

SENATE BILL NO. 160

INTRODUCED BY MAZUREK

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

IN THE SENATE

JANUARY 20, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 4, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 5, 1987	PRINTING REPORT.
FEBRUARY 7, 1987	SECOND READING, DO PASS.
FEBRUARY 9, 1987	ENGROSSING REPORT.
FEBRUARY 10, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 97; NOES, 1.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 Senate BILL NO. 160  
 2 INTRODUCED BY [Signature]  
 3 BY REQUEST OF THE MONTANA SUPREME COURT AND  
 4 THE SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 7 CLARIFY THE LAWS RELATING TO STATUTES OF LIMITATION ON THE  
 8 COMMENCEMENT OF A CIVIL ACTION; AND AMENDING SECTIONS  
 9 27-2-102, 27-2-301, 27-2-401, 27-2-402, 27-2-408, AND  
 10 27-2-409, MCA."

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

13 Section 1. Section 27-2-102, MCA, is amended to read:  
 14 "27-2-102. When action commenced. (1) For the purposes  
 15 of statutes relating to the time within which an action must  
 16 be commenced:

17 (a) a claim or cause of action accrues when all  
 18 elements of the claim or cause exist or have occurred, the  
 19 right to maintain an action on the claim or cause is  
 20 complete, and a court or other agency is authorized to  
 21 accept jurisdiction of the action;

22 (b) an action is commenced when the complaint is  
 23 filed.

24 (2) Unless otherwise provided by statute, the period  
 25 of limitation begins when the claim or cause of action

1 accrues. Lack of knowledge of the claim or cause of action,  
 2 or of its accrual, by the party to whom it has accrued, does  
 3 not postpone the beginning of the period of limitation.

4 (3) The period of limitation does not begin on any  
 5 claim or cause of action for an injury to person or property  
 6 until the injury has been discovered or, in the exercise of  
 7 due diligence, should have been discovered by the injured  
 8 party if:

9 (a) the injury is by its nature concealed or  
 10 self-concealing; or

11 (b) before, during, or after the act causing the  
 12 injury, the defendant has taken action which prevents the  
 13 injured party from discovering the injury or its cause.

14 (4) Subsection (3) does not apply to actions involving  
 15 the limitations contained in 27-2-205."

16 Section 2. Section 27-2-301, MCA, is amended to read:

17 "27-2-301. When demand necessary to perfect right to  
 18 action. Where a right exists but a demand is necessary to  
 19 entitle a person to maintain an action, the time within  
 20 which the action must be commenced must be computed from the  
 21 time when the right--to-make-the demand is complete made,  
 22 except in-one-of-the-following-cases:

23 ~~(1)~~ Where where the right grows out of the receipt or  
 24 detention of money or property by an agent, trustee,  
 25 attorney, or other person acting in a fiduciary capacity,



-2- INTRODUCED BILL  
 SB 160

1 the time must be computed from the time when the person  
2 having the right to make the demand has actual knowledge of  
3 the facts upon which that right depends.

4 ~~{2}--Where--there--was--a--deposit--of--money--not--to--be--paid  
5 at--a--fixed--time--but--only--upon--a--special--demand--or--a--delivery  
6 of--personal--property--not--to--be--returned--specifically--or--in  
7 kind--at--a--fixed--time--or--upon--a--fixed--contingency--the--time  
8 must--be--computed--from--the--demand--"~~

9 Section 3. Section 27-2-401, MCA, is amended to read:

10 "27-2-401. When person entitled to bring action is  
11 under a disability. (1) If a person entitled to bring an  
12 action mentioned in part 2, except 27-2-211(3), is, at the  
13 time the cause of action accrues, either a minor, seriously  
14 mentally ill, or imprisoned on a criminal charge or under a  
15 sentence for a term less than for life, the time of such  
16 disability is not a part of the time limited for commencing  
17 the action. However, the time so limited cannot be extended  
18 more than 5 years by any such disability except minority ~~or  
19 in--any--case--more--than--1--year--after--the--disability--ceases.~~

20 (2) If an action is barred by 27-2-304, any of the  
21 heirs, devisees, or creditors who at the time of the  
22 transaction upon which the action might have been founded  
23 was under one of the disabilities mentioned in subsection  
24 (1) may, within 5 years after the cessation of such  
25 disability, maintain an action to recover damages. In such

1 action he may recover such sum or the value of such property  
2 as he would have received upon the final distribution of the  
3 estate if an action had been seasonably commenced by the  
4 executor or administrator personal representative.

