

SENATE BILL NO. 38
INTRODUCED BY TURNAGE

IN THE SENATE

January 5, 1981	Introduced and referred to Committee on Judiciary.
February 4, 1981	Committee recommend bill do pass as amended. Report adopted.
February 5, 1981	Bill printed and placed on members' desks.
February 6, 1981	Second reading, do pass.
February 7, 1981	Correctly engrossed.
February 9, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

February 10, 1981	Introduced and referred to Committee on Judiciary.
March 4, 1981	Committee recommend bill be concurred in. Report adopted.
March 5, 1981	Second reading, concurred in.
March 7, 1981	Third reading, concurred in. Yeas, 90; Nays, 5.

IN THE SENATE

March 7, 1981	Returned from House. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 SENATE BILL NO. 38
2 INTRODUCED BY TURNAGE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
5 PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION,
6 INTESTATE SUCCESSION, ESTABLISHING THE PARENT-CHILD
7 RELATIONSHIP, THE AUGMENTED ESTATE, THE ELECTIVE SHARE OF
8 THE SURVIVING SPOUSE, STATUTE OF LIMITATIONS, SELF-PROVED
9 WILLS, AND FOREIGN PERSONAL REPRESENTATIVES BY GENERALLY
10 ADOPTING THE LANGUAGE OF THE UNIFORM PROBATE CODE; AMENDING
11 SECTIONS 72-2-101, 72-2-203, 72-2-213, 72-2-304, 72-2-705,
12 72-2-706, 72-2-707, 72-3-907, 72-3-1005, 72-3-1006,
13 72-4-201, 72-4-301, 72-4-306, AND 72-4-308, MCA; AND
14 REPEALING SECTION 72-3-608, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 72-2-101, MCA, is amended to read:

18 "72-2-101. Renunciation of succession. (1) A person (or
19 his personal representative) ~~or his representative of an~~
20 ~~incapacitated or protected person~~ who is an heir, devisee,
21 person succeeding to a renounced interest, beneficiary under
22 a testamentary instrument, or ~~person designated to take~~
23 ~~pursuant to appointment~~ under a power of appointment exercised
24 by a testamentary instrument may renounce, in whole or in
25 part, the right of succession to any property or interest

1 therein, including a future interest, by filing a written
2 ~~instrument within the time and at the place hereinafter~~
3 ~~provided renunciation under this section.~~ The instrument
4 shall:

- 5 (a) describe the property ~~or part thereof~~ or interest
- 6 therein renounced;
- 7 (b) be signed by the person renouncing; and
- 8 (c) declare the renunciation and the extent thereof.

9 (2) ~~(a) The writing specified in subsection (1) must An~~
10 ~~instrument renouncing a present interest shall~~ be filed
11 within 6 2 months after the death of the decedent or the
12 donee of the power, ~~or if the taker of the property is not~~
13 ~~then finally ascertained.~~

14 ~~(b) An instrument renouncing a future interest may be~~
15 ~~filed not later than 6 2 months after the event by which~~
16 ~~determining that the taker of the property or the interest~~
17 ~~is finally ascertained and his interest is indefeasibly~~
18 ~~vested.~~

19 ~~(c) The writing renunciation must be filed in the court~~
20 ~~of the county where in which proceedings concerning the~~
21 ~~decedent's estate are pending or where they would be pending~~
22 ~~if have been commenced for the administration of the estate~~
23 ~~of the deceased owner or deceased donee of the power or, if~~
24 ~~they have not been commenced, in which they could be~~
25 commenced. A copy of the ~~writing also~~ renunciation shall be

1 delivered in person or mailed by registered or certified
 2 mail to the any personal representative or other fiduciary
 3 of the decedent or donee of the power. If real property or
 4 an interest therein is renounced, a copy of the renunciation
 5 may be recorded in the office of the county clerk of the
 6 county in which the real estate is situated.

7 (3) Unless the decedent or donee of the power has
 8 otherwise indicated ~~by his will~~ provided, the property or
 9 interest renounced ~~and any future interest which is to take~~
 10 ~~effect in possession or enjoyment at or after the~~
 11 ~~termination of the interest renounced passes devolves~~ as if
 12 though the person renouncing had predeceased the decedent
 13 or, if the person ~~renouncing is one designated to take~~
 14 ~~pursuant to a power of appointment was~~ exercised by a
 15 testamentary instrument, as if though the person renouncing
 16 had predeceased the donee of the power. A future interest
 17 that takes effect in possession or enjoyment after the
 18 termination of the estate or interest renounced takes effect
 19 as though the person renouncing had predeceased the decedent
 20 or the donee of the power. In every case the A renunciation
 21 relates back for all purposes to the date of the death of
 22 the decedent or the donee as the case may be of the power.

23 (4) (a) The right to renounce property or an interest
 24 therein is barred by:

25 (i) Any an assignment, conveyance, encumbrance, pledge,

1 or transfer of property therein or interest, or any a
 2 contract therefor;

3 (ii) a written waiver of the right to renounce;

4 (iii) or any an acceptance of the property by an heir,
 5 devisee, person succeeding to a renounced interest,
 6 beneficiary, or person designated to take pursuant to a
 7 power of appointment exercised by testamentary instrument or
 8 interest or benefit thereunder; or

9 (iv) a sale or other disposition of the property
 10 pursuant to or interest under judicial process, sale made
 11 before the expiration of the period in which he is permitted
 12 to renounce bars the right to renounce as to the property
 13 renunciation is effected.

14 (5)(b) The right to renounce granted by this section
 15 exists ~~irrespective of~~ notwithstanding any limitation on the
 16 interest of the person renouncing in the nature of a
 17 spendthrift provision or similar restriction.

18 (c) A renunciation or a written waiver of the right to
 19 renounce is binding upon the person renouncing or person
 20 waiving and all persons claiming through or under him.

21 (6)(2) This section does not abridge the right of any a
 22 person to assign, convey, waive, release, disclaim, or
 23 renounce any property arising or an interest therein under
 24 any other section of this code or other statute.

25 (7)(6) Any An interest in property which exists on July

1 1, 1975, but which has not then become indefeasibly fixed
 2 both in quality and quantity or the taker of which has not
 3 then become finally ascertained, may be renounced after July
 4 1, 1975, as provided herein. An interest which has arisen
 5 prior to July 1, 1975, in any person other than the person
 6 renouncing is not destroyed or diminished by any action of
 7 the person renouncing taken under this section as to which
 8 if a present interest, the time for filing a renunciation
 9 under the Uniform Probate Code has not expired, or if a
 10 future interest, the interest has not become indefeasibly
 11 vested or the taker finally ascertained, may be renounced
 12 within 9 months after July 1, 1975."

13 Section 2. Section 72-2-203, MCA, is amended to read:
 14 "72-2-203. Share of heirs other than surviving spouse.
 15 The part of the intestate estate not passing to the
 16 surviving spouse under 72-2-202, or the entire intestate
 17 estate if there is no surviving spouse, passes as follows:

18 (1) to the issue of the decedent; if they are all of
 19 the same degree of kinship to the decedent, they take
 20 equally, but if of unequal degree, then those of more remote
 21 degree take by representation;

22 (2) if there are surviving several children or one
 23 child and the issue of one or more children and any such
 24 surviving child dies under age and not having been married,
 25 all the estate that came to such deceased child by

1 inheritance from the decedent in equal shares to the other
 2 children of the same parent and to the issue of any such
 3 other children who are dead by representation and if at
 4 the death of such child who dies under age not having been
 5 married, all the other children of his parents are also dead
 6 and any of them have left issue, to the issue of all other
 7 children of the same parent; and if all the issue are in the
 8 same degree of kinship to such child, they take equally, but
 9 if of unequal degree, then those of more remote degree take
 10 by representation;

11 (3)(2) if there is no surviving issue, to his parent or
 12 parents equally;

13 (4)(3) if there is no surviving issue or parent, to the
 14 brothers and sisters and the children or grandchildren of
 15 any deceased brother or sister, issue of the parents or
 16 either of them by representation;

17 (5)(4) if there is no surviving issue, parent, brother
 18 sister or children or grandchildren of a deceased brother
 19 or sister to the next of kin in equal degree, except that
 20 where there are two or more collateral kindred in equal
 21 degree but claiming through different ancestors, those who
 22 claim through the nearer ancestors must be preferred to
 23 those claiming through an ancestor more remote, issue of a
 24 parent, but the decedent is survived by one or more
 25 grandparents or issue of grandparents, half of the estate

1 passes to the paternal grandparents if both survive, or to
 2 the surviving paternal grandparent, or to the issue of the
 3 paternal grandparents if both are deceased, the issue taking
 4 equally if they are all of the same degree of kinship to the
 5 decedent, but if of unequal degree, those of more remote
 6 degree take by representation; and the other half passes to
 7 the maternal relatives in the same manner; but if there be
 8 no surviving grandparent or issue of grandparent on either
 9 the paternal or maternal side, the entire estate passes to
 10 the relatives on the other side in the same manner as the
 11 half."

12 Section 3. Section 72-2-213, MCA, is amended to read:

13 *72-2-213. Establishment of parent-child relationship.

14 If, for the purposes of intestate succession, a relationship
 15 of parent and child must be established to determine
 16 succession by, through, or from a person:

17 (1) An adopted person ~~shall inherit as~~ is the child of
 18 an adopting parent ~~and not of the natural parents, except~~
 19 ~~that adoption of a child by the spouse of a natural parent~~
 20 ~~has no effect on the relationship between the child and~~
 21 ~~either natural parent.~~

22 (2) In cases not covered by subsection (1), a person
 23 ~~born out of wedlock is a child of the mother; that person is~~
 24 ~~also a child of the father, if:~~

25 ~~(a) the natural parents participated in a marriage~~

1 ~~ceremony before or after the birth of the child, even though~~
 2 ~~the attempted marriage is void; or~~

3 ~~(b) the paternity is established by an adjudication~~
 4 ~~before the death of the father or is established thereafter~~
 5 ~~by clear and convincing proof, except that the paternity~~
 6 ~~established under this subsection (b) is ineffective to~~
 7 ~~qualify the father or his kindred to inherit from or through~~
 8 ~~the child unless the father has openly treated the child as~~
 9 ~~his and has not refused to support the child; is the child~~
 10 ~~of its parents regardless of the marital status of its~~
 11 ~~parents, and the parent and child relationship may be~~
 12 ~~established under the Uniform Parentage Act, Title 49,~~
 13 ~~chapter 6, part 1."~~

14 NEW SECTION. Section 4. Persons related to decedent
 15 through two lines. A person who is related to the decedent
 16 through two lines of relationship is entitled to only a
 17 single share based on the relationship that would entitle
 18 him to the larger share.

19 Section 5. Section 72-2-304, MCA, is amended to read:

20 *72-2-304. Self-proved will. (1) Any will may be
 21 simultaneously executed, attested, and made self-proved by
 22 acknowledgment thereof by the testator and affidavits of the
 23 witnesses, each made before an officer authorized to
 24 administer oaths under the laws of the state where execution
 25 occurs and evidenced by the officer's certificate under

1 official seal, in substantially the following form:
 2 I, _____ the testator, sign my name to this
 3 instrument this _____ day of _____ 19____ and being
 4 first duly sworn, do hereby declare to the undersigned
 5 authority that I sign and execute this instrument as my last
 6 will and that I sign it willingly (or willingly direct
 7 another to sign for me), that I execute it as my free and
 8 voluntary act for the purposes therein expressed, and that I
 9 am 18 years of age or older, of sound mind, and under no
 10 constraint or undue influence.

11 _____
 12 Testator
 13

14 We, _____ the witnesses, sign our names
 15 to this instrument, being first duly sworn, and do hereby
 16 declare to the undersigned authority that the testator signs
 17 and executes this instrument as his last will and that he
 18 signs it willingly (or willingly directs another to sign for
 19 him), and that each of us, in the presence and hearing of
 20 the testator, hereby signs this will as witness to the
 21 testator's signing, and that to the best of our knowledge
 22 the testator is 18 years of age or older, of sound mind, and
 23 under no constraint or undue influence.

24 _____
 25 Witness
 26 _____
 27 Witness

28 THE STATE OF _____
 29 COUNTY OF _____

1 Subscribed, sworn to, and acknowledged before me by
 2 _____ the testator, and subscribed and sworn to before
 3 me by _____ and _____ witnesses, this _____ day of
 4 _____

5 (SEAL)
 6 _____
 7 (Signed) _____
 8 (Official capacity of officer)
 9 _____
 10

11 (2) An attested will may ~~at the time of its execution~~
 12 or at any time subsequent ~~to its execution~~ be made
 13 self-proved by the acknowledgment thereof by the testator
 14 and the affidavits of the witnesses, each made before an
 15 officer authorized to administer oaths under the laws of
 16 ~~this~~ the state where the acknowledgment occurs and evidenced
 17 by the officer's certificate, under the official seal,
 18 attached or annexed to the will in form ~~and content~~
 19 substantially ~~as follows~~ the following form:

20 THE STATE OF _____
 21 COUNTY OF _____

22 We, _____, _____, and _____, the testator and the
 23 witnesses, respectively, whose names are signed to the
 24 attached or foregoing instrument, being first duly sworn, do
 25 hereby declare to the undersigned authority that the
 26 testator signed and executed the instrument as his last will
 27 and that he had signed willingly or directed another to sign

1 for him and that he executed it as his free and voluntary
 2 act for the purposes therein expressed and that each of the
 3 witnesses, in the presence and hearing of the testator,
 4 signed the will as witness and that to the best of his
 5 knowledge the testator was at that time 18 or more years of
 6 age, of sound mind, and under no constraint or undue
 7 influence.

8 Testator
 9 Witness
 10 Witness

11 Subscribed, sworn to, and acknowledged before me by
 12, the testator, and subscribed and sworn to before me by
 13 and, witnesses, this day of,

14 (SEAL) (Signed).....
 15 (Official capacity of officer)
 16"

17 Section 5. Section 72-2-705, MCA, is amended to read:
 18 "72-2-705. Augmented estate. The augmented estate means
 19 the estate, reduced by funeral and administration expenses,
 20 homestead allowance, family allowances and exemptions, and
 21 enforceable claims, to which is added the sum of the
 22 following amounts:

23 (1) the value of property transferred to anyone other
 24 than a bona fide purchaser by the decedent at any time
 25 during marriage, to or for the benefit of any person other
 26 than the surviving spouse, to the extent that the decedent
 27 did not receive adequate and full consideration in money or

1 money's worth for the transfer, if the transfer is of any of
 2 the following types:

3 (a) any transfer under which the decedent retained at
 4 the time of his death the possession or enjoyment of or
 5 right to income from the property;

6 (b) any transfer to the extent that the decedent
 7 retained at the time of his death a power, either alone or
 8 in conjunction with any other person, to revoke or to
 9 consume, invade, or dispose of the principal for his own
 10 benefit;

11 (c) any transfer whereby property is held at the time
 12 of decedent's death by decedent and another with right of
 13 survivorship;

14 (d) any transfer made to a donee within 3 2 years of
 15 death of the decedent to the extent that the aggregate
 16 transfers to any one donee in any of the years exceed
 17 \$3,000;

18 (2) any transfer is excluded if made with the written
 19 consent or joinder of the surviving spouse. Property is
 20 valued as of the decedent's death except that property given
 21 irrevocably to a donee during lifetime of the decedent is
 22 valued as of the date the donee came into possession or
 23 enjoyment if that occurs first. Nothing herein shall cause
 24 to be included in the augmented estate any life insurance,
 25 accident insurance, joint annuity, or pension payable to a

1 person other than the surviving spouse.

