

HOUSE BILL NO. 355

INTRODUCED BY SANDS, RAMIREZ, ADDY, SPAETH, YARDLEY

BY REQUEST OF THE MONTANA SUPREME COURT AND THE
MONTANA SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE

IN THE HOUSE

January 19, 1983	Introduced and referred to Committee on Judiciary.
February 4, 1983	Committee recommend bill do pass. Report adopted.
February 5, 1983	Bill printed and placed on members' desks.
February 7, 1983	Second reading, do pass.
February 8, 1983	Considered correctly engrossed.
February 9, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 10, 1983	Introduced and referred to Committee on Judiciary.
March 1, 1983	Committee recommend bill be concurrent in. Report adopted.
March 3, 1983	Second reading, concurred in.
March 5, 1983	Third reading, concurred in. Ayes, 48; Noes, 0.

IN THE HOUSE

March 5, 1983	Returned to House.
March 7, 1983	Sent to enrolling. Reported correctly enrolled.

1 HOUSE BILL NO. 355
 2 INTRODUCED BY Sen. Ramsey, Mr. Spaeth
 3 BY REQUEST OF THE MONTANA SUPREME COURT AND THE Montana
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5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 7 CLARIFY THE LAWS RELATING TO EVIDENCE; AMENDING SECTIONS
 8 26-1-101, 26-1-102, 26-1-201 THROUGH 26-1-203, 26-1-302,
 9 26-1-303, 26-1-401, 26-1-402, 26-1-501, 26-1-601, 26-1-602,
 10 26-1-607, 26-1-622, 26-1-623, 26-1-805, 26-2-104, 26-2-302,
 11 AND 26-2-404, MCA; REPEALING SECTIONS 26-1-107, 26-1-108,
 12 AND 26-1-621, MCA."

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

15 Section 1. Section 26-1-101, MCA, is amended to read:

16 "26-1-101. General definitions. (1) The "Direct
 17 examination" is the first examination of a witness by the
 18 party producing him is denominated the "direct examination";
 19 on a particular matter. "Cross examination" is the
 20 examination of the same a witness upon the same matter by
 21 the adverse by a party, the "cross examination". The direct
 22 examination must be completed before the cross examination
 23 begins unless the court otherwise directs other than the
 24 direct examiner.

25 (2) ~~"Judicial evidence"~~ "Evidence" is the means

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 9 ~~not allowed, except in the sound discretion of the court~~
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 15 oath is received as evidence for any purpose, whether such
 16 declaration be made on oral examination or by deposition or
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19 "26-1-102. Definitions -- kinds of evidence.

20 (1) (a) "Conclusive evidence" or "unanswerable evidence" is
 21 that which the law does not permit to be contradicted. For
 22 example, the record of a court of competent jurisdiction
 23 cannot be contradicted by the parties to it.

24 (b) No evidence is by law made conclusive or
 25 unanswerable unless so declared by this code statute.

1 (2) "Cumulative evidence" is additional evidence of
2 the same character to the same point.

3 (3) "Corroborative evidence" is additional evidence of
4 a different character to the same point.

5 ~~(3)(4)~~ "Direct evidence" is that which proves the a
6 fact in dispute directly, without an inference or
7 presumption, and which in itself, if true, conclusively
8 establishes that fact. ~~For example, if the fact in dispute~~
9 ~~be on agreement, the evidence of a witness who was present~~
10 ~~and witnessed the making of it is direct.~~

11 ~~(4)(a)(5)~~ "Indirect evidence" "Circumstantial
12 evidence" is that which tends to establish the a fact in
13 dispute by proving another and which, though true, does not
14 of itself conclusively establish that fact but affords an
15 inference or presumption of its existence. ~~For example, a~~
16 ~~witness proves an admission of the party to the fact in~~
17 ~~dispute. This proves a fact from which the fact in dispute~~
18 ~~is inferred.~~

19 ~~(b) Indirect evidence is of two kinds:~~

20 ~~(i) inferences; and~~

21 ~~(ii) presumptions.~~

22 ~~(5)(6)~~ "Prima facie evidence" is that which suffices
23 ~~for the proof of~~ proves a particular fact until contradicted
24 and overcome by other evidence. ~~For example, the certificate~~
25 ~~of a recording officer is prima facie evidence of a record.~~

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7 the facts preliminary to such admission, the construction of
8 statutes and other writings, and other rules of evidence,
9 ~~are to~~ must be decided by the court, ~~and all discussions of~~
10 ~~law addressed to it. Whenever the knowledge of the court is~~
11 ~~by this code, made evidence of a fact, the court is to~~
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14 Section 4. Section 26-1-202, MCA, is amended to read:

15 "26-1-202. Questions of fact. ~~At~~ If a trial is by
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18 decided by the jury, and all evidence thereon ~~is to~~ must be
19 addressed to them, except when ~~as~~ otherwise provided by this
20 ~~code law. If the trial of a question of fact is not by jury,~~
21 all evidence thereon must be addressed to the trial court,
22 which shall decide such question."

23 Section 5. Section 26-1-203, MCA, is amended to read:

24 "26-1-203. Who to judge effect or ~~and~~ value of
25 evidence. The jury, subject to the control of the court, in

~~the cases specified in this code~~ is the judge of the effect or and value of evidence addressed to it, except when the evidence is declared to be conclusive. The court is the judge of the effect and value of evidence addressed to it."

Section 6. Section 26-1-302, MCA, is amended to read:

"26-1-302. Witness presumed to speak the truth -- ~~how presumption rebutted.~~ A witness is presumed to speak the truth. ~~This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, by evidence affecting his motives or his character for truth, honesty, or integrity, or by contradictory evidence; and the~~ The jury or the court in the absence of a jury is the exclusive judge of his credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness' testimony; such matters include but are not limited to:

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness' testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness' character for truth, honesty, or

integrity;

(6) the extent of the witness' capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which he testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness' testimony."

Section 7. Section 26-1-303, MCA, is amended to read:

"26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions ~~that:~~

(1) that their power of judging of the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) that they are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) that a witness false in one part of his testimony is to be distrusted in others;

(4) that the testimony of an accomplice a person legally accountable for the acts of the accused ought to be viewed with distrust, and the evidence of the orat

1 ~~admissions of a party with caution;~~

2 ~~(5) that evidence is to be estimated not only by its~~
 3 ~~own intrinsic weight but also according to the evidence~~
 4 ~~which it is in the power of one side to produce and of the~~
 5 ~~other to contradict; and therefore~~

6 ~~(6)(5)~~ that if weaker and less satisfactory evidence
 7 is offered when and it appears that it is within the power
 8 of the party to offer stronger and more satisfactory was
 9 within the power of the party evidence, the evidence offered
 10 should be viewed with distrust."

