

CHAPTER NO. 12

SENATE BILL NO. 33

INTRODUCED BY VAN VALKENBURG

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.

SENATE BILL NO. 33

INTRODUCED BY \_\_\_\_\_

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO REMEDIES."

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

Section 1. Section 27-1-107, MCA, is amended to read:

"27-1-107. Kinds of relief -- when given. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance, and specific and preventive relief may be given in no other cases than those specified in parts 2, 3, and 4 of this chapter, 27-1-102, 27-1-103, 28-1-104, and parts 16 and 17 of chapter 2 of title 28 only when specifically provided for by statute."

Section 2. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, the slayer ~~he~~ must provide for the maintenance of the spouse and minor children of the person slain or permanently disabled ~~and for the minor 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 as is~~ determined by the courts ~~if any person slays or disables another person in a duel in this state, the slayer~~ 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 obligation. Notwithstanding ~~the provisions of 27-1-204, 27-1-222, 27-1-223, and this part, no~~ no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides ~~except in the cases specified in 27-1-221 through 27-1-223, 27-1-322, 70-16-106, 70-27-207, and 70-27-208 unless a greater recovery is specifically permitted by statute.~~"

Section 4. Section 27-1-311, MCA, is amended to read:

"27-1-311. Breach of contract. For the breach of an obligation arising from contract, the measure of damages, except where ~~when~~ otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment ~~which was~~ proximately caused thereby or which in the ordinary course of things would be likely to result therefrom. ~~no damages can be recovered for a breach of contract~~ Damages which are not clearly ascertainable in

1 both their nature and origin ~~cannot be recovered for a~~  
2 ~~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  
5 property. The detriment caused by the breach of an agreement  
6 to convey an estate in real property is ~~deemed considered~~ to  
7 be the price paid and the expenses properly incurred in  
8 examining the title and preparing the necessary papers, with  
9 interest thereon, ~~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 agreed price agreed-to-be~~  
13 ~~paid 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 land."~~

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

1 (b) a fair compensation for the time and money  
2 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 ~~his~~ such  
7 owner's consent."

8 Section 7. Section 27-1-501, MCA, is amended to read:

9 "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  
13 the transfer of any interest therein, ~~but shall in all~~  
14 ~~cases where a~~ whenever the cause of action or defense arose  
15 in favor of such party prior to his death or other  
16 disability or transfer of interest therein, ~~survive if~~  
17 ~~survives~~ and ~~may~~ be maintained by his representatives or  
18 successors in interest, ~~and in case such~~ if the action has  
19 not been begun or defense interposed, the action may be  
20 begun or defense ~~set-up~~ interposed in the name of his  
21 representatives or successors in interest, ~~and in case~~ if  
22 the action has been begun or defense ~~set-up~~ interposed, the  
23 ~~court shall on motion allow~~ the action or proceeding to  
24 ~~may~~ be continued by ~~or against his representatives or~~  
25 ~~successors in interest in case of any transfer of interest~~

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 substituted in the action or~~  
 4 ~~proceeding as provided in Rule 25, M.R.C.P."~~

5 Section 8. Section 27-1-606, MCA, is amended to read:

6 "27-1-606. Criminal penalty. Any person who shall  
 7 violate violates any of the provisions of this part shall be  
 8 guilty ~~of a 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:

14 "27-1-701. Liability for negligence as well as willful  
 15 acts. ~~Every one~~ Everyone is responsible not only for the  
 16 ~~result~~ 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 himself. ~~The extent of liability in such~~  
 21 ~~cases is defined by parts 2 and 3 of this chapter~~  
 22 ~~subsections (1) through (3) of 69-11-121, 70-16-106,~~  
 23 ~~70-27-207, and 70-27-208."~~

24 Section 10. Section 27-1-811, MCA, is amended to read:

25 "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 any other person~~, for discussion of controversial  
 7 or any other subjects in the absence of proof of actual  
 8 malice on the part of such owner or operator."

9 Section 11. Section 27-1-813, MCA, is amended to read:

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 ~~defamation~~. ~~Not~~ shall ~~anything 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  
 18 liability under the law of ~~libel~~ and defamation on account  
 19 of any broadcast prepared or made by ~~any~~ such person, firm,  
 20 or corporation or by any officer or employee thereof in the  
 21 course of his employment, ~~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~~  
 24 ~~of this sentence in that event where~~ and two or more  
 25 broadcasting stations were connected together simultaneously

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), 7-32-412, 17-5-100, 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, MCA, is amended to read:

14 "27-2-102. When action commenced. ~~An act the purposes~~  
 15 ~~of statutes relating to the time within which an action must~~  
 16 ~~be commenced, an action is commenced within the meaning of~~  
 17 ~~[this chapter] 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 amended to read:

1 "27-2-105. Periods of limitation. ~~The All civil~~  
 2 ~~actions must be commenced within the periods prescribed for~~  
 3 ~~the commencement of actions, other than for the recovery of~~  
 4 ~~real property, are as follows in part 2 except when another~~  
 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 contract 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, ~~other than a~~  
 16 ~~contract, account, or promise,~~ not founded upon an  
 17 instrument in writing ~~other than a contract, account, or~~  
 18 ~~promise~~ 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 ~~an obligation or a~~ liability not founded upon an  
 23 instrument in writing ~~other than a contract, account, or~~  
 24 ~~promise~~ is within 3 years.

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

1 action to recover damages for the death of one caused by the  
2 wrongful 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.\*

6 Section 18. Section 27-2-211, MCA, is amended to read:

7 \*27-2-211. Actions to enforce penalty or forfeiture or  
8 other statutory liability. (1) Within 2 years is the period  
9 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, except when the statute imposing it prescribes a  
13 different limitation;

14 (b) a statute or an undertaking in a criminal action  
15 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  
19 action by a municipal corporation for the violation of any  
20 city or town ordinance is within 1 year.

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

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

4 Section 19. Section 27-2-213, MCA, is amended to read:

5 \*27-2-213. Actions against banks. ~~To (1) Except as~~  
6 provided in subsection (2), there are no time limitations on  
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.

11 (2) ~~However--any~~ Any action to obtain, set aside, or  
12 question in any manner any stated or settled account between  
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  
16 or ~~and~~ loan corporation, association, or society must be  
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  
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 plaintiff or his agent, assignee, or personal  
25 representative ~~shall have been~~ was notified of such payment

1 or ~~on which he or they shall~~ have received such check,  
2 order, or note marked "paid."

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  
6 5 years after the cause of action ~~shall have accrued~~  
7 accrues."

8 Section 21. Section 27-2-303, MCA, is amended to read:

9 "27-2-303. Actions for waste, trespass, or injury  
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,  
15 geothermal resources, or other minerals, the cause of action  
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."

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 180~~ time  
23 within which an action must be commenced ~~in a court of this~~  
24 ~~state~~ by an executor or administrator to recover personal  
25 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 period; ~~the~~  
4 ~~letters are deemed to have been issued within 5 years after~~  
5 ~~the death of the testator or intestate shall be computed~~  
6 from:

7 (1) the time of issuing such letters if they are  
8 issued within 5 years of the death;

9 (2) 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, insane seriously mentally ill,~~  
17 or imprisoned on a criminal charge or ~~in execution under the~~  
18 ~~a 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 [93-2401 to 73-2720]~~ for commencing the action,  
21 ~~except that, 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

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

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 both removed."

17 Section 24. Section 27-2-404, MCA, is amended to read:

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

1 ~~(2)~~ If a person against whom an action may be brought  
 2 dies before the expiration of the time limited for the  
 3 commencement thereof and the cause of action survives, an  
 4 action may be commenced against his representatives after  
 5 the expiration of that time and within 1 year after the  
 6 issuing of letters testamentary or of administration if a  
 7 person against whom a cause of action exists dies without  
 8 the state, the time which elapses between his death and the  
 9 expiration of 1 year after the issuing within the state of  
 10 letters testamentary or letters of administration is not a  
 11 part of the time limited for the commencement of an action  
 12 therefor against his executor or administrator."

13 Section 25. Section 27-2-408, MCA, is amended to read:

14 "27-2-408. Effect on counterclaim of termination of  
 15 action. ~~where~~ ~~wherever~~ 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 favor, 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  
 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



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 26. Section 27-2-409, MCA, is amended to read:

6 "27-2-409. Acknowledgment 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 [93-2401 to 93-2720] 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 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 27. Section 27-5-303, MCA, 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  
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  
24 award ~~must be entered by the clerk~~ in the judgment book and  
25 thereupon ~~it~~ has the effect of a judgment."

1 Section 28. Section 27-6-402, MCA, is amended to read:

2 "27-6-402. Selection of panelists. (1) Application for  
3 review shall be promptly transmitted by the director to the  
4 directors of the health care provider's state professional  
5 society or association and the state bar, which shall each  
6 select three panelists within 30 days from the date of  
7 transmittal of the application.

8 (2) If no state professional society or association  
9 exists or if the health care provider does not belong to  
10 such a society or association, the director shall transmit  
11 the application to the health care provider's state  
12 licensing board, which shall in turn select three persons  
13 from the health care provider's profession 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  
18 hearing. (1) At the conclusion of the hearing, the panel may  
19 take the case under advisement or may request that  
20 additional facts, records, witnesses, 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  
24 the ~~attorney bringing the matter for review~~ claimant or his  
25 attorney consents in writing to a longer period.

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 30. Section 27-6-605, MCA, is amended to read:

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

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

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

4 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, guardian, or other  
8 fiduciary, creditor, devisee, ~~legatee~~ heir, ~~next-of-kin~~ or  
9 cestui que trust in the administration of a trust or of the  
10 estate of a decedent, ~~infant minor~~, ~~and~~ mentally seriously  
11 mentally 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 ~~legatees~~ heirs, ~~next-of-kin~~ 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 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~~ Subject to 28-2-709, a 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

1 liability on behalf of the defendant, or both, in the manner  
2 prescribed by this chapter. Such judgment may be entered in  
3 any court having jurisdiction for like amounts. Judgment  
4 upon confession may be entered up in any justice's court  
5 specified in the confession, as provided in this chapter."

