

SENATE BILL NO. 119
INTRODUCED BY HALLIGAN

IN THE SENATE

JANUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 19, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
	ON MOTION, RULES SUSPENDED TO ALLOW BILL TO BE PLACED ON 2ND & 3RD READING TOMORROW.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 87; NOES, 12.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993	SECOND READING, AMENDMENTS
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APRIL 5, 1993

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 119
2 INTRODUCED BY Holligan
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW CONCERNING ESTATES, WILLS, AND DONATIVE TRANSFERS;
6 REVISING THE ELECTIVE SHARE OF A SURVIVING SPOUSE;
7 INCREASING EXEMPT PROPERTY; REVISING THE LAW CONCERNING
8 WRITINGS INTENDED AS WILLS; REVISING THE RULES OF
9 CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING
10 INSTRUMENTS; REVISING THE LAW CONCERNING PROBATE AND
11 NONPROBATE TRANSFERS; PROVIDING FOR HONORARY TRUSTS AND
12 TRUSTS FOR PETS; PROVIDING FOR NONPROBATE TRANSFERS ON
13 DEATH; PROVIDING FOR PAYABLE-ON-DEATH DESIGNATIONS ON
14 ACCOUNTS IN FINANCIAL INSTITUTIONS; PROVIDING FOR
15 TRANSFER-ON-DEATH REGISTRATION FOR SECURITIES; REVISING THE
16 STATUTORY FORM POWER OF ATTORNEY; AMENDING SECTIONS 3-7-402,
17 70-1-703, 72-1-103, 72-1-108, 72-2-101, 72-2-102, 72-2-103,
18 72-2-104, 72-2-105, 72-2-201, 72-2-202, 72-2-203, 72-2-204,
19 72-2-205, 72-2-206, 72-2-207, 72-2-210, 72-2-212, 72-2-213,
20 72-2-214, 72-2-301, 72-2-302, 72-2-304, 72-2-305, 72-2-306,
21 72-2-311, 72-2-312, 72-2-313, 72-2-314, 72-2-321, 72-2-322,
22 72-2-323, 72-2-401, 72-2-402, 72-2-502, 72-2-504, 72-2-512,
23 72-2-513, 72-2-514, 72-2-515, 72-2-516, 72-2-517, 72-2-518,
24 72-2-519, 72-2-601, 72-2-602, 72-2-702, 72-2-703, 72-2-704,
25 72-2-705, 72-2-706, 72-2-707, 72-2-801, 72-2-802, 72-2-803,

1 72-2-804, 72-3-212, 72-3-213, 72-3-222, 72-11-101,
2 72-11-102, 72-11-103, 72-11-104, 72-12-206, 72-16-313,
3 72-31-201, 72-31-202, 72-31-203, 72-31-204, 72-31-205,
4 72-31-206, 72-31-207, 72-31-208, 72-31-211, 72-31-212, AND
5 72-36-206, MCA; REPEALING SECTIONS 32-1-442, 32-1-443,
6 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501,
7 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103,
8 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108,
9 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113,
10 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105,
11 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205,
12 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305,
13 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310,
14 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315,
15 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320,
16 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333,
17 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204,
18 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502,
19 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604,
20 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704,
21 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001,
22 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102,
23 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301,
24 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, AND
25 72-31-216, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY

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-2-

SB 119
INTRODUCED BILL

DATE."

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

Section 1. Section 3-7-402, MCA, is amended to read:

"3-7-402. Disqualification of water judge or master.

(1) A water judge may withdraw or may disqualify himself--or the water master in any proceeding or pertinent portion thereof of a proceeding in which his the judge's or the water master's impartiality might reasonably be questioned.

(2) A water judge may also withdraw or may disqualify himself-or the water master in the following circumstances:

(a) if he the judge or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice he the judge or the water master served as a lawyer in the matter in controversy or a lawyer with whom he the judge or the water master previously practiced law served during such the association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if he the judge or the water master has served in governmental employment and in such that capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if he the judge or the water master knows that he the judge or the water master, individually or as a fiduciary, or his the judge's or the water master's spouse or minor child residing in his the judge's or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if he the judge or the water master or his the judge's or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through ~~72-11-105~~ 72-11-104) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should ~~inform-himself~~ be informed about his the judge's and the water master's personal and fiduciary financial interests and make a reasonable effort to ~~inform-himself~~ be informed about the personal financial interests of his the judge's and the water master's spouse

1 and minor children residing in his the judge's or the water
2 master's respective household."

3 **Section 2.** Section 70-1-703, MCA, is amended to read:

4 "70-1-703. Conveyances to an estate. Unless a contrary
5 intention appears, a devise, as defined in 72-1-103~~(b)~~, or
6 an inter vivos conveyance of a property interest to the
7 estate of a named or otherwise designated person passes the
8 interest as if the interest had been owned by that person.
9 The interest may pass to the heirs of that person, may be
10 used to satisfy devises made in his that person's will, or
11 may be used to satisfy claims for debts or taxes."

12 **Section 3.** Section 72-1-103, MCA, is amended to read:

13 "72-1-103. General definitions. Subject to additional
14 definitions contained in the subsequent chapters which that
15 are applicable to specific chapters, or parts, or sections
16 and unless the context otherwise requires, in this-code
17 chapters 1 through 5, the following definitions apply:

18 (1) "Agent" includes an attorney-in-fact under a
19 lasting or nondurable power of attorney, an individual
20 authorized to make decisions concerning another's health
21 care, and an individual authorized to make decisions for
22 another under a natural death act.

23 (2) "Application" means a written request to the
24 clerk for an order of informal probate or appointment under
25 chapter 3, part 2.

1 (3) "Beneficiary", as it relates to:

2 (a) a trust beneficiaries beneficiary, includes a
3 person who has any present or future interest, vested or
4 contingent, and also includes the owner of an interest by
5 assignment or other transfer; and,

6 (b) as--it--relates-to a charitable trust, includes any
7 person entitled to enforce the trust;

8 (c) a beneficiary of a beneficiary designation, refers
9 to a beneficiary of:

10 (i) an insurance or annuity policy, an account with POD
11 designation, or a security registered in beneficiary form
12 (TOD);

13 (ii) a pension, profit-sharing, retirement, or similar
14 benefit plan; or

15 (iii) any other nonprobate transfer at death; and

16 (d) a beneficiary designated in a governing instrument,
17 includes a grantee of a deed; a devisee; a trust
18 beneficiary; a beneficiary of a beneficiary designation; a
19 donee, appointee, or taker in default of a power of
20 appointment; and a person in whose favor a power of attorney
21 or a power held in any individual, fiduciary, or
22 representative capacity is exercised.

23 (4) "Beneficiary designation" refers to a governing
24 instrument naming a beneficiary of:

25 (i) an insurance or annuity policy, an account with POD

1 designation, or a security registered in beneficiary form
 2 (TOD);
 3 (ii) a pension, profit-sharing, retirement, or similar
 4 benefit plan; or
 5 (iii) any other nonprobate transfer at death.
 6 {3}(5) "Child" includes any an individual entitled to
 7 take as a child under this-code chapters 1 through 5 by
 8 intestate succession from the parent whose relationship is
 9 involved and excludes a person who is only a stepchild, a
 10 foster child, a grandchild, or any more remote descendant.
 11 {4}(6) "Claims", in respect to estates of decedents and
 12 protected persons, includes liabilities of the decedent or
 13 protected person, whether arising in contract, in tort, or
 14 otherwise, and liabilities of the estate which that arise at
 15 or after the death of the decedent or after the appointment
 16 of a conservator, including funeral expenses and expenses of
 17 administration. The term does not include estate or
 18 inheritance taxes, or demands or disputes regarding title of
 19 a decedent or protected person to specific assets alleged to
 20 be included in the estate.
 21 {5}(7) "Clerk" or "clerk of court" means the clerk of
 22 the district court.
 23 {6}(8) "Conservator" means a person who is appointed by
 24 a court to manage the estate of a protected person.
 25 {7}(9) "Court" means the district court in this state

1 having jurisdiction in matters relating to the affairs of
 2 decedents. This-court-in-this-state--is--known--as--district
 3 court.
 4 {10} "Descendant" of an individual means all of the
 5 individual's descendants of all generations, with the
 6 relationship of parent and child at each generation being
 7 determined by the definition of child and parent contained
 8 in this section.
 9 {8}(11) "Devise" when used as a noun means a
 10 testamentary disposition of real or personal property and
 11 when used as a verb means to dispose of real or personal
 12 property by will.
 13 {9}(12) "Devisee" means any a person designated in a
 14 will to receive a devise. In For purposes of chapter 3, in
 15 the case of a devise to an existing trust or trustee or to a
 16 trustee on trust described by will, the trust or trustee is
 17 the devisee and the beneficiaries are not devisees.
 18 {10}(13) "Disability" means cause for a protective order
 19 as described by 72-5-409.
 20 {11}(14) "Distributee" means any person who has received
 21 property of a decedent from his the decedent's personal
 22 representative other than as a creditor or purchaser. A
 23 testamentary trustee is a distributee only to the extent of
 24 distributed assets or increment thereto remaining in his the
 25 trustee's hands. A beneficiary of a testamentary trust to

whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

{12}(15) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

{13}(16) "Exempt property" means that property of a decedent's estate which that is described in 72-2-802.

{14}(17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

{15}(18) "Foreign personal representative" means a personal representative of appointed by another jurisdiction.

{16}(19) "Formal proceedings" means those proceedings conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

{17}(21) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

{18}(22) "Heirs", except as controlled by [section 70], means those persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

{19}(23) "Incapacitated person" is-as--defined has the meaning provided in 72-5-101.