5 (3) No person may avail himself of a disability unless  
6 it existed when his right of action or entry accrued.

7 (4) When two or more disabilities coexist at the time  
8 the right of action or entry accrues, the limitation does  
9 not attach until they all are both removed."

10 Section 4. Section 27-2-402, MCA, is amended to read:

11 "27-2-402. When defendant is out of state. ~~if--when~~  
12 When the cause of action accrues against a person he who is  
13 out of the state and cannot be served with process, the  
14 action may be commenced within the term herein limited after  
15 his return to the state; and if after the cause of action  
16 accrues he departs from the state and cannot be served with  
17 process, the time of his absence is not part of the time  
18 limited for the commencement of the action."

19 Section 5. Section 27-2-408, MCA, is amended to read:

20 "27-2-408. ~~Effect--on~~ Assertion of counterclaim of  
21 ~~termination--of--action.~~ (1) ~~Whenever--a~~ defendant in-an  
22 ~~action-has-interposed-an-answer-in-support-of-which-he-would~~  
23 ~~be is~~ entitled to assert against a plaintiff, by pleading or  
24 ~~amendment, any~~ rely--at--the--trial--upon--a--defense--or  
25 ~~counterclaim arising out of the transaction or occurrence~~

1 that is the subject matter of the plaintiff's claim against  
2 him.

3 (2) The time period between the commencement and  
4 termination of an action is not part of the time limit for  
5 the commencement of an action by a defendant to recover for  
6 a counterclaim or to interpose it in that action or another  
7 action by the same plaintiff or a successor arising out of  
8 the same transaction or occurrence then-existing-in-his  
9 favor the remedy upon which, at the time of the commencement  
10 of the action, was not barred by any provision of this code  
11 and the complaint is dismissed or the action is discontinued  
12 or abates because of the plaintiff's death, the time between  
13 the commencement and the termination of the action is not a  
14 part of the time limited for the commencement of an action  
15 by the defendant to recover for the cause of action so  
16 interposed as a defense or to interpose the same defense in  
17 another action brought by the same plaintiff or a person  
18 deriving title from or under him."

19 Section 6. Section 27-2-409, MCA, is amended to read:

20 "27-2-409. Acknowledgment of debt or part payment. ~~No~~  
21 ~~acknowledgment or promise is evidence of a new or continuing~~  
22 contract An acknowledgment or the part payment of a debt is  
23 sufficient evidence to cause the relevant statute of  
24 limitations to begin running anew.

25 (1) unless the same is An acknowledgment must be

1 contained in some writing signed by the party to be charged  
2 thereby.

3 ~~(2) However, this section does not alter the effect of~~  
4 Part payment is any payment of principal or interest, which  
5 payment is equivalent to a new promise in writing, duly  
6 signed, to pay the residue of the debt."

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1 SENATE BILL NO. 160  
2 INTRODUCED BY MAZUREK  
3 BY REQUEST OF THE MONTANA SUPREME COURT AND  
4 THE SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE  
5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
7 CLARIFY THE LAWS RELATING TO STATUTES OF LIMITATION ON THE  
8 COMMENCEMENT OF A CIVIL ACTION; AND AMENDING SECTIONS  
9 27-2-102, 27-2-301, 27-2-401, 27-2-402, 27-2-408, AND  
10 27-2-409, MCA."  
11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
13 Section 1. Section 27-2-102, MCA, is amended to read:  
14 "27-2-102. When action commenced. (1) For the purposes  
15 of statutes relating to the time within which an action must  
16 be commenced;  
17 (a) a claim or cause of action accrues when all  
18 elements of the claim or cause exist or have occurred, the  
19 right to maintain an action on the claim or cause is  
20 complete, and a court or other agency is authorized to  
21 accept jurisdiction of the action;  
22 (b) an action is commenced when the complaint is  
23 filed.  
24 (2) Unless otherwise provided by statute, the period  
25 of limitation begins when the claim or cause of action