6 Section 35. Section 27-9-103, MCA, is amended to read:

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 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 ~~affidavit with the judgment endorsed thereon becomes the~~  
13 ~~judgment roll."~~

14 Section 36. Section 27-9-104, MCA, 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 so in the justice's court~~. If a  
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 37. Section 27-15-102, MCA, is amended to  
25 read:

1 "27-15-102. Availability of provisional remedies to  
2 defendant interposing counterclaim. ~~Where~~ ~~however~~ the  
3 defendant interposes 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  
6 brought by him against the plaintiff for the cause of action  
7 stated in the counterclaim and demanding the same judgment,  
8 ~~and for~~ ~~Eq~~ the purpose of applying to such a case the  
9 provisions of chapters 15 through 20 ~~(except part 10 of~~  
10 ~~chapter 16, 27-17-102, 27-17-401, 27-18-111, and part 15 of~~  
11 ~~chapter 18) of this title and chapter 8 of Title 25, chapter  
12 ~~8~~, 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, MCA, is amended to  
17 read:

18 "27-16-101. Exclusive procedure for prejudgment 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 39. 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:

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 in an action is for willful injury to~~  
6 ~~person--to or character 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  
10 property fraudulently misapplied or converted to his own use  
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  
14 fiduciary capacity; for misconduct or neglect in office or  
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;

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

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

4 Section 40. Section 27-18-102, MCA, is amended to  
5 read:

6 "27-18-102. What property subject to attachment. (1)  
7 ~~The except as provided in subsection (2), the~~ rights or  
8 shares which the defendant ~~may have~~ has in the stock of any  
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~~  
13 recovered, sold to satisfy the judgment and execution.  
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 ~~before~~ the  
20 commencement of the action--~~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. (1) The writ must be directed

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

3 (a) attach and safely keep all the property of such  
4 defendant within his county, not exempt from execution  
5 attachment, 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 (b) unless if 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 (2) Such the undertaking is to must be to the  
15 plaintiff or plaintiffs in the action and shall 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 sheriff."

20 Section 42. 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

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

25 Section 44. Section 27-18-413, MCA, is amended to

1 read:

2 "27-18-413. Personal property subject to a security  
3 interest. Personal property subject to a security interest  
4 may be taken on attachment issued at the suit of a creditor  
5 ~~(other than the secured party)~~ of the debtor under the  
6 security agreement; but before the property is so taken, the  
7 officer levying 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  
10 county in which the financing statement covering the  
11 security agreement is filed; if such statement is filed with  
12 a county clerk and recorder or if such statement is filed  
13 with another filing officer pursuant to law, then with such  
14 other filing officer, payable to the order of the secured  
15 party."

16 Section 45. 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

1 stated in conformity with the complaint or

2 (b) unless if 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 (2) Such the undertaking ~~is to~~ must be to the  
7 plaintiff ~~or plaintiffs in the action~~ and shall must 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 46. Section 27-18-1506, MCA, is amended to  
12 read:

13 "27-18-1506. Applicability of procedure in district  
14 court. Part 1 ~~except 27-18-101; 27-18-207, 27-18-303,~~  
15 ~~27-18-304, 27-18-306~~ through 27-18-308; parts 4, 5, and 6 ~~or~~  
16 ~~except 27-16-406; 27-18-711 through 27-18-713, 27-18-721~~  
17 through 27-18-732; and parts 8 and 9, except 27-18-901, are  
18 applicable to attachments issued in justices' courts, the  
19 word "constable" being substituted for the word "sheriff"  
20 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 ~~as in cases of equity~~

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  
 4 of Montana, upon a prima facie showing that an action ~~is~~  
 5 ~~or criminally~~ described in 27-19-202 has been so instituted  
 6 and is so pending ~~charging such person or persons~~  
 7 ~~corporation or corporations foreign or domestic with such~~  
 8 ~~violation."~~

9 Section 48. 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  
 13 issuing the summons upon the complaint or at any time  
 14 afterward before judgment upon affidavits. In the one case,  
 15 the complaint, with or without affidavits to support it,  
 16 and, in the other, the affidavits ~~shall~~ 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  
 21 (2) the material allegations of the complaint setting  
 22 forth the grounds ~~therefor~~ for the order ~~are~~ made  
 23 positively and not upon information and belief."

24 Section 49. Section 27-19-306, MCA, is amended to  
 25 read:

1 "27-19-306. Security for damages. (1) ~~On granting an~~  
 2 ~~injunction or restraining order, the court or judge may~~  
 3 ~~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  
 6 party plaintiff, ~~on granting an injunction or restraining~~  
 7 order, the court or judge may require a written undertaking  
 8 on the part of the plaintiff, with sufficient sureties, to  
 9 the effect that the plaintiff will pay to the party enjoined  
 10 such damages, not exceeding an amount to be specified, as  
 11 such party may sustain by reason of the injunction if the  
 12 court finally ~~decide~~ decides that the plaintiff was not  
 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 plaintiff~~ he fails to do so, ~~such plaintiff is deemed~~  
 17 ~~to have waived~~ he 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  
 21 bail on arrest, ~~and upon failure if they fail~~ to justify or  
 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

1 read:

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

11 Section 51. Section 27-19-403, MCA, is amended to  
12 read:

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

24 Section 52. Section 27-19-404, MCA, is amended to  
25 read:

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 order, ~~it-shall~~ the order must be dissolved;  
5 or if it satisfactorily ~~appear~~ appears that the extent of  
6 the injunction order is too great, ~~it-shall~~ the order must  
7 be modified. ~~The court or judge may vacate the injunction~~  
8 ~~order-where-the-alleged-wrong-or-injury-is-not-irreparable~~  
9 ~~and-is-capable-of-being-adequately-compensated-for-in~~  
10 ~~money."~~

11 Section 53. Section 27-19-405, MCA, is amended to  
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  
16 not irreparable and is capable of being adequately  
17 compensated for in money, the court or judge may ~~vacate the~~  
18 ~~injunction order-upon the defendant's 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 54. Section 27-20-301, MCA, is amended to  
25 read:



1       "27-20-301. Oath 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  
6 and in such sum as the court or judge may direct, to the  
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 as provided in 2-9-505."~~

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 ~~[93-2301--to--93-0717]~~ Title 25 are applicable to and  
17 constitute the rules of practice in the proceedings  
18 mentioned in this chapter. The provisions of ~~[93-2301-to~~  
19 ~~93-0717]~~ 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  
22 chapter."

23       Section 56. Section 27-26-103, MCA, is amended to  
24 read:

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

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

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

11       "27-26-303. Jury trial. (1) If an answer be is made  
12 which raises a question as to a matter of fact essential to  
13 the determination of the motion and affecting the  
14 substantial rights of the parties, and upon the supposed  
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  
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  
21 damages which the applicant may have sustained ~~in case they~~  
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,

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

11 Section 58. 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 costs,  
 20 ~~an-execution-may-issue~~; and

21 (3) a peremptory mandate must be awarded without  
 22 delay."

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

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

1 court. Actions under this chapter commenced in the supreme  
 2 court ~~shall must~~ be conducted in the same manner as if  
 3 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  
 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  
 8 same as in the district court. If a jury is required to  
 9 determine an issue of fact, a jury ~~shall must~~ be drawn and  
 10 selected from the jury boxes ~~box~~ of ~~the county in which the~~  
 11 ~~seat of government is located~~ Lewis and Clark County and the  
 12 clerk of the district court of ~~said that~~ county ~~must shall~~  
 13 place ~~such the~~ jury boxes ~~box~~ in the custody of the clerk of  
 14 the supreme court for that purpose."

15 Section 60. Section 27-28-505, MCA, 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, ~~books--deeds--notes--bills~~  
 20 ~~obligations~~, and papers ~~of--every--description~~ within the  
 21 custody--~~power~~ or control of the officers or the  
 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

1 the corporation.  
 2 ~~(2) and shall be~~ The trustees are jointly and  
 3 severally liable to the creditors and stockholders of the  
 4 corporation to the extent of its property and effects which  
 5 come into their hands."

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

8 "27-31-102. Petition for change of name of nonprofit  
 9 corporation. Any religious, benevolent, literary, or  
 10 scientific corporation or any corporation bearing or ~~having~~  
 11 ~~for its name~~ 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  
 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.  
 3 Each January the clerk of the district court shall ~~annually~~  
 4 ~~in the month of January make a return report~~ to the office  
 5 of secretary of state ~~of~~ and the legislative council all  
 6 changes of names made during the preceding year in the  
 7 district court of his county under this chapter. ~~Such return~~  
 8 ~~shall the report must~~ show the date of the judgment ~~of the~~  
 9 court, original name, name decreed, and residence. ~~Such~~  
 10 ~~returns shall the reports must~~ be published in a tabular  
 11 form with the statutes first published thereafter."

12 Section 63. Repealer. Sections 64-210, 93-6501 through  
 13 93-6517, and 93-9011, R.C.M. 1947, are repealed. Sections  
 14 27-1-814 through 27-1-817, MCA, are repealed.

-End-

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1979 Legislature  
Code Commissioner Bill - SummarySENATE Bill No. 33AN 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. 27-1-107. Kinds of relief -- when given.  
Changed obsolete (1895) reference to a general reference to  
statutes.Section 2. 27-1-223. Damages for injuries or death  
inflicted in a duel. Changed "the slayer" to "he" to clarify  
that the section applies whether the victim is dead or  
permanently disabled.Section 3. 27-1-303. Limitation of damages for breach  
of obligation. Deleted obsolete (1895) references and added  
a general reference to statutes.Section 4. 27-1-311. Breach of contract. Clarified  
what the second "which" (deleted) refers to.Section 5. 27-1-314. Breach of agreement to convey  
real property. Rewrote to clarify.Section 6. 27-1-320. Conversion of personal property.  
In subsection (2) clarified "his".Section 7. 27-1-501. 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.

Section 8. 27-1-606. Criminal penalty. Deleted inaccurate reference to misdemeanor (penalty prescribed makes it a felony).

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

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

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

Section 12. 27-2-101. Definition of action. Simplified 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. 27-2-103. Actions by state subject to limitations. Updated obsolete (1877) reference.

Section 15. 27-2-105. Periods of limitation. Rewrote to clarify obsolete (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. 27-2-204. Tort actions -- general and personal injury. In subsection (1) deleted language relating to obligations -- redundant with 27-2-202.