11 Section 8. Section 26-1-401, MCA, is amended to read:

12 "26-1-401. Who has the burden of producing evidence.
 13 ~~The party holding the affirmative of the issue must produce~~
 14 ~~the evidence to prove it; therefore, the initial~~ burden of
 15 proof lies producing evidence as to a particular fact is on
 16 the party who would be defeated if no evidence were given on
 17 either side. Hereafter, the burden of producing evidence is
 18 on the party who would suffer a finding against him in the
 19 absence of further evidence."

20 Section 9. Section 26-1-402, MCA, is amended to read:

21 "26-1-402. Who has the burden of persuasion. Each
 22 Except as otherwise provided by law, a party must prove his
 23 own affirmative allegations. Evidence need not be given in
 24 support of a negative allegation, except when such negative
 25 allegation is an essential part of the statement of the

1 ~~right or title on which the cause of action is founded, nor~~
 2 ~~even in such cases when the allegation is a denial of the~~
 3 ~~existence of a document, the custody of which belongs to the~~
 4 ~~opposite party has the burden of persuasion as to each fact~~
 5 ~~the existence or nonexistence of which is essential to the~~
 6 claim for relief or defense he is asserting."

7 Section 10. Section 26-1-501, MCA, is amended to read:

8 "26-1-501. Inference defined. An "inference" is a
 9 deduction which the ~~reason of the jury makes~~ trier of fact
 10 may make from the facts proved, without an express direction
 11 of the law to that effect evidence."

12 Section 11. Section 26-1-601, MCA, is amended to read:

13 "26-1-601. ~~Complete--list~~ List of conclusive
 14 presumptions. The following presumptions ~~and no others~~ are
 15 deemed conclusive:

16 ~~(1) a malicious and guilty intent from the deliberate~~
 17 ~~commission of an unlawful act for the purpose of injuring~~
 18 ~~another;~~

19 ~~(2) the truth of the facts recited, from the recital~~
 20 ~~in a written instrument between the parties thereto or their~~
 21 ~~successors in interest by a subsequent title; but this rule~~
 22 ~~does not apply to the recital of a consideration;~~

23 ~~(3)(1)~~ the truth of a declaration, act, or omission of
 24 a party, as against that party in any litigation arising out
 25 of such declaration, act, or omission, whenever a party he

1 has, by his own such declaration, act, or omission,
2 intentionally ~~and deliberately~~ led another to believe a
3 particular thing true and to act upon such belief; ~~he cannot~~
4 ~~in any litigation arising out of such declaration, act, or~~
5 ~~omission be permitted to falsify it;~~

6 ~~(4)(2)~~ that a tenant is not permitted to deny the
7 title of his landlord at the time of the commencement of the
8 relation;

9 ~~(5) the issue of a wife cohabiting with her husband~~
10 ~~who is not impotent is indisputably presumed to be~~
11 ~~legitimate;~~

12 ~~(6)(3)~~ the judgment or order of a court, when which is
13 declared by this code statute to be conclusive; ~~but such~~
14 ~~judgment or order must be alleged in the pleadings if there~~
15 ~~be an opportunity to do so; if there be no such opportunity,~~
16 ~~the judgment or order may be used as evidence;~~

17 ~~(7)(4)~~ any other presumption which, by statute, is
18 expressly made conclusive."

19 Section 12. Section 26-1-602, MCA, is amended to read:

20 "26-1-602. ~~Definition and examples of disputable~~
21 Disputable presumptions. All other presumptions are
22 ~~satisfactory if uncontradicted. They are denominated~~
23 "disputable presumptions" and may be controverted by other
24 evidence. The following are of that kind:

25 (1) ~~that a~~ A person is innocent of crime or wrongs;

1 (2) ~~that on~~ An unlawful act was done with an unlawful
2 intent;

3 (3) ~~that a~~ A person intends the ordinary consequence
4 of his voluntary act;

5 (4) ~~that a~~ A person takes ordinary care of his own
6 concerns;

7 (5) ~~that evidence~~ Evidence willfully suppressed would
8 be adverse if produced;

9 (6) ~~that higher~~ More satisfactory evidence would be
10 adverse from inferior being produced if weaker and less
11 satisfactory evidence is offered and it is within the power
12 of the party to offer more satisfactory evidence.

13 (7) ~~that money~~ Money paid by one to another was due to
14 the latter;

15 (8) ~~that a~~ A thing delivered by one to another
16 belonged to the latter;

17 (9) ~~that on~~ When the instrument evidencing an
18 obligation has been delivered up to the debtor, the
19 obligation has been paid;

20 (10) ~~that former~~ Prior rent or installments have been
21 paid when a receipt for ~~later~~ later rent or installments is
22 produced;

23 (11) ~~that things~~ Things which a person possesses are
24 owned by him;

25 (12) ~~that a~~ A person is the owner of property from

1 ~~exercising if he exercises~~ acts of ownership over it or from
2 ~~there is~~ common reputation of his ownership~~1~~

3 (13) ~~that-a~~ A person in possession of an order on
4 himself for the payment of money~~-on or~~ the delivery of a
5 thing~~y~~ has paid the money or delivered the thing
6 accordingly~~1~~

7 (14) ~~that--a~~ A person acting in a public office was
8 regularly appointed to it~~1~~

9 (15) ~~that-officer~~ Official duty has been regularly
10 performed~~1~~

11 (16) ~~that--a~~ A court or judge~~y~~ acting as such, whether
12 in this state or any other state or country, was acting in
13 the lawful exercise of its or his jurisdiction~~1~~

14 (17) ~~that--a~~ A judicial record, when not conclusive,
15 does still correctly determine or set forth the rights of
16 the parties~~1~~

17 (18) ~~that--all~~ All matters within an issue were laid
18 before the jury and passed upon by them~~1~~ and~~y~~ in like
19 manner, ~~that~~ all matters within a submission to arbitration
20 were laid before the arbitrators and passed upon by them~~1~~

21 (19) ~~that--private~~ Private transactions have been fair
22 and regular~~1~~

23 (20) ~~that--the~~ The ordinary course of business has been
24 followed~~1~~

25 (21) ~~that--a~~ A promissory note or bill of exchange was

1 given or endorsed for a sufficient consideration~~1~~

2 (22) ~~that--an~~ An endorsement of a negotiable promissory
3 note or bill of exchange was made at the time and place of
4 making the note or bill~~1~~

5 (23) ~~that--a~~ A writing is truly dated~~1~~

6 (24) ~~that--a~~ A letter duly directed and mailed was
7 received in the regular course of the mail~~1~~

8 (25) There is an identity of persons from ~~when there is~~
9 ~~an~~ identity of names~~1~~ names

