) it be is duly verified; and

(2) the material allegations of the complaint setting
 forth the grounds therefor--be for__ths__order__arg made
 positively and not upon information and belief.⁴⁴

24 Section 49+ Section 27-17-306+ MCA+ is amended to 25 read:

ł "Z7-19-306. Security for damages. (1) On--gronting--on 2 in junction--or--restroining--ordery--the--court-or-judge-may requires-except Except when the states a county, or any 3 subdivision thereof or a municipal corporation or a married 5 person in a suit for divorce against his or her spouse is a party plaistiff, on granting an injunction or restraining * 7 order: the court or judge may require a written undertaking on the part of the laintilf, with sufficient sureties, to A the effect that the plainting will pay to the party enjoined 9 such damages, not exceeding an amount to be specified, as 10 such party may sustain by reason of the injunction if the 11 court finally decide decides that the plaintiff was not 12 13 entitled thereto.

14 (2) Within 5 days after the service of the injunction, 15 the defendant may except to the sufficiency of the sureties. 16 If the slaintiff he fails to do so, such slaintiff is deemed 17 to--hove--waived be waives all objections to them. When 18 excepted to, the plaintiff's sureties, upon notice to the 19 defendant of not less than 2 or more than 5 days, must 20 justify before a judge or clerk in the same manner as upon nail on arresty_ ond-upon-foilure If they fail to justify or 21 22 if others in their place fail to justify at the time and 23 place appointed, the order granting an the injunction shall 24 must be dissolved."

25 Section 50. Section 27-19-402, MCA, is amended to

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1	read:	1	#27-19-404. When injunction dissolved or modified. If
2	"27-19-402. Evidence upon <u>at</u> hearing. Upon <u>At</u> the	2	upon suchapplication the hearing it satisfactorily appear
3	hearing <u>on the application</u> to vueste <u>dissolve</u> or modify an	3	appears that there is are not sufficient ground grounds for
4	injunction order: a verified answer has the effect only of	4	the injunction order, it-shall the order must be dissolved;
5	an affidavit. If the application be is made upon affidavits	5	or if it satisfactorily appear appears that the extent of
6	on <u>the</u> part of <u>the</u> defendant, but not otherwise, the	6	the injunction order is too great, it-shall the order must
7	plaintiff may oppose the same by <u>oral_testimony_or</u>	۲	be modified. The-court-or-judge-mayvacatetheinjunction
8	affidavits or-oral-testimony, in addition to those on which	6	orderwherethe-alleged-wrong-or-injury-is-not-irreparable
9	the injunction order was granted. The defendant may also use	9	and-tacopableofbeingbdequatelycompensatedforin
10	oral testimony."	10	No No Ya M
11	Section 51. Section 27-19-403, MCA, is amended to	11	Section 53. Section 27-19-405, MCA, is amended to
12	fead:	12	read:
13	#27+19-403. New undertaking for security following	13	#27-19-405. Defendant's undertaking for security upon
14	hearing. Upon the heariny of-an-application-to-vacate-or	14	dissolution. Up on-the-hearing-mentioned-in-27-19-403 <u>If the</u>
15	modify-on-injunction-order, the court or judge may require a	15	injunction_order_is_dissolved_because_the_alleged_injury_is
16	new undertaking, in the same or a different sum, to be given	16	<u>notirreparableandiscapableofbeingadequately</u>
17	by the plaintiff, with like sureties and to the like effect	17	<u>Compensated for in money</u> , the court or judge may-vecetethe
18	as <u>the undertaking executed</u> upon <u>the</u> granting of the	18	injunctionorderuponthedefendant*sexecuting <u>shall</u>
19	original order. The persons executing the new undertaking	19	<u>require the defendant to execute</u> an undertaking in such form
20	become liable thereon as if they had executed it upon the	20	and amount and with such sureties as the court or judge
21	granting of the original order. The persons who executed	21	shall may direct, conditioned to indemnify the plaintiff
22	the original undertaking remain liable thereon until the new	22	against loss sustained by reason of vocating-such-injunction
23	undertaking is given and approved, and no longer."	23	order the dissolution."
24	Section 52. Section 27-19-404, MCA, is amended to	24	Section 54. Section 27-20-301, MCA, is amended to
25	read:	25	read:

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1 #27-20-301. Uath and undertaking to faithfully 2 discharge duties. Before entering upon his duties, the 3 receiver must be sworn to perform them faithfully and shall 4 execute an undertaking, with one or more sureties approved . 5 by the court or judge, execute-an-undertaking to such person and in such sum as the court or judge may direct, to the 6 7 effect that he will faithfully discharge the duties of 8 receiver in the action and obey the orders of the court 9 therein. The court may at any time direct him to give new 10 bonds with new sureties with the like effect. Such 11 undertaking-may-be-sued-on- to-provided-in-2-9-585."

12 Section 55. Section 27-25-103, MCA, is amended to 13 read:

14 #27-25-103. Application of rules of procedure. Except 15 as otherwise provided in this chapter, the provisions of 16 f93-2381---to--93-87174 litle_25 are applicable to and 17 constitute the rules of practice in the proceedings 18 mentioned in this chapter. The provisions of 193-2391-to 93-8717] Title 25 relative to new trials and appeals, except 19 insofar as they are inconsistent with the provisions of this 20 21 chapter, apply to the proceedings mentioned in sets this 22 chapter.*

23 Section 56+ Section 27-26-103+ MCA; is amended to 24 read:

#27-26-103. Application of rules of procedure. Except

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as otherwise provided in this chapter, the provisions of 1 2 constitute the rules of practice in the proceedings 3 mentioned in this chapter. The provisions of [93-2901--to 4 93-0717- Iitle 25 relative to new trials and appeals, except 5 6 insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in said this 7 chapter." R

9 Section 7. Section 27-26-303, NCA, is amended to 10 read:

#27-26-303. Jury trial. (1) If an enswer be is made 11 12 which raises a question as to a matter of fact essential to the determination of the motion and affecting the 13 substantial rights of the parties, and upon the supposed 14 15 truth of the allegation of which the application for the 16 writ is based, the court or judge may, in its or his 17 discretion, order the question to be tried before a jury and 18 postpone the argument until such the trial can be had. The question to be tried must be distinctly stated in the order 19 20 for trial. The order may also direct the jury to assess any damages which the applicant may have sustaimedy-in-case-they 21 22 find if it finds for him.

23 (2) If the proceeding is in the district court or
24 before a district judge, the trial must take place as in
25 other cases. If a jury be is required in the supreme court,

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a jury must be drawn and selected from the jury boxes how of 1 the-county-in-which-the-sect-of-government-is-tocated Lewis 2 3 and Clark County and the clerk of the district court of said that county must shall place such--boxes the box in the 4 5 custody of the clerk of the supreme court for that purpose. The conduct of the trial shall must be the same as in the 6 7 district court, and the clerk of the supreme court shall have has the same authority to issue processy and enter 8 Q orders and judgments as the district court clerk has in like 10 cases."

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Section 58. Section 27-26-402, MCA, is amended to read:

13 "27-26-402. Judgment for applicant. If judgment be is
14 given for the applicant:

15 (1) he may recover the damages which he has sustained,
as found by the jury or as may-be determined by the court or
referees, upon if a reference to-be was ordered, together
with costs;

(2) <u>an execution may issue</u> for such damages and costsy
 on-execution may issue; and

(3) a peremptory mandate must be awarded without
 delay.^M

23 Section 59. Section 27-28-207, MCA, is amended to 24 read:

25 #27-28-207. Procedure when action brought in supreme

court. Actions under this chapter commenced in the supreme 1 court shall must be conducted in the same manner as if 2 commenced in the district court, and the clerk of the 4 supreme court shall--have has the same authority to issue 5 summons and other process and to enter orders and judgments as the clerk of the district court has in like cases. All 6 7 pleadings and the conduct of the trial shall sust be the same as in the district court. If a jury is required to А determine an issue of fact, a jury shall must be drawn and 9 selected from the jury boxes box of the-county-in-which-the 10 sest-of-government-is-focated Lewis and Clark County and the 11 12 clerk of the district court of said that county must shall place such the jury boxes box in the custody of the clerk of 13 14 the supreme court for that purpose.*

15 Section 60. Section 27-28-505, NCA, is amended to 16 read:

17 #27-28-505. Powers and duties of trustees --18 liability. (1) The trustees shall forthwith immediately 19 demand all money, property, booksy--deedsy--notesy--billsy 20 objigstionsy and papers of-revery-rescription within the 21 custody--powery or control of the officers of the 22 corporation--of-either-of-them belonging to the corporation 23 or in enywise any may necessary for the settlement of its 24 affairs or for the discharge of its debts and liabilities; 25 and they may sue for and recover the demands and property of

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1 the corporations

<u>121</u> and--shall--be <u>Ine_trustees_are</u> jointly and
 severally liable to the creditors and stockholders <u>of the</u>
 <u>corporation</u> to the extent of its property and effects which
 come into their hands."

6 Section 61+ Section 27-31-102, MCA, is amended to 7 read:

#27-31-102. Petition for change of name of nonprofit 8 9 corporation. Any religious, benevalent, literary, or 10 scientific corporation or any corporation bearing or--newing 11 12 benevolent or charitable order or society may by petition, 13 apply to the district court of the county in which its 14 articles of incorporation were originally filed or in which the its property of--such--corporation is situated for a 15 16 change of its corporate name. Such petition must be signed 17 a majority of the directors or trustees of the Dy . corporation and must specify the date of the formation of 18 the corporation, the name proposed, and the reason for such 19 the change of name. Upon the filing such of the petition on 20 21 behalf-of-such-corporation, the same proceedings procedure 22 shall be made followed as upon applications for changes of 23 names of natural persons."

24 Section 62. Section 27-31-205, MCA, is amended to 25 read:

1 #27-31+205. Annual report of name changes by clerk to 2 secretary of state and legislative council -- publication. Each <u>January the</u> cierk of the district court shally-annually 3 in--the-month-of-danueryy-make-a-return report to the office 4 5 of secretary of state of and the legislative council all ٨ changes of names made during the preceding year in the 7 district court of his county under this chapter. Such-return shall Ing_report must show the date of the judgment of--the 6 9 court, original name, name decreed, and residence. Such returns-shell Inc reports must be published in a tabular 10 form with the statutes first published thereafter." 11 Section 63. Repeater. Sections 64-210, 93-6501 through 12 13 93-6517, and 93-9011, K.C.M. 1947, are repealed. Sections

14 27-1-814 through 27-1-817, MCA, are repealed.

-End-

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LC 0020

1979 Legislature Code Commissioner Bill - Summary

SENATE Bill No. 33

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO REMEDIES.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. $\frac{27-1-107}{(1895)}$ Kinds of relief -- when given. Changed obsolete $\frac{27-1-107}{(1895)}$ reference to a general reference to statutes.

Section 2. <u>27-1-223</u>. Damages for injuries or death inflicted in a duel. Changed "the slayer" to "he" to <u>clarify</u> that the section applies whether the victim is dead or permanently disabled.

Section 3. <u>27-1-303</u>. Limitation of damages for breach of obligation. Deleted <u>obsolete</u> (1895) references and added a general reference to statutes.

Section 4. <u>27-1-311</u>. Breach of contract. Clarified what the second "which" (deleted) refers to.

Section 5. <u>27-1-314</u>. Breach of agreement to convey real property. Rewrote to clarify.

Section 6. <u>27-1-320</u>. Conversion of personal property. In subsection (2) clarified "his".

Section 7. <u>27-1-501</u>. Survival of cause of action or defense -- death or disability or transfer of interest. Deleted last clause of first sentence and second sentence and substituted a reference to Rule 25, M.R.Civ.P. Stricken language is conflicting and redundant with rule. LC 0020

Section 8. <u>27-1-606</u>. Criminal penalty. Deleted <u>in-</u> <u>accurate</u> reference to misdemeanor (penalty prescribed makes it a felony).

Section 9. <u>27-1-701</u>. Liability for negligence as well as willful acts. Deleted last sentence -- <u>obsolete</u> (1895) cross reference.

Section 10. <u>27-1-811</u>. When owner of radio station not liable for material broadcast. Deleted <u>inaccurate</u> reference to libel (Libel must be presented to the eye, not the ear).

Section 11. <u>27-1-813</u>. Liability of person broadcasting -liability of owner for broadcast prepared by station. <u>Same</u> change as in 10 above (27-1-811); deleted <u>redundancies</u>; clarified last provision.

Section 12. <u>27-2-101</u>. Definition of action. <u>Simplified</u> internal reference (1895).

Section 13. 27-2-102. When action commenced. Replaced obsolete (1895) reference with a general reference to statutes of limitations.

Section 14. <u>27-2-103</u>. Actions by state subject to limitations. Updated obsolete (1877) reference.

Section 15. <u>27-2-105</u>. Periods of limitation. Rewrote to clarify <u>obsolete</u> (1895) and obscure reference "as follows" and to provide for more recent and future exceptions to the general statutes of limitations.

Section 16. 27-2-202. Actions based on contract or other obligation. Rewrote subsection (3) to clarify.

Section 17. <u>27-2-204</u>. Tort actions -- general and personal injury. In subsection (1) deleted language relating to obligations -- redundant with 27-2-202.

Section 18. <u>27-2-211</u>. Actions to enforce penalty or forfeiture or other statutory liability. In subsection (3) updated obsolete (1895) reference.

Section 19. <u>27-2-213</u>. Actions against banks. Rewrote to <u>clarify</u>; changed "savings <u>or</u> loan" to "savings <u>and</u> loan" to correct <u>apparent error</u> (There is no "savings <u>or</u> loan" provided for in Montana's banking laws.); deleted "or depositors" -- <u>redundant</u>; changed "of" to "by" -- <u>apparent</u> error. Section 20. <u>27-2-215</u>. Other actions. Changed <u>obsolete</u> (1895) "hereinbefore" to "otherwise".

Section 21. <u>27-2-303</u>. Actions for waste, trespass, or injury committed during mining work or exploration. Added "resources" to correct <u>apparent</u> error (one adjective in a series of nouns).

Section 22. 27-2-304. Actions involving personal property accruing after death and before issuance of letters of administration. Rewrote to clarify significance of issuance of letters; deleted "in a court of this state" as redundant; deleted "letters testamentary or" -- obsolete terminology.

Section 23. 27-2-401. When person entitled to bring action is under a disability. In subsection (1) clarified "within the age of majority"; updated obsolete terminology, "insane"; rewrote to simplify. In subsection (2) updated terminology "next of kin" and "legatees" (see 72-1-103, MCA); clarified "it"; rewrote to simplify. In subsection (4) added "both" to clarify.

Section 24. <u>27-2-404</u>. When a party dies before action commenced. Consolidated subsections (1) and (2) and replaced provisions extending statutes of limitations with a reference to the Uniform Probate Code to resolve <u>conflicts</u> with that code. (See specifically 72-3-123 and 72-3-802.)

Section 25. <u>27-2-408</u>. Effect on counterclaim of termination of action. Replaced <u>obsolete</u> internal reference with a general reference. (Note that this section has not been amended since its enactment in 1895. The compiler at some point substituted R.C.M. section numbers for the original reference, which was quite broad.) Deleted "which intervened" as redundant.

Section 26. <u>27-2-409</u>. Acknowledgment of debt or part payment. Replaced obsolete internal reference with a general reference. (See parenthetical comment under 27-2-408, section 25 of this bill, except that this section was amended, not enacted, in 1895.)

Section 27. <u>27-5-303</u>. When award has effect of a judgment. Clarified who files affidavit.

Section 28. <u>27-6-402</u>. Selection of panelists. In subsection (2) changed "to" to "from" to correct <u>apparent</u> error.

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Section 29. <u>27-6-503</u>. Conclusion of hearing -supplemental hearing. In subsection (1) <u>clarified</u> "attorney bringing the matter for review".

Section 30. <u>27-6-605</u>. Decision to be filed and copies sent to parties, attorneys, and licensing board. Changed "report" to "decision" to correct <u>apparent</u> error, no report is provided for.

Section 31. 27-6-704. Panel proceedings and decision privileged from disclosure in court actions. In subsection (2) made same change as in 30 above (27-6-605).

Section 32. <u>27-7-103</u>. Entry of judgment -- costs. Deleted the last sentence, an obsolete reference to the judgment roll.

Section 33. <u>27-8-204</u>. Declarations concerning administration of trusts and estates. Updated <u>obsolete</u> terminology, "infant" and "lunatic"; deleted <u>redundant</u> <u>obsolete</u> terminology, "legatee" and "next of kin".

Section 34. <u>27-9-101</u>. When and in what courts judgment may be confessed. Added "Subject to 28-2-709" to <u>clarify</u> that section's relationship to this section. (28-2-709 was enacted in 1935, 27-9-101 was last amended in 1877.)

Section 35. <u>27-9-103</u>. Filing and costs -- district court. Same as 32 above (27-7-103).

Section 36. <u>27-9-104</u>. Filing and costs -- justice's court. Changed "may" to "shall" to correct <u>apparent error</u>; deleted specific dollar amount on justice's court costs and reference to district court costs -- <u>redundant</u> with 25-31-112 and 25-1-201, respectively, and also a potential source of future error. Note that 25-31-112 was amended several times and each time 27-9-104 was overlooked, creating an inconsistency regarding the amount of the costs in a justice's court. Clarified "clerk".

Section 37. <u>27-15-102</u>. Availability of provisional remedies to defendant interposing counterclaim. <u>Simplified</u> internal reference. The omission of part 10, chapter 16, section 27-17-102, and part 15 of chapter 18, MCA, in the R.C.M. reference appears to be an oversight. Counterclaims are treated much the same in justice's court as in district court (see 25-31-502, enacted in 1967). Sections 27-17-401 and 27-18-111 necessarily must be included since they are a part of the overall procedure. Section 38. <u>27-16-101</u>. Exclusive procedure for prejudgment arrest in civil action. Added "before judgment" to clarify.

Section 39. 27-16-102. When defendant may be arrested. Rewrote subsections (2) and (5) to clarify.

Section 40. <u>27-18-102</u>. What property subject to attachment. In subsection (1) added "Except as provided in subsection (2)" to <u>clarify</u> the relationship between the two subsections (originally separate sections in different R.C.M. chapters) and added the last sentence to <u>clarify</u> that all property exempt from execution is also exempt from attachment. In subsection (2) deleted redundancies.

Section 41. 27-18-301. Form and content of writ -defendant's undertaking to prevent levy. In subsection (1) (a) changed "execution" to "attachment" to provide for property subject to execution but not attachment. Rewrote subsection (1)(b) to clarify "in which case" (deleted). In subsection (2) deleted redundancies.

Section 42. <u>27-18-304</u>. When sheriff may require written specification of property to be levied upon. Changed "must" to "may" to correct apparent error.

Section 43. <u>27-18-410</u>. Corporate stock -- service on secretary of state. Made terminology consistent, "stock or shares or interest therein"; rewrote to simplify and clarify.

Section 44. <u>27-18-413</u>. Personal property subject to a security interest. <u>Clarified</u> that "creditor" does not refer to the secured party.

Section 45. <u>27-18-1504</u>. Form and content of writ -defendant's undertaking to prevent levy. Same as 41 above, 27-18-301.