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

Section 19. 27-2-213. Actions against banks. Rewrote to clarify; changed "savings or loan" to "savings and loan" to correct apparent error (There is no "savings or loan" provided for in Montana's banking laws.); deleted "or depositors" -- redundant; changed "of" to "by" -- apparent error.

Section 20. 27-2-215. Other actions. Changed obsolete (1895) "hereinbefore" to "otherwise".

Section 21. 27-2-303. Actions for waste, trespass, or injury committed during mining work or exploration. Added "resources" to correct apparent 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. 27-2-404. 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 conflicts with that code. (See specifically 72-3-123 and 72-3-802.)

Section 25. 27-2-408. Effect on counterclaim of termination of action. Replaced obsolete 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. 27-2-409. 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. 27-5-303. When award has effect of a judgment. Clarified who files affidavit.

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

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

Section 30. 27-6-605. Decision to be filed and copies sent to parties, attorneys, and licensing board. Changed "report" to "decision" to correct apparent 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. 27-7-103. Entry of judgment -- costs. Deleted the last sentence, an obsolete reference to the judgment roll.

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

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

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

Section 36. 27-9-104. Filing and costs -- justice's court. Changed "may" to "shall" to correct apparent error; deleted specific dollar amount on justice's court costs and reference to district court costs -- redundant 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. 27-15-102. Availability of provisional remedies to defendant interposing counterclaim. Simplified 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. 27-16-101. Exclusive procedure for pre-judgment 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. 27-18-102. What property subject to attachment. In subsection (1) added "Except as provided in subsection (2)" to clarify the relationship between the two subsections (originally separate sections in different R.C.M. chapters) and added the last sentence to clarify 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. 27-18-304. When sheriff may require written specification of property to be levied upon. Changed "must" to "may" to correct apparent error.

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

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

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

Section 46. 27-18-1506. Applicability of procedure in district court. Simplified and updated internal reference: 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 simplify since it applies anyway (27-18-1505 reads the same); 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.)



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 clarify.

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. 27-19-403. 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. 27-19-404. When injunction dissolved or modified. Changed "such application" to "the hearing" to clarify; clarified "it shall"; deleted last sentence -- substance being incorporated into 27-19-405 to correct recodification error (see 93-4209, R.C.M. 1947).

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

Section 54. 27-20-301. Oath and undertaking to faithfully discharge duties. Deleted last sentence, which is confusing and not useful (2-9-505 states that "where it is 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. 27-25-103. 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. 27-26-303. Jury trial. In subsection (2) changed "jury boxes" to "jury box" in two places to update (Current law provides for only one jury box) and added "and" and "court" to clarify.

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

Section 59. 27-28-207. Procedure when action brought in supreme court. Changed "jury boxes" to "jury box" in two places to update (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. 27-31-102. Petition for change of name of nonprofit corporation. Added "or" to clarify, deleted redundancies, and rewrote last sentence to clarify.

Section 62. 27-31-205. 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 update. (Current law requires the legislative council rather than the secretary of state, to publish the statutes -- 5-11-205, MCA.)

Section 63. Repealer. 64-210, R.C.M. 1947. Redundant 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.

93-9011, R.C.M. 1947. 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.

Approved by Committee  
on Judiciary

SENATE BILL NO. 33

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
CLARIFY THE LAWS RELATING TO REMEDIES."

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

Section 1. Section 27-1-107, MCA, is amended to read:

"27-1-107. Kinds of relief -- when given. As a general  
rule, compensation is the relief or remedy provided by the  
law of this state for the violation of private rights and  
the means of securing their observance, ~~and--specific~~  
Specific and preventive relief may be given ~~in--no--other~~  
~~cases--than--those--specified--in--parts-2v-3v-and-4-of-this~~  
~~chapterv-27-19-102v-27-19-103v-28-1-104v-and-parts-16-and-17~~  
~~of-chapter-2-of-title-28 only-when-specifically-provided-for~~  
by statute ONLY IN THOSE CASES SPECIFIED BY STATUTE."

Section 2. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in  
a duel. If any person slays or permanently disables another  
person in a duel in this state, the slayer ~~he~~ must provide  
for the maintenance of the spouse ~~and minor children~~ of the  
person slain or permanently disabled ~~and--for--the--minor~~  
~~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 as is~~ as is determined by  
the court ~~if any person slays or disables another person in~~  
~~a--duel--in--this--statev--the--slayer 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  
obligation. ~~Notwithstanding--the--provisions--of--27-1-204v~~  
~~27-1-222v-27-1-223v-and-this-partv--no~~ No person can recover  
a greater amount in damages for the breach of an obligation  
than he could have gained by the full performance thereof on  
both sides ~~except--in--the--cases--specified--in--27-1-221--through~~  
~~27-1-223v--27-1-322v--78-16-106v--78-27-207v--and--78-27-208~~  
unless a greater recovery is specifically--permitted  
SPECIFIED by statute."

Section 4. Section 27-1-311, MCA, is amended to read:

"27-1-311. Breach of contract. For the breach of an  
obligation arising from contract, the measure of damages,  
except where ~~when~~ otherwise expressly provided by this code,  
is the amount which will compensate the party aggrieved for  
all the detriment ~~which was~~ proximately caused thereby or  
which in the ordinary course of things would be likely to  
result therefrom. ~~No-damages-can-be-recovered-for-a--breach~~  
~~of--contract~~ Damages which are not clearly ascertainable in

1 both their nature and origin ~~cannot be recovered for a~~  
2 ~~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  
5 property. The detriment caused by the breach of an agreement  
6 to convey an estate in real property is deemed ~~considered~~  
7 to be the price paid and the expenses properly incurred in  
8 examining the title and preparing the necessary papers, with  
9 interest thereon, ~~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 agreed price agreed-to-be~~  
13 ~~paid 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 land."~~

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

1 (1) a fair compensation for the time and money  
2 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 ~~such~~  
7 ~~owner's~~ consent."

8 Section 7. Section 27-1-501, MCA, is amended to read:

9 "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  
13 the transfer of any interest therein, ~~but shall--in--all~~  
14 ~~cases--where--~~ whenever the cause of action or defense arose  
15 in favor of such party prior to his death or other  
16 disability or transfer of interest therein, survive it  
17 survives and may be maintained by his representatives or  
18 successors in interest, ~~and in case such~~ If the action has  
19 not been begun or defense interposed, the action may be  
20 begun or defense ~~set--up~~ interposed in the name of his  
21 representatives or successors in interest, ~~and in case~~ If  
22 the action has been begun or defense ~~set-up~~ interposed, the  
23 ~~court shall--on--motion--allow~~ the action or proceeding to  
24 may be continued by ~~--or--against--his--representatives--or~~  
25 ~~successors--in--interest--in--case--of--any--transfer--of--interest~~

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 substituted in the action or  
 4 proceeding as provided in Rule 25, M.R.Civ.P."

5 Section 8. Section 27-1-606, MCA, is amended to read:

6 "27-1-606. Criminal penalty. Any person who shall  
 7 violate ~~violates~~ any of the provisions of this part shall be  
 8 guilty of a 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:

14 "27-1-701. Liability for negligence as well as willful  
 15 acts. Every ~~one~~ Everyone is responsible not only for the  
 16 result ~~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 himself. The extent of liability in such  
 21 cases is defined by parts 2 and 3 of this chapter  
 22 subsections (1) through (3) of 69-11-121, 70-16-106,  
 23 70-27-297, and 70-27-288."

24 Section 10. Section 27-1-811, MCA, is amended to read:

25 "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 any other person, for discussion of controversial  
 7 or any other subjects in the absence of proof of actual  
 8 malice on the part of such owner or operator."

9 Section 11. Section 27-1-813, MCA, is amended to read:

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 defamations. Nor shall anything 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  
 18 liability under the law of libel and defamation on account  
 19 of any broadcast prepared or made by any such person, firm,  
 20 or corporation or by any officer or employee thereof in the  
 21 course of his employment, 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  
 24 of this sentence in that event where and two or more  
 25 broadcasting stations were connected together simultaneously

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, ~~7-7-1951; 7-32-412; 17-5-100; 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, MCA, is amended to read:

14 "27-2-102. When action commenced. An for the purposes  
 15 of statutes relating to the time within which an action must  
 16 be commenced, an action is commenced within the meaning of  
 17 ~~[this chapter]~~ 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 amended to read:

1 "27-2-105. Periods of limitation. The All civil  
 2 actions must be commenced within the periods prescribed for  
 3 the commencement of actions other than for the recovery of  
 4 real property are as follows in part 2 except when another  
 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 contract 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, other than a  
 16 contract, account, or promise not founded upon an  
 17 instrument in writing ~~other than a contract, account, or~~  
 18 ~~promise~~ 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 ~~an obligation or~~ a liability not founded upon an  
 23 instrument in writing ~~other than a contract, account, or~~  
 24 ~~promise~~ is within 3 years.

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

1 action to recover damages for the death of one caused by the  
2 wrongful 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."

6 Section 18. Section 27-2-211, MCA, is amended to read:

7 "27-2-211. Actions to enforce penalty or forfeiture or  
8 other statutory liability. (1) within 2 years is the period  
9 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, except when the statute imposing it prescribes a  
13 different limitation;

14 (b) a statute or an undertaking in a criminal action  
15 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  
19 action by a municipal corporation for the violation of any  
20 city or town ordinance is within 1 year.

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

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

4 Section 19. Section 27-2-213, MCA, is amended to read:

5 "27-2-213. Actions against banks. ~~to~~ [(1) Except as  
6 provided in subsection (2), there are no time limitations on  
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.

11 [(2) However--any Any action to obtain, set aside, or  
12 question in any manner any stated or settled account between  
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  
16 ~~or~~ and loan corporation, association, or society must be  
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  
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 plaintiff, ~~or~~ his agent, assignee, or personal  
25 representative shall ~~have-been~~ was notified of such payment

1 or ~~on--which--he--or--they--shall~~ have received such check,  
2 order, or note marked "paid".

