

IN THE HOUSE

MARCH 20, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 21, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 HOUSE BILL NO. 19
2 INTRODUCED BY MERCER

3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
6 REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION;
7 AMENDING SECTIONS 25-13-614, 70-32-104, 70-32-213,
8 70-32-214, 72-2-102, 72-2-205, 72-2-704, 72-2-705, 72-2-801
9 THROUGH 72-2-804, 72-3-101, 72-3-911, 72-3-1103, AND
10 72-3-1104, MCA; AND REPEALING SECTIONS 25-13-611 THROUGH
11 25-13-613, 25-13-616, AND 25-13-617, MCA."

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

14 NEW SECTION. Section 1. Protection of property of
15 residents. A resident of this state is entitled to the
16 exemptions provided in this part.

17 NEW SECTION. Section 2. Claim enforceable against
18 exempt property. Notwithstanding any other provision of this
19 part, a creditor may levy against exempt property to enforce
20 a claim for:

- 21 (1) the purchase price of the property; or
- 22 (2) a loan made for the express purpose of enabling
- 23 the judgment debtor to purchase the property and used for
- 24 that purpose.

25 NEW SECTION. Section 3. Property exempt without

1 limitation. A judgment debtor is entitled to exemption from
2 execution of the following:

- 3 (1) professionally prescribed health aids for the
- 4 judgment debtor or a dependent of the judgment debtor;
- 5 (2) benefits the judgment debtor has received or is
- 6 entitled to receive under federal social security or local
- 7 public assistance legislation;
- 8 (3) veterans' benefits;
- 9 (4) disability or illness benefits;
- 10 (5) benefits paid or payable for medical, surgical, or
- 11 hospital care to the extent they are used or will be used to
- 12 pay for the care;
- 13 (6) maintenance and child support; and
- 14 (7) a burial plot for the judgment debtor and his
- 15 family.

16 NEW SECTION. Section 4. Personal property exempt
17 subject to value limitations. A judgment debtor is entitled
18 to exemption from execution of the following:

- 19 (1) the judgment debtor's interest, not to exceed
- 20 \$6,000 in aggregate value, to the extent of a value not
- 21 exceeding \$600 in any item of property, household
- 22 furnishings and goods, appliances, jewelry, wearing apparel,
- 23 books, animals, crops, and musical instruments;
- 24 (2) the judgment debtor's interest, not to exceed
- 25 \$3,500 in value, in one motor vehicle;



1 (3) the judgment debtor's interest, not to exceed
2 \$3,000 in value, in any implements, professional books, or
3 tools, of the trade of the judgment debtor or a dependent of
4 the judgment debtor; and

5 (4) the judgment debtor's interest, not to exceed
6 \$4,000 in value, in any unmatured life insurance contracts
7 owned by him.

8 NEW SECTION. Section 5. Tracing exempt personal
9 property. (1) If money or other property exempt under
10 [sections 3 and 4] has been sold or has been lost, damaged,
11 or destroyed and the judgment debtor has been indemnified
12 for it, he is entitled for 6 months to an exemption of
13 proceeds that are traceable (for example, in a bank or
14 savings account).

15 (2) Earnings exempt under 25-13-614 remain exempt for
16 45 days after receipt by and while in the possession of the
17 judgment debtor in a form into which the exempt earnings are
18 traceable (for example, in a bank or savings account).

19 (3) Proceeds are traceable under this section by
20 application of the principles of first-in first-out, last-in
21 first-out, or any other reasonable basis for tracing
22 selected by the judgment debtor.

23 NEW SECTION. Section 6. Tracing homestead proceeds.
24 (1) If property or a part thereof that could have been
25 claimed as an exempt homestead has been sold or taken by

1 condemnation or has been lost, damaged, or destroyed and the
2 owner has been indemnified for it, he is entitled for 18
3 months to exemption of the proceeds that are traceable.

4 (2) Proceeds are traceable under this section by
5 application of the principles of first-in first-out, last-in
6 first-out, or any other reasonable basis for tracing
7 selected by the judgment debtor.

8 Section 7. Section 25-13-614, MCA, is amended to read:

9 "25-13-614. Earnings of judgment debtor. (1) ~~Except as~~
10 ~~provided in subsection (2), the earnings of the judgment~~
11 ~~debtor for his personal services rendered during the 45-day~~
12 ~~period prior to the levy of execution or attachment are~~
13 ~~exempt to the extent such earnings are necessary for the~~
14 ~~support of his family.~~

15 (2) ~~(a)~~ No earnings are exempt unless the judgment
16 debtor complies with 25-13-411.

17 ~~(b) Earnings are exempt under this section from~~
18 ~~judgments or orders for maintenance or child support only to~~
19 ~~the extent allowed by 15-U.S.C. 1673.~~

20 ~~(c) One-half of earnings are not exempt for debts~~
21 ~~incurred by the judgment debtor or his family for gasoline~~
22 ~~and the common necessities of life.~~

23 ~~(3) The words "his family", as used in this section,~~
24 ~~except to the extent that these words include a person~~
25 ~~covered by a judgment or order under subsection (2), are to~~

1 be construed to include:

2 (a) ~~the judgment debtor's spouse;~~

3 (b) ~~every person who resides with the judgment debtor~~

4 ~~under his care or maintenance and who is:~~

5 (i) ~~a minor child of the judgment debtor or of his~~

6 ~~spouse or former spouse;~~

7 (ii) ~~a minor grandchild, brother, or sister or minor~~

8 ~~child of a brother or sister of the judgment debtor or of~~

9 ~~his spouse;~~

10 (iii) ~~a father, mother, grandfather, or grandmother of~~

11 ~~the judgment debtor or of his spouse or former spouse;~~

12 (iv) ~~an unmarried sister, brother, or any other~~

13 ~~relative of the judgment debtor mentioned in this section~~

14 ~~who has attained the age of majority and is unable to care~~

15 ~~for or support himself;~~

16 (2) Except as provided in subsections (3) and (4), the

17 maximum part of the aggregate disposable earnings of a

18 judgment debtor for any workweek that is subjected to

19 garnishment may not exceed the lesser of:

20 (a) the amount by which his disposable earnings for

21 the week exceed 30 times the federal minimum hourly wage in

22 effect at the time the earnings are payable; or

23 (b) 25% of his disposable earnings for that week.

24 (3) The restrictions of subsection (2) do not apply in

25 the case of an order or judgment for the maintenance or

1 support of any person, issued by a court of competent

2 jurisdiction, or pursuant to an administrative procedure

3 that is established by state law, affords substantial due

4 process, and is subject to judicial review.

5 (4) (a) The maximum part of the aggregate disposable

6 earnings of a judgment debtor for any workweek that is

7 subject to garnishment to enforce an order described in

8 subsection (3) may not exceed:

9 (i) 50% of the judgment debtor's disposable earnings

10 for that week if he is supporting his spouse or dependent

11 child (other than a spouse or child for whom the order is

12 issued); or

13 (ii) 60% of the judgment debtor's disposable earnings

14 for that week if he is not supporting a spouse or dependent

15 child described in subsection (4)(a)(i).

16 (b) However, the amount stated in (4)(a)(i) may be 55%

17 and the amount stated in (4)(a)(ii) may be 65% if such

18 earnings are being garnished to enforce an order for

19 maintenance or support for a period prior to the 12-week

20 period that ends with the beginning of such workweek.

21 (5) For the purposes of this section, the definitions

22 of earnings, disposable earnings, and garnishment are as set

23 forth in 15 U.S.C. 1672."

24 Section 8. Section 70-32-104, MCA, is amended to read:

25 "70-32-104. Limitations Limitation on quantity--and

1 value which may be selected. (1) Homesteads may be selected
2 and claimed consisting of:

3 (a) a quantity of land not exceeding 320 acres used
4 for agricultural purposes and the dwelling house or mobile
5 home thereon and its appurtenances and not included in any
6 municipality;

7 (b) a quantity of land not in a municipality, not
8 exceeding 1 acre and not used for agricultural or commercial
9 purposes, and the dwelling house or mobile home thereon and
10 its appurtenances; or

11 (c) a quantity of land within a municipality, not
12 exceeding one-fourth of an acre, and the dwelling house or
13 mobile home thereon and its appurtenances.

14 (2) Such a homestead, in either case, shall may not
15 exceed in value the sum of \$40,000. However, in In any
16 proceedings instituted to determine the value of such
17 homestead, the assessed value of the land with included
18 appurtenances, if any, and of the dwelling house as appears
19 on the last completed assessment roll preceding the
20 institution of such proceedings shall be prima facie
21 evidence of the value of the property claimed as a
22 homestead.

23 (2) If a claimant who is an owner of an undivided
24 interest in real property claims a homestead exemption, he
25 is limited to an exemption amount proportional to his

1 undivided interest."

2 Section 9. Section 70-32-213, MCA, is amended to read:
3 "70-32-213. Sale proceeds equal to exemption
4 protected. The money paid to the claimant is entitled, for
5 the period of 6 18 months thereafter, to the same protection
6 against legal process and the voluntary disposition of
7 either spouse which the law gives to the homestead."

8 Section 10. Section 70-32-214, MCA, is amended to
9 read:

10 "70-32-214. Compensation of appraisers. The court must
11 fix the a reasonable amount as compensation of for the
12 appraisers, not to exceed \$3--per--day--each--for--the--time
13 actually engaged."

14 Section 11. Section 72-2-102, MCA, is amended to read:
15 "72-2-102. Waiver of rights by spouse. The right of
16 election of a surviving spouse and the rights of the
17 surviving spouse to the homestead allowance, exempt
18 property, and family allowance or any of them may be waived,
19 wholly or partially, before or after marriage, by a written
20 contract, agreement, or waiver signed by the party waiving
21 after fair disclosure. Unless it provides to the contrary,
22 a waiver of "all rights" (or equivalent language) in the
23 property or estate of a present or prospective spouse or a
24 complete property settlement entered into after or in
25 anticipation of separation or divorce is a waiver of all

1 rights to elective share, homestead allowance, exempt
 2 property, and family allowance by each spouse in the
 3 property of the other and a renunciation by each of all
 4 benefits which would otherwise pass to him from the other by
 5 intestate succession or by virtue of the provisions of any
 6 will executed before the waiver or property settlement."

7 Section 12. Section 72-2-205, MCA, is amended to read:

8 "72-2-205. Requirement that heir survive decedent by
 9 one hundred twenty hours. Any person who fails to survive
 10 the decedent by 120 hours is deemed to have predeceased the
 11 decedent for purposes of homestead allowance, exempt
 12 property, and intestate succession, and the decedent's heirs
 13 are determined accordingly. If the time of death of the
 14 decedent or of the person who would otherwise be an heir or
 15 the times of death of both cannot be determined and it
 16 cannot be established that the person who would otherwise be
 17 an heir has survived the decedent by 120 hours, it is deemed
 18 that the person failed to survive for the required period.
 19 This section is not to be applied where its application
 20 would result in a taking of intestate estate by the state
 21 under 72-2-207."

22 Section 13. Section 72-2-704, MCA, is amended to read:

23 "72-2-704. Effect of election on benefits by will or
 24 statute. (1) The surviving spouse's election of his elective
 25 share does not affect the share of the surviving spouse

1 under the provisions of the decedent's will or intestate
 2 succession unless the surviving spouse also expressly
 3 renounces in the petition for an elective share the benefit
 4 of all or any of the provisions. If any provision is so
 5 renounced, the property or other benefit which would
 6 otherwise have passed to the surviving spouse thereunder is
 7 treated, subject to contribution under 72-2-706(2), as if
 8 the surviving spouse had predeceased the testator.

9 (2) A surviving spouse is entitled to homestead
 10 allowance, exempt property, and family allowance whether or
 11 not he elects to take an elective share."

12 Section 14. Section 72-2-705, MCA, is amended to read:

13 "72-2-705. Augmented estate. The augmented estate
 14 means the estate, reduced by funeral and administration
 15 expenses, homestead allowance, family allowances and
 16 exemptions, and enforceable claims, to which is added the
 17 sum of the following amounts:

18 (1) the value of property transferred to anyone other
 19 than a bona fide purchaser by the decedent at any time
 20 during marriage, to or for the benefit of any person other
 21 than the surviving spouse, to the extent that the decedent
 22 did not receive adequate and full consideration in money or
 23 money's worth for the transfer, if the transfer is of any of
 24 the following types:

25 (a) any transfer under which the decedent retained at

1 the time of his death the possession or enjoyment of or
2 right to income from the property;

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

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

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

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

24 (3) the value of property owned by the surviving
25 spouse at the decedent's death, plus the value of property

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

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

1 decedent's death by decedent and the surviving spouse with
 2 right of survivorship, any property held by decedent and
 3 transferred by contract to the surviving spouse by reason of
 4 the decedent's death, and the value of the share of the
 5 surviving spouse resulting from rights in community property
 6 in this or any other state formerly owned with the decedent.
 7 Premiums paid by the decedent's employer, his partner, a
 8 partnership of which he was a member, or his creditors are
 9 deemed to have been paid by the decedent.

10 (b) property owned by the spouse at the decedent's
 11 death is valued as of the date of death. Property
 12 transferred by the spouse is valued at the time the transfer
 13 became irrevocable or at the decedent's death, whichever
 14 occurred first. Income earned by included property prior to
 15 the decedent's death is not treated as property derived from
 16 the decedent.