{20}(24) "Informal proceedings" means those proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

{21}(25) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may-be-affected-by-the-proceeding. It The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

1 ~~{22}~~{26} "Issue" of a person means ~~all--his--lineal~~
2 ~~descendants-of-all-generations--with--the--relationship--of~~
3 ~~parent--and-child-at-each-generation-being-determined-by-the~~
4 ~~definitions-of-child-and-parent-contained--in--this--code~~ a
5 ~~descendant as defined in subsection (10).~~

6 {27} "Joint tenants with the right of survivorship"
7 includes co-owners of property held under circumstances that
8 entitle one or more to the whole of the property on the
9 death of the other or others but excludes forms of
10 co-ownership registration in which the underlying ownership
11 of each party is in proportion to that party's contribution.

12 ~~{23}~~{28} "Lease" includes an oil, gas, coal, or other
13 mineral lease.

14 ~~{24}~~{29} "Letters" includes letters testamentary,
15 letters of guardianship, letters of administration, and
16 letters of conservatorship.

17 ~~{25}~~{30} "Minor" means a person who is under 18 years of
18 age.

19 ~~{26}~~{31} "Mortgage" means any conveyance, agreement, or
20 arrangement in which property is used as security.

21 ~~{27}~~{32} "Nonresident decedent" means a decedent who was
22 domiciled in another jurisdiction at the time of his death.

23 ~~{28}~~{33} "Organization" includes means a corporation,
24 ~~government-or-governmental-subdivision-or--agency,~~ business
25 trust, estate, trust, partnership, joint venture, or

1 association, ~~two-or-more-persons-having-a--joint--or--common~~
2 interest government or governmental subdivision or agency,
3 or any other legal or commercial entity.

4 ~~{29}~~{34} "Parent" includes any person entitled to take,
5 or who would be entitled to take if the child died without a
6 will, as a parent under this-code chapters 1 through 5 by
7 intestate succession from the child whose relationship is in
8 question and excludes any person who is only a stepparent,
9 foster parent, or grandparent.

10 {35} "Payor" means a trustee, insurer, business entity,
11 employer, government, governmental agency or subdivision, or
12 any other person authorized or obligated by law or a
13 governing instrument to make payments.

14 ~~{30}~~{36} "Person" means an individual, a corporation, an
15 organization, or other legal entity.

16 ~~{31}~~{37} "Personal representative" includes executor,
17 administrator, successor personal representative, special
18 administrator, and persons who perform substantially the
19 same function under the law governing their status. "General
20 personal representative" excludes special administrator.

21 ~~{32}~~{38} "Petition" means a written request to the court
22 for an order after notice.

23 ~~{33}~~{39} "Proceeding" includes action at law and suit in
24 equity.

25 ~~{34}~~{40} "Property" includes both real and personal

1 property or any interest therein in that property and means
2 anything that may be the subject of ownership.

3 {35}{41} "Protected person" ~~is--as--defined~~ has the
4 meaning provided in 72-5-101.

5 {36}{42} "Protective proceeding" ~~is-as-defined~~ has the
6 meaning provided in 72-5-101.

7 {37}{43} "Securities Security" includes any note;
8 stock; treasury stock; bond; debenture; evidence of
9 indebtedness; certificate of interest or participation in
10 an oil, gas, or mining title or lease or in payments out of
11 production under such a title or lease; collateral trust
12 certificate; transferable share; voting trust certificate;
13 or, in general, any interest or instrument commonly known as
14 a security; or any certificate of interest or
15 participation; or any temporary or interim certificate,
16 receipt, or certificate of deposit for, or any warrant or
17 right to subscribe to or purchase any of the foregoing.

18 {38}{44} "Settlement", in reference to a decedent's
19 estate, includes the full process of administration,
20 distribution, and closing.

21 {39}{45} "Special administrator" means a personal
22 representative as described by chapter 3, part 7.

23 {40}{46} "State" ~~includes--any~~ means a state of the
24 United States, the District of Columbia, the Commonwealth of
25 Puerto Rico, and or any territory or insular possession

1 subject to the ~~legislative--authority~~ jurisdiction of the
2 United States.

3 {41}{47} "Successor personal representative" means a
4 personal representative, other than a special administrator,
5 who is appointed to succeed a previously appointed personal
6 representative.

7 {42}{48} "Successors" means ~~those~~ persons, other than
8 creditors, who are entitled to property of a decedent under
9 his the decedent's will or this-code chapters 1 through 5.

10 {43}{49} "Supervised administration" refers to the
11 proceedings described in chapter 3, part 4.

12 {50} "Survive", except for purposes of [sections 103
13 through 112], means that an individual has neither
14 predeceased an event, including the death of another
15 individual, nor is considered to have predeceased an event
16 under 72-2-205 or [section 62]. The term includes its
17 derivatives, such as "survives", "survived", "survivor", and
18 "surviving".

19 {44}{51} "Testacy proceeding" means a proceeding to
20 establish a will or determine intestacy.

21 {52} "Testator" includes an individual of either sex.

22 {45}{53} "Trust" includes any an express trust, private
23 or charitable, with additions thereto, wherever and however
24 created. It The term also includes a trust created or
25 determined by judgment or decree under which the trust is to

be administered in the manner of an express trust. "Trust" ~~The term~~ excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in [sections 83 through 112]; custodial arrangements pursuant to chapter 26 of this title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting trusts; security arrangements; liquidation trusts; and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

{46}{54} "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

{47}{55} "Ward" ~~is--as--defined~~ means an individual described in 72-5-101.

{48}{56} "Will" includes codicil and any testamentary instrument which ~~that~~ merely appoints an executor, or revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 4. Section 72-1-108, MCA, is amended to read:

"72-1-108. ~~Evidential-rules-applicable-----evidence--as~~

to Evidence of death or status. {1} In proceedings under this code addition to the rules of evidence in courts of general jurisdiction, ~~including-any-relating-to-simultaneous deaths--are-applicable-unless-specifically-displaced-by-the code;~~ the following rules relating to a determination of death or status apply:

{2}{1} ~~In--addition--the--following--rules--relating-to determination-of-death-and--status--are--applicable:~~ Death occurs when an individual is determined to be dead under 50-22-101.

{a}{2} 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 evidence of the fact, place, date, and time of death and the identity of the decedent.

{b}{3} A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that ~~a--person~~ an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

{c}{4} In the absence of prima facie evidence of death under subsection (2){a} or {2}{b} {3}, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

~~(d)~~(5) A--person An individual whose death is not established under subsections (2)~~(a)~~ through ~~(2)~~~~(c)~~ (4), who is absent for a continuous period of 5 years, during which ~~he the individual~~ has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. ~~His~~ The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours."

Section 5. Section 72-2-101, MCA, is amended to read:

"72-2-101. Renunciation--of--succession Disclaimer of property interests. (1) (a) A person or his---personat representative--or the representative of an-incapacitated-or protected a person who--is--an-heir,---devisee,---person succeeding---to--a--renounced--interest,---donee,---appointee, grantee,---recipient,---or-beneficiary-under-a--trust--or--other nontestamentary--instrument--or-under-a-power-of-appointment

exercised-by-a-testamentary-or--nontestamentary--instrument, surviving---joint---owner--or--surviving--joint--tenant,--or beneficiary--or--owner--of--an--insurance--contract--or--any incident-of-ownership--therein--may--renounce, to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part,--the-right-of-succession-to-any-property-or interest--therein,--including-a-future-interest, by delivering or filing a written renunciation disclaimer under this section. The-instrument-shall:

(a)--describe-the-property-or-interest-renounced;

(b)--be-signed-by-the-person-renouncing;--and

(c)--declare-the-renunciation-and-the-extent-thereof.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose

1 identity or address is unknown; and an agent acting on
 2 behalf of the person within the authority of a power of
 3 attorney. The representative of a person may rely on a
 4 general family benefit accruing to the living members of the
 5 represented person's family as a basis for making a
 6 disclaimer.

7 (2) The court may direct or permit a trustee under a
 8 testamentary or nontestamentary instrument to renounce,
 9 modify, amend, or otherwise deviate from any restriction on
 10 or power of administration, management, or allocation of
 11 benefit upon finding that such restriction on the exercise
 12 of the power may defeat or impair the accomplishment of the
 13 purposes of the trust, whether by the imposition of tax, the
 14 allocation of beneficial interest inconsistent with such
 15 purposes, or by other reason. Such authority shall be
 16 exercised, after hearing and upon notice to all known
 17 persons beneficially interested in such trust, in the manner
 18 directed by the court. The following rules govern the time
 19 when a disclaimer must be filed or delivered:

20 (a) If the property or interest has devolved to the
 21 disclaimant under a testamentary instrument or by the laws
 22 of intestacy, the disclaimer must be filed, if of a present
 23 interest, not later than 9 months after the death of the
 24 deceased owner or deceased donee of a power of appointment
 25 and, if of a future interest, not later than 9 months after

1 the event determining that the taker of the property or
 2 interest is finally ascertained and the taker's interest is
 3 indefeasibly vested. The disclaimer must be filed in the
 4 court of the county in which proceedings for the
 5 administration of the estate of the deceased owner or
 6 deceased donee of the power have been commenced. A copy of
 7 the disclaimer must be delivered in person or mailed by
 8 certified mail, return receipt requested, to any personal
 9 representative or other fiduciary of the decedent or donee
 10 of the power.

11 (b) If a property or interest has devolved to the
 12 disclaimant under a nontestamentary instrument or contract,
 13 the disclaimer must be delivered or filed, if of a present
 14 interest, not later than 9 months after the effective date
 15 of the nontestamentary instrument or contract and, if of a
 16 future interest, not later than 9 months after the event
 17 determining that the taker of the property or interest is
 18 finally ascertained and the taker's interest is indefeasibly
 19 vested. If the person entitled to disclaim does not know of
 20 the existence of the interest, the disclaimer must be
 21 delivered or filed not later than 9 months after the person
 22 learns of the existence of the interest. The effective date
 23 of a revocable instrument or contract is the date on which
 24 the maker no longer has power to revoke it or to transfer to
 25 the maker or another the entire legal and equitable

1 ownership of the interest. The disclaimer or a copy of the
 2 disclaimer must be delivered in person or mailed by
 3 certified mail, return receipt requested, to the person who
 4 has legal title to or possession of the interest disclaimed.