1 accrues. Lack of knowledge of the claim or cause of action,  
2 or of its accrual, by the party to whom it has accrued, does  
3 not postpone the beginning of the period of limitation.  
4 (3) The period of limitation does not begin on any  
5 claim or cause of action for an injury to person or property  
6 until the injury has OR FACTS CONSTITUTING THE CLAIM HAVE  
7 been discovered or, in the exercise of due diligence, should  
8 have been discovered by the injured party if:  
9 (a) the injury is--by--its OR FACTS CONSTITUTING THE  
10 CLAIM ARE BY THEIR nature concealed or self-concealing; or  
11 (b) before, during, or after the act causing the  
12 injury, the defendant has taken action which prevents the  
13 injured party from discovering the injury or its cause.  
14 (4) Subsection (3) does not apply to actions involving  
15 the limitations contained in 27-2-205."  
16 Section 2. Section 27-2-301, MCA, is amended to read:  
17 "27-2-301. When demand necessary to perfect right to  
18 action. Where a right exists but a demand is necessary to  
19 entitle a person to maintain an action, the time within  
20 which the action must be commenced must be computed from the  
21 time when the ~~right--to-make-the~~ demand is complete made,  
22 except in-one-of-the-following-cases:  
23 (1) ~~Where~~ where the right grows out of the receipt or  
24 detention of money or property by an agent, trustee,  
25 attorney, or other person acting in a fiduciary capacity,

1 the time must be computed from the time when the person  
2 having the right to make the demand has actual knowledge of  
3 the facts upon which that right depends.

4 ~~(2) -- Where there was a deposit of money not to be paid  
5 at a fixed time but only upon a special demand or a delivery  
6 of personal property not to be returned, specifically or in  
7 kind, at a fixed time or upon a fixed contingency, the time  
8 must be computed from the demand.~~

9 Section 3. Section 27-2-401, MCA, is amended to read:

10 "27-2-401. When person entitled to bring action is  
11 under a disability. (1) If a person entitled to bring an  
12 action mentioned in part 2, except 27-2-211(3), is, at the  
13 time the cause of action accrues, either a minor, seriously  
14 mentally ill, or imprisoned on a criminal charge or under a  
15 sentence for a term less than for life, the time of such  
16 disability is not a part of the time limited for commencing  
17 the action. However, the time so limited cannot be extended  
18 more than 5 years by any such disability except minority ~~or~~  
19 ~~in any case, more than 1 year after the disability ceases.~~

20 (2) If an action is barred by 27-2-304, any of the  
21 heirs, devisees, or creditors who at the time of the  
22 transaction upon which the action might have been founded  
23 was under one of the disabilities mentioned in subsection  
24 (1) may, within 5 years after the cessation of such  
25 disability, maintain an action to recover damages. In such

1 action he may recover such sum or the value of such property  
2 as he would have received upon the final distribution of the  
3 estate if an action had been seasonably commenced by the  
4 ~~executor or administrator~~ personal representative.

5 (3) No person may avail himself of a disability unless  
6 it existed when his right of action or entry accrued.

7 (4) When two or more disabilities coexist at the time  
8 the right of action or entry accrues, the limitation does  
9 not attach until they all are both removed."

10 Section 4. Section 27-2-402, MCA, is amended to read:

11 "27-2-402. When defendant is out of state. ~~if when~~  
12 When the cause of action accrues against a person he who is  
13 out of the state and cannot be served with process, the  
14 action may be commenced within the term herein limited after  
15 his return to the state; and if after the cause of action  
16 accrues he departs from the state and cannot be served with  
17 process, the time of his absence is not part of the time  
18 limited for the commencement of the action."

