

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.
FEBRUARY 14, 1989	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.
FEBRUARY 20, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 10, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 14, 1989	SECOND READING, CONCURRED IN.
MARCH 16, 1989	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

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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, 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. ~~From--the--date--of--the--final--decree--of~~
 23 ~~adoption,--the--child--shall--be--entitled--to--inherit--real--and~~
 24 ~~personal--property--from--and--through--the--adoptive--parents--and~~
 25 ~~the--kindred--of--the--adoptive--parents--in--accordance--with--the~~

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~~
 4 ~~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."

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
 17 rules of evidence in courts of general jurisdiction,
 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
 21 determination of death and status are applicable:

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

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 (c)(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
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 the period unless there is sufficient evidence for
18 determining that death occurred earlier."

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 the decedent passes as if the

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

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

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

1 intentional killing, the court may determine by a
2 preponderance of evidence whether the killing was felonious
3 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
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."

19 **Section 4.** Section 72-2-202, MCA, is amended to read:

20 "72-2-202. Share of spouse. The intestate share of the
21 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;

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~~
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 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 ~~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;"~~

Section 6. Section 72-2-516, MCA, is amended to read:

"72-2-516. Nonademption of specific devises in certain cases. ~~{1}--if--specifically--devised--property--is--sold--by--a conservator--or--if--a--condemnation--award--or--insurance--proceeds are--paid--to--a--conservator--as--a--result--of--condemnation,--fire, or--casualty,--the--specific--devisee--has--the--right--to--a pecuniary--devise--equal--to--so--much--of--the--sale--price, condemnation--award,--or--insurance--proceeds--as--remains--in--the estate--and--is--identifiable--at--the--time--of--the--decendent's death. This subsection does not apply if subsequent--to--the sale,--condemnation,--or--casualty--it--is--adjudicated--that--the disability--of--the--testator--has--ceased--and--the--testator survives--the--adjudication--by--1--year. The right of the specific--devisee--under--this--subsection--is--reduced--by--any right--he--has--under--subsection--{2}.~~

~~{2}{1}~~ A specific devisee has the right to the remaining specifically devised property and:

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

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

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

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

result of foreclosure or obtained in lieu of foreclosure of the security for a specifically devised obligation.

(2) If specifically devised property is sold by a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (1)."

Section 7. Section 72-2-517, MCA, is amended to read:

"72-2-517. Changes in devised securities -- distributions prior to death. (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

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

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;

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

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

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

Section 8. Section 72-2-704, MCA, is amended to read:

~~"72-2-704. Effect-of-election-on-benefits-by--will--or statute Surviving spouse -- allowance -- exemptions. {1}-The surviving--spouse's--election-of-his-elective-share-does-not affect--the--share--of--the--surviving--spouse---under---the provisions--of--the--decedent's-will-or-intestate-succession unless-the-surviving-spouse-also-expressly-renounces-in--the petition--for-an-elective-share-the-benefit-of-all-or-any-of the-provisions--If--any--provision--is--so--renounced,--the property--or-other-benefit-which-would-otherwise-have-passed to-the-surviving-spouse-thereunder-is--treated,--subject-to~~

~~contribution--under--72-2-706{2},--as-if-the-surviving-spouse had-predeceased-the-testator.~~

{2} A surviving spouse is entitled to homestead 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:

"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 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

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

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."

6 **Section 10.** Section 72-3-213, MCA, is amended to read:

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

17 (2) The application shall be denied if it indicates
18 that a personal representative has been appointed in another
19 county of this state or, except as provided in subsection
20 (3) below, if it appears that this or another will of the
21 decedent has been the subject of a previous probate order.

22 (3) Informal probate of a will which has been
23 previously probated elsewhere may be granted at any time
24 upon written application by any interested person, together
25 with deposit of an authenticated copy of the will and of the

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

(4) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate which relates to one or more of a known series of testamentary instruments (other than ~~wills and codicils~~ a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, shall be declined."