5 (c) A surviving joint tenant may disclaim as a separate
 6 interest any property or interest in property devolving to
 7 the joint tenant by right of survivorship. A surviving joint
 8 tenant may disclaim the entire interest in any property or
 9 interest in the property that is the subject of a joint
 10 tenancy devolving to the joint tenant if the joint tenancy
 11 was created by act of a deceased joint tenant, the survivor
 12 did not join in creating the joint tenancy, and the survivor
 13 has not accepted a benefit under it.

14 {3}(d) The instrument of renunciation must be received
 15 by the transferor of the interest, his legal representative,
 16 the personal representative of a deceased transferor, the
 17 trustee of any trust in which the interest being renounced
 18 exists, or the holder of the legal title to the property to
 19 which the interest relates. To be effective for purposes of
 20 determining inheritance and estate taxes, the instrument
 21 must be received not later than the date which is 9 months
 22 after the later of the date on which the transfer creating
 23 the interest in a person is made or the date on which the
 24 person attains 18 years of age. If the circumstances that
 25 establish the right of a person to renounce an interest

1 arise as a result of the death of an individual, the
 2 instrument must also be filed in the court of the county
 3 where proceedings concerning the decedent's estate are
 4 pending or where they would be pending if commenced. If real
 5 property or an interest therein in the property is renounced
 6 disclaimed, a copy of the renunciation disclaimer may be
 7 recorded in the office of the county clerk and recorder of
 8 the county in which the real estate is situated property or
 9 interest disclaimed is located. No person entitled to a copy
 10 of the instrument is liable for any proper distribution or
 11 disposition made without actual notice of the renunciation,
 12 and no person making a proper distribution or disposition in
 13 reliance upon the renunciation is liable for any such
 14 distribution or disposition in the absence of actual notice
 15 that an action has been instituted contesting the validity
 16 of the renunciation.

17 (3) The disclaimer must:

18 (a) describe the property or interest disclaimed;

19 (b) declare the disclaimer and extent of the
 20 disclaimer; and

21 (c) be signed by the disclaimant.

22 (4) The following are the effects of a disclaimer:

23 (a) Unless the transferor of the interest has otherwise
 24 provided, the If property or an interest renounced in
 25 property devolves to a disclaimant under a testamentary

1 instrument, under a power of appointment exercised by a
 2 testamentary instrument, or under the laws of intestacy and
 3 the decedent has not provided for another disposition of
 4 that interest, should it be disclaimed, or of disclaimed or
 5 failed interests in general, the disclaimed interest
 6 devolves as though if the person-renouncing disclaimant had
 7 predeceased the decedent or, but if the appointment was
 8 exercised by a by law or under the testamentary instrument,
 9 as though the person renouncing had predeceased the donee of
 10 the power the descendants of the disclaimant would take the
 11 disclaimant's share by representation were the disclaimant
 12 to predecease the decedent, the disclaimed interest passes
 13 by representation to the descendants of the disclaimant who
 14 survive the decedent. A future interest that takes effect in
 15 possession or enjoyment after the termination of the estate
 16 or interest renounced disclaimed takes effect as though if
 17 the person--renouncing disclaimant had predeceased the
 18 decedent or the--donee--of--the--power. A renunciation
 19 disclaimer relates back for all purposes to the date of the
 20 death of the decedent or the--donee--of--the--power.

21 (b) If property or an interest in property devolves to
 22 a disclaimant under a nontestamentary instrument or contract
 23 and the instrument or contract does not provide for another
 24 disposition of that interest, should it be disclaimed, or of
 25 disclaimed or failed interests in general, the disclaimed

1 interest devolves as if the disclaimant had predeceased the
 2 effective date of the instrument or contract, but if by law
 3 or under the nontestamentary instrument or contract the
 4 descendants of the disclaimant would take the disclaimant's
 5 share by representation were the disclaimant to predecease
 6 the effective date of the instrument, the disclaimed
 7 interest passes by representation to the descendants of the
 8 disclaimant who survive the effective date of the
 9 instrument. A disclaimer relates back for all purposes to
 10 that date. A future interest that takes effect in possession
 11 or enjoyment at or after the termination of the disclaimed
 12 interest takes effect as if the disclaimant had died before
 13 the effective date of the instrument or contract that
 14 transferred the disclaimed interest.

15 (c) The disclaimer or the written waiver of the right
 16 to disclaim is binding upon the disclaimant or person
 17 waiving and on all persons claiming through or under either
 18 of them.

19 (5) (a) The right to renounce disclaim property or an
 20 interest therein in the property is barred by:

21 (i) (a) an assignment, conveyance, encumbrance, pledge,
 22 or transfer of the property or interest, or a contract
 23 therefor;

24 (ii) (b) a written waiver of the right to renounce
 25 disclaim;

~~{iii}~~(c) an acceptance of the property or interest or benefit thereunder under it; or

~~{iv}~~(d) a sale of the property or interest under judicial sale made before the ~~renunciation--is-effected~~ disclaimer is made.

~~{b}--The-right-to-renounce--exists--notwithstanding--any limitation--on--the-interest-of-the-person-renouncing-in-the nature-of-a-spendthrift-provision-or-similar-restriction--~~

~~{c}--A-renunciation-or-a-written-waiver-of-the-right--to renounce--is--binding--upon--the-person-renouncing-or-person waiving-and-all-persons-claiming-through-or-under-him--~~

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein in property under any other statute.

(7) ~~Within--30--days-of-receipt-of-a-written-instrument of-renunciation-by--the--transferor--of--the--interest--the renouncer,---his---legal---representative,---the---personal representative-of-the-decedent,---the-trustee-of-any-trust--in which--the-interest-being-renounced-exists,---or-the-holder-of the-legal-title--to--the-property--to--which--the--interest relates,---as--the--case--may--be,---shall-attempt-to-notify-in writing-those-persons-who-are-known--or--ascertainable--with reasonable---diligence---who-are--recipients--or--potential recipients-of-the-renounced-interest-of-the-renunciation-and the-interest--or--potential--interest--such--recipient--will~~

~~receive-as-a-result-of-the-renunciation--~~

~~{8}--Any~~ An interest in property which that exists on ~~July-17-1983, may be renounced after--October--17--1983,--as provided--in--this--section--An-interest-that-has-arisen-prior to-July-17--1983,--in--any--person--other--than--the--person renouncing--is--not--destroyed-or-diminished-by-any-action-of the--person--renouncing--taken--under--this---section [the effective date of this act] as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after [the effective date of this act]."~~

Section 6. Section 72-2-102, MCA, is amended to read:

"72-2-102. Waiver of right to elect and of other rights by spouse. (1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure surviving spouse.

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(a) the surviving spouse did not execute the waiver voluntarily; or

1 (b) the waiver was unconscionable when it was executed
 2 and, before execution of the waiver, the surviving spouse:

3 (i) was not provided a fair and reasonable disclosure
 4 of the property or financial obligations of the decedent;

5 (ii) did not voluntarily and expressly waive, in
 6 writing, any right to disclosure of the property or
 7 financial obligations of the decedent beyond the disclosure
 8 provided; and

9 (iii) did not have or reasonably could not have had an
 10 adequate knowledge of the property or financial obligations
 11 of the decedent.

12 (3) An issue of unconscionability of a waiver is for
 13 decision by the court as a matter of law.

14 (4) Unless it provides to the contrary, a waiver of
 15 "all rights", (or equivalent language), in the property or
 16 estate of a present or prospective spouse or a complete
 17 property settlement entered into after or in anticipation of
 18 separation or divorce is a waiver of all rights to elective
 19 share, homestead allowance, exempt property, and family
 20 allowance by each spouse in the property of the other and a
 21 renunciation by each of all benefits which that would
 22 otherwise pass to him that spouse from the other by
 23 intestate succession or by virtue of the-provisions-of any
 24 will executed before the waiver or property settlement."

25 **Section 7.** Section 72-2-103, MCA, is amended to read:

1 **"72-2-103. Effect of divorce, annulment, or decree of**
 2 **separation decree. (1) A--person An individual who is**
 3 **divorced from the decedent or whose marriage to the decedent**
 4 **has been annulled is not a surviving spouse unless by virtue**
 5 **of a subsequent marriage he the individual is married to the**
 6 **decedent at the time of death. A decree of separation which**
 7 **that does not terminate the status of husband and wife is**
 8 **not a divorce for purposes of this section.**

9 **(2) For purposes of chapter 2, parts 2, 6, 7, and 8 and**
 10 **of 72-3-501 through 72-3-508, a surviving spouse does not**
 11 **include:**

12 **(a) a--person an individual who obtains or consents to a**
 13 **final decree or judgment of divorce from the decedent or an**
 14 **annulment of their marriage, which decree or judgment is not**
 15 **recognized as valid in this state, unless they subsequently**
 16 **they participate in a marriage ceremony purporting to marry**
 17 **each to the other or subsequently live together as man**
 18 **husband and wife;**

19 **(b) a--person an individual who, following a an invalid**
 20 **decree or judgment of divorce or annulment obtained by the**
 21 **decedent, participates in a marriage ceremony with a third**
 22 **person individual; or**

23 **(c) a--person an individual who was a party to a valid**
 24 **proceeding concluded by an order purporting to terminate all**
 25 **marital property rights."**

Section 8. Section 72-2-104, MCA, is amended to read:

"72-2-104. ~~Homicide~~ Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

(1)(2) A surviving spouse, heir, or devisee An individual who feloniously and intentionally kills the decedent is not entitled to any forfeits all benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to

or for the benefit of the killer passes as if the killer had predeceased the decedent with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

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

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

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the

principles-of-this-section:

{5}--A-final-judgment-of--conviction--of--felonious--and intentional--killing--is--conclusive--for--purposes--of--this section--in-the-absence-of-a--conviction--of--felonious--and intentional--killing--the--court--may--determine--by--a preponderance-of-evidence-whether-the-killing-was--felonious and-intentional-for-purposes-of-this-section:

{6}--This--section--does--not--affect--the-rights-of-any person-who--before--rights--under--this--section--have--been adjudicated--purchases-from-the-killer-for-value-and-without notice--property-which-the-killer-would-have-acquired-except for-this-section--but-the-killer-is-liable-for-the-amount-of the-proceeds-or-the-value-of--the--property--Any--insurance company--bank--or-other-obligor-making-payment-according-to the-terms-of-its-policy--or--obligation--is--not--liable--by reason--of--this--section--unless--prior--to--payment--it--has received-at-its-home-office--or--principal--address--written notice-of-a-claim-under-this-section:

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer;

and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument that are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a

killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the

payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts

1 paid to or items of property transferred to or deposited
2 with the court.

