SENATE BILL NO. 331

INTRODUCED BY BISHOP

IN THE SENATE

FEBRUARY 3, 1989 INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.

FIRST READING.

FEBRUARY 13, 1989 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

PRINTING REPORT.

FEBRUARY 15, 1989 ON MOTION, CONSIDERATION PASSED UNTIL THE 41ST LEGISLATIVE DAY.

FEBRUARY 17, 1989 SECOND READING, DO PASS.

FEBRUARY 18, 1989 ENGROSSING REPORT.

THIRD READING, PASSED. AYES, 50; NOES, 0.

ON JUDICIARY.

FIRST READING.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989

FEBRUARY 20, 1989

FEBRUARY 14, 1989

MARCH 10, 1989

MARCH 14, 1989

MARCH 16, 1989

COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

INTRODUCED AND REFERRED TO COMMITTEE

SECOND READING, CONCURRED IN.

THIRD READING, CONCURRED IN. AYES, 94; NOES, 1.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 4, 1989

#5

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

INTRODUCED BY Dishop 1 2 3

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 4 5 UNIFORM PROBATE CODE AND RELATED LAW; REQUIRING A 120-HOUR 6 SURVIVORSHIP TO COLLECT INSURANCE PROCEEDS; AND AMENDING SECTIONS 40-8-125, 72-1-108, 72-2-104, 72-2-202, 72-2-305, 7 72-2-516, 72-2-517, 72-2-704, 72-3-122, 72-3-213, 72-3-603, 8 9 72-3-607, 72-3-805, 72-3-902, 72-3-917, 72-3-1103. 10 72-3-1104, 72-5-302 THROUGH 72-5-304, 72-5-325, 72-5-435. 11 72-5-438, 72-5-501, 72-16-301 THROUGH 72-16-303, AND 12 72-16-906, MCA."

13

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

15 Section 1. Section 40-8-125, MCA, is amended to read: "40-8-125. Effect of final decree. (1) After the final 16 decree of adoption is entered, the relation of parent and 17 18 child and all the rights, duties, and other legal consequences of the natural relation of child and parent 19 shall thereafter exist between such adopted child and the 20 21 adoptive parents adopting such child and the kindred of the 22 adoptive parents. Prom--the--date--of--the-final-decree-of 23 adoption7-the-child-shall-be-entitled-to--inherit--real--and personal--property-from-and-through-the-adoptive-parents-and 24 25 the-kindred-of-the-adoptive-parents-in-accordance--with--the

ntana legislative Council

statutes--of--descent--and--distribution--and--the--adoptive parents-and-their-kindred-shall-be-entitled-to-inherit--real and---personal--property--from--and--through--the--child--in accordance-with-said-statutes.

5 (2) After a the final decree of adoption is entered, 6 the natural parents and the kindred of the natural parents 7 of the adopted child, unless they are the adoptive parents 8 or the spouse of an adoptive parent, shall be relieved of 9 all parental responsibilities for said child and have no 10 rights over such adopted child or-to-his-property-by-descent 11 and-distribution.

12 (3) The relationship of parent and child for the 13 purposes of intestate succession is governed by Title 72." Section 2. Section 72-1-108, MCA, is amended to read: 14 15 "72-1-108. Evidential rules applicable -- evidence as 16 to death or status. (1) In proceedings under this code the 17 rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are 18 19 applicable unless specifically displaced by the code.

20 (2) In addition, the following rules relating to21 determination of death and status are applicable:

(a) A certified or authenticated copy of a death
certificate purporting to be issued by an official or agency
of the place where the death purportedly occurred is prima
facie proof of the fact, place, date, and time of death and

-2- INTRODUCED BILL

er de la company de

1 the identity of the decedent.

(b) A certified or authenticated copy of any record or
report of a governmental agency, domestic or foreign, that a
person is missing, detained, dead, or alive is prima facie
evidence of the status and of the dates, circumstances, and
places disclosed by the record or report.

7 (c) In the absence of prima facie evidence of death
8 under subsection (2)(a) or (2)(b), the fact of death may be
9 established by clear and convincing evidence, including
10 circumstantial evidence.

11 tct(d) A person whose death is not established under 12 subsections (2)(a) through (2)(c), who is absent for a 13 continuous period of 7 5 years, during which he has not been 14 heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be 15 dead. His death is presumed to have occurred at the end of 16 17 period unless there is sufficient evidence for the 18 determining that death occurred earlier."

Section 3. Section 72-2-104, MCA, is amended to read: "72-2-104. Homicide -- effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations. (1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by
 the will of the decedent to or for the benefit of the killer
 passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally 4 5 kills another joint tenant thereby effects a severance of 6 the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights 7 by survivorship. This provision applies to joint tenancies 8 9 in real and personal property, joint accounts in banks, 10 savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with 11 survivorship incidents. 12

13 (3) A named beneficiary of a bond, life insurance 14 policy, or other contractual arrangement who feloniously and 15 intentionally kills the principal obligee or the person upon 16 whose life the policy is issued is not entitled to any 17 benefit under the bond, policy, or other contractual 18 arrangement, and it becomes payable as though the killer had 19 predeceased the decedent.

20 (4) Any other acquisition of property or interest by
21 the killer shall be treated in accordance with the
22 principles of this section.

23 (5) A final judgment of conviction of felonious and
24 intentional killing is conclusive for purposes of this
25 section. In the absence of a conviction of felonious and

-4-

intentional killing, the court may determine by a
 preponderance of evidence whether the killing was felonious
 and intentional for purposes of this section.

4 (6) This section does not affect the rights of any 5 person who, before rights under this section have been adjudicated, purchases from the killer for value and without 6 7 notice property which the killer would have acquired except 8 for this section, but the killer is liable for the amount of 9 the proceeds or the value of the property. Any insurance 10 company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by 11 12 reason of this section unless prior to payment it has 13 received at its home office or principal address written 14 notice of a claim under this section.

15 (7) For the purposes of this section, a felonious and
intentional killing includes a deliberate homicide as
defined in 45-5-102 and a mitigated deliberate homicide as
defined in 45-5-103."

Section 4. Section 72-2-202, MCA, is amended to read:
"72-2-202. Share of spouse. The intestate share of the surviving spouse is:

22 (1) if there is no surviving issue or if there are
23 surviving issue all of whom are issue of the surviving
24 spouse also, the entire remaining estate;

-5-

25 (2) if there are surviving issue one or more of whom

1 are not issue of the surviving spouse, as follows: 2 (a) if there is surviving only one such child or the 3 issue of one such child, one-half of the intestate estate; 4 (b) if there are surviving more-than-one-such-child-or one-such-child two or more children, the issue of two or 5 more deceased children, or one or more children and the 6 7 issue of one or more deceased children, one-third of the 8 intestate estate." Section 5. Section 72-2-305, MCA, is amended to read: q "72-2-305. Who may witness -- effect of witness by 10 11 beneficiary. (1) Any person generally competent to be a 12 witness may act as a witness to a will. 13 (2) A will is not invalid because the will is signed 14 by an interested witness. 15 +3+--All--beneficial--devises--made--in--any--will-to-a 16 subscribing-witness-thereto-are-void-unless--there--are--two 17 other--competent--subscribing--witnesses--to-the-same;-but-a 18 mere-charge-on-the-estate-of-the-testator-does--not--prevent 19 his-creditors-from-being-competent-witnesses-to-his-will; 20 (4)---If--a--witness--to-whom-any-beneficial-devise-void 21 under-subsection-(3)-is-made-would-have-been-entitled-to-any

22 share-of-the-estate-of-the-testator-if-the-testator-had-died

23 intestate7-such-witness-succeeds-to-so-much-of-the-share--as

24 would--be-distributed-to-him-under-intestate-succession;-not

25 exceeding-the-devise-or-bequest-made-to-him in-the will-"

-6-

- LC 1072/01

de l'élemente le la marge de la marge de

Section 6. Section 72-2-516, MCA, is amended to read: 1 "72-2-516. Nonademption of specific devises in certain 2 3 cases. (1)--If--specifically--devised-property-is-sold-by-a conservator-or-if-a-condemnation-award-or-insurance-proceeds 4 are-paid-to-a-conservator-as-a-result-of-condemnation-fire-5 6 or-casualty7--the--specific--devisee--has--the--right--to--a 7 pecuniary--devise--equal--to--so--much--of--the--sale-price; 8 condemnation-award, or insurance proceeds as remains in - the 9 estate--and--is--identifiable--at-the-time-of-the-decedent+s 10 death_-This-subsection-does-not-apply-if-subsequent--to--the 11 saley--condemnationy--or-casualty-it-is-adjudicated-that-the 12 disability-of-the--testator--has--ceased--and--the--testator 13 survives--the--adjudication--by--l--year---The-right-of-the 14 specific-devisee-under-this-subsection--is--reduced--by--any 15 right-he-has-under-subsection-(2);

16 (2)(1) A specific devisee has the right to the 17 remaining specifically devised property and:

18 (a) any balance of the purchase price (together with 19 any security interest) owing from a purchaser to the 20 testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the takingof the property unpaid at death;

23 (c) any proceeds unpaid at death on fire or casualty24 insurance on the property; and

25

result of foreclosure or obtained in lieu of foreclosure of 1 2 the security for a specifically devised obligation. 3 (2) If specifically devised property is sold by a conservator or an agent acting within the authority of a 4 5 durable power of attorney for a principal who is under a 6 disability, or if a condemnation award or insurance proceeds 7 are paid to a conservator or an agent acting within the 8 authority of a durable power of attorney for a principal who 9 is under a disability, as a result of condemnation, fire, or 10 casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the 11 12 condemnation award, or the insurance proceeds. This 13 subsection does not apply if after the sale, condemnation, 14 or casualty it is adjudicated that the disability of the 15 testator has ceased and the testator survives the 16 adjudication by 1 year. The right of the specific devisee 17 under this subsection is reduced by any right he has under 18 subsection (1)." 19 Section 7. Section 72-2-517, MCA, is amended to read: 20 *72-2-517. Changes in devised securities --21 distributions prior to death. (1) If the testator intended a 22 specific devise of certain securities rather than the 23 equivalent value thereof, the specific devisee is entitled 24 only to:

25 (a) as much of the devised securities as is a part of

-7-

(d) property owned by testator at his death, as a

-8-

1 the estate at time of the testator's death:

(b) any additional or other securities of the same
entity owned by the testator by reason of action initiated
by the entity, excluding any securities acquired by exercise
of purchase options;

6 (c) securities of another entity owned by the testator
7 as a result of a merger, consolidation, reorganization, or
8 other similar action initiated by the entity; and

9 (d) any additional securities of the entity owned by
10 the testator as a result of a plan of reinvestment if-it-is
11 a-regulated-investment-company.

12 (2) Distributions prior to death with respect to a
13 specifically devised security not provided for in subsection
14 (1) are not part of the specific devise."

15 Section 8. Section 72-2-704, MCA, is amended to read: "72-2-704. Effect-of-election-on-benefits-by--will--or 16 statute Surviving spouse -- allowance -- exemptions. (+)-The 17 18 surviving--spouse+s--election-of-his-elective-share-does-not 19 affect--the--share--of--the--surviving--spouse---under---the 20 provisions--of--the--decedent's-will-or-intestate-succession 21 unless-the-surviving-spouse-also-expressly-renounces-in--the 22 petition--for-an-elective-share-the-benefit-of-all-or-any-of 23 the-provisions---If--any--provision--is--so--renounced7--the property--or-other-benefit-which-would-otherwise-have-passed 24 25 to-the-surviving-spouse-thereunder-is--treated_--subject--to 1 contribution--under--72-2-706(2);-as-if-the-surviving-spouse

2 had-predeceased-the-testator.

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

Section 9. Section 72-3-122, MCA, is amended to read: 6 "72-3-122. Time limit on probate, testacy, and 7 appointment proceedings -- exceptions. (1) No informal 8 probate or appointment proceeding or formal testacy or 9 10 appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and 11 appointment proceedings relating to an estate in which there 12 has been a prior appointment, may be commenced more than 3 13 years after the decedent's death, except: 14

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy
proceedings may be maintained in relation to the estate of
an absent, disappeared, or missing person for whose estate a
conservator has been appointed at any time within 3 years

-9~

-10-

11 Control of the second of th

1 after the conservator becomes able to establish the death of 2 the protected person; and

3 (c) a proceeding to contest an informally probated 4 will and to secure appointment of the person with legal 5 priority for appointment in the event the contest is 6 successful may be commenced within the later of 12 months 7 from the informal probate or 3 years from the decedent's 8 death; and

9 (d) if no proceeding concerning the succession or 10 administration of the estate has occurred within 3 years 11 after the decedent's death, a formal testacy proceeding may 12 be commenced at any time thereafter for the sole purpose of 13 establishing a devise of property which the devisee or his 14 successors and assigns possessed in accordance with the will 15 or property which was not possessed or claimed by anyone by 16 virtue of the decedent's title during the 3-year period, and 17 the order of the court must be limited to that property.

18 (2) These limitations do not apply to proceedings to 19 construe probated wills or determine heirs of an intestater 20 nor-do--they--limit--the--right--of--interested--persons--to 21 commence--informal--probate--or--appointment--proceedings-or 22 formal-testacy-or-appointment-proceedings-at-any-time--after 23 3--years--from--the--decedentis--death-if-there-have-been-no 24 previous--formal--or---informal---probate---or---appointment 25 proceedings-commenced-in-respect-of-that-decedent.

(3) In cases under (1)(a) or (1)(b) above, the date on
 which a testacy or appointment proceeding is properly
 commenced shall be deemed to be the date of the decedent's
 death for purposes of other limitations provisions of this
 code which relate to the date of death."

Section 10. Section 72-3-213, MCA, is amended to read: 6 "72-3-213. Rules for grant or denial of informal 7 probate. (1) A will which appears to have the required 8 signatures and which contains an attestation clause showing q that requirements of execution under 72-2-302, 72-2-303, or 10 72-2-306 have been met shall be probated without further 11 proof. In other cases the clerk may assume execution if the 12 will appears to be properly executed, or he may accept a 13 sworn statement or affidavit of any person having knowledge 14 of the circumstances of execution, whether or not the person 15 was a witness to the will. 16

(2) The application shall be denied if it indicates 17 that a personal representative has been appointed in another 18 county of this state or, except as provided in subsection 19 (3) below, if it appears that this or another will of the 20 decedent has been the subject of a previous probate order. 21 (3) Informal probate of a will which has been 22 previously probated elsewhere may be granted at any time 23 upon written application by any interested person, together 24 with deposit of an authenticated copy of the will and of the 25

-12-

1991年,这些1994年,如此的法国主义的公司,但如果是这些法国主义的法的,如果是这些事实的意思,但是是将父母们的是如何的情况的意思,这个人,"如此通过是是不是的法定的,这个人还是是是

statement probating it from the office or court where it was
 first probated.

3 (4) A will from a place which does not provide for probate of a will after death and which is not eligible for 4 probate under 72-3-212 may be probated in this state upon 5 6 receipt by the clerk of a duly authenticated copy of the 7 will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the 8 9 will has become operative under the law of the other place. 10 (5) Application for informal probate which relates to 11 one or more of a known series of testamentary instruments 12 (other than wills-and--codicits a will and one or more 13 codicils to the will), the latest of which does not expressly revoke the earlier, shall be declined." 14

Section 11. Section 72-3-603, MCA, is amended to read: 15 "72-3-603. Notice of appointment to heirs and 16 17 devisees. (1) Not later than 30 days after his appointment, 18 every personal representative, except any special administrator, shall give information of his appointment to 19 the heirs and devisees, including, if there has been no 20 21 formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died 22 intestate, the devisees in any will mentioned in the 23 application for appointment of a personal representative. 24 25 The information shall be delivered or sent by ordinary mail

1 each of the heirs and devisees whose address is to reasonably available to the personal representative. The 2 duty does not extend to require information to persons who 3 4 have been adjudicated in a prior formal testacy proceeding 5 to have no interest in the estate. б (2) (a) The information shall must: 7 tat(i) include the name and address of the personal 8 representative; {b}(ii) indicate that it is being sent to persons who 9 have or may have some interest in the estate being 10 11 administered: tct(iii) indicate whether bond has been filed; and 12 td+(iv) describe the court where papers relating to the 13 14 estate are on file. (b) The information must state that the estate is 15 16 being administered by the personal representative under the uniform probate code without supervision by the court but 17 16 that recipients are entitled to information regarding the 19 administration from the personal representative and may petition the court in any matter relating to the estate, 20 including distribution of assets and expenses of 21

22 administration.

(3) The personal representative's failure to give this
information is a breach of his duty to the persons concerned
but does not affect the validity of his appointment, his

-13-

-14-

al to call the terminal and the second as an a construction to the terminal dependence of the terminal terminal to the terminal termination of the termination of termination of the termination of the

1 powers, or other duties.

2 (4) A personal representative may inform other persons
3 of his appointment by delivery or ordinary first-class
4 mail."

Section 12. Section 72-3-607, MCA, is amended to read: 5 6 *72-3-607. Inventory -- appraisal -- copy to 7 department of revenue. (1) Within 3--months--after--his appointment the time required for the filing of a United 8 States estate tax return plus any extensions granted by the 9 10 internal revenue service, a personal representative, who is not a special administrator or a successor to another 11 12 representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory 13 shall include listing of all property which: 14

15 (a) the decedent owned, had an interest in or control
16 over, individually, in common, or jointly, or otherwise had
17 at the time of his death;

18 (b) the decedent had possessory or dispository rights
19 over at the time of his death or had disposed of for less
20 than its fair market value within 3 years of his death; or
21 (c) was affected by the decedent's death for the
22 purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the
full and true value of the decedent's interest in every item
listed in such inventory. In this connection the personal

representative shall appoint one or more qualified and 1 2 disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all 3 4 assets included in the estate. Different persons may be 5 employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall б 7 be indicated on the inventory with the item or items he 8 appraised.