Section 46. <u>27-18-1506</u>. Applicability of procedure in district court. <u>Simplified and updated internal reference</u>: deleted "except 27-18-101" since 27-18-101(1) applies by virtue of 27-18-202 and 27-18-1501, and 27-18-101(2) necessarily applies; added "27-18-305" to <u>simplify</u> since it applies anyway (27-18-1505 reads the <u>same</u>); deleted "except 27-18-406" to update because that section was enacted in 1901 and 27-18-1506 has not been amended since its enactment in 1864.

Section 47. 27-19-204. Issuance without bond. Added "provided for in 27-19-202" to clarify the application of this section; deleted "as in cases of equity" as redundant; and simplified and updated last clause (27-19-202 was amended in 1975 but 27-19-204 was overlooked, creating inconsistencies in terminology.) LC 0020

Section 48. 27-19-303. Time of granting injunction. In the introduction and subsection (2) clarified "therefor"; added "and" between subsections (1) and (2) to <u>clarify</u>.

Section 49. 27-19-306. Security for damages. In subsection (2) changed "plaintiff" to "he" (referring to the defendant) to correct an error in Chapter 535, Laws of 1975.

Section 50. 27-19-402. Evidence at hearing. Added "on the application" to clarify; changed "vacate" to "dissolve" -- uniform terminology, and clarified application of "in addition...granted".

Section 51. <u>27-19-403</u>. New undertaking for security following hearing. Deleted "of an application to vacate or modify an injunction order" -- redundant; clarified "as upon granting of the original order".

Section 52. <u>27-19-404</u>. When injunction dissolved or modified. Changed "such application" to "the hearing" to <u>clarify</u>; <u>clarified</u> "it shall"; <u>deleted</u> last sentence --<u>substance</u> being incorporated into 27-19-405 to correct recodification error (see 93-4209, R.C.M. 1947).

Section 53. <u>27-19-405</u>. Defendant's undertaking for security upon dissolution. Rewrote to <u>incorporate</u> substance of last sentence deleted from 27-19-404. (See also amendment of that section, section 52 of this bill.); changed "vacating" to "dissolution" -- <u>uniform terminology</u>, and deleted "such injunction order" -- redundant.

Section 54. <u>27-20-301</u>. Oath and undertaking to faithfully discharge duties. Deleted last sentence, which is <u>confusing and not useful (2-9-505 states that "where it is</u> not otherwise provided, [the bond] must be in the name of and payable to the state", but 27-20-301 states that the undertaking must be "to such person...as the court or judge may direct".)

Section 55. <u>27-25-103</u>. Application of rules of procedure. Changed "[93-2301 to 93-8717]" to "Title 25" in two places to aid recodification and update reference.

Section 56. 27-26-103. Same as 55 above (27-25-103).

Section 57. <u>27-26-303</u>. Jury trial. In subsection (2) changed "jury boxes" to "jury box" in two places to <u>update</u> (Current law provides for only one jury box) and added "and" and "court" to clarify.

Section 58. <u>27-26-402</u>. Judgment for applicant. In subsection (1) clarified "to be ordered".

Section 59. <u>27-28-207</u>. Procedure when action brought in supreme court. Changed "jury boxes" to "jury box" in two places to <u>update</u> (Current law provides for only one jury box.)

Section 60. 27-28-505. Powers and duties of trustees -liability. Rewrote to delete redundancy and clarify.

Section 61. <u>27-31-102</u>. Petition for change of name of nonprofit corporation. Added "or" to clarify, deleted redundancies, and rewrote last sentence to clarify.

Section 62. <u>27-31-205</u>. Annual report of name changes by clerk to secretary of state and legislative council -publication. Rewrote to clarify and eliminate redundancies, and added "and the legislative council" to <u>update</u>. (Current law requires the legislative council rather than the secretary of state, to publish the statutes -- 5-11-205, MCA.)

Section 63. Repealer. <u>64-210, R.C.M. 1947</u>. <u>Redundant</u> and conflicting with 45-3-102, MCA.

93-6501 through 93-6517, R.C.M. 1947. Obsolete and unnecessary. The general attachment statutes are adequate to protect the interests of the creditors.

<u>93-9011, R.C.M. 1947.</u> Obsolete provision regarding the judgment roll, which has been abolished.

27-1-814 through 27-1-817, MCA. Declared unconstitutional by the Montana Supreme Court in Madison v. Yunker, 35 State Reporter 1311.

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Approved by Committee on Judiciary

1	SENATE BILL NO. 33
2	INTRODUCED BY VAN VALKENBURG
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 REMEDIES.**
7	
8	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9	Section 1. Section 27-1-107, MCA, is amended to read:
10	#27-1-107。 Kinds of relief when given. As a general
11	rule, compensation is the relief or remedy provided by the
12	law of this state for the violation of private rights and
13	the means of securing their observance _{va} andspecific
14	<u>Specific</u> and preventive relief may be given innoother
15	casesthantnosespecifiedinparts-2v-3v-and-4-of-this
16	chapter+-27-19-102+-27-19-103+-20-1-104+-and-parts-16-and-17
17	of-chepter-2-of-Title-20 <u>only-when-specifically-provided_for</u>
18	by statute ONLY IN THOSE CASES SPECIFIED BY STATUTE."
19	Section 2. Section 27-1-223, MCA, is amended to read:
20	"27-1-223• Damages for injuries or death inflicted in
21	a duel. If any person slays or permanently disables another
22	person in a quel in this state, the slover <u>he</u> must provide
23	for the maintenance of the spouse and minor_children of the
24	person slain or permanently disabled andfor-the-minor

children in such manner and at such cost, either by

1 aggregate compensation in damages to each or by a monthly.
2 quarterly, or annual allowance, to-be <u>as_is</u> determined by
3 the courty-ff-any-person-slays-or-disables-another-person-in
6 a--duel--in--this-statey-the-slayer and he is liable for and
5 must pay all debts of the person slain or permanently
6 disabled.**

7 Section 3. Section 27-1-303, MCA, is amended to read: #27-1-303. Limitation of damages for breach of 8 abligation. Notwithstanding--the--provisions--of--27-1-204+ 9 27-1-222y-27-1-223y-and-this-party-no No person can recover 10 a greater amount in damages for the breach of an obligation 11 than he could have gained by the full performance thereof on 12 13 both sides except-in-the-cases-specified-in-27-1-221-through 14 27-1-223+--27-1-322+--78-16-108+--78-27-287+--and--78-27-288 15 unless a greater recovery is apecifically-permitted 16 SPECIFIED by_statute."

17 Section 4. Section 27-1-311. MCA. is amended to read: #27-1-311. Breach of contract. For the breach of an 18 19 obligation arising from contract, the measure of damages, except where when otherwise expressly provided by this code, 20 is the amount which will compensate the party aggrieved for 21 27 all the detriment which was proximately caused thereby or 23 which in the ordinary course of things would be likely to 24 result therefrom. Ho-domages-con-be-recovered-for-a--breach 25 of--contract Damages which are not clearly ascertainable in

-²⁻ SECOND READING ^{SB 33}

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1 both their nature and origin cannot_be recovered for a z breach of contract.* 3 Section 5. Section 27-1-314, MCA, is amended to read: 4 #27-1-314. Breach of agreement to convey real property. The detriment caused by the breach of an agreement 5 to convey an estate in real property is deemed considered to 6 be the price paid and the expenses properly incurred in 7 examining the title and preparing the necessary papers, with R 9 interest thereony, but-adding-thereto--in--case--of If ...the 10 breach was in bad faith and the agreed price was less than 11 the value of the estate, the detriment is also considered to 12 include the difference between the aureed price agreed-to-be 13 paid and the value of the estate agreed-to--be--conveyed at the time of the breach and the expenses properly incurred in 14 15 preparing to enter upon the land." Section 6. Section 27-1-320, MCA, is amended to read: 16 #27-1-320. Conversion of personal property. (1) The 17

18 detriment caused by the wrongful conversion of personal 19 property is presumed to be:

(a) the value of the property at the time of its
conversion with the interest from that time or, where when
the action has been prosecuted with reasonable diligence,
the highest market value of the property at any time between
the conversion and the verdict without interest, at the
option of the injured party; and

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~~~ (b) a fair compensation for the time and 1 monev properly expended in pursuit of the property. 2 3 (2) The presumption declared by subsection (1) cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the ٩, proparty to the benefit of the owner without his such 6 7 owner's consent." Section 7. Section 27-1-501. MCA. is amended to read: • #27-1-501. Survival of cause of action or defense --10 death or other disability or transfer of interest. An 11 action, cause of action, or defense shall does not abate by 12 because of the death or other disability of a party or by the transfer of any interest thereins but shally--in--all 13 coses--where-a whenever the cause of action or defense arose 14 15 in favor of such party prior to his death or other disability or transfer of interest therein, survive it 16 survives and may be maintained by his representatives or 17 successors in interest; and-in-case-such If the action has 18 not been begun or defense interposed, the action may be 19 begun or defense set--up interposed in the name of his 20 **∠**1 representatives or successors in interests, and-in--case If 27 the action has been begun or defense set-up interposed, the court-shally-on-motiony-allow the action or proceeding to 23 may be continued by--or--ogainst--his--representatives-or 24 successors-in-interesta-in-case-of-any-transfer-of-interesta 25

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1 the-action-or-proceeding-may-be-continued-in-the-name-of-the 2 ariginal-party-or-the-court-may-allow-the-person-to-whom-the 3 transfer--is--made--to--be--substituted--in--the--action--or 4 proceeding as provided in Rule\_25. MaR.CiveP.\*\*

5 Section 8. Section 27-1-606. MCA. is amended to read: #27-1-696. Criminal penalty. Any person who shell 6 violates any of the provisions of this part shall-be 7 8 quitty--of--e--misdemeanor-and is punishable upon conviction 9 therefor shall-be-punishable by a fine of not less than \$100 10 or more than \$1,000 or imprisonment for a term of not less 11 than 1 year or more than 5 years, in the discretion of the 12 court."

13 Section 9. Section 27-1-701, MCA, is amended to read: #27-1-701. Liability for negligence as well as willful 14 15 acts. Every--one Everyone is responsible not only for the 16 results of his willful acts but also for an injury 17 occasioned to another by his want of ordinary care or skill 18 in the management of his property or person except so far as 19 the latter has willfully or by want of ordinary care brought 20 the injury upon mimself. The-extent--of--liability--in--such 21 cases--is--defined--by--parts--2--and--3--of--this--chapter, 22 subsections--fit--through--fit--of---69-11-121----78-16-108+ 23 78-27-297y-ond-70-27-268y"

Section 10. Section 27-1-811. MCA. is amended to read:
#27-1-811. When owner of radio station not liable for

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1 material broadcast. No person, firm, or corporation owning or operating a radio broadcasting station shall-be is liable 2 under the law of libel-and defamation on account of having 3 made its broadcasting facilities available to any person. 4 5 whether including but not limited to a candidate for public 6 office or-any-other-person, for discussion of controversial or any other subjects in the absence of proof of actual 7 malice on the part of such owner or operator." 8

Section 11. Section 27-1-813, MCA, is amended to read: 9 10 "27-1-813. Liability of person broadcasting --11 liability of owner for broadcast prepared by station. 12 Nothing in 27-1-811 or 27-1-812 contained--shall may be 13 construed to relieve any person broadcasting over a radio 14 station from liability under the law of libel---and 15 defanationy--Nor--shall--enything-in-27-1-811-or-27-1-812-be 16 construed or to relieve any person, firm, or corporation 17 owning or operating a radio broadcasting station from liability under the law of libel-and defamation on account 18 19 of any broadcas: prepared or made by any such person, firm, 20 or corporation or by any officer or employee thereof in the 21 course of his employments, and-in-any-case-where-liability 22 shall-exist Whenever such an owner or operator is liable on 23 account of any a broadcast as-declared-in-the-first-clause of-this-sentencey-in--that--event--where and two or more 24 broadcasting stations were connected together simultaneously 25

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1 or by transcription, film, metal tape, or other approved or 2 adapted use for joint operation in the making of such the proadcast, such liability shall-be-confined-and is limited 3 solely to the person, firm, or corporation owning or 4 5 operating the radio station which originated such the broadcast." 6

7 Section 12. Section 27-2-101. MCA. is amended to read: "27-2-101. Definition of action. The word "action". as 8 9 used in this chapter, 7-7-105/11y-7-32-4121y-17-5-1001y--and 10 20-9-465 is to be construed, whenever it is necessary to do 11 so to--do, as including a special proceeding of a civil 12 nature."

Section 13. Section 27-2-102, MCA, is amended to read: 13 14 "27-2-102. When action commenced. An Eor the \_\_purposes 15 of statutes relating to the time within which an action must be commencedy\_an action is commencedy-within-the-meaning-of 16 fthis-chapterly when the complaint is filed.\* 17

18 Section 14. Section 27-2-103, MCA, is amended to read: #27-2-103. Actions by state subject to limitations. 19 The limitations prescribed in 27-2-201-through-27-2-204v 20 21 27-2-287+-27-2-289-through-27-2-211f2ty-and-27-2-212-through 27-2-215 part 2 of this chapter apply to actions brought in 22 the name of the state or for the benefit of the state in the 23 same manner as to actions by private parties.\* 24

Section 15. Section 27-2-105. MCA. is amended to read: 25

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#27-2-105. Periods of limitation. The All\_civil 1 actions wust be commenced within the periods prescribed for 2 the--commencement-of-actionsy-other-than-for-the-recovery-of 3 ۵ real-propertyy-are-as-follows in part 2\_except\_when\_\_another statute specifically provides a different limitation." 5 Section 16. Section 27-2-202, MCA, is amended to read: 6 #27-2-202. Actions based on cntract or other 7 obligation. (1) The period prescribed for the commencement 3 of an action upon any contract, obligation, or liability Q founded upon an instrument in writing is within 8 years. 10 (2) The period prescribed for the commencement of an 11 action upon a contract, account, or promise not founded on 12 an instrument in writing is within 5 years. 13 (3) The period prescribed for the commencement of an 14 action upon an obligation or liability, other than a 15 contracte accounte or promises not founded upon an 16 17 instrument in writingy--other-then-a-contracty-accounty-or promisev is within 3 years." 18 Section 17. Section 27-2-204. MCA, is amended to read: 19 #27-2-204. Tort actions -+ general and personal 20 injury. (1) The period prescribed for the commencement of an 21 action upon an-astigation-or a liability not founded upon an 22 instrument in writingy--other-then-s-contracty-accounty-of 23 24 promises is within 3 years. 25

(2) The period prescribed for the commencement of an

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action to recover damages for the death of one caused by the
 wronyful act or neglect of another is within 3 years.

3 (3) The period prescribed for the commencement of an
 4 action for libel, slander, assault, battery, false
 5 imprisonment, or seduction is within 2 years."

Section 18. Section 27-2-211, MCA, is amended to read:
#27-2-211. Actions to enforce penalty or forfeiture or
other statutory liability. (1) within 2 years is the period
prescribed for the commencement of an action upon:

10 (a) a statute for a penalty or forfeiture when the 11 action is given to an individual or to an individual and the 12 state<u>r</u> except when the statute imposing it prescribes a 13 different limitation;

(b) a statute or an undertaking in a criminal actionfor a forfeiture or penalty to the state;

16 (c) a liability created by statute other than a17 penalty or forfeiture.

18 (2) The period prescribed for the commencement of an
 action by a municipal corporation for the violation of any
 city or town ordinance is within 1 year.

(3) [Sections-93-2401-to-93-2720]-do-not--affect
 Notwithstanding any other provision of this chapter: actions
 against directors or stockholders of a corporation to
 recover a penalty or forfeiture imposed or to enforce a
 liability created by law-but-such-actions must be brought

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within 3 years after the discovery by the aggrieved party of
 the facts upon which the penalty of forfeiture attached or
 the liability was created."

Section 19. Section 27-2-213, MCA, is amended to read: 7. The commencement of actions brought to recover money or 8. other property deposited with any bank, banker, trust 9. company, or savings and loan corporation, association, or 10. society-there-are-no-limitations.

(2)\_\_Howevery--any Any action to obtain, set aside, or 11 question in any manner any stated or settled account between 12 13 any bank, banker, trust company, or savings or and loan 14 corporation, association, or society and any depositor or 15 depositors with such bank, banker, trust company, or savings or and loan corporation, association, or society must be 16 17 commenced within 5 years from the date of the statement of 18 such account. Any action based upon or arising from the 19 payment of by any bank, banker, trust company, or savings 20 and loan corporation, association, or society of a forged, 21 raised, or otherwise altered check, order, or promissory note out of the deposit, money, or property of the plaintiff 22 23 shall must be brought commenced within 3 years from the day on which the plaintiffy or his agent, assignee, or personal 24 25 representative shall-have-been was notified of such payment

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1 or on--which--he--or--they--shall-have received such check. order, or note marked "paid"." 2 3 Section 20. Section 27-2-215, MCA, is amended to read: 4 #27-2-215. Other actions. An action for relief not 5 hereinbefore otherwise provided for must be commenced within 5 years after the cause of action shall--have-accrued 6 7 accrues." Section 21. Section 27-2-303. MCA. is amended to read: 8 #27-2-303. Actions for waste, trespass, or injury 9 10 committed during mining work or exploration. When waste, 11 trespass, or injury is committed by reason of underground 12 work upon any mining claim or seismic exploration, location, 13 spacing, drilling, equipping, producing, or other operation 14 related to exploration or production of oil, gas, water, geothermal resources, or other minerals, the cause of action 15 16 shall is not be-deemed considered to have accrued until the 17 discovery by the aggrieved party of the facts constituting 18 such waste, trespass, or injury." Section 22. Section 27-2-304, MCA, is amended to read: 19

Section 22. Section 27-2-304, MLA, is amended to read: m27-2-304. Actions involving personal property accruing after death and before issuance of letters of administration. For--the--purpose-of-computing-the <u>The</u> time within which an action must be commenced in-a-court-of--this state by an executor or administrator to recover personal property taken after the death of a testator or intestate

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and before the issuing of tetters-testementery-or letters of administration or to recover Jamages for taking, detaining,

3 or injuring personal property within the same periody--the

i letters-orn-deemed-to-have-been-issued-within-5-years-after

5 the-death-of-the-testator-or-intestates shall be computed

6 from:

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2

7 (1) the time of issuing such letters if they are

8 issued\_within 5\_years of the death;

9 121\_5\_years\_after\_the\_death\_if\_the\_letters\_have\_not

10 then\_been\_issued."

11 Section 23. Section 27-2-401. MCA. is amended to read: 12 #27-2-401. When person entitled to bring action is 13 under a disability. (1) If a person entitled to bring an 14 action mentioned in part 2, except 27-2-211(3), be is, at 15 the time the cause of action accrued accrues, either within 16 the--age-of-majority a\_minor, insome seriously\_mentally\_ill, 17 or imprisoned on a criminal charge or in-execution under the a sentence of-a-criminal-court for a term less than for 18 19 life, the time of such disability is not a part of the time limited in-F93-2491-to-93-27204 for commencing the actions 20 21 except-thet. However the time so limited cannot be extended 22 more than 5 years by any such disability except infancy 23 minority or, in any case, more than 1 year after the 24 disability ceases. 25 (2) Where If an action is barred by 27-2-304+ any of

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the next-of-kin heirs, legatees devisees, or creditors whom 1 at the time of the transaction upon which it the action 2 might have been founded, was within-the--oge--of--mojority, 3 4 inseney--or-imprisoned-on-a-criminal-charge under one of the disabilities mentioned in subsection (1) way. within 5 years 5 after the cessation of such disability, maintain an action 6 7 to recover damages by--resson--thereofy in-whichs In\_such action he may recover such sum or the value of such property 8 as he would have received upon the final distribution of the Q 10 estate if an action had been seasonably commenced by the executor or administrator. 11

(3) No person con may avail himself of a disability 12 13 unless it existed when his right of action or entry accrued. (4) When two or more disabilities coexist at the time 14 the right of action or antry accrues, the limitation does 15 16 not attach until they are both removed."