2 (3) the value of property owned by the surviving spouse
3 at the decedent's death, plus the value of property
4 transferred by the spouse at any time during marriage to any
5 person other than the decedent which would have been
6 includible in the spouse's augmented estate if the surviving
7 spouse had predeceased the decedent, to the extent the owned
8 or transferred property is derived from the decedent by any
9 means other than testate or intestate succession without a
10 full consideration in money or money's worth. For purposes
11 of this subsection:

12 (a) property derived from the decedent includes but is
13 not limited to any beneficial interest of the surviving
14 spouse in a trust created by the decedent during his
15 lifetime, any property appointed to the spouse by the
16 decedent's exercise of a general or special power of
17 appointment also exercisable in favor of others than the
18 spouse, any proceeds of insurance (including accidental
19 death benefits) on the life of the decedent attributable to
20 premiums paid by him, any lump sum immediately payable and
21 the commuted value of the proceeds of annuity contracts
22 under which the decedent was the primary annuitant
23 attributable to premiums paid by him, the commuted value of
24 accounts payable after the decedent's death under any public
25 or private pension, disability compensation, death benefit,

1 or retirement plan, exclusive of the federal social security
2 system, by reason of service performed or disabilities
3 incurred by the decedent, any property held at the time of
4 decedent's death by decedent and the surviving spouse with
5 right of survivorship, any property held by decedent and
6 transferred by contract to the surviving spouse by reason of
7 the decedent's death, and the value of the share of the
8 surviving spouse resulting from rights in community property
9 in this or any other state formerly owned with the decedent.
10 Premiums paid by the decedent's employer, his partner, a
11 partnership of which he was a member, or his creditors are
12 deemed to have been paid by the decedent.

13 (b) property owned by the spouse at the decedent's
14 death is valued as of the date of death. Property
15 transferred by the spouse is valued at the time the transfer
16 became irrevocable or at the decedent's death, whichever
17 occurred first.

18 ~~(c)~~ income ~~Income~~ earned by included property prior to
19 the decedent's death is not treated as property derived from
20 the decedent.

21 (c) Property ~~property~~ owned by the surviving spouse as
22 of the decedent's death or previously transferred by the
23 surviving spouse is presumed to have been derived from the
24 decedent, except to the extent that the surviving spouse
25 establishes that it was derived from another source.

1 (4) For the purposes of this section, a bona fide
 2 purchaser is a purchaser for value in good faith and without
 3 notice of any adverse claim. Any recorded instrument is
 4 prima facie evidence that the transfer described therein was
 5 made to a bona fide purchaser."

6 Section 7. Section 72-2-706, MCA, is amended to read:

7 "72-2-706. Charging spouse with property received --
 8 liability of others for balance of elective share. (1) In
 9 the proceeding for an elective share, ~~property which is part~~
 10 ~~of values included in the augmented estate which passes pass~~
 11 ~~or has have passed to the surviving spouse, by--testate--or~~
 12 ~~intestate--succession--or--other--means--and--which--has--not--been~~
 13 ~~renounced,--including--that--described--in--72-2-705(3) or which~~
 14 ~~would have passed to the spouse but were renounced, is are~~
 15 applied first to satisfy the elective share and to reduce
 16 ~~the--amount any contributions due from other recipients of~~
 17 ~~portions of transfers included in the augmented estate. For~~
 18 ~~purposes of this subsection, the electing spouse's~~
 19 ~~beneficial interest in any life estate or in any trust shall~~
 20 ~~be computed as if worth one-half of the total value of the~~
 21 ~~property subject to the life estate, or of the trust estate,~~
 22 ~~unless higher or lower values for these interests are~~
 23 ~~established by proof.~~

24 (2) Remaining property of the augmented estate is so
 25 applied that liability for the balance of the elective share

1 of the surviving spouse is equitably apportioned among the
 2 recipients of the augmented estate in proportion to the
 3 value of their interests therein.

4 (3) Only original transferees from or appointees of the
 5 decedent and their donees, to the extent the donees have the
 6 property or its proceeds, are subject to the contribution to
 7 make up the elective share of the surviving spouse. A person
 8 liable to contribution may choose to give up the property
 9 transferred to him or to pay its value as of the time it is
 10 considered in computing the augmented estate."

11 Section 8. Section 72-2-707, MCA, is amended to read:

12 "72-2-707. Procedure for making of election. (1) The
 13 surviving spouse may elect to take his elective share in the
 14 augmented net estate by filing in the court and mailing or
 15 delivering to the personal representative, if any, a
 16 petition for the elective share within 6 2 months after the
 17 ~~first-publication-of-notice-to-creditors-for--filing--claims~~
 18 ~~which--arose--before--the--death--of--the--decedent--or--within--1~~
 19 ~~year--of--the date of death, or within 6 months after the~~
 20 ~~probate of the decedent's will, whichever time limitation~~
 21 ~~first last expires. However, the nonprobate transfers~~
 22 ~~described in 72-2-705(1) shall not be included within the~~
 23 ~~augmented estate for the purpose of computing the elective~~
 24 ~~share if the petition is filed later than 9 months after~~
 25 ~~death.~~ The court may extend the time for election as it sees

1 fit for cause shown by the surviving spouse before the time
2 for election has expired.

3 (2) The surviving spouse shall give notice of the time
4 and place set for hearing to persons interested in the
5 estate and to the distributees and recipients of portions of
6 the augmented net estate whose interests will be adversely
7 affected by the taking of the elective share.

8 (3) The surviving spouse may withdraw his demand for an
9 elective share at any time before entry of a final
10 determination by the court.

11 (4) After notice and hearing, the court shall determine
12 the amount of the elective share and shall order its payment
13 from the assets of the augmented net estate or by
14 contribution as appears appropriate under 72-2-706. If it
15 appears that a fund or property included in the augmented
16 net estate has not come into the possession of the personal
17 representative or has been distributed by the personal
18 representative, the court nevertheless shall fix the
19 liability of any person who has any interest in the fund or
20 property or who has possession thereof, whether as trustee
21 or otherwise. The proceeding may be maintained against fewer
22 than all persons against whom relief could be sought, but no
23 person is subject to contribution in any greater amount than
24 he would have been if relief had been secured against all
25 persons subject to contribution.

1 (5) The order or judgment of the court may be enforced
2 as necessary in suit for contribution or payment in other
3 courts of this state or other jurisdictions."

4 Section 9. Section 72-3-907, MCA, is amended to read:
5 "72-3-907. Purchases from distributees protected. If
6 property distributed in kind or a security interest therein
7 is acquired for value by a purchaser from or lender for
8 value-from to a distributee who has received an instrument
9 or deed of distribution from the personal representative, or
10 is so acquired by a purchaser from or lender to a transferee
11 from such distributee, the purchaser or lender takes title
12 free of rights of any claims-of-the-estate interested person
13 in the estate and incurs no personal liability to the estate
14 or to any interested person, whether or not the distribution
15 was proper or supported by court order or the authority of
16 the personal representative was terminated before execution
17 of the instrument or deed.

18 This section protects a purchaser from or lender to a
19 distributee who, as personal representative, has executed a
20 deed of distribution to himself, as well as a purchaser from
21 or lender to any other distributee or his transferee. To be
22 protected under this provision, a purchaser or lender need
23 not inquire whether a personal representative acted properly
24 in making the distribution in kind, even if the personal
25 representative and the distributee are the same person, or

1 whether the authority of the personal representative had
 2 terminated before the distribution. Any recorded instrument
 3 described in this section shall be prima facie evidence that
 4 such transfer was made for value.

5 For purposes of this section, the term purchaser
 6 includes any lessee or other person acquiring any interest
 7 in the property for value."

8 Section 10. Section 72-3-1005, MCA, is amended to read:

9 "72-3-1005. Final accounting required to close estate.

10 (1) Before an estate may be finally closed and the personal
 11 representative relieved of his duties and obligations, he
 12 shall either file with the court or deliver to all
 13 interested persons an accounting under oath showing the
 14 amount of money received and expended by him, the amount of
 15 all claims presented against the estate, and the names of
 16 the claimants and all other matters necessary to show the
 17 state of its affairs.

18 (2) Any interested person at any time during the course
 19 of the administration of an estate may for good cause shown
 20 require further accountings.

21 (3) If the personal representative is the sole residual
 22 beneficiary of the estate, no accounting need be made."

23 Section 11. Section 72-3-1006, MCA, is amended to read:

24 "72-3-1006. Certificate or receipt showing taxes paid
 25 required to close estate. (1) In all probate proceedings

1 under this code, before final distribution to successors is
 2 made and before any petition is granted under 72-3-1001,
 3 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been
 4 filed with the clerk:

5 (a) a certificate from the department of revenue
 6 stating that any inheritance tax due on the assets of the
 7 estate has been paid; or

8 (b) an agreement with the department of revenue for
 9 extension of time for payment of inheritance taxes; or

10 (c) a receipt from the county treasurer stating that
 11 any inheritance tax due on the assets of the estate has been
 12 paid.

13 (2) This section shall not prohibit such partial
 14 distribution as may become necessary in the course of
 15 administration."

16 Section 12. Section 72-4-201, MCA, is amended to read:

17 "72-4-201. Jurisdiction by act of foreign personal
 18 representative. (1) A foreign personal representative by
 19 ~~doing any of the acts described in part 3 or by~~ submits
 20 personally to the jurisdiction of the courts of this state
 21 in any proceeding relating to the estate by:

22 (a) filing authenticated copies of his appointment as
 23 provided in [section 15];

24 (b) receiving payment of money or taking delivery of
 25 personal property under 72-4-306; or

1 (c) doing any act as a personal representative in this
 2 state that would have given the state jurisdiction over him
 3 as an individual ~~submits himself personally to the~~
 4 ~~jurisdiction of the courts of this state in any proceeding~~
 5 ~~relating to the estate.~~

6 (2) Jurisdiction which ~~arises solely from receiving~~
 7 ~~payment of money or taking delivery of personal property~~
 8 under subsection (1)(b) is limited to the money or value of
 9 personal property collected."

10 Section 13. Section 72-4-301, MCA, is amended to read:

11 "72-4-301. Powers of foreign representative generally--
 12 ~~limited upon limited compliance. (1) Except as~~
 13 ~~limited by 72-4-303, a~~ domiciliary foreign personal
 14 representative who has complied with 72-4-303 and 72-4-304
 15 [section 15] may exercise as to assets in this state all
 16 powers of a local personal representative and may maintain
 17 actions and proceedings in this state, subject to any
 18 conditions imposed upon nonresident parties generally.

19 ~~(2) A domiciliary foreign personal representative who~~
 20 ~~has complied with all the requirements of 72-4-303(1) except~~
 21 ~~for the filing of an inventory and appraisal may, when~~
 22 ~~necessary to protect the estate of the decedent and upon~~
 23 ~~appointment by the clerk of court, exercise the powers of a~~
 24 ~~special administrator described in chapter 37, part 7."~~

25 Section 14. Section 72-4-306, MCA, is amended to read:

1 "72-4-306. Payment of debt and delivery of property to
 2 foreign representative. At any time after the expiration of
 3 60 days from the death of a nonresident decedent, any person
 4 indebted to the estate of the nonresident decedent or having
 5 possession or control of personal property or of an
 6 instrument evidencing a debt, obligation, stock, or chose in
 7 action belonging to the estate of the nonresident decedent
 8 may pay the debt, deliver the personal property, or the
 9 instrument evidencing the debt, obligation, stock, or chose
 10 in action to the domiciliary foreign personal representative
 11 of the nonresident decedent upon being presented with a
 12 ~~certificate from the clerk of the court for the county where~~
 13 ~~the domiciliary foreign personal representative has filed~~
 14 ~~his affidavit as described in 72-4-303 and a certificate~~
 15 ~~from the department of revenue as described in 72-4-304,~~
 16 proof of his appointment and an affidavit made by or on
 17 behalf of the representative, stating:

18 (1) the date of the death of the nonresident decedent;

19 (2) that no local administration, or application or
 20 petition therefor, is pending in this state;

21 (3) that the domiciliary foreign personal
 22 representative is entitled to payment or delivery."

23 Section 15. Section 72-4-308, MCA, is amended to read:

24 "72-4-308. Payment or delivery to foreign
 25 representative prohibited by resident creditor notice --

1 ~~court-order-to-allow-payment-or--delivery.~~ ~~{1}~~ Payment or
 2 delivery under 72-4-306 may not be made if a resident
 3 creditor of the nonresident decedent has notified the debtor
 4 of the nonresident decedent or the person having possession
 5 of the personal property belonging to the nonresident
 6 decedent that the debt should not be paid or the property
 7 delivered to the domiciliary foreign personal
 8 representative.

9 ~~{2}--in-cases-under-subsection-{1}-the-foreign-personel~~
 10 ~~representative-must-see-an-order-of-the-court-in--which--he~~
 11 ~~has-filed-his-affidavit-to-obtain-payment-or-delivery-unless~~
 12 ~~the-notification-by-the-resident-creditor-is-withdrawn."~~

13 NEW SECTION. Section 16. Proof of authority -- bond.
 14 If no local administration or application or petition
 15 therefor is pending in this state, a domiciliary foreign
 16 personal representative may file with a court in this state
 17 in a county in which property belonging to the decedent is
 18 located, authenticated copies of his appointment and of any
 19 official bond he has given.

20 Section 17. Codification instruction. Sections 4 and 16
 21 are intended to be codified as an integral part of Title 72,
 22 chapters 1 through 5 and chapter 16, part 6. The provisions
 23 of Title 72, chapters 1 through 5 and chapter 16, part 6,
 24 apply to sections 4 and 16.

25 Section 18. Repealer. Section 72-3-608, MCA, is

1 repealed.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 38

INTRODUCED BY TURNAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION, INTESTATE SUCCESSION, ESTABLISHING THE PARENT-CHILD RELATIONSHIP, THE AUGMENTED ESTATE, THE ELECTIVE SHARE OF THE SURVIVING SPOUSE, STATUTE OF LIMITATIONS, SELF-PROVED WILLS, AND FOREIGN PERSONAL REPRESENTATIVES BY GENERALLY ADOPTING THE LANGUAGE OF THE UNIFORM PROBATE CODE; AMENDING SECTIONS 72-2-101, 72-2-203, 72-2-213, 72-2-304, 72-2-705, 72-2-706, 72-2-707, 72-3-907, 72-3-1005, 72-3-1006, 72-4-201, 72-4-301, 72-4-306, AND 72-4-308, MCA; AND REPEALING SECTION 72-3-608, MCA."