17 (c) property owned by the surviving spouse as of the
 18 decedent's death or previously transferred by the surviving
 19 spouse is presumed to have been derived from the decedent,
 20 except to the extent that the surviving spouse establishes
 21 that it was derived from another source.

22 (4) For the purposes of this section, a bona fide
 23 purchaser is a purchaser for value in good faith and without
 24 notice of any adverse claim. Any recorded instrument is
 25 prima facie evidence that the transfer described therein was

1 made to a bona fide purchaser."

2 Section 15. Section 72-2-801, MCA, is amended to read:

3 "72-2-801. Homestead allowance. ~~(i) A surviving spouse~~
 4 ~~of a decedent who was domiciled in this state is entitled to~~
 5 ~~a homestead allowance of \$20,000. If there is no surviving~~
 6 ~~spouse, each minor child and each dependent child of the~~
 7 ~~decedent is entitled to a homestead allowance amounting to~~
 8 ~~\$20,000, divided by the number of minor and dependent~~
 9 ~~children of the decedent.~~

10 (1) (a) The personal representative may exercise the
 11 right to claim a homestead on behalf of a surviving spouse.
 12 If there is no surviving spouse, the personal representative
 13 may exercise the right on behalf of any minor child and any
 14 dependent child of the decedent, divided by the number of
 15 minor and dependent children of the decedent.

16 (b) (i) The homestead consists of the dwelling house
 17 or mobile home, and all appurtenances, in which the decedent
 18 resided and the land, if any, on which the residence is
 19 located.

20 (ii) The homestead may not exceed in value \$40,000. In
 21 any proceedings instituted to determine the value of such
 22 homestead, the assessed value of the land with included
 23 appurtenances, if any, and of the dwelling house as appears
 24 on the last completed assessment roll preceding the
 25 institution of such proceedings is be prima facie evidence

1 of the value of the property claimed as a homestead.

2 (2) The homestead ~~allowance is exempt from~~ and has
3 priority over all claims against the estate and is exempt
4 from execution as provided in Title 70, chapter 32, part 2.

5 (3) ~~Homestead--allowance~~ The homestead is in addition
6 to any share passing to the surviving spouse or minor or
7 dependent child by the will of the decedent unless otherwise
8 provided, by intestate succession, or by way of elective
9 share."

10 Section 16. Section 72-2-802, MCA, is amended to read:

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

25 (2) Rights to exempt property and assets needed to

1 make up a deficiency of exempt property have priority over
2 all claims against the estate, except that the right to any
3 assets to make up a deficiency of exempt property shall
4 abate as necessary to permit prior payment of the homestead
5 ~~allowance~~ and family allowance.

6 (3) These rights are in addition to any benefit or
7 share passing to the surviving spouse or children by the
8 will of the decedent unless otherwise provided, by intestate
9 succession, or by way of elective share."

10 Section 17. Section 72-2-803, MCA, is amended to read:

11 "72-2-803. Family allowance. (1) In addition to the
12 right to a homestead ~~allowance~~ and exempt property, if the
13 decedent was domiciled in this state, the surviving spouse
14 and minor children whom the decedent was obligated to
15 support and children who were in fact being supported by him
16 are entitled to a reasonable allowance in money out of the
17 estate for their maintenance during the period of
18 administration, which allowance may not continue for longer
19 than 1 year if the estate is inadequate to discharge allowed
20 claims. The allowance may be paid as a lump sum or in
21 periodic installments.

22 (2) It is payable to the surviving spouse, if living,
23 for the use of the surviving spouse and minor and dependent
24 children, otherwise to the children or persons having their
25 care and custody; but in case any minor child or dependent

1 child is not living with the surviving spouse, the allowance
2 may be made partially to the child or his guardian or other
3 person having his care and custody and partially to the
4 spouse, as their needs may appear.

5 (3) The family allowance is exempt from and has
6 priority over all claims but not over the homestead
7 allowance.

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

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

14 Section 18. Section 72-2-804, MCA, is amended to read:
15 "72-2-804. Source, determination, and documentation.

16 (1) If the estate is otherwise sufficient, property
17 specifically devised is not used to satisfy rights to
18 homestead and exempt property. Subject to this restriction,
19 the surviving spouse, the guardians of the minor children,
20 or children who are adults may select property of the estate
21 as the homestead allowance and exempt property. The personal
22 representative may make these selections if the surviving
23 spouse, the children, or the guardians of the minor children
24 are unable or fail to do so within a reasonable time or if
25 there are no guardians of the minor children. The personal

1 representative may execute an instrument or deed of
2 distribution to establish the ownership of property taken as
3 the homestead allowance or exempt property. He may determine
4 the family allowance in a lump sum not exceeding \$6,000 or
5 periodic installments not exceeding \$500 per month for 1
6 year and may disburse funds of the estate in payment of the
7 family allowance ~~and--any--part--of--the--homestead--allowance~~
8 ~~payable-in-cash.~~

9 (2) The personal representative or any interested
10 person aggrieved by any selection, determination, payment,
11 proposed payment, or failure to act under this section may
12 petition the court for appropriate relief, which relief may
13 provide a family allowance larger or smaller than that which
14 the personal representative determined or could have
15 determined."

16 Section 19. Section 72-3-101, MCA, is amended to read:
17 "72-3-101. Devolution of estate at death --
18 restrictions. (1) The power of a person to leave property by
19 will and the rights of creditors, devisees, and heirs to his
20 property are subject to the restrictions and limitations
21 contained in this code to facilitate the prompt settlement
22 of estates.

23 (2) Upon the death of a person, his real and personal
24 property devolves to the persons to whom it is devised by
25 his last will or to those indicated as substitutes for them

1 in cases involving lapse, renunciation, or other
 2 circumstances affecting the devolution of testate estates
 3 or, in the absence of testamentary disposition, to his heirs
 4 or to those indicated as substitutes for them in cases
 5 involving renunciation or other circumstances affecting
 6 devolution of intestate estates, subject to the homestead
 7 allowance, exempt property, and family allowance, to rights
 8 of creditors, elective share of the surviving spouse, and to
 9 administration."

10 Section 20. Section 72-3-911, MCA, is amended to read:

11 "72-3-911. Successors' rights if no administration.

12 (1) In the absence of administration, the heirs and devisees
 13 are entitled to the estate in accordance with the terms of a
 14 probated will or the laws of intestate succession.

15 (2) Devisees may establish title by the probated will
 16 to devised property. Persons entitled to property by
 17 homestead allowance, exemption, or intestacy may establish
 18 title thereto by proof of the decedent's ownership, his
 19 death, and their relationship to the decedent.

20 (3) Successors take subject to all charges incident to
 21 administration, including the claims of creditors and
 22 allowances of surviving spouse and dependent children and
 23 subject to the rights of others resulting from abatement,
 24 retainer, advancement, and ademption."

25 Section 21. Section 72-3-1103, MCA, is amended to

1 read:

2 "72-3-1103. Summary procedure for disbursement and
 3 distribution. If it appears from the inventory and appraisal
 4 that the value of the net distributable estate does not
 5 exceed \$7,500 or the value of the entire estate, less liens
 6 and encumbrances, does not exceed the homestead allowance,
 7 exempt property, family allowance, costs and expenses of
 8 administration, reasonable funeral expenses, and reasonable
 9 and necessary medical and hospital expenses of the last
 10 illness of the decedent, the personal representative,
 11 without giving notice to creditors, may immediately disburse
 12 and distribute the estate to the persons entitled thereto
 13 and file a closing statement as provided in 72-3-1104."

14 Section 22. Section 72-3-1104, MCA, is amended to
 15 read:

16 "72-3-1104. Closing by sworn statement of personal
 17 representative -- termination of appointment. (1) Unless
 18 prohibited by order of the court and except for estates
 19 being administered by supervised personal representatives, a
 20 personal representative may close an estate administered
 21 under the summary procedures of 72-3-1103 by filing with the
 22 court, at any time after disbursement and distribution of
 23 the estate, a verified statement stating that:

24 (a) to the best knowledge of the personal
 25 representative, the value of the net distributable estate

1 did not exceed \$7,500 or the value of the entire estate,
 2 less liens and encumbrances, did not exceed the homestead
 3 allowance, exempt property, family allowance, costs and
 4 expenses of administration, reasonable funeral expenses, and
 5 reasonable, necessary medical and hospital expenses of the
 6 last illness of the decedent;

7 (b) the personal representative has fully administered
 8 the estate by payment of inheritance taxes and by disbursing
 9 and distributing it to the persons entitled thereto; and

10 (c) the personal representative has sent a copy of the
 11 closing statement to all distributees of the estate and to
 12 all creditors or other claimants of whom he is aware whose
 13 claims are neither paid nor barred and has furnished a full
 14 account in writing of his administration to the distributees
 15 whose interests are affected.

16 (2) If no actions or proceedings involving the
 17 personal representative are pending in the court 1 year
 18 after the closing statement is filed, the appointment of the
 19 personal representative terminates.

20 (3) A closing statement filed under this section has
 21 the same effect as one filed under 72-3-1004."

22 NEW SECTION. Section 23. Repealer. Sections 25-13-611
 23 through 25-13-613, 25-13-616, and 25-13-617, MCA, are
 24 repealed.

25 NEW SECTION. Section 24. Codification instruction.

1 (1) Sections 1 through 5 are intended to be codified as an
 2 integral part of Title 25, chapter 13, part 6, and the
 3 provisions of Title 25, chapter 13, part 6, apply to
 4 sections 1 through 5.

5 (2) Section 6 is intended to be codified as an
 6 integral part of Title 70, chapter 32, part 2, and the
 7 provisions of Title 70, chapter 32, part 2, apply to section
 8 6.

9 NEW SECTION. Section 25. Saving clause. This act does
 10 not affect rights and duties that matured, penalties that
 11 were incurred, or proceedings that were begun before the
 12 effective date of this act.

13 NEW SECTION. Section 26. Severability. If a part of
 14 this act is invalid, all valid parts that are severable from
 15 the invalid part remain in effect. If a part of this act is
 16 invalid in one or more of its applications, the part remains
 17 in effect in all valid applications that are severable from
 18 the invalid applications.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

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 12 AND 25-13-617, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 NEW SECTION. Section 1. Protection of property of
 16 residents. A resident of this state is entitled to the
 17 exemptions provided in this part.

18 NEW SECTION. Section 2. Claim enforceable against
 19 exempt property. Notwithstanding any other provision of this
 20 part, a creditor may levy against exempt property to enforce
 21 a claim for:

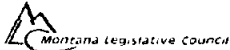
- 22 (1) the purchase price of the property; or
- 23 (2) a loan made for the express purpose of enabling
- 24 the judgment debtor to purchase the property and used for
- 25 that purpose.

1 NEW SECTION. Section 3. Property exempt without
 2 limitation. A judgment debtor is entitled to exemption from
 3 execution of the following:

- 4 (1) professionally prescribed health aids for the
- 5 judgment debtor or a dependent of the judgment debtor;
- 6 (2) benefits the judgment debtor has received or is
- 7 entitled to receive under federal social security or local
- 8 public assistance legislation;
- 9 (3) veterans' benefits;
- 10 (4) disability or illness benefits;
- 11 (5) benefits paid or payable for medical, surgical, or
- 12 hospital care to the extent they are used or will be used to
- 13 pay for the care;
- 14 (6) maintenance and child support; and
- 15 (7) a burial plot for the judgment debtor and his
- 16 family.

17 NEW SECTION. Section 4. Personal property exempt
 18 subject to value limitations. A judgment debtor is entitled
 19 to exemption from execution of the following:

- 20 (1) the judgment debtor's interest, not to exceed
- 21 \$6,000 in aggregate value, to the extent of a value not
- 22 exceeding \$600 in any item of property, IN household
- 23 furnishings and goods, appliances, jewelry, wearing apparel,
- 24 books, FIREARMS AND OTHER SPORTING GOODS, animals, FEED,
- 25 crops, and musical instruments;



1 (2) the judgment debtor's interest, not to exceed
2 \$3,500 in value, in one motor vehicle;

3 (3) the judgment debtor's interest, not to exceed
4 \$3,000 in value, in any implements, professional books, or
5 tools, of the trade of the judgment debtor or a dependent of
6 the judgment debtor; and

7 (4) the judgment debtor's interest, not to exceed
8 \$4,000 in value, in any unmaturing life insurance contracts
9 owned by him.

10 NEW SECTION. Section 5. Tracing exempt personal
11 property. (1) If money or other property exempt under
12 [sections 3 and 4] has been sold or has been lost, damaged,
13 or destroyed and the judgment debtor has been indemnified
14 for it, he is entitled for 6 months to an exemption of
15 proceeds that are traceable (for example, in a bank or
16 savings account).

17 (2) Earnings exempt under 25-13-614 remain exempt for
18 45 days after receipt by and while in the possession of the
19 judgment debtor in a form into which the exempt earnings are
20 traceable (for example, in a bank or savings account).

21 (3) Proceeds are traceable under this section by
22 application of the principles of first-in first-out, last-in
23 first-out, or any other reasonable basis for tracing
24 selected by the judgment debtor.