17 Section-24--Section-27-2-404-NEAv-is-smended-to-read+ #27-2-484\*--When-s-party-dies-before-action--commenced\* 18 tll--tf-a-person-entitled-to-bring-on-action-<u>oc-against-whom</u> 19 20 an\_action\_may\_bg\_brought-dies-before-the-expiration--of--the 21 time--limited--for-the-commencement-thereof-and-the-cause-of action-survivesy-an-action-may-be-commenced--by--or--against 22 23 his--representatives--after--the-expiration-of-that-time-and 24 within-l-veer-from-his-deeth--<u>as--provided--in--the--Unifors</u> 25 Probate-fode+

| 1  | <del>{2}ffa-person-against-whom-an-action-may-be-brought</del> |
|----|----------------------------------------------------------------|
| Z  | dies-before-the-expirationofthetimelimitedforthe               |
| 3  | commencementthereofandthe-cause-of-action-survivesy-an         |
| 4  | action-may-be-commenced-againsthisrepresentativesafter         |
| 5  | theexpirationofthattimeond-within-l-year-ofter-the             |
| 6  | issuing-of-letters-testamentary-or-of-administrationsIfa       |
| 7  | personagainstwhoma-cause-of-action-exists-dies-without         |
| 8  | the-states-the-time-which-elapses-between-his-death-andthe     |
| 9  | expirationofi-year-after-the-issuing-within-the-state-of       |
| 10 | letters-testamentary-or-letters-of-administration-isnota       |
| 11 | partofthe-time-limited-for-the-commencement-of-an-action       |
| 12 | therefor-against-his-executor-or-administrator.#               |
| 13 | Section 24. Section 27-2-408; MCA, is amended to read:         |
| 14 | #27-2-408. Effect on counterclaim of termination of            |
| 15 | action. Where <u>Whenever</u> a defendant in an action has     |
| 16 | interposed an answer in support of which he would be           |
| 17 | entitled to rely at the trial upon a defense or counterclaim   |
| 18 | then existing in his favory the remedy upon which, at the      |
| 19 | time of the commencement of the action, was not barred by      |
| 20 | the-provisions-of-[93-2401-to-93-2720] any provision of this   |
| 21 | code and the complaint is dismissed or the action is           |
|    | disambly and an upper in-anney and barry of the                |

discontinued or abates in--consequence because of the 22 23 plaintiff's death, the time which-intervened between the commencement and the termination of the action is not a part 24 25 of the time limited for the commencement of an action by the

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1 defendant to recover for the cause of action so interposed 2 as a defense or to interpose the same defense in another 3 action brought by the same plaintiff or a person deriving 4 title from or under him."

5 Section 25. Section 27-2-409. MCA. is amended to read: 6 #27-2-409. Acknowledument of debt or part payment. No 7 acknowledgment or promise is sufficient evidence of a new or 8 continuing contract by-which-to-take-the--case--out--of--the 9 operation--of--f93-2401--to-93-27203 sufficient\_to\_cause\_the 10 relevant\_statute\_of\_limitations\_to\_begin\_running\_anew\_unless 11 the same is contained in some writing signed by the party to 12 be charged thereby. But <u>Howevers</u> this section does not alter 13 the effect of any payment of principal or interest, which 14 payment is equivalent to a new promise in writing, duly 15 signed, to pay the residue of the debt."

Section 26. Section 27-5-303. MCA. is amended to read: 16 #27-5-303. When award has effect of a judgment. After 17 18 the expiration of 5 days from the filing of the award, upon 19 the application of a party-and-on-filing who also files an ∠0 affidavit showing that notice of filing the award has been 21 served on the adverse party or his attorney at least 4 days 22 prior to such application and that no order staying the 23 entry of judyment has been served, the clerk must enter the award must-be-entered-by-the-eferk in the judgment book and 24 25 thereupon it has the effect of a judgment."

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application to the health care provider's state 11 the licensing board, which shall in turn select three persons 12 from the health care provider's professiony and where 13 applicable, to from persons specializing in the same field 14 or discipline as the health care provider." 15 Section 28. Section 27-6-503, MCA, is amended to read: 15 #27-6-503. Conclusion of hearing -- supplemental 17 hearing. (1) At the conclusion of the hearing, the panel may 18 take the case under advisement or may request that 19 additional facts, records, witnesses, or other information 20 21 be obtained and presented to it at a supplemental hearing. which shall be set for a date and time certain, not longer 22 than 30 days from the date of the original hearing unless 23 the attorney-bringing-the-matter-for-review claimant or his 64

Section 27. Section 27-6-402, MCA, is amended to read:

#27-6-402. Selection of panelists. (1) Application for

review shall be promptly transmitted by the director to the

directors of the health care provider's state professional

society or association and the state bar, which shall each

select three panelists within 30 days from the date of

exists or if the health care provider does not belong to

such a society or association, the director shall transmit

(2) If no state professional society or association

transmittal of the application.

attorney consents in writing to a longer period. 25

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1 (2) Any supplemental hearing shall be held in the same 2 manner as the original hearing, and the parties concerned 3 and their attorneys may be present."

4 Section 29. Section 27-6-605. HCA. is amended to read: 5 #27-6-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. The decision shall 6 7 be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the 8 permanent files of the panel. The A copy of the report 9 decision shall be sent to the health care provider's 10 11 professional licensing board."

Section 30. Section 27-6-704. MCA+ is amended to read: m27-6-704. Panel proceedings and report decision privileged from disclosure in court actions. (1) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

18 (2) No statement made by any person during a hearing 19 before the panel may be used as impeaching evidence in 20 court. The report <u>decision</u> of the medical review panel is 21 not admissible as evidence in any action subsequently 22 brought in any court of law."

23 Section 31. Section 27-7-103. MCA, is amended to read:
24 "27-7-103. Entry of judgment -- costs. Judgment must
25 be entered in the judgment book as in other cases but

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without costs for any proceeding prior to the trial. The
 cesev--the-submissiony-and-e-copy-of-the-judgment-constitute
 the-judgment-rollw\*

Section 32. Section 27-8-204. MCA. is amended to read: 4 #27-8-204. Declarations concerning administration of 5 trusts and estates. Any person interested as or through an 6 7 executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, tegateey heir, next-of-kiny or 8 cestui que trust in the administration of a trust or of the 0 10 estate of a decedent, infont minor, iunatic seriously 11 centally\_ill\_person, or insolvent may have a declaration of 12 rights or legal relations in respect thereto:

13 (1) to ascertain any class of creditors, devisees,
 14 Jegatees, heirs, next-of-kiny or others;

15 (2) to direct the executors, administrators, or 16 trustees to do or abstain from doing any particular act in 17 their fiduciary capacity; or

18 (3) to determine any question arising in the
 19 administration of the estate or trust, including questions
 20 of construction of wills and other writings.<sup>44</sup>

Section 33. Section 27-9-101, MCA, is amended to read:
 #27-9-101. When and in what courts judgment may be

confessed. A <u>Subject\_to\_28=2=709...a</u> judgment by confession
may be entered without action, either for money due or to
become due or to secure any person against contingent

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1 liability on behalf of the defendant, or both, in the manner 2 prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts. Judgment 3 upon confession may be entered up in any justice's court 4 specified in the confession, as provided in this chapter." 5 Section 34. Section 27-9-103. MCA. is amended to read: 6 7 #27-9-103. Filing and costs -- district court. The 8 statement must be filed with the clerk of the court in which 9 the indoment is to be entered, who must shall endorse upon 10 it and enter in the judgment book a judgment of such court 11 for the amount confessed, with \$10 costs. Fre-statement--and affidavity--with--the-iudqment-endorsed-thereony-becomes-the 12 13 iddament-rolly" Section 35. Section 27-9-104. MCA. is amended to read: 14

#27-9-104. Filing and costs -- justice's court. In a 15 justice's court where-the-court which has authority to enter 16 17 the judgment, the statement may be filed with the justice, 19 who may shall thereupon enter in his docket a judgment of 19 his court for the amount confessed, with \$5 costs in-the 20 district--court--and--\$3--in--the--justice\*s--court. If a transcript of such judgment be is filed with the clerk of 21 the district court, a copy of the statement must be filed 22 with it." 23

24 Section 36. Section 27-15-102. MCA, is amended to 25 read:

1 "27-15-102. Availability of provisional remedies to defendant interposing counterclaim. Where <u>Whenever</u> the 2 3 defendant interposes a counterclaim and thereupon demands an affirmative judgment against the plaintiff, his right to a 4 provisional remedy is the same as it would be in an action 5 brought by him against the plaintiff for the cause of action 6 7 stated in the counterclaim and demanding the same judgmentt. and-for Eor the purpose of applying to such a case the 8 0 provisions of chapters 15 through 20 fexcept-port-10-of chapter-15+-27-17-102+-27-17-401+-27-10-111+-and-part-15--of 10 11 chapter-19; of this title and chapter 8 of Title 25; chapter by the defendant is deemed considered the plaintiff, the 12 13 plaintiff is deemed considered the defendant, and the counterrlaim so set forth in the answer is deemed considered 14 15 the complaint." Section 37. Section 27-16-101, MCA, is amended to 16

18 #27-16-101. Exclusive procedure for prejudgment arrest 19 in civil action. No person shall may be arrested before 20 juggment in a civil action except as prescribed by this 21 chapter.# 22 Section 38. Section 27-16-102, MCA, is amended to

23 read:

read:

17

- 24 #27-16-102. When defendant may be arrested. The
- 25 defendant may be arrested in the following cases:

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1 (1) in an action for the recovery of money or damages 2 on a cause of action arising upon contract, express or 3 implied, when the defendant is about to depart from the 4 state with intent to defraud his creditors;

5 (2) when--the <u>in</u> an action is for willful injury to 6 persony--to <u>or</u> charactery or to propertyy--knowing--the 7 property--to--belong which the defendant knew belonged to 8 another;

9 (3) in an action for a fine or penalty or for money or 10 property fraudulently misapplied or converted to his own use by a public officer, an officer of a corporation, or, an 11 12 attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a 13 fiduciary capacity; for misconduct or neglect in office or 14 in a professional employment; or for a willful violation of 15 16 duty;

17 (4) in an action to recover possession of personal
18 property unjustly obtained, when the property or any part
19 thereof has been concealed, removed, or disposed of so that
20 it cannot be found or taken by the sheriff;

21 (5) when the defendant has been guilty of fraud in 22 contracting the debty-in <u>or</u> incurring the obligation for 23 which the action is broughty or in concealing or disposing 24 of the property or for <u>the</u> taking, detention, or conversion 25 of which the action is brought;

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(6) when the defendant has removed or disposed of his
 property or is about to do so with intent to defraud his
 creditors.\*

4 Section 39. Section 27-18-102, MCA, is amended to 5 read:

#27-18-102. What property subject to attachment. (1) 6 7 The Except as provided in subsection (2): the rights or shares which the defendant mov-have has in the stock of any 8 corporation or company, together with the interest and 9 profits thereon, all debts due such the defendant, and all 10 11 other property in this state of such the defendant not 12 exempt from execution may be attached and, if judgment be is recovered, sold to satisfy the judgment and execution. 13

# 14 Property exempt from execution is exempt from attachment.

15 (2) In any action where <u>in which</u> the amount sued for 16 is \$10 or less, no-writ-of-attachment-shall--be--issued--and 17 levied--upon--or--acainst the wages or <u>and</u> earnings of the 18 debtor or defendant for his personal services rendered at 19 any time within 30 days <u>next--preceding before</u> the 20 commencement of the actiony-and-in-any-such-case--or--action 21 such-wages-and-earnings are exempt from attachment."

22 Section 40. Section 27-18-301, MCA, is amended to 23 read:

24 \*27-18-301. Form and content of writ -- defendant's
25 undertaking to prevent levy. (11) The writ must be directed

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to the sheriff of any county in which property of such
 defendant may be and must require him to:

3 <u>(a)</u> attach and safely keep all the property of such 4 defendant within his county, not exempt from execution 5 <u>attachment</u>, or so much thereof as may be sufficient to 6 satisfy the plaintiff's demand, the amount of which must be 7 stated in conformity with the complaint; or

8 <u>(b)</u> unless <u>if</u> the defendant give gives him security by 9 the undertaking of at least two sufficient sureties, in an 10 amount sufficient to satisfy such demand, besides costs, or 11 in an amount equal to the value of the property which has 12 been or is about to be attached, in-which-case, to take such 13 undertaking.

14 <u>121</u> Such <u>The</u> undertaking <del>is-</del>-to <u>must</u> be to the 15 plaintiff or-plaintiffs in the action and shall <u>must</u> be 16 approved in writing on the back thereof by the plaintiff or 17 plaintiffs or his or-their attorney or--attorneys or, upon 18 their refusal, by the judge of the district court of the 19 same county as the residence of the sheriff."

20 Section 41. Section 27-18-304, MCA, is amended to 21 read:

22 \*\*27-18-304. When sheriff may require written 23 specification of property to be levied upon. No written 24 specification of property to be levied upon must may be 25 required by the sheriff, except as to property referred to

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1 in 27-19-403 and 27-18-405(2)...\*

2 Section 42. Section 27-18-410, NCA, is amended to 3 read:

4 #27-18-410. Corporate stock -- service on secretary of state. In addition to the method prescribed in 27-18-409 for 5 attaching stocks stock or shares or interest therein of any 6 7 corporation or company, if the president or other head of the same or the secretary, cashier, or other managing agent А thereof does not live or cannot be found in Montana or o connot-he-found-within-the-sold-state and an affidavit is 10 filed in the office of the clerk of the court in which the 11 12 action is pending setting forth that the---above-named officers---or---monoging such officer or agent of--soid 15 14 corporation does not live or cannot be found within-the state in Montana, the clerk of-the-court shall make an order 15 directing the writ to be served upon the secretary of state 16 of Montana or, in his absence from his office, upon the 17 deputy secretary of state. When such order has been made, 18 19 the writ of attachment shall be served upon the secretary of 20 state ory-in-nis-obsencey-upon-the deputy secretary of state 21 by leaving with him a copy of soid the writ and a notice 27 that the stock or shares or interest therein of such 23 corporation or company belonging to the defendant is attached in pursuance of such the writ." 24 Section 43. Section 27-18-413, MCA, is amended to 25

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#27-18-413. Personal property subject to a security 2 3 interest. Personal property subject to a security interest may be taken on attachment issued at the suit of a creditor 4 iother than the secured party of the debtor under the -5 security agreement; but before the property is so taken, the 6 7 officer levving the writ must pay or tender to the secured 8 party the amount of the security agreement debt and interest 9 or must deposit the same with the county treasurer of the county in which the financing statement covering the 10 security agreement is filedy if such statement is filed with 11 12 a county clerk and recordery or, if such statement is filed 13 with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured 14 15 party."

16 Section 44. Section 27-18-1504. MCA. is amended to 17 read:

18 #27-18-1504. Form and content of writ -- defendant\*s 19 undertaking to prevent levy. <u>[1]</u> The writ may be directed to 20 the sheriff or any constable of the county or the sheriff of 21 any other county and must require him to:

22 <u>(a)</u> attach and safely keep all the property of the 23 defendant in his 'county, not exempt from execution 24 <u>attachment</u>, or so much thereof as may be sufficient to 25 satisfy the plaintiff's demand, the amount of which must be

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1 stated in conformity with the complainty: or

2 <u>(b)</u> unless <u>if</u> the defendant has--given gives him 3 security by the undertaking of two sufficient sureties in an 4 amount sufficient to satisfy such demand, besides costs, in 5 which-case-to take such undertaking.

6 <u>(21 Such The</u> undertaking is-to <u>must</u> be to the 7 plaintiff or-plaintiffs-in-the-action and shall <u>must</u> be 8 approved in writing on the back thereof by the plaintiff or 9 plaintiffs or his or-their attorney or-attorneys or, upon 10 their refusal, by the justice issuing such the writ."

11 Section 45. Section 27-18-1506, MCA, is amended to 12 read:

13 \*27-18-1506. Applicability of procedure in district court. Part 1y--except-27-10-101; 27-18-207, 27-18-303y 14 15 27-18-384y--27-18-386 through 27-18-308; parts 4, 5, and 6y 16 except-27-18-486; 27-18-711 through 27-18-713, 27-18-721 through 27-18-732; and parts 8 and 9, except 27-18-901, are 17 18 applicable to attachments issued in justices! courts, the word "constable" being substituted for the word "sheriff" 19 20 whenever the writ is directed to a constable, and the word 21 "justice" substituted for "judge"."

22 Section 46. Section 27-19-204, MCA, is amended to 23 read:

24 "27-19-204" Issuance without bond. 58+d The injunction
 25 provided\_for\_in\_27-19-202 shall issue 85-in-cases-of-equity\*

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1 without bond, upon the application of the county attorney of 2 the county in which such the action is pending or upon the 3 application of the attorney general in the name of the state of Montana, upon a prima facie showing that an action-eivit 4 5 or--criminaly described in 27-19-202 has been so instituted 6 and is so pendingy--charging--such--person--or--personsy 7 corporation--or-corporationsy-foreign-or-domesticy-with-such R violation."

9 Section 47. Section 27-19-303, MCA, is amended to
10 read:

#27-19-303. Time of granting injunction, evidence 11 12 required. The injunction order may be granted at the time of 13 issuing the summons upon the complaint or at any time 14 afterward before judgment upon affidavits. In the one case, the complaint, with or without affidavits to support it, 15 in the other, the affidavits shall must show 16 and. satisfactorily that sufficient grounds exist therefor for 17 18 the order. An injunction order shall may not be granted on 19 the complaint alone unless:

20 (1) it be is duly verified; and

(2) the material allegations of the complaint setting
forth the grounds therefor--be for the order are made
positively and not upon information and belief."

24 Section 48. Section 27-19-306, MCA, is amended to 25 read:

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#27-19+306. Security for damages. (1) On-gronting-on 1 2 ingunction-or-restraining-ordery--the--court--or--judge--may ٦ require--except Except when the state, a county, or any 4 subdivision thereof or a municipal corporation or a married 5 person in a suit for divorce against his or her spouse is a party plaintiff, on granting an injunction or restraining 6 orders the court or judge may require a written undertaking 7 on the part of the plaintiff, with sufficient sureties, to 12 the effect that the plaintiff will pay to the party enjoined 9 such damages, not exceeding an amount to be specified, as 10 11 such party may sustain by reason of the injunction if the court finally decide decides that the plaintiff was not 12 13 entitled thereto. 14 (2) Within 5 days after the service of the injunction. 15 the defendant may except to the sufficiency of the sureties. If the-plaintiff he fails to do so, such-plaintiff-is-deemed 16 to-have-waived he waives all objections to them. 17 When 18 excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 or more than 5 days. must 19 justify before a judge or clerk in the same manner as upon 20 bail on arresty, and-upon-failure If they fail to justify or 21 22 if others in their place fail to justify at the time and place appointed, the order granting on the injunction shall 23

25 Section 49. Section 27-19-402, MCA, is amended to

must be dissolved."