10 (26) ~~that--a~~ A person not heard from in 7 years is
11 dead~~1~~

12 (27) ~~that--acquiescence~~ Acquiescence followed from a
13 belief that the thing acquiesced in was conformable to the
14 right or fact~~1~~

15 (28) ~~that--things~~ Things have happened according to the
16 ordinary course of nature and the ordinary habits of life~~1~~

17 (29) ~~that--persons~~ Persons acting as partners have
18 entered into a contract of partnership~~1~~

19 (30) ~~that--a~~ A man and a woman deporting themselves as
20 husband and wife have entered into a lawful contract of
21 marriage~~1~~

22 (31) ~~that--a~~ A child born in lawful wedlock, there being
23 no divorce from bed and board, is legitimate~~1~~

24 (32) ~~that--a~~ A thing once proved to exist continues as
25 long as is usual with things of that nature~~1~~

~~(33) that the law has been obeyed.~~

~~(34) that a document or writing more than 30 years old is genuine when the same has been since generally acted upon as genuine by persons having an interest in the question and its custody has been satisfactorily explained.~~

~~(35)(34)~~ that a printed and published book purporting to be printed or published by public authority was so printed or published.

~~(36)(35)~~ that a printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

~~(37)(36)~~ that a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him, when such this presumption applies when it is necessary to perfect the title of such person or his successor in interest.

~~(38)(37)~~ the when there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, ~~is presumptive evidence of his intention he intended~~ to dedicate it to the public for that purpose.

~~(39)(38)~~ that there there was a good and sufficient consideration for a written contract.

Section 13. Section 26-1-607, MCA, is amended to read:

"26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and when the decedent ~~was~~ in a position to know the facts stated therein, ~~may be~~ read as are prima facie evidence of the facts stated therein, in the following cases:

(1) when the writing or entry was made against the interest of the person making it;

(2) when it was made in a professional capacity and in the ordinary course of professional conduct;

(3) when it was made in the performance of a duty specially enjoined by law."

Section 14. Section 26-1-622, MCA, is amended to read:

"26-1-622. Official reports and records made pursuant to federal law prima facie evidence. An official written report or record, or duly certified copy thereof, that a person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy or is dead or is alive, made by any officer or employee of the United States authorized by ~~the act referred to in 26-1-621 or by any other~~ law of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered,

1 besieged, or captured by an enemy ~~or-is-dead-or-is-alive~~, as
2 the case may be."

3 Section 15. Section 26-1-623, MCA, is amended to read:

4 "26-1-623. Presumption of authenticity of finding,
5 report, or record. For the purposes of ~~26-1-621--and~~
6 26-1-622, any finding, report, or record or duly certified
7 copy thereof purporting to have been signed by such an
8 officer or employee of the United States as is described in
9 ~~said-sections that section~~ shall prima facie be deemed to
10 have been signed and issued by such an officer or employee
11 pursuant to law, and the person signing same shall prima
12 facie be deemed to have acted within the scope of his
13 authority. If a copy purports to have been certified by a
14 person authorized by law to certify the same, such certified
15 copy shall be prima facie evidence of his authority so to
16 certify."

17 Section 16. Section 26-1-805, MCA, is amended to read:

18 "26-1-805. Doctor-patient privilege. A Except as
19 provided in Rule 35, Montana Rules of Civil Procedure, a
20 licensed physician or surgeon cannot, without the consent of
21 his patient, be examined in a civil action as to any
22 information acquired in attending the patient which was
23 necessary to enable him to prescribe or act for the
24 patient."

25 Section 17. Section 26-2-104, MCA, is amended to read:

1 "26-2-104. Disobedience -- how punished. Disobedience
2 to a subpoena or a refusal to be sworn or to answer as a
3 witness or to subscribe an affidavit or deposition, when
4 required, may be punished as a contempt by the court or
5 ~~officer~~ issuing the subpoena or requiring the witness to be
6 ~~so sworn, to so answer, or to so subscribe~~; and if the
7 witness be a party, his complaint or answer may be stricken
8 out."

9 Section 18. Section 26-2-302, MCA, is amended to read:

10 "26-2-302. Witness required to answer questions. A
11 witness must answer questions legal and pertinent to the
12 matter in issue though his answer may establish a claim
13 against himself, but he need not give an answer which will
14 have a tendency to subject him to punishment for a felony,
15 nor need he give an answer which will have a direct tendency
16 to degrade his character unless it be to the very fact in
17 issue or to a fact from which the fact in issue would be
18 presumed. ~~But--a witness must answer as to the fact of his~~
19 ~~previous-conviction-for-felony."~~

20 Section 19. Section 26-2-404, MCA, is amended to read:

21 "26-2-404. Affidavit of arrested witness --
22 exoneration of arresting officer. (1) An officer is not
23 ~~liable to the party~~ for making the arrest in ignorance of
24 the facts creating the exoneration but is liable for any
25 subsequent detention of the party ~~witness~~ if such party

1 ~~elate~~ witness claims the exemption and ~~make~~ makes an
2 affidavit stating that:

3 (a) he has been served with a subpoena to attend as a
4 witness before a court, officer, or other person, specifying
5 the same, the place of attendance, and the action or
6 proceeding in which the subpoena was issued;

7 (b) he has not thus been served by his own procurement
8 with the intention of avoiding arrest; and

9 (c) he is at the time going to the place of
10 attendance, returning therefrom, or remaining there in
11 obedience to the subpoena.

12 (2) The affidavit may be taken by the officer and
13 exonerates him from liability for discharging the witness
14 when arrested."

15 NEW SECTION. Section 20. Repealer. Sections 26-1-107,
16 26-1-108, and 26-1-621, MCA, are repealed.

-End-

Approved by Committee
on Judiciary

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11 ~~character for truth, honesty, or integrity, or by~~
12 ~~contradictory evidence; and the~~ The jury or the court in the
13 absence of a jury is the exclusive judge of his credibility.
14 This presumption may be controverted and overcome by any
15 matter that has a tendency to disprove the truthfulness of a
16 witness' testimony; such matters include but are not limited
17 to:

18 (1) the demeanor or manner of the witness while
19 testifying;

20 (2) the character of the witness' testimony;

21 (3) bias of the witness for or against any party
22 involved in the case;

23 (4) interest of the witness in the outcome of the
24 litigation or other motive to testify falsely;

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18 not produce conviction in their minds, against a less number
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20 minds;

21 (3) that a witness false in one part of his testimony
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 2 ~~{5} that evidence is to be estimated not only by its~~
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6 ~~{6}{5}~~ that if weaker and less satisfactory evidence
 7 is offered when and it appears that it is within the power
 8 of the party to offer stronger and more satisfactory was
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 13 ~~The party holding the affirmative of the issue must produce~~
 14 ~~the evidence to prove it; therefore the initial~~ burden of
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 16 the party who would be defeated if no evidence were given on
 17 either side. Thereafter, the burden of producing evidence is
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 25 allegation is an essential part of the statement of the