25 NEW SECTION. Section 6. Tracing homestead proceeds.

1 (1) If property or a part thereof that could have been
2 claimed as an exempt homestead has been sold or taken by
3 condemnation or has been lost, damaged, or destroyed and the
4 owner has been indemnified for it, he is entitled for 18
5 months to exemption of the proceeds that are traceable.

6 (2) Proceeds are traceable under this section by
7 application of the principles of first-in first-out, last-in
8 first-out, or any other reasonable basis for tracing
9 selected by the judgment debtor.

10 Section 7. Section 25-13-614, MCA, is amended to read:

11 "25-13-614. Earnings of judgment debtor. (1) ~~Except as~~
12 ~~provided in subsection (2), the earnings of the judgment~~
13 ~~debtor for his personal services rendered during the 45-day~~
14 ~~period prior to the levy of execution or attachment are~~
15 ~~exempt to the extent such earnings are necessary for the~~
16 ~~support of his family.~~

17 ~~(2) (a)~~ No earnings are exempt unless the judgment
18 debtor complies with 25-13-411.

19 ~~(b) Earnings are exempt under this section from~~
20 ~~judgments or orders for maintenance or child support only to~~
21 ~~the extent allowed by 15-U.S.C. 1673.~~

22 ~~(c) One-half of earnings are not exempt for debts~~
23 ~~incurred by the judgment debtor or his family for gasoline~~
24 ~~and the common necessities of life.~~

25 ~~(3) The words "his family" as used in this section.~~

1 ~~except to the extent that these words include a person~~
 2 ~~covered by a judgment or order under subsection (2), are to~~
 3 ~~be construed to include:~~

4 ~~(a) the judgment debtor's spouse;~~

5 ~~(b) every person who resides with the judgment debtor~~
 6 ~~under his care or maintenance and who is:~~

7 ~~(i) a minor child of the judgment debtor or of his~~
 8 ~~spouse or former spouse;~~

9 ~~(ii) a minor grandchild, brother, or sister or minor~~
 10 ~~child of a brother or sister of the judgment debtor or of~~
 11 ~~his spouse;~~

12 ~~(iii) a father, mother, grandfather, or grandmother of~~
 13 ~~the judgment debtor or of his spouse or former spouse;~~

14 ~~(iv) an unmarried sister, brother, or any other~~
 15 ~~relative of the judgment debtor mentioned in this section~~
 16 ~~who has attained the age of majority and is unable to care~~
 17 ~~for or support himself.~~

18 (2) Except as provided in subsections (3) and (4), the
 19 maximum part of the aggregate disposable earnings of a
 20 judgment debtor for any workweek that is subjected to
 21 garnishment may not exceed the lesser of:

22 (a) the amount by which his disposable earnings for
 23 the week exceed 30 times the federal minimum hourly wage in
 24 effect at the time the earnings are payable; or

25 (b) 25% of his disposable earnings for that week.

1 (3) The restrictions of subsection (2) do not apply in
 2 the case of an order or judgment for the maintenance or
 3 support of any person, issued by a court of competent
 4 jurisdiction, or pursuant to an administrative procedure
 5 that is established by state law, affords substantial due
 6 process, and is subject to judicial review.

7 (4) (a) The maximum part of the aggregate disposable
 8 earnings of a judgment debtor for any workweek that is
 9 subject to garnishment to enforce an order described in
 10 subsection (3) may not exceed:

11 (i) 50% of the judgment debtor's disposable earnings
 12 for that week if he is supporting his spouse or dependent
 13 child (other than a spouse or child for whom the order is
 14 issued); or

15 (ii) 60% of the judgment debtor's disposable earnings
 16 for that week if he is not supporting a spouse or dependent
 17 child described in subsection (4)(a)(i).

18 (b) However, the amount stated in (4)(a)(i) may be 55%
 19 and the amount stated in (4)(a)(ii) may be 65% if such
 20 earnings are being garnished to enforce an order for
 21 maintenance or support for a period prior to the 12-week
 22 period that ends with the beginning of such workweek.

23 (5) For the purposes of this section, the definitions
 24 of earnings, disposable earnings, and garnishment are as set
 25 forth in 15 U.S.C. 1672."

1 Section 8. Section 70-32-104, MCA, is amended to read:
 2 "70-32-104. ~~Limitations~~ Limitation on quantity--and
 3 value which may be selected. (1) ~~Homesteads may be selected~~
 4 ~~and claimed consisting of:~~
 5 (a) ~~a quantity of land not exceeding 320 acres used~~
 6 ~~for agricultural purposes and the dwelling house or mobile~~
 7 ~~home thereon and its appurtenances and not included in any~~
 8 ~~municipality;~~
 9 (b) ~~a quantity of land not in a municipality, not~~
 10 ~~exceeding 1/2 acre and not used for agricultural or commercial~~
 11 ~~purposes, and the dwelling house or mobile home thereon and~~
 12 ~~its appurtenances; or~~
 13 (c) ~~a quantity of land within a municipality, not~~
 14 ~~exceeding one-fourth of an acre, and the dwelling house or~~
 15 ~~mobile home thereon and its appurtenances.~~
 16 (2) ~~Such a homestead, in either case, shall may~~ not
 17 exceed in value ~~the sum of~~ \$40,000. However, ~~in~~ In any
 18 proceedings instituted to determine the value of such
 19 homestead, the assessed value of the land with included
 20 appurtenances, if any, and of the dwelling house as appears
 21 on the last completed assessment roll preceding the
 22 institution of such proceedings shall be prima facie
 23 evidence of the value of the property claimed as a
 24 homestead.
 25 (2) If a claimant who is an owner of an undivided

1 interest in real property claims a homestead exemption, he
 2 is limited to an exemption amount proportional to his
 3 undivided interest."
 4 Section 9. Section 70-32-213, MCA, is amended to read:
 5 "70-32-213. Sale proceeds equal to exemption
 6 protected. The money paid to the claimant is entitled, for
 7 the period of 6 18 months thereafter, to the same protection
 8 against legal process and the voluntary disposition of
 9 either spouse which the law gives to the homestead."
 10 Section 10. Section 70-32-214, MCA, is amended to
 11 read:
 12 "70-32-214. Compensation of appraisers. The court must
 13 fix the a reasonable amount as compensation of for the
 14 appraisers, ~~not to exceed \$3 per day each for the time~~
 15 actually engaged."
 16 Section 11. Section 72-2-102, MCA, is amended to read:
 17 "72-2-102. Waiver of rights by spouse. The right of
 18 election of a surviving spouse and the rights of the
 19 surviving spouse to the homestead allowance, exempt
 20 property, and family allowance or any of them may be waived,
 21 wholly or partially, before or after marriage, by a written
 22 contract, agreement, or waiver signed by the party waiving
 23 after fair disclosure. Unless it provides to the contrary,
 24 a waiver of "all rights" (or equivalent language) in the
 25 property or estate of a present or prospective spouse or a

1 complete property settlement entered into after or in
 2 anticipation of separation or divorce is a waiver of all
 3 rights to elective share, ~~homestead allowance~~, exempt
 4 property, and family allowance by each spouse in the
 5 property of the other and a renunciation by each of all
 6 benefits which would otherwise pass to him from the other by
 7 intestate succession or by virtue of the provisions of any
 8 will executed before the waiver or property settlement."

9 Section 12. Section 72-2-205, MCA, is amended to read:

10 "72-2-205. Requirement that heir survive decedent by
 11 one hundred twenty hours. Any person who fails to survive
 12 the decedent by 120 hours is deemed to have predeceased the
 13 decedent for purposes of ~~homestead allowance~~, exempt
 14 property, and intestate succession, and the decedent's heirs
 15 are determined accordingly. If the time of death of the
 16 decedent or of the person who would otherwise be an heir or
 17 the times of death of both cannot be determined and it
 18 cannot be established that the person who would otherwise be
 19 an heir has survived the decedent by 120 hours, it is deemed
 20 that the person failed to survive for the required period.
 21 This section is not to be applied where its application
 22 would result in a taking of intestate estate by the state
 23 under 72-2-207."

24 Section 13. Section 72-2-704, MCA, is amended to read:

25 "72-2-704. Effect of election on benefits by will or

1 statute. (1) The surviving spouse's election of his elective
 2 share does not affect the share of the surviving spouse
 3 under the provisions of the decedent's will or intestate
 4 succession unless the surviving spouse also expressly
 5 renounces in the petition for an elective share the benefit
 6 of all or any of the provisions. If any provision is so
 7 renounced, the property or other benefit which would
 8 otherwise have passed to the surviving spouse thereunder is
 9 treated, subject to contribution under 72-2-706(2), as if
 10 the surviving spouse had predeceased the testator.

11 (2) A surviving spouse is entitled to ~~homestead~~
 12 ~~allowance~~, exempt property, and family allowance whether or
 13 not he elects to take an elective share."

14 Section 14. Section 72-2-705, MCA, is amended to read:

15 "72-2-705. Augmented estate. The augmented estate
 16 means the estate, reduced by funeral and administration
 17 expenses, ~~homestead allowance~~, family allowances and
 18 exemptions, and enforceable claims, to which is added the
 19 sum of the following amounts:

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

1 the following types:

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

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

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

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

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

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

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

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

12 (b) property owned by the spouse at the decedent's
 13 death is valued as of the date of death. Property
 14 transferred by the spouse is valued at the time the transfer
 15 became irrevocable or at the decedent's death, whichever
 16 occurred first. Income earned by included property prior to
 17 the decedent's death is not treated as property derived from
 18 the decedent.

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

24 (4) For the purposes of this section, a bona fide
 25 purchaser is a purchaser for value in good faith and without

1 notice of any adverse claim. Any recorded instrument is
 2 prima facie evidence that the transfer described therein was
 3 made to a bona fide purchaser."

4 Section 15. Section 72-2-801, MCA, is amended to read:
 5 "72-2-801. Homestead allowance ELECTION. ~~(i)---A~~
 6 ~~surviving--spouse--of--a--decedent--who--was--domiciled--in--this~~
 7 ~~state--is--entitled--to--a--homestead--allowance--of--\$20,000,--if~~
 8 ~~there--is--no--surviving--spouse,--each--minor--child--and--each~~
 9 ~~dependent--child--of--the--decedent--is--entitled--to--a--homestead~~
 10 ~~allowance--amounting--to--\$20,000,--divided--by--the--number--of~~
 11 ~~minor--and--dependent--children--of--the--decedent;~~

12 ~~(i)---(a)---The--personal--representative--may--exercise--the~~
 13 ~~right--to--claim--a--homestead--on--behalf--of--a--surviving--spouse;~~
 14 ~~if--there--is--no--surviving--spouse,--the--personal--representative~~
 15 ~~may--exercise--the--right--on--behalf--of--any--minor--child--and--any~~
 16 ~~dependent--child--of--the--decedent,--divided--by--the--number--of~~
 17 ~~minor--and--dependent--children--of--the--decedent;~~

18 ~~(b)---(i)---The--homestead--consists--of--the--dwelling--house~~
 19 ~~or--mobile--home,--and--all--appurtenances,--in--which--the--decedent~~
 20 ~~resided--and--the--land,--if--any,--on--which--the--residence--is~~
 21 ~~located;~~

22 ~~(ii)---The--homestead--may--not--exceed--in--value--\$40,000,--in~~
 23 ~~any--proceedings--instituted--to--determine--the--value--of--such~~
 24 ~~homestead,--the--assessed--value--of--the--land--with--included~~
 25 ~~appurtenances,--if--any,--and--of--the--dwelling--house--as--appears~~

~~on--the--last--completed--assessment--roll--preceding--the
institution--of--such--proceedings--is--be--prima--facie--evidence
of--the--value--of--the--property--claimed--as--a--homestead: (1) IF
THE SPOUSE OR A MINOR OR DEPENDENT CHILD SURVIVES THE
DECEDENT BY 120 HOURS, THE PERSONAL REPRESENTATIVE MAY
DECLARE A HOMESTEAD ON BEHALF OF THE DECEDENT'S ESTATE
PURSUANT TO TITLE 70, CHAPTER 32.~~

~~(2) The homestead allowance is exempt from and has
priority over all IS EXEMPT FROM ALL UNSECURED claims
against the estate and is exempt from execution as provided
in Title 70, chapter 32, part 2.~~

~~{3}--Homestead--allowance The homestead is in addition
to any share passing to the surviving spouse or minor or
dependent child by the will of the decedent unless otherwise
provided, by intestate succession, or by way of elective
share."~~

Section 16. Section 72-2-802, MCA, is amended to read:

"72-2-802. Exempt property. (1) In addition to the
homestead allowance, the THE surviving spouse of a decedent
who was domiciled in this state is entitled from the estate
to value not exceeding \$3,500 in excess of any security
interests therein in household furniture, automobiles,
furnishings, appliances, and personal effects. If there is
no surviving spouse, children of the decedent are entitled
jointly to the same value. If encumbered chattels are

selected and if the value in excess of security interests,
plus that of other exempt property, is less than \$3,500 or
if there is not \$3,500 worth of exempt property in the
estate, the spouse or children are entitled to other assets
of the estate, if any, to the extent necessary to make up
the \$3,500 value.