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  
6 5 years after the cause of action ~~shall--have-accrued~~  
7 ~~accrues.~~"

8 Section 21. Section 27-2-303, MCA, is amended to read:  
9 "27-2-303. Actions for waste, trespass, or injury  
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,  
15 geothermal ~~resources~~, or other minerals, the cause of action  
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."

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  
23 within which an action must be commenced ~~in-a-court-of--this~~  
24 state by an executor or administrator to recover personal  
25 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 period--~~the~~  
4 ~~letters--are-deemed-to-have-been-issued-within-5-years-after~~  
5 ~~the-death-of-the-testator-or-intestator~~ shall be computed  
6 from:

7 (1) the time of issuing such letters if they are  
8 issued within 5 years of the death;

9 (2) 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~~, ~~in~~ ~~one~~ ~~seriously~~ ~~mentally~~ ~~ill~~,  
17 or imprisoned on a criminal charge or ~~in-execution~~ under the  
18 ~~a~~ 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-[93-2701-to-93-2720]~~ for commencing the action  
21 ~~except-that,~~ ~~however~~ the time so limited cannot be extended  
22 more than 5 years by any such disability except ~~in~~ ~~one~~  
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



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

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 both removed."

17 Section 24. Section 27-2-404, MCA, is amended to read:

18 "27-2-404. When a party dies before action commenced  
 19 ~~{1} if a person entitled to bring an action or against whom~~  
 20 ~~an action may be brought dies before the expiration of the~~  
 21 ~~time limited for the commencement thereof and the cause of~~  
 22 ~~action survives, an action may be commenced by or against~~  
 23 ~~his representatives after the expiration of that time and~~  
 24 ~~within 1 year from his death as provided in the Uniform~~  
 25 ~~Probate Code.~~

1 {2} if a person against whom an action may be brought  
 2 dies before the expiration of the time limited for the  
 3 commencement thereof and the cause of action survives, an  
 4 action may be commenced against his representatives after  
 5 the expiration of that time and within 1 year after the  
 6 issuing of letters testamentary or of administration, if a  
 7 person against whom a cause of action exists dies without  
 8 the state the time which elapses between his death and the  
 9 expiration of 1 year after the issuing within the state of  
 10 letters testamentary or letters of administration is not a  
 11 part of the 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 ~~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 favor, 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  
 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

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. Acknowledgment 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 ~~[93-248] to 93-2720~~ 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 ~~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  
 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  
 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  
 24 award ~~must be entered by the clerk~~ in the judgment book and  
 25 thereupon it has the effect of a judgment."

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

2 "27-6-402. Selection of panelists. (1) Application for  
 3 review shall be promptly transmitted by the director to the  
 4 directors of the health care provider's state professional  
 5 society or association and the state bar, which shall each  
 6 select three panelists within 30 days from the date of  
 7 transmittal of the application.

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

16 Section 28. Section 27-6-503, MCA, is amended to read:

17 "27-6-503. Conclusion of hearing -- supplemental  
 18 hearing. (1) At the conclusion of the hearing, the panel may  
 19 take the case under advisement or may request that  
 20 additional facts, records, witnesses, 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  
 24 the ~~attorney bringing the matter for review~~ claimant or his  
 25 attorney consents in writing to a longer period.

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, MCA, is amended to read:

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

12 Section 30. 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 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

1 without costs for any proceeding prior to the trial. ~~The~~  
2 ~~case--the-submission--and-a-copy-of-the-judgment-constitute~~  
3 ~~the-judgment-rolls"~~

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, devisee, ~~legatee~~, heir, next-of-kin or  
9 cestui que trust in the administration of a trust or of the  
10 estate of a decedent, ~~infant~~ ~~minor~~, ~~and~~ ~~the~~ ~~seriously~~  
11 ~~mentally\_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 ~~legatees~~, heirs, next-of-kin 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 Subject to 28-2-709,~~ a 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

1 liability on behalf of the defendant, or both, in the manner  
2 prescribed by this chapter. Such judgment may be entered in  
3 any court having jurisdiction for like amounts. Judgment  
4 upon confession may be entered up in any justice's court  
5 specified in the confession, as provided in this chapter."

6 Section 34. Section 27-9-103, MCA, is amended to read:

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 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 ~~affidavit--with--the-judgment-endorsed-thereon--becomes-the~~  
13 ~~judgment-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  
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  
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:

1 "27-15-102. Availability of provisional remedies to  
2 defendant interposing counterclaim. Where ~~Whenever~~ the  
3 defendant interposes 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  
6 brought by him against the plaintiff for the cause of action  
7 stated in the counterclaim and demanding the same judgment,  
8 ~~and-for [Q] the purpose of applying to such a case the~~  
9 provisions of chapters 15 through 20 ~~(except-part-10-of~~  
10 ~~chapter-15, 27-17-102, 27-17-401, 27-10-111, and-part-15--of~~  
11 chapter-19) of this title and chapter 8 of Title 25, chapter  
12 ~~or~~ 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 37. Section 27-16-101, MCA, is amended to  
17 read:

18 "27-16-101. Exclusive procedure for prejudgment 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:

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 in an action is for willful injury to  
6 person--to of character, 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  
10 property fraudulently misapplied or converted to his own use  
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  
14 fiduciary capacity; for misconduct or neglect in office or  
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;

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

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

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

6 "27-18-102. What property subject to attachment. (1)  
7 The Except as provided in subsection (2), the rights or  
8 shares which the defendant may have has in the stock of any  
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  
13 recovered, sold to satisfy the judgment and execution.  
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 before the  
20 commencement of the action--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. (1) The writ must be directed

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

3 (a) attach and safely keep all the property of such  
4 defendant within his county, not exempt from execution  
5 attachment, 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 (b) ~~unless if~~ 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 (c) ~~Such~~ The undertaking ~~is to~~ must be to the  
15 plaintiff ~~or plaintiffs~~ in the action and shall 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 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

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

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

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

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

1 read:

2 "27-18-413. Personal property subject to a security  
3 interest. Personal property subject to a security interest  
4 may be taken on attachment issued at the suit of a creditor  
5 ~~(other than the secured party)~~ of the debtor under the  
6 security agreement; but before the property is so taken, the  
7 officer levying 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  
10 county in which the financing statement covering the  
11 security agreement is filed; if such statement is filed with  
12 a county clerk and recorder or, if such statement is filed  
13 with another filing officer pursuant to law, then with such  
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

1 stated in conformity with the complaint; or

2 ~~(b)~~ unless if 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 ~~(2)~~ Such the undertaking ~~is--to~~ must be to the  
7 plaintiff ~~or--plaintiffs--in--the--action~~ and shall must 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  
14 court. Part ~~1--except--27-18-181; 27-18-207, 27-18-303;~~  
15 ~~27-18-384--27-18-386~~ through 27-18-308; parts 4, 5, and 6  
16 ~~except-27-18-486; 27-18-711 through 27-18-713, 27-18-721~~  
17 ~~through 27-18-732; and parts 8 and 9, except 27-18-901,~~ are  
18 applicable to attachments issued in justices' courts, the  
19 word "constable" being substituted for the word "sheriff"  
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. ~~Said~~ the injunction  
25 provided for in 27-19-202 shall issue ~~as in cases of equity~~

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  
 4 of Montana, upon a prima facie showing that an action ~~civil~~  
 5 ~~or-criminal~~ described in 27-19-202 has been so instituted  
 6 and is so pending ~~charging such person or persons~~  
 7 ~~corporation or corporations foreign or domestic with such~~  
 8 ~~violation.~~"

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  
 13 issuing the summons upon the complaint or at any time  
 14 afterward before judgment upon affidavits. In the one case,  
 15 the complaint, with or without affidavits to support it,  
 16 and, in the other, the affidavits ~~shall~~ 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~~  
 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."

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

1 "27-19-306. Security for damages. (1) ~~On-granting-an~~  
 2 ~~injunction-or-restraining-order--the--court--or--judge--may~~  
 3 ~~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  
 6 party plaintiff, ~~on-granting-an-injunction-or-restraining~~  
 7 ~~order--the-court-or-judge-may-require~~ a written undertaking  
 8 on the part of the plaintiff, with sufficient sureties, to  
 9 the effect that the plaintiff will pay to the party enjoined  
 10 such damages, not exceeding an amount to be specified, as  
 11 such party may sustain by reason of the injunction if the  
 12 court finally ~~decide~~ decides that the plaintiff was not  
 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-plaintiff~~ he fails to do so, ~~such-plaintiff-is-deemed~~  
 17 ~~to-have-waived~~ he 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  
 21 bail on arrest, ~~and-upon-feiture~~ if they fail to justify or  
 22 if others in their place fail to justify at the time and  
 23 place appointed, the order granting ~~on the~~ injunction ~~shall~~  
 24 must be dissolved."

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



1 read:

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

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

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

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

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 order, ~~it shall~~ ~~the order must~~ be dissolved;  
5 or if it satisfactorily appear ~~appears~~ that the extent of  
6 the injunction order is too great, ~~it shall~~ ~~the order must~~  
7 be modified. ~~The court or judge may vacate the injunction~~  
8 ~~order where the alleged wrong or injury is not irreparable~~  
9 ~~and is capable of being adequately compensated for in~~  
10 ~~money."~~

11 Section 52. Section 27-19-405, MCA, is amended to  
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~~  
16 ~~not irreparable and is capable of being adequately~~  
17 ~~compensated for in money~~, the court or judge ~~may vacate the~~  
18 ~~injunction order upon the defendant's 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:

1           "27-20-301. Oath 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  
 6 and in such sum as the court or judge may direct, to the  
 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 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 ~~[93-2301--to--93-8717]~~ Title 25 are applicable to and  
 17 constitute the rules of practice in the proceedings  
 18 mentioned in this chapter. The provisions of ~~[93-2301--to~~  
 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  
 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

1 as otherwise provided in this chapter, the provisions of  
 2 ~~[93-2301--to--93-8717]~~ Title 25 are applicable to and  
 3 constitute the rules of practice in the proceedings  
 4 mentioned in this chapter. The provisions of ~~[93-2301--to~~  
 5 ~~93-8717]~~ Title 25 relative to new trials and appeals, except  
 6 insofar as they are inconsistent with the provisions of this  
 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:

11           "27-26-303. Jury trial. (1) If an answer ~~be~~ is made  
 12 which raises a question as to a matter of fact essential to  
 13 the determination of the motion and affecting the  
 14 substantial rights of the parties, and upon the supposed  
 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  
 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  
 21 damages which the applicant ~~may have sustained, in case they~~  
 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,

1 a jury must be drawn and selected from the jury boxes ~~box~~ of  
 2 ~~the--county--in--which--the--seat--of--government--is--located~~ Lewis  
 3 ~~and Clark County~~ and the clerk of the district court of said  
 4 ~~that~~ county ~~must~~ shall place such--boxes ~~the~~ ~~box~~ in the  
 5 custody of the clerk of the supreme court for that purpose.  
 6 The conduct of the trial shall ~~must~~ be the same as in the  
 7 district court, and the clerk of the supreme court shall  
 8 have ~~has~~ the same authority to issue process, and enter  
 9 orders and judgments as the district ~~court~~ clerk has in like  
 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) ~~an execution may issue~~ for such damages and costs,  
 20 ~~an execution may issue~~; and

21 (3) a peremptory mandate must be awarded without  
 22 delay."

