

HOUSE BILL NO. 122
INTRODUCED BY SPAETH

IN THE HOUSE

JANUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 12, 1989	FIRST READING.
JANUARY 25, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 26, 1989	PRINTING REPORT.
JANUARY 28, 1989	SECOND READING, DO PASS AS AMENDED.
JANUARY 30, 1989	ENGROSSING REPORT.
JANUARY 31, 1989	THIRD READING, PASSED. AYES, 96; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 2, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 15, 1989	SECOND READING, CONCURRED IN.
MARCH 17, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989	RECEIVED FROM SENATE.
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MARCH 31, 1989

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 122

2 INTRODUCED BY Spaeth

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSONAL
5 REPRESENTATIVE OF AN ESTATE TO GIVE ACTUAL NOTICE TO
6 CREDITORS OF THE ESTATE WHOSE WHEREABOUTS ARE KNOWN OR ARE
7 REASONABLY ASCERTAINABLE; AND AMENDING SECTION 72-3-801,
8 MCA."

9

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

11 **Section 1.** Section 72-3-801, MCA, is amended to read:

12 "72-3-801. Notice to creditors. (1) Unless notice has
13 already been given under this section, a personal
14 representative upon his appointment shall publish a notice
15 once a week for 3 successive weeks in a newspaper of general
16 circulation in the county announcing his appointment and
17 address and notifying creditors of the estate to present
18 their claims within 4 months after the date of the first
19 publication of the notice or be forever barred, and proof of
20 publication shall be filed with the clerk.

21 (2) A personal representative shall give actual notice
22 to creditors of the estate whose names and addresses are
23 known or are reasonably ascertainable. A creditor receiving
24 actual notice shall file his claim within 4 months after the
25 first publication of the notice required in subsection (1)."

-End-



INTRODUCED BILL
HB 122

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 122
2 INTRODUCED BY SPAETH
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSONAL
5 REPRESENTATIVE OF AN ESTATE TO GIVE ACTUAL NOTICE TO
6 CREDITORS OF THE ESTATE WHOSE WHEREABOUTS ARE KNOWN OR ARE
7 REASONABLY ASCERTAINABLE; AND AMENDING SECTION 72-3-801,
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13 already been given under this section, a personal
14 representative upon his appointment shall publish a notice
15 once a week for 3 successive weeks in a newspaper of general
16 circulation in the county announcing his appointment and
17 address and notifying creditors of the estate to present
18 their claims within 4 months after the date of the first
19 publication of the notice or be forever barred, and proof of
20 publication shall be filed with the clerk.

21 (2) A personal representative shall ALSO give, PRIOR
22 TO THE THIRD PUBLICATION OF NOTICE IN A NEWSPAPER, actual
23 notice BY CERTIFIED MAIL OR OTHER MEANS to creditors of the
24 estate whose names and addresses are known or are reasonably
25 ascertainable. A creditor receiving actual notice shall file

1 his claim within 4 months after the first publication of the
2 notice required in subsection (1) OR BE FOREVER BARRED.
3 PROOF OF NOTICE SHALL BE FILED WITH THE CLERK."

-End-

HOUSE BILL NO. 122

INTRODUCED BY SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSONAL REPRESENTATIVE OF AN ESTATE TO GIVE ACTUAL NOTICE TO CREDITORS OF THE ESTATE WHOSE WHEREABOUTS ARE KNOWN OR ARE REASONABLY ASCERTAINABLE; AND AMENDING SECTION 72-3-801, MCA."

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

Section 1. Section 72-3-801, MCA, is amended to read:

"72-3-801. Notice to creditors. (1) Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred, and proof of publication shall be filed with the clerk.

(2) A personal representative shall ALSO give, PRIOR TO THE THIRD PUBLICATION OF NOTICE IN A NEWSPAPER, actual notice BY CERTIFIED REGISTERED CERTIFIED MAIL OR OTHER MEANS to creditors of the estate whose names and addresses are known or are reasonably ascertainable. A creditor receiving

actual notice shall file his claim within 4 months after the first publication of the notice required in subsection (1) OR BE FOREVER BARRED. PROOF OF NOTICE SHALL BE FILED WITH THE CLERK."

