

SENATE BILL NO. 64

Introduced: 01/06/83

Referred to Committee on Judiciary: 01/06/83

Hearing: 1/11/83

Report: 01/14/83, Do Not Pass. Report Adopted.

Bill Killed.

1 Senate BILL NO. 64  
2 INTRODUCED BY Turnage  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBJECT THE  
5 HOMESTEAD ALLOWANCE, THE EXEMPT PROPERTY ALLOWANCE, AND THE  
6 FAMILY ALLOWANCE TO SECURED CLAIMS AND TO FUNERAL AND  
7 ADMINISTRATION EXPENSES FOR PURPOSES OF ESTATE  
8 ADMINISTRATION; AND LIMITING CHILDREN WHO MAY CLAIM THE  
9 ALLOWANCES TO MINOR CHILDREN; AMENDING SECTIONS 72-2-801  
10 THROUGH 72-2-803, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 72-2-801, MCA, is amended to read:

14 "72-2-801. Homestead allowance. (1) A surviving spouse  
15 of a decedent who was domiciled in this state is entitled to  
16 a homestead allowance of \$20,000. If there is no surviving  
17 spouse, each minor child and each dependent child of the  
18 decedent is entitled to a homestead allowance amounting to  
19 \$20,000, divided by the number of minor and dependent  
20 children of the decedent.

21 (2) The homestead allowance is exempt from and has  
22 priority over all unsecured claims against the estate except  
23 funeral expenses and expenses of administration.

24 (3) Homestead allowance is in addition to any share  
25 passing to the surviving spouse or minor or dependent child

1 by the will of the decedent unless otherwise provided, by  
2 intestate succession, or by way of elective share."

3 Section 2. Section 72-2-802, MCA, is amended to read:

4 "72-2-802. Exempt property. (1) In addition to the  
5 homestead allowance, the surviving spouse of a decedent who  
6 was domiciled in this state is entitled from the estate to  
7 value not exceeding \$3,500 in excess of any security  
8 interests therein in household furniture, automobiles,  
9 furnishings, appliances, and personal effects. If there is  
10 no surviving spouse, minor children of the decedent are  
11 entitled jointly to the same value. If encumbered chattels  
12 are selected and if the value in excess of security  
13 interests, plus that of other exempt property, is less than  
14 \$3,500 or if there is not \$3,500 worth of exempt property in  
15 the estate, the spouse or minor children are entitled to  
16 other assets of the estate, if any, to the extent necessary  
17 to make up the \$3,500 value.

18 (2) Rights to exempt property and assets needed to  
19 make up a deficiency of exempt property have priority over  
20 all unsecured claims against the estate, except funeral  
21 expenses and expenses of administration. ~~that the~~ The right  
22 to any assets to make up a deficiency of exempt property  
23 shall abate as necessary to permit prior payment of  
24 homestead allowance and family allowance.

25 (3) These rights are in addition to any benefit or

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share passing to the surviving spouse or minor children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 3. Section 72-2-803, MCA, is amended to read:

"72-2-803. Family allowance. (1) In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and minor children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

(2) It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the minor children or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the minor child or his guardian or other person having his care and custody and partially to the spouse, as their needs may appear.

(3) The family allowance is exempt from and has priority over all unsecured claims but ~~not--over~~ does not

have priority over:

(a) funeral expenses and expenses of administration;

or

(b) the homestead allowance.

(4) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or minor children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

(5) The death of any person entitled to family allowance terminates his right to allowances not yet paid."

-End-