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

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

1 court. Actions under this chapter commenced in the supreme  
 2 court shall ~~must~~ be conducted in the same manner as if  
 3 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  
 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  
 8 same as in the district court. If a jury is required to  
 9 determine an issue of fact, a jury shall ~~must~~ be drawn and  
 10 selected from the jury boxes ~~box~~ of ~~the--county--in--which--the~~  
 11 ~~seat--of--government--is--located~~ Lewis and Clark County and the  
 12 clerk of the district court of said ~~that~~ county ~~must~~ shall  
 13 place such ~~the~~ jury boxes ~~box~~ in the custody of the clerk of  
 14 the supreme court for that purpose."

15 Section 59. Section 27-28-505, MCA, 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, books,--deeds,--notes,--bills,  
 20 obligations, and papers of--every--description within the  
 21 custody,--power, or control of the officers of the  
 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

1 the corporation.

2 ~~{2}~~ and---shall---be The trustees are jointly and  
3 severally liable to the creditors and stockholders of the  
4 corporation 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:

8 "27-31-102. Petition for change of name of nonprofit  
9 corporation. Any religious, benevolent, literary, or  
10 scientific corporation or any corporation bearing or having  
11 for its name 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  
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 61. 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.  
3 Each January the clerk of the district court shall ~~annually~~  
4 ~~in the month of January, make a return report~~ to the office  
5 of secretary ~~of state of and the legislative council~~ all  
6 changes of names made during the preceding year in the  
7 district court of his county under this chapter. ~~Such return~~  
8 shall the report must show the date of the judgment ~~of the~~  
9 court, original name, name decreed, and residence. ~~Such~~  
10 returns ~~shall the reports must~~ be published in a tabular  
11 form with the statutes first published thereafter."

12 Section 62. Repealer. Sections ~~64-210, 93-6501 through~~  
13 ~~93-6517, and 93-9011, R.C.M. 1947,~~ are repealed. Sections  
14 27-1-814 through 27-1-817, MCA, are repealed.

-End-

## 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, and specific  
14 specific and preventive relief may be given in no other  
15 cases than those specified in parts 2, 3, and 4 of this  
16 chapter, 27-19-102, 27-19-103, 28-1-104, 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  
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 by1 aggregate compensation in damages to each or by a monthly,  
2 quarterly, or annual allowance, ~~to be as is~~ as is determined by  
3 the court ~~if any person slays or disables another person in~~  
4 ~~a duel in this state, the slayer and he~~ 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:

8 "27-1-303. Limitation of damages for breach of  
9 obligation. ~~Notwithstanding the provisions of 27-1-204,~~  
10 ~~27-1-222, 27-1-229, and this part, 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 ~~27-1-223, 27-1-322, 70-16-108, 70-27-207, and 70-27-208~~  
15 ~~unless a greater recovery is specifically permitted~~  
16 SPECIFIED by statute."

17 Section 4. Section 27-1-311, MCA, is amended to read:

18 "27-1-311. Breach 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,  
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  
24 result therefrom. ~~No damages can be recovered for a breach~~  
25 ~~of contract~~ Damages which are not clearly ascertainable in

1 both their nature and origin ~~cannot be recovered for a~~  
2 ~~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  
5 property. The detriment caused by the breach of an agreement  
6 to convey an estate in real property is deemed considered to  
7 be the price paid and the expenses properly incurred in  
8 examining the title and preparing the necessary papers, with  
9 interest thereon, ~~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 agreed price agreed to be  
13 paid 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 land."

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

1 (b) a fair compensation for the time and money  
2 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 such  
7 owner's consent."

8 Section 7. Section 27-1-501, MCA, is amended to read:

9 "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  
13 the transfer of any interest therein, ~~but shall in all~~  
14 ~~cases where a~~ whenever the cause of action or defense arose  
15 in favor of such party prior to his death or other  
16 disability or transfer of interest therein, survive it  
17 survives and may be maintained by his representatives or  
18 successors in interest, ~~and in case such~~ if the action has  
19 not been begun or defense interposed, the action may be  
20 begun or defense ~~set up~~ interposed in the name of his  
21 representatives or successors in interest, ~~and in case~~ if  
22 the action has been begun or defense set up interposed, the  
23 ~~court shall on motion allow~~ the action or proceeding to  
24 may be continued by ~~or against his~~ his representatives or  
25 ~~successors in interest in case of any transfer of interest~~

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 substituted in the action or  
 4 proceeding as provided in Rule 25a M.R.C.P."

5 Section 8. Section 27-1-606, MCA, is amended to read:

6 "27-1-606. Criminal penalty. Any person who shall  
 7 violate ~~violates~~ any of the provisions of this part shall be  
 8 guilty of a 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:

14 "27-1-701. Liability for negligence as well as willful  
 15 acts. Every one ~~Everyone~~ is responsible not only for the  
 16 result ~~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 himself. The extent of liability in such  
 21 cases is defined by parts 2 and 3 of this chapter  
 22 subsections (1) through (3) of 69-11-121, 70-16-100,  
 23 70-27-207, and 70-27-208."

24 Section 10. Section 27-1-811, MCA, is amended to read:

25 "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 any other person, for discussion of controversial  
 7 or any other subjects in the absence of proof of actual  
 8 malice on the part of such owner or operator."

9 Section 11. Section 27-1-813, MCA, is amended to read:

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 defamation. ~~Nor shall anything 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  
 18 liability under the law of ~~libel~~ and defamation on account  
 19 of any broadcast prepared or made by any such person, firm,  
 20 or corporation or by any officer or employee thereof in the  
 21 course of his employment, ~~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~~  
 24 ~~of this sentence, in that event where~~ and two or more  
 25 broadcasting stations were connected together simultaneously

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), 7-32-412, 17-5-1001, and~~  
 10 ~~28-9-465,~~ 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, MCA, is amended to read:

14 "27-2-102. When action commenced. An ~~For the purposes~~  
 15 ~~of statutes relating to the time within which an action must~~  
 16 ~~be commenced,~~ an action is commenced ~~within the meaning of~~  
 17 ~~[this chapter],~~ 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 amended to read:

1 "27-2-105. Periods of limitation. The ~~All~~ civil  
 2 actions must be commenced within the periods prescribed for  
 3 ~~the commencement of actions, other than for the recovery of~~  
 4 ~~real property, are as follows in part 2, except when another~~  
 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 contract 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, other than a  
 16 contract, account, or promise, not founded upon an  
 17 instrument in writing ~~other than a contract, account, or~~  
 18 ~~promise,~~ 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 ~~an obligation or a~~ liability not founded upon an  
 23 instrument in writing ~~other than a contract, account, or~~  
 24 ~~promise,~~ is within 3 years.

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



1 action to recover damages for the death of one caused by the  
2 wrongful 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."

6 Section 18. Section 27-2-211, MCA, is amended to read:

7 "27-2-211. Actions to enforce penalty or forfeiture or  
8 other statutory liability. (1) Within 2 years is the period  
9 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, except when the statute imposing it prescribes a  
13 different limitation;

14 (b) a statute or an undertaking in a criminal action  
15 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  
19 action by a municipal corporation for the violation of any  
20 city or town ordinance is within 1 year.

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

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

4 Section 19. Section 27-2-213, MCA, is amended to read:

5 "27-2-213. Actions against banks. ~~To (1) Except as~~  
6 provided in subsection (2), there are no time limitations on  
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.~~

11 (2) ~~However--any~~ Any action to obtain, set aside, or  
12 question in any manner any stated or settled account between  
13 any bank, banker, trust company, or savings or ~~and~~ loan  
14 corporation, association, or society and any depositor or  
15 depositor with such bank, banker, trust company, or savings  
16 or ~~and~~ loan corporation, association, or society must be  
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  
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 plaintiff, ~~or~~ his agent, assignee, or personal  
25 representative shall ~~have been~~ was notified of such payment

1 or ~~on which he or they shall have~~ received such check,  
2 order, or note marked "paid".

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  
6 5 years after the cause of action ~~shall have accrued~~  
7 accrues."

8 Section 21. Section 27-2-303, MCA, is amended to read:

9 "27-2-303. Actions for waste, trespass, or injury  
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,  
15 geothermal resources, or other minerals, the cause of action  
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."

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  
23 within which an action must be commenced ~~in a court of this~~  
24 state by an executor or administrator to recover personal  
25 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 period--the  
4 ~~letters are deemed to have been issued within 5 years after~~  
5 ~~the death of the testator or intestate,~~ shall be computed  
6 from:

7 (1) the time of issuing such letters if they are  
8 issued within 5 years of the death;

9 (2) 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, insane seriously mentally ill,~~  
17 or imprisoned on a criminal charge or in execution under the  
18 ~~a sentence of a court for a term less than for~~  
19 life, the time of such disability is not a part of the time  
20 limited ~~in [93-2401 to 93-2720]~~ for commencing the action,  
21 ~~except that,~~ 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

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

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 both removed."