-End-

SENATE STANDING COMMITTEE REPORT

page 1 of 4
March 14, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 122 (third reading copy -- blue), respectfully report that HB 122 be amended and as so amended be concurred in:

Sponsor: Spaeth (Bishop)

1. Title, line 7.
Following: "ASCERTAINABLE;"
Insert: "REVISING THE TIME LIMITATIONS ON PRESENTATION OF CLAIMS;"
Strike: "SECTION"
Insert: "SECTIONS"
Following: "72-3-801"
Insert: "THROUGH 72-3-803, 72-3-808, AND 72-3-1004"

2. Page 1, lines 19 and 20.
Following: "barred" on line 19
Strike: remainder of line 19 through "clerk" on line 20

3. Page 1, line 21 through page 2, line 4.
Strike: subsection (2) in its entirety
Insert: "(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.
(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section."

4. Page 2.
Following: line 4
Insert: "Section 2. Section 72-3-802, MCA, is amended to read:
"72-3-802. Statutes of limitations -- waiver -- suspension.
(1) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.
(2) The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent or the giving of notice to creditors is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

continued

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(3) For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent to commencement of a proceeding on the claim."

Section 3. Section 72-3-803, MCA, is amended to read:
"72-3-803. Nonclaim -- limitations on presentation of claims -- exceptions. (1) ~~With the exception of claims for taxes and claims founded on tort, all~~ All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, ~~tort~~, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented ~~as follows within the earlier of the following time limitations:~~

(a) ~~within 4 months after the date of the first publication of notice to creditors if notice is given in compliance with 72-3-801, provided claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state, or~~

(b) ~~within 3 years 1 year~~ after the decedent's death ~~if notice to creditors has not been published, or~~

(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. However, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.

(2) ~~With the exception of claims for taxes and claims founded on tort, all~~ All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, ~~tort~~, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within the latter of 4 months after it arises or the time specified in subsection (1)(a).

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; ~~or~~

continued

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SENATE

(b) to the limits of the insurance protection only, and proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

Section 4. Section 72-3-808, MCA, is amended to read:

"72-3-808. Payment of claims. (1) Upon the expiration of 4 months from the date of the first publication of the notice to creditors the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority."

Section 5. Section 72-3-1004, MCA, is amended to read:

"72-3-1004. Closing estate by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than 6 months after the date of original appointment of a general

personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has:

(a) ~~published notice to creditors as provided by 72-3-801 and that the first publication occurred more than 6 months prior to the date of the statement determined that the time limitation for presentation of creditors' claims has expired;~~

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;


(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of 72-3-1006.

(2) If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates."

AND AS AMENDED BE CONCURRED IN

Signed:


Bruce D. Crippen, Chairman

HOUSE BILL NO. 122

INTRODUCED BY SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSONAL REPRESENTATIVE OF AN ESTATE TO GIVE ACTUAL NOTICE TO CREDITORS OF THE ESTATE WHOSE WHEREABOUTS ARE KNOWN OR ARE REASONABLY ASCERTAINABLE; REVISING THE TIME LIMITATIONS ON PRESENTATION OF CLAIMS; AND AMENDING ~~SECTION~~ SECTIONS 72-3-801 THROUGH 72-3-803, 72-3-808, AND 72-3-1004, MCA."

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

Section 1. Section 72-3-801, MCA, is amended to read:

"72-3-801. Notice to creditors. (1) Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred, ~~and proof of publication shall be filed with the clerk.~~

~~{2}--A personal representative shall ALSO give--PRIOR TO--THE--THIRD--PUBLICATION--OF--NOTICE--IN--A--NEWSPAPER, actual notice BY CERTIFIED REGISTERED CERTIFIED MAIL OR OTHER MEANS to creditors of the estate whose names and addresses are~~

~~known--or--are--reasonably--ascertainable,--A creditor receiving actual notice shall file his claim within 4 months after the first publication of the notice required in subsection (1) OR--BE--FOREVER--BARRED, PROOF OF NOTICE SHALL BE FILED WITH THE CLERK.~~

(2) A PERSONAL REPRESENTATIVE MAY GIVE WRITTEN NOTICE BY MAIL OR OTHER DELIVERY TO ANY CREDITOR, NOTIFYING THE CREDITOR TO PRESENT HIS CLAIM WITHIN 4 MONTHS FROM THE PUBLISHED NOTICE IF GIVEN AS PROVIDED IN SUBSECTION (1) OR WITHIN 30 DAYS FROM THE MAILING OR OTHER DELIVERY OF THE NOTICE, WHICHEVER IS LATER, OR BE FOREVER BARRED. WRITTEN NOTICE MUST BE THE NOTICE DESCRIBED IN SUBSECTION (1) OR A SIMILAR NOTICE.