Section 11. Section 72-3-603, MCA, is amended to read:

"72-3-603. Notice of appointment to heirs and devisees. (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail

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:

~~(i)~~ (i) include the name and address of the personal representative;

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

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

~~(iv)~~ (iv) describe the court where papers relating to the estate are on file.

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

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:

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
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;

18 (b) the decedent had possessory or dispositive 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.

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

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
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:

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
18 prescribed in 72-3-803, the personal representative may mail
19 a notice to any claimant stating that the claim has been
20 disallowed. If, after allowing or disallowing a claim, the
21 personal representative changes his decision concerning the
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

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
 15 disallowance as provided in this section. The personal
 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

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
 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

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

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

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

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

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

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

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

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

(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 cases, residuary property may be converted into cash for distribution~~ any equitable manner."

Section 15. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability.

(1) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing ~~to his conservator or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution~~ in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the

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

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
 12 illness of the decedent, the personal representative,
 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

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--\$77,500--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."

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
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. A--testamentary If both parents are
7 dead or the surviving parent is adjudged incapacitated, a
8 parental appointment by--a--parent 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--both--parents--are--dead--or--the~~
15 ~~surviving--parent--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 ~~it--is--terminated--by--the--denial--of--probate--in--formal~~
23 proceedings.

24 (2) The spouse of a married incapacitated person may
25 appoint by will appoint or other writing signed by the

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
 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
 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."

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

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 guardian 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 72-5-305 through 72-5-325."

12 **Section 21.** Section 72-5-325, MCA, is amended to read:

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

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

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
 4 guardianship. A request for this an order may also be made
 5 ~~by informal letter~~ informally to the court ~~or 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 guilty of contempt of court.

9 (3) ~~Before--removing--a~~ Upon removal, resignation, or
 10 ~~death of the guardian, accepting the resignation of a or if~~
 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 guardian,~~
 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~~
 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 safeguard the rights of the ward that apply to
 22 a petition for appointment of a guardian."

23 **Section 22.** Section 72-5-438, MCA, is amended to read:

24 "72-5-438. Accounts -- final and intermediate. (1)
 25 ~~Unless waived by the--court,--every~~ Each conservator must

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
 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 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
 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
 23 require a conservator to submit to a physical check of the
 24 estate ~~in his control~~, to be made in any manner the court
 25 may specify specifies.

~~(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:

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

(2) The protection here expressed in this section extends to instances---in---which--some any procedural irregularity or jurisdictional defect occurred occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or 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."

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

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

1 states a time of termination, the power is exercisable
 2 notwithstanding the lapse of time since the execution of the
 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
 7 conservator as well as the principal. The conservator has
 8 the same power to revoke or amend the power of attorney that
 9 the principal would have had if he were not disabled or
 10 incapacitated. A principal may nominate, by a durable power
 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
 14 thereafter later commenced. The court shall make its
 15 appointment in accordance with the principal's most recent
 16 nomination in a durable power of attorney except for good
 17 cause or disqualification."

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

20 "72-16-301. Taxable 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

1 section:

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
 22 shall,--unless--shown--to--the--contrary, 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

(3) Every transfer during the 3-year period shall be treated as having been made in contemplation of death. However, nothing herein contained shall be deemed to have modified, amended, or repealed the provisions of 72-16-306, ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) no transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may be considered to be a gift made in contemplation of death;

(b) if the transfer was a gift to a donee made during the calendar year and if the decedent was not required by section 6019 of the internal revenue code to file any gift 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. Whenever any person or corporation shall exercise a (1) To the extent of any property with respect to which the decedent has at the time of his death a general power of

appointment derived from any disposition of property made either before or after March 5, 1923, such appointment when made property shall be deemed considered to have been transferred in a transfer taxable under the provisions of parts 1 through 8, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. Whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of parts 1 through 8 shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure, whether or not the decedent exercised the power of appointment.