9 (3) The personal representative shall send a copy of 10 the inventory to interested persons who request it, or he 11 may file the original of the inventory with the court. In 12 any event, a copy of the inventory and statement of value 13 shall be mailed to the department of revenue."

14 Section 13. Section 72-3-805, MCA, is amended to read: "72-3-805. Allowance and disallowance of claims ---15 16 interest on allowed claims, (1) As to claims presented in 17 the manner described in 72-3-804 within the time limit 18 prescribed in 72-3-803, the personal representative may mail 19 a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the 20 personal representative changes his decision concerning the 21 22 claim, he shall notify the claimant. The personal 23 representative may not change a disallowance of a claim after the time for the claimant to file a petition for 24 25 allowance or to commence a proceeding on the claim has run

-15-

-16-

1 and the claim has been barred. Every claim which is 2 disallowed in whole or in part by the personal representative is barred so far as not allowed unless the 3 claimant files a petition for allowance in the court or 4 5 commences a proceeding against the personal representative 6 not later than 60 days after the mailing of the notice of 7 disallowance or partial allowance if the notice warns the 8 claimant of the impending bar. Failure of the personal 9 representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation 10 11 of the claim has expired has the effect of a notice of 12 disallowance allowance.

13 (2) After allowing or disallowing a claim, the 14 personal representative may change the allowance or disallowance as provided in this section. The personal 15 16 representative may change the allowance to a disallowance, 17 in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing 18 payment of the claim. The personal representative shall 19 20 notify the claimant of the change to disallowance, and the 21 disallowed claim is then subject to bar as provided in 22 subsection (1). The personal representative may change a 23 disallowance to an allowance, in whole or in part, until it 24 is barred under subsection (1). After it is barred, it may 25 be allowed and paid only if the estate is solvent and all

1 successors whose interests would be affected consent.

2 (2)(3) Upon the petition of the personal 3 representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim 4 or claims presented to the personal representative or filed 5 6 with the clerk of the court in due time and not barred by 7 subsection (1) of-this-section. Notice in this proceeding 8 shall be given to the claimant, the personal representative, 9 and those other persons interested in the estate as the court may direct by order entered at the time the proceeding 10 is commenced. 11

12 (3)(4) A judgment in a proceeding in another court
13 against a personal representative to enforce a claim against
14 a decedent's estate is an allowance of the claim.

15 (4)(5) Unless otherwise provided in any judgment in 16 another court entered against the personal representative, 17 an allowed claims--bear claim bears interest at the legal 18 rate for the period commencing 60 days after the time for 19 original presentation of the claim has expired unless based 20 on a contract making a provision for interest, in which case 21 they-bear the claim bears interest in accordance with that 22 provision."

23 Section 14. Section 72-3-902, MCA, is amended to read:
24 "72-3-902. Distribution in kind preferred -- method -25 valuation. Unless a contrary intention is indicated by the

-17-

LC 1072/01

-18-

-10-

1 will, the distributable assets of a decedent's estate shall 2 be distributed in kind to the extent possible through application of the following provisions: 3

(1) A specific devise is entitled to distribution of 4 5 the thing devised to him, and a spouse or child who has 6 selected particular assets of an estate as provided in 72-2-802 shall receive the items selected. 7

8 (2) Any homestead or family allowance or devise 9 payable-in of a stated sum of money may be satisfied by value in kind, provided: 10

11 (a) the person entitled to the payment has not demanded payment in cash: 12

(b) the property distributed in kind is valued at fair 13 market value as of the date of its distribution; and 14

15 (c) no residuary devisee has requested that the asset 16 in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), 17 securities any security regularly traded on a recognized 18 19 exchanges exchange, if distributed in kind, are is valued at 20 the price for the last sale of like securities traded on the 21 business day prior to distribution or, if there was no sale 22 on that day, at the median between amounts bid and offered 23 asked at the close of that day. Assets An asset consisting 24 of sums a sum owed the decedent or the estate by a solvent 25 debtors debtor as to which there is no known dispute or

defense are is valued at the sum due with accrued interest 1 or discounted to the date of distribution. For assets an 2 asset which do-not-have has no readily ascertainable values 3 value, a valuation as of a date not more than 30 days prior 4 to the date of distribution, if otherwise reasonable, 5 controls. For purposes of facilitating distribution, the 6 personal representative may ascertain the value of the 7 assets any asset as of the time of the proposed distribution 8 in any reasonable way, including the employment of qualified 9 appraisers, even if the assets asset may have been 10 11 previously appraised.

LC 1072/01

alante bande la balancie de la companya and a la terre esta de la tradecie de construction de la construction de la

(4) The residuary estate shall be distributed in kind 12 if-there-is-no-objection-to-the-proposed-distribution-and-it 13 is-practicable-to-distribute-undivided-interests;--In-other 14 cases7--residuary--property--may--be-converted-into-cash-for 15 16 distribution any equitable manner."

17 Section 15. Section 72-3-917, MCA, is amended to read: 18 "72-3-917. Distribution to person under disability. (1) A personal representative may discharge his obligation 19 20 to distribute to any person under legal disability by distributing to---his--conservator--or--any--other--person 21 22 authorized-by-this-code-or-otherwise-to-give-a-valid-receipt 23 and-discharge-for-the-distribution in a manner expressly 24 provided in the will. 25

(2) Unless contrary to an express provision in the

~20-

1 will, the personal representative may discharge his 2 obligation to distribute to a minor or person under other 3 disability as authorized by 72-5-501 or any other statute. 4 If the personal representative knows that a conservator has 5 been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is 6 7 authorized to distribute only to the conservator. 8 (3) (a) If the heir or devisee is under disability 9 other than minority, the personal representative is 10 authorized to distribute to: 11 (i) an attorney-in-fact who has authority under a 12 power of attorney to receive property for that person; or 13 (ii) the spouse, parent, or other close relative with 14 whom the person under disability resides if the distribution 15 is of amounts not exceeding \$10,000 a year or property not exceeding \$10,000 in value, unless the court authorizes a 16 17 larger amount or greater value. 18 (b) Any person receiving money or property for the 19 disabled person is obligated to apply the money or property to the support of that person, but may not pay himself 20 21 except by way of reimbursement for out-of-pocket expenses 22 for goods and services necessary for the support of the 23 disabled person. Excess sums must be preserved for future 24 support of the disabled person. The personal representative 25 is not responsible for the proper application of money or

1 property distributed pursuant to this subsection (3)."

2 Section 16. Section 72-3-1103, MCA, is amended to
 3 read:

*72-3-1103. Summary procedure for disbursement and 4 distribution. If it appears from the inventory and appraisal 5 that the value of the net--distributable--estate--does--not 6 exceed--57,500-or-the-value-of-the entire estate, less liens 7 and encumbrances, does not exceed homestead allowance, я exempt property, family allowance, costs and expenses of 9 administration, reasonable funeral expenses, and reasonable 10 and necessary medical and hospital expenses of the last 11 illness of the decedent, the personal representative, 12 without giving notice to the creditors, may immediately 13 disburse and distribute the estate to the persons entitled 14 thereto and file a closing statement as provided in 15 16 72-3-1104."

17 Section 17. Section 72-3-1104, MCA, is amended to 18 read:

19 "72-3-1104. Closing by sworn statement of personal 20 representative -- termination of appointment. (1) Unless 21 prohibited by order of the court and except for estates 22 being administered by supervised personal representatives, a 23 personal representative may close an estate administered 24 under the summary procedures of 72-3-1103 by filing with the 25 court, at any time after disbursement and distribution of

-21-

LC 1072/01

-22-

Contract Contraction and the contraction of the

1 the estate, a verified statement stating that:

2 (a) to the best knowledge of the personal 3 representative, the--walue--of-the-net-distributable-estate did-not-exceed-\$7,500-or the value of the entire estate. 4 5 less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and 6 expenses of administration, reasonable funeral expenses, and 7 8 reasonable, necessary medical and hospital expenses of the 9 last illness of the decedent;

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

(c) the personal representative has sent a copy of the closing statement 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.

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

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

25 Section 18. Section 72-5-302, MCA, is amended to read:

1 "72-5-302. Testamentary appointment of guardian for 2 incapacitated person -- when effective -- priorities. (1) 3 The parent of an unmarried incapacitated person may appoint by will appoint or other writing signed by the parent and 4 attested by at least two witnesses a guardian of the 5 6 incapacitated person. A--testamentary If both parents are 7 dead or the surviving parent is adjudged incapacitated, a parental appointment by--a--parent becomes effective when, 8 9 after having given 7 days' prior written notice of his intention to do so to the incapacitated person and to the 10 11 person having his care of the person or to his the nearest adult relative, the guardian files acceptance of appointment 12 in the court in which the will is informally or formally 13 probated, if-prior-thereto-both--parents--are--dead--or--the 14 surviving--parent-is-adjudged-incapacitated; or, in the case 15 16 of a nontestamentary nominating instrument, in the court at 17 the place where the incapacitated person resides or is 18 present. The notice must state that the appointment may be 19 terminated by filing a written objection in the court, as 20 provided by 72-5-304. If both parents are dead, an effective 21 appointment by the parent who died later has priority unless 22 it--is--terminated--by--the--denial--of--probate--in--formal 23 proceedings. 24 (2) The spouse of a married incapacitated person may

LC 1072/01

25 appoint by will appoint or other writing signed by the

-23-

-24-

1 spouse and attested by at least two witnesses a guardian of 2 the incapacitated person. The appointment becomes effective 3 when, after having given 7 days' prior written notice of his intention to do so to the incapacitated person and to the 4 person having his care of the incapacitated person or to his 5 6 the nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or 7 8 formally probated, or, in the case of nontestamentary nominating instrument, in the court at the place where the 9 incapacitated person resides or is present. The notice must 10 11 state that the appointment may be terminated by filing a 12 written objection in the court, as provided by 72-5-304. An 13 effective appointment by a spouse has priority over an 14 appointment by a parent unless--it--is-terminated-by-the 15 denial-of-probate-in-formal-proceedings."

16 Section 19. Section 72-5-303, MCA, is amended to read: 17 "72-5-303. Recognition of appointment of guardian by 18 foreign will. This-state-shall-recognize-a-testamentary An 19 appointment effected by filing the guardian's acceptance 20 under a will probated at-the-testator's in the state of the 21 decedent's domicile in-another-state is effective in this 22 state."

Section 20. Section 72-5-304, MCA, is amended to read:
"72-5-304. Objection by alleged incapacitated person
to testamentary appointment. On Upon the filing with in the

court in which the will was probated or, in the case of a 1 nontestamentary nominating instrument, in the court at the 2 3 place where the incapacitated person resides or is present, 4 of written objection to the appointment by the incapacitated person for whom a testamentary parental or spousal 5 appointment of guardian has been made, the appointment is 6 terminated. An objection does not prevent appointment by the 7 court in a proper proceeding of the testamentary parental or 8 spousal nominee or any other suitable person upon an 9 adjudication of incapacity in proceedings under this-part 10 11 72-5-305 through 72-5-325."

LC 1072/01

Section 21. Section 72-5-325, MCA, is amended to read: 12 *72-5-325. Petition for removal or resignation of 13 guardian -- termination of incapacity. (1) On petition of 14 the ward or any person interested in his the ward's welfare, 15 16 the court, after hearing, may remove a guardian and--appoint 17 e--successor if in the best interests of the ward. On petition of the guardian, the court, after hearing, may 18 accept his a resignation and-make-any-other-order-which-may 19 20 be-appropriate.

(2) An order adjudicating incapacity may specify a
minimum period, not exceeding 1-year 6 months, during which
no a petition for an adjudication that the ward is no longer
incapacitated may not be filed without special leave.
Subject to this that restriction, the ward or any person

interested in his the welfare of the ward may petition for 1 an order that he the ward is no longer incapacitated and for 2 3 removal---or--resignation termination of the guardian guardianship. A request for this an order may also be made 4 by-informal-letter informally to the court or-judge, and any 5 6 person who knowingly interferes with transmission of this kind-of the request to-the-court-or-judge may be adjudged 7 quilty of contempt of court. 8

9 (3) Before--removing-a Upon removal, resignation, or 10 death of the guardian;-accepting-the-resignation-of-a or if the guardian--or--ordering--that--a--ward's-incapacity-has 11 12 terminated is determined to be incapacitated, the courty 13 following-the-same-procedures-to-safeguard-the-rights-of-the 14 ward--as--apply-to-a-petition-for-appointment-of-a-quardian; 15 may send-a-visitor-to-the-residence-of-the-present appoint a 16 successor quardian and to-the-place-where-the--ward--resides 17 or--is-detained;-to-observe-conditions-and-report-in-writing 18 to-the-court, make any other appropriate order. Before 19 appointing a successor guardian or ordering that a ward's 20 incapacity has terminated, the court shall follow the same 21 procedures to safequard the rights of the ward that apply to 22 a petition for appointment of a guardian."

Section 22. Section 72-5-438, MCA, is amended to read:
"72-5-438. Accounts -- final and intermediate. (1)
Unless-waived-by-the--court;--every Each conservator must

LC 1072/01

shall account to the court for his administration of the 1 trust not less than annually for--the--preceding--year--and 2 also, unless the court directs otherwise, upon his 3 resignation or removal, and at other times as the court may 4 direct. A--copy--of--the--account--must--be-served-upon-the 5 protected-person's-parenty-guardiany-childy--or--sibling--if 6 that-person-has-made-an-effective-request-under-72-5-404. On 7 termination of the protected person's minority or 8 disability, a conservator may shall account to the court or 9 he--may--account to the former formerly protected person or 10 his-personal-representative the successors of that person. 11 (2) Subject to appeal or vacation within the time 12 permitted, an order made-upon, after notice and hearing, 13 allowing an intermediate account of a conservator 14 adjudicates as to his liabilities concerning the matters 15 considered in connection therewith with the hearing; and an 16 order made-upon, following notice and hearing, allowing a 17 final account adjudicates as to all previously unsettled 18 liabilities of the conservator to the protected person or 19 his the protected person's successors relating to the 20 21 conservatorship.

(3) In connection with any account, the court may
require a conservator to submit to a physical check of the
estate in-his-control, to be made in any manner the court
may-specify specifies.

-27-

-28-

1

2

3

4

(4)--Upon-failure, -as-determined-by-the-clerk-of-court,
 of--the--conservator--to--file--an-annual-account, -the-court
 shall-order-the-conservator-to-file--the--account--and--give
 good-cause-for-his-failure-to-file-a-timely-account."

5 Section 23. Section 72-5-435, MCA, is amended to read: "72-5-435. Persons dealing with conservator --6 protection. (1) A person who in good faith either assists a 7 8 conservator or deals with him for value in any transaction other than those requiring a court order as provided in 9 72-5-421 is protected as if the conservator properly 10 exercised the power. The fact that a person knowingly deals 11 12 with a conservator does not alone require the person to 13 inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of 14 conservators which are endorsed on letters as provided in 15 16 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid 17 18 or delivered to a conservator.

19 (2) The protection here expressed in this section 20 extends to instances---in---which--some any procedural 21 irregularity or jurisdictional defect occurred occurring in 22 proceedings leading to the issuance of letters and is not a 23 substitution for protection provided by comparable 24 provisions of the law relating to commercial transactions or 25 laws simplifying transfers of securities by fiduciaries. (3) The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

LC 1072/01

5 Section 24. Section 72-5-501, MCA, is amended to read: 6 "72-5-501. When power of attorney not affected by 7 disability. (1) A durable power of attorney is a power of 8 attorney by which a principal designates another his g. attorney-in-fact or agent in writing and the writing 10 contains the words, "This power of attorney shall not be 11 affected by subsequent disability or incapacity of the 12 principal or lapse of time" or "This power of attorney shall 13 become effective upon the disability or incapacity of the 14 principal" or similar words showing the intent of the 15 principal that the authority conferred shall be exercisable 16 notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, 17 18 notwithstanding the lapse of time since the execution of the 19 instrument. All acts done by the attorney-in-fact or-agent 20 pursuant to the a durable power of attorney during any 21 period of disability or incapacity or-uncertainty-as-to whether of the principal is-dead--or--alive have the same 22 23 effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were 24 25 alive, competent, and not disabled. Unless the instrument

-30-

states a time of termination, the power is exercisable
 notwithstanding the lapse of time since the execution of the
 instrument.

(2) If a conservator thereafter is appointed for the 4 principal, the attorney-in-fact or agent, during the 5 6 continuance of the appointment, is accountable to the 7 conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that 8 9 the principal would have had if he were not disabled or incapacitated. A principal may nominate, by a durable power 10 11 of attorney, the conservator of his estate or guardian of 12 his person for consideration by the court if protective 13 proceedings for the principal's person or estate are thereafter later commenced. The court shall make its 14 appointment in accordance with the principal's most recent 15 16 nomination in a durable power of attorney except for good 17 cause or disgualification."