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 17 ~~commission of an unlawful act for the purpose of injuring~~
 18 ~~another;~~

19 ~~{2} the truth of the facts recited, from the recital~~
 20 ~~in a written instrument between the parties thereto or their~~
 21 ~~successors in interest by a subsequent title; but this rule~~
 22 ~~does not apply to the recital of a consideration;~~

23 ~~{3}{1} the truth of a declaration, act, or omission of~~
 24 a party, as against that party in any litigation arising out
 25 of such declaration, act, or omission, whenever a party has

1 has, by his own such declaration, act, or omission,
2 intentionally ~~and deliberately~~ led another to believe a
3 particular thing true and to act upon such belief; ~~he cannot~~
4 ~~in any litigation arising out of such declaration, act, or~~
5 ~~omission be permitted to falsify it;~~

6 ~~(4)(2) that~~ a tenant is not permitted to deny the
7 title of his landlord at the time of the commencement of the
8 relation;

9 ~~(5) the issue of a wife cohabiting with her husband~~
10 ~~who is not impotent is indisputably presumed to be~~
11 ~~legitimate;~~

12 ~~(6)(3) the judgment or order of a court, when which is~~
13 ~~declared by this code statute to be conclusive; but such~~
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15 ~~be an opportunity to do so; if there be no such opportunity,~~
16 ~~the judgment or order may be used as evidence;~~

17 ~~(7)(4) any other presumption which, by statute, is~~
18 ~~expressly made conclusive."~~

19 Section 12. Section 26-1-602, MCA, is amended to read:

20 "26-1-602. ~~Definition and examples of disputable~~
21 Disputable presumptions. All other presumptions are
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23 "disputable presumptions" and may be controverted by other
24 evidence. The following are of that kind:

25 (1) ~~that a~~ A person is innocent of crime or wrong;

1 (2) ~~that on~~ An unlawful act was done with an unlawful
2 intent;

3 (3) ~~that a~~ A person intends the ordinary consequence
4 of his voluntary act;

5 (4) ~~that a~~ A person takes ordinary care of his own
6 concerns;

7 (5) ~~that evidence~~ Evidence willfully suppressed would
8 be adverse if produced;

9 (6) ~~that higher~~ More satisfactory evidence would be
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11 ~~satisfactory evidence is offered and it is within the power~~
12 ~~of the party to offer more satisfactory evidence.~~

13 (7) ~~that money~~ Money paid by one to another was due to
14 the latter;

15 (8) ~~that a~~ A thing delivered by one to another
16 belonged to the latter;

17 (9) ~~that on~~ When the instrument evidencing an
18 obligation ~~has been~~ delivered up to the debtor, ~~the~~
19 ~~obligation~~ has been paid;

20 (10) ~~that former~~ Prior rent or installments have been
21 paid when a receipt for ~~later~~ later rent or installments is
22 produced;

23 (11) ~~that things~~ Things which a person possesses are
24 owned by him;

25 (12) ~~that a~~ A person is the owner of property from

1 ~~exercising if he exercises~~ acts of ownership over it or from
2 ~~there is~~ common reputation of his ownership~~1~~

3 (13) ~~that-a~~ A person in possession of an order on
4 himself for the payment of money~~on or~~ the delivery of a
5 thing~~y~~ has paid the money or delivered the thing
6 accordingly~~1~~

7 (14) ~~that--a~~ A person acting in a public office was
8 regularly appointed to it~~1~~

9 (15) ~~that-official~~ Official duty has been regularly
10 performed~~1~~

11 (16) ~~that--a~~ A court or judge~~y~~ acting as such, whether
12 in this state or any other state or country, was acting in
13 the lawful exercise of its or his jurisdiction~~1~~

14 (17) ~~that--a~~ A judicial record, when not conclusive,
15 does still correctly determine or set forth the rights of
16 the parties~~1~~

17 (18) ~~that--all~~ All matters within an issue were laid
18 before the jury and passed upon by them~~1~~ and~~y~~ in like
19 manner, ~~that~~ all matters within a submission to arbitration
20 were laid before the arbitrators and passed upon by them~~1~~

21 (19) ~~that--private~~ Private transactions have been fair
22 and regular~~1~~

23 (20) ~~that--the~~ The ordinary course of business has been
24 followed~~1~~

25 (21) ~~that--a~~ A promissory note or bill of exchange was

1 given or endorsed for a sufficient consideration~~1~~

2 (22) ~~that--on~~ An endorsement of a negotiable promissory
3 note or bill of exchange was made at the time and place of
4 making the note or bill~~1~~

5 (23) ~~that--a~~ A writing is truly dated~~1~~

6 (24) ~~that--a~~ A letter duly directed and mailed was
7 received in the regular course of the mail~~1~~

8 (25) ~~There is an~~ identity of persons from ~~when there is~~
9 an identity of name~~1~~ names~~1~~

10 (26) ~~that--a~~ A person not heard from in 7 years is
11 dead~~1~~

12 (27) ~~that--acquiescence~~ Acquiescence followed from a
13 belief that the thing acquiesced in was conformable to the
14 right or fact~~1~~

15 (28) ~~that--things~~ Things have happened according to the
16 ordinary course of nature and the ordinary habits of life~~1~~

17 (29) ~~that--persons~~ Persons acting as partners have
18 entered into a contract of partnership~~1~~

19 (30) ~~that--a~~ A man and a woman deporting themselves as
20 husband and wife have entered into a lawful contract of
21 marriage~~1~~

22 (31) ~~that--a~~ A child born in lawful wedlock, there being
23 no divorce from bed and board, is legitimate~~1~~

24 (32) ~~that--a~~ A thing once proved to exist continues as
25 long as is usual with things of that nature~~1~~

(33) that the law has been obeyed.

~~(34) that a document or writing more than 30 years old is genuine when the same has been since generally acted upon as genuine by persons having an interest in the question and its custody has been satisfactorily explained.~~

~~(35)(34)~~ that a printed and published book purporting to be printed or published by public authority was so printed or published.

~~(36)(35)~~ that a printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

~~(37)(36)~~ that a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him, when such presumption applies when it is necessary to perfect the title of such person or his successor in interest.

~~(38)(37)~~ the When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, is presumptive evidence of his intention he intended to dedicate it to the public for that purpose.

~~(39)(38)~~ that there There was a good and sufficient consideration for a written contract.