24

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#27-19-402. Evidence upon at hearing. Upon At the 2 hearing on the application to vecete dissolve or modify an 3 injunction order, a verified answer has the effect only of 4 an affidavit. If the application be is made upon affidavits 5 on the part of the defendant, but not otherwise, the 6 plaintiff may oppose the same by oral testimony or 7 affidavits or-orei-testimony, in addition to those on which 8 the injunction order was granted. The defendant may also use 9 oral testimony." 10

11 Section 50. Section 27-19-403, MCA, is amended to 12 read:

#27-19-403. New undertaking for security following 13 hearing. Upon the hearing of-an--application--to--vacate--or 14 modify-an-injunction-order, the court or judge may require a 15 new undertaking, in the same or a different sum, to be given 16 by the plaintiff, with like sureties and to the like effect 17 as the undertaking executed upon the granting of the 18 original order. The persons executing the new undertaking 19 become liable thereon as if they had executed it upon the 20 granting of the original order. The persons who executed 21 the original undertaking remain liable thereon until the new 22 undertaking is given and approved, and no longer." 23

24 Section 51. Section 27-19-404, MCA, is amended to 25 read:

1 #27-19-404. When injunction dissolved or modified. If upon such-application the hearing it satisfactorily appear 7 apuears that there is are not sufficient ground grounds for 3 the injunction order. it-shall the order must be dissolved; 4 or if it satisfactorily appear appears that the extent of 5 the injunction order is too great, it-shall the order must \* be modified. The--court-or-judge-may-vecate-the-injunction 7 order-where-the-alleged-wrong-or-injury-is--not--irreporable R and--fs--copeble--of--being--adequately--coppensated--for-in Q. MOREYW 10

Section 52. Section 27-19-405, MCA; is amended to read:

13 #27-19-405. Defendant's undertaking for security upon 14 dissolution. Upon-the-hearing-mentioned-in-27-19-403 If the 15 injunction\_order\_is\_dissolved\_because\_the\_alleged\_injury\_is not\_irreparable\_and\_is\_capable\_of\_being\_adequately 16 17 compensated for in money, the court or judge may-vecate-the 18 injunction-order--upon--the--defendantis--executing shall 19 require the defendant to execute an undertaking in such form 20 and amount and with such sureties as the court or judge 21 shall may direct, conditioned to indemnify the plaintiff 22 against loss sustained by reason of vacating-such-injunction 23 order the dissolution."

24 Section 53+ Section 27-20-301+ MCA+ is amended to 25 read:

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1 "27-20-301. Cath and undertaking to faithfully 2 discharge duties. Before entering upon his duties. the 3 receiver must be sworn to perform them faithfully and shall 4 <u>execute an undertaking</u>, with one or more sureties approved 5 by the court or judge, execute-an-undertaking to such person 6 and in such sum as the court or judge may direct, to the 7 effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court 8 9 therein. The court may at any time direct him to give new bonds with new sureties with the like effect. Such 10 undertaking-may-be-sued-on-as-provided-in-2-9-585\*\* 11

12 Section 54. Section 27-25-103, NCA, is amended to 13 read:

14 "27-25-103. Application of rules of procedure. Except as otherwise provided in this chapter, the provisions of 15 [93-2301--to--93-0717] Title 25 are applicable to and 16 17 constitute the rules of practice in the proceedings 18 mentioned in this chapter. The provisions of F93-2301--to 19 93-87171 <u>Title\_25</u> relative to new trials and appeals, except 20 insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in soid this 21 22 chapter."

23 Section 55. Section 27-26-103, MCA, is amended to 24 read:

25 "27-26-103. Application of rules of procedure. Except

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as otherwise provided in this, chapter, the provisions of 1 2 F93-2301---to--93-07174 Title\_25 are applicable to and constitute the rules of practice in the proceedings 3 4 mentioned in this chapter. The provisions of f93-2301-to 5 93-A7174 Title\_25 relative to new trials and appeals, except ь insolar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in seid this 7 я chupter."

9 Section 56. Section 27-26-303. MCA. is amended to 10 read:

#27-26-303. Jury trial. (1) If an answer be is made 11 which raises a question as to a matter of fact essential to 12 the determination of the motion and affecting the 13 substantial rights of the parties, and upon the supposed 14 truth of the allegation of which the application for the 15 writ is based, the court or judge may, in its or his 16 discretion, order the question to be tried before a jury and 17 18 postpone the argument until such the trial can be had. The 19 question to be tried must be distinctly stated in the order 20 for trial. The order may also direct the jury to assess any damages which the applicant may have sustainedy-in-case-they د 1 find if it finds for him. 22

23 (2) If the proceeding is in the district court or
24 before a district judge, the trial must take place as in
25 other cases. If a jury be is required in the supreme court,

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a jury must be drawn and selected from the jury boxes hox of 1 the--county-in-which-the-seat-of-government-is-located Lewis z and Clark Lounty and the clerk of the district court of said 3 that county must shall place such--boxes the box in the 4 custody of the clerk of the supreme court for that purpose. 5 The conduct of the trial shell must be the same as in the ٨ district court, and the clerk of the supreme court shall 7 8 have has the same authority to issue processy and enter orders and judgments as the district court clerk has in like 9 10 cases.\*

11 Section 57. Section 27-26-402+ MCA, is amended to 12 read:

13 "27-26-402. Judgment for applicant. If judgment be is
14 given for the applicant:

15 (1) he may recover the damages which he has sustained,
16 as found by the jury or as may-be determined by the court or
17 referees, upon if a reference to-be was ordered, together
18 with costs;

19 (2) <u>an execution may issue</u> for such damages and costsy
 20 an-execution-may-issue; and

21 (3) a peremptory mandate must be awarded without 22 delay.<sup>m</sup>

23 Section 58. Section 27-28-207, MCA, is amended to 24 read:

25 "27-28-207" Procedure when action brought in supreme

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court. Actions under this chapter commenced in the supreme 1 court shall must be conducted in the same manner as if 2 ٦ commenced in the district court, and the clerk of the supreme court shall-have has the same authority to issue . summons and other process and to enter orders and judgments 5 6 as the clerk of the district court has in like cases. All 7 pleadings and the conduct of the trial shall must be the 2 same as in the district court. If a jury is required to determine an issue of fact, a jury shall must be drawn and 9 10 selected from the jury boxes box of the-county-in-which--the seat-of-government-is-located Lewis and Clark County and the 11 clerk of the district court of said that county must shall 12 13 place such the jury boxes box in the custody of the clerk of the supreme court for that purpose." 14

15 Section 59. Section 27-28-505, MCA, is amended to 16 read:

"27-28-505. Powers and duties of trustees --17 liability. [1] The trustees shall forthwith immediately 18 demand all morey, property, booksv--deedsv-notesy-billsv 19 20 obfigationsy and papers of--every--description within the 21 custody --- powery or control of the officers of the 22 corporation+-or-either-of-them belonging to the corporation 23 or in enywise any way necessary for the settlement of its affairs or for the discharge of its debts and liabilities: 24 25 and they may sue for and recover the demands and property of

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\$8 33

1 the corporations

<u>f21</u> and---shall---be <u>The\_trustees\_are</u> jointly and
severally liable to the creditors and stockholders <u>of\_the</u>
<u>corporation</u> to the extent of its property and effects which
come into their hands."

6 Section 60. Section 27-31-102. MCA. is amended to 7 read:

#27-31-102. Petition for change of name of nonprofit 8 corporation. Any religious, benevolent, literary, or 9 scientific corporation or any corporation bearing or-having 10 for-its-name or using or being known by the name of any 11 benevolent or charitable order or society mayy by petitiony 12 apply to the district court of the county in which its 13 articles of incorporation were originally filed or in which 14 the its property of--such--corporation is situated for a 15 change of its corporate name. Such petition must be signed 16 by a majority of the directors or trustees of the 17 corporation and must specify the date of the formation of 18 the corporation, the name proposed, and the reason for such 19 the change of name. Upon the filing such of the petition on 20 behalf--of--such-corporation, the same proceedings procedure 21 shall be mode followed as upon applications for changes of 22 23 names of natural persons."

24 Section 61. Section 27-31-205, MCA, is amended to 25 read:

#27-31-205. Annual report of name changes by clerk to 1 secretory--of--state and legislative\_council -- publication-2 Each <u>lanuary the</u> clerk of the district court shally-annually 3 in-the-month-of-Januaryy-make-a-return report to the office 4 5 of secretory--of--state of and-the legislative council all changes of names made during the preceding year in the 6 district court of his county under this chapter. Such-return 7 shall Inc\_ report\_must show the date of the judgment of-the А courts original names name decreeds and residences Such 9 returns--shell The reports must be published in a tabular 10 form with the statutes first published thereafter.\* 11 Section 62. Repeater. Sections 64-218, 93-6501 through 12

13 93-6517\* and 93-9011\* R.C.N. 1947\* are repealed. Sections

14 27-1-814 through 27-1-817, MCA, are repealed.

-End-

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SENATE BILL NO. 33 1 2 INTRODUCED BY VAN VALKENBURG 3 BY REQUEST OF THE CODE COMMISSIONER 4 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO REMEDIES." 6 7 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 9 Section 1. Section 27-1-107, MCA, is amended to read: 10 #27-1-107. Kinds of relief -- when given. As a general rule, compensation is the relief or remedy provided by the 11 12 law of this state for the violation of private rights and 13 the means of securing their observanceys end--specific 14 Specific and preventive relief may be given in-no-other 15 cases--thon--those--specified--in--parts-2x-3x-ond-4-of-this 16 chaptery-27-19-102y-27-19-103y-20-1-104y-and-parts-16-and-17 17 of-chapter-2-of-Title-28 only\_when-specifically\_provided\_for 18 by-statute ONLY IN THOSE CASES SPECIFIED BY STATUTE.\* 19 Section 2. Section 27-1-223. MCA. is amended to read: 20 #27-1-223. Damages for injuries or death inflicted in 21 a duel. If any person slays or permanently disables another person in a duel in this state, the stayer he must provide 22 23 for the maintenance of the spouse and minor children of the person slain or permanently disabled and--for-the-minor 24 25 children in such manner and at such cost, either by

1 aggregate compensation in damages to each or by a monthly, 2 quarterly, or annual allowance, to-be as is determined by 3 the courty-if-env-person-sievs-or-disables-enother-person-in 4 a--dust--in--this-state--the-staver and be is liable for and 5 must pay all debts of the person slain or permanently disabled." 6 7 Section 3. Section 27-1-303, HEA, is amended to read: #27-1-303. Limitation of damages for breach of 9 obligation. Notwithstanding--the--provisions--of--27-1-284\* 10 27-1-2227-27-1-2237-and-this-party-no No person can recover 11 a greater amount in damages for the breach of an obligation 12 than he could have gained by the full performance thereof on 13 both sides except-in-the-cases-specified-in-27-1-221-through 14 27-1-223y--27-1-322y--78-16-188y--78-27-287y--884--78-27-288 15 16 SPECIFIED by statute." Section 4. Section 27-1-311, MCA, is amended to read: 17 18 #27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, 19 20 except where when otherwise expressly provided by this code. 21 is the amount which will compensate the party aggrieved for 22 all the detriment which was proximately caused thereby or 23 which in the ordinary course of things would be likely to result therefrom. No-domages-con-be-recovered-for-e--breach 24 of--contract Damages which are not clearly ascertainable in 25

> -2- SB 33 THIRD READING

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both their nature and origin cannot be recovered for a 1 preach of contract.\* z Section 5. Section 27-1-314, HCA, is amended to read: 3 "27-1-314. Breach of agreement to convey real ٠ 5 property. The detriment caused by the breach of an agreement to convey an estate in real property is deemed considered to 6 7 be the price paid and the expenses properly incurred in 8 examining the title and preparing the necessary papers, with 9 interest thereony, but-adding-thereto--in--cese-of If the breach was in bad faith and the agreed price was less than 10 11 the value of the estates the detriment is also considered to 12 include the difference between the sorresd price egreed-to-be

13 peid and the value of the estate agreed-to-be-conveyed at 14 the time of the breach and the expenses properly incurred in 15 preparing to enter upon the lands"

16 Section 6. Section 27-1-320, MCA, is amended to read: 17 "27-1-320. Conversion of personal property. (1) The 18 detriment caused by the wrongful conversion of personal 19 property is presumed to be:

20 (a) the value of the property at the time of its 21 conversion with the interest from that time or, where when 22 the action has been prosecuted with reasonable diligence. 23 the highest market value of the property at any time between 24 the conversion and the verdict without interest. at the 25 option of the injured party; and

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(b) a fair compensation for the time and money properly expended in pursuit of the property.

3 (2) The presumption declared by subsection (1) cannot
4 or repelled in favor of one whose possession was wrongful
5 from the beginning by his subsequent application of the
6 property to the benefit of the owner without his such
7 owneris consent."

Section 7. Section 27-1-501, MCA, is amended to read: 8 9 #27-1-501. Survival of cause of action or defense -death or other disability or transfer of interest. An 10 11 action, cause of action, or defense shall does not abate by because of the death or other disability of a party or by 12 the transfer of any interest thereing but shally-in-all 13 cases--where-a whenever the cause of action or defense arose 14 in favor of such party prior to his death or other 15 disability or transfer of interest therein, survive it 16 17 survives and may be maintained by his representatives or 18 successors in interestty and-in-case-such If the action has not been begun or defense interposed, the action may be 19 begun or defense set-we interposed in the name of his 20 representatives or successors in interest; and-in-case If 21 the action has been begun or defense set-up interposed, the 22 court-shally-on-motiony-allow the action or proceeding to 23 may be continued by--or--against--his--representatives-or 24 successers-in-interestu-in-case-of-any-transfer-of-interesty 25

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the-action-or-proceeding-may-be-continued-in-the-name-of-the
 original-party-or-the-court-may-allow-the-person-to-whom-the
 transfer--is--mode--to--be--substituted--in--the--oction--or
 proceeding as provided in Bule 25s MaBaCiveP+\*

Section 8. Section 27-1-606, MCA, is amended to read: 5 #27-1-606. Criminal penalty. Any person who shall 6 violate violates any of the provisions of this part shall-be 7 auiity--of--a--misdemeanor-and is ounishable upon conviction 8 therefor shall-be-punishable by a fine of not less than \$100 9 or more than \$1,000 or imprisonment for a term of not less 10 than 1 year or more than 5 years, in the discretion of the 11 court.\* 12

Section 9. Section 27-1-701, MCA, is amended to read: 13 #27-1-701. Liability for negligence as well as willful 14 acts. Every--one Everyone is responsible not only for the 15 result results of his willful acts but also for an injury 16 occasioned to another by his want of ordinary care or skill 17 in the management of his property or person except so far as 18 the latter has willfully or by want of ordinary care brought 19 the injury upon himself. The-extent--of--liability--in--such 20 cases--is--defined--by--parts--2--end--3--of--this--chaptery 21 subsections--flj--through--f3j--ef---69-11-12ty---78-16-1884 22 78-27-287y-and-78-27-288y" 23 Section 10. Section 27-1-811, MCA, is amended to read: 24

#27-1-811. When owner of radio station not liable for

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1 material broadcast. No persons firms or corporation owning 2 or operating a radio broadcasting station shall-be is liable 3 under the law of libel-and defamation on account of having 4 made its broadcasting facilities available to any persone 5 whether including but not limited to a candidate for public office or-any-other-person, for discussion of controversial \* 7 or any other subjects in the absence of proof of actual malice on the part of such owner or operator." 8 • Section 11. Section 27-1-813. MCA. is amended to read: 10 #27-1-813. Liability of person broadcasting -liability of owner for broadcast prepared by station. 11 12 Nothing in 27-1-811 or 27-1-812 contained--shell may be construed to relieve any person broadcasting over a radio 13 14 station from liability under the law of libel---and defamation--Nor--shatt--anything-in-27-1-811-or-27-1-812-be 15 construed or to relieve any person. firm. or corporation 16 17 owning or operating a radio broadcasting station from liability under the law of libel-and defamation on account 16 19 of any broadcast prepared or made by sny such person, firm, 20 or corporation or by any officer or employee thereof in the course of his employments, and-in-any-case-where-liebility 21

- 22 shall-exist Whenever such an owner or operator is liable on
- 23 account of eny a broadcast es-declared-in-the-first-clause
- 24 of-this-sentences-in-that--event--where and two or more
- 25 broadcasting stations were connected together simultaneously

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1 or by transcription, film, metal tape, or other approved or 2 adapted use for joint operation in the making of such the 3 broadcast, such liability shall-be-confined-and is limited 4 solely to the person, firm, or corporation owning or 5 operating the radio station which originated such the 6 broadcast."

7 Section 12. Section 27-2-101. MCA, is amended to read: 8 "27-2-101. Definition of action. The word "action", as 9 used in this chapter. 7-7-185(1)-7-32-4121-17-5-1881--and 10 28-9-465v is to be construed, whenever it is necessary to do 11 so to--do, as including a special proceeding of a civil 12 nature."

13 Section 13. Section 27-2-102. MCA. is amended to read: 14 "27-2-102. When action commenced. An <u>Ear\_the\_purposes</u> 15 <u>of\_statutes\_relating\_to\_the\_time\_within\_which\_an\_action\_must</u> 16 <u>bs\_commenceds\_an</u> action is commencedy-within-the-meaning-of 17 <u>[this-chapter]</u>, when the complaint is filed."

18 Section 14. Section 27-2-103. MCA. is amended to read: 19 "27-2-103. Actions by state subject to limitations. 20 The limitations prescribed in 27-2-201-through-27-2-204. 21 27-2-207.-27-2-209-through-27-2-211(2).-and-27-2-212-through 22 27-2-215 part 2 of this chapter apply to actions brought in 23 the name of the state or for the benefit of the state in the 24 same manner as to actions by private parties."

