

SENATE BILL NO. 15

INTRODUCED BY MAZUREK

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 3, 1983	Introduced and referred to Committee on Judiciary.
January 4, 1983	Committee recommend bill do pass. Report adopted.
January 5, 1983	Bill printed and placed on members' desks.
January 6, 1983	Second reading, do pass.
January 7, 1983	Considered correctly engrossed.
January 8, 1983	Third reading, passed. Transmitted to House.

IN THE HOUSE

January 10, 1983	Introduced and referred to Committee on Judiciary.
January 17, 1983	Committee recommend bill be concurred in. Report adopted. Posted on Consent Calendar.
January 18, 1983	Questions and answers.
January 19, 1983	Consent Calendar, concurred in.

IN THE SENATE

January 20, 1983	Returned to Senate. Sent to enrolling. Reported correctly enrolled.
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Bill ~~Senate~~ No. 15

AN ACT TO CHANGE "INFANT" TO "MINOR" WHERE APPROPRIATE THROUGHOUT THE CODE IN ORDER TO ACHIEVE CONSISTENCY WITH TITLE 41, MCA; AMENDING SECTIONS 15-30-135, 25-5-301, 27-1-319, 70-29-102, 70-29-209, 70-29-210, 70-29-303, 70-29-305, 70-29-306, 70-29-327, 72-14-302, AND 72-20-407, MCA.

Sections 1 through 12. Every change made by this bill is to substitute "minor" for "infant" wherever it appears in the enumerated sections. "Minor" is defined in section 41-1-101, MCA, to mean persons under 18 years of age. "Infant" is not defined. "Infant" has been left in the code where it has an explicit meaning such as "newborn infant" or "infant mortality". Most of the amendments relate to areas concerning guardianship. Title 72, ch. 5, part 2 is entitled "Guardians of Minors". These changes will achieve consistency throughout the code.

1 SENATE BILL NO. 15
2 INTRODUCED BY MAZUREK
3 BY REQUEST OF THE CODE COMMISSIONER
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE 'INFANT' TO
6 'MINOR' WHERE APPROPRIATE THROUGHOUT THE CODE IN ORDER TO
7 ACHIEVE CONSISTENCY WITH TITLE 41, MCA; AMENDING SECTIONS
8 15-30-135, 25-5-301, 27-1-319, 70-29-102, 70-29-209,
9 70-29-210, 70-29-303, 70-29-305, 70-29-306, 70-29-327,
10 72-14-302, AND 72-20-407, MCA."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 15-30-135, MCA, is amended to read:
14 "15-30-135. Tax on beneficiaries or fiduciaries of
15 estates or trusts. (1) A tax shall be imposed upon either
16 the fiduciaries or the beneficiaries of estates and trusts
17 as hereinafter provided, except to the extent such estates
18 and trusts shall be held for educational, charitable, or
19 religious purposes, which tax shall be levied, collected,
20 and paid annually with respect to the income of estates or
21 of any kind of property held in trust, including:
22 (a) income received by estates of deceased persons
23 during the period of administration or settlement of the
24 estate;
25 (b) income accumulated in trust for the benefit of

1 unborn or unascertained persons or persons with contingent
2 interests;
3 (c) income held for future distribution under the
4 terms of the will or trust;
5 (d) income which is to be distributed to the
6 beneficiaries periodically, whether or not at regular
7 intervals, and the income collected by a guardian of an
8 infant ~~a minor~~, to be held or distributed as the court may
9 direct; and
10 (e) income of an estate during the period of
11 administration or settlement permitted by subsection (3) of
12 this section to be deducted from the net income, the tax
13 with reference to which is to be paid by the fiduciary.
14 (2) The fiduciary shall be responsible for making the
15 return of income for the estate or trust for which he acts,
16 whether the fiduciary or the beneficiaries be taxable with
17 reference to the income of such estate or trust. The net
18 income of an estate or trust shall be computed in the same
19 manner and on the same basis as provided in this chapter for
20 individual taxpayers, except that there shall also be
21 allowed as a deduction any part of the gross income which,
22 pursuant to the terms of the will or deed creating the
23 trust, is paid to or held for the United States or any
24 state, territory, or any political subdivision thereof or
25 the District of Columbia. In cases under subsections (d) and

INTRODUCED BILL

1 (e) of subsection (1) of this section, the fiduciary shall
 2 include in the return a statement of each beneficiary's
 3 distributive share of such net income, whether or not
 4 distributed before the close of the taxable year for which
 5 the return is made.

6 (3) In cases under subsections (a), (b), and (c) of
 7 subsection (1) of this section, the tax shall be imposed
 8 upon the fiduciary of the estate or trust with respect to
 9 the net income of the estate or trust and shall be paid by
 10 the fiduciary, except that in determining the net income of
 11 the estate of any deceased person during the period of
 12 administration or settlement, there may be deducted the
 13 amount of any income properly paid or credited to any
 14 legatee, heir, or other beneficiary. In such cases, the
 15 fiduciary of the estate or trust shall be allowed the same
 16 exemptions as are allowed to single persons under 15-30-112
 17 and the fiduciary of any estate or trust created by a person
 18 not a resident or of an estate of a person not a resident
 19 shall be subject to a tax only to the extent to which
 20 individuals other than residents are liable under 15-30-131.

21 (4) (a) There shall be allowed as an additional
 22 deduction in computing the net income of the estate or trust
 23 the amount of the income of the estate or trust for its
 24 taxable year which is to be distributed currently by the
 25 fiduciary to the beneficiaries and the amount of the income

1 collected by a guardian of ~~an infant a minor~~, which is to be
 2 held or distributed as the court may direct, but the amount
 3 so allowed as a deduction shall be included in computing the
 4 net income of the beneficiaries whether distributed to them
 5 or not. Any amount allowed as a deduction under this
 6 subsection shall not be allowed as a deduction under
 7 subsection (4)(b) of this section in the same or any
 8 succeeding taxable year.