Section 13. Section 26-1-607, MCA, is amended to read:

"26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and when the decedent ~~was~~ in a position to know the facts stated therein, may be read as are prima facie evidence of the facts stated therein, in the following cases:

(1) when the writing or entry was made against the interest of the person making it;

(2) when it was made in a professional capacity and in the ordinary course of professional conduct;

(3) when it was made in the performance of a duty specially enjoined by law."

Section 14. Section 26-1-622, MCA, is amended to read:

"26-1-622. Official reports and records made pursuant to federal law prima facie evidence. An official written report or record, or duly certified copy thereof, that a person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy ~~or is dead or is alive~~, made by any officer or employee of the United States authorized by the ~~act referred to in 26-1-621 or by any other law~~ of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is dead or alive; missing; missing in action; interned in a neutral country; or beleaguered,

1 besieged, or captured by an enemy ~~or is dead or is alive~~, as
2 the case may be."

3 Section 15. Section 26-1-623, MCA, is amended to read:

4 "26-1-623. Presumption of authenticity of findings,
5 report, or record. For the purposes of ~~26-1-621 and~~
6 26-1-622, any findings, report, or record or duly certified
7 copy thereof purporting to have been signed by such an
8 officer or employee of the United States as is described in
9 ~~said sections~~ that section shall prima facie be deemed to
10 have been signed and issued by such an officer or employee
11 pursuant to law, and the person signing same shall prima
12 facie be deemed to have acted within the scope of his
13 authority. If a copy purports to have been certified by a
14 person authorized by law to certify the same, such certified
15 copy shall be prima facie evidence of his authority so to
16 certify."

17 Section 16. Section 26-1-805, MCA, is amended to read:

18 "26-1-805. Doctor-patient privilege. A ~~Except as~~
19 ~~provided in Rule 35, Montana Rules of Civil Procedure, a~~
20 licensed physician or surgeon cannot, without the consent of
21 his patient, be examined in a civil action as to any
22 information acquired in attending the patient which was
23 necessary to enable him to prescribe or act for the
24 patient."

25 Section 17. Section 26-2-104, MCA, is amended to read:

1 "26-2-104. Disobedience — how punished. Disobedience
2 to a subpoena or a refusal to be sworn or to answer as a
3 witness or to subscribe an affidavit or deposition, when
4 required, may be punished as a contempt by the court or
5 ~~officer~~ issuing the subpoena or requiring the witness to be
6 ~~so sworn, to so answer, or to so subscribe~~; and if the
7 witness be a party, his complaint or answer may be stricken
8 out."

9 Section 18. Section 26-2-302, MCA, is amended to read:

10 "26-2-302. Witness required to answer questions. A
11 witness must answer questions legal and pertinent to the
12 matter in issue though his answer may establish a claim
13 against himself, but he need not give an answer which will
14 have a tendency to subject him to punishment for a felony,
15 nor need he give an answer which will have a direct tendency
16 to degrade his character unless it be to the very fact in
17 issue or to a fact from which the fact in issue would be
18 presumed. ~~But a witness must answer as to the fact of his~~
19 ~~previous conviction for felony."~~

20 Section 19. Section 26-2-404, MCA, is amended to read:

21 "26-2-404. Affidavit of arrested witness —
22 exoneration of arresting officer. (1) An officer is not
23 liable ~~to the party~~ for making the arrest in ignorance of
24 the facts creating the exoneration but is liable for any
25 subsequent detention of the ~~party~~ witness if such party

1 ~~claim~~ witness claims the exemption and ~~make~~ makes an
2 affidavit stating that:

3 (a) he has been served with a subpoena to attend as a
4 witness before a court, officer, or other person, specifying
5 the same, the place of attendance, and the action or
6 proceeding in which the subpoena was issued;

7 (b) he has not thus been served by his own procurement
8 with the intention of avoiding arrest; and

9 (c) he is at the time going to the place of
10 attendance, returning therefrom, or remaining there in
11 obedience to the subpoena.

12 (2) The affidavit may be taken by the officer and
13 exonerates him from liability for discharging the witness
14 when arrested."

15 NEW SECTION. Section 20. Repealer. Sections 26-1-107,
16 26-1-108, and 26-1-621, MCA, are repealed.

-End-

1 HOUSE BILL NO. 355
 2 INTRODUCED BY Sandra Remmer, Phil Spaulth
 3 BY REQUEST OF THE MONTANA SUPREME COURT AND THE Bar
 4 MONTANA SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 7 CLARIFY THE LAWS RELATING TO EVIDENCE; AMENDING SECTIONS
 8 26-1-101, 26-1-102, 26-1-201 THROUGH 26-1-203, 26-1-302,
 9 26-1-303, 26-1-401, 26-1-402, 26-1-501, 26-1-601, 26-1-602,
 10 26-1-607, 26-1-622, 26-1-623, 26-1-805, 26-2-104, 26-2-302,
 11 AND 26-2-404, MCA; REPEALING SECTIONS 26-1-107, 26-1-108,
 12 AND 26-1-621, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 26-1-101, MCA, is amended to read:

16 "26-1-101. General definitions. (1) The "Direct
 17 examination" is the first examination of a witness by the
 18 ~~party producing him is denominated the "direct examination";~~
 19 ~~on a particular matter. "Cross examination" is the~~
 20 ~~examination of the same witness upon the same matter by~~
 21 ~~the adverse party, the "cross examination". The direct~~
 22 ~~examination must be completed before the cross examination~~
 23 ~~begins unless the court otherwise directs other than the~~
 24 direct examiner.

25 (2) ~~"Judicial evidence"~~ "Evidence" is the means

1 ~~sanctioned by law of ascertaining in a judicial proceeding~~
 2 ~~the truth respecting a question of facts including but not~~
 3 ~~limited to witness testimony, writings, physical objects, or~~
 4 ~~other things presented to the senses.~~

5 (3) A "leading question" is a question which suggests
 6 to the witness the answer which the examining party desires
 7 ~~is denominated a "leading question" or "suggestive~~
 8 ~~question". On a direct examination leading questions are~~
 9 ~~not allowed except in the sound discretion of the court~~
 10 ~~under special circumstances making it appear that the~~
 11 ~~interests of justice require it.~~

12 (4) ~~"Proof"~~ is the ~~effect of evidence~~ the
 13 establishment of a fact by evidence.

14 (5) A "witness" is a person whose declaration under
 15 oath is received as evidence for any purpose, whether such
 16 declaration be made on oral examination or by deposition or
 17 affidavit."

18 Section 2. Section 26-1-102, MCA, is amended to read:

19 "26-1-102. Definitions — kinds of evidence.

20 (1) (a) ~~"Conclusive evidence" or "unanswerable evidence"~~ is
 21 that which the law does not permit to be contradicted. For
 22 ~~example, the record of a court of competent jurisdiction~~
 23 ~~cannot be contradicted by the parties to it.~~

24 (b) No evidence is by law made conclusive or
 25 unanswerable unless so declared by this code statute.