3 (9) (a) A person who purchases property for value and
4 without notice or who receives a payment or other item of
5 property in partial or full satisfaction of a legally
6 enforceable obligation is neither obligated under this
7 section to return the payment, item of property, or benefit
8 nor liable under this section for the amount of the payment
9 or the value of the item of property or benefit. However, a
10 person who, not for value, receives a payment, item of
11 property, or other benefit to which the person is not
12 entitled under this section is obligated to return the
13 payment, item of property, or benefit, or is personally
14 liable for the amount of the payment or the value of the
15 item of property or benefit, to the person who is entitled
16 to it under this section.

17 (b) If this section or any part of this section is
18 preempted by federal law with respect to a payment, an item
19 of property, or any other benefit covered by this section, a
20 person who, not for value, receives the payment, item of
21 property, or other benefit to which the person is not
22 entitled under this section is obligated to return the
23 payment, item of property, or benefit, or is personally
24 liable for the amount of the payment or the value of the
25 item of property or benefit, to the person who would have

1 been entitled to it were this section or part of this
2 section not preempted.

3 ~~{7}~~(10) For the purposes of this section, a felonious
4 and intentional killing includes a deliberate homicide as
5 defined in 45-5-102 and a mitigated deliberate homicide as
6 defined in 45-5-103."

7 **Section 9.** Section 72-2-105, MCA, is amended to read:

8 **"72-2-105. Contracts concerning succession. (1) A**
9 **contract to make a will or devise or not to revoke a will or**
10 **devise or to die intestate, if executed after July 1, 1975,**
11 **can may be established only by:**

12 (a) provisions of a will stating material provisions of
13 the contract;

14 (b) an express reference in a will to a contract and
15 extrinsic evidence proving the terms of the contract; or

16 (c) a writing signed by the decedent evidencing the
17 contract.

18 (2) The execution of a joint will or mutual wills does
19 not create a presumption of a contract not to revoke the
20 will or wills."

21 **Section 10.** Section 72-2-201, MCA, is amended to read:

22 **"72-2-201. Intestate estate. (1) Any part of the a**
23 **decedent's estate of-a-decedent not effectively disposed of**
24 **by his will passes by intestate succession to his the**
25 **decedent's heirs as prescribed in the-following-sections-of**

1 ~~this-code~~ chapters 1 through 5, except as modified by the
2 ~~decendent's will.~~

3 (2) A decedent may by will expressly exclude or limit
4 the right of an individual or class to succeed to property
5 of the decedent passing by intestate succession. If that
6 individual or a member of that class survives the decedent,
7 the share of the decedent's intestate estate to which that
8 individual or class would have succeeded passes as if that
9 individual or each member of that class had disclaimed an
10 intestate share."

11 **Section 11.** Section 72-2-202, MCA, is amended to read:

12 "72-2-202. Share of spouse. The intestate share of the
13 a decedent's surviving spouse is:

14 (1) ~~if--there--is--no--surviving--issue--or--if--there--are~~
15 ~~surviving--issue--all--of--whom--are--issue--of--the--surviving~~
16 ~~spouse--also,~~ the entire remaining intestate estate if:

17 (a) no descendant or parent of the decedent survives
18 the decedent; or

19 (2)(b) ~~if--there--are--surviving--issue--one--or--more--of--whom~~
20 ~~are--not--issue~~ all of the decedent's surviving descendants
21 are also descendants of the surviving spouse, as follows:

22 (a) ~~--if--there--is--surviving--only--one--child--or--the--issue~~
23 ~~of--one--child,~~ one-half of the intestate estate;

24 (b) ~~--if--there--are--surviving--two--or--more--children,~~ the
25 ~~issue--of--two--or--more--deceased--children,~~ or one or more

1 ~~children--and--the--issue--of--one--or--more--deceased--children,~~
2 ~~one-third--of--the--intestate--estate~~ and there is no other
3 descendant of the surviving spouse who survives the
4 decedent;

5 (2) the first \$200,000, plus three-fourths of any
6 balance of the intestate estate, if no descendant of the
7 decedent survives the decedent but a parent of the decedent
8 survives the decedent;

9 (3) the first \$150,000, plus one-half of any balance of
10 the intestate estate, if all of the decedent's surviving
11 descendants are also descendants of the surviving spouse and
12 the surviving spouse has one or more surviving descendants
13 who are not descendants of the decedent;

14 (4) the first \$100,000, plus one-half of any balance of
15 the intestate estate, if one or more of the decedent's
16 surviving descendants are not descendants of the surviving
17 spouse."

18 **Section 12.** Section 72-2-203, MCA, is amended to read:

19 "72-2-203. Share of heirs other than surviving spouse.
20 The Any part of the intestate estate not passing to the
21 decedent's surviving spouse under 72-2-202, or the entire
22 intestate estate if there is no surviving spouse, passes as
23 follows in the following order to the individuals designated
24 below who survive the decedent:

25 (1) to the issue--of--the--decedent;--if--they--are--all--of

~~the same degree of kinship to the decedent, they take equally, but if of unequal degree, then those of more remote degree take~~ decedent's descendants by representation;

(2) if there is no surviving issue descendant, to his ~~parent or~~ the decedent's parents equally if both survive or to the surviving parent;

(3) if there is no surviving issue or descendant or parent, to the ~~brothers and sisters and the children or grandchildren of any deceased brother or sister~~, descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving issue descendant, parent, brother, sister, or children or grandchildren of a deceased brother or sister, to the next of kin in equal degree, except that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote descendant of a parent and the decedent is:

(a) survived by one or more grandparents or descendants of grandparents:

(i) one-half to:

(A) the decedent's paternal grandparents equally if both survive;

(B) the surviving paternal grandparent; or

(C) the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(ii) the other one-half to the decedent's maternal relatives in the same manner; or

(b) not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent's relatives on the other side in the same manner as the half."

Section 13. Section 72-2-204, MCA, is amended to read:

"72-2-204. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-205.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-205.

(2) (a) If representation is called for by this code, under 72-2-203(1), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into decedent's descendants and the estate or part of the estate is divided into as many equal shares as there

are:

(i) surviving heirs descendants in the nearest-degree of-kinship-and-deceased-persons-in-the-same-degree-who--left issue--who--survive-the-decedent, each surviving heir in the nearest-degree-receiving-one-share-and--the--share--of--each deceased--person--in-the-same-degree-being-divided-among-his issue-in-the-same-manner generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(3) (a) If, under 72-2-203(3) or (4), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased

grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent."

Section 14. Section 72-2-205, MCA, is amended to read:

"72-2-205. Requirement that heir survive decedent by for one hundred twenty hours. Any-person An individual who fails to survive the decedent by 120 hours is deemed considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If the-time-of-death-of-the-decedent-or-of-the person-who-would-otherwise-be-an-heir-or-the-times-of--death of--both--cannot--be--determined--and it cannot--be is not established by clear and convincing evidence that the-person an individual who would otherwise be an heir has survived the decedent by 120 hours, it is deemed considered that the person individual failed to survive for the required period. This section is not to be applied where if its application

would result in a taking of intestate estate by the state under 72-2-207."

Section 15. Section 72-2-206, MCA, is amended to read:

"72-2-206. Advancements. (1) If ~~a person~~ an individual dies intestate as to all his or a portion of the individual's estate, property ~~which he~~ the decedent gave ~~in his~~ during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the ~~latter's~~ heir's intestate share of the estate only if:

(a) the decedent declared in a contemporaneous writing ~~by--the--decedent~~ or the heir acknowledged in writing ~~by--the heir--to--be~~ that the gift is an advancement; or

(b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For ~~this--purpose~~ purposes of subsection (1), the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of ~~death--of the decedent~~ decedent's death, whichever first occurs.

(3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's

intestate ~~share--to--be--received--by--the--recipient's--issue estate,~~ unless the ~~declaration--or--acknowledgment~~ decedent's contemporaneous writing provides otherwise."

Section 16. Section 72-2-207, MCA, is amended to read:

"72-2-207. No taker ~~---escheat--to--state.~~ If there is no taker under the provisions of ~~72-2-202--and--72-2-203~~ this chapter, the intestate estate passes to the state of Montana."

Section 17. Section 72-2-210, MCA, is amended to read:

"72-2-210. Persons Individuals related to decedent through two lines. ~~A person~~ An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle ~~him~~ the individual to the larger share."

Section 18. Section 72-2-212, MCA, is amended to read:

"72-2-212. Afterborn heirs. ~~Relatives--of--the--decedent conceived--before--his--death--but--born--thereafter--inherit--as--if they--had--been--born--in--the--lifetime--of--the--decedent.~~ An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth."

Section 19. Section 72-2-213, MCA, is amended to read:

"72-2-213. ~~Establishment--of--parent--child~~ Parent and child relationship. (1) ~~If~~ Except as provided in subsections (2) and (3), for the purposes of intestate succession, ~~a~~

~~relationship-of-parent-and-child--must--be--established--to~~
~~determine--succession~~ by, through, or from a person, an
individual is the child of the child's natural parents,
regardless of their marital status. The parent and child
relationship may be established under Title 40, chapter 6,
part 1.