18 Section 25. Section 72-16-301, MCA, is amended to 19 read:

*72-16-301. Taxable transfers generally -contemplation of death. (1) A tax shall be and is hereby
imposed upon any transfer of property, real, personal, or
mixed, or any interest therein or income therefrom in trust
or otherwise to any person, association, or corporation in
the following cases, except as hereinafter provided in this

1 <u>section</u>:

en de cale de la decente de la constant de la constant de constant de la constant de la constant de la decentra de la decentra de la decentra de la decentra de la constant de la

2 (1)(a) when the transfer is by will or by intestate
3 laws of this state from any person dying possessed of the
4 property while a resident of the state;

5 (2)(b) when a transfer is by will or intestate law of 6 property within the state or within its jurisdiction and the 7 decedent was a nonresident of the state at the time of his 8 death; or

9 (3)(c) when the transfer is of property made by a 10 resident or by a nonresident when such nonresident's 11 property is within the state or within its jurisdiction by 12 deed, grant, bargain, sale, or gift made in contemplation of 13 the death of the grantor, vendor, or donor or intended to 14 take effect in possession or enjoyment at or after such 15 death. Every

16 (2) No transfer by-deed;-grant;-bargain;-sale;-or-gift 17 made within--3--years-prior-to-the before the 3-year period 18 ending on the date of the decedent's death of -- the -- grantor; 19 vendor,---or-donor-of-a-material-part-of-his-estate-or-in-the 20 nature-of-a-final-disposition-or--distribution--thereof--and 21 without--a--fair--consideration--in--money--or-money+s-worth shall;-unless-shown-to-the-contrary; be deemed considered to 22 23 have been made in contemplation of death. within-the-meaning 24 of-this-section--but--no--such--transfer--by--deed---grant-25 bargainy-saley-or-gift-made-before-such

-31-

-32-

| 1 | (3) Every transfer during the 3-year period shall-be |
|--|---|
| 2 | treated-as-havingbeenmadeincontemplationofdeath- |
| 3 | Howeverynothinghereincontained-shall-be-deemed-to-have |
| 4 | modified;-amended;-or-repeated-the-provisions-of72-16-306; |
| 5 | ending on the date of the decedent's death must be |
| 6 | considered to have been made in contemplation of death, |
| 7 | except: |
| 8 | (a) no transfer shown to be a bona fide sale for an |
| 9 | adequate and full consideration in money or money's worth |
| 10 | may be considered to be a gift made in contemplation of |
| 11 | death; |
| 12 | (b) if the transfer was a gift to a donee made during |
| 13 | the calendar year and if the decedent was not required by |
| | contion (010 of the internal revenue and to file any with |
| 14 | section 6019 of the internal revenue code to file any gift |
| 14 15 | tax return for the year with respect to the donee, the |
| | |
| 15 | tax return for the year with respect to the donee, the |
| 15 16 | tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in |
| 15 16 17 | tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death. |
| 15 16 17 18 | tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death. (4) Subsection (3) does not apply to any transfer with |
| 15 16 17 18 19 | <pre>tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death.</pre> |
| 15 16 17 18 19 20 | <pre>tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death. (4) Subsection (3) does not apply to any transfer with respect to a life insurance policy." Section 26. Section 72-16-302, MCA, is amended to</pre> |
| 15 16 17 18 19 20 21 | <pre>tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death. (4) Subsection (3) does not apply to any transfer with respect to a life insurance policy." Section 26. Section 72-16-302, MCA, is amended to read:</pre> |
| 15 16 17 18 19 20 21 21 22 | <pre>tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death. (4) Subsection (3) does not apply to any transfer with respect to a life insurance policy." Section 26. Section 72-16-302, MCA, is amended to read: "72-16-302. Transfer under power of appointment.</pre> |
| 15 16 17 18 19 20 21 22 23 | <pre>tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death. (4) Subsection (3) does not apply to any transfer with respect to a life insurance policy." Section 26. Section 72-16-302, MCA, is amended to read: "72-16-302. Transfer under power of appointment. Wheneveranyperson-or-corporation-shall-exercise-a (1) To</pre> |

appointment derived-from-any-disposition--of--property--made 1 either--before-or-after-March-57-1923, such appointment-when 2 made property shall be deemed considered to have been 3 transferred in a transfer taxable under the provisions of 4 parts 1 through 8, in-the-same-manner-as-though-the-property 5 to-which-such-appointment-relates-belonged-absolutely-to-the 6 donee-of-such-power-and-had-been-bequeathed--or--devised--by 7 such--donee--by--will----Whenever--any-person-or-corporation 8 possessing-such-a-power-of-appointment-so-derived-shall-omit 9 or-fail-to--exercise--the--same--within--the--time--provided 10 therefor,--in-whole-or-in-part,-a-transfer-taxable-under-the 11 provisions-of-parts-1-through-8--shall--be--deemed--to--take 12 place-to-the-extent-of-such-omission-or-failure;-in-the-same 13 manner---as--though--the--persons--or--corporations--thereby 14 becoming-entitled-to-the--possession--or--enjoyment--of--the 15 property--to--which-such-power-related-had-succeeded-thereto 16 by-a-will-of-the-donee-of-the-power-failing-to-exercise-such 17 power--taking--effect--at--the--time--of--such--omission--or 18 failure. whether or not the decedent exercised the power of 19 appointment. 20 (2) The term "general power of appointment" means a 21 power that is exercisable in favor of the decedent, his 22 estate, his creditors, or the creditors of his estate, 23 except that a power to consume, invade, or appropriate 24 property for the benefit of the decedent which is limited by 25

-33-

-34-

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

19

an ascertainable standard relating to the health, education. 1 2 support, or maintenance of the decedent may not be 3 considered a general power of appointment,"

Section 27. Section 72-16-303, MCA, is amended to 4 5 read:

6 "72-16-303. Joint estates -- transfer by right of 7 survivorship taxable. (1) Whenever any property7-however 8 acquired;--real--or--personal;---tangible---or---intangible; 9 including---government---bonds--of--the--United--States, is 10 inscribed-in-co-ownership-form, held by two or more persons 11 in joint tenancy or--as--tenants--by--the-entirety--or-is 12 deposited-in-any-bank-or-other-depositary-in-the-joint-names 13 of-two-or-more--persons--and--payable--to--the--survivor--or 14 survivors--of--them-upon-the-death-of-one-of-them with right of survivorship, the right of the survivor or survivors to 15 16 the immediate possession or ownership is a taxable transfer. 17 (2) The tax is upon--the--transfer--of--decedent's interest;-one-half-or-other-proper-fraction;-as-evidenced-by 18 19 the-written-instrument-creating--the--same7--as--though--the 20 property-to-which-the-transfer-relates-belonged-to-the-joint 21 tenants;--tenants-by-the-entirety;-joint-depositors;-holders 22 in-co-ownership-formy-or-personsy-as-tenants-in--common--and 23 had--been7--for--inheritance--tax--purposes7--bequeathed--or 24 devised-to-the-survivor-or-survivors-by--will;--except--such part--thereof-as-may-be-shown-to-have-originally-belonged-to 25

the-survivor-and-never-to-have-belonged-to-the-decedent-when the-surviving-joint-tenant-is--a--spouse--or--issue--of--the decedent ---- In--all--other--cases --- the -- full--value--of-the property-shall-be-taxable-except-the-portion--thereof--that originally--belonged--to--the--survivor--and-as-to-which-the decedent-had-made-no-contribution;-if-the-decedent-had--made a--contribution-to-the-ownership-of-the-property,-the-amount of-the-contribution-shall-be-taxable-+3}--This-section-shall-not-be-construed-to--repeal--or modify--the-provisions-of-72-16-301(3), on the full value of the property held as joint tenants with right of survivorship, except a part of the property as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by the latter from the decedent for less than adequate and full consideration in money or money's worth. When the property or any part of the property, or part of the consideration with which the 18 property was acquired, is shown to have been at any time acquired by the other person from the decedent for less than 20 an adequate and full consideration in money or money's 21 worth, only the part of the value of the property as is proportionate to the consideration furnished by the other 22 23 person may be excepted. When any property has been acquired

24 by gift, bequest, devise, or inheritance as joint tenants

25 with right of survivorship and their interests are not

-36-

1 otherwise specified or fixed by law, the tax is on the value 2 of a fractional part to be determined by dividing the value 3 of the property by the number of joint tenants with right of 4 survivorship."

5 Section 28. Section 72-16-906, MCA, is amended to 6 read:

7 "72-16-906. Required filings. The personal representative of the estate of any decedent whose estate is 8 9 subject to the payment of a United States estate tax shall 10 file duplicates a duplicate of the United States estate tax returns return with the district--court--of--the--county--in 11 12 which--such-estate-is-being-probated-and-with-the department 13 of revenue. He shall also file with-such-court-and with the 14 department a certificate or other evidence from the internal revenue service showing the amount of the United States 15 estate tax as computed by that-agency the internal revenue 16 service." 17

18 NEW SECTION. Section 29. Requirement that beneficiary survive insured by 120 hours. A beneficiary in a policy of 19 life or accident insurance who does not survive the insured 20 by 120 hours is treated as if he had predeceased the insured 21 22 unless the policy of insurance contains some language dealing explicitly with simultaneous deaths or deaths in a 23 common disaster or requiring that the beneficiary survive 24 the insured for a stated period in order to receive the 25

1 proceeds of the policy.

2 <u>NEW SECTION.</u> Section 30. Extension of authority. Any 3 existing authority to make rules on the subject of the 4 provisions of [this act] is extended to the provisions of 5 [this act].

6 <u>NEW SECTION.</u> Section 31. Codification instruction. 7 [Section 29] is intended to be codified as an integral part 8 of Title 33, chapter 20, and the provisions of Title 33, 9 chapter 20, apply to [section 29].

+End-

-37-

51st Legislature

SB 0331/02

APPROVED BY COMMITTEE ON JUDICIARY

| 1 | SENATE BILL NO. 331 |
|----|---|
| 2 | INTRODUCED BY BISHOP |
| 3 | |
| 4 | A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE |
| 5 | UNIFORM PROBATE CODE AND RELATED LAW; REQUIRING A 120-HOUR |
| 6 | SURVIVORSHIP TO COLLECT INSURANCE PROCEEDS; AND AMENDING |
| 7 | SECTIONS 40-8-125, 72-1-108, 72-2-104, 72-2-202, 72-2-305, |
| 8 | 72-2-516, 72-2-517, 72-2-704, 72-3-122, 72-3-213, 72-3-603, |
| 9 | 72-3-607, 72-3-805, 72-3-902, 72-3-917, 72-3-1103, |
| 10 | 72-3-1104, 72-5-302 THROUGH 72-5-304, 72-5-325, 72-5-435, |
| 11 | 72-5-438, 72-5-501, 72-16-301 THROUGH 72-16-303, AND |
| 12 | 72-16-906, AND 72-26-502, MCA." |
| 13 | |
| 14 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: |
| 15 | Section 1. Section 40-8-125, MCA, is amended to read: |
| 16 | "40-8-125. Effect of final decree. (1) After the final |
| 17 | decree of adoption is entered, the relation of parent and |
| 18 | child and all the rights, duties, and other legal |
| 19 | consequences of the natural relation of child and parent |
| 20 | shall thereafter exist between such adopted child and the |
| 21 | adoptive parents adopting such child and the kindred of the |
| 22 | adoptive parents. Promthedateofthe-final-decree-of |
| 23 | adoption7-the-child-shall-be-entitled-toinheritrealand |
| 24 | personalproperty-from-and-through-the-adoptive-parents-and |
| 25 | the-kindred-of-the-adoptive-parents-in-accordancewiththe |

ina Legislative Council

1 statutes--of--descent--and--distribution--and--the--adoptive 2 parents-and-their-kindred-shall-be-entitled-to-inherit--real 3 and---personal--property--from--and--through--the--child--in Δ accordance-with-said-statutes-5 (2) After a the final decree of adoption is entered, 6 the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents 7 8 or the spouse of an adoptive parent, shall be relieved of 9 all parental responsibilities for said child and have no 10 rights over such adopted child or-to-his-property-by-descent and-distribution. 11 12 (3) The relationship of parent and child for the 13 purposes of intestate succession is governed by Title 72." 14 Section 2. Section 72-1-108, MCA, is amended to read: 15 "72-1-108. Evidential rules applicable -- evidence as 16 to death or status. (1) In proceedings under this code the rules of evidence in courts of general jurisdiction, 17 18 including any relating to simultaneous deaths, are 19 applicable unless specifically displaced by the code. 20 (2) In addition, the following rules relating to determination of death and status are applicable: 21

(a) A certified or authenticated copy of a death
certificate purporting to be issued by an official or agency
of the place where the death purportedly occurred is prima
facie proof of the fact, place, date, and time of death and

-2-

SECOND READING

SB 331

the second work would be an all when the second and the base of the

1 the identity of the decedent.

2 (b) A certified or authenticated copy of any record or 3 report of a governmental agency, domestic or foreign, that a 4 person is missing, detained, dead, or alive is prima facie 5 evidence of the status and of the dates, circumstances, and 6 places disclosed by the record or report.

7 (c) In the absence of prima facie evidence of death
8 under subsection (2)(a) or (2)(b), the fact of death may be
9 established by clear and convincing evidence, including
10 circumstantial evidence.

te;(d) A person whose death is not established under 11 subsections (2)(a) through (2)(c), who is absent for a 12 continuous period of 7 5 years, during which he has not been 13 heard from, and whose absence is not satisfactorily 14 explained after diligent search or inquiry is presumed to be 15 dead. His death is presumed to have occurred at the end of 16 the period unless there is sufficient evidence for 17 determining that death occurred earlier." 18

Section 3. Section 72-2-104, MCA, is amended to read: "72-2-104. Homicide -- effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations. (1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the

-3-

killer had predeceased the decedent. Property appointed by
 the will of the decedent to or for the benefit of the killer
 passes as if the killer had predeceased the decedent.

4 (2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of 5 the interest of the decedent so that the share of the 6 decedent passes as his property and the killer has no rights 7 8 by survivorship. This provision applies to joint tenancies 9 in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other 10 11 institutions, and any other form of co-ownership with survivorship incidents. 12

13 (3) A named beneficiary of a bond, life insurance 14 policy, or other contractual arrangement who feloniously and 15 intentionally kills the principal obligee or the person upon 16 whose life the policy is issued is not entitled to any 17 benefit under the bond, policy, or other contractual 18 arrangement, and it becomes payable as though the killer had 19 predeceased the decedent.

20 (4) Any other acquisition of property or interest by
21 the killer shall be treated in accordance with the
22 principles of this section.

(5) A final judgment of conviction of felonious and
intentional killing is conclusive for purposes of this
section. In the absence of a conviction of felonious and

-4-

SB 331

SB 331

1

intentional killing, the court may determine by a
 preponderance of evidence whether the killing was felonious
 and intentional for purposes of this section.

4 (6) This section does not affect the rights of any 5 person who, before rights under this section have been 6 adjudicated, purchases from the killer for value and without 7 notice property which the killer would have acquired except 8 for this section, but the killer is liable for the amount of 9 the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to 10 the terms of its policy or obligation is not liable by 11 reason of this section unless prior to payment it has 12 received at its home office or principal address written 13 14 notice of a claim under this section.

15 (7) For the purposes of this section, a felonious and 16 intentional killing includes a deliberate homicide as 17 defined in 45-5-102 and a mitigated deliberate homicide as 18 defined in 45-5-103."

Section 4. Section 72-2-202, MCA, is amended to read:
"72-2-202. Share of spouse. The intestate share of the
surviving spouse is:

(1) if there is no surviving issue or if there are
surviving issue all of whom are issue of the surviving
spouse also, the entire remaining estate;

25 (2) if there are surviving issue one or more of whom

-5-

are not issue of the surviving spouse, as follows:

(a) if there is surviving only one such child or the 2 3 issue of one such child, one-half of the intestate estate; (b) if there are surviving more-than-one-such-child-or Λ one-such-child two or more children, the issue of two or 5 more deceased children, or one or more children and the 6 issue of one or more deceased children, one-third of the 7 intestate estate." R Section 5. Section 72-2-305, MCA, is amended to read: ۵ "72-2-305. Who may witness -- effect of witness by 10 beneficiary. (1) Any person generally competent to be a 11 witness may act as a witness to a will. 12 (2) A will is not invalid because the will is signed 13 by an interested witness. 14 +3+--All--beneficial--devises--made--in--any--will-to-a 15 subscribing-witness-thereto-are-void-unless--there--are--two 16 17 other--competent--subscribing--witnesses--to-the-same;-but-a mere-charge-on-the-estate-of-the-testator-does--not--prevent 18 his-creditors-from-being-competent-witnesses-to-hig-will-19 20 +4+~~If--a--witness--to-whom-any-beneficial-devise-void under-subsection-(3)-is-made-would-have-been-entitled-to-any 21 22 share-of-the-estate-of-the-testator-if-the-testator-had-died 23 intestate,-such-witness-succeeds-to-so-much-of-the-share-as would--be-distributed-to-bim-under-intestate-succession--not 24

25 exceeding-the-devise-or-bequest-made-to-him-in-the-will+"

-6-

SB 0331/02

SB 331

and Weller and the descention of the descention of the second and a second and the second a

| 1 | Section 6. Section 72-2-516, MCA, is amended to read: |
|-----|---|
| 2 | "72-2-516. Nonademption of specific devises in certain |
| | cases. (1)Ifspecificallydevised property-is-sold -by-a |
| 3 | |
| 4 | conservator-or-if-a-condemnation-award-or-insurance-proceeds |
| . 5 | are-paid-to-a-conservator-as-a-result-of-condemnation7-fire7 |
| 6 | or-casualty;thespecificdeviseehastherighttoa |
| 7 | pecuniarydeviseequaltosomuchofthesale-price; |
| 8 | condemnation-award;-or-insurance-proceeds-as-remains-inthe |
| 9 | estateandisidentifiableat-the-time-of-the-decedent's |
| 10 | deathThis-subsection-does-not-apply-if-subsequenttothe |
| 11 | sale;condemnation;or-casualty-it-is-adjudicated-that-the |
| 12 | disability-of-thetestatorhasceasedandthetestator |
| 13 | survivestheadjudicationbylyearThe-right-of-the |
| 14 | specific-devisee-under-this-subsectionisreducedbyany |
| 15 | right-he-has-under-subsection-(2)- |
| 16 | <pre>f2;(1) A specific devisee has the right to the</pre> |
| 17 | remaining specifically devised property and: |
| 18 | (a) any balance of the purchase price (together with |
| 19 | any security interest) owing from a purchaser to the |
| 20 | testator at death by reason of sale of the property; |
| 21 | (b) any amount of a condemnation award for the taking |
| 22 | of the property unpaid at death; |
| 23 | (c) any proceeds unpaid at death on fire or casualty |
| 24 | insurance on the property; and |
| 25 | (d) property owned by testator at his death, as a |
| | -7- SB 331 |

| 1 | result of foreclosure or obtained in lieu of foreclosure of |
|----|--|
| 2 | the security for a specifically devised obligation. |
| 3 | (2) If specifically devised property is sold by a |
| 4 | conservator or an agent acting within the authority of a |
| 5 | durable power of attorney for a principal who is under a |
| 6 | disability, or if a condemnation award or insurance proceeds |
| 7 | are paid to a conservator or an agent acting within the |
| в | authority of a durable power of attorney for a principal who |
| 9 | is under a disability, as a result of condemnation, fire, or |
| 10 | casualty, the specific devisee has the right to a general |
| 11 | pecuniary devise equal to the net sale price, the |
| 12 | condemnation award, or the insurance proceeds. This |
| 13 | subsection does not apply if after the sale, condemnation, |
| 14 | or casualty it is adjudicated that the disability of the |
| 15 | testator has ceased and the testator survives the |
| 16 | adjudication by 1 year. The right of the specific devisee |
| 17 | under this subsection is reduced by any right he has under |
| 18 | <pre>subsection_(1)."</pre> |
| 19 | Section 7. Section 72-2-517, MCA, is amended to read: |
| 20 | "72-2-517. Changes in devised securities |
| 21 | distributions prior to death. (1) If the testator intended a |
| 22 | specific devise of certain securities rather than the |
| 23 | equivalent value thereof, the specific devisee is entitled |
| 24 | only to: |
| 25 | (a) as much of the devised securities as is a part of |

-8--

SB 331

SB 331

1

2

5

1 the estate at time of the testator's death: 2 (b) any additional or other securities of the same 3 entity owned by the testator by reason of action initiated by the entity, excluding any securities acquired by exercise 4 5 of purchase options; (c) securities of another entity owned by the testator 6 7 as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity; and 8 9 (d) any additional securities of the entity owned by 10 the testator as a result of a plan of reinvestment if-it-is a-regulated-investment-company. 11 (2) Distributions prior to death with respect to a 12 specifically devised security not provided for in subsection 13 14 (1) are not part of the specific devise." 15 Section 8. Section 72-2-704, MCA, is amended to read: "72-2-704. Effect-of-election-on-benefits-by--will--or 16 statute Surviving spouse -- allowance -- exemptions, fly-The 17 18 surviving--spouse's--election-of-his-elective-share-does-not affect--the--share--of--the--surviving--spouse---under---the 19 provisions--of--the--decedent's-will-or-intestate-succession 20 unless-the-surviving-spouse-also-expressly-renounces-in--the 21 petition--for-an-elective-share-the-benefit-of-all-or-any-of 22 23 the-provisions---If--any--provision--is--so--renounced,---the 24 property--or-other-benefit-which-would-otherwise-have-passed 25 to-the-surviving-spouse-thereunder-is--treated,--subject--to

-9--

contribution--under--72-2-706(2)7-as-if-the-surviving-spouse

3 (2) A surviving spouse is entitled to homestead
4 allowance, exempt property, and family allowance whether or

not he elects to take an elective share."