-2- THIRD READING
 HB 355

(2) "Cumulative evidence" is additional evidence of the same character to the same point.

~~(3) "Corroborative evidence" is additional evidence of a different character to the same point.~~

~~(3)(4) "Direct evidence" is that which proves the a fact in dispute directly, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. For example, if the fact in dispute be an agreement, the evidence of a witness who was present and witnessed the making of it is direct.~~

~~(4) (a)(5) "Indirect evidence" "Circumstantial evidence" is that which tends to establish the a fact in dispute by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence. For example, a witness proves an admission of the party to the fact in dispute. This proves a fact from which the fact in dispute is inferred.~~

~~(b) Indirect evidence is of two kinds:~~

~~(i) inferences; and~~

~~(ii) presumptions.~~

~~(5)(6) "Prima facie evidence" is that which suffices for the proof of proves a particular fact until contradicted and overcome by other evidence. For example, the certificate of a recording officer is prima facie evidence of a record,~~

~~but it may afterward be rejected upon proof that there is no such record."~~

Section 3. Section 26-1-201, MCA, is amended to read:

"26-1-201. Questions of law. ~~At~~ Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, ~~are to~~ must be decided by the court, ~~and all discussions of law addressed to it. Whenever the knowledge of the court is by this code, made evidence of a fact, the court is to declare such knowledge to the jury, which is bound to accept it.~~"

Section 4. Section 26-1-202, MCA, is amended to read:

"26-1-202. Questions of fact. ~~At~~ If a trial is by jury, all questions of fact, where the trial is by jury, other than those mentioned in 26-1-201 ~~are to~~ must be decided by the jury, and all evidence thereon ~~is to~~ must be addressed to them, except when ~~as~~ otherwise provided by this code ~~law~~. If the trial of a question of fact is not by jury, all evidence thereon must be addressed to the trial court, which shall decide such question."

Section 5. Section 26-1-203, MCA, is amended to read:

"26-1-203. Who to judge effect or and value of evidence. The jury, subject to the control of the court, ~~in~~

1 ~~the cases specified in this code~~ is the judge of the effect
2 or and value of evidence addressed to it, except when the
3 evidence is declared to be conclusive. The court is the
4 judge of the effect and value of evidence addressed to it."

5 Section 6. Section 26-1-302, MCA, is amended to read:

6 "26-1-302. Witness presumed to speak the truth -- ~~how~~
7 ~~presumption rebutted.~~ A witness is presumed to speak the
8 truth. ~~This presumption, however, may be repelled by the~~
9 ~~manner in which he testifies, by the character of his~~
10 ~~testimony, by evidence affecting his motives or his~~
11 ~~character for truth, honesty, or integrity, or by~~
12 ~~contradictory evidence; and the~~ The jury or the court in the
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18 ~~another;~~

19 ~~{2} the truth of the facts recited, from the recital~~
20 ~~in a written instrument between the parties thereto or their~~
21 ~~successors in interest by a subsequent title; but this rule~~
22 ~~does not apply to the recital of a consideration;~~

23 ~~{3}{1} the truth of a declaration, act, or omission of~~
24 ~~a party, as against that party in any litigation arising out~~
25 ~~of such declaration, act, or omission, whenever a party has~~

has, by his own such declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief; he cannot in any litigation arising out of such declaration, act, or omission be permitted to falsify it;

~~(4)(2)~~ that a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

~~(5) the issue of a wife cohabiting with her husband who is not impotent is indisputably presumed to be legitimate;~~

~~(6)(3) the judgment or order of a court, when which is declared by this code statute to be conclusive; but such judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence;~~

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(1) that a person is innocent of crime or wrong;

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(3) that a person intends the ordinary consequence of his voluntary act;

(4) that a person takes ordinary care of his own concerns;

(5) that ~~evidence~~ Evidence willfully suppressed would be adverse if produced;

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(7) that ~~money~~ Money paid by one to another was due to the latter;

(8) that a thing delivered by one to another belonged to the latter;

(9) that ~~on~~ When the instrument evidencing an obligation has been delivered up to the debtor, the obligation has been paid.

(10) that ~~former~~ Prior rent or installments have been paid when a receipt for ~~later~~ later rent or installments is produced;

(11) that ~~things~~ Things which a person possesses are owned by him;

(12) that a person is the owner of property from

1 exercising ~~if he exercises~~ acts of ownership over it or from
2 ~~there is~~ common reputation of his ownership₁

3 (13) ~~that-a~~ A person in possession of an order on
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11 (16) ~~that--a~~ A court or judge₁ acting as such, whether
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17 (18) ~~that--all~~ All matters within an issue were laid
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21 marriage₁

22 (31) ~~that--a~~ A child born in lawful wedlock, there being
23 no divorce from bed and board, is legitimate₁

24 (32) ~~that--a~~ A thing once proved to exist continues as
25 long as is usual with things of that nature₁

(33) that the law has been obeyed.

~~(34) that a document or writing more than 30 years old is genuine, when the same has been since generally acted upon as genuine by persons having an interest in the question and its custody has been satisfactorily explained.~~

~~(35)(34)~~ that a printed and published book purporting to be printed or published by public authority was so printed or published.

~~(36)(35)~~ that a printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

~~(37)(36)~~ that a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him, when such this presumption applies when it is necessary to perfect the title of such person or his successor in interest.

~~(38)(37)~~ the when there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, ~~is presumptive evidence of his intention he intended~~ to dedicate it to the public for that purpose.

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"26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and when the decedent ~~was~~ in a position to know the facts stated therein, ~~may be~~ read as are prima facie evidence of the facts stated therein, in the following cases:

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1 besieged, or captured by an enemy ~~or is dead or is alive~~, as
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8 officer or employee of the United States as is described in
9 ~~said sections that section~~ shall prima facie be deemed to
10 have been signed and issued by such an officer or employee
11 pursuant to law, and the person signing same shall prima
12 facie be deemed to have acted within the scope of his
13 authority. If a copy purports to have been certified by a
14 person authorized by law to certify the same, such certified
15 copy shall be prima facie evidence of his authority so to
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17 Section 16. Section 26-1-805, MCA, is amended to read:

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23 necessary to enable him to prescribe or act for the
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1 "26-2-104. Disobedience — how punished. Disobedience
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10 "26-2-302. Witness required to answer questions. A
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13 against himself, but he need not give an answer which will
14 have a tendency to subject him to punishment for a felony,
15 nor need he give an answer which will have a direct tendency
16 to degrade his character unless it be to the very fact in
17 issue or to a fact from which the fact in issue would be
18 presumed. ~~But a witness must answer as to the fact of his~~
19 ~~previous conviction for felony.~~"

20 Section 19. Section 26-2-404, MCA, is amended to read:

21 "26-2-404. Affidavit of arrested witness —
22 exoneration of arresting officer. (1) An officer is not
23 liable ~~to the party~~ for making the arrest in ignorance of
24 the facts creating the exoneration but is liable for any
25 subsequent detention of the ~~party~~ witness if such party

1 ~~claim~~ witness claims the exemption and ~~make~~ makes an
2 affidavit stating that:

3 (a) he has been served with a subpoena to attend as a
4 witness before a court, officer, or other person, specifying
5 the same, the place of attendance, and the action or
6 proceeding in which the subpoena was issued;

7 (b) he has not thus been served by his own procurement
8 with the intention of avoiding arrest; and

9 (c) he is at the time going to the place of
10 attendance, returning therefrom, or remaining there in
11 obedience to the subpoena.