(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by

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

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

"72-16-303. Joint estates -- transfer by right of survivorship taxable. (1) Whenever any property, however acquired, -- real -- or -- personal, -- tangible -- or -- intangible, including -- government -- bonds -- of -- the -- United -- States, is inscribed in co-ownership form, held by two or more persons in joint tenancy or -- as -- tenants -- by -- the -- entirety, -- or -- is deposited in any bank or other depository in the joint names of two or more persons -- and -- payable -- to -- the -- survivor -- or survivors -- of -- them -- upon -- the -- death -- of -- one -- of -- them with right of survivorship, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer.

(2) The tax is upon -- the -- transfer -- of -- decedent's interest, -- one -- half -- or -- other -- proper -- fraction, -- as -- evidenced -- by the written instrument creating the same, -- as -- though -- the property to which the transfer relates belonged to the joint tenants, -- tenants -- by -- the -- entirety, -- joint -- depositors, -- holders in co-ownership form, -- or -- persons, -- as -- tenants -- in -- common -- and had -- been, -- for -- inheritance -- tax -- purposes, -- bequeathed -- or devised to the survivor or survivors by will, -- except -- such part -- thereof -- as -- may -- be -- shown -- to -- have -- originally -- belonged -- to

~~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 property was acquired, is shown to have been at any time acquired by the other person from the decedent for less than an adequate and full consideration in money or money's worth, only the part of the value of the property as is proportionate to the consideration furnished by the other person may be excepted. When any property has been acquired by gift, bequest, devise, or inheritance as joint tenants with right of survivorship and their interests are not~~

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."

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

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

NEW SECTION. Section 29. 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 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.

NEW SECTION. Section 30. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 31. Codification instruction. [Section 29] 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].

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 331

INTRODUCED BY BISHOP

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

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

Section 1. Section 40-8-125, MCA, is amended to read:

"40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. ~~From--the--date--of--the--final--decree--of--adoption,--the--child--shall--be--entitled--to--inherit--real--and--personal--property--from--and--through--the--adoptive--parents--and--the--kindred--of--the--adoptive--parents--in--accordance--with--the~~

~~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.~~

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

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72."

Section 2. Section 72-1-108, MCA, is amended to read:

"72-1-108. Evidential rules applicable -- evidence as to death or status. (1) In proceedings under this code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the code.

(2) In addition, the following rules relating to 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

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 ~~(c)~~(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
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 the period unless there is sufficient evidence for
18 determining that death occurred earlier."

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 the decedent passes as if the

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

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

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

1 intentional killing, the court may determine by a
2 preponderance of evidence whether the killing was felonious
3 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
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."

19 **Section 4.** Section 72-2-202, MCA, is amended to read:

20 "72-2-202. Share of spouse. The intestate share of the
21 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;

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~~
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 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 ~~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."~~

Section 6. Section 72-2-516, MCA, is amended to read:

"72-2-516. Nonademption of specific devise in certain cases. ~~{1} If specifically devised property is sold by a conservator or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a pecuniary devise equal to so much of the sale price, condemnation award, or insurance proceeds as remains in the estate and is identifiable at the time of the decedent's death. This subsection does not apply if subsequent to the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).~~

~~{2}(1)~~ A specific devisee has the right to the remaining specifically devised property and:

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

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

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

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

result of foreclosure or obtained in lieu of foreclosure of the security for a specifically devised obligation.

(2) If specifically devised property is sold by a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (1)."

Section 7. Section 72-2-517, MCA, is amended to read:

"72-2-517. Changes in devised securities -- distributions prior to death. (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

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

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~~
17 ~~statute Surviving spouse -- allowance -- exemptions. (1) The~~
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), 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."

6 **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~~
10 ~~appointment proceeding, other than a proceeding to probate a~~
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~~
14 ~~years after the decedent's death, except:~~

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;

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

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

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."