Section 9. Section 72-3-122, MCA, is amended to read: 6 *72-3-122. Time limit on probate, testacy, and 7 appointment proceedings -- exceptions. (1) No informal 8 probate or appointment proceeding or formal testacy or 9 appointment proceeding, other than a proceeding to probate a 10 will previously probated at the testator's domicile and 11 appointment proceedings relating to an estate in which there 12 has been a prior appointment, may be commenced more than 3 13 14 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of
doubt about the fact of the decedent's death, appropriate
probate, appointment, or testacy proceedings may be
maintained at any time thereafter upon a finding that the
decedent's death occurred prior to the initiation of the
previous proceeding and the applicant or petitioner has not
delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy
proceedings may be maintained in relation to the estate of
an absent, disappeared, or missing person for whose estate a
conservator has been appointed at any time within 3 years

-10-

SB 331

en de la serie de la sela company de la serie deste de la serie d

SB 0331/02

after the conservator becomes able to establish the death of
 the protected person; and
 (c) a proceeding to contest an informally probated
 will and to secure appointment of the person with legal

5 priority for appointment in the event the contest is 6 successful may be commenced within the later of 12 months 7 from the informal probate or 3 years from the decedent's 8 death; and

9 (d) if no proceeding concerning the succession or administration of the estate has occurred within 3 years 10 11 after the decedent's death, a formal testacy proceeding may 12 be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or his 13 14 successors and assigns possessed in accordance with the will 15 or property which was not possessed or claimed by anyone by 16 virtue of the decedent's title during the 3-year period, and 17 the order of the court must be limited to that property. 18 (2) These limitations do not apply to proceedings to

19 construe probated wills or determine heirs of an intestate₇
20 nor-do--they--limit--the--right-of--interested--persons--to
21 commence--informal--probate--or--appointment--proceedings-or
22 formal-testacy-or-appointment-proceedings-at any-time--after
23 3--years--from--the--decedent*s--death-if-there-have-been-no
24 previous--formal--or--informal---probate---or--appointment
25 proceedings-commenced-in-respect-of-that-decedent.

-11-

SB 331

1 (3) In cases under (1)(a) or (1)(b) above, the date on 2 which a testacy or appointment proceeding is properly 3 commenced shall be deemed to be the date of the decedent's 4 death for purposes of other limitations provisions of this 5 code which relate to the date of death."

Section 10. Section 72-3-213, MCA, is amended to read: 6 7 "72-3-213. Rules for grant or denial of informal 8 probate. (1) A will which appears to have the required signatures and which contains an attestation clause showing 9 10 that requirements of execution under 72-2-302, 72-2-303, or 72-2-306 have been met shall be probated without further 31 proof. In other cases the clerk may assume execution if the 12 will appears to be properly executed, or he may accept a 13 sworn statement or affidavit of any person having knowledge 14 of the circumstances of execution, whether or not the person 15 was a witness to the will. 16

17 (2) The application shall be denied if it indicates that a personal representative has been appointed in another 18 19 county of this state or, except as provided in subsection 20 (3) below, if it appears that this or another will of the decedent has been the subject of a previous probate order. 21 22 (3) Informal probate of a will which has been previously probated elsewhere may be granted at any time 23 upon written application by any interested person, together 24 with deposit of an authenticated copy of the will and of the 25

-12-

SB 331

statement probating it from the office or court where it was
first probated.

(4) A will from a place which does not provide for 3 probate of a will after death and which is not eligible for 4 probate under 72-3-212 may be probated in this state upon 5 receipt by the clerk of a duly authenticated copy of the 6 will and a duly authenticated certificate of its legal 7 8 custodian that the copy filed is a true copy and that the will has become operative under the law of the other place. 9 (5) Application for informal probate which relates to 10 one or more of a known series of testamentary instruments 11 (other than wills-and--codicils a will and one or more 12 codicils to the will), the latest of which does not 13 expressly revoke the earlier, shall be declined." 14

Section 11. Section 72-3-603, MCA, is amended to read: 15 "72-3-603. Notice of appointment to heirs and 16 devisees. (1) Not later than 30 days after his appointment, 17 every personal representative, except any 18 special administrator, shall give information of his appointment to 19 the heirs and devisees, including, if there has been no 20 formal testacy proceeding and if the personal representative 21 was appointed on the assumption that the decedent died 22 intestate, the devisees in any will mentioned in the 23 application for appointment of a personal representative. 24 The information shall be delivered or sent by ordinary mail 25

1 to each of the heirs and devisees whose address is 2 reasonably available to the personal representative. The 3 duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding 4 5 to have no interest in the estate. 6 (2) (a) The information shall must: 7 (a)(i) include the name and address of the personal 8 representative; 9 (b)(ii) indicate that it is being sent to persons who 10 have or may have some interest in the estate being 11 administered: 12 (e)(iii) indicate whether bond has been filed; and (d)(iv) describe the court where papers relating to the 13 14 estate are on file.

(b) The information must state that the estate is 15 16 being administered by the personal representative under the 17 uniform probate code without supervision by the court but 18 that recipients are entitled to information regarding the 19 administration from the personal representative and may petition the court in any matter relating to the estate, 20 21 including distribution of assets and expenses of 22 administration. (3) The personal representative's failure to give this 23 24 information is a breach of his duty to the persons concerned

25 but does not affect the validity of his appointment, his

-13-

SB 331

-14-

SB 331

alaharan berara da ara maraka karana kara

1 powers, or other duties.

2 (4) A personal representative may inform other persons
3 of his appointment by delivery or ordinary first-class
4 mail."

5 Section 12. Section 72-3-607, MCA, is amended to read: "72-3-607. Inventory -- appraisal -- copy to 6 7 department of revenue, (1) Within 3--montha--after--his 8 appointment the time required for the filing of a United 9 States estate tax return plus any extensions granted by the 10 internal revenue service, a personal representative, who is 11 not a special administrator or a successor to another 12 representative who has previously discharged this duty, 13 shall prepare and file or mail an inventory, which inventory 14 shall include listing of all property which:

15 (a) the decedent owned, had an interest in or control 16 over, individually, in common, or jointly, or otherwise had 17 at the time of his death;

(b) the decedent had possessory or dispository rights
over at the time of his death or had disposed of for less
than its fair market value within 3 years of his death; or
(c) was affected by the decedent's death for the
purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the
full and true value of the decedent's interest in every item
listed in such inventory. In this connection the personal

-15-

SB 331

1 representative shall appoint one or more qualified and 2 disinterested persons to assist him in ascertaining the fair 3 market value as of the date of the decedent's death of all 4 assets included in the estate. Different persons may be 5 employed to appraise different kinds of assets included in 6 the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he 7 appraised. 8

9 (3) The personal representative shall send a copy of 10 the inventory to interested persons who request it, or he 11 may file the original of the inventory with the court. In 12 any event, a copy of the inventory and statement of value 13 shall be mailed to the department of revenue."

Section 13. Section 72-3-805, MCA, is amended to read: 14 15 "72-3-805. Allowance and disallowance of claims -interest on allowed claims. (1) As to claims presented in 16 the manner described in 72-3-804 within the time limit 17 prescribed in 72-3-803, the personal representative may mail 18 a notice to any claimant stating that the claim has been 19 20 disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the 21 22 claim, he shall notify the claimant. The personal 23 representative may not change a disallowance of a claim 24 after the time for the claimant to file a petition for 25 allowance or to commence a proceeding on the claim has run

-16-

SB 331

SB 331

and the claim has been barred. Every claim which is 1 2 disallowed in whole or in part by the personal 3 representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or 4 commences a proceeding against the personal representative 5 not later than 60 days after the mailing of the notice of 6 disallowance or partial allowance if the notice warns the 7 8 claimant of the impending bar. Failure of the personal 9 representative to mail notice to a claimant of action on his 10 claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of 11 12 disallowance allowance.

(2) After allowing or disallowing a claim, the 13 personal representative may change the allowance or 14 15 disallowance as provided in this section. The personal representative may change the allowance to a disallowance, 16 17 in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing 18 payment of the claim. The personal representative shall 19 20 notify the claimant of the change to disallowance, and the 21 disallowed claim is then subject to bar as provided in 22 subsection (1). The personal representative may change a 23 disallowance to an allowance, in whole or in part, until it 24 is barred under subsection (1). After it is barred, it may 25 be allowed and paid only if the estate is solvent and all

-17-

1 successors whose interests would be affected consent.

2 (2)(3) Upon the petition of the personal representative or of a claimant in a proceeding for the 3 purpose, the court may allow, in whole or in part, any claim 4 or claims presented to the personal representative or filed 5 with the clerk of the court in due time and not barred by 6 subsection (1) of-this-section. Notice in this proceeding 7 shall be given to the claimant, the personal representative, 8 and those other persons interested in the estate as the 9 court may direct by order entered at the time the proceeding 10 is commenced. 11

12 (3)(4) A judgment in a proceeding in another court 13 against a personal representative to enforce a claim against 14 a decedent's estate is an allowance of the claim.

(4)(5) Unless otherwise provided in any judgment in 15 16 another court entered against the personal representative, an allowed claims--bear claim bears interest at the legal 17 rate for the period commencing 60 days after the time for 18 original presentation of the claim has expired unless based 19 on a contract making a provision for interest, in which case 20 they-bear the claim bears interest in accordance with that 21 22 provision."

23 Section 14. Section 72-3-902, MCA, is amended to read:
24 "72-3-902. Distribution in kind preferred -- method -25 valuation. Unless a contrary intention is indicated by the

-18-

SB 331

ter en la tradición de la construction de la contractión de la contractión de la contraction de la contractión de

will, the distributable assets of a decedent's estate shall
 be distributed in kind to the extent possible through
 application of the following provisions:

4 (1) A specific devisee is entitled to distribution of 5 the thing devised to him, and a spouse or child who has 6 selected particular assets of an estate as provided in 7 72-2-802 shall receive the items selected.

8 (2) Any homestead or family allowance or devise
9 payable-in of a stated sum of money may be satisfied by
10 value in kind, provided:

11 (a) the person entitled to the payment has not 12 demanded payment in cash;

13 (b) the property distributed in kind is valued at fair 14 market value as of the date of its distribution; and

15 (c) no residuary devisee has requested that the asset 16 in question remain a part of the residue of the estate.

17 (3) For the purpose of valuation under subsection (2), 18 securities any security regularly traded on a recognized 19 exchanges exchange, if distributed in kind, are is valued at 20 the price for the last sale of like securities traded on the 21 business day prior to distribution or, if there was no sale 22 on that day, at the median between amounts bid and offered 23 asked at the close of that day. Assets An asset consisting 24 of sums a sum owed the decedent or the estate by a solvent 25 debtors debtor as to which there is no known dispute or

-19-

SB 331

defense are is valued at the sum due with accrued interest 1 or discounted to the date of distribution. For assets an 2 asset which de-not-have has no readily ascertainable values 3 value, a valuation as of a date not more than 30 days prior 4 to the date of distribution, if otherwise reasonable, 5 controls. For purposes of facilitating distribution, the 6 personal representative may ascertain the value of the 7 assets any asset as of the time of the proposed distribution 8 in any reasonable way, including the employment of gualified 9 appraisers, even if the assets asset may have heen 10 previously appraised. 11

12 (4) The residuary estate shall be distributed in kind 13 if-there-is-no-objection-to-the-proposed-distribution-and-it 14 is-practicable-to-distribute-undivided-interests---in--other 15 cases---residuary--property--may--be-converted-into-cash-for 16 distribution any equitable manner."

Section 15. Section 72-3-917, MCA, is amended to read: 17 "72-3-917. Distribution to person under disability. 18 (1) A personal representative may discharge his obligation 19 to distribute to any person under legal disability by 20 distributing to---his--conservator--or--any--other--person 21 authorized-by-this-code-or-otherwise-to-give-a-valid-receipt 22 and-discharge-for-the-distribution in a manner expressly 23 provided in the will. 24 (2) Unless contrary to an express provision in the 25

-20-

SB 331

SB 331

will, the personal representative may discharge his 1 obligation to distribute to a minor or person under other 2 3 disability as authorized by 72-5-501 or any other statute. 4 If the personal representative knows that a conservator has 5 been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is 6 7 authorized to distribute only to the conservator. (3) (a) If the heir or devisee is under disability 8 other than minority, the personal representative is 9 10 authorized to distribute to: (i) an attorney-in-fact who has authority under a 11 12 power of attorney to receive property for that person; or 13 (ii) the spouse, parent, or other close relative with 14 whom the person under disability resides if the distribution 15 is of amounts not exceeding \$10,000 a year or property not exceeding \$10,000 in value, unless the court authorizes a 16 larger amount or greater value. 17 18 (b) Any person receiving money or property for the 19 disabled person is obligated to apply the money or property 20 to the support of that person, but may not pay himself except by way of reimbursement for out-of-pocket expenses 21 for goods and services necessary for the support of the 22 disabled person. Excess sums must be preserved for future 23 support of the disabled person. The personal representative 24 is not responsible for the proper application of money or 25

1 property distributed pursuant to this subsection (3)."

2 Section 16. Section 72-3-1103, MCA, is amended to 3 read:

4 "72-3-1103. Summary procedure for disbursement and 5 distribution. If it appears from the inventory and appraisal 6 that the value of the net--distributable--estate--does--not 7 exceed--57,500-or-the-value-of-the entire estate, less liens 8 and encumbrances, does not exceed homestead allowance, 9 exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable 10 and necessary medical and hospital expenses of the last 11 illness of the decedent, the personal representative, 12 13 without giving notice to the creditors, may immediately 14 disburse and distribute the estate to the persons entitled 15 thereto and file a closing statement as provided in 16 72-3-1104."

17 Section 17. Section 72-3-1104, MCA, is amended to 18 read:

19 "72-3-1104. Closing by sworn statement of personal 20 representative -- termination of appointment. (1) Unless 21 prohibited by order of the court and except for estates 22 being administered by supervised personal representatives, a 23 personal representative may close an estate administered 24 under the summary procedures of 72-3-1103 by filing with the 25 court, at any time after disbursement and distribution of

-21-

-22-

SB 331

and the considerate a second state of the second second

1 the estate, a verified statement stating that:

2 (a) to the best knowledge of the personal 3 representative, the -- value -- of - the -net-distributable - estate did-mot-exceed-\$7,500-or the value of the entire estate, 4 5 less liens and encumbrances, did not exceed homestead 6 allowance, exempt property, family allowance, costs and 7 expenses of administration, reasonable funeral expenses, and 8 reasonable, necessary medical and hospital expenses of the 9 last illness of the decedent:

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

13 (c) the personal representative has sent a copy of the 14 closing statement to all distributees of the estate and to 15 all creditors or other claimants of whom he is aware whose 16 claims are neither paid nor barred and has furnished a full 17 account in writing of his administration to the distributees 18 whose interests are affected.

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

23 (3) A closing statement filed under this section has24 the same effect as one filed under 72-3-1004."