25 Section 15. Section 27-2-105. MCA. is awanded to read:

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| L  | "27-2-105。 Periods of limitation。 <del>The <u>All</u>_civil</del>       |
|----|-------------------------------------------------------------------------|
| 2  | actions must be commanded within the periods prescribed for             |
| 3  | thecommencement-of-actionsy-other-then-for-the-recovery-of              |
| 4  | real-property-are-as-follows <u>in_part_2_except_when_another</u>       |
| 5  | statute_specifically_provides_a_different_limitation."                  |
| 6  | Section 16. Section 27-2-202, MCA, is amended to read:                  |
| 7  | "27-2-202. Actions based on cntract or other                            |
| 8  | obligation. (1) The period prescribed for the commencement              |
| 9  | of an action upon any contract, obligation, or liability                |
| 10 | founded upon an instrument in writing is within 8 years.                |
| 11 | (2) The period prescribed for the commencement of an                    |
| 12 | action upon a contract, account, or promise not founded on              |
| 13 | an instrument in writing is within 5 years.                             |
| 14 | (3) The period prescribed for the commencement of an                    |
| 15 | action upon an obligation or liability <u>e other than a</u>            |
| 16 | <u>contract, account, or promises</u> not founded upon an               |
| 17 | instrument in writing <del>yother-than-a-contracty-accounty-or</del>    |
| 18 | promisev is within 3 years."                                            |
| 19 | Section 17. Section 27-2-204, MCA, is amended to read:                  |
| 20 | "27-2-204. Tort actions general and personal                            |
| 21 | injury. (1) The period prescribed for the commencement of an            |
| 22 | action upon <del>an abligation or a</del> liability not founded upon an |
| 23 | instrument in writing <del>y-athor-than-a-contracty-accounty-or</del>   |
| 24 | promiser is within 3 years.                                             |
| 25 | (2) The period prescribed for the commencement of an                    |
|    |                                                                         |

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action to recover damages for the death of one caused by the 1 wrongful act or neglect of another is within 3 years. 2 (3) The period prescribed for the commencement of an 3 action for libel, slander, assault, battery, false 4 imprisonment, or seduction is within 2 years." 5 Section 18. Section 27-2-211, NCA, is amended to read: 6 #27-2-211. Actions to enforce penalty or forfeiture or 7 other statutory liability. (1) Within 2 years is the period ß prescribed for the commencement of an action upon: o 10 (a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the 11 states except when the statute imposing it prescribes a 12 different limitation: 13 (b) a statute or an undertaking in a criminal action 14 for a forfeiture or penalty to the state; 15 (c) a liability created by statute other than a 16 17 penalty or forfeiture. (2) The period prescribed for the commencement of an 18 action by a municipal corporation for the violation of any 19 city or town ordinance is within 1 year. 20 (3) F5ections--93-2401--to--93-2720]--do--not---affect 21 Notwithstanding any other provision of this chapters actions 22 against directors or stockholders of a corporation to 23 24 recover a penalty or forfeiture imposed or to enforce a liability created by lawy-but-such-actions must be brought 25

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within 3 years after the discovery by the aggrieved party of
 the facts upon which the penalty of forfeiture attached or
 the liability was created."
 Section 19- Section 27-2-213- MFA: is emended to read;

Section 19. Section 27-2-213. MCA, is amended to read: "27-2-213. Actions against banks. To <u>(1) Except as</u> provided in subsection (2). there are no time limitations on the commancement of actions brought to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society-there-are-no-limitations.

11 (2)\_Howevery--any Any action to obtain, set aside, or question in any manner any stated or settled account between 12 13 any banks bankers trust companys or savings or and loan corporation, association, or society and any depositor or 14 depositors with such bank, banker, trust company, or savings 15 or and loan corporation, association, or society must be 16 17 commenced within 5 years from the date of the statement of such account. Any action based upon or arising from the 18 19 payment of by any bank+ banker+ trust company+ pr\_savings and loan corporation, association, or society of a forged, 20 raised, or otherwise altered check, order, or promissory 21 note out of the deposity money, or property of the plaintiff 22 shall must be brought commenced within 3 years from the day 23 on which the plaintiffy or his agent, assignee, or personal 24 representative sholl-have-been was notified of such payment 25

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or an--which--he--or--they--shell-have received such check. Ł Z order, or note marked "paid"." Section 20. Section 27-2-215. NCA. is amended to read: 3 4 #27-2-215. Other actions. An action for relief not 5 hereinbefore otherwise provided for must be commenced within 6 5 years after the cause of action shall--have-accrued 7 accrues." . Section 21. Section 27-2-303, MCA, is amended to read: 9 #27-2-303. Actions for waster trespasse or injury 10 committed during mining work or exploration. When waste, 11 trespass, or injury is completed by reason of underground 12 work upon any mining claim or seismic exploration, location, 13 spacing, drilling, equipping, producing, or other operation 14 related to exploration or production of oil, gas, water. 15 geothermal resources, or other minerals, the cause of action 16 shalf is not be-deemed considered to have accrued until the 17 discovery by the aggrieved party of the facts constituting 18 such waste, trespass, or injury." 19 Section 22. Section 27-2-304, MCA, is amended to read: 20 #27-2-304. Actions involvina personal property 2E accruing after death and before issuance of letters of administration. For-the-purpose-of-computing-the The time 22 23 within which an action must be commenced in-a-court-of--this 24 state by an executor or administrator to recover personal

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property taken after the death of a testator or intestate

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and before the issuing of letters-testementery-or letters of 1 2 administration or to recover damages for taking, detaining, or injuring personal property within the same periody--the а. 4 łetters--ere-deemed-to-have-been-issued-within-5-yeers-ofter 5 the-death-of-the-testator-or-intestates shall be computed 6 fromi 7 (1) the time of issuing such letters if they are issued within 5 years of the death: R 9 (2) 5 years after the death if the letters have not 10 then been issued." Section 23. Section 27-2-401. NCA. is amended to read: 11 #27-2-401. When person entitled to bring action is 12 13 under a disability. (1) If a person entitled to bring an 14 action mentioned in part 2, except 27-2-211(3), be is, at 15 the time the cause of action accrued accrues, either within 16 the -- age of - going the a minor + insone seriously mentally ill, or imprisoned on a criminal charge or in-execution under the 17 18 a sentence of-e-criminal-court for a term less than for life, the time of such disability is not a part of the time 19 limited in-F93-2461-to-93-27201 for commencing the actiony 20 21 except-thet. However the time so limited cannot be extended 22 more than 5 years by any such disability except infancy minority or, in any case, more than 1 year after the 23 disability ceases. 24 (2) Where If an action is barred by 27-2-304, any of 25

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the next-of-kin heirs, legatees devises, or creditors whom 1 at the time of the transaction upon which it the action 2 might have been founded, was within-the--age--of--majority, 3 insonev--or-imprisoned-on-a-criminal-charge under one of the 4 disabilities mentioned in subsection (1) may, within 5 years 5 after the cessation of such disability, maintain an action 6 to recover damages by--reason--thereofy in-which. In such 7 action he may recover such sum or the value of such property 8 as he would have received upon the final distribution of the 9 estate if an action had been seasonably commenced by the 10 executor or administrator. 11 (3) No person can may avail himself of a disability

12 (3) No person can may avail himself of a disability
13 unless it existed when his right of action or entry accrued.
14 (4) When two or more disabilities coexist at the time
15 the right of action or entry accrues, the limitation does
16 not attach until they are <u>both</u> removed."

Section-24---Section-27-2-404-M6A-is-amonded-to-read+ 17 #27-2-484w--When-e-perty-dies-before-action--commencedy 18 tl}--If-s-person-entitled-to-bring-on-action-grassings:ubos 19 an-action-may-ba-braught-dies-before-the-expiration--of--the 20 time--limited--for-the-commencement-thereof-end-the-couse-of 21 action-survivesy-an-action-may-be-commenced--by--gg=:sgginst 22 his--representatives--after--the-expiration-of-thet-time-and 23 within-l-year-from-his-death--as-provided-lin-the--Waifars 24 25 Probate-tode+

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| 1  | <del>t2jIfa-person-against-whom-an-action-mey-be-broug</del> ht                     |
|----|-------------------------------------------------------------------------------------|
| 2  | dies-before-the-expirationofthetimeiimitedforthe                                    |
| 3  | commencementthereofandthe-cause-of-action-survivesy-on                              |
| 4  | ection-mey-be-commenced-againsthisrepresentativesafter                              |
| 5  | theexpirationofthattimeand-within-t-year-after-the                                  |
| 6  | issuing-of-ietters-testamentary-or-of-administrationIfa                             |
| ۲  | personagainstwhoma-cause-of-action-axists-dies-without                              |
| 8  | the-state <del>y-the-time-which-ei</del> ops <del>es-between-his-death-andthe</del> |
| 9  | expirationof1-year-after-the-issuing-within-the-state-of                            |
| 10 | <del>letters-testamentary-or-letters-of-edministration-isnot</del> a                |
| 11 | partofthe-time-limited-for-the-commencement-of-an-action                            |
| 12 | therefor-against-his-executor-or-administrators <sup>m</sup>                        |
| 13 | Section 24. Section 27-2-408, MCA, is amended to read:                              |
| 14 | #27-2-408. Effect on counterclaim of termination of                                 |
| 15 | action. Where <u>Whenever</u> a defendant in an action has                          |
| 16 | interposed an answer in support of which he would be                                |
| 17 | entitled to rely at the trial upon a defense or counterclaim                        |
| 18 | then existing in his favory the remedy upon which, at the                           |
| 19 | time of the commencement of the action, was not barred by                           |
| 20 | the-provisions-of-[93-2401-to-93-2720] <u>any provision_of_this</u>                 |
| 21 | code and the complaint is dismissed or the action is                                |
| 22 | discontinued or abates <del>in-consequence <u>because</u> of the</del>              |
| 23 | plaintiff's death, the time which-intervened between the                            |
| 24 | commencement and the termination of the action is not a part                        |
|    |                                                                                     |

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of the time limited for the commencement of an action by the

defendant to recover for the cause of action so interposed
 as a defense or to interpose the same defense in another action brought by the same plaintiff or a person deriving
 title from or under him."

5 Section 25. Section 27-2-409. MCA. is amended to read? #27-2-409. Acknowledgeent of debt or part payment. No 6 7 acknowledgment or promise is sufficient evidence of a new or 8 continuing contract by-which-to-take-the--case--out--of--the 9 speration--of--f93-2401--to-93-27207 sufficient\_to\_cause\_the 10 relevant statute of limitations to begin running aney unless the same is contained in some writing signed by the party to 11 12 be charged thereby. But Howevers this section does not alter the effect of any payment of principal or interest, which 13 payment is equivalent to a new promise in writing, duly 14 15 signed, to pay the residue of the debt."

16 Section 26. Section 27-5-303, HCA, is amended to read: 17 #27-5-303. When award has effect of a judgment. After 18 the expiration of 5 days from the filing of the award, upon 19 the application of a party-and-on-filing who also files an 20 affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least 4 days 21 22 prior to such application and that no order staying the entry of judgment has been served, the clerk must enter the 23 award must-be-entered-by-the-cierk in the judgment book and 24 thereupon it has the effect of a judgment." 25

Section 27. Section 27-5-402, NCA+ is amended to read: "27-5-402. Selection of pahelists" (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall each select three panelists within 30 days from the date of transmittal of the application.

8 (2) If no state professional society or association exists or if the health care provider does not belong to 9 such a society or association, the director shall transmit 10 application to the health care provider's state 11 the 12 licensing boards which shall in turn select three persons 13 from the health care provider's professiony and where applicable, to from persons specializing in the same field 14 15 or discipline as the health care provider."

Section 28. Section 27-6-503, MCA, is amended to read: 16 17 #27-6-503+ Conclusion of hearing -- supplemental hearing. (1) At the conclusion of the hearing, the panel may 18 19 take the case under advisement or may request that 20 additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing. 21 which shall be set for a date and time certain, not longer 22 than 30 days from the date of the original hearing unless 23 the attorney-princing-the-motter-for-review claimant\_or\_his 24 attorney consents in writing to a longer period. 25

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1 (2) Any supplemental hearing shall be held in the same 2 manner as the original hearing, and the parties concerned 3 and their attorneys may be present."

Section 29. Section 27-6-605, MCA, is amended to read: 4 #27-6-605. Decision to be filed and copies sent to 5 parties, attorneys, and licensing board. The decision shall 6 be communicated in writing to the parties and attorneys 7 concerned, and a copy thereof shall be retained in the 8 permanent files of the panel. The A copy of the report 9 decision shall be sent to the health care provider's 10 professional licensing board.\* 11

12 Section 30. Section 27-6-704, ACA. is amended to read: 13 "27-6-704. Panel proceedings and report <u>decision</u> 14 privileged from disclosure in court actions. (1) No panel 15 member may be called to testify in any proceeding concerning 16 the deliberations. discussions. decisions. and internal 17 proceedings of the panel.

18 (2) No statement made by any person during a hearing 19 before the panel may be used as impeaching evidence in 20 court. The report <u>decision</u> of the medical review panel is 21 not admissible as evidence in any action subsequently 22 brought in any court of law.<sup>m</sup>

23 Section 31. Section 27-7-103, HCA, is amended to read:
 24 "27-7-103. Entry of judgment -- costs. Judgment must
 25 be entered in the judgment book as in other cases but

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| 1  | without costs for any proceeding prior to the trial. The                           |
|----|------------------------------------------------------------------------------------|
| 2  | casevthe-submissionv-and-a-copy-of-the-judgment-constitute                         |
| 3  | the-judgment-roll"                                                                 |
| 4  | Section 32. Section 27-8-204, MCA, is amended to read:                             |
| 5  | "27-8-204. Declarations concerning administration of                               |
| 6  | trusts and estates. Any person interested as or through an                         |
| 7  | executor, administrator, trustee, guardian, or other                               |
| 8  | fiduciary, creditor, devises, <del>legateev</del> heir, <del>next-of-kinv</del> or |
| 9  | cestui que trust in the administration of a trust or of the                        |
| 10 | estate of a decedent, infent minor, iunatic seriously                              |
| 11 | mentallyill_person, or insolvent may have a declaration of                         |
| 12 | rights or legal relations in respect thereto:                                      |
| 13 | (1) to ascertain any class of creditors, devisees,                                 |
| 14 | <del>legatees,</del> heirs, <del>next-of-kinv</del> or others:                     |
| 15 | (2) to direct the executors, administrators, or                                    |
| 16 | trustees to do or abstain from doing any particular act in                         |
| 17 | their fiduciary capacity; or                                                       |
| 18 | (3) to determine any question arising in the                                       |
| 19 | administration of the estate or trust, including questions                         |
| 20 | of construction of wills and other writings."                                      |
| 21 | Section 33. Section 27-9-101, MCA, is amended to read:                             |
| 22 | #27-9~101. When and in what courts judgment may be                                 |
| 23 | confessed. A <u>Subject to 28-2-709. a judgment</u> by confession                  |
| 24 | may be entered without action, either for money due or to                          |
| 25 | become due or to secure any person against contingent                              |
|    |                                                                                    |

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liability on behalf of the defendant, or both, in the manner 1 prescribed by this chapter. Such judgment may be entered in 2 any court having jurisdiction for like amounts. Judgment 3 upon confession may be entered up in any justice's court 4 specified in the confession, as provided in this chapter." 5 Section 34. Section 27-9-103. MEA. is amended to read: 6 "27-9-103. Filing and costs -- district court. The 7 statement sust be filed with the clerk of the court is which 8 the judgment is to be entered, who must shall endorse upon 9 10 it and enter in the judgment book a judgment of such court 11 for the amount confessed, with \$10 costs. The-statement--and 12 affidavity--with--the-judgeont-endorsed-thereony-becomes-the 13 iudament-roll."

14 Section 35. Section 27-9-104, MCA, is amended to read: 15 #27-9-104. Filing and costs -- justice's court. In a justice's court where-the-court which has authority to enter 16 17 the judgment, the statement may be filed with the justice. 18 who may shall thereupon enter in his docket a judgment of 19 his court for the amount confessed, with 55 costs in-the district-court-cand-63--in-the--justicets-court. If a 20 21 transcript of such judgment be is filed with the clerk of 22 the district court, a copy of the statement must be filed 23 with it."

24 Section 36. Section 27-15-102, MCA, is amended to 25 read:

\*27-15-102. Availability of provisional remedies to 1 2 defendant interposing counterclaim. Where Whenever the 3 defendant intercoses a counterclaim and thereupon demands an 4 affirmative judgment against the plaintiff, his right to a 5 provisional remedy is the same as it would be in an action brought by him against the plaintiff for the cause of action 5 stated in the counterclaim and demanding the same judgmentt\_ 7 and-for For the purpose of applying to such a case the А 9 provisions of chapters 15 through 20 texcept-part-10-of chopter-16y-27-17-182y-27-17-482y-27-18-111y-and-port-15--of 10 11 chapter-18; of this title and chapter 8 of Title 25, chapter 12 8y the defendant is deemed considered the plaintiff, the 13 plaintiff is deemed considered the defendant, and the counterclaim so set forth in the answer is deemed considered 14 the complaint." 15 Section 37. Section 27-16-101, MCA, is amended to 16 17 read: #27-16-101. Exclusive procedure for prejudgment arrest 18 in civil action. No person shell may be arrested before 19

20 judgment in a civil action except as prescribed by this 21 chapter."

22 Section 38. Section 27-16-102, MCA, is amended to 23 read:

24 "27-16-102. When defendant may be arrested. The 25 defendant may be arrested in the following cases:

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1 (1) in an action for the recovery of money or damages 2 on a cause of action arising upon contract, express or 3 implied, when the defendant is about to depart from the 4 state with intent to defraud his creditors;

5 (2) when--the <u>in\_an</u> action is for willful injury to 6 personv--to <u>or</u> charactery or to property--knowing--the 7 property--to--belong which the defandant knew belonged to 8 another;

(3) in an action for a fine or penalty or for money or Q property fraudulently misapplied or converted to his own use 10 by a public officer, an officer of a corporation, or an 11 attorney, factor, broker, agent, or clerk, in the course of 12 his employment as such, or by any other person in a 13 fiduciary capacity; for misconduct or neglect in office or 14 in a professional employment; or for a willful violation of 15 duty; 16

17 (4) in an action to recover possession of personal
18 property unjustly obtained, when the property or any part
19 thereof has been concealed, removed, or disposed of so that
20 it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of freud in contracting the debty-in or incurring the obligation for which the action is broughty or in concealing or disposing of the property or for the taking, detention, or conversion of which the action is brought;

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(6) when the defendant has removed or disposed of his
 property or is about to do so with intent to defraud his
 creditors.\*

4 Section 39. Section 27-18-102, MCA, is amended to 5 read:

#27-18-102. What property subject to attachment. (1) 6 7 The Excent as provided in subsection (2), the rights or 8 shares which the defendant mey-have has in the stock of any 9 corporation or company, together with the interest and profits thereon, all debts due such the defendant, and all 10 11 other property in this state of such the defendant not exempt from execution may be attached and, if judgment be is 12 13 recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment. 14 (2) In any action where in which the amount sued for 15

16 is \$10 or less, no-writ-of-ettechment-shall-be--issued--and levied--upon-or--against the wages or and earnings of the debtor or defendant for his personal services rendered at any time within 30 days next--preceding before the commencement of the actiony-and-in-any-such-cose--or--action

21 such-wages-and-earnings are exempt from attachment."

22 Section 40. Section 27-18-301, MCA, is amended to 23 read:

24 "27-18-301. Form and content of writ -- defendant's
25 undertaking to prevent levy. <u>[1]</u> The writ must be directed

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to the sheriff of any county in which property of such
 defendant may be and must require him to;

3 <u>(a)</u> attach and safely keep all the property of such 4 defendant within his county, not exempt from execution 5 <u>attachment</u>, or so much thereof as may be sufficient to 6 satisfy the plaintiff's demand, the amount of which must be 7 stated in conformity with the complainty; or

8 <u>(b)</u> unless <u>if</u> the defendant <u>sive gives</u> him security by 9 the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or 11 in an amount equal to the value of the property, which has 12 been or is about to be attached, in-which-case, to take such 13 undertaking.

14 <u>121</u> Such <u>Ibs</u> undertaking is-to <u>must</u> be to the 15 plaintiff er-plaintiffs in the action and shall <u>must</u> be 16 approved in writing on the back thereof by the plaintiff or 17 plaintiffs or his or-their attorney or--attorneys or, upon 18 their refusal, by the judge of the district court of the 19 same county as the residence of the sheriff."