12 (2) The affidavit may be taken by the officer and
13 exonerates him from liability for discharging the witness
14 when arrested."

15 NEW SECTION. Section 20. Repealer. Sections 26-1-107,
16 26-1-108, and 26-1-621, MCA, are repealed.

-End-

HOUSE BILL NO. 355

INTRODUCED BY SANDS, RAMIREZ, ADDY, SPAETH, YARDLEY

BY REQUEST OF THE MONTANA SUPREME COURT AND THE
MONTANA SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO EVIDENCE; AMENDING SECTIONS 26-1-101, 26-1-102, 26-1-201 THROUGH 26-1-203, 26-1-302, 26-1-303, 26-1-401, 26-1-402, 26-1-501, 26-1-601, 26-1-602, 26-1-607, 26-1-622, 26-1-623, 26-1-805, 26-2-104, 26-2-302, AND 26-2-404, MCA; REPEALING SECTIONS 26-1-107, 26-1-108, AND 26-1-621, MCA."

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

Section 1. Section 26-1-101, MCA, is amended to read:

"26-1-101. General definitions. (1) The "Direct examination" is the first examination of a witness by the party producing him; it is denominated the "direct examination" on a particular matter. "Cross examination" is the examination of the same a witness upon the same matter by the adverse party; the "cross examination" and the direct examination must be completed before the cross examination begins unless the court otherwise directs other than the direct examiner.

(2) "Judicial evidence" "Evidence" is the means

sanctioned by law of ascertaining in a judicial proceeding the truth respecting a question of fact, including but not limited to witness testimony, writings, physical objects, or other things presented to the senses.

(3) A "leading question" is a question which suggests to the witness the answer which the examining party desires ~~it is denominated a "leading question" or "suggestive question"~~ ~~on a direct examination leading questions are not allowed except in the sound discretion of the court under special circumstances making it appear that the interests of justice require it.~~

(4) "Proof" is the effect of evidence, the establishment of a fact by evidence.

(5) A "witness" is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit."

Section 2. Section 26-1-102, MCA, is amended to read:

"26-1-102. Definitions -- kinds of evidence.

(1) (a) "Conclusive evidence" or ~~"unanswerable evidence"~~ is that which the law does not permit to be contradicted. For example, the record of a court of competent jurisdiction cannot be contradicted by the parties to it.

(b) No evidence is by law made conclusive or unanswerable unless so declared by this code statute.

(2) "Cumulative evidence" is additional evidence of the same character to the same point.

~~(3) "Corroborative evidence" is additional evidence of a different character to the same point.~~

~~{3}{4} "Direct evidence" is that which proves the a fact in--dispute--directly, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. For-example, if the fact--in--dispute be--an--agreement, the evidence of a witness who was present and witnessed the making of it is direct.~~

~~{4}{5} "Indirect-----evidence" "Circumstantial evidence" is that which tends to establish the a fact in dispute by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence. For--example--a witness--proves--an--admission--of--the--party--to--the--fact--in--dispute--This--proves--a--fact--from--which--the--fact--in--dispute is--inferred.~~

~~{b}--indirect evidence is of two kinds:~~

~~{i}--inferences; and~~

~~{ii}--presumptions.~~

~~{5}{6} "Prima facie evidence" is that which suffices for the proof of proves a particular fact until contradicted and overcome by other evidence. For-example, the certificate of a recording officer is prima facie evidence of a--record.~~

~~but it may afterward be rejected upon proof that there is no such records"~~

Section 3. Section 26-1-201, MCA, is amended to read:

~~"26-1-201. Questions of law. At Except as provided in Article II, section 7, of the Montana constitution, all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to must be decided by the court, and all discussions of law addressed to it. Whenever the knowledge of the court is by this code made evidence of a fact, the court is to declare such knowledge to the jury, which is bound to accept it."~~

Section 4. Section 26-1-202, MCA, is amended to read:

~~"26-1-202. Questions of fact. At If a trial is by jury, all questions of fact where the trial is by jury, other than those mentioned in 26-1-201 are to must be decided by the jury, and all evidence thereon is to must be addressed to them, except when as otherwise provided by this code law. If the trial of a question of fact is not by jury, all evidence thereon must be addressed to the trial court, which shall decide such question."~~

Section 5. Section 26-1-203, MCA, is amended to read:

~~"26-1-203. Who to judge effect or and value of evidence. The jury, subject to the control of the court, in~~

1 the cases specified in this code, is the judge of the effect
2 or and value of evidence addressed to it, except when the
3 evidence is declared to be conclusive. The court is the
4 judge of the effect and value of evidence addressed to it."

5 Section 6. Section 26-1-302, MCA, is amended to read:
6 "26-1-302. Witness presumed to speak the truth -- how
7 presumption rebutted. A witness is presumed to speak the
8 truth. ~~This presumption, however, may be repelled by the~~
9 ~~manner in which he testifies by the character of his~~
10 ~~testimony by evidence affecting his motives or his~~
11 ~~character for truth, honesty or integrity or by~~
12 ~~contradictory evidence and the~~ The jury or the court in the
13 absence of a jury is the exclusive judge of his credibility.
14 This presumption may be controverted and overcome by any
15 matter that has a tendency to disprove the truthfulness of a
16 witness' testimony; such matters include but are not limited
17 to:

13 (1) the demeanor or manner of the witness while
19 testifying;

20 (2) the character of the witness' testimony;

21 (3) bias of the witness for or against any party
22 involved in the case;

23 (4) interest of the witness in the outcome of the
24 litigation or other motive to testify falsely;

25 (5) the witness' character for truth, honesty, or

1 integrity;

2 (6) the extent of the witness' capacity and
3 opportunity to perceive or capacity to recollect or to
4 communicate any matter about which he testifies;

5 (7) inconsistent statements of the witness;

6 (8) an admission of untruthfulness by the witness;

7 (9) other evidence contradicting the witness'
8 testimony."