25 Section 18. Section 72-5-302, MCA, is amended to read:

-23-

SB 331

| 1 | *72-5-302. Testamentary appointment of guardian for |
|----|--|
| 2 | incapacitated person when effective priorities. (1) |
| 3 | The parent of an unmarried incapacitated person may appoint |
| 4 | by will appoint or other writing signed by the parent and |
| 5 | attested by at least two witnesses a guardian of the |
| 6 | incapacitated person. Atestamentary If both parents are |
| 7 | dead or the surviving parent is adjudged incapacitated, a |
| 8 | parental appointment byaparent becomes effective when, |
| 9 | after having given 7 days' prior written notice of his |
| 10 | intention to do so to the incapacitated person and to the |
| 11 | person having his care of the person or to his the nearest |
| 12 | adult relative, the guardian files acceptance of appointment |
| 13 | in the court in which the will is informally or formally |
| 14 | probated, if-prior-thereto-bothparentsaredeadorthe |
| 15 | survivingparent-is-adjudged-incapacitated- or, in the case |
| 16 | of a nontestamentary nominating instrument, in the court at |
| 17 | the place where the incapacitated person resides or is |
| 18 | present. The notice must state that the appointment may be |
| 19 | terminated by filing a written objection in the court, as |
| 20 | provided by 72-5-304. If both parents are dead, an effective |
| 21 | appointment by the parent who died later has priority unless |
| 22 | itisterminatedbythedenialofprobateinformal |
| 23 | proceedings. |
| 24 | (2) The spouse of a married incapacitated person may |
| 25 | appoint by will appoint or other writing signed by the |

SB 0331/02

-24-

SB 331

SB 331

1

2

3

4

5

6

7

8

9

10

11

spouse and attested by at least two witnesses a quardian of 1 the incapacitated person. The appointment becomes effective 2 3 when, after having given 7 days' prior written notice of his 4 intention to do so to the incapacitated person and to the 5 person having his care of the incapacitated person or to his 6 the nearest adult relative, the guardian files acceptance of 7 appointment in the court in which the will is informally or formally probated: or, in the case of nontestamentary 8 9 nominating instrument, in the court at the place where the 10 incapacitated person resides or is present. The notice must 11 state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304. An 12 13 effective appointment by a spouse has priority over an 14 appointment by a parent unless--it--is-terminated-by-the 15 denial-of-probate-in-formal-proceedings."

Section 19. Section 72-5-303, MCA, is amended to read: 16 17 "72-5-303. Recognition of appointment of guardian by 18 foreign will. This-state-shall-recognize-a-testamentary An 19 appointment effected by filing the guardian's acceptance 20 under a will probated at-the-testator's in the state of the 21 decedent's domicile in-another-state is effective in this 22 state."

23 Section 20. Section 72-5-304, MCA, is amended to read: 24 *72-5-304. Objection by alleged incapacitated person 25 to testamentary appointment. On Upon the filing with in the

-25-

be-appropriate. 21 (2) An order adjudicating incapacity may specify a

court in which the will was probated or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present, of written objection to the appointment by the incapacitated person for whom a testamentary parental or spousal appointment of quardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary parental or spousal nominee or any other suitable person upon an adjudication of incapacity in proceedings under this-part 72-5-305 through 72-5-325."

Section 21. Section 72-5-325, MCA, is amended to read: 12 "72-5-325, Petition for removal or resignation of 13 quardian -- termination of incapacity. (1) On petition of 14 15 the ward or any person interested in his the ward's welfare, 16 the court, after hearing, may remove a quardian and--appoint a--successor if in the best interests of the ward. On 17 petition of the quardian, the court, after hearing, may 18 accept his a resignation and-make-any-other-order-which-may 19 20

minimum period, not exceeding 1-year 6 months, during which 22 no a petition for an adjudication that the ward is no longer 23 incapacitated may not be filed without special leave. 24 Subject to this that restriction, the ward or any person 25

-26-

SB 331

SB 331

1999 - Electron Contraction (Contraction) - 2019 - March Contraction and American Sciences States and American Sciences Sciences

a second a second and a second and a second second second second second as a second second

1

1 interested in his the welfare of the ward may petition for an order that he the ward is no longer incapacitated and for 2 3 removal---or---resignation termination of the quardian 4 quardianship. A request for this an order may also be made 5 by-informal-letter informally to the court cr-judge, and any 6 person who knowingly interferes with transmission of this 7 kind-of the request to-the-court-or-judge may be adjudged 8 quilty of contempt of court.

9 (3) Before--removing--a Upon removal, resignation, or 10 death of the quardian-accepting-the-resignation-of-a or if the quardian7--or--ordering--that--a--ward-s-incapacity-has 11 12 terminated is determined to be incapacitated, the court, following-the-same-procedures-to-safeguard-the-rights-of-the 13 14 ward--as--apply-to-a-petition-for-appointment-of-a-quardian-15 may send-a-visitor-to-the-residence-of-the-present appoint a 16 successor guardian and to-the-place-where-the--ward--resides 17 or--is-detainedz-to-observe-conditions-and-report-in-writing to-the-court- make any other appropriate order. Before 18 19 appointing a successor guardian or ordering that a ward's 20 incapacity has terminated, the court shall follow the same 21 procedures to safeguard the rights of the ward that apply to 22 a petition for appointment of a guardian." Section 22. Section 72-5-438, MCA, is amended to read: 23 24 "72-5-438. Accounts -- final and intermediate. (1) Unless-waived-by-the--courty--every Each conservator must 25

-27-

2 trust not less than annually for--the--preceding--year--and 3 also, unless the court directs otherwise, upon his 4 resignation or removal, and at other times as the court may 5 direct. A--copy--of--the--account--must--be-served-upon-the 6 protected-person's-parenty-quardiany-childy--or--sibling--if 7 that-person-has-made-an-effective-request-under-72-5-404- On 8 termination of the protected person's minority or 9 disability, a conservator may shall account to the court or 10 he--may--account to the former formerly protected person or 11 his-personal-representative the successors of that person. 12 (2) Subject to appeal or vacation within the time 13 permitted, an order made-upon, after notice and hearing, 14 allowing an intermediate account of a conservator 15 adjudicates as to his liabilities concerning the matters 16 considered in connection therewith with the hearing; and an 17 order made-upon, following notice and hearing, allowing a 18 final account adjudicates as to all previously unsettled 19 liabilities of the conservator to the protected person or 20 his the protected person's successors relating to the 21 conservatorship. 22 (3) In connection with any account, the court may

shall account to the court for his administration of the

(3) In connection with any account, the court may
require a conservator to submit to a physical check of the
estate in-his-control, to be made in any manner the court
may-specify specifies.

-28-

SB 331

(4)--Upon-failure,-as-determined-by-the-clerk-of-court,
 of--the--conservator-to-file--an-annual-account,-the-court
 shall-order-the-conservator-to-file--the--account--and--give
 good-cause-for-his-failure-to-file-a-timely-account,"

Section 23. Section 72-5-435, MCA, is amended to read: 5 "72-5-435. Persons dealing with conservator --6 protection. (1) A person who in good faith either assists a 7 8 conservator or deals with him for value in any transaction 9 other than those requiring a court order as provided in 10 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals 11 with a conservator does not alone require the person to 12 inquire into the existence of a power or the propriety of 13 14 exercise, except that restrictions on powers of its conservators which are endorsed on letters as provided in 15 16 72-5-430 are effective as to third persons. A person is not 17 bound to see to the proper application of estate assets paid 18 or delivered to a conservator.

19 (2) The protection here expressed in this section 20 extends to instances---in---which--some any procedural 21 irregularity or jurisdictional defect occurred occurring in 22 proceedings leading to the issuance of letters and is not a 23 substitution for protection provided by comparable 24 provisions of the law relating to commercial transactions or 25 laws simplifying transfers of securities by fiduciaries.

-29-

SB 331

1 (3) The protection here expressed is not by 2 substitution for that provided by comparable provisions of 3 the laws relating to commercial transactions and laws 4 simplifying transfers of securities by fiduciaries."

Section 24. Section 72-5-501, MCA, is amended to read: 5 "72-5-501. When power of attorney not affected by 6 7 disability. (1) A durable power of attorney is a power of 8 attorney by which a principal designates another his 9 attorney-in-fact or agent in writing and the writing contains the words, "This power of attorney shall not be 10 affected by subsequent disability or incapacity of the 11 principal or lapse of time" or "This power of attorney shall 12 become effective upon the disability or incapacity of the 13 principal" or similar words showing the intent of the 14 principal that the authority conferred shall be exercisable 15 16 notwithstanding the principal's subsequent disability or 17 incapacity, and, unless it states a time of termination, 18 notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact or-agent 19 20 pursuant to the a durable power of attorney during any period of disability or incapacity or-uncertainty-as-to 21 22 whether of the principal is-dead--or--alive have the same 23 effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were 24 25 alive, competent, and not disabled. Unless the instrument

-30-

SB 331

SB 331

states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

4 (2) If a conservator thereafter is appointed for the 5 principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the 6 conservator as well as the principal. The conservator has 7 the same power to revoke or amend the power of attorney that 8 9 the principal would have had if he were not disabled or 10 incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or quardian of 11 12 his person for consideration by the court if protective 13 proceedings for the principal's person or estate are 14 thereafter later commenced. The court shall make its appointment in accordance with the principal's most recent 15 16 nomination in a durable power of attorney except for good 17 cause or disgualification."

18 Section 25. Section 72-16-301, MCA, is amended to 19 read:

"72-16-301. Taxable transfers generally -contemplation of death. (1) A tax shall be and is hereby
imposed upon any transfer of property, real, personal, or
mixed, or any interest therein or income therefrom in trust
or otherwise to any person, association, or corporation in
the following cases, except as hereinafter provided in this

-31-

l section:

and the second has a share and an and an and an and a second a second second second here a second and a second second

2 (1)(a) when the transfer is by will or by intestate
3 laws of this state from any person dying possessed of the
4 property while a resident of the state;

5 (2)(b) when a transfer is by will or intestate law of 6 property within the state or within its jurisdiction and the 7 decedent was a nonresident of the state at the time of his 8 death; <u>or</u>

9 (3)(c) when the transfer is of property made by a 10 resident or by a nonresident when such nonresident's 11 property is within the state or within its jurisdiction by 12 deed, grant, bargain, sale, or gift made in contemplation of 13 the death of the grantor, vendor, or donor or intended to 14 take effect in possession or enjoyment at or after such 15 death. Every

16 (2) No transfer by-deed7-grant7-bargain7-sale7-or-gift 17 made within--3--years-prior-to-the before the 3-year period 18 ending on the date of the decedent's death of -- the -- grantor -19 vendory--or-donor-of-a-material-part-of-his-estate-or-in-the 20 nature of-a-final-disposition-or--distribution--thereof--and 21 without--a--fair--consideration--in--money--or-money-s-worth 22 shall7-unless-shown-to-the-contrary7 be deemed considered to 23 have been made in contemplation of death. within-the-meaning 24 of-this section---but--no--such--transfer--by--deed---grant; 25 bargain,-sale,-or-gift-made-before-such

~32-

SB 331

| 1 | (3) Every transfer during the 3-year period shall-be |
|----|--|
| 2 | treated-as-havingbeenmadeincontemplationofdeath- |
| 3 | However,nothinghereincontained-shall-be-deemed-to-have |
| 4 | modified;-amended;-or-repealed-the-provisions-of72-16-306+ |
| 5 | ending on the date of the decedent's death must be |
| 6 | considered to have been made in contemplation of death, |
| 7 | except: |
| 8 | (a) no transfer shown to be a bona fide sale for an |
| 9 | adequate and full consideration in money or money's worth |
| 10 | may be considered to be a gift made in contemplation of |
| 11 | death; |
| 12 | (b) if the transfer was a gift to a donee made during |
| 13 | the calendar year and if the decedent was not required by |
| 14 | section 6019 of the internal revenue code to file any gift |
| 15 | tax return for the year with respect to the donee, the |
| 16 | transfer may not be considered to be a gift made in |
| 17 | contemplation of death. |
| 18 | (4) Subsection (3) does not apply to any transfer with |
| 19 | respect to a life insurance policy." |
| 20 | Section 26. Section 72-16-302, MCA, is amended to |
| 21 | read: |
| 22 | "72-16-302. Transfer under power of appointment. |
| 23 | Wheneveranyperson-or-corporation-shall-exercise-a (1) To |
| 24 | the extent of any property with respect to which the |
| 25 | decedent has at the time of his death a general power of |
| | -33- SB 331 |

.

| 1 | appointment derived-from-any-dispositionofpropertymade |
|----|--|
| 2 | eitherbefore-or-after-March-57-1923, such appointment-when |
| 3 | made property shall be deemed considered to have been |
| 4 | transferred in a transfer taxable under the provisions of |
| 5 | parts 1 through 8, in-the-same-manner-as-though-the-property |
| 6 | to-which-such-appointment-relates-belonged-absolutely-to-the |
| 7 | donee-of-such-power-and-had-been-bequeathedordevisedby |
| 8 | suchdoneebywillWheneverany-person-or-corporation |
| 9 | possessing-such-a-power-of-appointment-so-derived-shall-omit |
| 10 | or-fail-toexercisethesamewithinthetimeprovided |
| 11 | therefor;in-whole-or-in-part;-a-transfer-taxable-under-the |
| 12 | provisions-of-parts-1-through-8shallbedeemedtotake |
| 13 | place-to-the-extent-of-such-omission-or-failurein-the-same |
| 14 | mannerasthoughthepersonsorcorporationsthereby |
| 15 | becoming-entitled-to-thepossessionorenjoymentofthe |
| 16 | propertytowhich-such-power-related-had-succeeded-thereto |
| 17 | by-a-will-of-the-donee-of-the-power-failing-to-exercise-such |
| 18 | powery-takingeffectatthetimeofsuchomissionor |
| 19 | failure: whether or not the decedent exercised the power of |
| 20 | appointment. |
| 21 | (2) The term "general power of appointment" means a |
| 22 | power that is exercisable in favor of the decedent, his |
| 23 | estate, his creditors, or the creditors of his estate, |
| 24 | except that a power to consume, invade, or appropriate |
| 25 | property for the benefit of the decedent which is limited by |
| | |

-34-

SB 0331/02

| 1 | an ascertainable standard relating to the health, education, |
|----|---|
| 2 | support, or maintenance of the decedent may not be |
| 3 | considered a general power of appointment." |
| 4 | Section 27. Section 72-16-303, MCA, is amended to |
| 5 | read: |
| 6 | "72-16-303. Joint estates transfer by right of |
| 7 | <pre>survivorship taxable. (1) Whenever any property7-however</pre> |
| 8 | acquired;realorpersonal;tangibleorintangible; |
| 9 | includinggovernmentbondsoftheUnitedStates; is |
| 10 | inscribed-in-co-ownership-form; held by two or more persons |
| 11 | in joint tenancy orastenantsbythe-entiretyor-is |
| 12 | deposited-in-any-bank-or-other-depositary-in-the-joint-names |
| 13 | of-two-or-morepersonsandpayabletothesurvivoror |
| 14 | survivorsofthem-upon-the-death-of-one-of-them with right |
| 15 | of survivorship, the right of the survivor or survivors to |
| 16 | the immediate possession or ownership is a taxable transfer. |
| 17 | (2) The tax is uponthetransferofdecedent's |
| 18 | interest,-one-half-or-other-proper-fraction,-as-evidenced-by |
| 19 | the-written-instrument-creatingthesame7asthoughthe |
| 20 | property to-which the transfer-relates-belonged-to-the-joint |
| 21 | tenants;tenants-by-the-entirety;-joint-depositors;-holders |
| 22 | in-co-ownership-form7-or-persons7-as-tenants-incommonand |
| 23 | hadbeen;forinheritancetaxpurposes;bequeathedor |
| 24 | devised-to-the-survivor-or-survivors-bywill;exceptsuch |
| 25 | partthercof-as-may-be-shown-to-have-originally-belonged-to |
| | -35- SB 331 |

Markan Same

4

| 1 | the-survivor-and-never-to-have-belonged-to-the-decedent-when |
|----|--|
| 2 | the-surviving-joint-tenant-isaspouseorissueofthe |
| 3 | decedent;Inallothercases;thefullvalueof-the |
| 4 | property-shall-be-taxable,-except-the-portionthereofthat |
| 5 | originallybelongedtothesurvivorand-as-to-which-the |
| 6 | decedent-had-made-no-contribution;-if-the-decedent-had-~made |
| 7 | acontribution-to-the-ownership-of-the-property7-the-amount |
| 8 | of-the-contribution-shall-be-taxable- |
| 9 | <pre>t3;This-section-shall-not-be-construed-torepealor</pre> |
| 10 | modifythe-provisions-of-72-16-301(3)- on the full value of |
| 11 | the property held as joint tenants with right of |
| 12 | survivorship, except a part of the property as may be shown |
| 13 | to have originally belonged to the survivor or survivors and |
| 14 | never to have been received or acquired by the latter from |
| 15 | the decedent for less than adequate and full consideration |
| 16 | in money or money's worth. When the property or any part of |
| 17 | the property, or part of the consideration with which the |
| 18 | property was acquired, is shown to have been at any time |
| 19 | acquired by the other person from the decedent for less than |
| 20 | an adequate and full consideration in money or money's |
| 21 | worth, only the part of the value of the property as is |
| 22 | proportionate to the consideration furnished by the other |
| 23 | person may be excepted. When any property has been acquired |
| 24 | by gift, bequest, devise, or inheritance as joint tenants |
| 25 | with right of survivorship and their interests are not |

-36-

SB 331

SB 331

otherwise specified or fixed by law, the tax is on the value
 of a fractional part to be determined by dividing the value
 of the property by the number of joint tenants with right of
 survivorship."

5 Section 28. Section 72-16-906, MCA, is amended to 6 read:

*72-16-906. Required 7 filings. The personal representative of the estate of any decedent whose estate is 8 9 subject to the payment of a United States estate tax shall file duplicates a duplicate of the United States estate tax 10 11 returns return with the district--court--of--the--county--in 12 which--such-estate-is-being-probated-and-with-the department 13 of revenue. He shall also file with-such-court-and with the department a certificate or other evidence from the internal 14 revenue service showing the amount of the United States 15 estate tax as computed by that-agency the internal revenue 16 service." 17

18 **SECTION 29.** SECTION 72-26-502, MCA, IS AMENDED TO 19 READ:

20 "72-26-502. Definitions. As used in this chapter,
21 unless the context requires otherwise, the following
22 definitions apply:

23 (1) "Adult" means an individual who has attained the
24 age of 10 21 years.