9 (b) In the case of income received by estates of
 10 deceased persons during the period of administration or
 11 settlement of the estate and in the case of income which, in
 12 the discretion of the fiduciary, may be either distributed
 13 to the beneficiary or accumulated, there shall be allowed as
 14 an additional deduction in computing the net income of the
 15 estate or trust the amount of the income of the estate or
 16 trust for its taxable year which is properly paid or
 17 credited during such year to any legatee, heir, or
 18 beneficiary, but the amount so allowed as a deduction shall
 19 be included in computing the net income of the legatee,
 20 heir, or beneficiary.

21 (c) If the taxpayer's net income for such taxable year
 22 is computed upon the basis of a period different from that
 23 upon the basis of which the net income of the estate or
 24 trust is computed, then his distributive share of the net
 25 income of the estate or trust for any accounting period of

such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(6) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under

which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor."

Section 2. Section 25-5-301, MCA, is amended to read:

"25-5-301. Appointment of guardian. When a guardian ad litem is appointed by the court, he must be appointed as follows:

(1) when the infant minor is plaintiff, upon the application of the infant minor if he be of the age of 14 years or, if under that age, upon the application of a relative or friend of the infant minor;

(2) when the infant minor is defendant, upon the application of the infant minor if he be of the age of 14 years and apply within 10 days after the service of the summons or, if under that age or if he neglects so to apply, upon the application of a relative or friend of the infant minor or of any other party to the action;

(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person or of any other party to the action or proceeding."

Section 3. Section 27-1-319, MCA, is amended to read:

"27-1-319. Willful holding over of real property. For willfully holding over real property by a person who entered upon the same as guardian or trustee for an infant a minor

1 or by right of an estate terminable with any life or lives,
2 after the termination of the trust or particular estate,
3 without the consent of the party immediately entitled after
4 such termination, the measure of damages is the value of the
5 profits received during such holding over."

6 Section 4. Section 70-29-102, MCA, is amended to read:

7 "70-29-102. Action by ~~infant~~ minor. (1) An action for
8 the partition of real property shall not be brought by an
9 ~~infant a minor~~, except by the written authority of the
10 district judge of the county in which the property or a part
11 thereof is situated. The authority shall not be given unless
12 the district judge is satisfied, by affidavit or other
13 competent evidence, that the interests of the ~~infant~~ minor
14 will be promoted by bringing the action.

15 (2) A judgment for a partition shall not be rendered
16 in such an action unless the court is satisfied that the
17 interests of the ~~infant~~ minor will be promoted thereby and
18 that fact is expressly recited in the judgment.

19 (3) A guardian ad litem for ~~an infant a minor~~ party,
20 in an action for partition, can be appointed only by the
21 court or judge and must give an undertaking in a sum fixed
22 by the judge for the faithful discharge of his trust, which
23 undertaking must be approved by the judge and filed with the
24 clerk."

25 Section 5. Section 70-29-209, MCA, is amended to read:

1 "70-29-209. Compensation of one party by another in
2 certain cases of partition. (1) When it appears that a
3 partition cannot be made equal between the parties according
4 to their respective rights without prejudice to the rights
5 and interests of some of them and a partition be ordered,
6 the court may adjudge compensation to be made by one party
7 to another on account of the inequality, but such
8 compensation shall not be required to be made to others by
9 owners unknown or by ~~an infant a minor~~ unless it appears
10 that such ~~infant~~ minor has personal property sufficient for
11 that purpose and that his interest will be promoted thereby.

12 (2) In all cases the court has power to make
13 compensatory adjustment between the respective parties
14 according to the ordinary principles of equity."

15 Section 6. Section 70-29-210, MCA, is amended to read:

16 "70-29-210. Consent of guardian to share of ward. The
17 general guardian of ~~an infant a minor~~ and the guardian
18 entitled to the custody and management of the estate of a
19 seriously mentally ill person or other person adjudged
20 incapable of conducting his own affairs, who is interested
21 in real estate held in joint tenancy or in common or in any
22 other manner so as to authorize his being made a party to an
23 action, may agree upon the share to be set off to such
24 ~~infant~~ minor or other person entitled and may execute a
25 release, in his behalf, to the owners of the shares of the

1 parts to which they may be respectively entitled, upon an
2 order of the court."

3 Section 7. Section 70-29-303, MCA, is amended to read:

4 "70-29-303. Who may not be purchasers. (1) Neither of
5 the referees nor any person for the benefit of either of
6 them can be interested in any purchase, nor can a guardian
7 of ~~an infant~~ a minor party be interested in the purchase of
8 any real property being the subject of the action except for
9 the benefit of the ~~infant~~ minor.

10 (2) All sales contrary to the provisions of this
11 section are void."

12 Section 8. Section 70-29-305, MCA, is amended to read:

13 "70-29-305. Court to direct terms of credit and
14 investment. The court must, in the order of sale, direct the
15 terms of credit which may be allowed for the purchase money
16 of any portion of the premises of which it may direct a sale
17 on credit and for that portion of which the purchase money
18 is required by the provisions herein contained to be
19 invested for the benefit of unknown owners, ~~infants~~ minors,
20 or parties out of this state."

21 Section 9. Section 70-29-306, MCA, is amended to read:

22 "70-29-306. Security for sales on credit. The referees
23 may take separate mortgages and other securities for the
24 whole or convenient portions of the purchase money of such
25 parts of the property as are directed by the court to be

1 sold on credit for the:

2 (1) shares of any known owner of full age, in the name
3 of such owner;

4 (2) shares of ~~an infant~~ a minor, in the name of the
5 guardian of such ~~infant~~ minor; and

6 (3) other shares, in the name of the clerk of the
7 court of the county and his successors in office."

8 Section 10. Section 70-29-327, MCA, is amended to
9 read:

10 "70-29-327. ~~Infant's~~ Minor's share of proceeds --
11 payment to guardian. When the share of ~~an infant~~ a minor is
12 sold, the proceeds of the sale may be paid by the referee
13 making the sale to his general guardian or the special
14 guardian appointed for him in the action upon giving the
15 security required by law or directed by order of the court."