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

Section 1. Section 72-2-101, MCA, is amended to read:

"72-2-101. Renunciation of succession. (1) A person ~~for his personal representative~~ or the representative of an incapacitated or protected person who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or ~~person--designated-to-take pursuant to appointee under~~ a power of appointment exercised by a testamentary instrument may renounce, in whole or in part, the right of succession to any property or interest

~~therein, including a future interest,~~ by filing a written instrument ~~--within--the--time--and--at--the--place--hereinafter~~ provided renunciation under this section. The instrument shall:

- (a) describe the property ~~or-part-thereof~~ or interest therein renounced;
- (b) be signed by the person renouncing; and
- (c) declare the renunciation and the extent thereof.

(2) ~~(a) The--writing--specified--in--subsection--(1)--must~~ An instrument renouncing a present interest shall be filed within 6 9 months after the death of the decedent or the donee of the power, ~~or, if the taker of the property is not then finally ascertained,~~

(b) An instrument renouncing a future interest may be filed not later than 6 9 months after the event ~~by--which determining that~~ the taker of the property or the interest is finally ascertained and his interest is indefeasibly vested.

(c) The writing renunciation must be filed in the court of the county where in which proceedings concerning ~~the--decedent's--estate--are--pending--or--where--they--would--be pending--if have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be~~ commenced. A copy of the ~~writing--also~~ renunciation shall be

1 delivered in person or mailed by registered or certified
 2 mail to the any personal representative or other fiduciary
 3 of the decedent or donee of the power. If real property or
 4 an interest therein is renounced, a copy of the renunciation
 5 may be recorded in the office of the county clerk of the
 6 county in which the real estate is situated.

7 (3) Unless the decedent or donee of the power has
 8 otherwise indicated by his will provided, the property or
 9 interest renounced and any future interest which is to take
 10 effect in possession or enjoyment at or after the
 11 termination of the interest renounced passes devolves as if
 12 though the person renouncing had predeceased the decedent
 13 or, if the person renouncing is one designated to take
 14 pursuant to a power of appointment was exercised by a
 15 testamentary instrument, as if though the person renouncing
 16 had predeceased the donee of the power. A future interest
 17 that takes effect in possession or enjoyment after the
 18 termination of the estate or interest renounced takes effect
 19 as though the person renouncing had predeceased the decedent
 20 or the donee of the power. In every case the A renunciation
 21 relates back for all purposes to the date of the death of
 22 the decedent or the donee, as the case may be of the power.

23 (4) (a) The right to renounce property or an interest
 24 therein is barred by:

25 (i) Any an assignment, conveyance, encumbrance,

1 pledge, or transfer of property therein or interest, or any
 2 a contract therefor;

3 (ii) a written waiver of the right to renounce;

4 (iii) or any an acceptance of the property by an heir
 5 devisee, person succeeding to a renounced interest
 6 beneficiary or person designated to take pursuant to a
 7 power of appointment exercised by testamentary instrument or
 8 interest or benefit thereunder; or

9 (iv) a sale or other disposition of the property
 10 pursuant to or interest under judicial process, sale made
 11 before the expiration of the period in which he is permitted
 12 to renounce, bars the right to renounce as to the property
 13 renunciation is effected.

14 (5)(b) The right to renounce granted by this section
 15 exists irrespective of notwithstanding any limitation on the
 16 interest of the person renouncing in the nature of a
 17 spendthrift provision or similar restriction.

18 (c) A renunciation or a written waiver of the right to
 19 renounce is binding upon the person renouncing or person
 20 waiving and all persons claiming through or under him.

21 (6)(5) This section does not abridge the right of any
 22 a person to assign, convey, waive, release, disclaim, or
 23 renounce any property arising or an interest therein under
 24 any other section of this code or other statute.

25 (7)(6) Any An interest in property which exists on

1 July 1, 1975, but--which-has-not-then-become-indefeasibly
 2 fixed-both-in-quality-and-quantity-or-the-taker-of-which-has
 3 not-then-become-finally-ascertained, may-be-renounced--after
 4 July--1,--1975,--as--provided--herein. An-interest-which-has
 5 arisen-prior-to-July-1,--1975,--in-any-person-other--than--the
 6 person--renouncing--is--not--destroyed--or--diminished--by--any
 7 action-of-the-person-renouncing-taken-under-this-section as
 8 to which, if a present interest, the time for filing a
 9 renunciation under the Uniform Probate Code has not expired,
 10 or if a future interest, the interest has not become
 11 indefeasibly vested or the taker finally ascertained, may be
 12 renounced within 9 months after July 1, 1975."

13 Section 2. Section 72-2-203, MCA, is amended to read:

14 "72-2-203. Share of heirs other than surviving spouse.
 15 The part of the intestate estate not passing to the
 16 surviving spouse under 72-2-202, or the entire intestate
 17 estate if there is no surviving spouse, passes as follows:

18 (1) to the issue of the decedent; if they are all of
 19 the same degree of kinship to the decedent, they take
 20 equally, but if of unequal degree, then those of more remote
 21 degree take by representation;

22 (2) ~~if there are surviving several children or one~~
 23 ~~child and the issue of one or more children and any such~~
 24 ~~surviving child dies under age and not having been married,~~
 25 ~~all the estate that came to such deceased child--or~~

1 inheritance--from-the-decedent--in-equal-shares--to-the-other
 2 children-of-the-same-parent-and-to-the--issue--of--any--such
 3 other--children--who-are-dead--by-representation; and-if-at
 4 the-death-of-such-child, who-dies-under-age-not-having--been
 5 married, all-the-other-children-of-his-parents-are-also-dead
 6 and--any--of-them-have-left-issue, to-the-issue-of-all-other
 7 children-of-the-same-parent; and-if-all-the-issue-are-in-the
 8 same-degree-of-kinship-to-such-child, they-take-equally, but
 9 if-of-unequal-degree, then-those-of-more-remote-degree--take
 10 by-representation;

11 (3) (2) if there is no surviving issue, to his parent
 12 or parents equally;

13 (4) (3) if there is no surviving issue or parent, to
 14 the ~~brothers--and-sisters-and-the-children-or-grandchildren~~
 15 ~~of-any-deceased-brother-or-sister,~~ BROTHERS AND SISTERS AND
 16 THE CHILDREN OR GRANDCHILDREN OF ANY DECEASED BROTHER OR
 17 SISTER, ~~issue--of--the--parents--or--either--of--them~~ by
 18 representation;

19 (5) (4) if there is no surviving issue, parent,
 20 brother,--sister, BROTHER, SISTER, or children--or
 21 grandchildren--of--a-deceased-brother-or-sister,--to-the-next
 22 of-kin-in-equal-degree, except-that-where-there-are--two--or
 23 more-collateral-kindred-in-equal-degree-but-claiming-through
 24 different--ancestors,--those--who--claim--through-the-nearer
 25 ancestors--must-be-preferred-to--those--claiming--through--an

1 ~~ancestor---more---remote~~ CHILDREN OR GRANDCHILDREN OF A
 2 ~~DECEASED BROTHER OR SISTER, TO THE NEXT OF KIN IN EQUAL~~
 3 ~~DEGREE, EXCEPT THAT WHERE THERE ARE TWO OR MORE COLLATERAL~~
 4 ~~KINDRED IN EQUAL DEGREE BUT CLAIMING THROUGH DIFFERENT~~
 5 ~~ANCESTORS, THOSE WHO CLAIM THROUGH THE NEARER ANCESTORS MUST~~
 6 ~~BE PREFERRED TO THOSE CLAIMING THROUGH AN ANCESTOR MORE~~
 7 ~~REMOTE. issue-of-a-parent-but-the-decedent-is-survived-by~~
 8 ~~one--or--more-grandparents-or-issue-of-grandparents-half-of~~
 9 ~~the-estate-passes--to--the--paternal--grandparents--if--both~~
 10 ~~survive-or-to-the-surviving-paternal-grandparent-or-to-the~~
 11 ~~issue-of-the-paternal-grandparents-if-both-are-deceased-the~~
 12 ~~issue-taking-equality-if-they-are-all-of-the-same-degree-of~~
 13 ~~kinship-to-the-decedent-but-if-of-unequal-degree-those--of~~
 14 ~~more-remote-degree--take--by--representation--and--the--other~~
 15 ~~half-passes-to-the-maternal-relatives-in--the--same--manner~~
 16 ~~but--if--there--be--no--surviving--grandparent--or--issue-of~~
 17 ~~grandparent-on-either-the-paternal--or--maternal--side--the~~
 18 ~~entire--estate--passes-to-the-relatives-on-the-other-side-in~~
 19 ~~the-same-manner-as-the-half."~~

20 Section 3. Section 72-2-213, MCA, is amended to read:
 21 "72-2-213. Establishment of parent-child relationship.
 22 If, for the purposes of intestate succession, a relationship
 23 of parent and child must be established to determine
 24 succession by, through, or from a person:
 25 (1) An adopted person ~~shall inherit as~~ is the child of

1 an adopting parent and not of the natural parents, except
 2 that adoption of a child by the spouse of a natural parent
 3 has no effect on the relationship between the child and
 4 either natural parent.

5 (2) In cases not covered by subsection (1), a person
 6 ~~born-out-of-wedlock-is-a-child-of-the-mother-if-that-person-is~~
 7 ~~also-a-child-of-the-father-if:~~

8 (a) ~~the-natural-parents-participated-in-a-marriage~~
 9 ~~ceremony-before-or-after-the-birth-of-the-child-even-though~~
 10 ~~the-attempted-marriage-is-void-or~~

11 (b) ~~the-paternity-is-established-by-an-adjudication~~
 12 ~~before-the-death-of-the-father-or-is-established-thereafter~~
 13 ~~by-clear-and-convincing-proof-except-that-the-paternity~~
 14 ~~established-under-this-subsection-(b)-is-ineffective-to~~
 15 ~~qualify-the-father-or-his-kindred-to-inherit-from-or-through~~
 16 ~~the-child-unless-the-father-has-openly-treated-the-child-as~~
 17 ~~his-and-has-not-refused-to-support-the-child-is-the-child~~
 18 ~~of-its-parents-regardless-of-the-marital-status-of-its~~
 19 ~~parents-and-the-parent-and-child-relationship-may-be~~
 20 ~~established-under-the-Uniform-Parentage-Act, Title 40,~~
 21 ~~chapter 6, part 1."~~

22 NEW SECTION. Section 4. Persons related to decedent
 23 through two lines. A person who is related to the decedent
 24 through two lines of relationship is entitled to only a
 25 single share based on the relationship that would entitle

1 him to the larger share.

2 Section 5. Section 72-2-304, MCA, is amended to read:

3 "72-2-304. Self-proved will. (1) Any will may be
4 simultaneously executed, attested, and made self-proved by
5 acknowledgment thereof by the testator and affidavits of the
6 witnesses, each made before an officer authorized to
7 administer oaths under the laws of the state where execution
8 occurs and evidenced by the officer's certificate, under
9 official seal, in substantially the following form:

10 I,, the testator, sign my name to this
11 instrument this day of, 19...., and being
12 first duly sworn, do hereby declare to the undersigned
13 authority that I sign and execute this instrument as my last
14 will and that I sign it willingly (or willingly direct
15 another to sign for me), that I execute it as my free and
16 voluntary act for the purposes therein expressed, and that I
17 am 18 years of age or older, of sound mind, and under no
18 constraint or undue influence.

19
20
21 Testator

22 We,, the witnesses, sign our
23 names to this instrument, being first duly sworn, and do
24 hereby declare to the undersigned authority that the
25 testator signs and executes this instrument as his last will
26 and that he signs it willingly (or willingly directs another

1 to sign for him), and that each of us, in the presence and
2 hearing of the testator, hereby signs this will as witness
3 to the testator's signing, and that to the best of our
4 knowledge the testator is 18 years of age or older, of sound
5 mind, and under no constraint or undue influence.

6
7
8 Witness
9
10
11
12 Witness
13

14 THE STATE OF
15 COUNTY OF

16 Subscribed, sworn to, and acknowledged before me by
17, the testator, and subscribed and sworn to before
18 me by and witnesses, this day of
19

20 (SEAL)

21 (Signed).....
22
23 (Official capacity of officer)
24
25

26 (2) An attested will may, at the time of its execution
27 or at any time subsequent date, to its execution be made
28 self-proved by the acknowledgment thereof by the testator
29 and the affidavits of the witnesses, each made before an
30 officer authorized to administer oaths under the laws of
31 this the state where the acknowledgment occurs and evidenced

1 by the officer's certificate, under the official seal,
2 attached or annexed to the will in form--and--content
3 substantially as follows the following form:

4 THE STATE OF

5 COUNTY OF

6 We,,, and, the testator and the
7 witnesses, respectively, whose names are signed to the
8 attached or foregoing instrument, being first July sworn, do
9 hereby declare to the undersigned authority that the
10 testator signed and executed the instrument as his last will
11 and that he had signed willingly or directed another to sign
12 for him and that he executed it as his free and voluntary
13 act for the purposes therein expressed and that each of the
14 witnesses, in the presence and hearing of the testator,
15 signed the will as witness and that to the best of his
16 knowledge the testator was at that time 18 or more years of
17 age, of sound mind, and under no constraint or undue
18 influence.

19 Testator
20 Witness
21 Witness
22
23

24 Subscribed, sworn to, and acknowledged before me by
25, the testator, and subscribed and sworn to before me by
26 and, witnesses, this day of,

27 (SEAL) (Signed).....
28

1 (Official capacity of officer)
2
3"

4 Section 6. Section 72-2-705, MCA, is amended to read:

5 "72-2-705. Augmented estate. The augmented estate
6 means the estate, reduced by funeral and administration
7 expenses, homestead allowance, family allowances and
8 exemptions, and enforceable claims, to which is added the
9 sum of the following amounts:

10 (1) the value of property transferred to anyone other
11 than a bona fide purchaser by the decedent at any time
12 during marriage, to or for the benefit of any person other
13 than the surviving spouse, to the extent that the decedent
14 did not receive adequate and full consideration in money or
15 money's worth for the transfer, if the transfer is of any of
16 the following types:

17 (a) any transfer under which the decedent retained at
18 the time of his death the possession or enjoyment of or
19 right to income from the property;

20 (b) any transfer to the extent that the decedent
21 retained at the time of his death a power, either alone or
22 in conjunction with any other person, to revoke or to
23 consume, invade, or dispose of the principal for his own
24 benefit;

25 (c) any transfer whereby property is held at the time
26 of decedent's death by decedent and another with right of

1 survivorship;

2 (d) any transfer made to a donee within 3 2 years of
3 death of the decedent to the extent that the aggregate
4 transfers to any one donee in any of the years exceed
5 \$3,000;

6 (2) any transfer is excluded if made with the written
7 consent or joinder of the surviving spouse. Property is
8 valued as of the decedent's death except that property given
9 irrevocably to a donee during lifetime of the decedent is
10 valued as of the date the donee came into possession or
11 enjoyment if that occurs first. Nothing herein shall cause
12 to be included in the augmented estate any life insurance,
13 accident insurance, joint annuity, or pension payable to a
14 person other than the surviving spouse.