(2) Rights to exempt property and assets needed to
make up a deficiency of exempt property have priority over
all claims against the estate, except that the right to any
assets to make up a deficiency of exempt property shall
abate as necessary to permit prior payment of the homestead
allowance and family allowance.

(3) These rights are in addition to any benefit or
share passing to the surviving spouse or children by the
will of the decedent unless otherwise provided, by intestate
succession, or by way of elective share."

Section 17. Section 72-2-803, MCA, is amended to read:

"72-2-803. Family allowance. (1) In addition to the
right to a 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 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

1 than 1 year if the estate is inadequate to discharge allowed
 2 claims. The allowance may be paid as a lump sum or in
 3 periodic installments.

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

12 (3) The family allowance is exempt from and has
 13 priority over all claims ~~but--not--over--the--homestead~~
 14 ~~allowance.~~

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

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

21 Section 18. Section 72-2-804, MCA, is amended to read:
 22 "72-2-804. Source, determination, and documentation.

23 (1) If the estate is otherwise sufficient, property
 24 specifically devised is not used to satisfy rights to
 25 ~~homestead-and~~ exempt property. Subject to this restriction,

1 the surviving spouse, the guardians of the minor children,
 2 or children who are adults may select property of the estate
 3 as the homestead allowance and exempt property. The personal
 4 representative may make these selections if the surviving
 5 spouse, the children, or the guardians of the minor children
 6 are unable or fail to do so within a reasonable time or if
 7 there are no guardians of the minor children. The personal
 8 representative may execute an instrument or deed of
 9 distribution to establish the ownership of property taken as
 10 the homestead allowance or exempt property. He may determine
 11 the family allowance in a lump sum not exceeding \$6,000 or
 12 periodic installments not exceeding \$500 per month for 1
 13 year and may disburse funds of the estate in payment of the
 14 family allowance ~~and--any--part-of-the-homestead-allowance~~
 15 ~~payable-in-cash.~~

16 (2) The personal representative or any interested
 17 person aggrieved by any selection, determination, payment,
 18 proposed payment, or failure to act under this section may
 19 petition the court for appropriate relief, which relief may
 20 provide a family allowance larger or smaller than that which
 21 the personal representative determined or could have
 22 determined."

23 Section 19. Section 72-3-101, MCA, is amended to read:
 24 "72-3-101. Devolution of estate at death --
 25 restrictions. (1) The power of a person to leave property by

1 will and the rights of creditors, devisees, and heirs to his
 2 property are subject to the restrictions and limitations
 3 contained in this code to facilitate the prompt settlement
 4 of estates.

5 (2) Upon the death of a person, his real and personal
 6 property devolves to the persons to whom it is devised by
 7 his last will or to those indicated as substitutes for them
 8 in cases involving lapse, renunciation, or other
 9 circumstances affecting the devolution of testate estates
 10 or, in the absence of testamentary disposition, to his heirs
 11 or to those indicated as substitutes for them in cases
 12 involving renunciation or other circumstances affecting
 13 devolution of intestate estates, subject to the homestead
 14 allowance, exempt property, and family allowance, to rights
 15 of creditors, elective share of the surviving spouse, and to
 16 administration."

17 Section 20. Section 72-3-911, MCA, is amended to read:

18 "72-3-911. Successors' rights if no administration.

19 (1) In the absence of administration, the heirs and devisees
 20 are entitled to the estate in accordance with the terms of a
 21 probated will or the laws of intestate succession.

22 (2) Devisees may establish title by the probated will
 23 to devised property. Persons entitled to property by
 24 homestead allowance, exemption, or intestacy may establish
 25 title thereto by proof of the decedent's ownership, his

1 death, and their relationship to the decedent.

2 (3) Successors take subject to all charges incident to
 3 administration, including the claims of creditors and
 4 allowances of surviving spouse and dependent children and
 5 subject to the rights of others resulting from abatement,
 6 retainer, advancement, and ademption."

7 Section 21. Section 72-3-1103, MCA, is amended to
 8 read:

9 "72-3-1103. Summary procedure for disbursement and
 10 distribution. If it appears from the inventory and appraisal
 11 that the value of the net distributable estate does not
 12 exceed \$7,500 or the value of the entire estate, less liens
 13 and encumbrances, does not exceed the homestead allowance
 14 ELECTION, exempt property, family allowance, costs and
 15 expenses of administration, reasonable funeral expenses, and
 16 reasonable and necessary medical and hospital expenses of
 17 the last illness of the decedent, the personal
 18 representative, without giving notice to creditors, may
 19 immediately disburse and distribute the estate to the
 20 persons entitled thereto and file a closing statement as
 21 provided in 72-3-1104."

22 Section 22. Section 72-3-1104, MCA, is amended to
 23 read:

24 "72-3-1104. Closing by sworn statement of personal
 25 representative -- termination of appointment. (1) Unless

1 prohibited by order of the court and except for estates
 2 being administered by supervised personal representatives, a
 3 personal representative may close an estate administered
 4 under the summary procedures of 72-3-1103 by filing with the
 5 court, at any time after disbursement and distribution of
 6 the estate, a verified statement stating that:

7 (a) to the best knowledge of the personal
 8 representative, the value of the net distributable estate
 9 did not exceed \$7,500 or the value of the entire estate,
 10 less liens and encumbrances, did not exceed the homestead
 11 allowance ELECTION, exempt property, family allowance, costs
 12 and expenses of administration, reasonable funeral expenses,
 13 and reasonable, necessary medical and hospital expenses of
 14 the last illness of the decedent;

15 (b) the personal representative has fully administered
 16 the estate by payment of inheritance taxes and by disbursing
 17 and distributing it to the persons entitled thereto; and

18 (c) the personal representative has sent a copy of the
 19 closing statement to all distributees of the estate and to
 20 all creditors or other claimants of whom he is aware whose
 21 claims are neither paid nor barred and has furnished a full
 22 account in writing of his administration to the distributees
 23 whose interests are affected.

24 (2) If no actions or proceedings involving the
 25 personal representative are pending in the court 1 year

1 after the closing statement is filed, the appointment of the
 2 personal representative terminates.

3 (3) A closing statement filed under this section has
 4 the same effect as one filed under 72-3-1004."

5 SECTION 23. SECTION 70-32-103, MCA, IS AMENDED TO
 6 READ:

7 "70-32-103. From whose property homestead may be
 8 selected -- declaration on behalf of decedent. (1) If the
 9 claimant be is married, the homestead may be selected from
 10 the property of either spouse. When the claimant is not
 11 married, the homestead may be selected from any of his or
 12 her property.

13 (2) For purposes of this chapter, the term "claimant"
 14 includes a personal representative of a decedent's estate
 15 who under 72-2-801 declares a homestead on behalf of the
 16 estate."

17 SECTION 24. SECTION 70-32-106, MCA, IS AMENDED TO
 18 READ:

19 "70-32-106. Contents of declaration. (1) The
 20 declaration of homestead must contain a statement that the
 21 person making it is residing on the premises and claims them
 22 as a homestead and a description of the premises.

23 (2) If the declaration of homestead is made by the
 24 personal representative on behalf of a decedent's estate
 25 under 72-2-801, it must contain:

- 1 (a) a description of the premises;
- 2 (b) a statement that the surviving spouse or minor or
- 3 dependent child was residing on the premises at the time of
- 4 the decedent's death; and
- 5 (c) a declaration that the personal representative is
- 6 claiming the premises as a homestead."

7 SECTION 25. SECTION 70-32-302, MCA, IS AMENDED TO
 8 READ:

9 "70-32-302. How abandoned -- declaration. A homestead
 10 can be abandoned only by a declaration of abandonment or a
 11 grant thereof executed and acknowledged by:

- 12 (1) the husband and wife if the claimant is married;
- 13 (2) the claimant if unmarried; or
- 14 (3) the personal representative if a declaration is
- 15 made on behalf of a decedent's estate under 72-2-801."

16 NEW SECTION. Section 26. Repealer. Sections 25-13-611
 17 through 25-13-613, 25-13-616, and 25-13-617, MCA, are
 18 repealed.

19 NEW SECTION. Section 27. Codification instruction.

20 (1) Sections 1 through 5 are intended to be codified as an
 21 integral part of Title 25, chapter 13, part 6, and the
 22 provisions of Title 25, chapter 13, part 6, apply to
 23 sections 1 through 5.

24 (2) Section 6 is intended to be codified as an
 25 integral part of Title 70, chapter 32, part 2, and the

1 provisions of Title 70, chapter 32, part 2, apply to section
 2 6.

3 NEW SECTION. Section 28. Saving clause. This act does
 4 not affect rights and duties that matured, penalties that
 5 were incurred, or proceedings that were begun before the
 6 effective date of this act.

7 NEW SECTION. Section 29. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

-End-

1 HOUSE BILL NO. 19

2 INTRODUCED BY MERCER

3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS.

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
 6 REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION;
 7 AMENDING SECTIONS 25-13-614, 70-32-103, 70-32-104,
 8 70-32-106, 70-32-213, 70-32-214, 70-32-302, 72-2-102,
 9 72-2-205, 72-2-704, 72-2-705, 72-2-801 THROUGH 72-2-804,
 10 72-3-101, 72-3-911, 72-3-1103, AND 72-3-1104, MCA; AND
 11 REPEALING SECTIONS 25-13-611 THROUGH ~~25-13-613~~, 25-13-612,
 12 25-13-616, AND 25-13-617, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 NEW SECTION. Section 1. Protection of property of
16 residents. A resident of this state is entitled to the
17 exemptions provided in this part.18 NEW SECTION. Section 2. Claim enforceable against
19 exempt property. Notwithstanding any other provision of this
20 part, a creditor may levy against exempt property to enforce
21 a claim for:

- 22 (1) the purchase price of the property; or
 23 (2) a loan made for the express purpose of enabling
 24 the judgment debtor to purchase the property and used for
 25 that purpose.

1 NEW SECTION. Section 3. Property exempt without
 2 limitation. A judgment debtor is entitled to exemption from
 3 execution of the following:

- 4 (1) professionally prescribed health aids for the
 5 judgment debtor or a dependent of the judgment debtor;
 6 (2) benefits the judgment debtor has received or is
 7 entitled to receive under federal social security or local
 8 public assistance legislation;
 9 (3) veterans' benefits;
 10 (4) disability or illness benefits;
 11 (5) benefits paid or payable for medical, surgical, or
 12 hospital care to the extent they are used or will be used to
 13 pay for the care;
 14 (6) maintenance and child support; and
 15 (7) a burial plot for the judgment debtor and his
 16 family.

17 NEW SECTION. Section 4. Personal property exempt
 18 subject to value limitations. A judgment debtor is entitled
 19 to exemption from execution of the following:

- 20 (1) the judgment debtor's interest, not to exceed
 21 ~~\$67,000~~ \$4,500 in aggregate value, to the extent of a value
 22 not exceeding \$600 in any item of property, IN household
 23 furnishings and goods, appliances, jewelry, wearing apparel,
 24 books, FIREARMS AND OTHER SPORTING GOODS, animals, FEED,
 25 crops, and musical instruments;

1 (2) the judgment debtor's interest, not to exceed
2 \$9,500 \$1,200 in value, in one motor vehicle;

3 (3) the judgment debtor's interest, not to exceed
4 \$3,000 in value, in any implements, professional books, or
5 tools, of the trade of the judgment debtor or a dependent of
6 the judgment debtor; and

7 (4) the judgment debtor's interest, not to exceed
8 \$4,000 in value, in any unexpired life insurance contracts
9 owned by him.

10 NEW SECTION. Section 5. Tracing exempt personal
11 property. (1) If money or other property exempt under
12 [sections 3 and 4] has been sold or has been lost, damaged,
13 or destroyed and the judgment debtor has been indemnified
14 for it, he is entitled for 6 months to an exemption of
15 proceeds that are traceable (for example, in a bank or
16 savings account).

17 (2) Earnings exempt under 25-13-614 remain exempt for
18 45 days after receipt by and while in the possession of the
19 judgment debtor in a form into which the exempt earnings are
20 traceable (for example, in a bank or savings account).

21 (3) Proceeds are traceable under this section by
22 application of the principles of first-in first-out, last-in
23 first-out, or any other reasonable basis for tracing
24 selected by the judgment debtor.

25 NEW SECTION. Section 6. Tracing homestead proceeds.

1 (1) If property or a part thereof that could have been
2 claimed as an exempt homestead has been sold or taken by
3 condemnation or has been lost, damaged, or destroyed and the
4 owner has been indemnified for it, he is entitled for 18
5 months to exemption of the proceeds that are traceable.

6 (2) Proceeds are traceable under this section by
7 application of the principles of first-in first-out, last-in
8 first-out, or any other reasonable basis for tracing
9 selected by the judgment debtor.

10 Section 7. Section 25-13-614, MCA, is amended to read:

11 "25-13-614. Earnings of judgment debtor. (1) ~~Except as~~
12 ~~provided in subsection (2), the earnings of the judgment~~
13 ~~debtor for his personal services rendered during the 45-day~~
14 ~~period prior to the levy of execution or attachment are~~
15 ~~exempt to the extent such earnings are necessary for the~~
16 ~~support of his family.~~

17 (2) (a) No earnings are exempt unless the judgment
18 debtor complies with 25-13-411.