16 Section 11. Section 72-14-302, MCA, is amended to
17 read:

18 "72-14-302. Statute of limitations. Such action must
19 be brought within 5 years from the date on which the money
20 or property is received by the state treasurer, saving,
21 however, to ~~infants~~ minors and persons of unsound mind or
22 citizens of the United States beyond the limits of the
23 United States, the right to commence their action at any
24 time within the time limited or 5 years after their
25 respective disabilities cease."

1 Section 12. Section 72-20-407, MCA, is amended to
2 read:

3 "72-20-407. Objections to account -- hearing --
4 decree. (1) Upon or before the return day, any beneficiary
5 of the trust may file his written objections or exceptions
6 to the account filed or to any action of the trustee or
7 trustees set forth therein.

8 (2) The court may appoint either the legal guardian of
9 a beneficiary or a guardian ad litem to represent the
10 interest of any such beneficiary who is ~~an infant~~ a minor or
11 of unsound mind or otherwise legally incompetent or who is
12 yet unborn or unascertained, and such beneficiary shall be
13 bound by any action taken by such representative. Every
14 unborn or unascertainable beneficiary shall be concluded by
15 any action taken by the court for or against any living
16 beneficiary of the same class or whose interests are similar
17 to the interests of such unborn or unascertainable
18 beneficiary.

19 (3) At the same time or at some later day fixed by the
20 court if so requested by one or more of the parties, the
21 court, without the intervention of a jury and after hearing
22 all the evidence submitted, shall determine the correctness
23 of the account and the validity and propriety of all actions
24 of the trustee or trustees set forth therein, including the
25 purchase, retention, and disposition of any of the property

1 and funds of the trust and shall render its decree either
2 approving or disapproving the same or any part thereof and,
3 in addition, may surcharge the trustee or trustees for all
4 losses, if any, caused by negligent or willful breaches of
5 trust."

-End-

Bill senate No. 15

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16 the fiduciaries or the beneficiaries of estates and trusts
17 as hereinafter provided, except to the extent such estates
18 and trusts shall be held for educational, charitable, or
19 religious purposes, which tax shall be levied, collected,
20 and paid annually with respect to the income of estates or
21 of any kind of property held in trust, including:
22 (a) income received by estates of deceased persons
23 during the period of administration or settlement of the
24 estate;
25 (b) income accumulated in trust for the benefit of

1 unborn or unascertained persons or persons with contingent
2 interests;
3 (c) income held for future distribution under the
4 terms of the will or trust;
5 (d) income which is to be distributed to the
6 beneficiaries periodically, whether or not at regular
7 intervals, and the income collected by a guardian of an
8 infant ~~a minor~~, to be held or distributed as the court may
9 direct; and
10 (e) income of an estate during the period of
11 administration or settlement permitted by subsection (3) of
12 this section to be deducted from the net income, the tax
13 with reference to which is to be paid by the fiduciary.
14 (2) The fiduciary shall be responsible for making the
15 return of income for the estate or trust for which he acts,
16 whether the fiduciary or the beneficiaries be taxable with
17 reference to the income of such estate or trust. The net
18 income of an estate or trust shall be computed in the same
19 manner and on the same basis as provided in this chapter for
20 individual taxpayers, except that there shall also be
21 allowed as a deduction any part of the gross income which,
22 pursuant to the terms of the will or deed creating the
23 trust, is paid to or held for the United States or any
24 state, territory, or any political subdivision thereof or
25 the District of Columbia. In cases under subsections (d) and

1 (e) of subsection (1) of this section, the fiduciary shall
 2 include in the return a statement of each beneficiary's
 3 distributive share of such net income, whether or not
 4 distributed before the close of the taxable year for which
 5 the return is made.

6 (3) In cases under subsections (a), (b), and (c) of
 7 subsection (1) of this section, the tax shall be imposed
 8 upon the fiduciary of the estate or trust with respect to
 9 the net income of the estate or trust and shall be paid by
 10 the fiduciary, except that in determining the net income of
 11 the estate of any deceased person during the period of
 12 administration or settlement, there may be deducted the
 13 amount of any income properly paid or credited to any
 14 legatee, heir, or other beneficiary. In such cases, the
 15 fiduciary of the estate or trust shall be allowed the same
 16 exemptions as are allowed to single persons under 15-30-112
 17 and the fiduciary of any estate or trust created by a person
 18 not a resident or of an estate of a person not a resident
 19 shall be subject to a tax only to the extent to which
 20 individuals other than residents are liable under 15-30-131.

21 (4) (a) There shall be allowed as an additional
 22 deduction in computing the net income of the estate or trust
 23 the amount of the income of the estate or trust for its
 24 taxable year which is to be distributed currently by the
 25 fiduciary to the beneficiaries and the amount of the income

1 collected by a guardian of ~~an infant a minor~~, which is to be
 2 held or distributed as the court may direct, but the amount
 3 so allowed as a deduction shall be included in computing the
 4 net income of the beneficiaries whether distributed to them
 5 or not. Any amount allowed as a deduction under this
 6 subsection shall not be allowed as a deduction under
 7 subsection (4)(b) of this section in the same or any
 8 succeeding taxable year.

9 (b) In the case of income received by estates of
 10 deceased persons during the period of administration or
 11 settlement of the estate and in the case of income which, in
 12 the discretion of the fiduciary, may be either distributed
 13 to the beneficiary or accumulated, there shall be allowed as
 14 an additional deduction in computing the net income of the
 15 estate or trust the amount of the income of the estate or
 16 trust for its taxable year which is properly paid or
 17 credited during such year to any legatee, heir, or
 18 beneficiary, but the amount so allowed as a deduction shall
 19 be included in computing the net income of the legatee,
 20 heir, or beneficiary.