19 Section 5. Section 27-2-408, MCA, is amended to read:

20 "27-2-408. ~~Effect on Assertion of~~ counterclaim of  
21 ~~termination of action.~~ (1) ~~Whenever a~~ A defendant ~~in an~~  
22 ~~action has interposed an answer in support of which he would~~  
23 ~~be is~~ entitled to assert against a plaintiff, by pleading or  
24 amendment, any ~~rely at the trial upon a defense or~~  
25 counterclaim arising out of the transaction or occurrence

1 that is the subject matter of the plaintiff's claim against  
2 him.

3 (2) The time period between the commencement and  
4 termination of an action is not part of the time limit for  
5 the commencement of an action by a defendant to recover for  
6 a counterclaim or to interpose it in that action or another  
7 action by the same plaintiff or a successor arising out of  
8 the same transaction or occurrence then-existing-in-his  
9 favor-the-remedy-upon-which-at-the-time-of-the-commencement  
10 of-the-action-was-not-barred-by-any-provision-of-this-code  
11 and-the-complaint-is-dismissed-or-the-action-is-discontinued  
12 or-abates-because-of-the-plaintiff's-death-the-time-between  
13 the-commencement-and-the-termination-of-the-action-is-not-a  
14 part-of-the-time-limited-for-the-commencement-of-an-action  
15 by-the-defendant-to-recover-for-the-cause-of-action-so  
16 interposed-as-a-defense-or-to-interpose-the-same-defense-in  
17 another-action-brought-by-the-same-plaintiff-or-a-person  
18 deriving-title-from-or-under-him."

19 Section 6. Section 27-2-409, MCA, is amended to read:

20 "27-2-409. Acknowledgment of debt or part payment. ~~No~~  
21 ~~acknowledgment-or-promise-is-evidence-of-a-new-or-continuing~~  
22 contract An acknowledgment or the part payment of a debt is  
23 sufficient evidence to cause the relevant statute of  
24 limitations to begin running anew.

25 (1) unless-the-same-is An acknowledgment must be

1 contained in some writing signed by the party to be charged  
2 thereby.

3 ~~(2) However, this section does not alter the effect of~~  
4 Part payment is any payment of principal or interest, which  
5 payment is equivalent to a new promise in writing, duly  
6 signed, to pay the residue of the debt."

-End-



SENATE BILL NO. 160

INTRODUCED BY MAZUREK

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

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
CLARIFY THE LAWS RELATING TO STATUTES OF LIMITATION ON THE  
COMMENCEMENT OF A CIVIL ACTION; AND AMENDING SECTIONS  
27-2-102, 27-2-301, 27-2-401, 27-2-402, 27-2-408, AND  
27-2-409, MCA."

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

Section 1. Section 27-2-102, MCA, is amended to read:

"27-2-102. When action commenced. (1) For the purposes  
of statutes relating to the time within which an action must  
be commenced;

(a) a claim or cause of action accrues when all  
elements of the claim or cause exist or have occurred, the  
right to maintain an action on the claim or cause is  
complete, and a court or other agency is authorized to  
accept jurisdiction of the action;

(b) an action is commenced when the complaint is  
filed.

(2) Unless otherwise provided by statute, the period  
of limitation begins when the claim or cause of action

accrues. Lack of knowledge of the claim or cause of action,  
or of its accrual, by the party to whom it has accrued, does  
not postpone the beginning of the period of limitation.

(3) The period of limitation does not begin on any  
claim or cause of action for an injury to person or property  
until the injury has OR FACTS CONSTITUTING THE CLAIM HAVE  
been discovered or, in the exercise of due diligence, should  
have been discovered by the injured party if:

(a) the injury is--by--its OR FACTS CONSTITUTING THE  
CLAIM ARE BY THEIR nature concealed or self-concealing; or

(b) before, during, or after the act causing the  
injury, the defendant has taken action which prevents the  
injured party from discovering the injury or its cause.

(4) Subsection (3) does not apply to actions involving  
the limitations contained in 27-2-205."