19 (b) ~~Earnings are exempt under this section from~~
20 ~~judgments or orders for maintenance or child support only to~~
21 ~~the extent allowed by 15-U.S.C. 1673.~~

22 (c) ~~One-half of earnings are not exempt for debts~~
23 ~~incurred by the judgment debtor or his family for gasoline~~
24 ~~and the common necessities of life.~~

25 (3) ~~The words "his family", as used in this section,~~

1 ~~except--to--the--extent--that--these--words--include--a--person~~
 2 ~~covered--by--a--judgment--or--order--under--subsection--(2),--are--to~~
 3 ~~be--construed--to--include:~~

4 ~~(a)--the--judgment--debtor's--spouse;~~

5 ~~(b)--every--person--who--resides--with--the--judgment--debtor~~
 6 ~~under--his--care--or--maintenance--and--who--is;~~

7 ~~(i)--a--minor--child--of--the--judgment--debtor--or--of--his~~
 8 ~~spouse--or--former--spouse;~~

9 ~~(ii)--a--minor--grandchild,--brother,--or--sister--or--minor~~
 10 ~~child--of--a--brother--or--sister--of--the--judgment--debtor--or--of~~
 11 ~~his--spouse;~~

12 ~~(iii)--a--father,--mother,--grandfather,--or--grandmother--of~~
 13 ~~the--judgment--debtor--or--of--his--spouse--or--former--spouse;~~

14 ~~(iv)--an--unmarried--sister,--brother,--or--any--other~~
 15 ~~relative--of--the--judgment--debtor--mentioned--in--this--section~~
 16 ~~who--has--attained--the--age--of--majority--and--is--unable--to--care~~
 17 ~~for--or--support--himself.~~

18 (2) Except as provided in subsections (3) and (4), the
 19 maximum part of the aggregate disposable earnings of a
 20 judgment debtor for any workweek that is subjected to
 21 garnishment may not exceed the lesser of:

22 (a) the amount by which his disposable earnings for
 23 the week exceed 30 times the federal minimum hourly wage in
 24 effect at the time the earnings are payable; or

25 (b) 25% of his disposable earnings for that week.

1 (3) The restrictions of subsection (2) do not apply in
 2 the case of an order or judgment for the maintenance or
 3 support of any person, issued by a court of competent
 4 jurisdiction, or pursuant to an administrative procedure
 5 that is established by state law, affords substantial due
 6 process, and is subject to judicial review.

7 (4) (a) The maximum part of the aggregate disposable
 8 earnings of a judgment debtor for any workweek that is
 9 subject to garnishment to enforce an order described in
 10 subsection (3) may not exceed:

11 (i) 50% of the judgment debtor's disposable earnings
 12 for that week if he is supporting his spouse or dependent
 13 child (other than a spouse or child for whom the order is
 14 issued); or

15 (ii) 60% of the judgment debtor's disposable earnings
 16 for that week if he is not supporting a spouse or dependent
 17 child described in subsection (4)(a)(i).

18 (b) However, the amount stated in (4)(a)(i) may be 55%
 19 and the amount stated in (4)(a)(ii) may be 65% if such
 20 earnings are being garnished to enforce an order for
 21 maintenance or support for a period prior to the 12-week
 22 period that ends with the beginning of such workweek.

23 (5) For the purposes of this section, the definitions
 24 of earnings, disposable earnings, and garnishment are as set
 25 forth in 15 U.S.C. 1672."

1 Section 8. Section 70-32-104, MCA, is amended to read:

2 "70-32-104. ~~Limitations~~ Limitation on quantity--and
3 value ~~which may be selected~~. (1) ~~Homesteads may be selected~~
4 ~~and claimed consisting of:~~

5 ~~(a) a quantity of land not exceeding 320 acres used~~
6 ~~for agricultural purposes and the dwelling house or mobile~~
7 ~~home thereon and its appurtenances and not included in any~~
8 ~~municipality;~~

9 ~~(b) a quantity of land not in a municipality, not~~
10 ~~exceeding 1 acre and not used for agricultural or commercial~~
11 ~~purposes, and the dwelling house or mobile home thereon and~~
12 ~~its appurtenances; or~~

13 ~~(c) a quantity of land within a municipality, not~~
14 ~~exceeding one-fourth of an acre, and the dwelling house or~~
15 ~~mobile home thereon and its appurtenances.~~

16 ~~(2) Such a homestead, in either case, shall may not~~
17 ~~exceed in value the sum of \$40,000. However, in In any~~
18 ~~proceedings instituted to determine the value of such~~
19 ~~homestead, the assessed value of the land with included~~
20 ~~appurtenances, if any, and of the dwelling house as appears~~
21 ~~on the last completed assessment roll preceding the~~
22 ~~institution of such proceedings shall be prima facie~~
23 ~~evidence of the value of the property claimed as a~~
24 ~~homestead.~~

25 (2) If a claimant who is an owner of an undivided

1 interest in real property claims a homestead exemption, he
2 is limited to an exemption amount proportional to his
3 undivided interest."

4 Section 9. Section 70-32-213, MCA, is amended to read:

5 "70-32-213. Sale proceeds equal to exemption
6 protected. The money paid to the claimant is entitled, for
7 the period of 6 18 months thereafter, to the same protection
8 against legal process and the voluntary disposition of
9 either spouse which the law gives to the homestead."

10 Section 10. Section 70-32-214, MCA, is amended to
11 read:

12 "70-32-214. Compensation of appraisers. The court must
13 fix the a reasonable amount as compensation of for the
14 appraisers, not to exceed \$3 per day each for the time
15 actually engaged."

16 Section 11. Section 72-2-102, MCA, is amended to read:

17 "72-2-102. Waiver of rights by spouse. The right of
18 ~~election of a surviving spouse and the rights of the~~
19 ~~surviving spouse to~~ SURVIVING SPOUSE'S RIGHTS TO AN ELECTIVE
20 SHARE, the homestead allowance, exempt property, and family
21 allowance, or any of them, may be waived, wholly or
22 partially, before or after marriage, by a written contract,
23 agreement, or waiver signed by the party waiving after fair
24 disclosure. Unless it provides to the contrary, a waiver of
25 "all rights" (or equivalent language) in the property or

1 estate of a present or prospective spouse or a complete
 2 property settlement entered into after or in anticipation of
 3 separation or divorce is a waiver of all rights to elective
 4 share, homestead allowance, exempt property, and family
 5 allowance by each spouse in the property of the other and a
 6 renunciation by each of all benefits which would otherwise
 7 pass to him from the other by intestate succession or by
 8 virtue of the provisions of any will executed before the
 9 waiver or property settlement."

10 Section 12. Section 72-2-205, MCA, is amended to read:

11 "72-2-205. Requirement that heir survive decedent by
 12 one hundred twenty hours. Any person who fails to survive
 13 the decedent by 120 hours is deemed to have predeceased the
 14 decedent for purposes of homestead allowance, exempt
 15 property, and intestate succession, and the decedent's heirs
 16 are determined accordingly. If the time of death of the
 17 decedent or of the person who would otherwise be an heir or
 18 the times of death of both cannot be determined and it
 19 cannot be established that the person who would otherwise be
 20 an heir has survived the decedent by 120 hours, it is deemed
 21 that the person failed to survive for the required period.
 22 This section is not to be applied where its application
 23 would result in a taking of intestate estate by the state
 24 under 72-2-207."

25 Section 13. Section 72-2-704, MCA, is amended to read:

1 "72-2-704. Effect of election on benefits by will or
 2 statute. (1) The surviving spouse's election of his elective
 3 share does not affect the share of the surviving spouse
 4 under the provisions of the decedent's will or intestate
 5 succession unless the surviving spouse also expressly
 6 renounces in the petition for an elective share the benefit
 7 of all or any of the provisions. If any provision is so
 8 renounced, the property or other benefit which would
 9 otherwise have passed to the surviving spouse thereunder is
 10 treated, subject to contribution under 72-2-706(2), as if
 11 the surviving spouse had predeceased the testator.

12 (2) A surviving spouse is entitled to homestead
 13 allowance, exempt property, and family allowance whether or
 14 not he elects to take an elective share."

15 Section 14. Section 72-2-705, MCA, is amended to read:

16 "72-2-705. Augmented estate. The augmented estate
 17 means the estate, reduced by funeral and administration
 18 expenses, homestead allowance, family allowances and
 19 exemptions, and enforceable claims, to which is added the
 20 sum of the following amounts:

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

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

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

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

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

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

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

1 person other than the surviving spouse.

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

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

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

13 (b) property owned by the spouse at the decedent's
 14 death is valued as of the date of death. Property
 15 transferred by the spouse is valued at the time the transfer
 16 became irrevocable or at the decedent's death, whichever
 17 occurred first. Income earned by included property prior to
 18 the decedent's death is not treated as property derived from
 19 the decedent.

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

25 (4) For the purposes of this section, a bona fide

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

5 Section 15. Section 72-2-801, MCA, is amended to read:
 6 "72-2-801. Homestead allowance ELECTION. ~~(i)---A~~
 7 ~~surviving--spouse--of--a--decedent--who--was--domiciled--in--this~~
 8 ~~state--is--entitled--to--a--homestead--allowance--of--\$20,000,--if~~
 9 ~~there--is--no--surviving--spouse,--each--minor--child--and--each~~
 10 ~~dependent--child--of--the--decedent--is--entitled--to--a--homestead~~
 11 ~~allowance--amounting--to--\$20,000,--divided--by--the--number--of~~
 12 ~~minor--and--dependent--children--of--the--decedent.~~

13 ~~(i)---(a)---The--personal--representative--may--exercise--the~~
 14 ~~right--to--claim--a--homestead--on--behalf--of--a--surviving--spouse.~~
 15 ~~If--there--is--no--surviving--spouse,--the--personal--representative~~
 16 ~~may--exercise--the--right--on--behalf--of--any--minor--child--and--any~~
 17 ~~dependent--child--of--the--decedent,--divided--by--the--number--of~~
 18 ~~minor--and--dependent--children--of--the--decedent.~~

19 ~~(b)---(i)---The--homestead--consists--of--the--dwelling--house~~
 20 ~~or--mobile--home,--and--all--appurtenances,--in--which--the--decedent~~
 21 ~~resided--and--the--land,--if--any,--on--which--the--residence--is~~
 22 ~~located.~~

23 ~~(ii)---The--homestead--may--not--exceed--in--value--\$40,000,--in~~
 24 ~~any--proceedings--instituted--to--determine--the--value--of--such~~
 25 ~~homestead,--the--assessed--value--of--the--land--with--included~~

1 ~~appurtenances,--if-any,--and-of-the-dwelling-house-as-appears~~
 2 ~~on--the--last--completed--assessment--roll--preceding--the~~
 3 ~~institution--of--such-proceedings-is-be-prima-facie-evidence~~
 4 ~~of-the-value-of-the-property-claimed-as-a-homestead: (1) IF~~
 5 ~~THE SPOUSE OR A MINOR OR DEPENDENT CHILD SURVIVES THE~~
 6 ~~DECEDENT BY 120 HOURS, THE PERSONAL REPRESENTATIVE MAY~~
 7 ~~DECLARE A HOMESTEAD ON BEHALF OF THE DECEDENT'S ESTATE~~
 8 ~~PURSUANT TO TITLE 70, CHAPTER 32.~~

9 (2) The homestead allowance ~~is--exempt--from--and~~ has
 10 ~~priority--over--all~~ IS EXEMPT FROM ALL UNSECURED claims
 11 against the estate and ~~is-exempt from execution as provided~~
 12 in Title 70, chapter 32, part 2.

13 ~~(3)--Homestead--allowance The-homestead is-in-addition~~
 14 ~~to-any-share-passing-to-the-surviving--spouse--or--minor--or~~
 15 ~~dependent-child-by-the-will-of-the-decedent-unless-otherwise~~
 16 ~~provided,--by--intestate--succession,--or-by-way-of-elective~~
 17 ~~share."~~

18 Section 16. Section 72-2-802, MCA, is amended to read:

19 "72-2-802. Exempt property. (1) ~~In--addition--to--the~~
 20 ~~homestead allowance,--the~~ THE surviving spouse of a decedent
 21 who was domiciled in this state is entitled from the estate
 22 to value not exceeding \$3,500 in excess of any security
 23 interests therein in household furniture, automobiles,
 24 furnishings, appliances, and personal effects. If there is
 25 no surviving spouse, children of the decedent are entitled

1 jointly to the same value. If encumbered chattels are
 2 selected and if the value in excess of security interests,
 3 plus that of other exempt property, is less than \$3,500 or
 4 if there is not \$3,500 worth of exempt property in the
 5 estate, the spouse or children are entitled to other assets
 6 of the estate, if any, to the extent necessary to make up
 7 the \$3,500 value.

8 (2) Rights to exempt property and assets needed to
 9 make up a deficiency of exempt property have priority over
 10 all claims against the estate, except that the right to any
 11 assets to make up a deficiency of exempt property shall
 12 abate as necessary to permit prior payment of the homestead
 13 allowance and family allowance.