25 (2) "Benefit plan" means an employer's plan for the

-37-

benefit of an employee or partner.

2 (3) "Broker" means a person lawfully engaged in the
3 business of effecting transactions in securities or
4 commodities for the person's own account or for the account
5 of others.

6 (4) "Conservator" means a person appointed or 7 qualified by a court to act as general, limited, or 8 temporary guardian of a minor's property or a person legally 9 authorized to perform substantially the same functions.

10 (5) "Court" means district court.

11 (6) "Custodial property" means:

12 (a) any interest in property transferred to a13 custodian under this chapter; and

14 (b) the income from and proceeds of that interest in 15 property.

16 (7) "Custodian" means a person so designated under 17 72-26-603 or a successor or substitute custodian designated 18 under 72-26-801.

(8) "Financial institution" means a bank, trust
company, savings institution, or credit union chartered and
supervised under state or federal law.

22 (9) "Legal representative" means an individual's
23 personal representative or conservator.

24 (10) "Member of the minor's family" means the minor's
25 parent, stepparent, spouse, grandparent, brother, sister,

-38- SB 331

uncle, or aunt, whether of the whole or half blood or by 1 2 adoption.

3 (11) "Minor" means an individual who has not attained 4 the age of ±8 21 years.

(12) "Person" means an individual, corporation, 5 6 organization, or other legal entity.

7 (13) "Personal representative" means an executor, 8 administrator, successor personal representative, or special administrator of a decedent's estate or a person legally 9 authorized to perform substantially the same functions. 10

11 (14) "State" includes any state of the United States, 12 the District of Columbia, the Commonwealth of Puerto Rico, 13 and any territory or possession subject to the legislative authority of the United States. 14

15 (15) "Transfer" means a transaction that creates 16 custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer 17 18 under this chapter.

19 (17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise 20 general trust powers." 21

22 NEW SECTION. Section 30. Requirement that beneficiary 23 survive insured by 120 hours. A beneficiary in a policy of life or accident insurance who does not survive the insured 24 by 120 hours is treated as if he had predeceased the insured 25

~ 39-

unless the policy of insurance contains some language 1 2 dealing explicitly with simultaneous deaths or deaths in a 3 common disaster or requiring that the beneficiary survive 4 the insured for a stated period in order to receive the ς proceeds of the policy.

NEW SECTION. Section 31. Extension of authority. Any 6 7 existing authority to make rules on the subject of the 8 provisions of (this act) is extended to the provisions of 9 [this act].

NEW SECTION. Section 32. Codification 10 instruction. 11 [Section 29 30] is intended to be codified as an integral 12 part of Title 33, chapter 20, and the provisions of Title 13

33, chapter 20, apply to [section 29 30].

-End-

SB 331

-40-

SB 331

1 SENATE BILL NO. 331

| 3 | |
|----|---|
| 4 | A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE |
| 5 | UNIFORM PROBATE CODE AND RELATED LAW; REQUIRING A 120-HOUR |
| 6 | SURVIVORSHIP TO COLLECT INSURANCE PROCEEDS; AND AMENDING |
| 7 | SECTIONS 40-8-125, 72-1-108, 72-2-104, 72-2-202, 72-2-305, |
| 8 | 72-2-516, 72-2-517, 72-2-704, 72-3-122, 72-3-213, 72-3-603, |
| 9 | 72-3-607, 72-3-805, 72-3-902, 72-3-917, 72-3-1103, |
| 10 | 72-3-1104, 72-5-302 THROUGH 72-5-304, 72-5-325, 72-5-435, |
| 11 | 72-5-438, 72-5-501, 72-16-301 THROUGH 72-16-303, AND |
| 12 | 72-16-906, AND 72-26-502, MCA." |

INTRODUCED BY BISHOP

13

2

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

15 Section 1. Section 40-8-125, MCA, is amended to read: 16 "40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and 17 child and all the rights, duties, and other legal 18 19 consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the 20 adoptive parents adopting such child and the kindred of the 21 22 adoptive parents. Prom--the--date--of--the-final-decree-of 23 adoption7-the-child-shall-be-entitled-to--inherit--real--and personal--property-from-and-through-the-adoptive-parents-and 24 25 the-kindred-of-the-adoptive-parents-in-accordance--with--the

untana Legislative Council

There is no change on <u>SB 331</u> and will not be reprinted. Please refer to second reading (yellow) for complete text.

-2-

SB 331 THIRD READING

STANDING COMMITTEE REPORT

March 9, 1989 Page 1 of 1

Mr. Speaker: We, the committee on <u>Judiciary</u> report that <u>SENATE</u> <u>BILL 331</u> (third reading copy -- blue) <u>be concurred in as</u> <u>amended</u>.

Signed: airman

WILL CARRY THIS BILL ON THE HOUSE FLOOR] [REP.

And, that such amendment read:

1. Page 33, line 18.
Following: "(3)"
Insert: "(b)"

•

.

SB 0331/03

SB 0331/03

AS AMENDED

| 1 | SENATE BILL NO. 331 | 1 | statutesofdescentanddistributionandtheadoptive |
|----|---|----|--|
| 2 | INTRODUCED BY BISHOP | 2 | parents-and-their-kindred-shall-be-entitled-to-inheritreal |
| 3 | | 3 | andpersonalpropertyfromandthroughthechildin |
| 4 | A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE | 4 | accordance-with-said-statutes- |
| 5 | UNIFORM PROBATE CODE AND RELATED LAW; REQUIRING A 120-HOUR | 5 | (2) After a the final decree of adoption is entered, |
| 6 | SURVIVORSHIP TO COLLECT INSURANCE PROCEEDS; AND AMENDING | 6 | the natural parents and the kindred of the natural parents |
| 7 | SECTIONS 40-8-125, 72-1-108, 72-2-104, 72-2-202, 72-2-305, | 7 | of the adopted child, unless they are the adoptive parents |
| 8 | 72-2-516, 72-2-517, 72-2-704, 72-3-122, 72-3-213, 72-3-603, | 8 | or the spouse of an adoptive parent, shall be relieved of |
| 9 | 72-3-607, 72-3-805, 72-3-902, 72-3-917, 72-3-1103, | 9 | all parental responsibilities for said child and have no |
| 10 | 72-3-1104, 72-5-302 THROUGH 72-5-304, 72-5-325, 72-5-435, | 10 | rights over such adopted child or-to-his-property-by-descent |
| 11 | 72-5-438, 72-5-501, 72-16-301 THROUGH 72-16-303, AND | 11 | and-distribution. |
| 12 | 72-16-906, <u>AND 72-26-502,</u> MCA." | 12 | (3) The relationship of parent and child for the |
| 13 | | 13 | purposes of intestate succession is governed by Title 72." |
| 14 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: | 14 | Section 2. Section 72-1-108, MCA, is amended to read: |
| 15 | Section 1. Section 40-8-125, MCA, is amended to read: | 15 | *72-1-108. Evidential rules applicable evidence as |
| 16 | "40-8-125. Effect of final decree. (1) After the final | 16 | to death or status. (1) In proceedings under this code the |
| 17 | decree of adoption is entered, the relation of parent and | 17 | rules of evidence in courts of general jurisdiction, |
| 18 | child and all the rights, duties, and other legal | 18 | including any relating to simultaneous deaths, are |
| 19 | consequences of the natural relation of child and parent | 19 | applicable unless specifically displaced by the code. |
| 20 | shall thereafter exist between such adopted child and the | 20 | (2) In addition, the following rules relating to |
| 21 | adoptive parents adopting such child and the kindred of the | 21 | determination of death and status are applicable: |
| 22 | adoptive parents. Fromthedateofthe-final-decree-o f | 22 | (a) A certified or authenticated copy of a death |
| 23 | adoption;-the-child-shall-be-entitled-toinheritrealand | 23 | certificate purporting to be issued by an official or agency |
| 24 | personalproperty-from-and-through-the-adoptive-parents-and | 24 | of the place where the death purportedly occurred is prima |
| 25 | the-kindred-of-the-adoptive-parents-in-accordancewiththe | 25 | facie proof of the fact, place, date, and time of death and |
| | | | -2- REFERENCE BILL |

Montana Legislative Council

and a second of the second second

1 the identity of the decedent.

2 (b) A certified or authenticated copy of any record or 3 report of a governmental agency, domestic or foreign, that a 4 person is missing, detained, dead, or alive is prima facie 5 evidence of the status and of the dates, circumstances, and 6 places disclosed by the record or report.

7 (c) In the absence of prima facie evidence of death
8 under subsection (2)(a) or (2)(b), the fact of death may be
9 established by clear and convincing evidence, including
10 circumstantial evidence.

11 fc;(d) A person whose death is not established under 12 subsections (2)(a) through (2)(c), who is absent for a 13 continuous period of 7 5 years, during which he has not been heard from, and whose absence is not satisfactorily 14 15 explained after diligent search or inquiry is presumed to be 16 dead. His death is presumed to have occurred at the end of 17 period unless there is sufficient evidence for the determining that death occurred earlier." 18

19 Section 3. Section 72-2-104, MCA, is amended to read:
20 "72-2-104. Homicide -- effect on intestate succession,
21 wills, joint assets, life insurance, and beneficiary
22 designations. (1) A surviving spouse, heir, or devisee who
23 feloniously and intentionally kills the decedent is not
24 entitled to any benefits under the will or under this
25 chapter, and the estate of <u>the</u> decedent passes as if the

killer had predeceased the decedent. Property appointed by
 the will of the decedent to or for the benefit of the killer
 passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally 4 kills another joint tenant thereby effects a severance of 5 the interest of the decedent so that the share of the 6 decedent passes as his property and the killer has no rights 7 by survivorship. This provision applies to joint tenancies 8 in real and personal property, joint accounts in banks, 9 savings and loan associations, credit unions, and other 10 institutions, and any other form of co-ownership with 11 survivorship incidents. 12

13 (3) A named beneficiary of a bond, life insurance 14 policy, or other contractual arrangement who feloniously and 15 intentionally kills the principal obligee or the person upon 16 whose life the policy is issued is not entitled to any 17 benefit under the bond, policy, or other contractual 18 arrangement, and it becomes payable as though the killer had 19 predeceased the decedent.

20 (4) Any other acquisition of property or interest by
21 the killer shall be treated in accordance with the
22 principles of this section.

23 (5) A final judgment of conviction of felonious and
24 intentional killing is conclusive for purposes of this
25 section. In the absence of a conviction of felonious and

· 1991年,1991年,1999年,1999年4月,1999年,1999年19月,19月1日

-3-

SB 331

-4-

SB 331

intentional killing, the court may determine by a
 preponderance of evidence whether the killing was felonious
 and intentional for purposes of this section.

4 (6) This section does not affect the rights of any 5 person who, before rights under this section have been 6 adjudicated, purchases from the killer for value and without 7 notice property which the killer would have acquired except 8 for this section, but the killer is liable for the amount of 9 the proceeds or the value of the property. Any insurance 10 company, bank, or other obligor making payment according to 11 the terms of its policy or obligation is not liable by 12 reason of this section unless prior to payment it has 13 received at its home office or principal address written 14 notice of a claim under this section.

15 (7) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 4. Section 72-2-202, MCA, is amended to read:
"72-2-202. Share of spouse. The intestate share of the
surviving spouse is:

(1) if there is no surviving issue or if there are
surviving issue all of whom are issue of the surviving
spouse also, the entire remaining estate;

25 (2) if there are surviving issue one or more of whom

-5-

1 are not issue of the surviving spouse, as follows:

2 (a) if there is surviving only one such child or the
3 issue of one such child, one-half of the intestate estate;
4 (b) if there are surviving more-than-one-such-child-or
5 one-such-child two or more children, the issue of two or
6 more deceased children, or one or more children and the
7 issue of one or more deceased children, one-third of the
8 intestate estate."

9 Section 5. Section 72-2-305, MCA, is amended to read:
10 *72-2-305. Who may witness -- effect of witness by
11 beneficiary. (1) Any person generally competent to be a
12 witness may act as a witness to a will.

13 (2) A will is not invalid because the will is signed14 by an interested witness.

15 (3)--All--beneficial--devises--made--in--any--will-to-a subscribing-witness-thereto-are-void-unless--there--are--two other--competent--subscribing--witnesses--to-the-same;-but-a mere-charge-on-the-estate-of-the-testator-does--not--prevent his-creditors-from-being-competent-witnesses-to-his-will; 20 (4)--If--a--witness--to-whom-any-beneficial-devise-void

21 under-subsection-(3)-is-made-would-have-been-entitled-to-any 22 share-of-the-estate-of-the-testator-if-the-testator-had-died 23 intestate;-such-witness-succeeds-to-so-much-of-the-share--as 24 would--be-distributed-to-him-under-intestate-succession;-not 25 exceeding-the-devise-or-bequest-made-to-him-in-the-will;"

-6-

SB 331

SB 331

and the set of the set

Section 6. Section 72-2-516, MCA, is amended to read: 1 "72-2-516. Nonademption of specific devises in certain 2 3 cases. (1)--If--specifically--devised-property-is-sold-by-a conservator-or-if-a-condemnation-award-or-insurance-proceeds 4 are-paid-to-a-conservator-as-a-result-of-condemnation7-fire7 5 6 or-casualty7--the--specific--devisee--has--the--right--to--a 7 pecuniary--devise--equal--to--so--much--of--the--sale-price; 8 condemnation-award;-or-insurance-proceeds-as-remains-in--the 9 estate--and--is--identifiable--at-the-time-of-the-decedent+s 10 death--This-subsection-does-not-apply-if-subsequent--to--the 11 sale --- condemnation -- or - casualty-it-is-adjudicated-that-the 12 disability-of-the--testator--has--ceased--and--the--testator 13 survives--the--adjudication--by--l--year---The-right-of-the 14 specific-devisee-under-this-subsection--is--reduced--by--any 15 right-he-has-under-subsection-(2)-16 +2+(1) A specific devisee has the right to the 17 remaining specifically devised property and: 18 (a) any balance of the purchase price (together with any security interest) owing from a purchaser to the 19 testator at death by reason of sale of the property; 20 21 (b) any amount of a condemnation award for the taking 22 of the property unpaid at death; 23 (c) any proceeds unpaid at death on fire or casualty 24 insurance on the property; and 25 (d) property owned by testator at his death, as a

-7-

| 1 | result of foreclosure or obtained in lieu of foreclosure of |
|----|--|
| 2 | the security for a specifically devised obligation. |
| 3 | (2) If specifically devised property is sold by a |
| 4 | conservator or an agent acting within the authority of a |
| 5 | durable power of attorney for a principal who is under a |
| 6 | disability, or if a condemnation award or insurance proceeds |
| 7 | are paid to a conservator or an agent acting within the |
| 8 | authority of a durable power of attorney for a principal who |
| 9 | is under a disability, as a result of condemnation, fire, or |
| 10 | casualty, the specific devisee has the right to a general |
| 11 | pecuniary devise equal to the net sale price, the |
| 12 | condemnation award, or the insurance proceeds. This |
| 13 | subsection does not apply if after the sale, condemnation, |
| 14 | or casualty it is adjudicated that the disability of the |
| 15 | testator has ceased and the testator survives the |
| 16 | adjudication by 1 year. The right of the specific devisee |
| 17 | under this subsection is reduced by any right he has under |
| 18 | subsection (1)." |
| 19 | Section 7. section 72-2-517, MCA, is amended to read: |
| 20 | "72-2-517. Changes in devised securities |
| 21 | distributions prior to death. (1) If the testator intended a |
| 22 | specific devise of certain securities rather than the |
| 23 | equivalent value thereof, the specific devisee is entitled |
| 24 | only to: |
| 25 | (a) as much of the devised securities as is a part of |
| | |

of formalogura or obtained in lion of formalization of

SB 0331/03

-8-

1 the estate at time of the testator's death;

2 (b) any additional or other securities of the same
3 entity owned by the testator by reason of action initiated
4 by the entity, excluding any securities acquired by exercise
5 of purchase options;

6 (c) securities of another entity owned by the testator
7 as a result of a merger, consolidation, reorganization, or
8 other similar action initiated by the entity; and

9 (d) any additional securities of the entity owned by
10 the testator as a result of a plan of reinvestment if-it-is
11 a-regulated-investment-company.

12 (2) Distributions prior to death with respect to a
13 specifically devised security not provided for in subsection
14 (1) are not part of the specific devise."

15 Section 8. Section 72-2-704, MCA, is amended to read: 16 "72-2-704. Effect-of-election-on-benefits-by--will--or statute Surviving spouse -- allowance -- exemptions. fl}-The 17 18 surviving--spouse's--election-of-his-elective-share-does-not 19 affect--the--share--of--the--surviving--spouse---under---the 20 provisions--of--the--decedent's-will-or-intestate-succession 21 unless-the-surviving-spouse-also-expressly-renounces-in--the 22 petition--for-an-elective-share-the-benefit-of-all-or-any-of 23 the-provisions---If--any--provision--is--so--renounced---the 24 property--or-other-benefit-which-would-otherwise-have-passed 25 to-the-surviving-spouse-thereunder-is--treated,--subject--to 1 contribution--under--72-2-706(2)7-as-if-the-surviving-spouse 2 had-predeceased-the-testatory

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

б Section 9. Section 72-3-122, MCA, is amended to read: 7 "72-3-122. Time limit on probate, testacy, and 8 appointment proceedings -- exceptions. (1) No informal 9 probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a 10 11 will previously probated at the testator's domicile and 12 appointment proceedings relating to an estate in which there 13 has been a prior appointment, may be commenced more than 3 years after the decedent's death, except: 14

15 (a) if a previous proceeding was dismissed because of 16 doubt about the fact of the decedent's death, appropriate 17 probate, appointment, or testacy proceedings may be 18 maintained at any time thereafter upon a finding that the 19 decedent's death occurred prior to the initiation of the 20 previous proceeding and the applicant or petitioner has not 21 delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy
proceedings may be maintained in relation to the estate of
an absent, disappeared, or missing person for whose estate a
conservator has been appointed at any time within 3 years

-9-

SB 331

-10-

after the conservator becomes able to establish the death of
 the protected person; and

3 (c) a proceeding to contest an informally probated 4 will and to secure appointment of the person with legal 5 priority for appointment in the event the contest is 6 successful may be commenced within the later of 12 months 7 from the informal probate or 3 years from the decedent's 8 death; and

9 (d) if no proceeding concerning the succession or administration of the estate has occurred within 3 years 10 11 after the decedent's death, a formal testacy proceeding may 12 be commenced at any time thereafter for the sole purpose of 13 establishing a devise of property which the devisee or his 14 successors and assigns possessed in accordance with the will 15 or property which was not possessed or claimed by anyone by 16 virtue of the decedent's title during the 3-year period, and 17 the order of the court must be limited to that property. 18 (2) These limitations do not apply to proceedings to 19 construe probated wills or determine heirs of an intestate; 20 nor-do--they--limit--the--right--of--interested--persons--to 21 commence--informal--probate--or--appointment--proceedings-or 22 formal-testacy-or-appointment-proceedings-at-any-time--after 23 3--years--from--the--decedent's--death-if-there-have-been-no

24 previous--formal--or---informal---probate---or---appointment

-11-

25 proceedings-commenced-in-respect-of-that-decedent.