6 **Section 10.** Section 72-3-213, MCA, is amended to read:

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

17 (2) The application shall be denied if it indicates
18 that a personal representative has been appointed in another
19 county of this state or, except as provided in subsection
20 (3) below, if it appears that this or another will of the
21 decedent has been the subject of a previous probate order.

22 (3) Informal probate of a will which has been
23 previously probated elsewhere may be granted at any time
24 upon written application by any interested person, together
25 with deposit of an authenticated copy of the will and of the

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

3 (4) A will from a place which does not provide for
4 probate of a will after death and which is not eligible for
5 probate under 72-3-212 may be probated in this state upon
6 receipt by the clerk of a duly authenticated copy of the
7 will and a duly authenticated certificate of its legal
8 custodian that the copy filed is a true copy and that the
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 codicils~~ a will and one or more
13 codicils to the will), the latest of which does not
14 expressly revoke the earlier, shall be declined."

15 **Section 11.** Section 72-3-603, MCA, is amended to read:

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

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
4 have been adjudicated in a prior formal testacy proceeding
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 (c)(iii) indicate whether bond has been filed; and

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

15 (b) The information must state that the estate is
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
20 petition the court in any matter relating to the estate,
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

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:

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
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;

18 (b) the decedent had possessory or dispositive 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.

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

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
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:

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
18 prescribed in 72-3-803, the personal representative may mail
19 a notice to any claimant stating that the claim has been
20 disallowed. If, after allowing or disallowing a claim, the
21 personal representative changes his decision concerning the
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

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
 15 disallowance as provided in this section. The personal
 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

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 claim--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

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

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

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

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

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

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

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

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

(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-cases--residuary-property-may-be-converted-into-cash-for distribution any equitable manner."

Section 15. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability.

(1) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to---his---conservator---or---any---other---person authorized-by-this-code-or-otherwise-to-give-a-valid-receipt and-discharge-for-the-distribution in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the

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

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--\$77,500--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
 12 illness of the decedent, the personal representative,
 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

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--\$7,500--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."

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
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. A--testamentary If both parents are
7 dead or the surviving parent is adjudged incapacitated, a
8 parental appointment by--a--parent 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--both--parents--are--dead--or--the
15 surviving--parent--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 it--is--terminated--by--the--denial--of--probate--in--formal
23 proceedings.

24 (2) The spouse of a married incapacitated person may
25 appoint by will appoint or other writing signed by the

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

Section 19. Section 72-5-303, MCA, is amended to read:

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

"72-5-325. Petition for removal or resignation of guardian -- termination of incapacity. (1) On petition of the ward or any person interested in his the ward's welfare, the court, after hearing, may remove a guardian and--appoint a--successor if in the best interests of the ward. On petition of the guardian, the court, after hearing, may accept his a resignation and--make-any-other-order-which-may 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 an order that he the ward is no longer incapacitated and for ~~removal--or--resignation~~ termination of the guardian guardianship. A request for this an order may also be made ~~by informal letter~~ informally to the court or judge, and any person who knowingly interferes with transmission of this ~~kind of the~~ request to the court or judge may be adjudged guilty of contempt of court.

(3) ~~Before--removing--a~~ Upon removal, resignation, or death of the guardian, accepting the resignation of a or if the guardian,--or--ordering--that--a--ward's--incapacity--has terminated is determined to be incapacitated, the court, following the same procedures to safeguard the rights of the ward--as--apply to a petition for appointment of a guardian, may send a visitor to the residence of the present appoint a successor guardian and to the place where the--ward--resides or--is detained, to observe conditions and report in writing to the court, make any other appropriate order. Before appointing a successor guardian or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to 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

shall account to the court for ~~his~~ administration of the trust not less than annually for--the--preceding--year--and also, unless the court directs otherwise, upon his resignation or removal, and at other times as the court may direct. ~~A--copy--of--the--account--must--be--served--upon--the protected person's parent, guardian, child,--or--sibling--if that person has made an effective request under 72-5-404.~~ On termination of the protected person's minority or disability, a conservator may shall account to the court or ~~he--may--account~~ to the former formerly protected person or his personal representative the successors of that person.