(3) THE PERSONAL REPRESENTATIVE IS NOT LIABLE TO ANY CREDITOR OR TO ANY SUCCESSOR OF THE DECEDENT FOR GIVING OR FAILING TO GIVE NOTICE UNDER THIS SECTION."

SECTION 2. SECTION 72-3-802, MCA, IS AMENDED TO READ:

"72-3-802. Statutes of limitations -- waiver -- suspension. (1) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

1 (2) The running of any statute of limitations measured
2 ~~from some other event than death and advertisement for~~
3 ~~claims against a decedent or the giving of notice to~~
4 ~~creditors~~ is suspended during the 4 months following the
5 decedent's death but resumes thereafter as to claims not
6 barred pursuant to the sections which follow.

7 (3) For purposes of any statute of limitations, the
8 proper presentation of a claim under 72-3-804 is equivalent
9 to commencement of a proceeding on the claim."

10 **SECTION 3. SECTION 72-3-803, MCA, IS AMENDED TO READ:**

11 "**72-3-803. Nonclaim** -- limitations on presentation of
12 ~~claims -- exceptions. (1) With the exception of claims for~~
13 ~~taxes and claims founded on tort, all~~ All claims against a
14 decedent's estate which arose before the death of the
15 decedent, including claims of the state and any subdivision
16 thereof, whether due or to become due, absolute or
17 contingent, liquidated or unliquidated, founded on contract,
18 tort, or other legal basis, if not barred earlier by other
19 statute of limitations, are barred against the estate, the
20 personal representative, and the heirs and devisees of the
21 decedent, ~~unless presented as follows within the earlier of~~
22 the following time limitations:

23 (a) ~~within 4 months after the date of the first~~
24 ~~publication of notice to creditors if notice is given in~~
25 ~~compliance with 72-3-801, provided claims barred by the~~

1 ~~nonclaim statute at the decedent's domicile before the first~~
2 ~~publication for claims in this state are also barred in this~~
3 ~~state, or~~

4 ~~(b) within 3 years 1 year~~ after the decedent's death
5 ~~if notice to creditors has not been published; or~~

6 (b) within the time provided by 72-3-801(2) for
7 ~~creditors who are given actual notice and within the time~~
8 ~~provided in 72-3-801(1) for all creditors barred by~~
9 ~~publication. However, claims barred by the nonclaim statute~~
10 ~~at the decedent's domicile before the giving of notice to~~
11 ~~creditors in this state are also barred in this state.~~

12 (2) ~~With the exception of claims for taxes and claims~~
13 ~~founded on tort, all~~ All claims against a decedent's estate
14 which arise at or after the death of the decedent, including
15 claims of the state and any subdivision thereof, whether due
16 or to become due, absolute or contingent, liquidated or
17 unliquidated, founded on contract, tort, or other legal
18 basis, are barred against the estate, the personal
19 representative, and the heirs and devisees of the decedent
20 unless presented as follows:

21 (a) a claim based on a contract with the personal
22 representative, within 4 months after performance by the
23 personal representative is due;

24 (b) any other claim, within the latter of 4 months
25 after it arises or the time specified in subsection (1)(a).

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

SECTION 4. SECTION 72-3-808, MCA, IS AMENDED TO READ:

"72-3-808. Payment of claims. (1) Upon the expiration of ~~4 months from the date of the first publication of the~~ notice to creditors the earlier of the time limitations provided in 72-3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is

supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority."

SECTION 5. SECTION 72-3-1004, MCA, IS AMENDED TO READ:

"72-3-1004. Closing estate by sworn statement of personal representative. (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than 6 months after the date of original appointment of a general personal representative for the

1 estate, a verified statement stating that he, or a prior
2 personal representative whom he has succeeded, has:

3 (a) ~~published--notice--to--creditors--as--provided--by~~
4 ~~72-3-801-and-that-the-first-publication-occurred-more-than-6~~
5 ~~months-prior-to-the-date-of-the--statement~~ determined that
6 the time limitation for presentation of creditors' claims
7 has expired;

8 (b) fully administered the estate of the decedent by
9 making payment, settlement, or other disposition of all
10 claims which were presented, expenses of administration, and
11 estate, inheritance, and other death taxes, except as
12 specified in the statement, and that the assets of the
13 estate have been distributed to the persons entitled; if any
14 claims remain undischarged, the statement shall state
15 whether the personal representative has distributed the
16 estate subject to possible liability with the agreement of
17 the distributees, or it shall state in detail other
18 arrangements which have been made to accommodate outstanding
19 liabilities;

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

25 (d) complied with the provisions of 72-3-1006.

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

-End-