20 Section 41. Section 27-18-304, MCA, is amended to 21 read:

22 \*\*27-18-304. When sheriff may require written 23 specification of property to be levied upon. No written 24 specification of property to be levied upon must may be 25 required by the sheriff. except as to property referred to

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1 in 27-18-403 and 27-18-405(2).\*\*

2 Section 42. Section 27-18-410, MCA, is annended to 3 read:

4 #27-16-410. Corporate stock -- service on secretary of 5 state. In addition to the method prescribed in 27-18-409 for attaching stocks stock or shares or interest therein of any 6 corporation or company, if the president or other head of 7 the same or the secretary, cashier, or other managing agent thereof does not live ar cannat be found in Montana or • connot-be-found-within-the-soid-state and an affidavit is 10 filed in the office of the clerk of the court in which the 11 action is pending setting forth that the-----12 efficers---or---weweging such officer or agent of--said 12 corporation does not live or cannot be found within-the 14 15 state in Montana, the clerk of the court shall make an order 16 directing the writ to be served upon the secretary of state of Montana or, in his absence from his office, upon the 17 deputy secretary of state. When such order has been made, 18 the writ of attachment shall be served upon the secretary of 19 state or-in-his-ebsencey-upon-the deputy secretary of state 20 by leaving with him a copy of said the writ and a notice 21 22 that the stock or shares or interest therein of such corporation or company belonging to the defendant is 23 attached in pursuance of such the writ." 24

25 Section 43. Section 27-18-413, MCA, is amended to

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#27-18-413. Personal property subject to a security 2 interest. Personal property subject to a security interest 3 may be taken on attachment issued at the suit of a creditor 4 iother than the secured party) of the debtor under the 5 security agreement; but before the property is so taken. the 6 officer levying the writ must pay or tender to the secured 7 party the amount of the security agreement debt and interest 8 or sust deposit the same with the county treasurer of the 9 county in which the financing statement covering the 10 security agreement is filedy if such statement is filed with 11 a county clerk and recordery org if such statement is filed 12 with another filing officer pursuant to law, then with such 13 14 other filing officer, payable to the order of the secured 15 party."

16 Section 44. Section 27-18-1504. MCA: is amended to 17 read:

18 "27-18-1504. Form and content of writ -- defendant's 19 undertaking to prevent levy. [1] The writ may be directed to 20 the sheriff or any constable of the county or the sheriff of 21 any other county and must require him to:

22 (a) attach and safely keep all the property of the 23 defendant in his county, not exempt from execution 24 attachment, or so much thereof as may be sufficient to 25 satisfy the plaintiff's demand, the amount of which must be

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stated in conformity with the complaintrior
 <u>(b)</u> unless <u>if</u> the defendant has--given gives him
 security by the undertaking of two sufficient sureties in an
 amount sufficient to satisfy such demand, besides costs, in
 which-case-to take such undertaking.
 <u>(2)</u> Such <u>The</u> undertaking is--to <u>must</u> be to the
 plaintiff or--plaintiffs--in--the--action and shall <u>must</u> be

8 approved in writing on the back thereof by the plaintiff or 9 plaintiffs or his or-their attorney or-ettorneys or, upon 10 their refusal, by the justice issuing such the write"

11 Section 45. Section 27-18-1506. NCA. is amended to 12 read:

13 #27-18-1506. Applicability of procedure in district court. Part ly--except--27-18-101; 27-18-207, 27-18-303+ 14 27-18-304--27-18-306 through 27-18-308; parts 4. 5. and 6. 15 excent-27-18-406: 27-18-711 through 27-18-713. 27-18-721 16 17 through 27-18-732; and parts 8 and 9, except 27-18-901, are 18 applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff" 19 whenever the writ is directed to a constable, and the word 20 "justice" substituted for "judge"." 21

22 Section 46. Section 27-19-204. MCA, is amended to 23 read:

24 "27-19-204" Issuance without bond. Soid <u>The injunction</u>
 25 provided for in 27-19-202 shall issue as-in-cases-of-equity.

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without bond, upon the application of the county attorney of 1 2 the county in which such the action is pending or upon the application of the attorney general in the name of the state 3 4 of Montana, upon a prima facie showing that an action-civit 5 er-criminaly described in 27-19-202 has been so instituted 6 and is so pendingy-charging-such-person-or--personsy 7 corporation-or-corporationsy-foreign-or-domesticy-with-such A vielation."

9 Section 47. Section 27-19-303, MCA, is amended to 10 read:

11 #27-19-303. Time of granting injunction, evidence 12 required. The injunction order may be granted at the time of issuing the summons upon the complaint or at any time 13 14 afterward before indomest upon affidavits. In the one cases the complaint, with or without affidavits to support it. 15 16 and, in the other, the affidavits shall must show 17 satisfactorily that sufficient grounds exist therefor for 18 the order. An injunction order shell may not be granted on 19 the complaint alone unless:

(1) it be is duly verified; and

20

(2) the material allegations of the complaint setting
 forth the grounds therefor--be for the order are made
 positively and not upon information and belief."

24 Section 48. Section 27-19-306, MCA, is amended to 25 read:

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#27-19-306. Security for damages. (1) On-gronting-on 1 °2 in junction-or-restraining-ordery--the-scoort---judge-may requirer--except Except when the state, a county, or any 3 4 subdivision thereof or a municipal corporation or a married person in a suit for divorce against his or her spouse is a 5 6 party plaintiff, on granting an injunction or restraining orders the court or judge may require a written undertaking 7 on the part of the plaintiff, with sufficient sureties, to 8 the effect that the plaintiff will pay to the party enjoined 9 such damages, not exceeding an amount to be specified, as 10 such party may sustain by reason of the injunction if the 11 court finally meetide decides that the plaintiff was not 12 entitled therets. 13

(2) Within 5 days after the service of the injunction, 14 15 the defendant may except to the sufficiency of the sureties. If the plaintiff he fails to do so, such plaintiff-is-deemed 16 to-have-waived he waives all objections to them. When 17 excepted to, the plaintiff's surcties, upon notice to the 16 defendant of not less than 2 or more than 5 days, must 19 justify before a judge or clerk in the same manner as upon 20 bail on arrestys end-upon-failure If they fail to justify or 21 if others in their place fail to justify at the time and 22 place appointed, the order granting an the injunction shall 23 must be dissolved." 24

25 "Section 49. Section 27-19-402, MCA, is amended to

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1 read:

2 #27-19-402. Evidence upon at hearing. Upon At the hearing on the application to vecete dissolve or modify an 3 injunction order, a verified answer has the effect only of 4 an affidavit. If the application be is made upon affidavits 5 on the part of the defendant, but not otherwise, the 6 plaintiff may oppose the same by oral\_\_testimony\_\_or 7 affidavits or-orol-testimony in addition to those on which 6 the injunction order was granted. The defendant may also use 9 10 oral testimonv."

11 Section 50. Section 27-19-403. MCA. is amended to 12 read:

#27-19-403. New undertaking for security following 13 hearing. Upon the hearing of-an--application--to--vacate--or 14 modify-en-injunction-order, the court or judge may require a 15 new undertaking, in the same or a different sum, to be given 16 by the plaintiff, with like sursties and to the like effect 17 as the undertaking executed upon the granting of the 18 original order. The persons executing the new undertaking 19 become liable thereon as if they had executed it upon the 20 granting of the original order. The persons who executed 21 22 the original undertaking remain liable thereon until the new undertaking is given and approved, and no longer.\* 23 Section 51. Section 27-19-404, MCA, is amended to 24

25 read:

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| 1  | "27-19-404. When injunction dissolved or modified. If                   |
|----|-------------------------------------------------------------------------|
| 2  | upon such-application the hearing it satisfactorily appear              |
| 3  | appears that there is are not sufficient ground grounds for             |
| 4  | the injunction orders it-shall the order must be dissolved;             |
| 5  | or if it satisfactorily appear <u>appears</u> that the extent of        |
| 6  | the injunction order is too great. it-shall the order must              |
| 7  | be modified. Thecourt-or-judge-may-vecate-the-injunction                |
| 8  | order-where-the-alleged-wrong-or-injury-isnotirreperable                |
| 9  | andis-capableofbeingedequatelycompensatedfor-in                         |
| 10 | WOUGAA.                                                                 |
| 11 | Section 52. Section 27-19-405, MCA, is amended to                       |
| 12 | readi                                                                   |
| 13 | #27-19-405. Defendant's Undertaking for security upon                   |
| 14 | dissolution. Upon-the-hearing-mentioned-in-27-19-483 Ifthe              |
| 15 | injunction_order.is_dissolved_because.the_allened_injury_is             |
| 16 | not irreparable and is capable of being adequately                      |
| 17 | compensated for in money, the court or judge mey-vacete-the             |
|    |                                                                         |
| 18 |                                                                         |
| 19 | require the defendant to execute an undertaking in such form            |
| 20 | and amount and with such sureties as the court or judge                 |
| 21 | shall may direct, conditioned to indemnify the plaintiff                |
| 22 | against loss sustained by reason of <del>vacating-such-injunction</del> |
| 23 | order the dissolution."                                                 |
| 24 | Section 53. Section 27-20-301, MCA, is amended to                       |
| 25 | read:                                                                   |

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1 "27-20-301. Gath and undertaking to faithfully 2 discharge duties, Before entering upon his duties, the receiver must be sworn to perform them faithfully and shall 3 axecute an undertaking, with one or more sureties approved 4 5 by the court or judge, execute-on-undertaking to such person and in such sum as the court or judge may direct, to the 6 effect that he will faithfully discharge the duties of 7 8 receiver in the action and obey the orders of the court 9 therein. The court may at any time direct him to give new 10 bonds with new sureties with the like effect. Sneh 11 underteking-mey-be-sued-en-es-provided-in-2-9-585\*\*

12 Section 54. Section 27-25-103, NCA, is amended to 13 read:

#27-25-103. Application of rules of procedure. Except 14 15 as otherwise provided in this chapter, the provisions of F93-2301--to--93-07171 Title\_25 are applicable to and 16 constitute the rules of practice in the proceedings 17 18 mentioned in this chapter. The provisions of 193-2301--te 93-8717] <u>Title 25</u> relative to new trials and appeals, except 19 20 insofar as they are inconsistent with the provisions of this 21 chapter, apply to the proceedings mentioned in soid this 22 chapter."

23 Section 55. Section 27-26-103, MCA, is amended to 24 read:

25 "27-26-103. Application of rules of procedure. Except

as otherwise provided in this chapter, the provisions of 1 f93-2302---te--93-8747] Title 25 are applicable to and 2 3 constitute the rules of practice in the proceedings mentioned in this chapter. The provisions of <del>193-2301-to</del> 4 5 93-87171 Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this 6 7 chapter, apply to the proceedings mentioned in said this 8 chapter."

9 Section 56. Section 27-26-303, MCA, is amended to 10 read:

#27-26-303. Jury trial. (1) If an answer be is made 11 which raises a question as to a matter of fact essential to 12 13 the determination of the motion and affecting the substantial rights of the parties, and upon the supposed 14 truth of the allegation of which the application for the 15 writ is based, the court or judge may, in its or his 16 discretion, order the question to be tried before a jury and 17 postpone the argument until such the trial can be had. The 18 question to be tried must be distinctly stated in the order 19 for trial. The order may also direct the jury to assess any 20 damages which the applicant may have sustainedy-in-case-they 21 22 find if it finds for him-

(2) If the proceeding is in the district court or
 24 before a district judger the trial must take place as in
 25 other cases. If a jury be is required in the supreme court.

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a jury must be drawn and selected from the jury boxes box of 1 the -- county -in-which-the-seat-of-government-is-located Lawis z and Clark County and the clerk of the district court of said 3 that county must shall place such--boxes the box in the 4 custody of the clerk of the supreme court for that purpose. 5 The conduct of the trial shall must be the same as in the 6 district court, and the clerk of the supreme court shall 7 have has the same authority to issue processy and enter 8 orders and judgments as the district court clerk has in like 9 cases." 10

11 Section 57. Section 27-26-402, MCA, is amended to 12 read:

13 "27-26-402. Judgment for applicant. If judgment be is
14 given for the applicant:

15 (1) he may recover the damages which he has sustained. 16 as found by the jury or as may-be determined by the court or 17 referees, upon if a reference to-be was ordered, together 18 with costs;

19 (2) an execution may issue for such damages and costsy
 20 an-execution-may-issue; and

21 (3) a peremptory mandate must be awarded without 22 delay.<sup>w</sup>

23 Section 58. Section 27-28-207, MCA, is amended to 24 read:

25 #27-28-207. Procedure when action brought in supreme

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court. Actions under this chapter commenced in the supreme 1 2 court shall must be conducted in the same manner as if 3 commenced in the district court, and the clark of the supreme court shell-have has the same authority to issue . 4 summons and other process and to enter orders and judgments 6 as the clerk of the district court has in like cases. All 7 pleadings and the conduct of the trial shall must be the 6 same as in the district court. If a jury is required to determine an issue of fact, a jury shell must be drawn and q 10 selected from the jury boxes box of the county in which -- the seat-of-government-is-located Lawis and Clark County and the 11 clerk of the district court of said that county must shall 22 13 place such the jury boxes box in the custody of the clerk of 14 the supreme court for that purpose." Section 59. Section 27-28-505, MCA, is amended to 15 reads 16 #27-28-505. Powers and duties of 17 trustees --liability. [1] The trustees shall forthwith immediately 18 19 demand all money. property. booksy--deedsy-notesy-billey obligationsy and papers of--every--description within the 20

22 corporation-or-either-of-them belonging to the corporation
23 or in anywise any\_way necessary for the settlement of its
24 affairs or for the discharge of its debts and liabilities;
25 and they may sue for and recover the demands and property of

custody---- covery or control of the officers of the

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1 the corporations

2 <u>121 and---shell---be The trustees are jointly and</u> 3 severally liable to the creditors and stockholders of the 4 <u>corporation</u> to the extent of its property and effects which 5 come into their hands."

6 Section 60. Section 27-31-102, MCA, is amended to 7 read:

#27-31-102. Petition for change of name of nonprofit 8 9 corporation. Any religious, benevolent, literary, or 10 scientific corporation or any corporation bearing or-hoving 11 for-its-name or using or being known by the name of any 12 benevolant or charitable order or society mayy by patiziony 13 apply to the district court of the county in which its articles of incorporation were originally filed or in which 14 the its property of--such--corporation is situated for a 15 change of its corporate name. Such petition must be signed 16 by a majority of the directors or trustees of the 17 18 corporation and must specify the date of the formation of the corporation, the name proposed, and the reason for such 19 the change of name. Upon the filing such of the petition on 20 behalf--of--such-corporation, the same proceedings procedure 21 shall be made followed as upon applications for changes of 22 names of natural persons." 23

24Section 61. Section 27-31-205. MCA, is amended to25read:

#27-31-205. Annual report of name changes by clerk to 1 secretary--of--state and legislative council -- publication. 2 Each January the clerk of the district court shally-ennuelly 3 in-the-month-of-denuervy-make-a-return report to the office 4 of secretory--of--state of and-the legislative council all 5 6 changes of names made during the precading year in the district court of his county under this chapter. Such-return 7 8 shall The report must show the date of the judgment of-the 9 court, original name, name decreed, and residence. Such 10 returns--shell The reports must be published in a tabular 11 form with the statutes first published thereafter." Section 62. Repeater. Sections 64-218, 93-6501 through 12 93-6517y and 93-9011; R.C.N. 1947; are repealed. Sections 13

14 27-1-814 through 27-1-817, MCA, are repealed.

-End-

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SENATE BILL NO. 33

I
INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE CODE COMMISSIONER

A
A BILL FUR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND

CLARIFY THE LANS RELATING TO REMEDIES."

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

Section 1. Section 27-1-107, MCA, is amended to read: 9 "27-1-107. Kinds of relief -- when given. As a general 10 rule, compensation is the relief or remedy provided by the 11 law of this state for the violation of private rights and 12 the means of securing their observances, and--specific 13 Specific and preventive relief may be given in-no-other 14 cases--than--those--spacified--in--parts-2v-3v-and-4-of-this 15 16 chaptery-27-19-102y-27-19-103y-28-1-104y-and-parts-16-and-17 of-chepter-2-of-fitte-20 oply-when\_apecifically\_provided\_for 17 by-statute ONLY IN THOSE CASES SPECIFIED BY STATUIE." 18

19 Section 2. Section 27-1-223, MCA, is amended to read: 20 \*27-1-223. Damages for injuries or death inflicted in 21 a duel. If any person slays or permanently disables another 22 person in a duel in this state, the-slayer he must provide 23 for the maintenance of the spouse and minor children of the 24 person slain or permanently disabled and--for-the-minor 25 children in such manner and at such cost, either by aggregate compensation in damages to each or by a monthly, quarterly, or annual allowance, to be <u>as is</u> determined by the courte-If-any-person-slays-or-disables-another-person-in a--duel--in-this-state-the-slayer <u>and he</u> is liable for and must pay all debts of the person slain or permanently disabled.<sup>m</sup>

Section 3. Section 27-1-303, MCA, is amended to read: #27-1-303. Limitation of damages for breach of 9 obligation. Notwithstanding--the--provisions--of--27-1-284+ 10 27-1-2224-27-1-2234-and-this-party-no No person can recover 11 a greater amount in damages for the breach of an obligation 12 than he could have gained by the full performance thereof on 13 both sides except-in-the-cases-specified-in-27-1-221-through 14 27-1-223y--27-1-322y--78-16-108y--70-27-207y--and--78-27-208 15 unless a greater recovery is specifically-permitted SPECIFIED by statute.\* 16

17 Section 4. Section 27-1-311. MCA. is amended to read: 18 #27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages. 19 except where when otherwise expressly provided by this code. 20 21 is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or 22 23 which in the ordinary course of things would be likely to 24 result therefrom. No-damages-can-be-recovered-for-a--breach of--contract Damages which are not clearly ascertainable in 25

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both their nature and origin <u>cannot\_be\_recovered\_for\_a</u>
 breach\_of\_contract.\*

Section 5. Section 27-1-314. MCA. is amended to read: 3 #27-1-314. Breach of agreement to convey real 4 5 property. The detriment caused by the breach of an agreement to convey an estate in real property is deemed considered to 6 7 be the price paid and the expenses properly incurred in 8 examining the title and preparing the necessary papers, with interest thereony, but-adding-thereto--in--case--of If\_\_the 9 breach was in bad faith and the agreed price was less than 10 11 the value of the estate. the detriment is also considered to include the difference between the agreed price agreed-to-be 12 paid and the value of the estate agreed-to--be--conveyed at 13 the time of the breach and the expenses properly incurred in 14 preparing to enter upon the land." 15

Section 6. Section 27-1-320. MCA. is amended to read:
"27-1-320. Conversion of personal property. (1) The
detriment caused by the wrongful conversion of personal
property is presumed to be:

(a) the value of the property at the time of its
conversion with the interest from that time or, where when
the action has been prosecuted with reasonable diligence,
the highest market value of the property at any time between
the conversion and the verdict without interest, at the
option of the injured party; and

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(b) a fair compensation for the time and money
 properly expended in pursuit of the property.

3 (2) The presumption declared by subsection (1) cannot 4 be repalled in favor of one whose possession was wrongful 5 from the beginning by his subsequent application of the 6 property to the benefit of the owner without his such 7 owner's consent."