(2) Subject to appeal or vacation within the time permitted, an order made upon, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to his liabilities concerning the matters considered in connection ~~therewith~~ with the hearing; and an order made upon, following notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or ~~his the protected person's~~ successors relating to the 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.

~~(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:

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

(2) The protection here expressed in this section extends to instances---in---which--some any procedural irregularity or jurisdictional defect occurred occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or 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."

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

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

1 states a time of termination, the power is exercisable
 2 notwithstanding the lapse of time since the execution of the
 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
 7 conservator as well as the principal. The conservator has
 8 the same power to revoke or amend the power of attorney that
 9 the principal would have had if he were not disabled or
 10 incapacitated. A principal may nominate, by a durable power
 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
 14 thereafter later commenced. The court shall make its
 15 appointment in accordance with the principal's most recent
 16 nomination in a durable power of attorney except for good
 17 cause or disqualification."

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

20 "72-16-301. Taxable 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

1 section:

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-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 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 shall7-unless-shown-to-the-contrary7 be deemed considered to
 23 have been made in contemplation of death. within-the-meaning
 24 of-this section7--but--no--such--transfer--by--deed7--grant7
 25 bargain7-sale7-or-gift-made-before-such

(3) Every transfer during the 3-year period shall be treated as having been made in contemplation of death. However, nothing herein contained shall be deemed to have modified, amended, or repeated the provisions of 72-16-306, ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) no transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may be considered to be a gift made in contemplation of death;

(b) if the transfer was a gift to a donee made during the calendar year and if the decedent was not required by section 6019 of the internal revenue code to file any gift 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. Whenever any person or corporation shall exercise a (1) To the extent of any property with respect to which the decedent has at the time of his death a general power of

appointment derived from any disposition of property made either before or after March 5, 1923, such appointment when made property shall be deemed considered to have been transferred in a transfer taxable under the provisions of parts 1 through 8, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. Whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of parts 1 through 8 shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure, whether or not the decedent exercised the power of appointment.

(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by

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 property, 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 depository 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
 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 upon the transfer of decedent's
 18 interest, one-half or other proper fraction, as evidenced by
 19 the written instrument creating the same, 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 form, or persons, as tenants in common, and
 23 had been, for inheritance tax purposes, bequeathed or
 24 devised to the survivor or survivors by will, except such
 25 part thereof as may be shown to have originally belonged to

1 the survivor and never to have belonged to the decedent when
 2 the surviving joint tenant is a spouse or issue of the
 3 decedent, in all other cases, the full value of the
 4 property shall be taxable, except the portion thereof that
 5 originally belonged to the survivor and as to which the
 6 decedent had made no contribution, if the decedent had made
 7 a contribution to the ownership of the property, the amount
 8 of the contribution shall be taxable.

9 {3} This section shall not be construed to repeat 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 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

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."

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

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

SECTION 29. SECTION 72-26-502, MCA, IS AMENDED TO

READ:

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

(1) "Adult" means an individual who has attained the age of 18 21 years.

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

benefit of an employee or partner.

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

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

(5) "Court" means district court.

(6) "Custodial property" means:

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

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

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

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

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

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 ~~18~~ 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.

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
14 authority of the United States.

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

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

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

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

1 unless the policy of insurance contains some language
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
5 proceeds of the policy.

6 **NEW SECTION. 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].

10 **NEW SECTION. Section 32. Codification 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-

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. ~~From--the--date--of--the--final--decree--of~~
23 ~~adoption, the child shall be entitled to inherit real and~~
24 ~~personal property from and through the adoptive parents and~~
25 ~~the kindred of the adoptive parents in accordance with the~~

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

STANDING COMMITTEE REPORT

March 9, 1989

Page 1 of 1

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

Signed: Kelly Addy
Kelly Addy, Vice-Chairman

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

And, that such amendment read:

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

HOUSE

SB 331

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. ~~From--the--date--of--the--final--decree--of~~
23 ~~adoption,--the--child--shall--be--entitled--to--inherit--real--and~~
24 ~~personal--property--from--and--through--the--adoptive--parents--and~~
25 ~~the--kindred--of--the--adoptive--parents--in--accordance--with--the~~

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~~
4 ~~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."