14 (3) These rights are in addition to any benefit or
 15 share passing to the surviving spouse or children by the
 16 will of the decedent unless otherwise provided, by intestate
 17 succession, or by way of elective share."

18 Section 17. Section 72-2-803, MCA, is amended to read:

19 "72-2-803. Family allowance. (1) In addition to the
 20 right to a homestead allowance and exempt property, if the
 21 decedent was domiciled in this state, the surviving spouse
 22 and minor children whom the decedent was obligated to
 23 support and children who were in fact being supported by him
 24 are entitled to a reasonable allowance in money out of the
 25 estate for their maintenance during the period of

1 administration, which allowance may not continue for longer
2 than 1 year if the estate is inadequate to discharge allowed
3 claims. The allowance may be paid as a lump sum or in
4 periodic installments.

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

13 (3) The family allowance is exempt from and has
14 priority over all claims ~~but--not--over--the--homestead~~
15 ~~allowance.~~

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

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

22 Section 18. Section 72-2-804, MCA, is amended to read:

23 "72-2-804. Source, determination, and documentation.

24 (1) If the estate is otherwise sufficient, property
25 specifically devised is not used to satisfy rights to

1 homestead-and exempt property. Subject to this restriction,
2 the surviving spouse, the guardians of the minor children,
3 or children who are adults may select property of the estate
4 as the homestead allowance and exempt property. The personal
5 representative may make these selections if the surviving
6 spouse, the children, or the guardians of the minor children
7 are unable or fail to do so within a reasonable time or if
8 there are no guardians of the minor children. The personal
9 representative may execute an instrument or deed of
10 distribution to establish the ownership of property taken as
11 the homestead allowance or exempt property. He may determine
12 the family allowance in a lump sum not exceeding \$6,000 or
13 periodic installments not exceeding \$500 per month for 1
14 year and may disburse funds of the estate in payment of the
15 family allowance ~~and--any--part--of--the--homestead--allowance~~
16 ~~payable--in--cash.~~

17 (2) The personal representative or any interested
18 person aggrieved by any selection, determination, payment,
19 proposed payment, or failure to act under this section may
20 petition the court for appropriate relief, which relief may
21 provide a family allowance larger or smaller than that which
22 the personal representative determined or could have
23 determined."

24 Section 19. Section 72-3-101, MCA, is amended to read:

25 "72-3-101. Devolution of estate at death --

1 restrictions. (1) The power of a person to leave property by
 2 will and the rights of creditors, devisees, and heirs to his
 3 property are subject to the restrictions and limitations
 4 contained in this code to facilitate the prompt settlement
 5 of estates.

6 (2) Upon the death of a person, his real and personal
 7 property devolves to the persons to whom it is devised by
 8 his last will or to those indicated as substitutes for them
 9 in cases involving lapse, renunciation, or other
 10 circumstances affecting the devolution of testate estates
 11 or, in the absence of testamentary disposition, to his heirs
 12 or to those indicated as substitutes for them in cases
 13 involving renunciation or other circumstances affecting
 14 devolution of intestate estates, subject to the homestead
 15 allowance, exempt property, and family allowance, to rights
 16 of creditors, elective share of the surviving spouse, and to
 17 administration."

18 Section 20. Section 72-3-911, MCA, is amended to read:

19 "72-3-911. Successors' rights if no administration.

20 (1) In the absence of administration, the heirs and devisees
 21 are entitled to the estate in accordance with the terms of a
 22 probated will or the laws of intestate succession.

23 (2) Devisees may establish title by the probated will
 24 to devised property. Persons entitled to property by
 25 homestead allowance, exemption, or intestacy may establish

1 title thereto by proof of the decedent's ownership, his
 2 death, and their relationship to the decedent.

3 (3) Successors take subject to all charges incident to
 4 administration, including the claims of creditors and
 5 allowances of surviving spouse and dependent children and
 6 subject to the rights of others resulting from abatement,
 7 retainer, advancement, and ademption."

8 Section 21. Section 72-3-1103, MCA, is amended to
 9 read:

10 "72-3-1103. Summary procedure for disbursement and
 11 distribution. If it appears from the inventory and appraisal
 12 that the value of the net distributable estate does not
 13 exceed \$7,500 or the value of the entire estate, less liens
 14 and encumbrances, does not exceed the homestead allowance
 15 ELECTION, exempt property, family allowance, costs and
 16 expenses of administration, reasonable funeral expenses, and
 17 reasonable and necessary medical and hospital expenses of
 18 the last illness of the decedent, the personal
 19 representative, without giving notice to creditors, may
 20 immediately disburse and distribute the estate to the
 21 persons entitled thereto and file a closing statement as
 22 provided in 72-3-1104."

23 Section 22. Section 72-3-1104, MCA, is amended to
 24 read:

25 "72-3-1104. Closing by sworn statement of personal

1 representative -- termination of appointment. (1) Unless
 2 prohibited by order of the court and except for estates
 3 being administered by supervised personal representatives, a
 4 personal representative may close an estate administered
 5 under the summary procedures of 72-3-1103 by filing with the
 6 court, at any time after disbursement and distribution of
 7 the estate, a verified statement stating that:

8 (a) to the best knowledge of the personal
 9 representative, the value of the net distributable estate
 10 did not exceed \$7,500 or the value of the entire estate,
 11 less liens and encumbrances, did not exceed the homestead
 12 allowance ELECTION, exempt property, family allowance, costs
 13 and expenses of administration, reasonable funeral expenses,
 14 and reasonable, necessary medical and hospital expenses of
 15 the last illness of the decedent;

16 (b) the personal representative has fully administered
 17 the estate by payment of inheritance taxes and by disbursing
 18 and distributing it to the persons entitled thereto; and

19 (c) the personal representative has sent a copy of the
 20 closing statement to all distributees of the estate and to
 21 all creditors or other claimants of whom he is aware whose
 22 claims are neither paid nor barred and has furnished a full
 23 account in writing of his administration to the distributees
 24 whose interests are affected.

25 (2) If no actions or proceedings involving the

1 personal representative are pending in the court 1 year
 2 after the closing statement is filed, the appointment of the
 3 personal representative terminates.

4 (3) A closing statement filed under this section has
 5 the same effect as one filed under 72-3-1004."

6 SECTION 23. SECTION 70-32-103, MCA, IS AMENDED TO
 7 READ:

8 "70-32-103. From whose property homestead may be
 9 selected -- declaration on behalf of decedent. (1) If the
 10 claimant be is married, the homestead may be selected from
 11 the property of either spouse. When the claimant is not
 12 married, the homestead may be selected from any of his or
 13 her property.

14 (2) For purposes of this chapter, the term "claimant"
 15 includes a personal representative of a decedent's estate
 16 who under 72-2-801 declares a homestead on behalf of the
 17 estate."

18 SECTION 24. SECTION 70-32-106, MCA, IS AMENDED TO
 19 READ:

20 "70-32-106. Contents of declaration. (1) The
 21 declaration of homestead must contain a statement that the
 22 person making it is residing on the premises and claims them
 23 as a homestead and a description of the premises.

24 (2) If the declaration of homestead is made by the
 25 personal representative on behalf of a decedent's estate

1 under 72-2-801, it must contain:

2 (a) a description of the premises;

3 (b) a statement that the surviving spouse or minor or
 4 dependent child was residing on the premises at the time of
 5 the decedent's death; and

6 (c) a declaration that the personal representative is
 7 claiming the premises as a homestead."

8 SECTION 25. SECTION 70-32-302, MCA, IS AMENDED TO
 9 READ:

10 "70-32-302. How abandoned -- declaration. A homestead
 11 can be abandoned only by a declaration of abandonment or a
 12 grant thereof executed and acknowledged by:

13 (1) the husband and wife if the claimant is married;

14 (2) the claimant if unmarried; or

15 (3) the personal representative if a declaration is
 16 made on behalf of a decedent's estate under 72-2-801."

17 NEW SECTION. Section 26. Repealer. Sections 25-13-611
 18 through-25-13-613, 25-13-612, 25-13-616, and 25-13-617, MCA,
 19 are repealed.

20 NEW SECTION. Section 27. Codification instruction.

21 (1) Sections 1 through 5 are intended to be codified as an
 22 integral part of Title 25, chapter 13, part 6, and the
 23 provisions of Title 25, chapter 13, part 6, apply to
 24 sections 1 through 5.

25 (2) Section 6 is intended to be codified as an

1 integral part of Title 70, chapter 32, part 2, and the
 2 provisions of Title 70, chapter 32, part 2, apply to section
 3 6.

4 NEW SECTION. Section 28. Saving clause. This act does
 5 not affect rights and duties that matured, penalties that
 6 were incurred, or proceedings that were begun before the
 7 effective date of this act.

8 NEW SECTION. Section 29. Severability. If a part of
 9 this act is invalid, all valid parts that are severable from
 10 the invalid part remain in effect. If a part of this act is
 11 invalid in one or more of its applications, the part remains
 12 in effect in all valid applications that are severable from
 13 the invalid applications.

-End-

1 HOUSE BILL NO. 19
 2 INTRODUCED BY MERCER
 3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON LIEN LAWS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
 6 REVISION OF LAWS RELATING TO PROPERTY EXEMPT FROM EXECUTION;
 7 AMENDING SECTIONS 25-13-614, ~~70-32-103~~, 70-32-104,
 8 ~~70-32-106~~, 70-32-213, AND 70-32-214, ~~70-32-302~~, 72-2-102,
 9 72-2-205,--72-2-704,--72-2-705,--72-2-801--THROUGH-72-2-804,
 10 72-3-101,--72-3-911,--72-3-1103,--AND--72-3-1104, MCA; AND
 11 REPEALING SECTIONS 25-13-611 THROUGH-25-13-613, 25-13-612,
 12 25-13-616, AND 25-13-617, MCA."
 13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 NEW SECTION. Section 1. Protection of property of
 16 residents. A resident of this state is entitled to the
 17 exemptions provided in this part.

18 NEW SECTION. Section 2. Claim enforceable against
 19 exempt property. Notwithstanding any other provision of this
 20 part, a creditor may levy against exempt property to enforce
 21 a claim for:

- 22 (1) the purchase price of the property; or
 23 (2) a loan made for the express purpose of enabling
 24 the judgment debtor to purchase the property and used for
 25 that purpose.

1 NEW SECTION. Section 3. Property exempt without
 2 limitation. A judgment debtor is entitled to exemption from
 3 execution of the following:

- 4 (1) professionally prescribed health aids for the
 5 judgment debtor or a dependent of the judgment debtor;
 6 (2) benefits the judgment debtor has received or is
 7 entitled to receive under federal social security or local
 8 public assistance legislation;
 9 (3) veterans' benefits;
 10 (4) disability or illness benefits;
 11 (5) benefits paid or payable for medical, surgical, or
 12 hospital care to the extent they are used or will be used to
 13 pay for the care;
 14 (6) maintenance and child support; and
 15 (7) a burial plot for the judgment debtor and his
 16 family.

17 NEW SECTION. Section 4. Personal property exempt
 18 subject to value limitations. A judgment debtor is entitled
 19 to exemption from execution of the following:

- 20 (1) the judgment debtor's interest, not to exceed
 21 ~~\$6,000~~ \$4,500 ~~\$6,000~~ \$4,500 in aggregate value, to the
 22 extent of a value not exceeding \$600 in any item of
 23 property, IN household furnishings and goods, appliances,
 24 jewelry, wearing apparel, books, FIREARMS AND OTHER SPORTING
 25 GOODS, animals, FEED, crops, and musical instruments;

1 (2) the judgment debtor's interest, not to exceed
2 ~~997500~~ ~~917200~~ ~~927500~~ \$1,200 in value, in one motor vehicle;

3 (3) the judgment debtor's interest, not to exceed
4 \$3,000 in value, in any implements, professional books, or
5 tools, of the trade of the judgment debtor or a dependent of
6 the judgment debtor; and

7 (4) the judgment debtor's interest, not to exceed
8 \$4,000 in value, in any unexpired life insurance contracts
9 owned by him.

10 NEW SECTION. Section 5. Tracing exempt personal
11 property. (1) If money or other property exempt under
12 [sections 3 and 4] has been sold or has been lost, damaged,
13 or destroyed and the judgment debtor has been indemnified
14 for it, he is entitled for 6 months to an exemption of
15 proceeds that are traceable (for example, in a bank or
16 savings account).

17 (2) Earnings exempt under 25-13-614 remain exempt for
18 45 days after receipt by and while in the possession of the
19 judgment debtor in a form into which the exempt earnings are
20 traceable (for example, in a bank or savings account).

21 (3) Proceeds are traceable under this section by
22 application of the principles of first-in first-out, last-in
23 first-out, or any other reasonable basis for tracing
24 selected by the judgment debtor.

25 NEW SECTION. Section 6. Tracing homestead proceeds.

1 (1) If property or a part thereof that could have been
2 claimed as an exempt homestead has been sold or taken by
3 condemnation or has been lost, damaged, or destroyed and the
4 owner has been indemnified for it, he is entitled for 18
5 months to exemption of the proceeds that are traceable.

6 (2) Proceeds are traceable under this section by
7 application of the principles of first-in first-out, last-in
8 first-out, or any other reasonable basis for tracing
9 selected by the judgment debtor.