Section 2. Section 27-2-301, MCA, is amended to read:

"27-2-301. When demand necessary to perfect right to  
action. Where a right exists but a demand is necessary to  
entitle a person to maintain an action, the time within  
which the action must be commenced must be computed from the  
time when the ~~right--to-make-the~~ demand is complete made,  
except ~~in one of the following cases:~~

~~(1)--Where~~ where the right grows out of the receipt or  
detention of money or property by an agent, trustee,  
attorney, or other person acting in a fiduciary capacity,



1 the time must be computed from the time when the person  
2 having the right to make the demand has actual knowledge of  
3 the facts upon which that right depends.

4 ~~(2) Where there was a deposit of money not to be paid  
5 at a fixed time but only upon a special demand or a delivery  
6 of personal property not to be returned, specifically or in  
7 kind, at a fixed time or upon a fixed contingency, the time  
8 must be computed from the demand."~~

9 Section 3. Section 27-2-401, MCA, is amended to read:

10 "27-2-401. When person entitled to bring action is  
11 under a disability. (1) If a person entitled to bring an  
12 action mentioned in part 2, except 27-2-211(3), is, at the  
13 time the cause of action accrues, either a minor, seriously  
14 mentally ill, or imprisoned on a criminal charge or under a  
15 sentence for a term less than for life, the time of such  
16 disability is not a part of the time limited for commencing  
17 the action. However, the time so limited cannot be extended  
18 more than 5 years by any such disability except minority ~~or  
19 in any case, more than 1 year after the disability ceases.~~

20 (2) If an action is barred by 27-2-304, any of the  
21 heirs, devisees, or creditors who at the time of the  
22 transaction upon which the action might have been founded  
23 was under one of the disabilities mentioned in subsection  
24 (1) may, within 5 years after the cessation of such  
25 disability, maintain an action to recover damages. In such

1 action he may recover such sum or the value of such property  
2 as he would have received upon the final distribution of the  
3 estate if an action had been seasonably commenced by the  
4 ~~executor or administrator~~ personal representative.

5 (3) No person may avail himself of a disability unless  
6 it existed when his right of action or entry accrued.

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9 not attach until they all are both removed."

10 Section 4. Section 27-2-402, MCA, is amended to read:

11 "27-2-402. When defendant is out of state, ~~if when~~  
12 When the cause of action accrues against a person he who is  
13 out of the state and cannot be served with process, the  
14 action may be commenced within the term herein limited after  
15 his return to the state; and if after the cause of action  
16 accrues he departs from the state and cannot be served with  
17 process, the time of his absence is not part of the time  
18 limited for the commencement of the action."

19 Section 5. Section 27-2-408, MCA, is amended to read:

20 "27-2-408. ~~Effect on Assertion of~~ counterclaim of  
21 ~~termination of action.~~ (1) ~~Whenever a~~ A defendant in an  
22 ~~action has interposed an answer in support of which he would~~  
23 ~~be is~~ entitled to assert against a plaintiff, by pleading or  
24 amendment, any reply at the trial upon a defense or  
25 counterclaim arising out of the transaction or occurrence

1 that is the subject matter of the plaintiff's claim against  
2 him.

3 (2) The time period between the commencement and  
4 termination of an action is not part of the time limit for  
5 the commencement of an action by a defendant to recover for  
6 a counterclaim or to interpose it in that action or another  
7 action by the same plaintiff or a successor arising out of  
8 the same transaction or occurrence then-existing-in-his  
9 favor-the-remedy-upon-which-at-the-time-of-the-commencement  
10 of-the-action-was-not-barred-by-any-provision-of-this-code  
11 and-the-complaint-is-dismissed-or-the-action-is-discontinued  
12 or-abates-because-of-the-plaintiff's-death-the-time-between  
13 the-commencement-and-the-termination-of-the-action-is-not-a  
14 part-of-the-time-limited-for-the-commencement-of-an-action  
15 by-the-defendant-to-recover-for-the-cause-of-action-so  
16 interposed-as-a-defense-or-to-interpose-the-same-defense-in  
17 another-action-brought-by-the-same-plaintiff-or-a-person  
18 deriving-title-from-or-under-him."

19 Section 6. Section 27-2-409, MCA, is amended to read:  
20 "27-2-409. Acknowledgment of debt or part payment. No  
21 ~~acknowledgment or promise is evidence of a new or continuing~~  
22 contract An acknowledgment or the part payment of a debt is  
23 sufficient evidence to cause the relevant statute of  
24 limitations to begin running anew.