15 (3) the value of property owned by the surviving
16 spouse at the decedent's death, plus the value of property
17 transferred by the spouse at any time during marriage to any
18 person other than the decedent which would have been
19 includible in the spouse's augmented estate if the surviving
20 spouse had predeceased the decedent, to the extent the owned
21 or transferred property is derived from the decedent by any
22 means other than testate or intestate succession without a
23 full consideration in money or money's worth. For purposes
24 of this subsection:

25 (a) property derived from the decedent includes but is

1 not limited to any beneficial interest of the surviving
2 spouse in a trust created by the decedent during his
3 lifetime, any property appointed to the spouse by the
4 decedent's exercise of a general or special power of
5 appointment also exercisable in favor of others than the
6 spouse, any proceeds of insurance (including accidental
7 death benefits) on the life of the decedent attributable to
8 premiums paid by him, any lump sum immediately payable and
9 the commuted value of the proceeds of annuity contracts
10 under which the decedent was the primary annuitant
11 attributable to premiums paid by him, the commuted value of
12 accounts payable after the decedent's death under any public
13 or private pension, disability compensation, death benefit,
14 or retirement plan, exclusive of the federal social security
15 system, by reason of service performed or disabilities
16 incurred by the decedent, any property held at the time of
17 decedent's death by decedent and the surviving spouse with
18 right of survivorship, any property held by decedent and
19 transferred by contract to the surviving spouse by reason of
20 the decedent's death, and the value of the share of the
21 surviving spouse resulting from rights in community property
22 in this or any other state formerly owned with the decedent.
23 Premiums paid by the decedent's employer, his partner, a
24 partnership of which he was a member, or his creditors are
25 deemed to have been paid by the decedent.

1 (b) property owned by the spouse at the decedent's
2 death is valued as of the date of death. Property
3 transferred by the spouse is valued at the time the transfer
4 became irrevocable or at the decedent's death, whichever
5 occurred first.

6 ~~(c)~~ income Income earned by included property prior to
7 the decedent's death is not treated as property derived from
8 the decedent.

9 (c) Property ~~property~~ owned by the surviving spouse as
10 of the decedent's death or previously transferred by the
11 surviving spouse is presumed to have been derived from the
12 decedent, except to the extent that the surviving spouse
13 establishes that it was derived from another source.

14 (4) For the purposes of this section, a bona fide
15 purchaser is a purchaser for value in good faith and without
16 notice of any adverse claim. Any recorded instrument is
17 prima facie evidence that the transfer described therein was
18 made to a bona fide purchaser."

19 Section 7. Section 72-2-706, MCA, is amended to read:

20 "72-2-706. Charging spouse with property received --
21 liability of others for balance of elective share. (1) In
22 the proceeding for an elective share, ~~property which is part~~
23 of values included in the augmented estate which passes pass
24 or has have passed to the surviving spouse, ~~by--testate--or~~
25 ~~intestate--succession--or-other-means--and-which-has-not-been~~

1 ~~renounced--including-that-described-in-72-2-705(3) or which~~
2 would have passed to the spouse but were renounced, is are
3 applied first to satisfy the elective share and to reduce
4 ~~the--amount~~ any contributions due from other recipients of
5 ~~portions of transfers included in~~ the augmented estate. For
6 ~~purposes of this subsection, the electing spouse's~~
7 beneficial interest in any life estate or in any trust shall
8 be computed as if worth one-half of the total value of the
9 property subject to the life estate, or of the trust estate,
10 unless higher or lower values for these interests are
11 established by proof.

12 (2) Remaining property of the augmented estate is so
13 applied that liability for the balance of the elective share
14 of the surviving spouse is equitably apportioned among the
15 recipients of the augmented estate in proportion to the
16 value of their interests therein.

17 (3) Only original transferees from or appointees of
18 the decedent and their donees, to the extent the donees have
19 the property or its proceeds, are subject to the
20 contribution to make up the elective share of the surviving
21 spouse. A person liable to contribution may choose to give
22 up the property transferred to him or to pay its value as of
23 the time it is considered in computing the augmented
24 estate."

25 Section 8. Section 72-2-707, MCA, is amended to read:

1 "72-2-707. Procedure for making of election. (1) The
 2 surviving spouse may elect to take his elective share in the
 3 augmented net estate by filing in the court and mailing or
 4 delivering to the personal representative, if any, a
 5 petition for the elective share within 6 9 months after the
 6 ~~first publication of notice to creditors for filing claims~~
 7 ~~which arose before the death of the decedent or within a~~
 8 ~~year of the date of death~~ or within 6 months after the
 9 probate of the decedent's will, whichever time limitation
 10 first last expires. However, the nonprobate transfers
 11 described in 72-2-705(1) shall not be included within the
 12 augmented estate for the purpose of computing the elective
 13 share if the petition is filed later than 9 months after
 14 death. The court may extend the time for election as it sees
 15 fit for cause shown by the surviving spouse before the time
 16 for election has expired.

17 (2) The surviving spouse shall give notice of the time
 18 and place set for hearing to persons interested in the
 19 estate and to the distributees and recipients of portions of
 20 the augmented net estate whose interests will be adversely
 21 affected by the taking of the elective share.

22 (3) The surviving spouse may withdraw his demand for
 23 an elective share at any time before entry of a final
 24 determination by the court.

25 (4) After notice and hearing, the court shall

1 determine the amount of the elective share and shall order
 2 its payment from the assets of the augmented net estate or
 3 by contribution as appears appropriate under 72-2-706. If it
 4 appears that a fund or property included in the augmented
 5 net estate has not come into the possession of the personal
 6 representative or has been distributed by the personal
 7 representative, the court nevertheless shall fix the
 8 liability of any person who has any interest in the fund or
 9 property or who has possession thereof, whether as trustee
 10 or otherwise. The proceeding may be maintained against fewer
 11 than all persons against whom relief could be sought, but no
 12 person is subject to contribution in any greater amount than
 13 he would have been if relief had been secured against all
 14 persons subject to contribution.

15 (5) The order or judgment of the court may be enforced
 16 as necessary in suit for contribution or payment in other
 17 courts of this state or other jurisdictions."

18 Section 9. Section 72-3-907, MCA, is amended to read:

19 "72-3-907. Purchases from distributees protected. If
 20 property distributed in kind or a security interest therein
 21 is acquired for value by a purchaser from or lender for
 22 value--from to a distributee who has received an instrument
 23 or deed of distribution from the personal representative, or
 24 is so acquired by a purchaser from or lender to a transferee
 25 from such distributee, the purchaser or lender takes title

1 free of rights of any claims-of-the-estate interested person
 2 in the estate and incurs no personal liability to the estate
 3 or to any interested person, whether or not the distribution
 4 was proper or supported by court order or the authority of
 5 the personal representative was terminated before execution
 6 of the instrument or deed.

7 This section protects a purchaser from or lender to a
 8 distributee who, as personal representative, has executed a
 9 deed of distribution to himself, as well as a purchaser from
 10 or lender to any other distributee or his transferee. To be
 11 protected under this provision, a purchaser or lender need
 12 not inquire whether a personal representative acted properly
 13 in making the distribution in kind, even if the personal
 14 representative and the distributee are the same person, or
 15 whether the authority of the personal representative had
 16 terminated before the distribution. Any recorded instrument
 17 described in this section shall be prima facie evidence that
 18 such transfer was made for value.

19 For purposes of this section, the term purchaser
 20 includes any lessee or other person acquiring any interest
 21 in the property for value."

22 Section 10. Section 72-3-1005, MCA, is amended to
 23 read:

24 "72-3-1005. Final accounting required to close estate.
 25 (1) Before an estate may be finally closed and the personal

1 representative relieved of his duties and obligations, he
 2 shall either file with the court or deliver to all
 3 interested persons an accounting under oath showing the
 4 amount of money received and expended by him, the amount of
 5 all claims presented against the estate, and the names of
 6 the claimants and all other matters necessary to show the
 7 state of its affairs.

8 (2) Any interested person at any time during the
 9 course of the administration of an estate may for good cause
 10 shown require further accountings.

11 (3) If the personal representative is the sole
 12 residual beneficiary of the estate, no accounting need be
 13 made."

14 Section 11. Section 72-3-1006, MCA, is amended to
 15 read:

16 "72-3-1006. Certificate or receipt showing taxes paid
 17 required to close estate. (1) In all probate proceedings
 18 under this code, before final distribution to successors is
 19 made and before any petition is granted under 72-3-1001,
 20 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been
 21 filed with the clerk:

22 (a) a certificate from the department of revenue
 23 stating that any inheritance tax due on the assets of the
 24 estate has been paid; or

25 (b) an agreement with the department of revenue for

1 extension of time for payment of inheritance taxes; or
 2 (c) a receipt from the county treasurer stating that
 3 any inheritance tax due on the assets of the estate has been
 4 paid.

5 (2) This section shall not prohibit such partial
 6 distribution as may become necessary in the course of
 7 administration."

8 Section 12. Section 72-4-201, MCA, is amended to read:

9 "72-4-201. Jurisdiction by act of foreign personal
 10 representative. (1) A foreign personal representative by
 11 ~~doing any of the acts described in part 3 or by submits~~
 12 personally to the jurisdiction of the courts of this state
 13 in any proceeding relating to the estate by:

14 (a) filing authenticated copies of his appointment as
 15 provided in [section 15 16];

16 (b) receiving payment of money or taking delivery of
 17 personal property under 72-4-306; or

18 (c) doing any act as a personal representative in this
 19 state that would have given the state jurisdiction over him
 20 as an individual ~~submits himself personally to the~~
 21 ~~jurisdiction of the courts of this state in any proceeding~~
 22 ~~relating to the estate.~~

23 (2) ~~Jurisdiction which arises solely from receiving~~
 24 ~~payment of money or taking delivery of personal property~~
 25 under subsection (1)(b) is limited to the money or value of

1 personal property collected."

2 Section 13. Section 72-4-301, MCA, is amended to read:

3 "72-4-301. Powers of foreign representative
 4 generally ~~limited powers upon limited compliance. (1)~~
 5 ~~Except as limited by 72-4-308, a~~ A domiciliary foreign
 6 personal representative who has complied with 72-4-303 ~~and~~
 7 ~~72-4-304~~ [section 15 16] may exercise as to assets in this
 8 state all powers of a local personal representative and may
 9 maintain actions and proceedings in this state, subject to
 10 any conditions imposed upon nonresident parties generally.

11 (2) ~~A domiciliary foreign personal representative who~~
 12 ~~has complied with all the requirements of 72-4-303(1) except~~
 13 ~~for the filing of an inventory and appraisal may when~~
 14 ~~necessary to protect the estate of the decedent and upon~~
 15 ~~appointment by the clerk of court exercise the powers of a~~
 16 ~~special administrator described in chapter 3, part 7."~~

17 Section 14. Section 72-4-306, MCA, is amended to read:

18 "72-4-306. Payment of debt and delivery of property to
 19 foreign representative. At any time after the expiration of
 20 60 days from the death of a nonresident decedent, any person
 21 indebted to the estate of the nonresident decedent or having
 22 possession or control of personal property or of an
 23 instrument evidencing a debt, obligation, stock, or chose in
 24 action belonging to the estate of the nonresident decedent
 25 may pay the debt, deliver the personal property, or the

1 instrument evidencing the debt, obligation, stock, or chose
 2 in action to the domiciliary foreign personal representative
 3 of the nonresident decedent upon being presented with a
 4 certificate from the clerk of the court for the county where
 5 the domiciliary foreign personal representative has filed
 6 his affidavit as described in 72-4-303 and a certificate
 7 from the department of revenue as described in 72-4-304
 8 proof of his appointment and an affidavit made by or on
 9 behalf of the representative, stating:

10 (1) the date of the death of the nonresident decedent;

11 (2) that no local administration, or application or
 12 petition therefor, is pending in this state;

13 (3) that the domiciliary foreign personal
 14 representative is entitled to payment or delivery."

15 Section 15. Section 72-4-308, MCA, is amended to read:

16 "72-4-308. Payment or delivery to foreign
 17 representative prohibited by resident creditor notice --
 18 court order to allow payment or delivery. (1) Payment or
 19 delivery under 72-4-306 may not be made if a resident
 20 creditor of the nonresident decedent has notified the debtor
 21 of the nonresident decedent or the person having possession
 22 of the personal property belonging to the nonresident
 23 decedent that the debt should not be paid or the property
 24 delivered to the domiciliary foreign personal
 25 representative.

1 (2) in cases under subsection (1) the foreign
 2 personal representative must seek an order of the court in
 3 which he has filed his affidavit to obtain payment or
 4 delivery unless the notification by the resident creditor is
 5 withdrawn"

6 NEW SECTION. Section 16. Proof of authority -- bond.
 7 If no local administration or application or petition
 8 therefor is pending in this state, a domiciliary foreign
 9 personal representative may file with a court in this state
 10 in a county in which property belonging to the decedent is
 11 located, authenticated copies of his appointment and of any
 12 official bond he has given.

13 Section 17. Codification instruction. (1) Sections 4
 14 and 16 are intended to be codified as an integral part of
 15 Title 72, chapters 1 through 5 and chapter 16, part 6. The
 16 provisions of Title 72, chapters 1 through 5 and chapter 16,
 17 part 6, apply to sections 4 and 16.

18 (2) THE CODE COMMISSIONER IS INSTRUCTED TO CODIFY
 19 SECTION 16 AND TO RENUMBER TITLE 72, CHAPTER 4, PART 3 IN
 20 SUCH A WAY THAT THE SECTIONS OF TITLE 72, CHAPTER 4, PART 3
 21 ARE IN THE SAME NUMERICAL ORDER AS THE CORRESPONDING
 22 SECTIONS OF THE UNIFORM PROBATE CODE, 1977 EDITION, AS
 23 PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON
 24 UNIFORM STATE LAWS.

25 Section 18. Repealer. Section 72-3-608, MCA, is

SB 0038/02

1 repealed.

-End-

1 SENATE BILL NO. 38
 2 INTRODUCED BY TURNAGE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
 5 PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION,
 6 INTESTATE SUCCESSION, ESTABLISHING THE PARENT-CHILD
 7 RELATIONSHIP, THE AUGMENTED ESTATE, THE ELECTIVE SHARE OF
 8 THE SURVIVING SPOUSE, STATUTE OF LIMITATIONS, SELF-PROVED
 9 WILLS, AND FOREIGN PERSONAL REPRESENTATIVES BY GENERALLY
 10 ADOPTING THE LANGUAGE OF THE UNIFORM PROBATE CODE; AMENDING
 11 SECTIONS 72-2-101, 72-2-203, 72-2-213, 72-2-304, 72-2-705,
 12 72-2-706, 72-2-707, 72-3-907, 72-3-1005, 72-3-1006,
 13 72-4-201, 72-4-301, 72-4-306, AND 72-4-308, MCA; AND
 14 REPEALING SECTION 72-3-608, MCA."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 72-2-101, MCA, is amended to read:
 18 "72-2-101. Renunciation of succession. (1) A person
 19 for his personal representative or the representative of an
 20 incapacitated or protected person who is an heir, devisee,
 21 person succeeding to a renounced interest, beneficiary under
 22 a testamentary instrument, or person ~~designated to take~~
 23 personant to appointee under a power of appointment exercised
 24 by a testamentary instrument may renounce, in whole or in
 25 part, the right of succession to any property or interest

1 therein, including a future interest, by filing a written
 2 ~~instrument within the time and at the place hereinafter~~
 3 provided renunciation under this section. The instrument
 4 shall:

5 (a) describe the property ~~or part thereof~~ or interest
 6 therein renounced;

7 (b) be signed by the person renouncing; and

8 (c) declare the renunciation and the extent thereof.