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
17 rules of evidence in courts of general jurisdiction,
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
21 determination of death and status are applicable:

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

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 (e)(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 1/2 years, during which he has not been
14 heard from, and whose absence is not satisfactorily
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 the period unless there is sufficient evidence for
18 determining that death occurred earlier."

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 the decedent passes as if the

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

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

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

1 intentional killing, the court may determine by a
2 preponderance of evidence whether the killing was felonious
3 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
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."

19 **Section 4.** Section 72-2-202, MCA, is amended to read:

20 "72-2-202. Share of spouse. The intestate share of the
21 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;

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~~
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 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 ~~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;"~~

Section 6. Section 72-2-516, MCA, is amended to read:

"72-2-516. Nonademption of specific devises in certain cases. ~~{1} If specifically devised property is sold by a conservator or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a pecuniary devise equal to so much of the sale price, condemnation award, or insurance proceeds as remains in the estate and is identifiable at the time of the decedent's death. This subsection does not apply if subsequent to the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).~~

~~{2}~~ (1) A specific devisee has the right to the remaining specifically devised property and:

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

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

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

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

result of foreclosure or obtained in lieu of foreclosure of the security for a specifically devised obligation.

(2) If specifically devised property is sold by a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (1)."

Section 7. Section 72-2-517, MCA, is amended to read:

"72-2-517. Changes in devised securities -- distributions prior to death. (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

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

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;

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

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

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

Section 8. Section 72-2-704, MCA, is amended to read:

~~"72-2-704. Effect of election on benefits by will or statute Surviving spouse -- allowance -- exemptions. (1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to~~

~~contribution under 72-2-706(2), as if the surviving spouse had predeceased the testator.~~

(2) A surviving spouse is entitled to homestead 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:

"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions. (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 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

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

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."

6 **Section 10.** Section 72-3-213, MCA, is amended to read:

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

17 (2) The application shall be denied if it indicates
18 that a personal representative has been appointed in another
19 county of this state or, except as provided in subsection
20 (3) below, if it appears that this or another will of the
21 decedent has been the subject of a previous probate order.

22 (3) Informal probate of a will which has been
23 previously probated elsewhere may be granted at any time
24 upon written application by any interested person, together
25 with deposit of an authenticated copy of the will and of the

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

3 (4) A will from a place which does not provide for
4 probate of a will after death and which is not eligible for
5 probate under 72-3-212 may be probated in this state upon
6 receipt by the clerk of a duly authenticated copy of the
7 will and a duly authenticated certificate of its legal
8 custodian that the copy filed is a true copy and that the
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 codicils~~ a will and one or more
13 codicils to the will), the latest of which does not
14 expressly revoke the earlier, shall be declined."

15 **Section 11.** Section 72-3-603, MCA, is amended to read:

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

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
4 have been adjudicated in a prior formal testacy proceeding
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 {c}{iii} indicate whether bond has been filed; and

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

15 (b) The information must state that the estate is
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
20 petition the court in any matter relating to the estate,
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

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:

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
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;

18 (b) the decedent had possessory or dispositive 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.

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

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
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:

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
18 prescribed in 72-3-803, the personal representative may mail
19 a notice to any claimant stating that the claim has been
20 disallowed. If, after allowing or disallowing a claim, the
21 personal representative changes his decision concerning the
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

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
 15 disallowance as provided in this section. The personal
 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

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
 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

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

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

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

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

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

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

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

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

(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 cases, residuary property may be converted into cash for distribution~~ any equitable manner."