~~{1}(2)~~ An adopted person individual is the child of an
 adopting parent or parents and not of the natural parents,
~~except--that~~ but adoption of a child by the spouse of a
either natural parent has no effect on:

(a) the relationship between the child and either
natural parent; or

(b) the right of the child or a descendant of the child
to inherit from or through the other natural parent.

~~{2}--in-cases-not-covered-by-subsection-{1}-a-person-is~~
~~the-child-of-its-parents-regardless-of-the-marital-status-of~~
~~its-parents,-and-the-parent-and-child--relationship--may--be~~
~~established--under--the--Uniform--Parentage--Act,-Title-40,~~
~~chapter-6,-part-1.~~

(3) Inheritance from or through a child by either
natural parent or the parent's kindred is precluded unless
that natural parent has openly treated the child as the
parent's and has not refused to support the child."

Section 20. Section 72-2-214, MCA, is amended to read:

"72-2-214. Alienage. No person individual is

disqualified to take as an heir because he the individual or
a-person an individual through whom he the individual claims
 is or has been an alien ~~unless--the--country--in--which--he~~
~~resides-does-not-allow-reciprocity."~~

NEW SECTION. Section 21. Debts to decedent. A debt
 owed to a decedent is not charged against the intestate
 share of any individual except the debtor. If the debtor
 fails to survive the decedent, the debt is not taken into
 account in computing the intestate share of the debtor's
 descendants.

Section 22. Section 72-2-301, MCA, is amended to read:

"72-2-301. Who may make a will. Any--person An
individual 18 or more years of age who is of sound mind may
 make a will."

Section 23. Section 72-2-302, MCA, is amended to read:

"72-2-302. Execution -- witnessed wills -- holographic
wills. (1) Except as provided for--holographic--wills,
writings--within--72-2-312,-and--wills--within in 72-2-303,
72-2-306, 72-2-312, and subsection (2) of this section,
every a will shall must be:

(a) in writing;

(b) signed by the testator or in the testator's name by
some other person individual in the testator's conscious
presence and by his the testator's direction; and

(c) shall--be signed by at least two persons

1 individuals, each of whom signed within a reasonable time
 2 after having witnessed either the signing of the will as
 3 described in subsection (1)(b) or the testator's
 4 acknowledgment of the that signature or acknowledgment of
 5 the will.

6 (2) A will that does not comply with subsection (1) is
 7 valid as a holographic will, whether or not witnessed, if
 8 the signature and material portions of the document are in
 9 the testator's handwriting.

10 (3) Intent that the document constitute the testator's
 11 will may be established by extrinsic evidence, including,
 12 for holographic wills, portions of the document that are not
 13 in the testator's handwriting."

14 **Section 24.** Section 72-2-304, MCA, is amended to read:

15 **"72-2-304. Self-proved will.** (1) Any A will may be
 16 simultaneously executed, attested, and made self-proved by
 17 acknowledgment thereof by the testator and affidavits of the
 18 witnesses, each made before an officer authorized to
 19 administer oaths under the laws of the state where in which
 20 execution occurs and evidenced by the officer's certificate,
 21 under official seal, in substantially the following form:

22 I,, the testator, sign my name to this
 23 instrument this day of, 19...., and being
 24 first duly sworn, do hereby declare to the undersigned
 25 authority that I sign and execute this instrument as my ~~last~~

1 will and that I sign it willingly (or willingly direct
 2 another to sign for me), that I execute it as my free and
 3 voluntary act for the purposes therein expressed, and that I
 4 am 18 years of age or older, of sound mind, and under no
 5 constraint or undue influence.

6
 7 Testator

8 We,,, the witnesses, sign our
 9 names to this instrument, being first duly sworn, and do
 10 hereby declare to the undersigned authority that the
 11 testator signs and executes this instrument as ~~his last~~ the
 12 testator's will and that ~~he~~ the testator signs it willingly
 13 (or willingly directs another to sign for ~~him~~ the testator),
 14 and that each of us, in the presence and hearing of the
 15 testator, hereby signs this will as witness to the
 16 testator's signing, and that to the best of our knowledge
 17 the testator is 18 years of age or older, of sound mind, and
 18 under no constraint or undue influence.

19
 20 Witness

21
 22 Witness

23 THE STATE OF

24 COUNTY OF

25 Subscribed, sworn to, and acknowledged before me by

1 , the testator, and subscribed and sworn to before
2 me by and , witnesses, this day
3 of

4 (SEAL) (Signed).....
5 (Official capacity of officer)
6

7 (2) An attested will may be made self-proved at any
8 time ~~subsequent to~~ after its execution ~~be--made--self-proved~~
9 by the acknowledgment thereof by the testator and the
10 affidavits of the witnesses, each made before an officer
11 authorized to administer oaths under the laws of the state
12 where in which the acknowledgment occurs and evidenced by
13 the officer's certificate, under the official seal, attached
14 or annexed to the will in substantially the following form:

15 THE STATE OF
16 COUNTY OF

17 We, , , and , the testator
18 and the witnesses, respectively, whose names are signed to
19 the attached or foregoing instrument, being first duly
20 sworn, do hereby declare to the undersigned authority that
21 the testator signed and executed the instrument as ~~his--last~~
22 the testator's will and that ~~he had the testator~~ signed
23 willingly (or willingly directed another to sign for ~~him the~~
24 testator), and that ~~he the testator~~ executed it as his the
25 testator's free and voluntary act for the purposes therein

1 expressed, and that each of the witnesses, in the presence
2 and hearing of the testator, signed the will as witness and
3 that to the best of ~~his~~ the witness's knowledge the testator
4 was at that time 18 ~~or more~~ years of age or older, of sound
5 mind, and under no constraint or undue influence.

6 Testator
7 Witness
8 Witness

9 Subscribed, sworn to, and acknowledged before me by
10 , the testator, and subscribed and sworn to before
11 me by and , witnesses, this day
12 of ,

13 (SEAL) (Signed).....
14 (Official capacity of officer)
15

16 (3) A signature affixed to a self-proving affidavit
17 attached to a will is considered a signature affixed to the
18 will if necessary to prove the will's due execution."

19 **Section 25.** Section 72-2-305, MCA, is amended to read:

20 "72-2-305. Who may witness. (1) ~~Any--person~~ An
21 individual generally competent to be a witness may act as a
22 witness to a will.

23 (2) A The signing of a will is not invalid because the
24 will is signed by an interested witness does not invalidate
25 the will or any provision of it."

Section 26. Section 72-2-306, MCA, is amended to read:

"72-2-306. Choice of law as to execution. A written will is valid if executed in compliance with 72-2-302 or 72-2-303 [section 34] or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national."

Section 27. Section 72-2-311, MCA, is amended to read:

"72-2-311. Incorporation by reference. Any A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification."

Section 28. Section 72-2-312, MCA, is amended to read:

"72-2-312. Separate writing identifying disposition of tangible personal property. (1) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, ~~evidences of indebtedness, documents of title, and securities and property used in trade or business.~~

(2) To be admissible under this section as evidence of the intended disposition, the writing must ~~either be in the~~

~~handwriting of the testator or be signed by him~~ the testator and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the testator's death;

(b) prepared before or after the execution of the will;

(c) altered by the testator after its preparation; and

(d) a writing ~~which that~~ which has no significance apart from its effect upon the dispositions made by the will."

Section 29. Section 72-2-313, MCA, is amended to read:

"72-2-313. Events of independent significance. A will may dispose of property by reference to acts and events ~~which that~~ which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event."

Section 30. Section 72-2-314, MCA, is amended to read:

"72-2-314. Testamentary additions to trusts. ~~(1) (a) A will may validly devise or bequest, the validity of which is determinable by the law of this state, may be made by a will property~~ to the trustee of a trust established or to be established;

(i) during the testator's lifetime by the testator, or

by the testator and some other person, or by some other person, (including a funded or unfunded life insurance trust, although the trustor settlor has reserved any or all rights of ownership of the insurance contracts); or

(ii) at the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, (other than a will), executed before, or concurrently with, or after the execution of the testator's will or in the ~~valid last~~ another individual's will of a person who if that other individual has predeceased the testator, (regardless of the existence, size, or character of the corpus of the trust).

(b) The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or ~~after the testator's death of-the-testator.~~

(2) Unless the testator's will provides otherwise, the property ~~so devised~~ to a trust described in subsection (1) is not ~~deemed-to-be~~ held under a testamentary trust of the testator but it becomes a part of the trust to which it is given devised and ~~shall must~~ be administered and disposed of in accordance with the provisions of the governing instrument ~~or-will~~ setting forth the terms of the trust, including any amendments thereto made before or after the

~~testator's death of-the-testator-(regardless-of-whether-made before-or-after-the-execution-of-the-testator's-will)-and-if the-testator's-will-so-provides,-including-any-amendments-to the-trust-made-after-the-death-of-the-testator.~~

(3) A Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death of-the-testator causes the devise to lapse."

Section 31. Section 72-2-321, MCA, is amended to read:

"72-2-321. Revocation by writing or act. (1) A will or any part thereof of a will is revoked:

(a) by executing a subsequent will which that revokes the prior previous will or part expressly or by inconsistency; or

(b) by being-burned,-torn,-canceled,-obliterated,-or destroyed performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking it-by-the-testator the will or part of the will or by if another person individual performed the act in his the testator's conscious presence and by his the testator's direction. For purposes of this subsection (b), "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent."

Section 32. Section 72-2-322, MCA, is amended to read:

"72-2-322. Revocation by divorce--or--annulment-----no revocation-by-other change in of circumstances. {1}-if-after executing--a--will--the-testator-is-divorced-or-his-marriage

annulled, the divorce or annulment revokes--any--disposition or--appointment--of--property-made-by-the-will-to-the-former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.

{2}--Property prevented from passing to a former spouse because of revocation by divorce or annulment passes--as--if the--former-spouse-failed-to-survive-the-decedent, and other provisions conferring some power or office on the former spouse--are--interpreted--as-if-the-spouse-failed-to-survive the decedent.