SB 331

SB 0331/03

1 (3) In cases under (1)(a) or (1)(b) above, the date on 2 which a testacy or appointment proceeding is properly 3 commenced shall be deemed to be the date of the decedent's 4 death for purposes of other limitations provisions of this 5 code which relate to the date of death."

Section 10. Section 72-3-213. MCA, is amended to read: 6 *72-3-213. Rules for grant or denial of informal 7 8 probate. (1) A will which appears to have the required 9 signatures and which contains an attestation clause showing that requirements of execution under 72-2-302, 72-2-303, or 10 72-2-306 have been met shall be probated without further 11 proof. In other cases the clerk may assume execution if the 12 13 will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge 14 of the circumstances of execution, whether or not the person 15 16 was a witness to the will.

(2) The application shall be denied if it indicates 17 that a personal representative has been appointed in another 18 county of this state or, except as provided in subsection 19 (3) below, if it appears that this or another will of the 20 decedent has been the subject of a previous probate order. 21 (3) Informal probate of a will which has been 22 previously probated elsewhere may be granted at any time 23 24 upon written application by any interested person, together 25 with deposit of an authenticated copy of the will and of the

al versening have i versen er sen server versen en server and former is server the server stream and a server a

-12-

statement probating it from the office or court where it was
first probated.

3 (4) A will from a place which does not provide for probate of a will after death and which is not eligible for 4 probate under 72-3-212 may be probated in this state upon 5 receipt by the clerk of a duly authenticated copy of the 6 will and a duly authenticated certificate of its legal 7 custodian that the copy filed is a true copy and that the 8 9 will has become operative under the law of the other place. (5) Application for informal probate which relates to 10 11 one or more of a known series of testamentary instruments 12 (other than wills-and-codicits a will and one or more 13 codicils to the will), the latest of which does not expressly revoke the earlier, shall be declined." 14

15 Section 11. Section 72-3-603, MCA, is amended to read: "72-3-603. Notice of appointment to heirs and 16 17 devisees. (1) Not later than 30 days after his appointment, every personal representative, except any 18 special administrator, shall give information of his appointment to 19 20 the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative 21 22 was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the 23 application for appointment of a personal representative. 24 25 The information shall be delivered or sent by ordinary mail

SB 331

SB 0331/03

to each of the heirs and devisees whose address is
 reasonably available to the personal representative. The
 duty does not extend to require information to persons who
 have been adjudicated in a prior formal testacy proceeding
 to have no interest in the estate.

(2) (a) The information shall must:

6

7 (a)(i) include the name and address of the personal 8 representative;

9 (b)(ii) indicate that it is being sent to persons who 10 have or may have some interest in the estate being 11 administered;

12 (iii) indicate whether bond has been filed; and

13 (d)(iv) describe the court where papers relating to the 14 estate are on file.

(b) The information must state that the estate is 15 16 being administered by the personal representative under the 17 uniform probate code without supervision by the court but 18 that recipients are entitled to information regarding the administration from the personal representative and may 19 petition the court in any matter relating to the estate, 20 21 including distribution of assets and expenses of 22 administration.

23 (3) The personal representative's failure to give this
24 information is a breach of his duty to the persons concerned
25 but does not affect the validity of his appointment, his

-14-

-13-

1 powers, or other duties.

2 (4) A personal representative may inform other persons
3 of his appointment by delivery or ordinary first-class
4 mail."

Section 12. Section 72-3-607, MCA, is amended to read: 5 6 "72-3-607. Inventory -- appraisal -- copy to 7 department of revenue. (1) Within 3--months--after--his 8 appointment the time required for the filing of a United 9 States estate tax return plus any extensions granted by the 10 internal revenue service, a personal representative, who is 11 not a special administrator or a successor to another representative who has previously discharged this duty, 12 13 shall prepare and file or mail an inventory, which inventory 14 shall include listing of all property which:

(a) the decedent owned, had an interest in or control
over, individually, in common, or jointly, or otherwise had
at the time of his death;

(b) the decedent had possessory or dispository rights
over at the time of his death or had disposed of for less
than its fair market value within 3 years of his death; or
(c) was affected by the decedent's death for the
purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the
full and true value of the decedent's interest in every item
listed in such inventory. In this connection the personal

-15-

SB 331

1 representative shall appoint one or more qualified and disinterested persons to assist him in ascertaining the fair 2 з market value as of the date of the decedent's death of all 4 assets included in the estate. Different persons may be 5 employed to appraise different kinds of assets included in 6 the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he 7 appraised. 8

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue."

14 Section 13. Section 72-3-805, MCA, is amended to read: 15 "72-3-805. Allowance and disallowance of claims --16 interest on allowed claims. (1) As to claims presented in 17 the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail 18 a notice to any claimant stating that the claim has been 19 20 disallowed. If, after allowing or disallowing a claim, the 21 personal representative changes his decision concerning the claim, he shall notify the claimant. The personal 22 23 representative may not change a disallowance of a claim 24 after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run 25

-16-

SB 331

SB 0331/03

SB 331

1 and the claim has been barred. Every claim which is 2 disallowed in whole or in part by the personal 3 representative is barred so far as not allowed unless the 4 claimant files a petition for allowance in the court or 5 commences a proceeding against the personal representative 6 not later than 60 days after the mailing of the notice of 7 disallowance or partial allowance if the notice warns the 8 claimant of the impending bar. Failure of the personal 9 representative to mail notice to a claimant of action on his 10 claim for 60 days after the time for original presentation 11 of the claim has expired has the effect of a notice of 12 disallowance allowance.

13 (2) After allowing or disallowing a claim, the 14 personal representative may change the allowance or disallowance as provided in this section. The personal 15 16 representative may change the allowance to a disallowance, 17 in whole or in part, prior to payment, but not after 18 allowance by a court order or judgment or an order directing 19 payment of the claim. The personal representative shall 20 notify the claimant of the change to disallowance, and the 21 disallowed claim is then subject to bar as provided in 22 subsection (1). The personal representative may change a 23 disallowance to an allowance, in whole or in part, until it 24 is barred under subsection (1). After it is barred, it may 25 be allowed and paid only if the estate is solvent and all SB 0331/03

1 successors whose interests would be affected consent.

2 (2)(3) Upon the petition of the personal 3 representative or of a claimant in a proceeding for the 4 purpose, the court may allow, in whole or in part, any claim 5 or claims presented to the personal representative or filed 6 with the clerk of the court in due time and not barred by 7 subsection (1) of-this-section. Notice in this proceeding 8 shall be given to the claimant, the personal representative, 9 and those other persons interested in the estate as the 10 court may direct by order entered at the time the proceeding 11 is commenced.

12 (3)(4) A judgment in a proceeding in another court
13 against a personal representative to enforce a claim against
14 a decedent's estate is an allowance of the claim.

15 (4)(5) Unless otherwise provided in any judgment in 16 another court entered against the personal representative, 17 an allowed claims--bear claim bears interest at the legal 18 rate for the period commencing 60 days after the time for 19 original presentation of the claim has expired unless based on a contract making a provision for interest, in which case 20 21 they-bear the claim bears interest in accordance with that 22 provision."

Section 14. Section 72-3-902, MCA, is amended to read:
"72-3-902. Distribution in kind preferred -- method -valuation. Unless a contrary intention is indicated by the

-18-

-17-

and and the second s

will, the distributable assets of a decedent's estate shall
 be distributed in kind to the extent possible through
 application of the following provisions:

4 (1) A specific devisee is entitled to distribution of 5 the thing devised to him, and a spouse or child who has 6 selected particular assets of an estate as provided in 7 72-2-802 shall receive the items selected.

8 (2) Any homestead or family allowance or devise
9 payable-in of a stated sum of money may be satisfied by
10 value in kind, provided:

11 (a) the person entitled to the payment has not 12 demanded payment in cash;

13 (b) the property distributed in kind is valued at fair 14 market value as of the date of its distribution; and

15 (c) no residuary devisee has requested that the asset16 in question remain a part of the residue of the estate.

17 (3) For the purpose of valuation under subsection (2), 18 securities any security regularly traded on a recognized 19 exchanges exchange, if distributed in kind, are is valued at 20 the price for the last sale of like securities traded on the 21 business day prior to distribution or, if there was no sale 22 on that day, at the median between amounts bid and offered 23 asked at the close of that day. Assets An asset consisting 24 of sums a sum owed the decedent or the estate by a solvent 25 debtors debtor as to which there is no known dispute or

defense are is valued at the sum due with accrued interest 1 or discounted to the date of distribution. For assets an 2 asset which do-not-have has no readily ascertainable vatues 3 value, a valuation as of a date not more than 30 days prior 4 5 to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the 6 personal representative may ascertain the value of the 7 assets any asset as of the time of the proposed distribution 8 in any reasonable way, including the employment of qualified 9 appraisers, even if the assets asset may have been 10 previously appraised. 11

(4) The residuary estate shall be distributed in kind
if-there-is-no-objection-to-the-proposed-distribution-and-it
is-practicable-to-distribute-undivided-interests---In--other
cases7--residuary--property--may--be-converted-into-cash-for
distribution any equitable manner."

17 Section 15. Section 72-3-917, MCA, is amended to read: "72-3-917. Distribution to person under disability. 18 (1) A personal representative may discharge his obligation 19 to distribute to any person under legal disability by 20 distributing to---his--conservator--or--any--other--person 21 22 authorized-by-this-code-or-otherwise-to-give-a-valid-receipt and-discharge-for-the-distribution in a manner expressly 23 24 provided in the will. (2) Unless contrary to an express provision in the 25

en har verse in volumenter for Statute daag van van de statiske state eerste worden verstaktie is en van de ser

-19-

SB 331

-20-

SB 331

| 1 | will, the personal representative may discharge his |
|----|--|
| 2 | obligation to distribute to a minor or person under other |
| 3 | disability as authorized by 72-5-501 or any other statute. |
| 4 | If the personal representative knows that a conservator has |
| 5 | been appointed or that a proceeding for appointment of a |
| 6 | conservator is pending, the personal representative is |
| 7 | authorized to distribute only to the conservator. |
| 8 | (3) (a) If the heir or devisee is under disability |
| 9 | other than minority, the personal representative is |
| 10 | authorized to distribute to: |
| 11 | (i) an attorney-in-fact who has authority under a |
| 12 | power of attorney to receive property for that person; or |
| 13 | (ii) the spouse, parent, or other close relative with |
| 14 | whom the person under disability resides if the distribution |
| 15 | is of amounts not exceeding \$10,000 a year or property not |
| 16 | exceeding \$10,000 in value, unless the court authorizes a |
| 17 | larger amount or greater value. |
| 18 | (b) Any person receiving money or property for the |
| 19 | disabled person is obligated to apply the money or property |
| 20 | to the support of that person, but may not pay himself |
| 21 | except by way of reimbursement for out-of-pocket expenses |
| 22 | for goods and services necessary for the support of the |
| 23 | disabled person. Excess sums must be preserved for future |
| 24 | support of the disabled person. The personal representative |
| 25 | is not responsible for the proper application of money or |
| | |

-21-

1 property distributed pursuant to this subsection (3)."

2 Section 16. Section 72-3-1103, MCA, is amended to 3 read:

4 "72-3-1103. Summary procedure for disbursement and 5 distribution. If it appears from the inventory and appraisal 6 that the value of the net--distributable--estate--does--not 7 exceed--\$7;500-or-the-value-of-the entire estate, less liens 8 and encumbrances, does not exceed homestead allowance, 9 exempt property, family allowance, costs and expenses of 10 administration, reasonable funeral expenses, and reasonable 11 and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, 12 without giving notice to the creditors, may immediately 13 14 disburse and distribute the estate to the persons entitled 15 thereto and file a closing statement as provided in 72-3-1104." 16

17 Section 17. Section 72-3-1104, MCA, is amended to 18 read:

19 "72-3-1104. Closing by sworn statement of personal 20 representative -- termination of appointment. (1) Unless 21 prohibited by order of the court and except for estates 22 being administered by supervised personal representatives, a 23 personal representative may close an estate administered 24 under the summary procedures of 72-3-1103 by filing with the 25 court, at any time after disbursement and distribution of

-22-

SB 0331/03

1 the estate, a verified statement stating that:

2 (a) to the best knowledge of the personal 3 representative, the--value--of-the-net-distributable-estate 4 did-not-exceed-97,500-or the value of the entire estate, 5 less liens and encumbrances, did not exceed homestead 6 allowance, exempt property, family allowance, costs and 7 expenses of administration, reasonable funeral expenses, and 8 reasonable, necessary medical and hospital expenses of the 9 last illness of the decedent:

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

13 (c) the personal representative has sent a copy of the 14 closing statement to all distributees of the estate and to 15 all creditors or other claimants of whom he is aware whose 16 claims are neither paid nor barred and has furnished a full 17 account in writing of his administration to the distributees 18 whose interests are affected.

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

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

-23-

25 Section 18. Section 72-5-302, MCA, is amended to read:

SB 331

| 1 | *72-5-302. Testamentary appointment of guardian for |
|----|--|
| 2 | incapacitated person when effective priorities. (1) |
| 3 | The parent of an unmarried incapacitated person may appoint |
| 4 | by will appoint or other writing signed by the parent and |
| 5 | attested by at least two witnesses a guardian of the |
| 6 | incapacitated person. Atestamentary If both parents are |
| 7 | dead or the surviving parent is adjudged incapacitated, a |
| 8 | parental appointment byaparent becomes effective when, |
| 9 | after having given 7 days' prior written notice of his |
| 10 | intention to do so to the incapacitated person and to the |
| 11 | person having his care of the person or to his the nearest |
| 12 | adult relative, the guardian files acceptance of appointment |
| 13 | in the court in which the will is informally or formally |
| 14 | probated, if-prior-thereto-bothparentsaredeadorthe |
| 15 | survivingparent-is-adjudged-incapacitated- or, in the case |
| 16 | of a nontestamentary nominating instrument, in the court at |
| 17 | the place where the incapacitated person resides or is |
| 18 | present. The notice must state that the appointment may be |
| 19 | terminated by filing a written objection in the court, as |
| 20 | provided by 72-5-304. If both parents are dead, an effective |
| 21 | appointment by the parent who died later has priority unless |
| 22 | itisterminatedbythedenialofprobateinformal |
| 23 | proceedings. |
| 24 | (2) The spouse of a married incapacitated person may |
| 25 | appoint by will appoint or other writing signed by the |

-24-

SB 331

SB 0331/03

1 spouse and attested by at least two witnesses a guardian of 2 the incapacitated person. The appointment becomes effective 3 when, after having given 7 days' prior written notice of his intention to do so to the incapacitated person and to the 4 person having his care of the incapacitated person or to his 5 the nearest adult relative, the guardian files acceptance of 6 7 appointment in the court in which the will is informally or 8 formally probated, or, in the case of nontestamentary 9 nominating instrument, in the court at the place where the 10 incapacitated person resides or is present. The notice must 11 state that the appointment may be terminated by filing a 12 written objection in the court, as provided by 72-5-304. An 13 effective appointment by a spouse has priority over an 14 appointment by a parent unless--it--is-terminated-by-the 15 denial-of-probate-in-formal-proceedings." 16 Section 19. Section 72-5-303, MCA, is amended to read:

17 "72-5-303. Recognition of appointment of guardian by 18 foreign will. This-state-shall-recognize-a-testamentary An 19 appointment effected by filing the guardian's acceptance 20 under a will probated at-the-testator's in the state of the 21 decedent's domicile in-another-state is effective in this 22 state."

Section 20. Section 72-5-304, MCA, is amended to read:
"72-5-304. Objection by alleged incapacitated person
to testamentary appointment. On Upon the filing with in the

-25-

SB 331

1 court in which the will was probated or, in the case of a 2 nontestamentary nominating instrument, in the court at the 3 place where the incapacitated person resides or is present. 4 of written objection to the appointment by the incapacitated 5 person for whom a testamentary parental or spousal 6 appointment of quardian has been made, the appointment is 7 terminated. An objection does not prevent appointment by the 8 court in a proper proceeding of the testamentary parental or 9 spousal nominee or any other suitable person upon an 10 adjudication of incapacity in proceedings under this-part

11 <u>72-5-305 through 72-5-325.</u>"

12 Section 21. Section 72-5-325, MCA, is amended to read: *72-5-325. Petition for removal or resignation of 13 quardian -- termination of incapacity. (1) On petition of 14 the ward or any person interested in his the ward's welfare, 15 16 the court, after hearing, may remove a guardian and--appoint 17 a--successor if in the best interests of the ward. On petition of the guardian, the court, after hearing, may 18 accept his a resignation and-make-any-other-order-which-may 19 20 be-apprepriate.