21 (c) If the taxpayer's net income for such taxable year
 22 is computed upon the basis of a period different from that
 23 upon the basis of which the net income of the estate or
 24 trust is computed, then his distributive share of the net
 25 income of the estate or trust for any accounting period of

1 such estate or trust ending within the fiscal or calendar
 2 year shall be computed upon the basis on which such
 3 beneficiary's net income is computed. In such cases, a
 4 beneficiary not a resident shall be taxable with respect to
 5 his income derived through such estate or trust only to the
 6 extent provided in 15-30-131 for individuals other than
 7 residents.

8 (5) The fiduciary of a trust created by an employer as
 9 a part of a stock bonus, pension, or profit-sharing plan for
 10 the exclusive benefit of some or all of his employees, to
 11 which contributions are made by such employer or employees,
 12 or both, for the purpose of distributing to such employees
 13 the earnings and principal of the fund accumulated by the
 14 trust in accordance with such plan, shall not be taxable
 15 under this section, but any amount contributed to such fund
 16 by the employer and all earnings of such fund shall be
 17 included in computing the income of the distributee in the
 18 year in which distributed or made available to him.

19 (6) Where any part of the income of a trust other than
 20 a testamentary trust is or may be applied to the payment of
 21 premiums upon policies of insurance on the life of the
 22 grantor (except policies of insurance irrevocably payable
 23 for the purposes and in the manner specified relating to the
 24 so-called "charitable contribution" deduction) or to the
 25 payment of premiums upon policies of life insurance under

1 which the grantor is the beneficiary, such part of the
 2 income of the trust shall be included in computing the net
 3 income of the grantor."

4 Section 2. Section 25-5-301, MCA, is amended to read:
 5 "25-5-301. Appointment of guardian. When a guardian ad
 6 litem is appointed by the court, he must be appointed as
 7 follows:

8 (1) when the ~~infant~~ minor is plaintiff, upon the
 9 application of the ~~infant~~ minor if he be of the age of 14
 10 years or, if under that age, upon the application of a
 11 relative or friend of the ~~infant~~ minor;

12 (2) when the ~~infant~~ minor is defendant, upon the
 13 application of the ~~infant~~ minor if he be of the age of 14
 14 years and apply within 10 days after the service of the
 15 summons or, if under that age or if he neglects so to apply,
 16 upon the application of a relative or friend of the ~~infant~~ minor
 17 minor or of any other party to the action;

18 (3) when an insane or incompetent person is party to
 19 an action or proceeding, upon the application of a relative
 20 or friend of such insane or incompetent person or of any
 21 other party to the action or proceeding."

22 Section 3. Section 27-1-319, MCA, is amended to read:
 23 "27-1-319. Willful holding over of real property. For
 24 willfully holding over real property by a person who entered
 25 upon the same as guardian or trustee for ~~an infant~~ a minor

1 or by right of an estate terminable with any life or lives,
2 after the termination of the trust or particular estate,
3 without the consent of the party immediately entitled after
4 such termination, the measure of damages is the value of the
5 profits received during such holding over."

6 Section 4. Section 70-29-102, MCA, is amended to read:

7 "70-29-102. Action by ~~infant~~ minor. (1) An action for
8 the partition of real property shall not be brought by ~~an~~
9 ~~infant~~ a minor, except by the written authority of the
10 district judge of the county in which the property or a part
11 thereof is situated. The authority shall not be given unless
12 the district judge is satisfied, by affidavit or other
13 competent evidence, that the interests of the ~~infant~~ minor
14 will be promoted by bringing the action.

15 (2) A judgment for a partition shall not be rendered
16 in such an action unless the court is satisfied that the
17 interests of the ~~infant~~ minor will be promoted thereby and
18 that fact is expressly recited in the judgment.

19 (3) A guardian ad litem for ~~an--infant~~ a minor party,
20 in an action for partition, can be appointed only by the
21 court or judge and must give an undertaking in a sum fixed
22 by the judge for the faithful discharge of his trust, which
23 undertaking must be approved by the judge and filed with the
24 clerk."

25 Section 5. Section 70-29-209, MCA, is amended to read:

1 "70-29-209. Compensation of one party by another in
2 certain cases of partition. (1) When it appears that a
3 partition cannot be made equal between the parties according
4 to their respective rights without prejudice to the rights
5 and interests of some of them and a partition be ordered,
6 the court may adjudge compensation to be made by one party
7 to another on account of the inequality, but such
8 compensation shall not be required to be made to others by
9 owners unknown or by ~~an--infant~~ a minor unless it appears
10 that such ~~infant~~ minor has personal property sufficient for
11 that purpose and that his interest will be promoted thereby.

12 (2) In all cases the court has power to make
13 compensatory adjustment between the respective parties
14 according to the ordinary principles of equity."

15 Section 6. Section 70-29-210, MCA, is amended to read:

16 "70-29-210. Consent of guardian to share of ward. The
17 general guardian of ~~an--infant~~ a minor and the guardian
18 entitled to the custody and management of the estate of a
19 seriously mentally ill person or other person adjudged
20 incapable of conducting his own affairs, who is interested
21 in real estate held in joint tenancy or in common or in any
22 other manner so as to authorize his being made a party to an
23 action, may agree upon the share to be set off to such
24 ~~infant~~ minor or other person entitled and may execute a
25 release, in his behalf, to the owners of the shares of the

parts to which they may be respectively entitled, upon an order of the court."

Section 7. Section 70-29-303, MCA, is amended to read:

"70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of ~~an~~-infant a minor party be interested in the purchase of any real property being the subject of the action except for the benefit of the ~~infant~~ minor."

(2) All sales contrary to the provisions of this section are void."

Section 8. Section 70-29-305, MCA, is amended to read:

"70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, ~~infants~~ minors, or parties out of this state."