{3}--If provisions are revoked solely by this section, they--are--revived--by--testator's--remarriage-to-the-former spouse.

{4}--For purposes of this section, divorce or annulment means--any--divorce--or--annulment--which--would-exclude-the spouse--as--a--surviving--spouse--within--the--meaning--of 72-2-103{2}. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

{5}--No Except as provided in 72-2-104 and [section 71], a change of circumstances other than as described in this section revokes does not revoke a will or any part of it."

Section 33. Section 72-2-323, MCA, is amended to read:

"72-2-323. Revival of revoked will. (1) If a second subsequent will which had it remained effective at death would have that wholly revoked the first a previous will in whole or in part is thereafter revoked by acts a revocatory act under 72-2-321(1)(b), the first previous will is remains revoked in whole or in part unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the second subsequent will or from the testator's contemporary or subsequent declarations that he the testator intended the first previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under 72-2-321(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(2)(3) If a second subsequent will which had it remained effective at death would have that revoked the first a previous will in whole or in part is thereafter revoked by a third another, later will, the first previous will is remains revoked in whole or in part, except unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the

terms of the third later will that the testator intended the first previous will to take effect."

NEW SECTION. Section 34. Writings intended as wills.

Although a document or writing added upon a document was not executed in compliance with 72-2-302, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

- (1) the decedent's will;
- (2) a partial or complete revocation of the will;
- (3) an addition to or an alteration of the will; or
- (4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

Section 35. Section 72-2-401, MCA, is amended to read:

"72-2-401. Duty of custodian to deliver of will -- liability. (1) After the death of a testator and on request of an interested person, any a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court.

(2) Any A person who willfully fails to deliver a will is liable to any person aggrieved for the any damages which that may be sustained by the failure. Any A person who

willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court."

Section 36. Section 72-2-402, MCA, is amended to read:

"72-2-402. Deposit of will with court -- confidentiality---examination-by-conservator---delivery in testator's lifetime. {1} A will may be deposited by the testator or his the testator's agent with any court for safekeeping, under rules of the court. The will ~~shall~~ must be sealed and kept confidential.

{2} During the testator's lifetime, a deposited will ~~shall~~ may be delivered only to him the testator or to a person authorized in writing signed by him the testator to receive the will.

{3} A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ~~assure~~ ensure that it will be resealed and ~~left kept~~ on deposit after the examination.

{4} Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him that person on request, or the court may deliver the will to the appropriate court."

Section 37. Section 72-2-502, MCA, is amended to read:

"72-2-502. Will construed--to may pass all property -- and after-acquired property. A will ~~is construed to pass may~~ provide for the passage of all property which the testator owns at his death, ~~including and all~~ property acquired by the estate after the ~~execution--of--the--will~~ testator's death."

Section 38. Section 72-2-504, MCA, is amended to read:

"72-2-504. Choice of law as to meaning and effect of ~~wills~~ governing instrument. The meaning and legal effect of a ~~disposition--in--a--will--shall--be~~ governing instrument is determined by the local law of ~~a--particular~~ the state selected by the testator transferor in ~~his the~~ governing instrument unless the application of that law is contrary to the provisions relating to the elective share described in part 7, the provisions relating to exempt property and allowances described in part 8, or any other public policy of this state otherwise applicable to the disposition."

Section 39. Section 72-2-512, MCA, is amended to read:

"72-2-512. Antilapse -- deceased devisee -- class gifts. (1) As used in this section, the following definitions apply:

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the

testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving,

deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under [section 62].

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee who fails to survive the testator and is a grandparent, or a lineal descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply: ~~of-the-testator-is--dead--at--the time--of--execution--of--the--will,--fails--to--survive--the testator,--or--is--treated--as--if--he--predeceased--the--testator, the--issue--of--the--deceased--devisee--who--survive--the--testator by--120--hours--take--in--place--of--the--deceased--devisee--and--if they--are--all--of--the--same--degree--of--kinship--to--the--devisee, they--take--equally,--but--if--of--unequal--degree--then--those--of more--remote--degree--take--by--representation;~~

~~(2) --One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred~~

1 ~~before-or-after-the-execution-of-the-will:~~

2 (a) Except as provided in subsection (2)(d), if the
3 devise is not in the form of a class gift and the deceased
4 devisee leaves surviving descendants, a substitute gift is
5 created in the devisee's surviving descendants. They take by
6 representation the property to which the devisee would have
7 been entitled had the devisee survived the testator.

8 (b) Except as provided in subsection (2)(d), if the
9 devise is in the form of a class gift, other than a devise
10 to "issue", "descendants", "heirs of the body", "heirs",
11 "next of kin", "relatives", or "family" or a class described
12 by language of similar import, a substitute gift is created
13 in the deceased devisee or devisee's surviving descendants.
14 The property to which the devisees would have been entitled
15 had all of them survived the testator passes to the
16 surviving devisees and the surviving descendants of the
17 deceased devisees. Each surviving devisee takes the share to
18 which the devisee would have been entitled had the deceased
19 devisees survived the testator. Each deceased devisee's
20 surviving descendants who are substituted for the deceased
21 devisee take by representation the share to which the
22 deceased devisee would have been entitled had the deceased
23 devisee survived the testator. For purposes of this
24 subsection (b), "deceased devisee" means a class member who
25 failed to survive the testator and left one or more

1 surviving descendants.

2 (c) For purposes of [section 47], words of
3 survivorship, such as in a devise to an individual "if the
4 individual survives me" or in a devise to "my surviving
5 children", are not, in the absence of additional evidence, a
6 sufficient indication of an intent contrary to the
7 application of this section.

8 (d) If the will creates an alternative devise with
9 respect to a devise for which a substitute gift is created
10 by subsection (2)(a) or (2)(b), the substitute gift is
11 superseded by the alternative devise only if an expressly
12 designated devisee of the alternative devise is entitled to
13 take under the will.

14 (e) Unless the language creating a power of appointment
15 expressly excludes the substitution of the descendants of an
16 appointee for the appointee, a surviving descendant of a
17 deceased appointee of a power of appointment may be
18 substituted for the appointee under this section, whether or
19 not the descendant is an object of the power.

20 (3) If, under subsection (2), substitute gifts are
21 created and not superseded with respect to more than one
22 devise and the devises are alternative devises, one to the
23 other, the determination of which of the substitute gifts
24 takes effect is resolved as follows:

25 (a) Except as provided in subsection (3)(b), the

1 devised property passes under the primary substitute gift.

2 (b) If there is a younger-generation devise, the
3 devised property passes under the younger-generation
4 substitute gift and not under the primary substitute gift.

5 (c) As used in this subsection (3), the following
6 definitions apply:

7 (i) "Primary devise" means the devise that would have
8 taken effect had all the deceased devisees of the
9 alternative devises who left surviving descendants survived
10 the testator.

11 (ii) "Primary substitute gift" means the substitute gift
12 created with respect to the primary devise.

13 (iii) "Younger-generation devise" means a devise that:

14 (A) is to a descendant of a devisee of the primary
15 devise;

16 (B) is an alternative devise with respect to the
17 primary devise;

18 (C) is a devise for which a substitute gift is created;
19 and

20 (D) would have taken effect had all the deceased
21 devisees who left surviving descendants survived the
22 testator except the deceased devisee or devisees of the
23 primary devise.

24 (iv) "Younger-generation substitute gift" means the
25 substitute gift created with respect to the

1 younger-generation devise."

2 **Section 40.** Section 72-2-513, MCA, is amended to read:

3 **"72-2-513. Failure of devise testamentary provision.**

4 (1) Except as provided in 72-2-512, if a devise, other than
5 a residuary devise, that fails for any reason--it becomes a
6 part of the residue.

7 (2) Except as provided in 72-2-512, if the residue is
8 devised to two or more persons, and the share of one-of-the
9 a residuary devisees devisee that fails for any reason--his
10 share passes to the other residuary devisee or to other
11 residuary devisees in proportion to their--interests the
12 interest of each in the remaining part of the residue."

13 **Section 41.** Section 72-2-514, MCA, is amended to read:

14 **"72-2-514. Nonexoneration ---specific-devise-subject-to**
15 **security--interest.** A specific devise passes subject to any
16 security interest existing at the date of death, without
17 right of exoneration, regardless of a general directive in
18 the will to pay debts."

19 **Section 42.** Section 72-2-515, MCA, is amended to read:

20 **"72-2-515. Ademption by satisfaction. (1)** Property
21 **which** that a testator gave in his the testator's lifetime to
22 a person is treated as a satisfaction of a devise to-that
23 person, in whole or in part, only if:

24 (a) the will provides for deduction of the lifetime
25 gift;

(b) or the testator declares declared in a contemporaneous writing that the gift ~~is to be deducted from the devise or~~ is in satisfaction of the devise or the devisee ~~acknowledges in writing that the gift is in~~ satisfaction that its value is to be deducted from the value of the devise; or

(c) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purpose purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or ~~as of the time of~~ at the testator's death of ~~the testator~~, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying 72-2-512 and 72-2-513, unless the testator's contemporaneous writing provides otherwise."