10 Section 7. Section 25-13-614, MCA, is amended to read:

11 "25-13-614. Earnings of judgment debtor. (1) ~~Except as~~
12 ~~provided in subsection (2), the earnings of the judgment~~
13 ~~debtor for his personal services rendered during the 45-day~~
14 ~~period prior to the levy of execution or attachment are~~
15 ~~exempt to the extent such earnings are necessary for the~~
16 ~~support of his family.~~

17 (2) (a) No earnings are exempt unless the judgment
18 debtor complies with 25-13-411.

19 (b) ~~Earnings are exempt under this section from~~
20 ~~judgments or orders for maintenance or child support only to~~
21 ~~the extent allowed by 15-U.S.C. 1673.~~

22 (c) ~~One-half of earnings are not exempt for debts~~
23 ~~incurred by the judgment debtor or his family for gasoline~~
24 ~~and the common necessities of life.~~

25 (3) ~~The words "his family", as used in this section,~~

1 ~~except to the extent that these words include a person~~
 2 ~~covered by a judgment or order under subsection (2), are to~~
 3 ~~be construed to include:~~

- 4 ~~(a) the judgment debtor's spouse;~~
 5 ~~(b) every person who resides with the judgment debtor~~
 6 ~~under his care or maintenance and who is:~~
- 7 ~~(i) a minor child of the judgment debtor or of his~~
 8 ~~spouse or former spouse;~~
- 9 ~~(ii) a minor grandchild, brother, or sister or minor~~
 10 ~~child of a brother or sister of the judgment debtor or of~~
 11 ~~his spouse;~~
- 12 ~~(iii) a father, mother, grandfather, or grandmother of~~
 13 ~~the judgment debtor or of his spouse or former spouse;~~
- 14 ~~(iv) an unmarried sister, brother, or any other~~
 15 ~~relative of the judgment debtor mentioned in this section~~
 16 ~~who has attained the age of majority and is unable to care~~
 17 ~~for or support himself.~~

18 (2) Except as provided in subsections (3) and (4), the
 19 maximum part of the aggregate disposable earnings of a
 20 judgment debtor for any workweek that is subjected to
 21 garnishment may not exceed the lesser of:

- 22 (a) the amount by which his disposable earnings for
 23 the week exceed 30 times the federal minimum hourly wage in
 24 effect at the time the earnings are payable; or
 25 (b) 25% of his disposable earnings for that week.

1 (3) The restrictions of subsection (2) do not apply in
 2 the case of an order or judgment for the maintenance or
 3 support of any person, issued by a court of competent
 4 jurisdiction, or pursuant to an administrative procedure
 5 that is established by state law, affords substantial due
 6 process, and is subject to judicial review.

7 (4) (a) The maximum part of the aggregate disposable
 8 earnings of a judgment debtor for any workweek that is
 9 subject to garnishment to enforce an order described in
 10 subsection (3) may not exceed:

11 (i) 50% of the judgment debtor's disposable earnings
 12 for that week if he is supporting his spouse or dependent
 13 child (other than a spouse or child for whom the order is
 14 issued); or

15 (ii) 60% of the judgment debtor's disposable earnings
 16 for that week if he is not supporting a spouse or dependent
 17 child described in subsection (4)(a)(i).

18 (b) However, the amount stated in (4)(a)(i) may be 55%
 19 and the amount stated in (4)(a)(ii) may be 65% if such
 20 earnings are being garnished to enforce an order for
 21 maintenance or support for a period prior to the 12-week
 22 period that ends with the beginning of such workweek.

23 (5) For the purposes of this section, the definitions
 24 of earnings, disposable earnings, and garnishment are as set
 25 forth in 15 U.S.C. 1672."

1 Section 8. Section 70-32-104, MCA, is amended to read:

2 "70-32-104. ~~Limitations~~ Limitation on quantity--and
3 value ~~which may be selected~~. (1) ~~Homesteads may be selected~~
4 ~~and claimed consisting of:~~

5 ~~(a) a quantity of land not exceeding 320 acres used~~
6 ~~for agricultural purposes and the dwelling house or mobile~~
7 ~~home thereon and its appurtenances and not included in any~~
8 ~~municipality;~~

9 ~~(b) a quantity of land not in a municipality, not~~
10 ~~exceeding 1 acre and not used for agricultural or commercial~~
11 ~~purposes, and the dwelling house or mobile home thereon and~~
12 ~~its appurtenances; or~~

13 ~~(c) a quantity of land within a municipality, not~~
14 ~~exceeding one-fourth of an acre, and the dwelling house or~~
15 ~~mobile home thereon and its appurtenances.~~

16 ~~(2) Such A~~ homestead, ~~in either case, shall~~ may not
17 exceed in value the sum of \$40,000. ~~However, in~~ In any
18 proceedings instituted to determine the value of such
19 homestead, the assessed value of the land with included
20 appurtenances, if any, and of the dwelling house as appears
21 on the last completed assessment roll preceding the
22 institution of such proceedings shall be prima facie
23 evidence of the value of the property claimed as a
24 homestead.

25 (2) If a claimant who is an owner of an undivided

1 interest in real property claims a homestead exemption, he
2 is limited to an exemption amount proportional to his
3 undivided interest."

4 Section 9. Section 70-32-213, MCA, is amended to read:

5 "70-32-213. Sale proceeds equal to exemption
6 protected. The money paid to the claimant is entitled, for
7 the period of 6 18 months thereafter, to the same protection
8 against legal process and the voluntary disposition of
9 either spouse which the law gives to the homestead."

10 Section 10. Section 70-32-214, MCA, is amended to
11 read:

12 "70-32-214. Compensation of appraisers. The court must
13 fix the a reasonable amount as compensation of for the
14 appraisers, ~~not to exceed \$3 per day each for the time~~
15 ~~actually engaged."~~

16 ~~Section 11. Section 72-2-102, MCA, is amended to read:~~

17 ~~"72-2-102. Waiver of rights by spouse. The right of~~
18 ~~election of a surviving spouse and the rights of the~~
19 ~~surviving spouse to SURVIVING SPOUSE'S RIGHTS TO AN ELECTIVE~~
20 ~~SHARE, the homestead allowance, exempt property, and family~~
21 ~~allowance, or any of them, may be waived, wholly or~~
22 ~~partially, before or after marriage, by a written contract,~~
23 ~~agreement, or waiver signed by the party waiving after fair~~
24 ~~disclosure. Unless it provides to the contrary, a waiver of~~
25 ~~"all rights" (or equivalent language) in the property or~~

1 estate--of--a--present--or--prospective-spouse-or-a-complete
 2 property-settlement-entered-into-after-or-in-anticipation-of
 3 separation-or-divorce-is-a-waiver-of-all-rights-to--elective
 4 share,-homestead--allowance,-exempt--property,-and-family
 5 allowance-by-each-spouse-in-the-property-of-the-other-and-a
 6 renunciation--by--each-of-all-benefits-which-would-otherwise
 7 pass-to-him-from-the-other-by--intestate--succession--or--by
 8 virtue--of--the--provisions--of-any-will-executed-before-the
 9 waiver-or-property-settlement."

10 Section-12--Section-72-2-205,-MCA,-is-amended-to-read:

11 "72-2-205--Requirement-that-heir-survive--decendent--by
 12 one--hundred-twenty--hours,-Any-person-who-fails-to-survive
 13 the-decedent-by-120-hours-is-deemed-to-have-predeceased--the
 14 decedent---for---purposes--of--homestead--allowance,-exempt
 15 property,-and-intestate-succession,-and-the-decedent's-heirs
 16 are-determined-accordingly.-If-the-time--of--death--of--the
 17 decedent--or--of-the-person-who-would-otherwise-be-an-heir-or
 18 the-times-of-death-of--both--cannot--be--determined--and--it
 19 cannot-be-established-that-the-person-who-would-otherwise-be
 20 an-heir-has-survived-the-decedent-by-120-hours,-it-is-deemed
 21 that--the--person-failed-to-survive-for-the-required-period.
 22 This-section-is-not-to--be--applied--where--its--application
 23 would--result--in--a-taking-of-intestate-estate-by-the-state
 24 under-72-2-207."

25 Section-13--Section-72-2-704,-MCA,-is-amended-to-read:

1 "72-2-704--Effect-of-election-on-benefits-by--will--or
 2 statute,-(1)--The--surviving--spouse's--election--of--his
 3 elective-share-does-not-affect-the-share--of--the--surviving
 4 spouse--under--the--provisions--of--the--decedent's--will-or
 5 intestate--succession--unless--the--surviving--spouse--also
 6 expressly--renounces--in--the-petition-for-an-elective-share
 7 the-benefit--of--all--or--any--of--the--provisions,-If-any
 8 provision--is--so--renounced,-the-property-or-other-benefit
 9 which-would-otherwise-have-passed-to--the--surviving--spouse
 10 thereunder---is---treated,-subject--to--contribution--under
 11 72-2-706(2),-as-if-the-surviving-spouse-had-predeceased--the
 12 testator.

13 (2)--A--surviving--spouse--is--entitled--to--homestead
 14 allowance,-exempt-property,-and-family-allowance-whether--or
 15 not-he-elects-to-take-an-elective-share."

16 Section-14--Section-72-2-705,-MCA,-is-amended-to-read:

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

22 (1)--the--value-of-property-transferred-to-anyone-other
 23 than-a-bona-fide-purchaser--by--the--decedent--at--any--time
 24 during--marriage,-to-or-for-the-benefit-of-any-person-other
 25 than-the-surviving-spouse,-to-the-extent-that--the--decedent

1 did--not--receive--adequate--and--full--consideration--in--money--or
2 money's--worth--for--the--transfer,--if--the--transfer--is--of--any--of
3 the--following--types:

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

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

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

15 (d)--any--transfer--made--to--a--donee--within--2--years--of
16 death--of--the--decedent--to--the--extent--that--the--aggregate
17 transfers--to--any--one--donee--in--any--of--the--years--exceed
18 \$37,000;

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

1 accident--insurance,--joint--annuity,--or--pension--payable--to--a
2 person--other--than--the--surviving--spouse;

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

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

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

14 (b)--property-owned-by-the--spouse--at--the--decedent's
 15 death--is--valued--as--of--the--date--of--death.--Property
 16 transferred-by-the-spouse-is-valued-at-the-time-the-transfer
 17 became-irrevocable-or-at--the--decedent's--death,--whichever
 18 occurred-first,--Income-earned-by-included-property-prior-to
 19 the-decedent's-death-is-not-treated-as-property-derived-from
 20 the-decedent.

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

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

6 Section-15,--Section-72-2-801,--MCA,--is-amended-to-read:
 7 "72-2-801.--Homestead--allowance ELECTION,--(i)--A
 8 surviving-spouse-of-a-decedent-who--was--domiciled--in--this
 9 state--is--entitled--to-a-homestead-allowance-of-\$20,000,--if
 10 there-is-no-surviving-spouse,--each--minor--child--and--each
 11 dependent--child--of-the-decedent-is-entitled-to-a-homestead
 12 allowance-amounting-to-\$20,000,--divided--by--the--number--of
 13 minor-and-dependent-children-of-the-decedent.

14 (i)--(A)--The--personal--representative-may-exercise-the
 15 right-to-claim-a-homestead-on-behalf-of-a-surviving--spouse,
 16 if-there-is-no-surviving-spouse,--the-personal-representative
 17 may--exercise-the-right-on-behalf-of-any-minor-child-and-any
 18 dependent-child-of-the-decedent,--divided-by--the--number--of
 19 minor-and-dependent-children-of-the-decedent.

20 (b)--(i)--The--homestead--consists-of-the-dwelling-house
 21 or-mobile-home,--and-all-appurtenances,--in-which-the-decedent
 22 resided-and-the-land,--if-any,--on-which--the--residence--is
 23 located.

24 (ii)--The--homestead-may-not-exceed-in-value-\$40,000--in
 25 any-proceedings-instituted-to-determine-the--value--of--such

1 homestead, the assessed value of the land with included
 2 appurtenances, if any, and of the dwelling house as appears
 3 on the last completed assessment roll preceding the
 4 institution of such proceedings is be prima facie evidence
 5 of the value of the property claimed as a homestead. (1) IF
 6 THE SPOUSE OR A MINOR OR DEPENDENT CHILD SURVIVES THE
 7 DECEDENT BY 120 HOURS, THE PERSONAL REPRESENTATIVE MAY
 8 BEHOLD A HOMESTEAD ON BEHALF OF THE DECEDENT'S ESTATE
 9 PURSUANT TO TITLE 70, CHAPTER 32.

10 (2) The homestead allowance is exempt from and has
 11 priority over all IS EXEMPT FROM ALL UNSECURED claims
 12 against the estate and is exempt from execution as provided
 13 in Title 70, chapter 32, part 2.

14 (3) Homestead allowance The homestead is in addition
 15 to any share passing to the surviving spouse or minor or
 16 dependent child by the will of the decedent unless otherwise
 17 provided, by intestate succession, or by way of elective
 18 share."