9 (2) ~~(a) The writing specified in subsection (1) must~~
 10 An instrument renouncing a present interest shall be filed
 11 within 6 9 months after the death of the decedent or the
 12 donee of the power, ~~or if the taker of the property is not~~
 13 ~~then finally ascertained,~~

14 (b) An instrument renouncing a future interest may be
 15 filed not later than 6 9 months after the event ~~by which~~
 16 determining that the taker of the property or the interest
 17 is finally ascertained and his interest is indefeasibly
 18 vested.

19 (c) The writing renunciation must be filed in the
 20 court of the county where in which proceedings concerning
 21 ~~the decedent's estate are pending or where they would be~~
 22 pending if have been commenced for the administration of the
 23 estate of the deceased owner or deceased donee of the power
 24 or, if they have not been commenced, in which they could be
 25 commenced. A copy of the ~~writing~~ also renunciation shall be

1 delivered in person or mailed by registered or certified
 2 mail to the any personal representative or other fiduciary
 3 of the decedent or donee of the power. If real property or
 4 an interest therein is renounced, a copy of the renunciation
 5 may be recorded in the office of the county clerk of the
 6 county in which the real estate is situated.

7 (3) Unless the decedent or donee of the power has
 8 otherwise ~~indicated by his will~~ provided, the property or
 9 interest renounced and any future interest which is to take
 10 effect in possession or enjoyment at or after the
 11 termination of the interest renounced passes devolves as if
 12 though the person renouncing had predeceased the decedent
 13 or, if the ~~person renouncing is one designated to take~~
 14 ~~pursuant to a power of~~ appointment was exercised by a
 15 testamentary instrument, as if though the person renouncing
 16 had predeceased the donee of the power. A future interest
 17 that takes effect in possession or enjoyment after the
 18 termination of the estate or interest renounced takes effect
 19 as though the person renouncing had predeceased the decedent
 20 or the donee of the power. In every case the A renunciation
 21 relates back for all purposes to the date of the death of
 22 the decedent or the donee as the case may be of the power.

23 (4) (a) The right to renounce property or an interest
 24 therein is barred by:

25 (i) Any an assignment, conveyance, encumbrance,

1 pledge, or transfer of property therein or interest, or any
 2 a contract therefor;

3 (ii) a written waiver of the right to renounce;

4 (iii) ~~or any an~~ acceptance of the property ~~by an heir~~
 5 ~~devisee~~ ~~or person succeeding to a renounced interest~~
 6 ~~beneficiary or person designated to take pursuant to a~~
 7 ~~power of appointment exercised by testamentary instrument or~~
 8 interest or benefit thereunder; or

9 (iv) a sale or other ~~disposition~~ of the property
 10 pursuant to or interest under judicial process, sale made
 11 before the expiration of the period in which he is permitted
 12 ~~to renounce~~ ~~bars the right to renounce as to the property~~
 13 renunciation is effected.

14 (5)(b) The right to renounce granted by this section
 15 exists irrespective of notwithstanding any limitation on the
 16 interest of the person renouncing in the nature of a
 17 spendthrift provision or similar restriction.

18 (c) A renunciation or a written waiver of the right to
 19 renounce is binding upon the person renouncing or person
 20 waiving and all persons claiming through or under him.

21 (6)(5) This section does not abridge the right of any
 22 a person to ~~assign~~ ~~convey~~ waive, release, disclaim, or
 23 renounce any property arising or an interest therein under
 24 any other section of this code or other statute.

25 (7)(6) Any An interest in property which exists on

1 July 1, 1975, but--which-has-not-then-become-indefeasibly
 2 fixed-both-in-quality-and-quantity-or-the-taker-of-which-has
 3 not-then-become-finally-ascertained-may-be-renounced--after
 4 July--1--1975--as--provided--herein--An-interest-which-has
 5 arisen-prior-to-July-1-1975--in-any-person-other--than--the
 6 person--renouncing--is--not--destroyed--or-diminished-by-any
 7 action-of-the-person-renouncing-taken-under-this-section as
 8 to which, if a present interest, the time for filing a
 9 renunciation under the Uniform Probate Code has not expired,
 10 or if a future interest, the interest has not become
 11 indefeasibly vested or the taker finally ascertained, may be
 12 renounced within 9 months after July 1, 1975."

13 Section 2. Section 72-2-203, MCA, is amended to read:

14 "72-2-203. Share of heirs other than surviving spouse.
 15 The part of the intestate estate not passing to the
 16 surviving spouse under 72-2-202, or the entire intestate
 17 estate if there is no surviving spouse, passes as follows:

18 (1) to the issue of the decedent; if they are all of
 19 the same degree of kinship to the decedent, they take
 20 equally, but if of unequal degree, then those of more remote
 21 degree take by representation;

22 (2) ~~if there are surviving several children or one~~
 23 ~~child and the issue of one or more children and any such~~
 24 ~~surviving child dies under age and not having been married,~~
 25 ~~all the estate that came to such deceased child by~~

1 inheritance--from-the-decedent--in-equal-shares-to-the-other
 2 children-of-the-same-parent-and-to-the--issue--of--any--such
 3 other--children--who-are-dead--by-representation--and--if--at
 4 the-death-of-such-child--who-dies-under-age-not-having--been
 5 married--all-the-other-children-of-his-parents-are-also-dead
 6 and--any--of-them-have-left-issue--to-the-issue-of-all-other
 7 children-of-the-same-parent--and-if-all-the-issue-are-in-the
 8 same-degree-of-kinship-to-such-child--they-take-equally--but
 9 if-of-unequal-degree--then-those-of-more-remote-degree--take
 10 by-representation;

11 (3) (2) if there is no surviving issue, to his parent
 12 or parents equally;

13 (4) (3) if there is no surviving issue or parent, to
 14 the brothers--and-sisters-and-the-children-or-grandchildren
 15 of-any-deceased-brother-or-sister, BROTHERS AND SISTERS AND
 16 THE CHILDREN OR GRANDCHILDREN OF ANY DECEASED BROTHER OR
 17 SISTER, issue-of-the-parents--or--either--of--them by
 18 representation;

19 (5) (4) if there is no surviving issue, parent,
 20 brother--sister, BROTHER, SISTER, or children--or
 21 grandchildren--of--a-deceased-brother-or-sister--to-the-next
 22 of-kin-in-equal-degree--except-that-where-there-are--two--or
 23 more-collateral-kindred-in-equal-degree-but-claiming-through
 24 different--ancestors--those--who--claim--through-the-nearer
 25 ancestors--must-be-preferred-to--those--claiming--through--an

1 ~~ancestor---more---remote. CHILDREN OR GRANDCHILDREN OF A~~
 2 ~~DECEASED BROTHER OR SISTER, TO THE NEXT OF KIN IN EQUAL~~
 3 ~~DEGREE, EXCEPT THAT WHERE THERE ARE TWO OR MORE COLLATERAL~~
 4 ~~KINDRED IN EQUAL DEGREE BUT CLAIMING THROUGH DIFFERENT~~
 5 ~~ANCESTORS, THOSE WHO CLAIM THROUGH THE NEARER ANCESTORS MUST~~
 6 ~~BE PREFERRED TO THOSE CLAIMING THROUGH AN ANCESTOR MORE~~
 7 ~~REMOTE. issue-of-a-parent-but-the-decedent-is-survived-by~~
 8 ~~one-or-more-grandparents-or-issue-of-grandparents-half-of~~
 9 ~~the-estate-passes-to-the-paternal-grandparents-if-both~~
 10 ~~survive-or-to-the-surviving-paternal-grandparent-or-to-the~~
 11 ~~issue-of-the-paternal-grandparents-if-both-are-deceased-the~~
 12 ~~issue-taking-equally-if-they-are-all-of-the-same-degree-of~~
 13 ~~kinship-to-the-decedent-but-if-of-unequal-degree-these-of~~
 14 ~~more-remote-degree-take-by-representation-and-the-other~~
 15 ~~half-passes-to-the-maternal-relatives-in-the-same-manner~~
 16 ~~but-if-there-be-no-surviving-grandparent-or-issue-of~~
 17 ~~grandparent-on-either-the-paternal-or-maternal-side-the~~
 18 ~~entire-estate-passes-to-the-relatives-on-the-other-side-in~~
 19 ~~the-same-manner-as-the-half."~~

20 Section 3. Section 72-2-213, MCA, is amended to read:
 21 "72-2-213. Establishment of parent-child relationship.
 22 If, for the purposes of intestate succession, a relationship
 23 of parent and child must be established to determine
 24 succession by, through, or from a person:

25 (1) An adopted person ~~shall inherit as~~ is the child of

1 an adopting parent and not of the natural parents, except
 2 that adoption of a child by the spouse of a natural parent
 3 has no effect on the relationship between the child and
 4 either natural parent.

5 (2) In cases not covered by subsection (1), a person
 6 ~~born-out-of-wedlock-is-a-child-of-the-mother-if-that-person-is~~
 7 ~~also-a-child-of-the-father-if+~~

8 ~~(a)-the-natural-parents-participated-in-a-marriage~~
 9 ~~ceremony-before-or-after-the-birth-of-the-child-even-though~~
 10 ~~the-attempted-marriage-is-void-or~~

11 ~~(b)-the-paternity-is-established-by-an-adjudication~~
 12 ~~before-the-death-of-the-father-or-is-established-thereafter~~
 13 ~~by-clear-and-convincing-proof-except-that-the-paternity~~
 14 ~~established-under-this-subsection-(b)-is-ineffective-to~~
 15 ~~qualify-the-father-or-his-kindred-to-inherit-from-or-through~~
 16 ~~the-child-unless-the-father-has-openly-treated-the-child-as~~
 17 ~~his-and-has-not-refused-to-support-the-child-is~~ the child
 18 of its parents regardless of the marital status of its
 19 parents, and the parent and child relationship may be
 20 established under the Uniform Parentage Act, Title 40,
 21 chapter 6, part 1."

22 NEW SECTION. Section 4. Persons related to decedent
 23 through two lines. A person who is related to the decedent
 24 through two lines of relationship is entitled to only a
 25 single share based on the relationship that would entitle

1 him to the larger share.

2 Section 5. Section 72-2-304, MCA, is amended to read:
3 "72-2-304. Self-proved will. (1) Any will may be
4 simultaneously executed, attested, and made self-proved by
5 acknowledgment thereof by the testator and affidavits of the
6 witnesses, each made before an officer authorized to
7 administer oaths under the laws of the state where execution
8 occurs and evidenced by the officer's certificate, under
9 official seal, in substantially the following form:

10 I,, the testator, sign my name to this
11 instrument this day of 19..... and being
12 first duly sworn, do hereby declare to the undersigned
13 authority that I sign and execute this instrument as my last
14 will and that I sign it willingly (or willingly direct
15 another to sign for me), that I execute it as my free and
16 voluntary act for the purposes therein expressed, and that I
17 am 18 years of age or older, of sound mind, and under no
18 constraint or undue influence.

19
20
21 Testator

22 He,, the witnesses, sign our
23 names to this instrument, being first duly sworn, and do
24 hereby declare to the undersigned authority that the
25 testator signs and executes this instrument as his last will
26 and that he signs it willingly (or willingly directs another

1 to sign for him), and that each of us, in the presence and
2 hearing of the testator, hereby signs this will as witness
3 to the testator's signing, and that to the best of our
4 knowledge the testator is 18 years of age or older, of sound
5 mind, and under no constraint or undue influence.

6
7
8 Witness
9
10
11
12 Witness
13

14 THE STATE OF

15 COUNTY OF

16 Subscribed, sworn to, and acknowledged before me by
17 the testator, and subscribed and sworn to before
18 me by and, witnesses, this day of
19
20 (SEAL)

21 (Signed).....
22
23 (Official capacity of officer)
24
25

26 (2) An attested will may, at the time of its execution
27 or at any time subsequent date, to its execution be made
28 self-proved by the acknowledgment thereof by the testator
29 and the affidavits of the witnesses, each made before an
30 officer authorized to administer oaths under the laws of
31 this the state where the acknowledgment occurs and evidenced

1 by the officer's certificate, under the official seal,
2 attached or annexed to the will in ~~form--and--content~~
3 substantially ~~as--follows~~ the following form:

4 THE STATE OF
5 COUNTY OF

6 Me,,, and, the testator and the
7 witnesses, respectively, whose names are signed to the
8 attached or foregoing instrument, being first duly sworn, do
9 hereby declare to the undersigned authority that the
10 testator signed and executed the instrument as his last will
11 and that he had signed willingly or directed another to sign
12 for him and that he executed it as his free and voluntary
13 act for the purposes therein expressed and that each of the
14 witnesses, in the presence and hearing of the testator,
15 signed the will as witness and that to the best of his
16 knowledge the testator was at that time 18 or more years of
17 age, of sound mind, and under no constraint or undue
18 influence.

19 Testator
20 witness
21 witness
22
23

24 Subscribed, sworn to, and acknowledged before me by
25, the testator, and subscribed and sworn to before me by
26 and, witnesses, this day of,

27 (SEAL) (Signed).....
28

1 (Official capacity of officer)
2
3"

4 Section 6. Section 72-2-705, MCA, is amended to read:
5 "72-2-705. Augmented estate. The augmented estate
6 means the estate, reduced by funeral and administration
7 expenses, homestead allowance, family allowances and
8 exemptions, and enforceable claims, to which is added the
9 sum of the following amounts:

10 (1) the value of property transferred to anyone other
11 than a bona fide purchaser by the decedent at any time
12 during marriage, to or for the benefit of any person other
13 than the surviving spouse, to the extent that the decedent
14 did not receive adequate and full consideration in money or
15 money's worth for the transfer, if the transfer is of any of
16 the following types:

17 (a) any transfer under which the decedent retained at
18 the time of his death the possession or enjoyment of or
19 right to income from the property;

20 (b) any transfer to the extent that the decedent
21 retained at the time of his death a power, either alone or
22 in conjunction with any other person, to revoke or to
23 consume, invade, or dispose of the principal for his own
24 benefit;

25 (c) any transfer whereby property is held at the time
26 of decedent's death by decedent and another with right of

1 survivorship;

2 (d) any transfer made to a donee within 3 2 years of
3 death of the decedent to the extent that the aggregate
4 transfers to any one donee in any of the years exceed
5 \$3,000;

6 (2) any transfer is excluded if made with the written
7 consent or joinder of the surviving spouse. Property is
8 valued as of the decedent's death except that property given
9 irrevocably to a donee during lifetime of the decedent is
10 valued as of the date the donee came into possession or
11 enjoyment if that occurs first. Nothing herein shall cause
12 to be included in the augmented estate any life insurance,
13 accident insurance, joint annuity, or pension payable to a
14 person other than the surviving spouse.