Section 43. Section 72-2-516, MCA, is amended to read:

"72-2-516. Nonademption of specific devises in ~~certain cases~~ -- unpaid proceeds of sale, condemnation, or insurance -- sale by conservator or agent. (1) A specific devisee has the right to the specifically devised property in the testator's estate at death 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 or other recovery for injury to the property; and

(d) property owned by the testator at his death, and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(2) If specifically devised property is sold or

1 mortgaged by a conservator or an agent acting within the
 2 authority of a durable power of attorney for a an
 3 incapacitated principal ~~who--is-under-a-disability~~ or if a
 4 condemnation award, or insurance proceeds, or recovery for
 5 an injury to property ~~are~~ is paid to a conservator or an
 6 agent acting within the authority of a durable power of
 7 attorney for a an incapacitated principal, ~~who-is-under-a~~
 8 ~~disability,--as-a-result-of-condemnation,--fire,--or--casualty,~~
 9 the specific devisee has the right to a general pecuniary
 10 devise equal to the net sale price, the amount of the unpaid
 11 loan, the condemnation award, or the insurance proceeds, or
 12 the recovery. ~~This--subsection-does-not-apply-if-after-the~~
 13 ~~sale,--condemnation,--or-casualty-it-is-adjudicated--that--the~~
 14 ~~disability--of--the--testator--has--ceased--and-the-testator~~
 15 ~~survives-the-adjudication-by-1-year.~~

16 (3) The right of the specific devisee under this
 17 subsection (2) is reduced by any right he the devisee has
 18 under subsection (1).

19 (4) For the purposes of the references in subsection
 20 (2) to a conservator, subsection (2) does not apply if,
 21 after the sale, mortgage, condemnation, casualty, or
 22 recovery, it was adjudicated that the testator's incapacity
 23 ceased and the testator survived the adjudication by 1 year.

24 (5) For the purposes of the references in subsection
 25 (2) to an agent acting within the authority of a durable

1 power of attorney for an incapacitated principal:

2 (a) "incapacitated principal" means a principal who is
 3 an incapacitated person;

4 (b) no adjudication of incapacity before death is
 5 necessary; and

6 (c) the acts of an agent within the authority of a
 7 durable power of attorney are presumed to be for an
 8 incapacitated principal."

9 **Section 44.** Section 72-2-517, MCA, is amended to read:

10 "72-2-517. Changes Increase in devised securities --
 11 distributions-prior--to--death accessions. (1) If the a
 12 testator intended--a--specific-devise-of-certain executes a
 13 will that devises securities rather--than--the--equivalent
 14 value--thereof,--the-specific-devisee-is-entitled-only-to and
 15 the testator then owned securities that meet the description
 16 in the will, the devise includes additional securities owned
 17 by the testator at death to the extent the additional
 18 securities were acquired by the testator after the will was
 19 executed as a result of the testator's ownership of the
 20 described securities and if the securities are of any of the
 21 following types:

22 (a) as--much--of-the-devised securities as-is-a-part-of
 23 the-estate-at-time-of-the-testator's-death;

24 (b) --any-additional-or--other--securities of the same
 25 entity-owned-by-the-testator organization acquired by reason

of action initiated by the entity organization or any successor, related, or acquiring organization, excluding any securities acquired by exercise of purchase options;

~~(c)~~(b) securities of another ~~entity--owned--by--the~~ testator organization acquired as a result of a merger, consolidation, reorganization, or other ~~similar--action~~ initiated distribution by the entity organization or any successor, related, or acquiring organization; and or

~~(d)~~(c) ~~any-additional~~ securities of the ~~entity-owned-by~~ the-testator same organization acquired as a result of a plan of reinvestment.

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

Section 45. Section 72-2-518, MCA, is amended to read:

"72-2-518. ~~No-implied-exercise~~ Exercise of power of appointment. A In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a general residuary clause in a will or a will making general disposition of all of the testator's property does--not expresses an intention to exercise a power of appointment held by the testator unless only if:

(1) ~~specific-reference-is-made-to~~ the power ~~or--there-is~~

~~some-other-indication-of~~ is a general power and the creating instrument does not contain a gift if the power is not exercised; or

(2) the testator's will manifests an intention to include the property subject to the power."

Section 46. Section 72-2-519, MCA, is amended to read:

"72-2-519. Penalty clause for contest unenforceable. A provision in a will purporting to penalize any an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings."

NEW SECTION. **Section 47. Scope.** In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

Section 48. Section 72-2-601, MCA, is amended to read:

"72-2-601. Omitted Entitlement of spouse -- premarital will. (1) If a ~~testator-fails-to-provide-by-will-for-his~~ testator's surviving spouse who married the testator after the execution of the will, the ~~omitted~~ surviving spouse ~~shall~~ is entitled to receive, as an intestate share, no less than the value of the same share of the estate he the spouse would have received if the decedent-left--no--will testator had died intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator who was born before the testator married the

surviving spouse and who is not a child of the surviving spouse nor devised or passes under 72-2-512 or 72-2-513 to a descendant of such a child, unless:

(a) it appears from the will that the omission was intentional or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements of--the--testator or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying a the share provided by this section, the devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-512 or 72-2-513 to a descendant of such a child, abate as provided in 72-3-901."

Section 49. Section 72-2-602, MCA, is amended to read:

"72-2-602. Pretermitted-child Omitted children. (1) if Except as provided in subsection (2), if a testator fails to

provide in his the testator's will for any of his the testator's children born or adopted after the execution of his the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which he the child would have received if had the testator had died intestate unless: the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have

1 received had the testator included all omitted after-born
 2 and after-adopted children with the children to whom devises
 3 were made under the will and had given an equal share of the
 4 estate to each child.

5 (iii) To the extent feasible, the interest granted an
 6 omitted after-born or after-adopted child under this section
 7 must be of the same character, whether equitable or legal,
 8 present or future, as that devised to the testator's
 9 then-living children under the will.

10 (iv) In satisfying a share provided by this subsection
 11 (1)(b), devises to the testator's children who were living
 12 when the will was executed abate ratably. In abating the
 13 devises of the then-living children, the court shall
 14 preserve to the maximum extent possible the character of the
 15 testamentary plan adopted by the testator.

16 (2) Subsections (1)(a), (1)(b), and (3) do not apply
 17 if:

18 (a) it appears from the will that the omission was
 19 intentional;

20 (b) when the will was executed the testator had one or
 21 more children and devised substantially all his estate to
 22 the other parent of the omitted child; or

23 (c)(b) the testator provided for the omitted after-born
 24 or after-adopted child by transfer outside the will and the
 25 intent that the transfer be in lieu of a testamentary

1 provision is shown by the testator's statements of--the
 2 testator or is reasonably inferred from the amount of the
 3 transfer or other evidence.

4 (2)(3) If Except as provided in subsection (2), if at
 5 the time of execution of the will the testator fails to
 6 provide in his the testator's will for a living child solely
 7 because he the testator believes the child to be dead, the
 8 child receives-a is entitled to share in the estate equal-in
 9 value--to--that-which-he-would-have-received-if-the-testator
 10 had--died--intestate as if the child were an omitted
 11 after-born or after-adopted child.

12 (3)(4) In satisfying a share provided by this-section
 13 subsection (1)(a), the devises made by the will abate as
 14 provided in 72-3-901."

15 **Section 50.** Section 72-2-702, MCA, is amended to read:

16 "72-2-702. Right--to--elective Elective share. (1) If-a
 17 married--person--domiciled--in--this--state--dies--the The
 18 surviving spouse of a decedent who dies domiciled in this
 19 state has a right of election, under the limitations and
 20 conditions stated in this part, to take an elective-share-of
 21 one-third elective-share amount equal to the value of the
 22 elective-share percentage of the augmented estate under-the
 23 limitations-and-conditions-hereinafter--stated-, determined
 24 by the length of time the spouse and the decedent were
 25 married to each other, in accordance with the following

schedule:

If the decedent and the The elective-share
 spouse were married to percentage is:
 each other:

Less than 1 year	supplemental amount only
1 year but less than 2 years	3% of the augmented estate
2 years but less than 3 years	6% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	12% of the augmented estate
5 years but less than 6 years	15% of the augmented estate
6 years but less than 7 years	18% of the augmented estate
7 years but less than 8 years	21% of the augmented estate
8 years but less than 9 years	24% of the augmented estate
9 years but less than 10 years	27% of the augmented estate
10 years but less than 11 years	30% of the augmented estate
11 years but less than 12 years	34% of the augmented estate
12 years but less than 13 years	38% of the augmented estate
13 years but less than 14 years	42% of the augmented estate
14 years but less than 15 years	46% of the augmented estate
15 years or more	50% of the augmented estate

(2) If the sum of the amounts described in
 72-2-705(2)(c) and (2)(d) and 72-2-706(1)(a) and (1)(c) and
 that part of the elective-share amount payable from the
 decedent's probate and reclaimable estates under 72-2-706(2)
 and (3) is less than \$50,000, the surviving spouse is

entitled to a supplemental elective-share amount equal to
 \$50,000, minus the sum of the amounts described in those
 sections. The supplemental elective-share amount is payable
 from the decedent's probate estate and from recipients of
 the decedent's reclaimable estate in the order of priority
 set forth in 72-2-706(2) and (3).

~~(2)(3) If a married person not domiciled in this state~~
 dies,--the The right, if any, of the surviving spouse of a
 decedent who dies domiciled outside this state to take an
 elective share in property in this state is governed by the
 law of the decedent's domicile at death."

Section 51. Section 72-2-703, MCA, is amended to read:

"72-2-703. Right of election personal to surviving
 spouse. (1) The right of election of--the--surviving--spouse
 may be exercised only by him a surviving spouse who is
 living when the petition for the elective share is filed in
 the court under 72-2-707(1). If the election is not
 exercised by the surviving spouse personally, it may be
 exercised on the surviving spouse's behalf by the surviving
 spouse's conservator, guardian, or agent under the authority
 of a power of attorney.

(2) ~~in the case of a protected~~ If the election is
 exercised on behalf of a surviving spouse who is an
 incapacitated person, ~~the right of election may be exercised~~
 only--by--order-of the court in which protective proceedings

~~as-to-his-property-are-pending-after-finding--that--exercise~~
~~is--necessary--to--provide--adequate~~ shall set aside that
 portion of the elective-share and supplemental
 elective-share amounts due from the decedent's probate
 estate and recipients of the decedent's reclaimable estate
 under 72-2-706(2) and (3) and shall appoint a trustee to
 administer that property for the support ~~for-the-protected~~
~~person-during-his-probable-life-expectancy~~ of the surviving
 spouse. For the purposes of this subsection, an election on
 behalf of a surviving spouse by an agent under a durable
 power of attorney is presumed to be on behalf of a surviving
 spouse who is an incapacitated person. The trustee shall
 administer the trust in accordance with the following terms
 and such additional terms as the court determines
 appropriate:

(a) Expenditures of income and principal may be made in
 the manner, when, and to the extent that the trustee
 determines suitable and proper for the surviving spouse's
 support, without court order but with regard to other
 support, income, and property of the surviving spouse
 exclusive of benefits of medical or other forms of
 assistance from any state or federal government or
 governmental agency for which the surviving spouse qualifies
 on the basis of need.