25 (1) unless-the-same-is An acknowledgment must be

1 contained in some writing signed by the party to be charged  
2 thereby.

3 ~~(2) However, this section does not alter the effect of~~  
4 ~~Part payment is any payment of principal or interest, which~~  
5 ~~payment is equivalent to a new promise in writing, duly~~  
6 ~~signed, to pay the residue of the debt."~~

-End-

## 1 SENATE BILL NO. 160

2 INTRODUCED BY MAZUREK

3 BY REQUEST OF THE MONTANA SUPREME COURT AND  
4 THE SUPREME COURT COMMISSION ON THE RULES OF EVIDENCE  
56 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
7 CLARIFY THE LAWS RELATING TO STATUTES OF LIMITATION ON THE  
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9 27-2-102, 27-2-301, 27-2-401, 27-2-402, 27-2-408, AND  
10 27-2-409, MCA."  
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 27-2-102, MCA, is amended to read:

14 "27-2-102. When action commenced. (1) For the purposes  
15 of statutes relating to the time within which an action must  
16 be commenced:17 (a) a claim or cause of action accrues when all  
18 elements of the claim or cause exist or have occurred, the  
19 right to maintain an action on the claim or cause is  
20 complete, and a court or other agency is authorized to  
21 accept jurisdiction of the action;22 (b) an action is commenced when the complaint is  
23 filed.24 (2) Unless otherwise provided by statute, the period  
25 of limitation begins when the claim or cause of action1 accrues. Lack of knowledge of the claim or cause of action,  
2 or of its accrual, by the party to whom it has accrued, does  
3 not postpone the beginning of the period of limitation.4 (3) The period of limitation does not begin on any  
5 claim or cause of action for an injury to person or property  
6 until the injury has OR FACTS CONSTITUTING THE CLAIM HAVE  
7 been discovered or, in the exercise of due diligence, should  
8 have been discovered by the injured party if:9 (a) the injury is--by--its OR FACTS CONSTITUTING THE  
10 CLAIM ARE BY THEIR nature concealed or self-concealing; or  
11 (b) before, during, or after the act causing the  
12 injury, the defendant has taken action which prevents the  
13 injured party from discovering the injury or its cause.14 (4) Subsection (3) does not apply to actions involving  
15 the limitations contained in 27-2-205."

16 Section 2. Section 27-2-301, MCA, is amended to read:

17 "27-2-301. When demand necessary to perfect right to  
18 action. Where a right exists but a demand is necessary to  
19 entitle a person to maintain an action, the time within  
20 which the action must be commenced must be computed from the  
21 time when the ~~right--to-make-the~~ demand is complete made,  
22 except ~~in-one-of-the-following-cases:~~23 ~~{}~~--Where where the right grows out of the receipt or  
24 detention of money or property by an agent, trustee,  
25 attorney, or other person acting in a fiduciary capacity,

1 the time must be computed from the time when the person  
2 having the right to make the demand has actual knowledge of  
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5 at a fixed time but only upon a special demand or a delivery  
6 of personal property not to be returned, specifically or in  
7 kind -- at a fixed time or upon a fixed contingency, the time  
8 must be computed from the demand --"~~

9 Section 3. Section 27-2-401, MCA, is amended to read:

10 "27-2-401. When person entitled to bring action is  
11 under a disability. (1) If a person entitled to bring an  
12 action mentioned in part 2, except 27-2-211(3), is, at the  
13 time the cause of action accrues, either a minor, seriously  
14 mentally ill, or imprisoned on a criminal charge or under a  
15 sentence for a term less than for life, the time of such  
16 disability is not a part of the time limited for commencing  
17 the action. However, the time so limited cannot be extended  
18 more than 5 years by any such disability except minority ~~or  
19 in any case, more than 1 year after the disability ceases.~~

20 (2) If an action is barred by 27-2-304, any of the  
21 heirs, devisees, or creditors who at the time of the  
22 transaction upon which the action might have been founded  
23 was under one of the disabilities mentioned in subsection  
24 (1) may, within 5 years after the cessation of such  
25 disability, maintain an action to recover damages. In such

1 action he may recover such sum or the value of such property  
2 as he would have received upon the final distribution of the  
3 estate if an action had been seasonably commenced by the  
4 executor or administrator personal representative.