15 (3) the value of property owned by the surviving
16 spouse at the decedent's death, plus the value of property
17 transferred by the spouse at any time during marriage to any
18 person other than the decedent which would have been
19 includible in the spouse's augmented estate if the surviving
20 spouse had predeceased the decedent, to the extent the owned
21 or transferred property is derived from the decedent by any
22 means other than testate or intestate succession without a
23 full consideration in money or money's worth. For purposes
24 of this subsection:

25 (a) property derived from the decedent includes but is

1 not limited to any beneficial interest of the surviving
2 spouse in a trust created by the decedent during his
3 lifetime, any property appointed to the spouse by the
4 decedent's exercise of a general or special power of
5 appointment also exercisable in favor of others than the
6 spouse, any proceeds of insurance (including accidental
7 death benefits) on the life of the decedent attributable to
8 premiums paid by him, any lump sum immediately payable and
9 the commuted value of the proceeds of annuity contracts
10 under which the decedent was the primary annuitant
11 attributable to premiums paid by him, the commuted value of
12 accounts payable after the decedent's death under any public
13 or private pension, disability compensation, death benefit,
14 or retirement plan, exclusive of the federal social security
15 system, by reason of service performed or disabilities
16 incurred by the decedent, any property held at the time of
17 decedent's death by decedent and the surviving spouse with
18 right of survivorship, any property held by decedent and
19 transferred by contract to the surviving spouse by reason of
20 the decedent's death, and the value of the share of the
21 surviving spouse resulting from rights in community property
22 in this or any other state formerly owned with the decedent.
23 Premiums paid by the decedent's employer, his partner, a
24 partnership of which he was a member, or his creditors are
25 deemed to have been paid by the decedent.

1 (b) property owned by the spouse at the decedent's
2 death is valued as of the date of death. Property
3 transferred by the spouse is valued at the time the transfer
4 became irrevocable or at the decedent's death, whichever
5 occurred first.

6 ~~(c)~~ Income earned by included property prior to
7 the decedent's death is not treated as property derived from
8 the decedent.

9 (c) Property property owned by the surviving spouse as
10 of the decedent's death or previously transferred by the
11 surviving spouse is presumed to have been derived from the
12 decedent, except to the extent that the surviving spouse
13 establishes that it was derived from another source.

14 (4) For the purposes of this section, a bona fide
15 purchaser is a purchaser for value in good faith and without
16 notice of any adverse claim. Any recorded instrument is
17 prima facie evidence that the transfer described therein was
18 made to a bona fide purchaser."

19 Section 7. Section 72-2-706, MCA, is amended to read:

20 ~~"72-2-706. Charging spouse with property received --~~
21 ~~liability of others for balance of elective share. (1) In~~
22 ~~the proceeding for an elective share, property which is part~~
23 ~~of values included in the augmented estate which passes pass~~
24 ~~or has have passed to the surviving spouse, by--testate--or~~
25 ~~intestate--succession--or-other-means-and-which-has-not-been~~

1 ~~renounced, including that described in 72-2-705(3) or which~~
2 ~~would have passed to the spouse but were renounced, is~~ are
3 applied first to satisfy the elective share and to reduce
4 the--amount any contributions due from other recipients of
5 portions of transfers included in the augmented estate. For
6 purposes of this subsection, the electing spouse's
7 beneficial interest in any life estate or in any trust shall
8 be computed as if worth one-half of the total value of the
9 property subject to the life estate, or of the trust estate,
10 unless higher or lower values for these interests are
11 established by proof.

12 (2) Remaining property of the augmented estate is so
13 applied that liability for the balance of the elective share
14 of the surviving spouse is equitably apportioned among the
15 recipients of the augmented estate in proportion to the
16 value of their interests therein.

17 (3) Only original transferees from or appointees of
18 the decedent and their donees, to the extent the donees have
19 the property or its proceeds, are subject to the
20 contribution to make up the elective share of the surviving
21 spouse. A person liable to contribution may choose to give
22 up the property transferred to him or to pay its value as of
23 the time it is considered in computing the augmented
24 estate."

25 Section 8. Section 72-2-707, MCA, is amended to read:

1 "72-2-707. Procedure for making of election. (1) The
 2 surviving spouse may elect to take his elective share in the
 3 augmented net estate by filing in the court and mailing or
 4 delivering to the personal representative, if any, a
 5 petition for the elective share within 6 9 months after the
 6 ~~first publication of notice to creditors for filing claims~~
 7 ~~which arose before the death of the decedent or within 1~~
 8 ~~year of the date of death~~ or within 6 months after the
 9 probate of the decedent's will, whichever time limitation
 10 first last expires. However, the nonprobate transfers
 11 described in 72-2-705(i) shall not be included within the
 12 augmented estate for the purpose of computing the elective
 13 share if the petition is filed later than 9 months after
 14 death. The court may extend the time for election as it sees
 15 fit for cause shown by the surviving spouse before the time
 16 for election has expired.

17 (2) The surviving spouse shall give notice of the time
 18 and place set for hearing to persons interested in the
 19 estate and to the distributees and recipients of portions of
 20 the augmented net estate whose interests will be adversely
 21 affected by the taking of the elective share.

22 (3) The surviving spouse may withdraw his demand for
 23 an elective share at any time before entry of a final
 24 determination by the court.

25 (4) After notice and hearing, the court shall

1 determine the amount of the elective share and shall order
 2 its payment from the assets of the augmented net estate or
 3 by contribution as appears appropriate under 72-2-706. If it
 4 appears that a fund or property included in the augmented
 5 net estate has not come into the possession of the personal
 6 representative or has been distributed by the personal
 7 representative, the court nevertheless shall fix the
 8 liability of any person who has any interest in the fund or
 9 property or who has possession thereof, whether as trustee
 10 or otherwise. The proceeding may be maintained against fewer
 11 than all persons against whom relief could be sought, but no
 12 person is subject to contribution in any greater amount than
 13 he would have been if relief had been secured against all
 14 persons subject to contribution.

15 (5) The order or judgment of the court may be enforced
 16 as necessary in suit for contribution or payment in other
 17 courts of this state or other jurisdictions."

18 Section 9. Section 72-3-907, MCA, is amended to read:

19 "72-3-907. Purchases from distributees protected. If
 20 property distributed in kind or a security interest therein
 21 is acquired for value by a purchaser from or lender for
 22 ~~value--from~~ to a distributee who has received an instrument
 23 or deed of distribution from the personal representative, or
 24 is so acquired by a purchaser from or lender to a transferee
 25 from such distributee, the purchaser or lender takes title

1 free of rights of any claims-of-the-estate interested person
 2 in the estate and incurs no personal liability to the estate
 3 or to any interested person, whether or not the distribution
 4 was proper or supported by court order or the authority of
 5 the personal representative was terminated before execution
 6 of the instrument or deed.

7 This section protects a purchaser from or lender to a
 8 distributee who, as personal representative, has executed a
 9 deed of distribution to himself, as well as a purchaser from
 10 or lender to any other distributee or his transferee. To be
 11 protected under this provision, a purchaser or lender need
 12 not inquire whether a personal representative acted properly
 13 in making the distribution in kind, even if the personal
 14 representative and the distributee are the same person, or
 15 whether the authority of the personal representative had
 16 terminated before the distribution. Any recorded instrument
 17 described in this section shall be prima facie evidence that
 18 such transfer was made for value.

19 For purposes of this section, the term purchaser
 20 includes any lessee or other person acquiring any interest
 21 in the property for value."

22 Section 10. Section 72-3-1005, MCA, is amended to
 23 read:

24 "72-3-1005. Final accounting required to close estate.
 25 (1) Before an estate may be finally closed and the personal

1 representative relieved of his duties and obligations, he
 2 shall either file with the court or deliver to all
 3 interested persons an accounting under oath showing the
 4 amount of money received and expended by him, the amount of
 5 all claims presented against the estate, and the names of
 6 the claimants and all other matters necessary to show the
 7 state of its affairs.

8 (2) Any interested person at any time during the
 9 course of the administration of an estate may for good cause
 10 shown require further accountings.

11 (3) If the personal representative is the sole
 12 residual beneficiary of the estate, no accounting need be
 13 made."

14 Section 11. Section 72-3-1006, MCA, is amended to
 15 read:

16 "72-3-1006. Certificate or receipt showing taxes paid
 17 required to close estate. (1) In all probate proceedings
 18 under this code, before final distribution to successors is
 19 made and before any petition is granted under 72-3-1001,
 20 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been
 21 filed with the clerk:

22 (a) a certificate from the department of revenue
 23 stating that any inheritance tax due on the assets of the
 24 estate has been paid; or

25 (b) an agreement with the department of revenue for

1 extension of time for payment of inheritance taxes; or
 2 (c) a receipt from the county treasurer stating that
 3 any inheritance tax due on the assets of the estate has been
 4 paid.
 5 (2) This section shall not prohibit such partial
 6 distribution as may become necessary in the course of
 7 administration."
 8 Section 12. Section 72-4-201, MCA, is amended to read:
 9 "72-4-201. Jurisdiction by act of foreign personal
 10 representative. (1) A foreign personal representative by
 11 ~~doing any of the acts described in part 3 or by~~ submits
 12 personally to the jurisdiction of the courts of this state
 13 in any proceeding relating to the estate by:
 14 (a) filing authenticated copies of his appointment as
 15 provided in [section 15 16];
 16 (b) receiving payment of money or taking delivery of
 17 personal property under 72-4-306; or
 18 (c) doing any act as a personal representative in this
 19 state that would have given the state jurisdiction over him
 20 as an individual ~~submits himself personally to the~~
 21 ~~jurisdiction of the courts of this state in any proceeding~~
 22 ~~relating to the estate.~~
 23 (2) Jurisdiction ~~which arises solely from receiving~~
 24 ~~payment of money or taking delivery of personal property~~
 25 under subsection (1)(b) is limited to the money or value of

1 personal property collected."
 2 Section 13. Section 72-4-301, MCA, is amended to read:
 3 "72-4-301. Powers of foreign representative
 4 ~~generally limited powers upon limited compliance. (1)~~
 5 ~~Except as limited by 72-4-308, a~~ A domiciliary foreign
 6 personal representative who has complied with 72-4-303 and
 7 72-4-304 [section 15 16] may exercise as to assets in this
 8 state all powers of a local personal representative and may
 9 maintain actions and proceedings in this state, subject to
 10 any conditions imposed upon nonresident parties generally.
 11 (2) ~~A domiciliary foreign personal representative who~~
 12 ~~has complied with all the requirements of 72-4-303 (1) except~~
 13 ~~for the filing of an inventory and appraisal may when~~
 14 ~~necessary to protect the estate of the decedent and upon~~
 15 ~~appointment by the clerk of court exercise the powers of a~~
 16 ~~special administrator described in chapter 3, part 7."~~
 17 Section 14. Section 72-4-306, MCA, is amended to read:
 18 "72-4-306. Payment of debt and delivery of property to
 19 foreign representative. At any time after the expiration of
 20 60 days from the death of a nonresident decedent, any person
 21 indebted to the estate of the nonresident decedent or having
 22 possession or control of personal property or of an
 23 instrument evidencing a debt, obligation, stock, or chose in
 24 action belonging to the estate of the nonresident decedent
 25 may pay the debt, deliver the personal property, or the

1 instrument evidencing the debt, obligation, stock, or chose
 2 in action to the domiciliary foreign personal representative
 3 of the nonresident decedent upon being presented with a
 4 certificate from the clerk of the court for the county where
 5 the domiciliary foreign personal representative has filed
 6 his affidavit as described in 72-4-383v and a certificate
 7 from the department of revenue as described in 72-4-384v
 8 proof of his appointment and an affidavit made by or on
 9 behalf of the representative, stating:

- 10 (1) the date of the death of the nonresident decedent;
- 11 (2) that no local administration, or application or
 12 petition therefor, is pending in this state;
- 13 (3) that the domiciliary foreign personal
 14 representative is entitled to payment or delivery."

15 Section 15. Section 72-4-308, MCA, is amended to read:
 16 "72-4-308. Payment or delivery to foreign
 17 representative prohibited by resident creditor notice --
 18 ~~court order to allow payment or delivery.~~ ~~{}~~ Payment or
 19 delivery under 72-4-306 may not be made if a resident
 20 creditor of the nonresident decedent has notified the debtor
 21 of the nonresident decedent or the person having possession
 22 of the personal property belonging to the nonresident
 23 decedent that the debt should not be paid or the property
 24 delivered to the domiciliary foreign personal
 25 representative.

1 ~~{2}--in---cases---under--subsection--{1}--the--foreign~~
 2 ~~personal--representative--must--seek--an--order--of--the--court--in~~
 3 ~~which--he--has--filed--his--affidavit--to--obtain--payment--or~~
 4 ~~delivery--unless--the--notification--by--the--resident--creditor--is~~
 5 ~~withdrawn"~~

6 NEW SECTION. Section 16. Proof of authority -- bond.
 7 If no local administration or application or petition
 8 therefor is pending in this state, a domiciliary foreign
 9 personal representative may file with a court in this state
 10 in a county in which property belonging to the decedent is
 11 located, authenticated copies of his appointment and of any
 12 official bond he has given.

13 Section 17. Codification instruction. {1} Sections 4
 14 and 16 are intended to be codified as an integral part of
 15 Title 72, chapters 1 through 5 and chapter 16, part 6. The
 16 provisions of Title 72, chapters 1 through 5 and chapter 16,
 17 part 6, apply to sections 4 and 16.

18 {2} THE CODE COMMISSIONER IS INSTRUCTED TO CODIFY
 19 SECTION 16 AND TO RENUMBER TITLE 72, CHAPTER 4, PART 3 IN
 20 SUCH A WAY THAT THE SECTIONS OF TITLE 72, CHAPTER 4, PART 3
 21 ARE IN THE SAME NUMERICAL ORDER AS THE CORRESPONDING
 22 SECTIONS OF THE UNIFORM PROBATE CODE, 1977 EDITION, AS
 23 PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON
 24 UNIFORM STATE LAWS.

25 Section 18. Repealer. Section 72-3-608, MCA, is

SB 0038/02

1 repeated.