Section 7. Section 27-1-501, HCA, is amended to read: 8 #27-1-501. Survival of cause of action or defense --9 death or other disability or transfer of interest. An 10 action, cause of action, or defense shall does not abate by 11 because of the death or other disability of a party or by 12 the transfer of any interest thereing but shelly--in--all 13 ceses--where-e whenever the cause of action or defense arose 14 in favor of such party prior to his death or other 15 disability or transfer of interest therein, survive it 16 survives and may be maintained by his representatives or 17 successors in interest; and-in-case-such If the action have 18 not been begun or defense interposed, the action may be 19 begun or defense set--up interposed in the name of his 20 representatives or successors in interest# end-in-case If 21 the action has been begun or defense set-up interposed, the 22 court-shally-on-motiony-allow the action or proceeding to 23 may be continued by--or--against--his--representatives-or 24 successors-in-interests-in-case-of-any-transfer-of-interestv 25

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the-action-or-proceeding-may-be-continued-in-the-name-of-the original-party-or-the-court-may-allow-the-person-to-whom-the transfer--is--made--to--be--substituted--in--the--action--or proceeding as provided in <u>Rule\_25</u>. <u>MaRaCiva</u>Pa

5 Section 8. Section 27-1-606. MCA, is amended to read: #27-1-606. Criminal penalty. Any person who shall 6 7 violate violates any of the provisions of this part shall-be 8 guilty--of--a--misdemeanor-and is ounishable upon conviction therefor shall-be-punishable by a fine of not less than \$100 9 or more than \$1,000 or imprisonment for a term of not less 10 11 than 1 year or more than 5 years, in the discretion of the 12 court."

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13 Section 9. Section 27-1-701, MCA, is amended to read: "27-1-701. Liability for negligence as well as willful 14 15 acts. Every-one Everyone is responsible not only for the results of his willful acts but also for an injury 16 17 occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as 18 19 the latter has willfully or by want of ordinary care brought 20 the injury upon himself. The-extent--of--liebility--in--such cases--is--defined--by--parts--2--and--3--of--this--chapterr 21 subsections--{1}--through--{3}--of---69-11-121y---70-16-108y 22 78-27-287y-ond-78-27-288y\* 23

Section 10. Section 27-1-811. MCA, is amended to read:
 #27-1-811. When owner of radio station not liable for

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1 material broadcast. No person, firm, or corporation owning 2 or operating a radio broadcasting station shall-be is liable 3 under the law of ++be+-and defamation on account of having 4 made its broadcasting facilities available to any person-5 whether including but not limited to a candidate for public 6 office er-env-other-person. for discussion of controversial or any other subjects in the absence of proof of actual 7 malice on the part of such owner or operator." 8

Section 11. Section 27-1-813, MCA, is amended to read: 9 10 #27-1-813. Liability of person broadcasting --11 liability of owner for broadcast prepared by station. 12 Nothing in 27-1-811 or 27-1-812 contained--shall may be 13 construed to relieve any person broadcasting over a radio 14 station from liability under the law of libel---end 15 defamations--Nor--shall--anything-in-27-1-811-or-27-1-812-be 16 construed of to relieve any person, firm, or corporation 17 owning or operating a radio broadcasting station from 18 liability under the law of tibet-end defamation on account 19 of any broadcast prepared or made by ony such person, firm, 20 or corporation or by any officer or employee thereof in the 21 course of his employments, and in any case where lightity 22 shall-exist whenever such an owner or operator is liable on 23 account of any a broadcast es-declared-in-the-first-clause 24 of-this-sentencev-in--that--event--where and two or more 25 broadcasting stations were connected together simultaneously

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or by transcription, film, metal tape, or other approved or
 adapted use for joint operation in the making of such the
 broadcast, such liability shall-be-confined-and is limited
 solely to the person, firm, or corporation owning or
 operating the radio station which originated such the
 broadcast."

7 Section 12. Section 27-2-101, MCA, is amended to read: 8 "27-2-101. Definition of action. The word "action", as 9 used in this chapter, 7-7-105(1)y-7-32-4121y-17-5-1001y--end 10 28-9-465y is to be construed, whenever it is necessary to do 11 so to--do, as including a special proceeding of a civil 12 nature."

13 Section 13. Section 27-2-102: NCA: is amended to read: 14 "27-2-102: When action commenced. An <u>For\_the\_purposes</u> 15 <u>of\_statutes\_relating\_to\_the\_time\_within\_which\_an\_action\_pust</u> 16 <u>be\_commenced: an</u> action is commencedv-within-the-meening-of 17 <u>fthis-chapterly when the complaint is filed."</u>

Section 14. Section 27-2-103, MCA, is amended to read: "27-2-103. Actions by state subject to limitations. Ine limitations prescribed in 27-2-201-through-27-2-204y 27-2-207y-27-2-209-through-27-2-211(2)y-and-27-2-212-through 27-2-215 part 2 of this chapter apply to actions brought in the name of the state or for the benefit of the state in the same manner as to actions by private parties."

25 Section 15. Section 27-2-105. MCA. is amended to read:

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#27-2-105. Periods of limitation. The All civil 1 actions sust be commenced within the periods prescribed for 2 з real-propertyy-are-es-follows in part 2 except when, another 4 statute\_specifically\_provides\_a\_different\_limitation." 5 Section 16. Section 27-2-202+ NCA+ is amended to read: 6 #27-2-202. Actions based on cntract or other 7 obligation. (1) The period prescribed for the commencement R of an action upon any contract, obligation, or liability 9 founded upon an instrument in writing is within 8 years. 10 (2) The period prescribed for the commencement of an 11 action upon a contract, account, or promise not founded on 12 13 an instrument in writing is within 5 years. (3) The period prescribed for the commencement of an 14 15 action upon an obligation or liability<u>s other than a</u> contract, account, or promise, not founded upon an 16 17 instrument in writingy--other-than-a-contracty-accounty-or promiser is within 3 years." 18 Section 17. Section 27-2-204, MCA, is amended to read: 19 #27-2-204. Tort actions -- general and personal 20 intury. (1) The period prescribed for the commencement of an 21 action upon en-opligation-or a liability not founded upon an 22 instrument in writingy--other-than-a-contfacty-accounty-or 23

24 promisey is within 3 years.

25 (2) The period prescribed for the commencement of an

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action to recover damages for the death of one caused by the wronyful act or neglect of another is within 3 years. (3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false

5 imprisonment, or seduction is within 2 years."
6 Section 18. Section 27-2-211, MCA, is amended to read:
7 #27-2-211. Actions to enforce penalty or forfeiture or

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8 other statutory liability. (1) Within 2 years is the period
9 prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the
action is given to an individual or to an individual and the
state<sub>1</sub> except when the statute imposing it prescribes a
different limitation;

(b) a statute or an undertaking in a criminal action
for a forfeiture or penalty to the state;

16 (c) a liability created by statute other than a 17 penalty or forfeiture.

18 (2) The period prescribed for the commencement of an
 action by a municipal corporation for the violation of any
 20 city or town ordinance is within 1 year.

(3) [Sections--93-2401--to--93-2720]--do--not---effect
 <u>notwithstanding\_any\_other\_provision\_of\_this\_chapters</u> actions
 against directors or stockholders of a corporation to
 recover a penalty or forfeiture imposed or to enforce a
 liability created by law-but-such-actions must be brought

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within 3 years after the discovery by the aggrieved party of
 the facts upon which the penalty of forfeiture attached or

3 the liability was created.\*

Section 19. Section 27-2-213. MCA, is amended to read: "27-2-213. Actions against banks. Fo <u>(1) Except as</u> provided in subsection (2). there are no time limitations on the commencement of actions brought to recover money or other property deposited with any bank, banker, trust company, or savings and loan corporation, association, or society-there-are-no-limitations.

(2)\_\_Howevery--any Any action to obtain, set aside, or 11 question in any manner any stated or settled account between 12 any bank, banker, trust company, or savings or and loan 13 corporation, association, or society and any depositor or 14 depositors with such bank, banker, trust company, or savings 15 or and loan corporation, association, or society must be 16 17 commenced within 5 years from the date of the statement of 18 such account. Any action based upon or arising from the 19 payment of by any bank+ banker+ trust company+ or savings and loan corporation, association, or society of a forged, 20 21 raised, or otherwise altered check, order, or promissory note out of the deposit, money, or property of the plaintiff 22 sholl must be brought commanced within 3 years from the day 23 on which the plaintiff or his agent, assignee, or personal 24 representative shell-have-been was notified of such payment 25

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1 or on--which--ha--or--they--shall-have received such check, order, or note marked "paig"." 2 Section 20. Section 27-2-215, MCA. is amended to read: з #27-2-215. Other actions. An action for relief not 4 hereinbefore otherwise provided for must be commenced within 5 5 years after the cause of action shall--have-accrued 6 7 accrues..." Section 21. Section 27-2-303. MCA. is amended to read: A 9 #27-2-303. Actions for waster trespasse or injury committed during mining work or exploration. When waster 10 11 trespass, or injury is committed by reason of underground 12 work upon any mining claim or seismic exploration, location, 13 spacing, drilling, equipping, producing, or other operation 14 related to exploration or production of oil, gas, water, 15 geothermal resources, or other minerals, the cause of action shall is not be-deemed considered to have accrued until the 16 17 discovery by the aggrieved party of the facts constituting such waster trespass, or injury." 18

19 Section 22. Section 27-2-304. MCA, is amended to read: 20 #27-2-304. Actions involving personal property 21 accruing after death and before issuance of letters of 22 administration. For--the--purpose-of-computing-the The time within which an action must be commenced in-a-court-of--this 23 state by an executor or administrator to recover personal 24 property taken after the death of a testator or intestate 25

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and before the issuing of letters-testomentary-or letters of 1 administration or to recover damages for taking, detaining, 2 or injuring personal property within the same periody--the 2 letters--are-decmed-to-have-been-issued-within-5-years-after 4 the-death-of-the-testator-or-intestates shall be computed 5 6 fromi [1] the time of issuing such letters if they are 7 issued within 5 years of the death: 8 (2) 5 years after the death if the letters have not 9 then been issued." 10 Section 23. Section 27-2-401, MCA, is amended to read: 11 #27-2-401. When person entitled to bring action is 12 under a disability. (1) If a person entitled to bring an 13 action mentioned in part 2, except 27-2-211(3), be is, at 14 the time the cause of action occrued accrues, either within 15 16 the--age-of-majority a minor, insone seriously mentally ill, 17 or imprisoned on a criminal charge or in-execution under the a sentence of-o-criminal-court for a term less than f. 18 life, the time of such disability is not a part of the time 19 limited in-F93-2401-to-93-2720] for commencing the actiony 20 except-thet. However the time so limited cannot be extended 21 more than 5 years by any such disability except infancy 22 ainority or, in any case, more than 1 year after the 23

- 24 disability ceases.
- 25 (2) Where If an action is barred by 27-2-304, any of

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the next-of-kin heirs, legates devisees, or creditors, who 1 at the time of the transaction upon which it the action 2 might have been foundedy was within--the--age--of--majority 3 insaney--or-imprisoned-on-e-criminal-charge under one of the 4 5 disabilities mentioned in subsection [1] may, within 5 years after the cessation of such disability, maintain an action - 6 to recover damages by -- reason -- thereafy in-which. In such 7 action he may recover such sum or the value of such property 8 as he would have received upon the final distribution of the 9 estate if an action had been seasonably commenced by the 10 11 executor or administrator.

12 (3) No person cen may avail himself of a disability
13 unless it existed when his right of action or entry accrued.
14 (4) when two or more disabilities coexist at the time
15 the right of action or entry accrues, the limitation does
16 not attach until they are both removed."

17 Section-24---Section-27-2-484--MEAr-is-amended-to-read+ #27-2-484+--When-a-party-dies-before-action--commenced+ 1.8 19 +++--++-a-person-entitled-to-bring-an-action-<u>ar-adainst-whos</u> 20 an-action-may-berbrought-dies-before-the-expiration-of--the time--limited--for-the-commencement-thereof-and-the-cause-of 21 action-survivesy-an-action-may-be-commenced--by--or::addinat 22 his--representatives--after--the-expiration-of-that-time-and 23 within-l-year-from-his-death--as--provided-tin--the--Vaifars 24 25 Probate-fode\*

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1 t2t--if--e-person-adainst-whom-an-action-may-be-brought dies-before-the-expiration--of--the--time--limited--for--the 2 3 action-may-be-commenced-agdinst--his--representatives--after 4 the--expiretion--of--thet--time--and-within-i-venr-after-the 5 issuing-of-letters-testamentory-or-of-administrations--if--a 6 person--against--whom--a-couse-of-action-exists-dies-without 7 the-statey-the-time-which-elapses-between-his-death-ond--the R expiration--of--i-veer-efter-the-issuing-within-the-state-of 9 +etters-testementery-or-tetters-of-edministration-is--not--e 10 pert--of--the-time-limited-for-the-commencement-of-an-action 11 12 therefor-against-his-executor-or-administratory# 13 Section 24. Section 27-2-408. MCA. is amended to read: 14 "27-2-408. Effect on counterclaim of termination of 15 action. Where Whenever a defendant in an action has 16 interposed an answer in support of which he would be entitled to rely at the trial upon a defense or counterclaim 17 18 then existing in his favory the remedy upon which, at the 19 time of the commencement of the action, was not barred by the-provisions-of-[93-2401-to-93-2720] any provision of this 20

21 <u>code</u> and the complaint is dismissed or the action is 22 discontinued or abates in--consequence because of the 23 plaintiff's death, the time which-intervened between the 24 commencement and the termination of the action is not a part 25 of the time limited for the commencement of an action by the

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defendant to recover for the cause of action so interposed
 as a defense or to interpose the same defense in another
 action brought by the same plaintiff or a person deriving
 title from or under him."

Section 25. Section 27-2-409, MCA, is amended to read: 5 #27-2-409. Acknowledgment of debt or part payment. No 6 7 acknowledgment or promise is sufficient evidence of a new or continuing contract by-which-to-take-the--case--out--of--the 8 eporation--of--f93-2401--to-93-27201 sufficient to cause the 9 relevant statute of limitations to begin running anew unless 10 the same is contained in some writing signed by the party to 11 12 be charged thereby. But However: this section does not alter 13 the effect of any payment of principal or interest, which 14 payment is equivalent to a new promise in writing, duly 15 signed; to pay the residue of the debt."

16 Section 26. Section 27-5-303, MCA, is amended to read: 17 #27-5-303. When award has effect of a judgment. After the expiration of 5 days from the filing of the awardy upon 18 19 the application of a party-end-on-filing who also files an 20 affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least 4 days 21 prior to such application and that no order staying the 22 entry of judgment has been served, the clerk must enter the 23 award must-be-entered-by-the-cferk in the judgment book and 24 thereupon it has the effect of a judgment." 25

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Section 27. Section 27-6-402. MCA, is amended to read: #27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar. which shall each select three panelists within 30 days from the date of transmittal of the application.

(2) If no state professional society or association 8 exists or if the health care provider does not belong to 0 such a society or association, the director shall transmit 10 application to the health care provider's state 11 the licensing board, which shall in turn select three persons 12 from the health care provider's profession, and, where 13 applicable, to from persons specializing in the same field 14 or discipline as the health care provider." 15

16 Section 28. Section 27-6-503, MCA, is amended to read: #27-6-503. Conclusion of hearing -- supplemental 17 hearing. (1) At the conclusion of the hearing, the panel ma, 18 take the case under advisement or may request that 19 additional facts, records, witnesses, or other information 20 be obtained and presented to it at a supplemental hearing. 21 which shall be set for a date and time certain, not longer 22 than 30 days from the date of the original hearing unless 23 the attorney-bringing-the-matter-for-review claimant or his 24 attorney consents in writing to a longer period. 25

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(2) Any supplemental hearing shall be held in the same 1 manner as the original hearing, and the parties concerned 2 and their attorneys may be present." з

Section 29. Section 27-6-605, MCA, is amended to read: 4 "27-6-605. Decision to be filed and copies sent to 5 parties, attorneys, and licensing board. The decision shall 6 be communicated in writing to the parties and attorneys 7 concerned, and a copy thereof shall be retained in the 8 permanent files of the panel. The A copy of the report 9 decision shall be sent to the health care provider's 10 professional licensing board." 11

Section 30. Section 27-6-704, MCA, is amended to read: 12 #27-6-704. Panel proceedings and report decision 13 privileged from disclosure in court actions. (1) No panel 14 member may be called to testify in any proceeding concerning 15 16 the deliberations, discussions, decisions, and internal 17 proceedings of the panel.

(2) No statement made by any person during a hearing 19 before the panel may be used as impeaching evidence in 19 court. The report decision of the medical review panel is 20 not admissible as evidence in any action subsequently ۷1 prought in any court of law." 22

Section 31. Section 27-7-103. MCA, is amended to read: 23 #27-7-103. Entry of judgment -- costs. Judgment must 24 be entered in the judgment book as in other cases but 25

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without costs for any proceeding prior to the trial. The 1 casey--the-submissiony-and-a-copy-of-the-judgment-constitute 2 3 the-judgment-roll."

Section 32. Section 27-8-204, MCA, is amended to read: 4 #27-8-204. Declarations concerning administration of 5 trusts and estates. Any person interested as or through an 6 executor, administrator, trustee, guardian, or other 7 fiduciary, creditor, devisee, legatee, heir, next-of-king or A cestui que trust in the administration of a trust or of the Q estate of a decedent, infant minor, iunatic seriously 10 mentally\_ill\_person, or insolvent may have a declaration of 11 rights or legal relations in respect thereto: 12 (1) to ascertain any class of creditors, devisees, 13 14 tegateesy heirs, next-of-kiny or others; {2} to direct the executors, administrators, or 15 16 trustees to do or abstain from doing any particular act in their fiduciary capacity; or 17 18 (3) to determine any question arising in the administration of the estate or trusty including questions 19 of construction of wills and other writings.\* 20 Section 33. Section 27-9-101, MCA, is amended to read: 21 \*27-9-101. When and in what courts judgment may be 22 confessed. A Subject to 28-2-707, a judgment by confession 23

may be entered without action, either for money due or to 24 25 become due or to secure any person against contingent

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liability on behalf of the defendant. or both. in the manner 1 prescribed by this chapter. Such judgment may be entered in 2 any court having jurisdiction for like amounts. Judgment 3 upon confession may be entered up in any justice's court 4 specified in the confession, as provided in this chapter.\* 5 Section 34. Section 27-9-103. NCA. is amended to read: 6 1 #27-9-103. Filing and costs -- district court. The statement must be filed with the clerk of the court in which 8 9 the judgment is to be entered, who must shall endorse upon 10 it and enter in the judgment book a judgment of such court 11 for the amount confessed, with \$10 costs. The-statement--and 12 affidavity--with--the-judgment-endorsed-theraony-becomes-the 13 indement-rolly"

14 Section 35. Section 27-9-104, NCA, is amended to read: 15 #27-9-104. Filing and costs -- justice's court. In a 16 justice's court where-the-court which has authority to enter 17 the judgment, the statement may be filed with the justice. 18 who may shall thereupon enter in his docket a judgment of 19 his court for the amount confessed, with \$5 costs in-the 20 district--court--and--\$3--in--the--justice-s--court. If a transcript of such judgment be is filed with the clerk of 21 22 the district court, a copy of the statement must be filed with it." 23

24 Section 36. Section 27-15-102, MCA, is amended to 25 read:

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#27-15-102. Availability of provisional remedies to Ł defendant interposing counterclaim. where Whenever the 2 defendant interposes a counterclaim and thereupon demands an 2 affirmative judgment against the plaintiff, his right to a 4 provisional remedy is the same as it would be in an action 5 brought by him against the plaintiff for the cause of action 6 stated in the counterclaim and demanding the same indomenter 7 and-for Ear the purpose of applying to such a case the ۵ provisions of chapters 15 through 20 texcept-part-10-of 9 chapter-16y-27-17-102y-27-17-401y-27-10-111y-ond-port-15--of 10 chapter-18; of this title and chapter 8 of Title 25; chapter 11 8, the defendant is deemed considered the plaintiff, the 12 plaintiff is deemed considered the defendant, and the 13 counterclaim so set forth in the answer is deemed considered 14 the complaint." 15 Section 37. Section 27-16-101, MCA, is amended to 16 17 reads

18 "27-16-101. Exclusive procedure for <u>prejudgment</u> arrest 19 in civil action. No person shall may be arrested before 20 judgment in a civil action except as prescribed by this 21 chapter."