Section 9. Section 70-29-306, MCA, is amended to read:

"70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be

sold on credit for the:

(1) shares of any known owner of full age, in the name of such owner;

(2) shares of ~~an~~-infant a minor, in the name of the guardian of such ~~infant~~ minor; and

(3) other shares, in the name of the clerk of the court of the county and his successors in office."

Section 10. Section 70-29-327, MCA, is amended to read:

"70-29-327. ~~Infant's~~ Minor's share of proceeds -- payment to guardian. When the share of ~~an~~-infant a minor is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action upon giving the security required by law or directed by order of the court."

Section 11. Section 72-14-302, MCA, is amended to read:

"72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to ~~infants~~ minors and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease."

1 Section 12. Section 72-20-407, MCA, is amended to
2 read:

3 "72-20-407. Objections to account -- hearing --
4 decree. (1) Upon or before the return day, any beneficiary
5 of the trust may file his written objections or exceptions
6 to the account filed or to any action of the trustee or
7 trustees set forth therein.

8 (2) The court may appoint either the legal guardian of
9 a beneficiary or a guardian ad litem to represent the
10 interest of any such beneficiary who is ~~an infant~~ a minor or
11 of unsound mind or otherwise legally incompetent or who is
12 yet unborn or unascertained, and such beneficiary shall be
13 bound by any action taken by such representative. Every
14 unborn or unascertainable beneficiary shall be concluded by
15 any action taken by the court for or against any living
16 beneficiary of the same class or whose interests are similar
17 to the interests of such unborn or unascertainable
18 beneficiary.

19 (3) At the same time or at some later day fixed by the
20 court if so requested by one or more of the parties, the
21 court, without the intervention of a jury and after hearing
22 all the evidence submitted, shall determine the correctness
23 of the account and the validity and propriety of all actions
24 of the trustee or trustees set forth therein, including the
25 purchase, retention, and disposition of any of the property

1 and funds of the trust and shall render its decree either
2 approving or disapproving the same or any part thereof and,
3 in addition, may surcharge the trustee or trustees for all
4 losses, if any, caused by negligent or willful breaches of
5 trust."

-End-

Bill senate No. 15

AN ACT TO CHANGE "INFANT" TO "MINOR" WHERE APPROPRIATE THROUGHOUT THE CODE IN ORDER TO ACHIEVE CONSISTENCY WITH TITLE 41, MCA; AMENDING SECTIONS 15-30-135, 25-5-301, 27-1-319, 70-29-102, 70-29-209, 70-29-210, 70-29-303, 70-29-305, 70-29-306, 70-29-327, 72-14-302, AND 72-20-407, MCA.

Sections 1 through 12. Every change made by this bill is to substitute "minor" for "infant" wherever it appears in the enumerated sections. "Minor" is defined in section 41-1-101, MCA, to mean persons under 18 years of age. "Infant" is not defined. "Infant" has been left in the code where it has an explicit meaning such as "newborn infant" or "infant mortality". Most of the amendments relate to areas concerning guardianship. Title 72, ch. 5, part 2 is entitled "Guardians of Minors". These changes will achieve consistency throughout the code.

1 SENATE BILL NO. 15
2 INTRODUCED BY MAZUREK
3 BY REQUEST OF THE CODE COMMISSIONER
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE "INFANT" TO
6 "MINOR" WHERE APPROPRIATE THROUGHOUT THE CODE IN ORDER TO
7 ACHIEVE CONSISTENCY WITH TITLE 41, MCA; AMENDING SECTIONS
8 15-30-135, 25-5-301, 27-1-319, 70-29-102, 70-29-209,
9 70-29-210, 70-29-303, 70-29-305, 70-29-306, 70-29-327,
10 72-14-302, AND 72-20-407, MCA."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 15-30-135, MCA, is amended to read:
14 "15-30-135. Tax on beneficiaries or fiduciaries of
15 estates or trusts. (1) A tax shall be imposed upon either
16 the fiduciaries or the beneficiaries of estates and trusts
17 as hereinafter provided, except to the extent such estates
18 and trusts shall be held for educational, charitable, or
19 religious purposes, which tax shall be levied, collected,
20 and paid annually with respect to the income of estates or
21 of any kind of property held in trust, including:
22 (a) Income received by estates of deceased persons
23 during the period of administration or settlement of the
24 estate;
25 (b) Income accumulated in trust for the benefit of

1 unborn or unascertained persons or persons with contingent
2 interests;
3 (c) Income held for future distribution under the
4 terms of the will or trust;
5 (d) Income which is to be distributed to the
6 beneficiaries periodically, whether or not at regular
7 intervals, and the income collected by a guardian of an
8 infant ~~a minor~~, to be held or distributed as the court may
9 direct; and
10 (e) income of an estate during the period of
11 administration or settlement permitted by subsection (3) of
12 this section to be deducted from the net income, the tax
13 with reference to which is to be paid by the fiduciary.
14 (2) The fiduciary shall be responsible for making the
15 return of income for the estate or trust for which he acts,
16 whether the fiduciary or the beneficiaries be taxable with
17 reference to the income of such estate or trust. The net
18 income of an estate or trust shall be computed in the same
19 manner and on the same basis as provided in this chapter for
20 individual taxpayers, except that there shall also be
21 allowed as a deduction any part of the gross income which,
22 pursuant to the terms of the will or deed creating the
23 trust, is paid to or held for the United States or any
24 state, territory, or any political subdivision thereof or
25 the District of Columbia. In cases under subsections (d) and

(e) of subsection (1) of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131.

(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income

collected by a guardian of an infant a minor, which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.

(b) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

(c) If the taxpayer's net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of

1 such estate or trust ending within the fiscal or calendar
2 year shall be computed upon the basis on which such
3 beneficiary's net income is computed. In such cases, a
4 beneficiary not a resident shall be taxable with respect to
5 his income derived through such estate or trust only to the
6 extent provided in 15-30-131 for individuals other than
7 residents.