Section 15. Section 72-3-917, MCA, is amended to read:

"72-3-917. Distribution to person under disability.

(1) A personal representative may discharge his obligation to distribute to any person under legal disability by distributing ~~to his conservator or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution~~ in a manner expressly provided in the will.

(2) Unless contrary to an express provision in the

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

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
 12 illness of the decedent, the personal representative,
 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

the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, ~~the--value--of--the--net--distributable--estate~~ did not exceed \$7,500 or the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the 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

(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.

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

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

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

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

(2) The spouse of a married incapacitated person may appoint by will appoint or other writing signed by the

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
 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
 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."

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

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 guardian 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 72-5-305 through 72-5-325."

12 **Section 21.** Section 72-5-325, MCA, is amended to read:

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

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

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
 4 guardianship. A request for this an order may also be made
 5 ~~by-informal-letter~~ informally to the court or 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 guilty of contempt of court.

9 (3) ~~Before--removing--a~~ Upon removal, resignation, or
 10 death of the guardian--accepting-the-resignation-of-a or if
 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-guardian,~~
 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~~
 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 safeguard the rights of the ward that apply to
 22 a petition for appointment of a guardian."

23 **Section 22.** Section 72-5-438, MCA, is amended to read:

24 "72-5-438. Accounts -- final and intermediate. (1)
 25 ~~Unless-waived-by-the--court,-every~~ Each conservator must

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
 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-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
 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
 23 require a conservator to submit to a physical check of the
 24 estate ~~in-his-control~~, to be made in any manner the court
 25 may-specify specifies.

~~(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:

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

(2) The protection here expressed in this section extends to instances in which some any procedural irregularity or jurisdictional defect occurred occurring in proceedings leading to the issuance of letters and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or 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."

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

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

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 principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

Section 25. Section 72-16-301, MCA, is amended to 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

section:

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

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

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

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

(3) Every transfer during the 3-year period shall be treated as having been made in contemplation of death. However, nothing herein contained shall be deemed to have modified, amended, or repeated the provisions of 72-16-306 ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:

(a) no transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may be considered to be a gift made in contemplation of death;

(b) if the transfer was a gift to a donee made during the calendar year and if the decedent was not required by section 6019 of the internal revenue code to file any gift 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)(B) 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. Whenever any person or corporation shall exercise a (1) To the extent of any property with respect to which the decedent has at the time of his death a general power of

appointment derived from any disposition of property made either before or after March 5, 1923, such appointment when made property shall be deemed considered to have been transferred in a transfer taxable under the provisions of parts 1 through 8, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will. Whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of parts 1 through 8 shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure, whether or not the decedent exercised the power of appointment.

(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by

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 property, 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 depository 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
 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 upon the transfer of decedent's
 18 interest, one-half or other proper fraction, as evidenced by
 19 the written instrument creating the same, 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 form, or persons, as tenants in common and
 23 had been, for inheritance tax purposes, bequeathed or
 24 devised to the survivor or survivors by will, except such
 25 part thereof as may be shown to have originally belonged to

1 the survivor and never to have belonged to the decedent when
 2 the surviving joint tenant is a spouse or issue of the
 3 decedent. In all other cases, the full value of the
 4 property shall be taxable, except the portion thereof that
 5 originally belonged to the survivor and as to which the
 6 decedent had made no contribution; if the decedent had made
 7 a contribution to the ownership of the property, the amount
 8 of the contribution shall be taxable.

9 {3} This section shall 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 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

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 ~~18~~ 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.

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
14 authority of the United States.

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

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

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

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

1 unless the policy of insurance contains some language
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
5 proceeds of the policy.

6 **NEW SECTION. 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].

10 **NEW SECTION. Section 32.** Codification 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-

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."

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

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

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

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

(1) "Adult" means an individual who has attained the age of ~~18~~ 21 years.

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

benefit of an employee or partner.

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

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

(5) "Court" means district court.

(6) "Custodial property" means:

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

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

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

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

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