5 (3) No person may avail himself of a disability unless  
6 it existed when his right of action or entry accrued.

7 (4) When two or more disabilities coexist at the time  
8 the right of action or entry accrues, the limitation does  
9 not attach until they all are both removed."

10 Section 4. Section 27-2-402, MCA, is amended to read:

11 "27-2-402. When defendant is out of state. ~~if when~~  
12 When the cause of action accrues against a person he who is  
13 out of the state and cannot be served with process, the  
14 action may be commenced within the term herein limited after  
15 his return to the state; and if after the cause of action  
16 accrues he departs from the state and cannot be served with  
17 process, the time of his absence is not part of the time  
18 limited for the commencement of the action."

19 Section 5. Section 27-2-408, MCA, is amended to read:

20 "27-2-408. ~~Effect -- on~~ Assertion of counterclaim of  
21 ~~termination -- of -- action.~~ (1) ~~Whenever -- a~~ A defendant in an  
22 ~~action has interposed an answer in support of which he would~~  
23 ~~be is~~ entitled to assert against a plaintiff, by pleading or  
24 amendment, any rely -- at -- the -- trial -- upon -- a -- defense -- or  
25 counterclaim arising out of the transaction or occurrence

1 that is the subject matter of the plaintiff's claim against  
 2 him.

3 (2) The time period between the commencement and  
 4 termination of an action is not part of the time limit for  
 5 the commencement of an action by a defendant to recover for  
 6 a counterclaim or to interpose it in that action or another  
 7 action by the same plaintiff or a successor arising out of  
 8 the same transaction or occurrence then-existing-in-his  
 9 favor-the-remedy-upon-which,-at-the-time-of-the-commencement  
 10 of--the-action,-was-not-barred-by-any-provision-of-this-code  
 11 and-the-complaint-is-dismissed-or-the-action-is-discontinued  
 12 or-abates-because-of-the-plaintiff's-death,-the-time-between  
 13 the-commencement-and-the-termination-of-the-action-is-not-a  
 14 part--of--the-time-limited-for-the-commencement-of-an-action  
 15 by-the-defendant-to-recover--for--the--cause--of--action--so  
 16 interposed--as-a-defense-or-to-interpose-the-same-defense-in  
 17 another-action-brought-by-the-same-plaintiff--or--a--person  
 18 deriving-title-from-or-under-him."

19 Section 6. Section 27-2-409, MCA, is amended to read:

20 "27-2-409. Acknowledgment of debt or part payment. No  
 21 ~~acknowledgment-or-promise-is-evidence-of-a-new-or-continuing~~  
 22 contract An acknowledgment or the part payment of a debt is  
 23 sufficient evidence to cause the relevant statute of  
 24 limitations to begin running anew.

25 (1) unless-the-same-is An acknowledgment must be

1 contained in some writing signed by the party to be charged  
 2 thereby.

3 (2) However,-this-section-does-not-alter-the-effect-of  
 4 Part payment is any payment of principal or interest,-which  
 5 payment-is-equivalent-to-a-new-promise--in-writing,-duly  
 6 signed,-to-pay-the-residue-of-the-debt."

-End-

HOUSE

STANDING COMMITTEE REPORT

79

MARCH 23, 1987

JUDICIARY

Mr. Speaker: We, the committee on \_\_\_\_\_  
report \_\_\_\_\_  
SENATE BILL NO. 160

- do pass
- do not pass
- be concurred in
- be not concurred in
- as amended
- statement of intent attached

*Earley*  
\_\_\_\_\_  
Chairman

Page 2, lines 6 and 9.  
Strike: "injury" on lines 6 and 9  
Strike: "OR" on lines 6 and 9

THIRD reading copy (BLUE color)

REP. MERCER WILL CARRY THE BILL!