19 Section 16, Section 72-2-802, MCA, is amended to read:

20 "72-2-802. Exempt property. (1) In addition to the
 21 homestead allowance, the THE surviving spouse of a decedent
 22 who was domiciled in this state is entitled from the estate
 23 to value not exceeding \$3,500 in excess of any security
 24 interests therein in household furniture, automobiles,
 25 furnishings, appliances, and personal effects, if there is

1 no surviving spouse, children of the decedent are entitled
 2 jointly to the same value. If encumbered chattels are
 3 selected and if the value in excess of security interests,
 4 plus that of other exempt property, is less than \$3,500 or
 5 if there is not \$3,500 worth of exempt property in the
 6 estate, the spouse or children are entitled to other assets
 7 of the estate, if any, to the extent necessary to make up
 8 the \$3,500 value.

9 (2) Rights to exempt property and assets needed to
 10 make up a deficiency of exempt property have priority over
 11 all claims against the estate, except that the right to any
 12 assets to make up a deficiency of exempt property shall
 13 abate as necessary to permit prior payment of the homestead
 14 allowance and family allowance.

15 (3) These rights are in addition to any benefit or
 16 share passing to the surviving spouse or children by the
 17 will of the decedent unless otherwise provided, by intestate
 18 succession, or by way of elective share."

19 Section 17, Section 72-2-803, MCA, is amended to read:

20 "72-2-803. Family allowance. (1) In addition to the
 21 right to a homestead allowance and exempt property, if the
 22 decedent was domiciled in this state, the surviving spouse
 23 and minor children whom the decedent was obligated to
 24 support and children who were in fact being supported by him
 25 are entitled to a reasonable allowance in money out of the

1 estate--for--their--maintenance--during--the--period--of
 2 administration7--which--allowance--may--not--continue--for--longer
 3 than--1--year--if--the--estate--is--inadequate--to--discharge--allowed
 4 claims7--The--allowance--may--be--paid--as--a--lump--sum--or--in
 5 periodic--installments7

6 (2)--It--is--payable--to--the--surviving--spouse7--if--living7
 7 for--the--use--of--the--surviving--spouse--and--minor--and--dependent
 8 children7--otherwise--to--the--children--or--persons--having--their
 9 care--and--custody7--but--in--case--any--minor--child--or--dependent
 10 child--is--not--living--with--the--surviving--spouse7--the--allowance
 11 may--be--made--partially--to--the--child--or--his--guardian--or--other
 12 person--having--his--care--and--custody--and--partially--to--the
 13 spouse7--as--their--needs--may--appear7

14 (3)--The--family--allowance--is--exempt--from--and--has
 15 priority--over--all--claims--but--not--over--the--homestead
 16 allowance7

17 (4)--The--family--allowance--is--not--chargeable--against--any
 18 benefit--or--share--passing--to--the--surviving--spouse--or--children
 19 by--the--will--of--the--decedent--unless--otherwise--provided7--by
 20 intestate--succession7--or--by--way--of--elective--share7

21 (5)--The--death--of--any--person--entitled--to--family
 22 allowance--terminates--his--right--to--allowances--not--yet--paid7"

23 Section--187--Section--72-2-8047--MCA7--is--amended--to--read:

24 "72-2-804. Source7--determination7--and--documentation7

25 (1)--If--the--estate--is--otherwise--sufficient7--property

1 specifically--devised--is--not--used--to--satisfy--rights--to
 2 homestead--and--exempt--property7--Subject--to--this--restriction7
 3 the--surviving--spouse7--the--guardians--of--the--minor--children7
 4 or--children--who--are--adults--may--select--property--of--the--estate
 5 as the homestead--allowance--and--exempt--property7--The--personal
 6 representative--may--make--these--selections--if--the--surviving
 7 spouse7--the--children7--or--the--guardians--of--the--minor--children
 8 are--unable--or--fail--to--do--so--within--a--reasonable--time--or--if
 9 there--are--no--guardians--of--the--minor--children7--The--personal
 10 representative--may--execute--an--instrument--or--deed--of
 11 distribution--to--establish--the--ownership--of--property--taken--as
 12 the homestead--allowance--or--exempt--property7--He--may--determine
 13 the--family--allowance--in--a--lump--sum--not--exceeding--\$6,000--or
 14 periodic--installments--not--exceeding--\$500--per--month--for--1
 15 year--and--may--disburse--funds--of--the--estate--in--payment--of--the
 16 family--allowance--and--any--part--of--the--homestead--allowance
 17 payable--in--cash7

18 (2)--The--personal--representative--or--any--interested
 19 person--aggrieved--by--any--selection7--determination7--payment7
 20 proposed--payment7--or--failure--to--act--under--this--section--may
 21 petition--the--court--for--appropriate--relief7--which--relief--may
 22 provide--a--family--allowance--larger--or--smaller--than--that--which
 23 the--personal--representative--determined--or--could--have
 24 determined7"

25 Section--197--Section--72-3-1017--MCA7--is--amended--to--read:

1 "72-3-101,--Devolution---of---estate---at---death-----
 2 restrictions:---(1)---The-power-of-a-person-to-leave-property
 3 by-will-and-the-rights-of-creditors, devisees, and heirs--to
 4 his-property-are-subject-to-the-restrictions-and-limitations
 5 contained--in--this-code-to-facilitate-the-prompt-settlement
 6 of-estates;

7 (2)---Upon-the-death-of-a-person, his-real-and--personal
 8 property--devoives--to--the-persons-to-whom-it-is-devised-by
 9 his-last-will-or-to-those-indicated-as-substitutes-for--them
 10 in---cases---involving---lapse,---renunciation,---or---other
 11 circumstances-affecting-the-devolution--of--testate--estates
 12 or, in-the-absence-of-testamentary-disposition, to-his-heirs
 13 or--to--those--indicated--as--substitutes--for-them-in-cases
 14 involving--renunciation--or--other--circumstances--affecting
 15 devolution--of--intestate--estates, subject-to the homestead
 16 allowance, exempt-property, and-family-allowance, to--rights
 17 of-creditors, elective-share-of-the-surviving-spouse, and-to
 18 administration."

19 Section-20,--Section-72-3-911,--MCA, is-amended-to-read:

20 "72-3-911,--Successors'--rights--if--no-administration:
 21 (1)---In-the-absence-of-administration, the-heirs-and-devisees
 22 are-entitled-to-the-estate-in-accordance-with-the-terms-of-a
 23 probated-will-or-the-laws-of-intestate-succession;

24 (2)---Devisees-may-establish-title-by-the-probated--will
 25 to---devised--property;--Persons--entitled--to--property--by

1 homestead-allowance, exemption, or-intestacy--may--establish
 2 title--thereto--by--proof--of--the-decedent's-ownership, his
 3 death, and-their-relationship-to-the-decedent;

4 (3)---Successors-take-subject-to-all-charges-incident-to
 5 administration, including--the--claims--of--creditors---and
 6 allowances--of--surviving--spouse-and-dependent-children-and
 7 subject-to-the-rights-of-others--resulting--from--abatement,
 8 retainer, advancement, and-ademption."

9 Section-21,--Section--72-3-1103,--MCA, is--amended--to
 10 read:

11 "72-3-1103,--Summary--procedure--for--disbursement--and
 12 distribution,---If---it--appears--from--the--inventory--and
 13 appraisal--that--the-value-of--the--net--distributable--estate
 14 does--not--exceed--\$7,500-or-the-value-of-the-entire-estate,
 15 less-liens-and-encumbrances, does-not-exceed the homestead
 16 allowance ELECTION, exempt-property, family-allowance, costs
 17 and-expenses-of-administration, reasonable-funeral-expenses,
 18 and--reasonable--and-necessary-medical-and-hospital-expenses
 19 of--the--last--illness--of--the---decedent,---the---personal
 20 representative,--without--giving--notice--to--creditors, may
 21 immediately--disburse--and--distribute--the--estate--to--the
 22 persons--entitled--thereto--and--file-a-closing-statement-as
 23 provided-in-72-3-1104."

24 Section-22,--Section--72-3-1104,--MCA, is--amended--to
 25 read:

1 "72-3-1104. Closing by sworn statement of personal
 2 representative termination of appointment. (1) Unless
 3 prohibited by order of the court and except for estates
 4 being administered by supervised personal representatives, a
 5 personal representative may close an estate administered
 6 under the summary procedures of 72-3-1103 by filing with the
 7 court, at any time after disbursement and distribution of
 8 the estate, a verified statement stating that:

9 (a) to the best knowledge of the personal
 10 representative, the value of the net distributable estate
 11 did not exceed \$7,500 or the value of the entire estate,
 12 less liens and encumbrances, did not exceed the homestead
 13 allowance SECTION, exempt property, family allowance, costs
 14 and expenses of administration, reasonable funeral expenses,
 15 and reasonable, necessary medical and hospital expenses of
 16 the last illness of the decedent;

17 (b) the personal representative has fully administered
 18 the estate by payment of inheritance taxes and by disbursing
 19 and distributing it to the persons entitled thereto; and

20 (c) the personal representative has sent a copy of the
 21 closing statement to all distributees of the estate and to
 22 all creditors or other claimants of whom he is aware whose
 23 claims are neither paid nor barred and has furnished a full
 24 account in writing of his administration to the distributees
 25 whose interests are affected;

1 (2) If no actions or proceedings involving the
 2 personal representative are pending in the court a year
 3 after the closing statement is filed, the appointment of the
 4 personal representative terminates;

5 (3) A closing statement filed under this section has
 6 the same effect as one filed under 72-3-1004."

7 SECTION 23. SECTION 70-32-103, MCA, IS AMENDED TO
 8 READ:

9 "70-32-103. From whose property homestead may be
 10 selected declaration on behalf of decedent: (1) If the
 11 claimant be is married, the homestead may be selected from
 12 the property of either spouse; When the claimant is not
 13 married, the homestead may be selected from any of his or
 14 her property;

15 (2) For purposes of this chapter, the term "claimant"
 16 includes a personal representative of a decedent's estate
 17 who under 72-2-801 declares a homestead on behalf of the
 18 estate."

19 SECTION 24. SECTION 70-32-106, MCA, IS AMENDED TO
 20 READ:

21 "70-32-106. CONTENTS OF DECLARATION: (1) The
 22 declaration of homestead must contain a statement that the
 23 person making it is residing on the premises and claims them
 24 as a homestead and a description of the premises;

25 (2) If the declaration of homestead is made by the

1 ~~personal representative on behalf of a decedent's estate~~
2 ~~under 72-2-801; it must contain:~~

- 3 ~~(a) a description of the premises;~~
- 4 ~~(b) a statement that the surviving spouse or minor or~~
5 ~~dependent child was residing on the premises at the time of~~
6 ~~the decedent's death; and~~
- 7 ~~(c) a declaration that the personal representative is~~
8 ~~claiming the premises as a homestead."~~

9 ~~SECTION 25. SECTION 70-32-302, MCA, IS AMENDED TO~~
10 ~~READ:~~

11 ~~"70-32-302. How abandoned. A homestead~~
12 ~~can be abandoned only by a declaration of abandonment or a~~
13 ~~grant thereof executed and acknowledged by:~~

- 14 ~~(1) the husband and wife if the claimant is married;~~
- 15 ~~(2) the claimant if unmarried; or~~
- 16 ~~(3) the personal representative if a declaration is~~
17 ~~made on behalf of a decedent's estate under 72-2-801."~~

18 ~~NEW SECTION. Section 11. Repealer. Sections 25-13-611~~
19 ~~through 25-13-613, 25-13-612, 25-13-616, and 25-13-617, MCA,~~
20 ~~are repealed.~~

21 ~~NEW SECTION. Section 12. Codification instruction.~~
22 ~~(1) Sections 1 through 5 are intended to be codified as an~~
23 ~~integral part of Title 25, chapter 13, part 6, and the~~
24 ~~provisions of Title 25, chapter 13, part 6, apply to~~
25 ~~sections 1 through 5.~~

1 (2) Section 6 is intended to be codified as an
2 integral part of Title 70, chapter 32, part 2, and the
3 provisions of Title 70, chapter 32, part 2, apply to section
4 6.

5 NEW SECTION. Section 13. Saving clause. This act does
6 not affect rights and duties that matured, penalties that
7 were incurred, or proceedings that were begun before the
8 effective date of this act.

9 NEW SECTION. Section 14. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.

-End-

STANDING COMMITTEE REPORT

March 9

19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration..... HOUSE BILL No. 19

Third reading copy (blue)
color

General revision of laws relating to property exempt from execution.
Mercer (Thayer)

Respectfully report as follows: That..... HOUSE BILL No. 19

1. Title, line 7.
Strike: "70-32-103,"
2. Title, line 8.
Strike: "70-32-106,"
Following: "70-32-213,"
Insert: "AND"
3. Title, lines 8 through 10.
Following: "70-32-214," on line 8
Strike: the remainder of line 8 through "72-3-1104,"
on line 10
4. Page 2, line 21.
Following: "\$67,000"
Strike: "\$4,500"
Insert: "\$6,000"
5. Page 3, line 2.
Following: "\$37,500"
Strike: "\$1,200"
Insert: "\$2,500"
6. Page 8, line 16 through page 23, line 16.
Strike: sections 11 through 25 in their entirety
Renumber: subsequent sections

~~XXXXXX~~

AND AS AMENDED

~~XXXXXXXXXX~~

BE CONCURRED IN

.....
Senator Mazurek

.....
Chairman.