22 Section 38+ Section 27-16-102, MCA, is amended to 23 read:

24 \*27-16-102. When defendant may be arrested. The
25 defendant may be arrested in the following cases:

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1 (1) in an action for the recovery of money or damages 2 on a cause of action arising upon contract, express or 3 implied, when the defendant is about to depart from the 4 state with intent to defraud his creditors;

5 (2) when--the <u>in\_an</u> action is for willful injury to 6 personv--to <u>or</u> charactery or to property--knowing--the 7 property--to--belong <u>which\_the\_defendant\_knew\_belonged</u> to 8 another;

(3) in an action for a fine or penalty or for money or 9 property fraudulently misapolied or converted to his own use 10 by a public officer, an officer of a corporation, or an 11 attorney, factor, broker, agent, or clerk, in the course of 12 13 his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or 14 15 in a professional employment; or for a willful violation of 16 duty;

17 (4) in an action to recover possession of personal
18 property unjustly obtained, when the property or any part
19 thereof has been concealed, removed, or disposed of so that
20 it cannot be found or taken by the sheriff;

(5) when the defendant has been guilty of fraud in contracting the debty-in <u>or</u> incurring the obligation for which the action is broughty or in concealing or disposing of the property or for <u>the</u> taking, detention, or conversion of which the action is brought;

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(6) when the defendant has removed or disposed of his
 property or is about to do so with intent to defraud his
 creditors.\*

4 Section 39. Section 27-18-102, MCA, is amended to 5 read:

#27-18-102. What property subject to attachment. (1) 6 7 The Excent as provided in subsection (21: the rights or shares which the defendent mov-have has in the stock of any 8 corporation or company, together with the interest and 9 profits thereon, all debts due such the defendant, and all 10 other property in this state of such the defendant not 11 exampt from execution may be attached and, if judgment be is 12 recovered, sold to satisfy the judgment and execution. 13 Property exempt from execution is exempt from attachment. 14 15 (2) In any action where in which the amount sued for 16 is \$10 or less, no-writ-of-attachment-sholl-be--issued--and tevted--upon--or--against the wages or and earnings of the 17 debtor or defendant for his personal services rendered at 18 19 any time within 30 days next-preceding before the 20 commencement of the actiony-end-in-any-such-cese--or--action 21 such-wages-and-cornings are exempt from attachment."

22 Section 40. Section 27-18-301, MCA, is amended to 23 read:

24 "27-18-301. Form and content of writ -- defendant's 45 undertaking to prevent levy. <u>111</u> The writ must be directed

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to the sheriff of any county in which property of such
 defendant may be and must require him to:

3 <u>(a)</u> attach and safely keep all the property of such 4 defendant within his county, not exempt from execution 5 <u>attachment</u>, or so much thereof as may be sufficient to 6 satisfy the plaintiff's demand, the amount of which must be 7 stated in conformity with the complainty<u>: or</u>

8 <u>(b)</u> unless <u>if</u> the defendant give <u>gives</u> him security by 9 the undertaking of at least two sufficient sureties, in an 10 amount sufficient to satisfy such demand, besides costs, or 11 in an amount equal to the value of the property which has 12 been or is about to be attached, <del>in-which-casey-to</del> take such 13 undertaking.

14 <u>(2)</u> Such <u>The</u> undertaking is--to <u>must</u> be to the 15 plaintiff or-plaintiffs in the action and shall <u>must</u> be 16 approved in writing on the back thereof by the plaintiff or 17 plaintiffs or his or-their attorney or--attorneys or, upon 18 their refusal, by the judge of the district court of the 19 same county as the residence of the sheriff."

20 Section 41. Section 27-18-304. NCA, is amended to 21 read:

22 "27-18-304. when sheriff may require written 23 specification of property to be levied upon. No written 24 specification of property to be levied upon must may be 25 required by the sheriff, except as to property referred to

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1 in 27-13-403 and 27-18-405(2).\*\*

2 Section 42. Section 27-18-410, MCA, is amended to 3 read:

#27-18-410. Corporate stock -- service on secretary of 4 state. In addition to the method prescribed in 27-18-409 for 5 attaching stocks stock or shares or interest therein of any 6 corporation or company, if the president or other head of 7 the same or the secretary, cashier, or other managing agent A thereof does not live or cannot be found in Montana or 9 cennot-be-found-within-the-said-state and an affidavit is 10 filed in the office of the clerk of the court in which the 11 action is pending setting forth that the --- above named 12 officers---or---managing such officer or agent of--said 13 corporation does not live or cannot be found within-the 14 state in Montana: the clerk of-the-court shall make an order 15 directing the writ to be served upon the secretary of state 16 of Montana or; in his absence from his office, upon the 17 deputy secretary of state. When such order has been made, 18 the writ of attachment shall be served upon the secretary of 19 state ory-in-his-absencey-upon-the deputy secretary of state 20 by leaving with him a copy of said the writ and a notice 21 that the stock or shares or interest therein of such 22 corporation or company belonging to the defendant is 23 attached in pursuance of such the writ." 24

25 Section 43. Section 27-18-413, MCA, is amended to

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1 read:

\*27-10-413. Personal property subject to a security 2 interest. Personal property subject to a security interest 3 may be taken on attachment issued at the suit of a creditor 4 (other than the secured party) of the debtor under the 5 security agreement; but before the property is so taken, the 5 officer levying the writ must pay or tender to the secured 7 party the amount of the security agreement debt and interest 3 or must deposit the same with the county treasurer of the c county in which the financing statement covering the 10 security agreement is filedy if such statement is filed with ìl a county clerk and recordery org if such statement is filed 12 13 with another filing officer pursuant to law, then with such other filing officer, payable to the order of the secured 14 party." 15

16 Section 44. Section 27-18-1504, MCA, is amended to 17 read:

18 "27-18-1504. Form and content of writ -- defendant's undertaking to prevent levy. <u>(11)</u> The writ may be directed to the sheriff or any constable of the county or the sheriff of any other county and must require him to:

22 (a) attach and safely keep all the property of the 23 defendant in his county, not exempt from execution 24 attachment, or so much thereof as may be sufficient to 25 satisfy the plaintiff's demand, the amount of which must be

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2 (b) unless if the defendant hos--given gives him
3 security by the undertaking of two sufficient sureties in an
4 amount sufficient to satisfy such demand, basides costs, in
5 which-case-to take such undertaking.

stated in conformity with the complaintwior

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6 <u>[2]</u> Such <u>The</u> undertaking is-to <u>must</u> be to the 7 plaintiff or--plaintiffs--in--the-action and shall <u>must</u> be 8 approved in writing on the back thereof by the plaintiff or 9 plaintiffs or his or-their attorney or-attorneys or, upon 10 their refusal, by the justice issuing such the writ."

11 Section 45. Section 27-18-1506. MCA. is amended to 12 read:

#27-18-1506. Applicability of procedure in district 13 court. Part 1y--except--27-10-101; 27-18-207, 27-18-303y 14 27-18-304+--27-18-306 through 27-18-308; parts 4, 5, and 6+ 15 except-27-18-406; 27-18-711 through 27-18-713, 27-18-721 16 through 27-18-732; and parts 6 and 9, except 27-18-901, are 17 18 applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff" 19 20 whenever the writ is directed to a constable, and the word "justice" substituted for "judge"." 21

22 Section 46. Section 27-19-204. MCA. is amended to 23 read:

24 \*27-19-204. Issuance without bond. Said The injunction
 25 provided for in 27-19-202 shall issue as-in-cases-of-equity-

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1 without bond, upon the application of the county attorney of the county in which such the action is pending or upon the 2 application of the attorney general in the name of the state 3 of Montana, upon a prima facie showing that an action-eivit 4 5 or--crisingly described in 27-19-202 has been so instituted and is so pending -- charging -- such -- person -- or -- persons 6 7 corporation--or-corporationsy-foreign-or-domesticy-with-such violation." 8

Section 47. Section 27-19-303, MCA. is amended to Q. read: 10

11 #27-19-303. Time of granting injunction, evidence 12 required. The injunction order may be granted at the time of 13 issuing the summons upon the complaint or at any time 14 afterward before judgment upon affidavits. In the one case, the complaint, with or without affidavits to support it, 15 16 and, in the other, the affidavits shall must show 17 satisfactorily that sufficient grounds exist therefor for 18 the order. An injunction order shell may not be granted on 19 the complaint alone unless:

(1) it be is duly verified; and

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21 (2) the material allegations of the complaint setting 22 forth the grounds therefor-be for the order are made 23 positively and not upon information and belief."

Section 48. Section 27-19-306, MCA, is amended to 24 25 read:

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must be dissolved."

#27-19-306. Security for damages. (1) On-granting-an 1 injunction-or-restraining-ordery-the--court--or--judge--may 2 requires-except Except when the state, a county, or any 3 subdivision thereof or a municipal corporation or a married 4 person in a suit for divorce against his or her spouse is a 5 party plaintiff, on granting an injunction or restraining 6 order: the court or judge may require a written undertaking 7 on the part of the plaintiff, with sufficient sureties, to A the effect that the plaintiff will pay to the party enjoined 0 such damages; not exceeding an amount to be specified; as 10 such party may sustain by reason of the injunction if the 11 court finally decide decides that the plaintiff was not 12 entitled thereto. 13 (2) Within 5 days after the service of the injunction. 14 the defendant may except to the sufficiency of the sureties. 15 If the-plaintiff he fails to do son such-plaintiff-is-deemed 16 to-have-waived he waives all objections to them. When 17 excepted to, the plaintiff's sureties, upon notice to the 18 defendant of not less than 2 or more than 5 days, must 19 justify before a judge or clerk in the same manner as upon 20 bail on arrestva end-upon-feilure If they fail to justify or 21 if others in their place fail to justify at the time and 22 place appointed, the order granting an the injunction shall

Section 49. Section 27-19-402, MCA, is amended to 25

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"27-19-402. Evidence upon at hearing. Upon At the 2 hearing on the application to vecete dissolve or modify an 3 injunction order, a verified answer has the effect only of 4 an affidavit. If the application be is made upon affidavits 5 on the part of the defendant, but not otherwise, the 6 plaintiff may oppose the same by oral\_\_\_testimony\_\_\_or 7 affidavits or-oral-testimony in addition to those on which B the injunction order was granted. The defendant may also use Q oral testimony." 10

11 Section 50. Section 27-19-403, MCA, is amended to 12 read:

#27-19-403. New undertaking for security following 13 hearing. Upon the hearing of-an--application--to--vacate--or 14 modify-an-injunction-order, the court or judge may require a 15 16 new undertaking, in the same or a different sum, to be given 17 by the plaintiff, with like suraties and to the like effect 18 as the undertaking executed upon the granting of the 19 original order. The persons executing the new undertaking become liable thereon as if they had executed it upon the 20 granting of the original order. The persons who executed 21 the original undertaking remain liable thereon until the new 22 undertaking is given and approved, and no longer." 23

24 Section 51. Section 27-19-404, MCA, is amended to 25 read:

1 #27-19-404. When injunction dissolved or modified. If upon such-spolication the hearing it satisfactorily appear 2 appears that there is are not sufficient sround grounds for 3 4 the injunction order, it-shall the order must be dissolved; or if it satisfactorily encear appears that the extent of 5 6 the injunction order is too great, it-shall the order must be modified. The--court-or-ludge-mov-vacate-the-injunction 7 8 order-whare-the-alleged-wrong-or-iniury-is--not--irrepereble 9 and--+s--capable--of--being--adoguately--compensated--for-in 10 BOREYV Section 52. Section 27-19-405, MCA, is amended to 11 12 read: 13 \*27-19-405. Defendant's undertaking for security upon 14 dissolution. Upon-the-hearing-mentioned-in-27-19-403 If the 15 injunction\_order\_is\_dissolved\_because the alleged injury is not\_\_irreparable\_\_and\_\_is\_\_capable\_\_of\_\_being\_\_adequately 16 17 compensated for in money. the court or judge may-vacate-the injunction--order--upon--the--defendent\*s--executing shall 18 require the defendant to execute an undertaking in such form 19 20 and amount and with such sureties as the court or judge 21 shall <u>may</u> direct, conditioned to indemnify the plaintiff against loss sustained by reason of vacating-such-injunction 22 23 order the dissolution." 24 Section 53. Section 27-20-301, MCA, is amended to 25 read:

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#27-20-301. Oath and undertaking to faithfully 1 2 discharge duties. Before entering upon his duties, the 3 receiver must be sworn to perform them faithfully and shall execute an undertaking, with one or more sureties approved 4 5 by the court or judge, execute-en-undertaking to such person and in such sum as the court or judge may direct, to the 6 7 effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court 8 therein. The court may at any time direct him to give new 9 10 bonds with new sureties with the like effect. Such 11 underteking-may-be-sued-on-as-provided-in-2-9-505\*\*

12 Section 54. Section 27-25-103, MCA, is amended to 13 read:

14 #27-25-103. Application of rules of procedure. Except 15 as otherwise provided in this chapter, the provisions of 16 [93-2381--to--93-8717] <u>litle\_25</u> are applicable to and 17 constitute the rules of practice in the proceedings 18 mentioned in this chapter. The provisions of f93-2301--te 19 93-8717] Title 25 relative to new trials and appeals, except 20 insofar as they are inconsistent with the provisions of this 21 chapter, apply to the proceedings mentioned in said this chapter." 22

23 Section 55. Section 27-26-103. MCA, is amended to 24 read:

25 #27-26-103. Application of rules of procedure. Except

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as otherwise provided in this chapter, the provisions of 1 F93-2381---to--93-87174 Title 25 are applicable to and 2 constitute the rules of practice in the proceedings 3 mentioned in this chapter. The provisions of [93-2301-to 4 93-0717] <u>Title 25</u> relative to new trials and appeals, except 5 insofar as they are inconsistent with the provisions of this 6 chapter, apply to the proceedings mentioned in said this 7 8 chapter."

9 Section 56. Section 27-26-303. MCA. is amended to 10 read:

#27-26-303. Jury trial. (1) If an answer be is made 11 which raises a question as to a matter of fact essential to 12 the determination of the motion and affecting the 13 substantial rights of the parties, and upon the supposed 14 truth of the allegation of which the application for the 15 16 writ is based, the court or judge may, in its or his discretion, order the question to be tried before a jury and 17 postpone the argument until such the trial can be had. The 18 question to be tried must be distinctly stated in the order 19 for trial. The order may also direct the jury to assess any 20 damages which the applicant may have sustainedy-in-case-they 21 find if it finds for him. 22

(2) If the proceeding is in the district court or
before a district judge, the trial must take place as in
other cases. If a jury be is required in the supreme court,

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a jury must be drawn and selected from the jury boxes box of 1 the--county-in-which-the-seat-of-government-is-located Lewis 2 and Clark County and the clerk of the district court of said 3 that county must shall place such-boxes the box in the 4 custody of the clerk of the supreme court for that purpose. 5 The conduct of the trial shell must be the same as in the 5 district court, and the clerk of the supreme court shall 7 nave has the same authority to issue processy and enter 9 orders and judgments as the district court clerk has in like 9 cases." 10 Section 57. Section 27-26-402, MCA, is amended to 11 12 read: "27-26-402. Judgment for applicant. If judgment be is 13 14 given for the applicant: 15 (1) he may recover the damages which he has sustained, 16 as found by the jury or as may-be determined by the court or referees. upon if a reference to-be was ordered, together 17 18 with costs: 19 (2) an execution may issue for such damages and costsy en-execution-may-issue; and 20 21 (3) a peremptory mandate must be awarded without delay." 22 23 Section 58. Section 27-28-207, MCA, is amended to 24 read: #27-28-207. Procedure when action brought in supreme 25 S8 33 -33-

court. Actions under this chapter commenced in the supreme 1 court shall must be conducted in the same manner as if • commanced in the district court, and the clerk of the 3 supreme court shell-have has the same authority to issue summons and other process and to enter orders and judgments 5 as the clerk of the district court has in like cases. All pleadings and the conduct of the trial sholl must be the 7 same as in the district court. If a jury is required to R determine an issue of fact, a jury shall must be drawn and o selected from the jury boxes box of the-county-in-which--the 10 sect-of-government-is-located Lewis and Clark County and the 11 clerk of the district court of said that county must shall 12 place such the jury boxes box in the custody of the clerk of 13 14 the supreme court for that purpose." Section 59. Section 27-28-505. MCA, is amended to 15

17 #27-28-505. Powers and duties of trustees -liability. [1] The trustees shall forthwith immediately 18 demand all money, property, booksy--deedsy-notesy-billsy 19 obtigotionsy and papers of--every--description within the 20 custody --- powers or control of the officers of the 21 22 corporation-or-either-of-them belonging to the corporation or in anywise any way necessary for the settlement of its 23 affairs or for the discharge of its debts and liabilities; 24 and they may sue for and recover the demands and property of 25

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read:

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1 the corporations

2 <u>(2)</u> and---shall---be <u>The\_trustees\_are</u> jointly and 3 severally liable to the creditors and stockholders <u>of\_the</u> 4 <u>corporation</u> to the extent of its property and effects which 5 come into their hands.\*

6 Section 60. Section 27-31-102, MCA, is amended to 7 read:

#27-31-102. Petition for change of name of nonprofit 8 9 corporation. Any religious, benevolent, literary, or scientific corporation or any corporation bearing or-having 10 11 for-sts-nome or using or being known by the name of any 12 benevolent or charitable order or society may by petition 13 apply to the district court of the county in which its 14 articles of incorporation were originally filed or in which 15 the its property of--such--corporation is situated for a 16 change of its corporate name. Such petition must be signed 17 by a majority of the directors or trustees of the 18 corporation and must specify the date of the formation of 19 the corporation, the name proposed, and the reason for such 20 the change of name. Upon the filing such of the petition on behalf--of--such-corporation, the same proceedings procedure 21 22 shall be made followed as upon applications for changes of names of natural persons." 23

24 Section 61. Section 27-31-205, MCA, is amended to 25 read:

#27-31-205. Annual report of name changes by clerk to 1 secretory--of--state and legislative council -- publication. 2 Each January the clerk of the district court shally-annually ٦. in-the-month-of-dandaryy-make-a-return report to the office 4 of secretary--of--state of and-the legislative council all 5 changes of names made during the preceding year in the 5 district court of his county under this chapter. Such-return 7 shall Inc. report must show the date of the judgment of-the 8 court, original name, name decreed, and residence. Such 9 returns--shall The reports must be published in a tabular 10 form with the statutes first published thereafter." 11 Section 62. Repeater. Sections 64-210, 93-6501 through 12

13 93-6517v and 93-9011v R.C.M. 1947v are repealed. Sections

14 27-1-814 through 27-1-817. MCA. are repealed.

-End-

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