-End-

1 SENATE BILL NO. 38

2 INTRODUCED BY TURNAGE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
5 PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION,
6 INTESTATE SUCCESSION, ESTABLISHING THE PARENT-CHILD
7 RELATIONSHIP, THE AUGMENTED ESTATE, THE ELECTIVE SHARE OF
8 THE SURVIVING SPOUSE, STATUTE OF LIMITATIONS, SELF-PROVED
9 WILLS, AND FOREIGN PERSONAL REPRESENTATIVES BY GENERALLY
10 ADOPTING THE LANGUAGE OF THE UNIFORM PROBATE CODE; AMENDING
11 SECTIONS 72-2-101, 72-2-203, 72-2-213, 72-2-304, 72-2-705,
12 72-2-706, 72-2-707, 72-3-907, 72-3-1005, 72-3-1006,
13 72-4-201, 72-4-301, 72-4-306, AND 72-4-308, MCA; AND
14 REPEALING SECTION 72-3-608, MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 72-2-101, MCA, is amended to read:

18 "72-2-101. Renunciation of succession. (1) A person
19 for his personal representative} or the representative of an
20 incapacitated or protected person who is an heir, devisee,
21 person succeeding to a renounced interest, beneficiary under
22 a testamentary instrument, or person--designated-to-take
23 pursuant to appointee under a power of appointment exercised
24 by a testamentary instrument may renounce, in whole or in
25 part, the right of succession to any property or interest

1 therein, including a future interest, by filing a written
2 instrument--within--the--time--and--at--the--place--hereinafter
3 provided renunciation under this section. The instrument
4 shall:

5 (a) describe the property or-part--thereof or interest
6 therein renounced;

7 (b) be signed by the person renouncing; and

8 (c) declare the renunciation and the extent thereof.

9 (2) ~~(a) The writing specified in subsection (1) must~~
10 An instrument renouncing a present interest shall be filed
11 within 6 9 months after the death of the decedent or the
12 donee of the power, ~~or, if the taker of the property is not~~
13 ~~then finally ascertained,~~

14 (b) An instrument renouncing a future interest may be
15 filed not later than 6 9 months after the event by--which
16 determining that the taker of the property or the interest
17 is finally ascertained and his interest is indefeasibly
18 vested.

19 (c) The writing renunciation must be filed in the
20 court of the county where in which proceedings concerning
21 ~~the--decedent's--estate--are--pending--or--where--they--would--be~~
22 pending-if have been commenced for the administration of the
23 estate of the deceased owner or deceased donee of the power
24 or, if they have not been commenced, in which they could be
25 commenced. A copy of the writing-also renunciation shall be

1 delivered in person or mailed by registered or certified
 2 mail to the any personal representative or other fiduciary
 3 of the decedent or donee of the power. If real property or
 4 an interest therein is renounced, a copy of the renunciation
 5 may be recorded in the office of the county clerk of the
 6 county in which the real estate is situated.

7 (3) Unless the decedent or donee of the power has
 8 otherwise indicated ~~by his will~~ provided, the property or
 9 interest renounced and any future interest which is to take
 10 effect in possession or enjoyment at or after the
 11 termination of the interest renounced passes devolves as if
 12 though the person renouncing had predeceased the decedent
 13 or, if the person renouncing is one designated to take
 14 pursuant to a power of appointment was exercised by a
 15 testamentary instrument, as if though the person renouncing
 16 had predeceased the donee of the power. A future interest
 17 that takes effect in possession or enjoyment after the
 18 termination of the estate or interest renounced takes effect
 19 as though the person renouncing had predeceased the decedent
 20 or the donee of the power. In every case the A renunciation
 21 relates back for all purposes to the date of the death of
 22 the decedent or the donee, as the case may be of the power.

23 (4) (a) The right to renounce property or an interest
 24 therein is barred by:

25 (i) Any an assignment, conveyance, encumbrance,

1 pledge, or transfer of property therein or interest, or any
 2 a contract therefor;

3 (ii) a written waiver of the right to renounce;

4 (iii) ~~or any an~~ acceptance of the property by an heir
 5 ~~devisee, person succeeding to a renounced interest,~~
 6 ~~beneficiary or person designated to take pursuant to a~~
 7 ~~power of appointment exercised by testamentary instrument or~~
 8 ~~interest or benefit thereunder;~~ or

9 (iv) a sale or other disposition of the property
 10 pursuant to or interest under judicial process, sale made
 11 before the expiration of the period in which he is permitted
 12 to renounce, bars the right to renounce as to the property
 13 renunciation is effected.

14 (5)(b) The right to renounce granted by this section
 15 exists irrespective of notwithstanding any limitation on the
 16 interest of the person renouncing in the nature of a
 17 spendthrift provision or similar restriction.

18 (c) A renunciation or a written waiver of the right to
 19 renounce is binding upon the person renouncing or person
 20 waiving and all persons claiming through or under him.

21 (6)(5) This section does not abridge the right of any
 22 a person to assign, convey waive, release, disclaim, or
 23 renounce any property ~~or any~~ or an interest therein under
 24 any other section of this code or other statute.

25 (7)(6) Any An interest in property which exists on

1 July 1, 1975, but--which has not then become indefeasibly
 2 fixed both in quality and quantity or the taker of which has
 3 not then become finally ascertained, may be renounced--after
 4 July--1,--1975,--as--provided--herein--An interest which has
 5 arisen prior to July 1, 1975, in any person other--than--the
 6 person--renouncing--is--not--destroyed--or--diminished--by--any
 7 action of the person renouncing taken under this section as
 8 to which, if a present interest, the time for filing a
 9 renunciation under the Uniform Probate Code has not expired,
 10 or if a future interest, the interest has not become
 11 indefeasibly vested or the taker finally ascertained, may be
 12 renounced within 9 months after July 1, 1975."

13 Section 2. Section 72-2-203, MCA, is amended to read:
 14 "72-2-203. Share of heirs other than surviving spouse.
 15 The part of the intestate estate not passing to the
 16 surviving spouse under 72-2-202, or the entire intestate
 17 estate if there is no surviving spouse, passes as follows:

18 (1) to the issue of the decedent; if they are all of
 19 the same degree of kinship to the decedent, they take
 20 equally, but if of unequal degree, then those of more remote
 21 degree take by representation;

22 (2) ~~if there are surviving several children or one~~
 23 ~~child and the issue of one or more children and any such~~
 24 ~~surviving child dies under age and not having been married,~~
 25 ~~all the estate that come to such deceased child by~~

1 inheritance--from the decedent, in equal shares to the other
 2 children of the same parent and to the--issue--of--any--such
 3 other--children--who are dead, by representation; and if, at
 4 the death of such child, who dies under age not having been
 5 married, all the other children of his parents are also dead
 6 and--any--of them have left issue, to the issue of all other
 7 children of the same parent; and if all the issue are in the
 8 same degree of kinship to such child, they take equally, but
 9 if of unequal degree, then those of more remote degree--take
 10 by representation;

11 (3) (2) if there is no surviving issue, to his parent
 12 or parents equally;

13 (4) (3) if there is no surviving issue or parent, to
 14 the ~~brothers--and--sisters--and--the--children--or--grandchildren~~
 15 ~~of any deceased brother or sister~~ BROTHERS AND SISTERS AND
 16 THE CHILDREN OR GRANDCHILDREN OF ANY DECEASED BROTHER OR
 17 SISTER, ~~issue of the parents or either of them~~ by
 18 representation;

19 (5) (4) if there is no surviving issue, parent,
 20 ~~brother,--sister,~~ BROTHER, SISTER, or ~~children--or~~
 21 ~~grandchildren--of--a--deceased--brother--or--sister,~~ to the next
 22 ~~of kin in equal degree, except that where there are two or~~
 23 ~~more collateral kindred in equal degree but claiming through~~
 24 ~~different ancestors, those who claim through the nearer~~
 25 ~~ancestors must be preferred to those claiming through an~~

1 ~~ancestor---more---remote~~ CHILDREN OR GRANDCHILDREN OF A
 2 ~~DECEASED BROTHER OR SISTER, TO THE NEXT OF KIN IN EQUAL~~
 3 ~~DEGREE, EXCEPT THAT WHERE THERE ARE TWO OR MORE COLLATERAL~~
 4 ~~KINDRED IN EQUAL DEGREE BUT CLAIMING THROUGH DIFFERENT~~
 5 ~~ANCESTORS, THOSE WHO CLAIM THROUGH THE NEARER ANCESTORS MUST~~
 6 ~~BE PREFERRED TO THOSE CLAIMING THROUGH AN ANCESTOR MORE~~
 7 ~~REMOTE. issue-of-a-parent-but-the-decedent-is-survived-by~~
 8 ~~one--or--more-grandparents-or-issue-of-grandparents-half-of~~
 9 ~~the-estate-passes-to-the-paternal-grandparents-if-both~~
 10 ~~survive-or-to-the-surviving-paternal-grandparents-or-to-the~~
 11 ~~issue-of-the-paternal-grandparents-if-both-are-deceased-the~~
 12 ~~issue-taking-equally-if-they-are-all-of-the-same-degree-of~~
 13 ~~kinship-to-the-decedent-but-if-of-unequal-degree-those-of~~
 14 ~~more-remote-degree-take-by-representation-and-the-other~~
 15 ~~half-passes-to-the-maternal-relatives-in-the-same-manner~~
 16 ~~but-if-there-be-no-surviving-grandparent-or-issue-of~~
 17 ~~grandparent-on-either-the-paternal-or-maternal-side-the~~
 18 ~~entire-estate-passes-to-the-relatives-on-the-other-side-in~~
 19 ~~the-same-manner-as-the-half.~~"

20 Section 3. Section 72-2-213, MCA, is amended to read:
 21 "72-2-213. Establishment of parent-child relationship.
 22 If, for the purposes of intestate succession, a relationship
 23 of parent and child must be established to determine
 24 succession by, through, or from a person:

25 (1) An adopted person ~~shall inherit as~~ is the child of

1 an adopting parent and not of the natural parents, except
 2 that adoption of a child by the spouse of a natural parent
 3 has no effect on the relationship between the child and
 4 either natural parent.

5 (2) In cases not covered by subsection (1), a person
 6 ~~born-out-of-wedlock-is-a-child-of-the-mother-if-that-person-is~~
 7 ~~also-a-child-of-the-father-if-~~

8 ~~(a)-the-natural-parents-participated-in-a-marriage~~
 9 ~~ceremony-before-or-after-the-birth-of-the-child-even-though~~
 10 ~~the-attempted-marriage-is-void-or~~

11 ~~(b)-the-paternity-is-established-by-an-adjudication~~
 12 ~~before-the-death-of-the-father-or-is-established-thereafter~~
 13 ~~by-clear-and-convincing-proof-except-that-the-paternity~~
 14 ~~established-under-this-subsection-(b)-is-ineffective-to~~
 15 ~~qualify-the-father-or-his-kindred-to-inherit-from-or-through~~
 16 ~~the-child-unless-the-father-has-openly-treated-the-child-as~~
 17 ~~his-and-has-not-refused-to-support-the-child-is the child~~
 18 ~~of its parents regardless of the marital status of its~~
 19 ~~parents, and the parent and child relationship may be~~
 20 ~~established under the Uniform Parentage Act, Title 40,~~
 21 ~~chapter 6, part 1."~~

22 NEW SECTION. Section 4. Persons related to decedent
 23 through two lines. A person who is related to the decedent
 24 through two lines of relationship is entitled to only a
 25 single share based on the relationship that would entitle

1 him to the larger share.

2 Section 5. Section 72-2-304, MCA, is amended to read:

3 "72-2-304. Self-proved will. (1) Any will may be
4 simultaneously executed, attested, and made self-proved by
5 acknowledgment thereof by the testator and affidavits of the
6 witnesses, each made before an officer authorized to
7 administer oaths under the laws of the state where execution
8 occurs and evidenced by the officer's certificate, under
9 official seal, in substantially the following form:

10 I,, the testator, sign my name to this
11 instrument this day of, 19....., and being
12 first duly sworn, do hereby declare to the undersigned
13 authority that I sign and execute this instrument as my last
14 will and that I sign it willingly (or willingly direct
15 another to sign for me), that I execute it as my free and
16 voluntary act for the purposes therein expressed, and that I
17 am 18 years of age or older, of sound mind, and under no
18 constraint or undue influence.

19
20
21 Testator

22 We,, the witnesses, sign our
23 names to this instrument, being first duly sworn, and do
24 hereby declare to the undersigned authority that the
25 testator signs and executes this instrument as his last will
26 and that he signs it willingly (or willingly directs another

1 to sign for him), and that each of us, in the presence and
2 hearing of the testator, hereby signs this will as witness
3 to the testator's signing, and that to the best of our
4 knowledge the testator is 18 years of age or older, of sound
5 mind, and under no constraint or undue influence.

6
7
8 Witness
9
10
11
12 Witness
13

14 THE STATE OF
15 COUNTY OF

16 Subscribed, sworn to, and acknowledged before me by
17 the testator, and subscribed and sworn to before
18 me by and, witnesses, this day of
19
20 {SEAL}

21 [Signed].....
22
23 [Official capacity of officer]
24
25

26 [2] An attested will may, at the time of its execution
27 or at any time subsequent date, to its execution be made
28 self-proved by the acknowledgment thereof by the testator
29 and the affidavits of the witnesses, each made before an
30 officer authorized to administer oaths under the laws of
31 this the state where the acknowledgment occurs and evidenced

1 by the officer's certificate, under the official seal,
2 attached or annexed to the will in ~~form--and--content~~
3 substantially ~~as--follows~~ the following form:

4 THE STATE OF
5 COUNTY OF

6 We,, and, the testator and the
7 witnesses, respectively, whose names are signed to the
8 attached or foregoing instrument, being first duly sworn, do
9 hereby declare to the undersigned authority that the
10 testator signed and executed the instrument as his last will
11 and that he had signed willingly or directed another to sign
12 for him and that he executed it as his free and voluntary
13 act for the purposes therein expressed and that each of the
14 witnesses, in the presence and hearing of the testator,
15 signed the will as witness and that to the best of his
16 knowledge the testator was at that time 18 or more years of
17 age, of sound mind, and under no constraint or undue
18 influence.

19 Testator
20 Witness
21 Witness
22
23

24 Subscribed, sworn to, and acknowledged before me by
25, the testator, and subscribed and sworn to before me by
26 and witnesses, this day of,

27 (SEAL) (Signed).....
28

1 (Official capacity of officer)
2
3

4 Section 6. Section 72-2-705, MCA, is amended to read:
5 "72-2-705. Augmented estate. The augmented estate
6 means the estate, reduced by funeral and administration
7 expenses, homestead allowance, family allowances and
8 exemptions, and enforceable claims, to which is added the
9 sum of the following amounts:

10 (1) the value of property transferred to anyone other
11 than a bona fide purchaser by the decedent at any time
12 during marriage, to or for the benefit of any person other
13 than the surviving spouse, to the extent that the decedent
14 did not receive adequate and full consideration in money or
15 money's worth for the transfer, if the transfer is of any of
16 the following types:

17 (a) any transfer under which the decedent retained at
18 the time of his death the possession or enjoyment of or
19 right to income from the property;

20 (b) any transfer to the extent that the decedent
21 retained at the time of his death a power, either alone or
22 in conjunction with any other person, to revoke or to
23 consume, invade, or dispose of the principal for his own
24 benefit;

25 (c) any transfer whereby property is held at the time
26 of decedent's death by decedent and another with right of

1 survivorship;

2 (d) any transfer made to a donee within 3 2 years of
3 death of the decedent to the extent that the aggregate
4 transfers to any one donee in any of the years exceed
5 \$3,000;

6 (2) any transfer is excluded if made with the written
7 consent or joinder of the surviving spouse. Property is
8 valued as of the decedent's death except that property given
9 irrevocably to a donee during lifetime of the decedent is
10 valued as of the date the donee came into possession or
11 enjoyment if that occurs first. Nothing herein shall cause
12 to be included in the augmented estate any life insurance,
13 accident insurance, joint annuity, or pension payable to a
14 person other than the surviving spouse.