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

1 (2) If a person against whom an action may be brought  
 2 dies before the expiration of the time limited for the  
 3 commencement thereof and the cause of action survives, on  
 4 action may be commenced against his representatives after  
 5 the expiration of that time and within 1 year after the  
 6 issuing of letters testamentary or of administration if a  
 7 person against whom a cause of action exists dies without  
 8 the state, the time which elapses between his death and the  
 9 expiration of 1 year after the issuing within the state of  
 10 letters testamentary or letters of administration is not a  
 11 part of the time limited for the commencement of an action  
 12 therefor against his executor or administrators"

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  
 17 entitled to rely at the trial upon a defense or counterclaim  
 18 then existing in his favor, 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  
 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

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. Acknowledgment 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 [93-2401 to 93-2720]~~ 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 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  
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  
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  
24 ~~award must be entered by the clerk~~ in the judgment book and  
25 thereupon it has the effect of a judgment."

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

2 "27-6-402. Selection of panelists. (1) Application for  
3 review shall be promptly transmitted by the director to the  
4 directors of the health care provider's state professional  
5 society or association and the state bar, which shall each  
6 select three panelists within 30 days from the date of  
7 transmittal of the application.

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

16 Section 28. Section 27-6-503, MCA, is amended to read:

17 "27-6-503. Conclusion of hearing -- supplemental  
18 hearing. (1) At the conclusion of the hearing, the panel may  
19 take the case under advisement or may request that  
20 additional facts, records, witnesses, 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  
24 the ~~attorney bringing the matter for review~~ claimant or his  
25 attorney consents in writing to a longer period.

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

12 Section 30. 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 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

1 without costs for any proceeding prior to the trial. ~~The~~  
2 ~~case--the-submission--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, devisee, ~~legatee~~ heir, next-of-kin, or  
9 cestui que trust in the administration of a trust or of the  
10 estate of a decedent, ~~infant~~ ~~minor~~, ~~tenant~~ ~~seriously~~  
11 ~~mentally 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 ~~legatees~~, heirs, next-of-kin, 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 ~~Subject to 28-2-709~~, a 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

1 liability on behalf of the defendant, or both, in the manner  
 2 prescribed by this chapter. Such judgment may be entered in  
 3 any court having jurisdiction for like amounts. Judgment  
 4 upon confession may be entered up in any justice's court  
 5 specified in the confession, as provided in this chapter."

6 Section 34. Section 27-9-103, MCA, is amended to read:

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 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 ~~affidavit, with the judgment endorsed thereon, becomes the~~  
 13 ~~judgment 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  
 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 \$5 in the justice's court.~~ If a  
 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:

1 "27-15-102. Availability of provisional remedies to  
 2 defendant interposing counterclaim. Where ~~Whenever~~ the  
 3 defendant interposes 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  
 6 brought by him against the plaintiff for the cause of action  
 7 stated in the counterclaim and demanding the same judgment,  
 8 and for ~~for~~ the purpose of applying to such a case the  
 9 provisions of chapters 15 through 20 ~~(except part 10 of~~  
 10 ~~chapter 16, 27-17-102, 27-17-401, 27-10-111 and part 15 of~~  
 11 ~~chapter 10)~~ 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 37. Section 27-16-101, MCA, is amended to  
 17 read:

18 "27-16-101. Exclusive procedure for prejudgment 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:

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 in an action is for willful injury to  
6 person--to or character, 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  
10 property fraudulently misapplied or converted to his own use  
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  
14 fiduciary capacity; for misconduct or neglect in office or  
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;

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

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

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

6 "27-18-102. What property subject to attachment. (1)  
7 The Except as provided in subsection (2), the rights or  
8 shares which the defendant may have has in the stock of any  
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  
13 recovered, sold to satisfy the judgment and execution.  
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 before the  
20 commencement of the action, 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. [1] The writ must be directed

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

3 (a) attach and safely keep all the property of such  
4 defendant within his county, not exempt from execution  
5 attachment, 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 (b) unless if 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 (2) Such ~~the~~ undertaking ~~is to~~ must be to the  
15 plaintiff ~~or plaintiffs~~ in the action and ~~shall~~ 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 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

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

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

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

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



1 read:

2 "27-18-413. Personal property subject to a security  
3 interest. Personal property subject to a security interest  
4 may be taken on attachment issued at the suit of a creditor  
5 ~~(other than the secured party)~~ of the debtor under the  
6 security agreement; but before the property is so taken, the  
7 officer levying 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  
10 county in which the financing statement covering the  
11 security agreement is filed, if such statement is filed with  
12 a county clerk and recorder, or, if such statement is filed  
13 with another filing officer pursuant to law, then with such  
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

1 stated in conformity with the complaint or

2 (b) unless if 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 (2) Such the undertaking ~~is--to~~ must be to the  
7 plaintiff ~~or--plaintiffs--in--the--action~~ and ~~shall~~ must 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  
14 court. Part 1v--~~except--27-18-101; 27-18-207, 27-18-303v~~  
15 ~~27-18-304v--27-18-306~~ through 27-18-308; parts 4, 5, and 6v  
16 ~~except-27-18-406; 27-18-711~~ through 27-18-713, 27-18-721  
17 through 27-18-732; and parts 8 and 9, except 27-18-901, are  
18 applicable to attachments issued in justices' courts, the  
19 word "constable" being substituted for the word "sheriff"  
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. Said the injunction  
25 provided for in 27-19-202 shall issue ~~as--in--cases--of--equityv~~

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  
 4 of Montana, upon a prima facie showing that an action ~~civil~~  
 5 ~~or criminal~~ described in 27-19-202 has been so instituted  
 6 and is so pending ~~charging such person or persons,~~  
 7 ~~corporation or corporations, foreign or domestic, with such~~  
 8 ~~violation."~~

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  
 13 issuing the summons upon the complaint or at any time  
 14 afterward before judgment upon affidavits. In the one case,  
 15 the complaint, with or without affidavits to support it,  
 16 and, in the other, the affidavits shall 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  
 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."

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

1 "27-19-306. Security for damages. (1) ~~On granting an~~  
 2 ~~injunction or restraining order, the court or judge may~~  
 3 ~~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  
 6 party plaintiff, on granting an injunction or restraining  
 7 order, the court or judge may require a written undertaking  
 8 on the part of the plaintiff, with sufficient sureties, to  
 9 the effect that the plaintiff will pay to the party enjoined  
 10 such damages, not exceeding an amount to be specified, as  
 11 such party may sustain by reason of the injunction if the  
 12 court finally ~~decide~~ decides that the plaintiff was not  
 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 plaintiff ~~he~~ fails to do so, such plaintiff ~~is deemed~~  
 17 ~~to have waived~~ he 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  
 21 bail on arrest, ~~and upon failure~~ if they fail to justify or  
 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 49. Section 27-19-402, MCA, is amended to

1 read:

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

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

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

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

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 order, ~~it shall the order must~~ be dissolved;  
5 or if it satisfactorily appear ~~appears~~ that the extent of  
6 the injunction order is too great, ~~it shall the order must~~  
7 be modified. ~~The court or judge may vacate the injunction~~  
8 ~~order where the alleged wrong or injury is not irreparable~~  
9 ~~and is capable of being adequately compensated for in~~  
10 ~~money."~~

11 Section 52. Section 27-19-405, MCA, is amended to  
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~~  
16 ~~not irreparable and is capable of being adequately~~  
17 ~~compensated for in money~~, the court or judge ~~may vacate the~~  
18 ~~injunction order upon the defendant's 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:

1       "27-20-301. Oath 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  
6 and in such sum as the court or judge may direct, to the  
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 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 ~~[93-2301--to--93-0717]~~ Title 25 are applicable to and  
17 constitute the rules of practice in the proceedings  
18 mentioned in this chapter. The provisions of ~~[93-2301--to~~  
19 ~~93-0717]~~ 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  
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

1 as otherwise provided in this chapter, the provisions of  
2 ~~[93-2301--to--93-0717]~~ Title 25 are applicable to and  
3 constitute the rules of practice in the proceedings  
4 mentioned in this chapter. The provisions of ~~[93-2301--to~~  
5 ~~93-0717]~~ Title 25 relative to new trials and appeals, except  
6 insofar as they are inconsistent with the provisions of this  
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:

11       "27-26-303. Jury trial. (1) If an answer be is made  
12 which raises a question as to a matter of fact essential to  
13 the determination of the motion and affecting the  
14 substantial rights of the parties, and upon the supposed  
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  
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  
21 damages which the applicant may have sustained, ~~in case they~~  
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,

1 a jury must be drawn and selected from the jury boxes ~~box~~ of  
 2 ~~the--county-in-which-the-seat-of-government-is-located~~ Lewis  
 3 ~~and Clark County~~ and the clerk of the district court of said  
 4 ~~that county must shall~~ place such--boxes ~~the box~~ in the  
 5 custody of the clerk of the supreme court for that purpose.  
 6 The conduct of the trial shall ~~must~~ be the same as in the  
 7 district court, and the clerk of the supreme court shall  
 8 have ~~has~~ the same authority to issue process, and enter  
 9 orders and judgments as the district ~~court~~ clerk has in like  
 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) ~~an execution may issue~~ for such damages and costs;  
 20 ~~an-execution-may-issue~~; and

21 (3) a peremptory mandate must be awarded without  
 22 delay."

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

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

1 court. Actions under this chapter commenced in the supreme  
 2 court shall ~~must~~ be conducted in the same manner as if  
 3 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  
 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  
 8 same as in the district court. If a jury is required to  
 9 determine an issue of fact, a jury shall ~~must~~ be drawn and  
 10 selected from the jury boxes ~~box~~ of ~~the-county-in-which--the~~  
 11 ~~seat-of-government-is-located~~ Lewis and Clark County and the  
 12 ~~clerk of the district court of said that county must shall~~  
 13 place such ~~the~~ jury boxes ~~box~~ in the custody of the clerk of  
 14 the supreme court for that purpose."

15 Section 59. Section 27-28-505, MCA, 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, books--deeds--notes--bills  
 20 obligations, and papers of--every--description within the  
 21 custody---power or control of the officers of the  
 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

1 the corporation.