8 (5) The fiduciary of a trust created by an employer as
9 a part of a stock bonus, pension, or profit-sharing plan for
10 the exclusive benefit of some or all of his employees, to
11 which contributions are made by such employer or employees,
12 or both, for the purpose of distributing to such employees
13 the earnings and principal of the fund accumulated by the
14 trust in accordance with such plan, shall not be taxable
15 under this section, but any amount contributed to such fund
16 by the employer and all earnings of such fund shall be
17 included in computing the income of the distributee in the
18 year in which distributed or made available to him.

19 (6) Where any part of the income of a trust other than
20 a testamentary trust is or may be applied to the payment of
21 premiums upon policies of insurance on the life of the
22 grantor (except policies of insurance irrevocably payable
23 for the purposes and in the manner specified relating to the
24 so-called "charitable contribution" deduction) or to the
25 payment of premiums upon policies of life insurance under

1 which the grantor is the beneficiary, such part of the
2 income of the trust shall be included in computing the net
3 income of the grantor."

4 Section 2. Section 25-5-301, MCA, is amended to read:

5 "25-5-301. Appointment of guardian. When a guardian ad
6 litem is appointed by the court, he must be appointed as
7 follows:

8 (1) when the ~~infant~~ minor is plaintiff, upon the
9 application of the ~~infant~~ minor if he be of the age of 14
10 years or, if under that age, upon the application of a
11 relative or friend of the ~~infant~~ minor;

12 (2) when the ~~infant~~ minor is defendant, upon the
13 application of the ~~infant~~ minor if he be of the age of 14
14 years and apply within 10 days after the service of the
15 summons or, if under that age or if he neglects so to apply,
16 upon the application of a relative or friend of the ~~infant~~ minor
17 minor or of any other party to the action;

18 (3) when an insane or incompetent person is party to
19 an action or proceeding, upon the application of a relative
20 or friend of such insane or incompetent person or of any
21 other party to the action or proceeding."

22 Section 3. Section 27-1-319, MCA, is amended to read:

23 "27-1-319. Willful holding over of real property. For
24 willfully holding over real property by a person who entered
25 upon the same as guardian or trustee for ~~an~~ a ~~infant~~ minor

1 or by right of an estate terminable with any life or lives,
2 after the termination of the trust or particular estate,
3 without the consent of the party immediately entitled after
4 such termination, the measure of damages is the value of the
5 profits received during such holding over."

6 Section 4. Section 70-29-102, MCA, is amended to read:

7 "70-29-102. Action by ~~infant minor~~. (1) An action for
8 the partition of real property shall not be brought by an
9 ~~infant a minor~~, except by the written authority of the
10 district judge of the county in which the property or a part
11 thereof is situated. The authority shall not be given unless
12 the district judge is satisfied, by affidavit or other
13 competent evidence, that the interests of the ~~infant minor~~
14 will be promoted by bringing the action.

15 (2) A judgment for a partition shall not be rendered
16 in such an action unless the court is satisfied that the
17 interests of the ~~infant minor~~ will be promoted thereby and
18 that fact is expressly recited in the judgment.

19 (3) A guardian ad litem for ~~an-infant a minor~~ party,
20 in an action for partition, can be appointed only by the
21 court or judge and must give an undertaking in a sum fixed
22 by the judge for the faithful discharge of his trust, which
23 undertaking must be approved by the judge and filed with the
24 clerk."

25 Section 5. Section 70-29-209, MCA, is amended to read:

1 "70-29-209. Compensation of one party by another in
2 certain cases of partition. (1) When it appears that a
3 partition cannot be made equal between the parties according
4 to their respective rights without prejudice to the rights
5 and interests of some of them and a partition be ordered,
6 the court may adjudge compensation to be made by one party
7 to another on account of the inequality, but such
8 compensation shall not be required to be made to others by
9 owners unknown or by ~~an-infant a minor~~ unless it appears
10 that such ~~infant minor~~ has personal property sufficient for
11 that purpose and that his interest will be promoted thereby.

12 (2) In all cases the court has power to make
13 compensatory adjustment between the respective parties
14 according to the ordinary principles of equity."

15 Section 6. Section 70-29-210, MCA, is amended to read:

16 "70-29-210. Consent of guardian to share of ward. The
17 general guardian of ~~an--infant a minor~~ and the guardian
18 entitled to the custody and management of the estate of a
19 seriously mentally ill person or other person adjudged
20 incapable of conducting his own affairs, who is interested
21 in real estate held in joint tenancy or in common or in any
22 other manner so as to authorize his being made a party to an
23 action, may agree upon the share to be set off to such
24 ~~infant minor~~ or other person entitled and may execute a
25 release, in his behalf, to the owners of the shares of the

parts to which they may be respectively entitled, upon an order of the court."

Section 7. Section 70-29-303, MCA, is amended to read:

"70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of ~~an infant a~~ minor party be interested in the purchase of any real property being the subject of the action except for the benefit of the infant minor.

(2) All sales contrary to the provisions of this section are void."

Section 8. Section 70-29-305, MCA, is amended to read:

"70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, infants minors, or parties out of this state."

Section 9. Section 70-29-306, MCA, is amended to read:

"70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be

sold on credit for the:

(1) shares of any known owner of full age, in the name of such owner;

(2) shares of ~~an infant a~~ minor, in the name of the guardian of such infant minor; and

(3) other shares, in the name of the clerk of the court of the county and his successors in office."

Section 10. Section 70-29-327, MCA, is amended to read:

"70-29-327. ~~infant's~~ minor's share of proceeds -- payment to guardian. When the share of ~~an infant a~~ minor is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action upon giving the security required by law or directed by order of the court."

Section 11. Section 72-14-302, MCA, is amended to read:

"72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to infants minors and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease."

1 Section 12. Section 72-20-407, MCA, is amended to
2 read:

3 "72-20-407. Objections to account -- hearing --
4 decree. (1) Upon or before the return day, any beneficiary
5 of the trust may file his written objections or exceptions
6 to the account filed or to any action of the trustee or
7 trustees set forth therein.