9 Section 7. Section 26-1-303, MCA, is amended to read:
10 "26-1-303. Instructions to jury on how to evaluate
11 evidence. The jury is to be instructed by the court on all
12 proper occasions that:

13 (1) that their power of judging of the effect of
14 evidence is not arbitrary but to be exercised with legal
15 discretion and in subordination to the rules of evidence;

16 (2) that they are not bound to decide in conformity
17 with the declarations of any number of witnesses which do
18 not produce conviction in their minds, against a less number
19 or against a presumption or other evidence satisfying their
20 minds;

21 (3) that a witness false in one part of his testimony
22 is to be distrusted in others;

23 (4) that the testimony of an accomplice a person
24 legally accountable for the acts of the accused ought to be
25 viewed with distrust and the evidence of the oral

admissions-of-a-party-with-caution;

(5)--that-evidence-is-to-be-estimated-not-only-by-its
own--intrinsic-weight--but--also--according-to-the-evidence
which-it-is-in-the-power-of-one-side-to-produce-and--of--the
other-to-contradict--and--therefore

(6)(5) that if weaker and less satisfactory evidence
is offered when and it appears that it is within the power
of the party to offer stronger and more satisfactory was
within the power of the party evidence, the evidence offered
should be viewed with distrust."

Section 8. Section 26-1-401, MCA, is amended to read:

"26-1-401. Who has the burden of producing evidence.
The party--holding--the-affirmative--of--the--issue--must--produce
the--evidence--to--prove--it;--therefore--the initial burden of
proof--is producing evidence as to a particular fact is on
the party who would be defeated if no evidence were given on
either side. Thereafter, the burden of producing evidence is
on the party who would suffer a finding against him in the
absence of further evidence."

Section 9. Section 26-1-402, MCA, is amended to read:

"26-1-402. Who has the burden of persuasion. Each
Except as otherwise provided by law a party must prove--his
own--affirmative--allegations. Evidence need not be given in
support of a negative allegation, except when such negative
allegation--is--an--essential--part--of--the--statement--of--the

right-or-title-on-which-the-cause-of-action-is-founded--nor
even--in--such--case--when-the-allegation-is-a-denial-of-the
existence-of-a-document-the-custody-of-which-belongs-to-the
opposite-party has the burden of persuasion as to each fact
the existence or nonexistence of which is essential to the
claim for relief or defense he is asserting."

Section 10. Section 26-1-501, MCA, is amended to read:

"26-1-501. Inference defined. An "inference" is a
deduction which the reason-of-the-jury-makes trial of fact
may make from the facts-proved, without an express direction
of-the-law-to-that-effect evidence."

Section 11. Section 26-1-601, MCA, is amended to read:

"26-1-601. Complete--list of conclusive
presumptions. The following presumptions and no others are
deemed conclusive:

(1)--a-meticulous-and-guilty-intent-from-the-deliberate
commission-of-an-unlawful-act-for-the--purpose--of--injuring
another;

(2)--the--truth--of--the--facts--recited--from--the--recital
in-a-written-instrument-between-the-parties-thereto-or-their
successors-in-interest-by-a-subsequent-title--but--this--rule
does-not-apply-to-the-recital-of-a-consideration;

(3)(1) the truth of a declaration, act, or omission of
a party, as against that party in any litigation arising out
of such declaration, act, or omission, whenever a party has

has, by his--own such declaration, act, or omission,
intentionally and--deliberately led another to believe a
particular thing true and to act upon such beliefs--he cannot
in any litigation arising out of such declaration--act--or
omission be permitted to falsify it;

~~(4)(2)~~ that a tenant is not permitted to deny the
title of his landlord at the time of the commencement of the
relation;

~~(5)--the issue of a wife cohabiting--with--her--husband
who--is--not--impotent--is--indisputably--presumed--to--be
legitimate;~~

~~(6)(3)~~ the judgment or order of a court, when which is
declared by this code statute to be conclusive--but--such
judgment--or--order--must--be--alleged--in--the--pleadings--if--there
be an opportunity to do so--if there be no such opportunity,
the judgment or order may be used as evidence;

~~(7)(4)~~ any other presumption which, by statute, is
expressly made conclusive."

Section 12. Section 26-1-602, MCA, is amended to read:

"26-1-602. Definition--and--examples--of--disputable
Disputable presumptions. All other presumptions are
satisfactory--if--uncontradicted--They--are--denominated
"disputable presumptions" and may be controverted by other
evidence. The following are of that kind:

(1) that--a A person is innocent of crime or wrong;

(2) that--an An unlawful act was done with an unlawful
intent;

(3) that--a A person intends the ordinary consequence
of his voluntary act;

(4) that--a A person takes ordinary care of his own
concerns;

(5) that--evidence Evidence willfully suppressed would
be adverse if produced;

(6) that--higher More satisfactory evidence would be
adverse from inferior being produced; if weaker and less
satisfactory evidence is offered and it is within the power
of the party to offer more satisfactory evidence.

(7) that--money Money paid by one to another was due to
the latter;

(8) that--a A thing delivered by one to another
belonged to the latter;

(9) that--an When the instrument evidencing an
obligation has been delivered up to the debtor, the
obligation has been paid;

(10) that--former Prior rent or installments have been
paid when a receipt for later rent or installments is
produced;

(11) that--things Things which a person possesses are
owned by him;

(12) that--a A person is the owner of property from

1 ~~exercising if he exercises~~ acts of ownership over it or from
2 ~~there is~~ common reputation of his ownership~~†~~_A

3 (13) ~~that--a~~ A person in possession of an order on
4 himself for the payment of money~~†~~_{on} ~~or~~ the delivery of a
5 thing~~†~~ has paid the money or delivered the thing
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18 entered into a contract of partnership~~†~~_A

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20 husband and wife have entered into a lawful contract of
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23 no divorce from bed and board, is legitimate~~†~~_A

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1 ~~claim~~ witness claims the exemption and ~~make~~ makes an
2 affidavit stating that:

3 (a) he has been served with a subpoena to attend as a
4 witness before a court, officer, or other person, specifying
5 the same, the place of attendance, and the action or
6 proceeding in which the subpoena was issued;

7 (b) he has not thus been served by his own procurement
8 with the intention of avoiding arrest; and

9 (c) he is at the time going to the place of
10 attendance, returning therefrom, or remaining there in
11 obedience to the subpoena.

12 (2) The affidavit may be taken by the officer and
13 exonerates him from liability for discharging the witness
14 when arrested."

15 NEW SECTION. Section 20. Repealer. Sections 26-1-107,
16 26-1-108, and 26-1-621, MCA, are repealed.

-End-