2 ~~(2)~~ and ~~shall~~ be The trustees are jointly and  
3 severally liable to the creditors and stockholders of the  
4 corporation 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:

8 "27-31-102. Petition for change of name of nonprofit  
9 corporation. Any religious, benevolent, literary, or  
10 scientific corporation or any corporation bearing or having  
11 ~~for its name~~ 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  
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 61. 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.  
3 Each January the clerk of the district court shall ~~annually~~  
4 ~~in the month of January~~ make a return report to the office  
5 of secretary ~~of state~~ of ~~and the legislative council~~ all  
6 changes of names made during the preceding year in the  
7 district court of his county under this chapter. Such return  
8 ~~shall~~ The report must show the date of the judgment of the  
9 court, original name, name decreed, and residence. Such  
10 returns ~~shall~~ The reports must be published in a tabular  
11 form with the statutes first published thereafter."

12 Section 62. Repealer. Sections ~~64-210~~, 93-6501 through  
13 93-6517, and ~~93-9011~~, R.C.M. 1947, are repealed. Sections  
14 27-1-814 through 27-1-817, MCA, are repealed.

-End-

SENATE BILL NO. 33

INTRODUCED BY VAN VALKENBURG

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO REMEDIES."

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

Section 1. Section 27-1-107, MCA, is amended to read:

"27-1-107. Kinds of relief -- when given. As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance, and specific and preventive relief may be given in no other cases than those specified in parts 2, 3, and 4 of this chapter, 27-19-102, 27-19-103, 20-1-104, and parts 16 and 17 of chapter 2 of title 20 only when specifically provided for by statute ONLY IN THOSE CASES SPECIFIED BY STATUTE."

Section 2. Section 27-1-223, MCA, is amended to read:

"27-1-223. Damages for injuries or death inflicted in a duel. If any person slays or permanently disables another person in a duel in this state, the slayer he must provide for the maintenance of the spouse and minor children of the person slain or permanently disabled and for the minor 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 as is determined by the courts if any person slays or disables another person in a duel in this state, the slayer 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 obligation. Notwithstanding the provisions of 27-1-204, 27-1-222, 27-1-223, and this part, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides except in the cases specified in 27-1-221 through 27-1-223, 27-1-322, 70-16-106, 70-27-207, and 70-27-208 unless a greater recovery is specifically permitted SPECIFIED by statute."

Section 4. Section 27-1-311, MCA, is amended to read:

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

1 both their nature and origin ~~cannot be recovered for a~~  
2 ~~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  
5 property. The detriment caused by the breach of an agreement  
6 to convey an estate in real property is deemed ~~considered~~ to  
7 be the price paid and the expenses properly incurred in  
8 examining the title and preparing the necessary papers, with  
9 interest thereon, ~~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 ~~agreed price agreed-to-be~~  
13 ~~paid~~ 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 land."

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

1 (b) a fair compensation for the time and money  
2 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 ~~such~~  
7 ~~owner's~~ consent."

8 Section 7. Section 27-1-501, MCA, is amended to read:

9 "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  
13 the transfer of any interest therein, ~~but shall--in--all~~  
14 ~~cases--where--a~~ ~~whenever the~~ cause of action or defense arose  
15 in favor of such party prior to his death or other  
16 disability or transfer of interest therein, ~~survive it~~  
17 ~~survives~~ and ~~may~~ be maintained by his representatives or  
18 successors in interest, ~~and--in--case--such~~ ~~if the~~ action has  
19 not been begun or defense interposed, the action may be  
20 begun or defense set-up ~~interposed~~ in the name of his  
21 representatives or successors in interest, ~~and--in--case~~ ~~if~~  
22 the action has been begun or defense set-up ~~interposed~~, the  
23 court ~~shall--on--motion--allow~~ the action or proceeding to  
24 ~~may~~ be continued by ~~--or--against--his--representatives--or~~  
25 ~~successors--in--interest--in--case--of--any--transfer--of--interest~~



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 substituted in the action or  
 4 proceeding as provided in Rule 25, M.R.C.P."

5 Section 8. Section 27-1-606, MCA, is amended to read:  
 6 "27-1-606. Criminal penalty. Any person who shall  
 7 violate violates any of the provisions of this part shall be  
 8 guilty of a 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:  
 14 "27-1-701. Liability for negligence as well as willful  
 15 acts. Everyone Everyone is responsible not only for the  
 16 result 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 himself. The extent of liability in such  
 21 cases is defined by parts 2 and 3 of this chapter  
 22 subsections (1) through (3) of 69-11-121, 70-16-108,  
 23 70-27-207, and 70-27-208."

24 Section 10. Section 27-1-811, MCA, is amended to read:  
 25 "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 any other person, for discussion of controversial  
 7 or any other subjects in the absence of proof of actual  
 8 malice on the part of such owner or operator."

9 Section 11. Section 27-1-813, MCA, is amended to read:  
 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 defamations. Nor shall anything 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  
 18 liability under the law of libel and defamation on account  
 19 of any broadcast prepared or made by any such person, firm,  
 20 or corporation or by any officer or employee thereof in the  
 21 course of his employment, 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  
 24 of this sentence in that event where and two or more  
 25 broadcasting stations were connected together simultaneously

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), 7-32-412, 17-5-1001, and~~  
 10 ~~26-9-465,~~ 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, MCA, is amended to read:

14 "27-2-102. When action commenced. An For the purposes  
 15 of statutes relating to the time within which an action must  
 16 be commenced, an action is commenced ~~within the meaning of~~  
 17 ~~[this chapter],~~ 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 amended to read:

1 "27-2-105. Periods of limitation. The All civil  
 2 actions must be commenced within the periods prescribed for  
 3 ~~the commencement of actions, other than for the recovery of~~  
 4 ~~real property, are as follows in part 2 except when another~~  
 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 contract 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, other than a  
 16 contract, account, or promise, not founded upon an  
 17 instrument in writing ~~or other than a contract, account, or~~  
 18 ~~promise~~ 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 ~~an obligation or a liability~~ not founded upon an  
 23 instrument in writing ~~or other than a contract, account, or~~  
 24 ~~promise~~ is within 3 years.

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

1 action to recover damages for the death of one caused by the  
2 wrongful 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."

6 Section 18. Section 27-2-211, MCA, is amended to read:

7 "27-2-211. Actions to enforce penalty or forfeiture or  
8 other statutory liability. (1) Within 2 years is the period  
9 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, except when the statute imposing it prescribes a  
13 different limitation;

14 (b) a statute or an undertaking in a criminal action  
15 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  
19 action by a municipal corporation for the violation of any  
20 city or town ordinance is within 1 year.

21 (3) ~~[Sections--93-2401--to--93-2720]--do--not--effect~~  
22 ~~notwithstanding any other provision of this chapter,~~ actions  
23 against directors or stockholders of a corporation to  
24 recover a penalty or forfeiture imposed or to enforce a  
25 liability created by law--but--such--actions must be brought

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

4 Section 19. Section 27-2-213, MCA, is amended to read:

5 "27-2-213. Actions against banks. ~~to (1) Except as~~  
6 ~~provided in subsection (2), there are no time limitations on~~  
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.

11 (2) ~~However--any~~ Any action to obtain, set aside, or  
12 question in any manner any stated or settled account between  
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  
16 or ~~and~~ loan corporation, association, or society must be  
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  
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 plaintiff, ~~or~~ his agent, assignee, or personal  
25 representative shall--have--been ~~was~~ notified of such payment

1 or on--which--he--or--they--shall--have received such checks,  
2 orders, or note marked "paid".

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  
6 5 years after the cause of action shall--have-occurred  
7 ~~accrues.~~"

8 Section 21. Section 27-2-303, MCA, is amended to read:

9 "27-2-303. Actions for waste, trespass, or injury  
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,  
15 geothermal resources, or other minerals, the cause of action  
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."

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  
23 within which an action must be commenced ~~in-a-court-of--this~~  
24 ~~state~~ by an executor or administrator to recover personal  
25 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 periody--the  
4 letters--are-deemed-to-have-been-issued-within-5-years-after  
5 the-death-of-the-testator-or-intestate shall be computed  
6 from:

7 (1) the time of issuing such letters if they are  
8 issued within 5 years of the death;

9 (2) 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 occurred accrues, either within  
16 the--age-of-majority a minor, insane seriously mentally ill,  
17 or imprisoned on a criminal charge or in-execution under the  
18 a sentence of-a-criminal-court for a term less than f  
19 life, the time of such disability is not a part of the time  
20 limited ~~in-[93-240]-to-93-2720~~ for commencing the actiony  
21 ~~except-that,~~ 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

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

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 both removed."

17 ~~Section 24. Section 27-2-404, MCA, is amended to read:~~

18 ~~"27-2-404. When a party dies before action commenced,~~

19 ~~(1) if a person entitled to bring an action or against whom~~  
 20 ~~an action may be brought dies before the expiration of the~~  
 21 ~~time limited for the commencement thereof and the cause of~~  
 22 ~~action survives, an action may be commenced by or against~~  
 23 ~~his representatives after the expiration of that time and~~  
 24 ~~within 1 year from his death as provided in the Uniform~~  
 25 ~~Probate Code.~~

1 (2) ~~if a person against whom an action may be brought~~  
 2 ~~dies before the expiration of the time limited for the~~  
 3 ~~commencement thereof and the cause of action survives, on~~  
 4 ~~action may be commenced against his representatives after~~  
 5 ~~the expiration of that time and within 1 year after the~~  
 6 ~~issuing of letters testamentary or of administration if a~~  
 7 ~~person against whom a cause of action exists dies without~~  
 8 ~~the state the time which elapses between his death and the~~  
 9 ~~expiration of 1 year after the issuing within the state of~~  
 10 ~~letters testamentary or letters of administration is not a~~  
 11 ~~part of the 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 ~~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 favor, 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  
 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

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. Acknowledgment 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 ~~of [93-2401 to 93-2720]~~ 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 ~~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  
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  
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  
24 award ~~must be entered by the clerk~~ in the judgment book and  
25 thereupon it has the effect of a judgment."

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

2 "27-6-402. Selection of panelists. (1) Application for  
3 review shall be promptly transmitted by the director to the  
4 directors of the health care provider's state professional  
5 society or association and the state bar, which shall each  
6 select three panelists within 30 days from the date of  
7 transmittal of the application.