8 (2) The court may appoint either the legal guardian of
9 a beneficiary or a guardian ad litem to represent the
10 interest of any such beneficiary who is ~~an infant~~ a minor or
11 of unsound mind or otherwise legally incompetent or who is
12 yet unborn or unascertained, and such beneficiary shall be
13 bound by any action taken by such representative. Every
14 unborn or unascertainable beneficiary shall be concluded by
15 any action taken by the court for or against any living
16 beneficiary of the same class or whose interests are similar
17 to the interests of such unborn or unascertainable
18 beneficiary.

19 (3) At the same time or at some later day fixed by the
20 court if so requested by one or more of the parties, the
21 court, without the intervention of a jury and after hearing
22 all the evidence submitted, shall determine the correctness
23 of the account and the validity and propriety of all actions
24 of the trustee or trustees set forth therein, including the
25 purchase, retention, and disposition of any of the property

1 and funds of the trust and shall render its decree either
2 approving or disapproving the same or any part thereof and,
3 in addition, may surcharge the trustee or trustees for all
4 losses, if any, caused by negligent or willful breaches of
5 trust."

-End-

SENATE BILL NO. 12

INTRODUCED BY JACOBSON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PHYSICIANS TO REPORT TO THE DIVISION OF MOTOR VEHICLES PATIENTS WITH CONDITIONS THAT IMPAIR THEIR ABILITY TO SAFELY OPERATE A MOTOR VEHICLE; AND PROVIDING LIMITED IMMUNITY FOR SUCH PHYSICIANS."

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

Section 1. Report to division by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair the person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the division of motor vehicles. The division, upon receiving the report, shall require the person so reported to be examined in the manner provided for in 61-5-110 and 61-5-207.

(2) Subsection--(1)--is--subject--to--the--provisions--of--26-1-805,--and--the--(A)--THE physician's report may not be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license before the division or a court.

~~(B) THE PHYSICIAN'S REPORT MAY NOT BE UTILIZED IN A~~

~~CRIMINAL PROCEEDING, OR IN A CIVIL PROCEEDING OTHER THAN AS PROVIDED IN THIS SUBSECTION, WITHOUT THE CONSENT OF THE PATIENT.~~

Section 2. Physician's immunity from liability. Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to [section 1] except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to [section 1].

-End-

Bill senate No. 15

AN ACT TO CHANGE "INFANT" TO "MINOR" WHERE APPROPRIATE THROUGHOUT THE CODE IN ORDER TO ACHIEVE CONSISTENCY WITH TITLE 41, MCA; AMENDING SECTIONS 15-30-135, 25-5-301, 27-1-319, 70-29-102, 70-29-209, 70-29-210, 70-29-303, 70-29-305, 70-29-306, 70-29-327, 72-14-302, AND 72-20-407, MCA.

Sections 1 through 12. Every change made by this bill is to substitute "minor" for "infant" wherever it appears in the enumerated sections. "Minor" is defined in section 41-1-101, MCA, to mean persons under 18 years of age. "Infant" is not defined. "Infant" has been left in the code where it has an explicit meaning such as "newborn infant" or "infant mortality". Most of the amendments relate to areas concerning guardianship. Title 72, ch. 5, part 2 is entitled "Guardians of Minors". These changes will achieve consistency throughout the code.

SENATE BILL NO. 15

INTRODUCED BY MAZUREK

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE 'INFANT' TO 'MINOR' WHERE APPROPRIATE THROUGHOUT THE CODE IN ORDER TO ACHIEVE CONSISTENCY WITH TITLE 41, MCA; AMENDING SECTIONS 15-30-135, 25-5-301, 27-1-319, 70-29-102, 70-29-209, 70-29-210, 70-29-303, 70-29-305, 70-29-306, 70-29-327, 72-14-302, AND 72-20-407, MCA."

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

Section 1. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable, or religious purposes, which tax shall be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of

unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust;

(d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant a minor, to be held or distributed as the court may direct; and

(e) income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be taxable with reference to the income of such estate or trust. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States or any state, territory, or any political subdivision thereof or the District of Columbia. In cases under subsections (d) and

(e) of subsection (1) of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131.

(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income

collected by a guardian of an infant a minor, which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.

(b) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

(c) If the taxpayer's net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of

1 such estate or trust ending within the fiscal or calendar
 2 year shall be computed upon the basis on which such
 3 beneficiary's net income is computed. In such cases, a
 4 beneficiary not a resident shall be taxable with respect to
 5 his income derived through such estate or trust only to the
 6 extent provided in 15-30-131 for individuals other than
 7 residents.

8 (5) The fiduciary of a trust created by an employer as
 9 a part of a stock bonus, pension, or profit-sharing plan for
 10 the exclusive benefit of some or all of his employees, to
 11 which contributions are made by such employer or employees,
 12 or both, for the purpose of distributing to such employees
 13 the earnings and principal of the fund accumulated by the
 14 trust in accordance with such plan, shall not be taxable
 15 under this section, but any amount contributed to such fund
 16 by the employer and all earnings of such fund shall be
 17 included in computing the income of the distributee in the
 18 year in which distributed or made available to him.

19 (6) Where any part of the income of a trust other than
 20 a testamentary trust is or may be applied to the payment of
 21 premiums upon policies of insurance on the life of the
 22 grantor (except policies of insurance irrevocably payable
 23 for the purposes and in the manner specified relating to the
 24 so-called "charitable contribution" deduction) or to the
 25 payment of premiums upon policies of life insurance under

1 which the grantor is the beneficiary, such part of the
 2 income of the trust shall be included in computing the net
 3 income of the grantor."