15 (3) the value of property owned by the surviving
16 spouse at the decedent's death, plus the value of property
17 transferred by the spouse at any time during marriage to any
18 person other than the decedent which would have been
19 includible in the spouse's augmented estate if the surviving
20 spouse had predeceased the decedent, to the extent the owned
21 or transferred property is derived from the decedent by any
22 means other than testate or intestate succession without a
23 full consideration in money or money's worth. For purposes
24 of this subsection:

25 (a) property derived from the decedent includes but is

1 not limited to any beneficial interest of the surviving
2 spouse in a trust created by the decedent during his
3 lifetime, any property appointed to the spouse by the
4 decedent's exercise of a general or special power of
5 appointment also exercisable in favor of others than the
6 spouse, any proceeds of insurance (including accidental
7 death benefits) on the life of the decedent attributable to
8 premiums paid by him, any lump sum immediately payable and
9 the commuted value of the proceeds of annuity contracts
10 under which the decedent was the primary annuitant
11 attributable to premiums paid by him, the commuted value of
12 accounts payable after the decedent's death under any public
13 or private pension, disability compensation, death benefit,
14 or retirement plan, exclusive of the federal social security
15 system, by reason of service performed or disabilities
16 incurred by the decedent, any property held at the time of
17 decedent's death by decedent and the surviving spouse with
18 right of survivorship, any property held by decedent and
19 transferred by contract to the surviving spouse by reason of
20 the decedent's death, and the value of the share of the
21 surviving spouse resulting from rights in community property
22 in this or any other state formerly owned with the decedent.
23 Premiums paid by the decedent's employer, his partner, a
24 partnership of which he was a member, or his creditors are
25 deemed to have been paid by the decedent.

1 (b) property owned by the spouse at the decedent's
2 death is valued as of the date of death. Property
3 transferred by the spouse is valued at the time the transfer
4 became irrevocable or at the decedent's death, whichever
5 occurred first.

6 (c) ~~income~~ Income earned by included property prior to
7 the decedent's death is not treated as property derived from
8 the decedent.

9 (c) Property ~~property~~ owned by the surviving spouse as
10 of the decedent's death or previously transferred by the
11 surviving spouse is presumed to have been derived from the
12 decedent, except to the extent that the surviving spouse
13 establishes that it was derived from another source.

14 (4) For the purposes of this section, a bona fide
15 purchaser is a purchaser for value in good faith and without
16 notice of any adverse claim. Any recorded instrument is
17 prima facie evidence that the transfer described therein was
18 made to a bona fide purchaser."

19 Section 7. Section 72-2-706, MCA, is amended to read:

20 "72-2-706. Charging spouse with property received --
21 liability of others for balance of elective share. (1) In
22 the proceeding for an elective share, ~~property which is part~~
23 of values included in the augmented estate which passes pass
24 or has have passed to the surviving spouse, by--testate--or
25 intestate--succession--or-other--means--and--which--has--not--been

1 ~~renounced, including that described in 72-2-705(3) or which~~
2 ~~would have passed to the spouse but were renounced, is are~~
3 applied first to satisfy the elective share and to reduce
4 ~~the--amount~~ any contributions due from other recipients of
5 ~~portions of transfers included in the augmented estate. For~~
6 ~~purposes of this subsection, the electing spouse's~~
7 ~~beneficial interest in any life estate or in any trust shall~~
8 ~~be computed as if worth one-half of the total value of the~~
9 ~~property subject to the life estate, or of the trust estate,~~
10 ~~unless higher or lower values for these interests are~~
11 ~~established by proof.~~

12 (2) Remaining property of the augmented estate is so
13 applied that liability for the balance of the elective share
14 of the surviving spouse is equitably apportioned among the
15 recipients of the augmented estate in proportion to the
16 value of their interests therein.

17 (3) Only original transferees from or appointees of
18 the decedent and their donees, to the extent the donees have
19 the property or its proceeds, are subject to the
20 contribution to make up the elective share of the surviving
21 spouse. A person liable to contribution may choose to give
22 up the property transferred to him or to pay its value as of
23 the time it is considered in computing the augmented
24 estate."

25 Section 8. Section 72-2-707, MCA, is amended to read:

1 "72-2-707. Procedure for making of election. (1) The
 2 surviving spouse may elect to take his elective share in the
 3 augmented net estate by filing in the court and mailing or
 4 delivering to the personal representative, if any, a
 5 petition for the elective share within ~~6 9~~ months after the
 6 ~~first--publication--of--notice--to--creditors--for--filing--claims~~
 7 ~~which--arose--before--the--death--of--the--decedent--or--within--1~~
 8 ~~year--of--the~~ date of death or within 6 months after the
 9 probate of the decedent's will, whichever time limitation
 10 first last expires. However, the nonprobate transfers
 11 described in 72-2-705(1) shall not be included within the
 12 augmented estate for the purpose of computing the elective
 13 share if the petition is filed later than 9 months after
 14 death. The court may extend the time for election as it sees
 15 fit for cause shown by the surviving spouse before the time
 16 for election has expired.

17 (2) The surviving spouse shall give notice of the time
 18 and place set for hearing to persons interested in the
 19 estate and to the distributees and recipients of portions of
 20 the augmented net estate whose interests will be adversely
 21 affected by the taking of the elective share.

22 (3) The surviving spouse may withdraw his demand for
 23 an elective share at any time before entry of a final
 24 determination by the court.

25 (4) After notice and hearing, the court shall

1 determine the amount of the elective share and shall order
 2 its payment from the assets of the augmented net estate or
 3 by contribution as appears appropriate under 72-2-706. If it
 4 appears that a fund or property included in the augmented
 5 net estate has not come into the possession of the personal
 6 representative or has been distributed by the personal
 7 representative, the court nevertheless shall fix the
 8 liability of any person who has any interest in the fund or
 9 property or who has possession thereof, whether as trustee
 10 or otherwise. The proceeding may be maintained against fewer
 11 than all persons against whom relief could be sought, but no
 12 person is subject to contribution in any greater amount than
 13 he would have been if relief had been secured against all
 14 persons subject to contribution.

15 (5) The order or judgment of the court may be enforced
 16 as necessary in suit for contribution or payment in other
 17 courts of this state or other jurisdictions."

18 Section 9. Section 72-3-907, MCA, is amended to read:

19 "72-3-907. Purchases from distributees protected. If
 20 property distributed in kind or a security interest therein
 21 is acquired for value by a purchaser from or lender for
 22 value--from to a distributee who has received an instrument
 23 or deed of distribution from the personal representative, or
 24 is so acquired by a purchaser from or lender to a transferee
 25 from such distributee, the purchaser or lender takes title

1 free of rights of any claims-of-the-estate interested person
 2 in the estate and incurs no personal liability to the estate
 3 or to any interested person, whether or not the distribution
 4 was proper or supported by court order or the authority of
 5 the personal representative was terminated before execution
 6 of the instrument or deed.

7 This section protects a purchaser from or lender to a
 8 distributee who, as personal representative, has executed a
 9 deed of distribution to himself, as well as a purchaser from
 10 or lender to any other distributee or his transferee. To be
 11 protected under this provision, a purchaser or lender need
 12 not inquire whether a personal representative acted properly
 13 in making the distribution in kind, even if the personal
 14 representative and the distributee are the same person, or
 15 whether the authority of the personal representative had
 16 terminated before the distribution. Any recorded instrument
 17 described in this section shall be prima facie evidence that
 18 such transfer was made for value.

19 For purposes of this section, the term purchaser
 20 includes any lessee or other person acquiring any interest
 21 in the property for value."

22 Section 10. Section 72-3-1005, MCA, is amended to
 23 read:

24 "72-3-1005. Final accounting required to close estate.

25 (1) Before an estate may be finally closed and the personal

1 representative relieved of his duties and obligations, he
 2 shall either file with the court or deliver to all
 3 interested persons an accounting under oath showing the
 4 amount of money received and expended by him, the amount of
 5 all claims presented against the estate, and the names of
 6 the claimants and all other matters necessary to show the
 7 state of its affairs.

8 (2) Any interested person at any time during the
 9 course of the administration of an estate may for good cause
 10 shown require further accountings.

11 (3) If the personal representative is the sole
 12 residual beneficiary of the estate, no accounting need be
 13 made."

14 Section 11. Section 72-3-1006, MCA, is amended to
 15 read:

16 "72-3-1006. Certificate or receipt showing taxes paid
 17 required to close estate. (1) In all probate proceedings
 18 under this code, before final distribution to successors is
 19 made and before any petition is granted under 72-3-1001,
 20 72-3-1002, 72-3-1003, or 72-3-1004, there shall have been
 21 filed with the clerk:

22 (a) a certificate from the department of revenue
 23 stating that any inheritance tax due on the assets of the
 24 estate has been paid; or

25 (b) an agreement with the department of revenue for

1 extension of time for payment of inheritance taxes; or

2 (c) a receipt from the county treasurer stating that
3 any inheritance tax due on the assets of the estate has been
4 paid.

5 (2) This section shall not prohibit such partial
6 distribution as may become necessary in the course of
7 administration."

8 Section 12. Section 72-4-201, MCA, is amended to read:

9 "72-4-201. Jurisdiction by act of foreign personal
10 representative. (1) A foreign personal representative by
11 ~~doing any of the acts described in part 3 or by~~ submits
12 personally to the jurisdiction of the courts of this state
13 in any proceeding relating to the estate by:

14 (a) filing authenticated copies of his appointment as
15 provided in [section 15 16];

16 (b) receiving payment of money or taking delivery of
17 personal property under 72-4-306; or

18 (c) doing any act as a personal representative in this
19 state that would have given the state jurisdiction over him
20 as an individual ~~submits himself personally to the~~
21 ~~jurisdiction of the courts of this state in any proceeding~~
22 ~~relating to the estate.~~

23 (2) ~~Jurisdiction which arises solely from receiving~~
24 ~~payment of money or taking delivery of personal property~~
25 under subsection (1)(b) is limited to the money or value of

1 personal property collected."

2 Section 13. Section 72-4-301, MCA, is amended to read:

3 "72-4-301. Powers of foreign representative
4 ~~generally limited powers upon limited compliance. (1)~~
5 ~~Except as limited by 72-4-306, a~~ A domiciliary foreign
6 personal representative who has complied with 72-4-303 ~~and~~
7 72-4-304 [section 15 16] may exercise as to assets in this
8 state all powers of a local personal representative and may
9 maintain actions and proceedings in this state, subject to
10 any conditions imposed upon nonresident parties generally.

11 (2) ~~A domiciliary foreign personal representative who~~
12 ~~has complied with all the requirements of 72-4-303(1) except~~
13 ~~for the filing of an inventory and appraisal may, when~~
14 ~~necessary to protect the estate of the decedent and upon~~
15 ~~appointment by the clerk of court, exercise the powers of a~~
16 ~~special administrator described in chapter 3, part 7."~~

17 Section 14. Section 72-4-306, MCA, is amended to read:

18 "72-4-306. Payment of debt and delivery of property to
19 foreign representative. At any time after the expiration of
20 60 days from the death of a nonresident decedent, any person
21 indebted to the estate of the nonresident decedent or having
22 possession or control of personal property or of an
23 instrument evidencing a debt, obligation, stock, or chose in
24 action belonging to the estate of the nonresident decedent
25 may pay the debt, deliver the personal property, or the

1 instrument evidencing the debt, obligation, stock, or chose
 2 in action to the domiciliary foreign personal representative
 3 of the nonresident decedent upon being presented with a
 4 ~~certificate from the clerk of the court for the county where~~
 5 ~~the domiciliary foreign personal representative has filed~~
 6 ~~his affidavit as described in 72-4-303, and a certificate~~
 7 ~~from the department of revenue as described in 72-4-304,~~
 8 proof of his appointment and an affidavit made by or on
 9 behalf of the representative, stating:

- 10 (1) the date of the death of the nonresident decedent;
- 11 (2) that no local administration, or application or
- 12 petition therefor, is pending in this state;
- 13 (3) that the domiciliary foreign personal
- 14 representative is entitled to payment or delivery."

15 Section 15. Section 72-4-308, MCA, is amended to read:
 16 "72-4-308. Payment or delivery to foreign
 17 representative prohibited by resident creditor notice --
 18 ~~court order to allow payment or delivery. (1) Payment or~~
 19 ~~delivery under 72-4-306 may not be made if a resident~~
 20 ~~creditor of the nonresident decedent has notified the debtor~~
 21 ~~of the nonresident decedent or the person having possession~~
 22 ~~of the personal property belonging to the nonresident~~
 23 ~~decedent that the debt should not be paid or the property~~
 24 ~~delivered to the domiciliary foreign personal~~
 25 ~~representative.~~

1 ~~(2) in cases under subsection (1), the foreign~~
 2 ~~personal representative must seek an order of the court in~~
 3 ~~which he has filed his affidavit to obtain payment or~~
 4 ~~delivery unless the notification by the resident creditor is~~
 5 ~~withdrawn"~~

6 NEW SECTION. Section 16. Proof of authority -- bond.
 7 If no local administration or application or petition
 8 therefor is pending in this state, a domiciliary foreign
 9 personal representative may file with a court in this state
 10 in a county in which property belonging to the decedent is
 11 located, authenticated copies of his appointment and of any
 12 official bond he has given.

13 Section 17. Codification instruction. (1) Sections 4
 14 and 16 are intended to be codified as an integral part of
 15 Title 72, chapters 1 through 5 and chapter 16, part 6. The
 16 provisions of Title 72, chapters 1 through 5 and chapter 16,
 17 part 6, apply to sections 4 and 16.

18 (2) THE CODE COMMISSIONER IS INSTRUCTED TO CODIFY
 19 SECTION 16 AND TO RENUMBER TITLE 72, CHAPTER 4, PART 3 IN
 20 SUCH A WAY THAT THE SECTIONS OF TITLE 72, CHAPTER 4, PART 3
 21 ARE IN THE SAME NUMERICAL ORDER AS THE CORRESPONDING
 22 SECTIONS OF THE UNIFORM PROBATE CODE, 1977 EDITION, AS
 23 PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON
 24 UNIFORM STATE LAWS.

25 Section 18. Repealer. Section 72-3-608, MCA, is

SB 0038/02

1 repealed.

-End-