(2) An order adjudicating incapacity may specify a
minimum period, not exceeding 1-year 6 months, during which
no a petition for an adjudication that the ward is no longer
incapacitated may not be filed without special leave.
Subject to this that restriction, the ward or any person

-26-

SB 331

SB 331

1 interested in his the welfare of the ward may petition for 2 an order that he the ward is no longer incapacitated and for 3 removal---or---resignation termination of the guardian quardianship. A request for this an order may also be made 4 by-informal-letter informally to the court or-judge, and any 5 person who knowingly interferes with transmission of this 6 kind-of the request to-the-court-or-judge may be adjudged 7 8 guilty of contempt of court.

9 (3) Before--removing--a Upon removal, resignation, or death of the guardian7-accepting-the-resignation-of-a or if 10 11 the guardian--or--ordering--that--a--ward-s-incapacity-has 12 terminated is determined to be incapacitated, the court, 13 following-the-same-procedures-to-safeguard-the-rights-of-the 14 ward--as--apply-to-a-petition-for-appointment-of-a-guardian7 15 may send-a-visitor-to-the-residence-of-the-present appoint a 16 successor guardian and to-the-place-where-the--ward--resides 17 or--is-detained,-to-observe-conditions-and-report-in-writing to-the-court, make any other appropriate order. Before 18 appointing a successor guardian or ordering that a ward's 19 20 incapacity has terminated, the court shall follow the same 21 procedures to safeguard the rights of the ward that apply to 22 a petition for appointment of a guardian." Section 22. Section 72-5-438, MCA, is amended to read: 23 24 *72-5-438. Accounts -- final and intermediate. (1)

25 Unless-waived-by-the--court--every Each conservator must

-27-

1 shall account to the court for his administration of the 2 trust not less than annually for--the--preceding--year--and 3 also, unless the court directs otherwise, upon his resignation or removal, and at other times as the court may 4 direct. A--copy--of--the--account--must--be-served-upon-the 5 б protected-person's-parent;-guardian;-child;--or--sibling--if 7 that-person-has-made-an-effective-request-under-72-5-404- On 8 termination of the protected person's minority or 9 disability, a conservator may shall account to the court or 10 he--may--account to the former formerly protected person or 11 his-personal-representative the successors of that person. 12 (2) Subject to appeal or vacation within the time 13 permitted, an order made-upon, after notice and hearing, 14 allowing an intermediate account of a conservator 15 adjudicates as to his liabilities concerning the matters considered in connection therewith with the hearing; and an 16 17 order made-upon, following notice and hearing, allowing a 18 final account adjudicates as to all previously unsettled 19 liabilities of the conservator to the protected person or 20 his the protected person's successors relating to the 21 conservatorship.

(3) In connection with any account, the court may
require a conservator to submit to a physical check of the
estate in-his-control, to be made in any manner the court
may-specify specifies.

-28-

1 (4)--Upon-failure,-as-determined-by-the-clerk-of-court, 2 of--the--conservator-to-file--an-annual-account,-the-court 3 shall-order-the-conservator-to-file--the--account--and--give 4 good-cause-for-his-failure-to-file-a-timely-account."

Section 23. Section 72-5-435, MCA, is amended to read: 5 6 *72-5-435. Persons dealing with conservator --7 protection. (1) A person who in good faith either assists a 8 conservator or deals with him for value in any transaction 9 other than those requiring a court order as provided in 10 72-5-421 is protected as if the conservator properly 11 exercised the power. The fact that a person knowingly deals 12 with a conservator does not alone require the person to 13 inquire into the existence of a power or the propriety of 14 its exercise, except that restrictions on powers of 15 conservators which are endorsed on letters as provided in 16 72-5-430 are effective as to third persons. A person is not 17 bound to see to the proper application of estate assets paid 18 or delivered to a conservator.

19 (2) The protection here expressed in this section 20 extends to instances---in---which--some any procedural 21 irregularity or jurisdictional defect occurred occurring in 22 proceedings leading to the issuance of letters and is not a 23 substitution for protection provided by comparable 24 provisions of the law relating to commercial transactions or 25 laws simplifying transfers of securities by fiduciaries.

-29-

SB 331

(3) The protection here expressed is not by
 substitution for that provided by comparable provisions of
 the laws relating to commercial transactions and laws
 simplifying transfers of securities by fiduciaries."

5 Section 24. Section 72-5-501, MCA, is amended to read:

"72-5-501, When power of attorney not affected by 6 disability. (1) A durable power of attorney is a power of 7 attorney by which a principal designates another his 8 attorney-in-fact or agent in writing and the writing 9 contains the words, "This power of attorney shall not be 10 affected by subsequent disability or incapacity of the 11 principal or lapse of time" or "This power of attorney shall 12 become effective upon the disability or incapacity of the 13 principal" or similar words showing the intent of the 14 principal that the authority conferred shall be exercisable 15 notwithstanding the principal's subsequent disability or 16 incapacity, and, unless it states a time of termination, 17 notwithstanding the lapse of time since the execution of the 18 instrument. All acts done by the attorney-in-fact or-agent 19 pursuant to the a durable power of attorney during any 20 period of disability or incapacity or-uncertainty-as-to 21 whether of the principal is-dead-or-alive have the same 22 effect and inure to the benefit of and bind the principal 23 and his successors in interest as if the principal were 24 alive, competent, and not disabled. Unless the instrument 25

-30-

SB 331

states a time of termination, the power is exercisable 1 notwithstanding the lapse of time since the execution of the 2 3 instrument.

4 (2) If a conservator thereafter is appointed for the 5 principal, the attorney-in-fact or agent, during the 6 continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has 7 the same power to revoke or amend the power of attorney that 8 the principal would have had if he were not disabled or 9 incapacitated. A principal may nominate, by a durable power 10 of attorney, the conservator of his estate or guardian of 11 his person for consideration by the court if protective 12 proceedings for the principal's person or estate are 13 14 thereafter later commenced. The court shall make its 15 appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good 16 17 cause or disgualification."

Section 25. Section 72-16-301, MCA, is amended to 18 19 read:

"72-16-301. Taxable 20 transfers generally 21 contemplation of death. (1) A tax shall be and is hereby 22 imposed upon any transfer of property, real, personal, or 23 mixed, or any interest therein or income therefrom in trust 24 or otherwise to any person, association, or corporation in 25 the following cases, except as hereinafter provided in this

-31-

SB 331

1 section:

(1)(a) when the transfer is by will or by intestate 2 laws of this state from any person dying possessed of the 3 4 property while a resident of the state;

+2+(b) when a transfer is by will or intestate law of 5 6 property within the state or within its jurisdiction and the 7 decedent was a nonresident of the state at the time of his 8 death; or

(3)(c) when the transfer is of property made by a 9 resident or by a nonresident when such nonresident's 10 property is within the state or within its jurisdiction by 11 deed, grant, bargain, sale, or gift made in contemplation of 12 13 the death of the grantor, yendor, or donor or intended to 14 take effect in possession or enjoyment at or after such 15 death. Every

16 (2) No transfer by-deedy-granty-bargainy-saley-or-gift 17 made within--3--years-prior-to-the before the 3-year period 18 ending on the date of the decedent's death of -- the -- grantor, 19 vendor --- or-donor-of-a-material-part-of-his-estate-or-in-the 20 nature-of-a-final-disposition-or--distribution--thereof--and 21 without--a--fair--consideration--in--money--or-money-s-worth 22 shall_-unless-shown-to-the-contrary, be deemed considered to 23 have been made in contemplation of death, within-the-meaning of-this-section---but--no--such--transfer--by--deed---grant; 24 25 bargainz-salez-or-gift-made-before-such

-32-

el 1 l'anne a star que transmission alla a canton de contraction de servicie de servicie de la servicie de la c

SB 0331/03

| 1 | (3) Every transfer during the 3-year period shall-be |
|----|--|
| 2 | treated-as-havingbeenmadeincontemplationofdeath- |
| 3 | However;nothinghereincontained-shall-be-deemed-to-have |
| 4 | modified;-amended;-or-repealed-the-provisions-of72-16-306. |
| 5 | ending on the date of the decedent's death must be |
| 6 | considered to have been made in contemplation of death, |
| 7 | <u>except:</u> |
| В | (a) no transfer shown to be a bona fide sale for an |
| 9 | adequate and full consideration in money or money's worth |
| 10 | may be considered to be a gift made in contemplation of |
| 11 | death; |
| 12 | (b) if the transfer was a gift to a donee made during |
| 13 | the calendar year and if the decedent was not required by |
| 14 | section 6019 of the internal revenue code to file any gift |
| 15 | tax return for the year with respect to the donee, the |
| 16 | transfer may not be considered to be a gift made in |
| 17 | contemplation of death. |
| 18 | (4) Subsection (3)(B) does not apply to any transfer |
| 19 | with respect to a life insurance policy." |
| 20 | Section 26. Section 72-16-302, MCA, is amended to |
| 21 | read: |
| 22 | *72-16-302. Transfer under power of appointment. |
| 23 | Whenever-any-person-or-corporation-shall-exercise-a (1) To |
| 24 | the extent of any property with respect to which the |
| 25 | decedent has at the time of his death a general power of |
| | -33- SB 331 |

•

.

| 1 | appointment derivedfromany-disposition-of-property-made |
|----|--|
| 2 | either-before-or-after-March-5,-1923, such appointmentwhen |
| 3 | made property shall be deemed considered to have been |
| 4 | transferred in a transfer taxable under the provisions of |
| 5 | parts 1 through 8, in-the-same-manner-as-though-the-property |
| 6 | to-which-such-appointment-relates-belonged-absolutely-to-the |
| 7 | donceofsuchpower-and-had-been-bequeathed-or-devised-by |
| 8 | such-donee-by-willWheneveranypersonorcorporation |
| 9 | possessing-such-a-power-of-appointment-so-derived-shall-omit |
| 10 | orfailtoexercisethesamewithinthe-time-provided |
| 11 | therefor;-in-whole-or-in-part;-a-transfer-taxable-underthe |
| 12 | provisionsofpartslthrough8-shall-be-deemed-to-take. |
| 13 | place-to-the-extent-of-such-omission-or-failure;-in-the-same |
| 14 | mannerasthoughthepersonsorcorporationsthereby |
| 15 | becomingentitledtothepossessionor-enjoyment-of-the |
| 16 | property-to-which-such-power-related-hadsucceededthereto |
| 17 | by-a-will-of-the-donee-of-the-power-failing-to-exercise-such |
| 18 | power7takingeffectatthetimeofsuchomission-or |
| 19 | failure: whether or not the decedent exercised the power of |
| 20 | appointment. |
| 21 | (2) The term "general power of appointment" means a |
| 22 | power that is exercisable in favor of the decedent, his |
| 23 | estate, his creditors, or the creditors of his estate, |
| 24 | except that a power to consume, invade, or appropriate |
| 25 | property for the benefit of the decedent which is limited by |
| | |

-34-

SB 331

SB 331

· 医哈哈勒德的 化化化合物 化化化合物 医结核的 化化合物

| 1 | an ascertainable standard relating to the health, education, |
|----|--|
| 2 | support, or maintenance of the decedent may not be |
| 3 | considered a general power of appointment." |
| 4 | Section 27. Section 72-16-303, MCA, is amended to |
| 5 | read: |
| 6 | "72-16-303. Joint estates transfer by right of |
| 7 | survivorship taxable. (1) Whenever any property7however |
| 8 | acquired;realorpersonal;tangibleorintangible; |
| 9 | includinggovernmentbondsoftheUnitedStates; is |
| 10 | inscribedin-co-ownership-form, held by two or more persons |
| 11 | in joint tenancy orastenantsbytheentiretyoris |
| 12 | deposited-in-any-bank-or-other-depositary-in-the-joint-names |
| 13 | oftwoormorepersonsandpayableto-the-survivor-or |
| 14 | survivors-of-them-upon-the-death-of-one-of-them with right |
| 15 | of survivorship, the right of the survivor or survivors to |
| 16 | the immediate possession or ownership is a taxable transfer. |
| 17 | (2) The tax is uponthetransferofdecedentis |
| 18 | interest;-one-half-or-other-proper-fraction;-as-evidenced-by |
| 19 | thewritteninstrumentcreatingthesame;-as-though-the |
| 20 | property-to-which-the-transfer-relates-belonged-to-the-joint |
| 21 | tenants,-tenants-by-the-entirety,-joint-depositors,holders |
| 22 | inco-ownershipform;-or-persons;-as-tenants-in-common-and |
| 23 | hadbeen7forinheritancetaxpurposes7bequeathedor |
| 24 | devisedtothesurvivor-or-survivors-by-will;-except-such |
| 25 | part-thereof-as-may-be-shown-to-have-originally-belongedto |

-35-

ad he wate is that the other second states the

| 1 | the-survivor-and-never-to-have-belonged-to-the-decedent-when |
|----|--|
| 2 | thesurvivingjointtenantisaspouse-or-issue-of-the |
| 3 | decedentInallothercases,thefullvalueofthe |
| 4 | propertyshallbe-taxable;-except-the-portion-thereof-that |
| 5 | originally-belonged-to-the-survivorandastowhichthe |
| 6 | decedenthad-made-no-contribution;-if-the-decedent-had-made |
| 7 | a-contribution-to-the-ownership-of-the-property;-theamount |
| 8 | of-the-contribution-shall-be-taxable- |
| 9 | (3)Thissectionshall-not-be-construed-to-repeal-or |
| 10 | modify-the-provisions-of-72-16-301(3); on the full value of |
| 11 | the property held as joint tenants with right of |
| 12 | survivorship, except a part of the property as may be shown |
| 13 | to have originally belonged to the survivor or survivors and |
| 14 | never to have been received or acquired by the latter from |
| 15 | the decedent for less than adequate and full consideration |
| 16 | in money or money's worth. When the property or any part of |
| 17 | the property, or part of the consideration with which the |
| 18 | property was acquired, is shown to have been at any time |
| 19 | acquired by the other person from the decedent for less than |
| 20 | an adequate and full consideration in money or monéy's |
| 21 | worth, only the part of the value of the property as is |
| 22 | proportionate to the consideration furnished by the other |
| 23 | person may be excepted. When any property has been acquired |
| 24 | by gift, bequest, devise, or inheritance as joint tenants |
| 25 | with right of survivorship and their interests are not |

SB 0331/03

-36-

Section and and

anan persenta any amin'ny tanàna mandritry dia 2014. Ilay kaominina dia 41554. Ilay kaominina dia mm

and an and marked in the

SB 331

SB 331

1 uncle, or aunt, whether of the whole or half blood or by 2 adoption.

3 (11) "Minor" means an individual who has not attained
4 the age of ±0 21 years.

5 (12) "Person" means an individual, corporation,
6 organization, or other legal entity.

7 (13) "Personal representative" means an executor,
8 administrator, successor personal representative, or special
9 administrator of a decedent's estate or a person legally
10 authorized to perform substantially the same functions.

(14) "State" includes any state of the United States,
 the District of Columbia, the Commonwealth of Puerto Rico,
 and any territory or possession subject to the legislative
 authority of the United States.

15 (15) "Transfer" means a transaction that creates16 custodial property under 72-26-603.

17 (16) "Transferor" means a person who makes a transfer18 under this chapter.

19 (17) "Trust company" means a financial institution,
20 corporation, or other legal entity authorized to exercise
21 general trust powers."

NEW SECTION. Section 30. Requirement that beneficiary
survive insured by 120 hours. A beneficiary in a policy of
life or accident insurance who does not survive the insured
by 120 hours is treated as if he had predeceased the insured

-39-

unless the policy of insurance contains some language
 dealing explicitly with simultaneous deaths or deaths in a
 common disaster or requiring that the beneficiary survive
 the insured for a stated period in order to receive the
 proceeds of the policy.

6 <u>NEW SECTION.</u> Section 31. Extension of authority. Any 7 existing authority to make rules on the subject of the 8 provisions of [this act] is extended to the provisions of 9 [this act].

<u>NEW SECTION.</u> Section 32. Codification instruction.
[Section 29 <u>30</u>] is intended to be codified as an integral
part of Title 33, chapter 20, and the provisions of Title
33, chapter 20, apply to [section 29 30].

-End-

-40-

otherwise specified or fixed by law, the tax is on the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship."

5 Section 28. Section 72-16-906, MCA, is amended to 6 read:

7 "72-16-906. Required filings. The personal 8 representative of the estate of any decedent whose estate is 9 subject to the payment of a United States estate tax shall 10 file duplicates a duplicate of the United States estate tax 11 returns return with the district--court-of-the-county-in 12 which-such-estate-is-being-probated-and-with-the department 13 of revenue. He shall also file with-such-court-and with the 14 department a certificate or other evidence from the internal 15 revenue service showing the amount of the United States 16 estate tax as computed by that-agency the internal revenue 17 service."

18 SECTION 29. SECTION 72-26-502, MCA, IS AMENDED TO 19 READ: 20 "72-26-502. Definitions. As used in this chapter,

21 unless the context requires otherwise, the following 22 definitions apply:

23 (1) "Adult" means an individual who has attained the
24 age of ±8 <u>21</u> years.

25 (2) "Benefit plan" means an employer's plan for the

1 benefit of an employee or partner.

2 (3) "Broker" means a person lawfully engaged in the
3 business of effecting transactions in securities or
4 commodities for the person's own account or for the account
5 of others.

6 (4) "Conservator" means a person appointed or
7 qualified by a court to act as general, limited, or
8 temporary guardian of a minor's property or a person legally
9 authorized to perform substantially the same functions.

10 (5) "Court" means district court.

11 (6) "Custodial property" means:

12 (a) any interest in property transferred to a13 custodian under this chapter; and

14 (b) the income from and proceeds of that interest in 15 property.

16 (7) "Custodian" means a person so designated under
17 72-26-603 or a successor or substitute custodian designated
18 under 72-26-801.

19 (8) "Financial institution" means a bank, trust
 20 company, savings institution, or credit union chartered and
 21 supervised under state or federal law.

22 (9) "Legal representative" means an individual's
23 personal representative or conservator.

24 (10) "Member of the minor's family" means the minor's
25 parent, stepparent, spouse, grandparent, brother, sister,

-38-

-37-

SB 331

SB 331