4 Section 2. Section 25-5-301, MCA, is amended to read:
 5 "25-5-301. Appointment of guardian. When a guardian ad
 6 litem is appointed by the court, he must be appointed as
 7 follows:

8 (1) when the ~~infant~~ minor is plaintiff, upon the
 9 application of the ~~infant~~ minor if he be of the age of 14
 10 years or, if under that age, upon the application of a
 11 relative or friend of the ~~infant~~ minor;

12 (2) when the ~~infant~~ minor is defendant, upon the
 13 application of the ~~infant~~ minor if he be of the age of 14
 14 years and apply within 10 days after the service of the
 15 summons or, if under that age or if he neglects so to apply,
 16 upon the application of a relative or friend of the ~~infant~~
 17 minor or of any other party to the action;

18 (3) when an insane or incompetent person is party to
 19 an action or proceeding, upon the application of a relative
 20 or friend of such insane or incompetent person or of any
 21 other party to the action or proceeding."

22 Section 3. Section 27-1-319, MCA, is amended to read:
 23 "27-1-319. Willful holding over of real property. For
 24 willfully holding over real property by a person who entered
 25 upon the same as guardian or trustee for an ~~infant~~ a minor

1 or by right of an estate terminable with any life or lives,
2 after the termination of the trust or particular estate,
3 without the consent of the party immediately entitled after
4 such termination, the measure of damages is the value of the
5 profits received during such holding over."

6 Section 4. Section 70-29-102, MCA, is amended to read:

7 "70-29-102. Action by ~~infant~~ minor. (1) An action for
8 the partition of real property shall not be brought by ~~an~~
9 ~~infant~~ a minor, except by the written authority of the
10 district judge of the county in which the property or a part
11 thereof is situated. The authority shall not be given unless
12 the district judge is satisfied, by affidavit or other
13 competent evidence, that the interests of the ~~infant~~ minor
14 will be promoted by bringing the action.

15 (2) A judgment for a partition shall not be rendered
16 in such an action unless the court is satisfied that the
17 interests of the ~~infant~~ minor will be promoted thereby and
18 that fact is expressly recited in the judgment.

19 (3) A guardian ad litem for ~~an infant~~ a minor party,
20 in an action for partition, can be appointed only by the
21 court or judge and must give an undertaking in a sum fixed
22 by the judge for the faithful discharge of his trust, which
23 undertaking must be approved by the judge and filed with the
24 clerk."

25 Section 5. Section 70-29-209, MCA, is amended to read:

1 "70-29-209. Compensation of one party by another in
2 certain cases of partition. (1) When it appears that a
3 partition cannot be made equal between the parties according
4 to their respective rights without prejudice to the rights
5 and interests of some of them and a partition be ordered,
6 the court may adjudge compensation to be made by one party
7 to another on account of the inequality, but such
8 compensation shall not be required to be made to others by
9 owners unknown or by ~~an infant~~ a minor unless it appears
10 that such ~~infant~~ minor has personal property sufficient for
11 that purpose and that his interest will be promoted thereby.
12 (2) In all cases the court has power to make
13 compensatory adjustment between the respective parties
14 according to the ordinary principles of equity."

15 Section 6. Section 70-29-210, MCA, is amended to read:

16 "70-29-210. Consent of guardian to share of ward. The
17 general guardian of ~~an infant~~ a minor and the guardian
18 entitled to the custody and management of the estate of a
19 seriously mentally ill person or other person adjudged
20 incapable of conducting his own affairs, who is interested
21 in real estate held in joint tenancy or in common or in any
22 other manner so as to authorize his being made a party to an
23 action, may agree upon the share to be set off to such
24 ~~infant~~ minor or other person entitled and may execute a
25 release, in his behalf, to the owners of the shares of the

parts to which they may be respectively entitled, upon an order of the court."

Section 7. Section 70-29-303, MCA, is amended to read:

"70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of ~~an infant a minor~~ party be interested in the purchase of any real property being the subject of the action except for the benefit of the ~~infant~~ minor.

(2) All sales contrary to the provisions of this section are void."

Section 8. Section 70-29-305, MCA, is amended to read:

"70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, ~~infants minors~~, or parties out of this state."

Section 9. Section 70-29-306, MCA, is amended to read:

"70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be

sold on credit for the:

(1) shares of any known owner of full age, in the name of such owner;

(2) shares of ~~an infant a minor~~, in the name of the guardian of such ~~infant~~ minor; and

(3) other shares, in the name of the clerk of the court of the county and his successors in office."

Section 10. Section 70-29-327, MCA, is amended to read:

"70-29-327. ~~Infant's~~ Minor's share of proceeds -- payment to guardian. When the share of ~~an infant a minor~~ is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action upon giving the security required by law or directed by order of the court."

Section 11. Section 72-14-302, MCA, is amended to read:

"72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to ~~infants minors~~ and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease."

1 Section 12. Section 72-20-407, MCA, is amended to
2 read:

3 "72-20-407. Objections to account -- hearing --
4 decree. (1) Upon or before the return day, any beneficiary
5 of the trust may file his written objections or exceptions
6 to the account filed or to any action of the trustee or
7 trustees set forth therein.

8 (2) The court may appoint either the legal guardian of
9 a beneficiary or a guardian ad litem to represent the
10 interest of any such beneficiary who is ~~an infant~~ a minor or
11 of unsound mind or otherwise legally incompetent or who is
12 yet unborn or unascertained, and such beneficiary shall be
13 bound by any action taken by such representative. Every
14 unborn or unascertainable beneficiary shall be concluded by
15 any action taken by the court for or against any living
16 beneficiary of the same class or whose interests are similar
17 to the interests of such unborn or unascertainable
18 beneficiary.

19 (3) At the same time or at some later day fixed by the
20 court if so requested by one or more of the parties, the
21 court, without the intervention of a jury and after hearing
22 all the evidence submitted, shall determine the correctness
23 of the account and the validity and propriety of all actions
24 of the trustee or trustees set forth therein, including the
25 purchase, retention, and disposition of any of the property

1 and funds of the trust and shall render its decree either
2 approving or disapproving the same or any part thereof and,
3 in addition, may surcharge the trustee or trustees for all
4 losses, if any, caused by negligent or willful breaches of
5 trust."

-End-