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

16 Section 28. Section 27-6-503, MCA, is amended to read:

17 "27-6-503. Conclusion of hearing -- supplemental  
18 hearing. (1) At the conclusion of the hearing, the panel may,  
19 take the case under advisement or may request that  
20 additional facts, records, witnesses, 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  
24 the ~~attorney bringing the matter for review~~ claimant or his  
25 attorney consents in writing to a longer period.

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, MCA, is amended to read:

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

12 Section 30. 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 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

1 without costs for any proceeding prior to the trial. ~~The~~  
2 ~~case--the-submission--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, devisee, ~~legatee~~ heir, next-of-kin or  
9 cestui que trust in the administration of a trust or of the  
10 estate of a decedent, ~~infant~~ minor, ~~tenetic~~ ~~seriously~~  
11 ~~mentally 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 ~~legatees~~ heirs, next-of-kin 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 Subject to 28-2-702,~~ a 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

1 liability on behalf of the defendant, or both, in the manner  
2 prescribed by this chapter. Such judgment may be entered in  
3 any court having jurisdiction for like amounts. Judgment  
4 upon confession may be entered up in any justice's court  
5 specified in the confession, as provided in this chapter."

6 Section 34. Section 27-9-103, MCA, is amended to read:

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 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 ~~affidavit--with--the-judgment-endorsed-thereon--becomes--the~~  
13 ~~judgment-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  
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  
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:

1 "27-15-102. Availability of provisional remedies to  
2 defendant interposing counterclaim. Where ~~Whenever~~ the  
3 defendant interposes 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  
6 brought by him against the plaintiff for the cause of action  
7 stated in the counterclaim and demanding the same judgment,  
8 and-for ~~Eq~~ the purpose of applying to such a case the  
9 provisions of chapters 15 through 20 ~~(except-part-10-of~~  
10 ~~chapter-16,-27-17-102,-27-17-401,-27-18-111,-and-part-15--of~~  
11 ~~chapter-10)~~ of this title and chapter 8 of Title 25, chapter  
12 8, 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 37. Section 27-16-101, MCA, is amended to  
17 read:

18 "27-16-101. Exclusive procedure for prejudgment 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:



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 in an action is for willful injury to  
6 persons--to or character, 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  
10 property fraudulently misapplied or converted to his own use  
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  
14 fiduciary capacity; for misconduct or neglect in office or  
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;

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

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

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

6 "27-18-102. What property subject to attachment. (1)  
7 The Except as provided in subsection (2), the rights or  
8 shares which the defendant may have has in the stock of any  
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  
13 recovered, sold to satisfy the judgment and execution.  
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 before the  
20 commencement of the action--end-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. (1) The writ must be directed

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

3 (a) attach and safely keep all the property of such  
4 defendant within his county, not exempt from execution  
5 ~~attachment~~, 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 (b) ~~unless if~~ 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 (2) ~~Such~~ ~~the~~ undertaking ~~is to~~ ~~must~~ be to the  
15 plaintiff ~~or plaintiffs~~ in the action and shall ~~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 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

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

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

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

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

1 read:

2 \*27-18-413. Personal property subject to a security  
3 interest. Personal property subject to a security interest  
4 may be taken on attachment issued at the suit of a creditor  
5 ~~(other than the secured party)~~ of the debtor under the  
6 security agreement; but before the property is so taken, the  
7 officer levying 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  
10 county in which the financing statement covering the  
11 security agreement is filed, if such statement is filed with  
12 a county clerk and recorder, or, if such statement is filed  
13 with another filing officer pursuant to law, then with such  
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

1 stated in conformity with the complaint, ~~or~~

2 (b) unless if 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 (2) Such ~~the~~ undertaking is--to must be to the  
7 plaintiff or--plaintiffs--in--the--action and shall must 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  
14 court. Part 1v--except--27-18-101; 27-18-207, 27-18-303v  
15 27-18-304v--27-18-306 through 27-18-308; parts 4, 5, and 6v  
16 except-27-18-406; 27-18-711 through 27-18-713, 27-18-721  
17 through 27-18-732; and parts 8 and 9, except 27-18-901, are  
18 applicable to attachments issued in justices' courts, the  
19 word "constable" being substituted for the word "sheriff"  
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. Said ~~the~~ injunction  
25 provided for in 27-19-202 shall issue as--in--cases--of--equityv

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  
 4 of Montana, upon a prima facie showing that an action ~~civil~~  
 5 ~~or criminal~~, described in 27-19-202 has been so instituted  
 6 and is so pending ~~charging such person or persons~~  
 7 ~~corporation or corporations, foreign or domestic, with such~~  
 8 ~~violation."~~

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  
 13 issuing the summons upon the complaint or at any time  
 14 afterward before judgment upon affidavits. In the one case,  
 15 the complaint, with or without affidavits to support it,  
 16 and, in the other, the affidavits shall ~~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  
 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."

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

1 "27-19-306. Security for damages. (1) ~~On granting an~~  
 2 ~~injunction or restraining order, the court or judge may~~  
 3 ~~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  
 6 party plaintiff, on granting an injunction or restraining  
 7 order, the court or judge may require a written undertaking  
 8 on the part of the plaintiff, with sufficient sureties, to  
 9 the effect that the plaintiff will pay to the party enjoined  
 10 such damages, not exceeding an amount to be specified, as  
 11 such party may sustain by reason of the injunction if the  
 12 court finally ~~decide~~ decides that the plaintiff was not  
 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 plaintiff ~~he~~ fails to do so, such plaintiff ~~is~~ deemed  
 17 to have waived ~~he~~ 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  
 21 bail on arrest, ~~and upon failure~~ if they fail to justify or  
 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 49. Section 27-19-402, MCA, is amended to

1 read:

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

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

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

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

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 order, ~~it shall the order must~~ be dissolved;  
5 or if it satisfactorily appear appears that the extent of  
6 the injunction order is too great, ~~it shall the order must~~  
7 be modified. ~~The court or judge may vacate the injunction~~  
8 ~~order where the alleged wrong or injury is not irreparable~~  
9 ~~and is capable of being adequately compensated for in~~  
10 ~~money."~~

11 Section 52. Section 27-19-405, MCA, is amended to  
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~~  
16 ~~not irreparable and is capable of being adequately~~  
17 ~~compensated for in money~~, the court or judge ~~may vacate the~~  
18 ~~injunction order upon the defendant's 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 pay 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:

1       "27-20-301. Oath 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  
6 and in such sum as the court or judge may direct, to the  
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 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 ~~[93-2301--to--93-8717]~~ Title 25 are applicable to and  
17 constitute the rules of practice in the proceedings  
18 mentioned in this chapter. The provisions of ~~[93-2301--to~~  
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~~  
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

1 as otherwise provided in this chapter, the provisions of  
2 ~~[93-2301--to--93-8717]~~ Title 25 are applicable to and  
3 constitute the rules of practice in the proceedings  
4 mentioned in this chapter. The provisions of ~~[93-2301--to~~  
5 ~~93-8717]~~ Title 25 relative to new trials and appeals, except  
6 insofar as they are inconsistent with the provisions of this  
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:

11       "27-26-303. Jury trial. (1) If an answer be is made  
12 which raises a question as to a matter of fact essential to  
13 the determination of the motion and affecting the  
14 substantial rights of the parties, and upon the supposed  
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. Tr  
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  
21 damages which the applicant may have sustained, ~~in case they~~  
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,

1 a jury must be drawn and selected from the jury boxes ~~box~~ of  
 2 ~~the--county-in-which-the-seat-of-government-is-located Lewis~~  
 3 ~~and Clark County~~ and the clerk of the district court of said  
 4 ~~that~~ county ~~must shall~~ place ~~such--boxes the box~~ in the  
 5 custody of the clerk of the supreme court for that purpose.  
 6 The conduct of the trial ~~shall must~~ be the same as in the  
 7 district court, and the clerk of the supreme court ~~shall~~  
 8 ~~have has~~ the same authority to issue process~~v~~ and enter  
 9 orders and judgments as the district ~~court~~ clerk has in like  
 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) ~~an execution may issue~~ for such damages and costs~~v~~  
 20 ~~an-execution-may-issue~~; and

21 (3) a peremptory mandate must be awarded without  
 22 delay."

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

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

1 court. Actions under this chapter commenced in the supreme  
 2 court ~~shall must~~ be conducted in the same manner as if  
 3 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  
 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  
 8 same as in the district court. If a jury is required to  
 9 determine an issue of fact, a jury ~~shall must~~ be drawn and  
 10 selected from the jury boxes ~~box~~ of ~~the-county-in-which--the~~  
 11 ~~seat-of-government-is-located Lewis and Clark County~~ and the  
 12 clerk of the district court of said ~~that~~ county ~~must shall~~  
 13 place ~~such the~~ jury boxes ~~box~~ in the custody of the clerk of  
 14 the supreme court for that purpose."

15 Section 59. Section 27-28-505, MCA, 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, ~~books--deeds--notes--bills--~~  
 20 ~~ob+gettons~~ and papers of ~~every--description~~ within the  
 21 custody~~v~~---power, or control of the officers of the  
 22 corporation~~v~~---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

1 the corporation.

2 ~~(2)~~ and ~~shall~~ be the trustees are jointly and  
3 severally liable to the creditors and stockholders ~~of the~~  
4 corporation 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:

8 "27-31-102. Petition for change of name of nonprofit  
9 corporation. Any religious, benevolent, literary, or  
10 scientific corporation or any corporation bearing or ~~having~~  
11 ~~for its name~~ 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  
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 61. 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.  
3 Each ~~January the~~ clerk of the district court shall ~~annually~~  
4 ~~in the month of January, make a return~~ report to the office  
5 of secretary ~~of state~~ of ~~and the legislative council~~ all  
6 changes of names made during the preceding year in the  
7 district court of his county under this chapter. ~~Such return~~  
8 shall the report must show the date of the judgment of ~~the~~  
9 court, original name, name decreed, and residence. ~~Such~~  
10 returns ~~shall~~ the reports must be published in a tabular  
11 form with the statutes first published thereafter."

12 Section 62. Repealer. Sections 64-210, 93-6501 through  
13 93-6517, and 93-9011, R.C.M. 1947, are repealed. Sections  
14 27-1-814 through 27-1-817, MCA, are repealed.

-End-