(b) During the surviving spouse's incapacity, neither

the surviving spouse nor anyone acting on behalf of the
 surviving spouse has a power to terminate the trust; but if
 the surviving spouse regains capacity, the surviving spouse
 then acquires the power to terminate the trust and acquire
 full ownership of the trust property free of trust by
 delivering to the trustee a writing signed by the surviving
 spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee
 shall transfer the unexpended trust property in the
 following order:

(i) under the residuary clause, if any, of the will of
 the predeceased spouse against whom the elective share was
 taken, as if that predeceased spouse died immediately after
 the surviving spouse; or

(ii) to that predeceased spouse's heirs under [section
 70]."

Section 52. Section 72-2-704, MCA, is amended to read:

"72-2-704 ~~Surviving-spouse----~~allowance-----~~exemptions~~
 Effect of election on statutory benefits. A If the right of
 election is exercised by or on behalf of the surviving
 spouse, ~~is--entitled--to~~ the surviving spouse's homestead
 allowance, exempt property, and family allowance, if any,
 are not charged against but are in addition to the ~~whether~~
~~or-not-he-elects-to-take-an--elective--share~~ elective-share
 and supplemental elective-share amounts."

Section 53. Section 72-2-705, MCA, is amended to read:

"72-2-705. Augmented estate. (1) (a) As used in this section, the following definitions apply:

(i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim.

(ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in the decedent or the decedent's creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the

surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(b) As used in subsections (2)(b)(iii) and (2)(b)(iv), "transfer" includes an exercise or release of a power of appointment but does not include a lapse of a power of appointment.

(2) The augmented estate ~~means-the~~ consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, ~~to which-is-added-the-sum-of-the-following-amounts;~~

(b) the value of the decedent's reclaimable estate, which is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property, to the extent the passing of the principal thereof to or for the benefit of any person, other

than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse, or surviving spouse;

(ii) property, to the extent of the decedent's unilaterally severable interest therein, held by the decedent and any other person, except the decedent's surviving spouse, with right of survivorship, if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse;

(iii) proceeds or insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before

death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse; and

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

(a)(A) any transfer under-which to the extent that the decedent retained at the time of his or during the 2-year period preceding death the possession or enjoyment of or right to income from the property;

(b)(B) any transfer to the extent that the--decedent retained at the time of his or during the 2-year period preceding the decedent's death, the income or principal was subject to a power, either exercisable by the decedent alone or in conjunction with any other person, to-revoke-or-to consume, invade, or dispose-of-the-principal or exercisable by a nonadverse party for his--own the benefit of the decedent or the decedent's estate;

(c)(C) any transfer whereby of property to the extent

the decedent's contribution to it, as a percentage of the whole, was made during the 2-year period preceding the decedent's death, by which the property is held at the time of or during the 2-year period preceding the decedent's death by the decedent and another, other than the decedent's surviving spouse, with right of survivorship; or

(d) any transfer made to a donee within 2 years of during the 2-year period preceding the decedent's death of the decedent to the extent that the aggregate transfers to any one donee in any either of the years exceed \$3,000 \$10,000;

(c) the value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and including benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(d) the value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includable in the surviving spouse's reclaimable estate had the spouse predeceased the

decedent. However, amounts that would have been includable in the surviving spouse's reclaimable estate under subsection (2)(b)(iii) are not valued as if the surviving spouse were deceased.

(2)(3) any Any transfer or exercise or release of a power of appointment is excluded from the decedent's reclaimable estate:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise, or release; or

(b) if irrevocably made with the written consent or joinder of the surviving spouse.

(4) Property is valued as of the decedent's death, except that but an irrevocable transfer of property given irrevocably to a donee during lifetime of the decedent during the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv) is valued as of the date the donee came into possession or enjoyment if that occurs first time of the transfer. If the terms of more than one of the provisions of subsection (2)(b) apply, the property is included in the augmented estate under the provision that yields the highest value. For purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of

appointment. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse:

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

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

attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent, Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.

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

(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived from the decedent.

1 ~~except to the extent that the surviving spouse establishes~~
2 ~~that it was derived from another source.~~

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

8 (5) (a) Although under this section a payment, item of
9 property, or other benefit is included in the decedent's
10 reclaimable estate, a payor or other third party is not
11 liable for having made a payment or transferred an item of
12 property or other benefit to a beneficiary designated in a
13 governing instrument, or for having taken any other action
14 in good faith reliance on the validity of a governing
15 instrument, upon request and satisfactory proof of the
16 decedent's death, before the payor or other third party
17 received written notice from the surviving spouse or
18 spouse's representative of an intention to file a petition
19 for the elective share or that a petition for the elective
20 share has been filed. A payor or other third party is liable
21 for payments made or other actions taken after the payor or
22 other third party received written notice of an intention to
23 file a petition for the elective share or that a petition
24 for the elective share has been filed.

25 (b) The written notice of intention to file a petition

1 for the elective share or that a petition for the elective
2 share has been filed must be mailed to the payor's or other
3 third party's main office or home by certified mail, return
4 receipt requested, or served upon the payor or other third
5 party in the same manner as a summons in a civil action.
6 Upon receipt of written notice of intention to file a
7 petition for the elective share or that a petition for the
8 elective share has been filed, a payor or other third party
9 may pay any amount owed or transfer or deposit any item of
10 property held by it to or with the court having jurisdiction
11 of the probate proceedings relating to the decedent's estate
12 or, if no proceedings have been commenced, to or with the
13 court having jurisdiction of probate proceedings relating to
14 decedents' estates located in the county of the decedent's
15 residence. The court shall hold the funds or item of
16 property and, upon its determination under 72-2-707(4),
17 shall order disbursement in accordance with the
18 determination. If no petition is filed in the court within
19 the specified time under 72-2-707(1) or, if filed, the
20 demand for an elective share is withdrawn under 72-2-707(3),
21 the court shall order disbursement to the designated
22 beneficiary. Payments, transfers, or deposits made to or
23 with the court discharge the payor or other third party from
24 all claims for the value of amounts paid to or items of
25 property transferred to or deposited with the court.

(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(6) (a) A person who purchases property from a recipient for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this part to return the payment, item of property, or benefit nor liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in 72-2-706.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that

payment or the value of that item of property or benefit, as provided in 72-2-706, to the person who would have been entitled to it were that section or part of that section not preempted."

Section 54. Section 72-2-706, MCA, is amended to read:

"72-2-706. Charging spouse with property owned assets and gifts received -- liability of others for balance of elective share. (1) In the proceeding for an elective share, values-included-in-the-augmented-estate-which-pass--or--have-passed--to--the-surviving-spouse--or-which-would-have-passed-to-the-spouse-but-were-renounced, the following are applied first to satisfy the elective-share elective-share amount and to reduce or eliminate any contributions due from other the decedent's probate estate and recipients of transfers included-in the augmented decedent's reclaimable estate--For purposes--of--this---subsection,---the---electing---spouse's beneficial-interest-in-any-life-estate-or-in-any-trust-shall be--computed--as-if-worth-one-half-of-the-total-value-of-the property-subject-to-the-life-estate--or-of-the-trust-estate, unless-higher--or--lower--values--for--these--interests--are established-by-proof.:

(a) amounts included in the augmented estate that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under

1 72-2-705(2)(c);

2 (c) amounts included in the augmented estate that would
3 have passed to the spouse but were disclaimed; and

4 (d) amounts included in the augmented estate under
5 72-2-705(2)(d) up to the applicable percentage thereof. For
6 purposes of this subsection (d), the "applicable percentage"
7 is twice the elective-share percentage set forth in the
8 schedule in 72-2-702(1) appropriate to the length of time
9 the spouse and the decedent were married to each other.

10 (2) If, after the application of subsection (1), the
11 elective-share amount is not fully satisfied or the
12 surviving spouse is entitled to a supplemental
13 elective-share amount, amounts included in the decedent's
14 probate estate and that portion of the decedent's
15 reclaimable estate, other than amounts irrevocably
16 transferred within 2 years before the decedent's death, are
17 applied first to satisfy the unsatisfied balance of the
18 elective-share amount or the supplemental elective-share
19 amount. The decedent's probate estate and that portion of
20 the decedent's reclaimable estate are applied so that
21 liability for the unsatisfied balance of the elective-share
22 amount or for the supplemental elective-share amount is
23 equitably apportioned among the recipients of the decedent's
24 probate estate and that portion of the decedent's
25 reclaimable estate in proportion to the value of their

1 interests therein.

2 ~~(2)~~(3) Remaining--property--of--the-augmented If, after
3 the application of subsections (1) and (2), the
4 elective-share or supplemental elective-share amount is not
5 fully satisfied, the remaining portion of the decedent's
6 reclaimable estate is so applied so that liability for the
7 unsatisfied balance of the elective-share-of--the--surviving
8 spouse elective-share or supplemental elective-share amount
9 is equitably apportioned among the recipients of the
10 augmented that portion of the decedent's reclaimable estate
11 in proportion to the value of their interests therein.

12 ~~(3)~~(4) Only original transferees-from-or-appointees--of
13 the-decedent-and-their-donees, recipients of the reclaimable
14 estate described in 72-2-705(2)(b) and the donees of the
15 recipients of the reclaimable estate to the extent the
16 donees have the property or its proceeds, are subject-to-the
17 liable to make a proportional contribution to-make-up-the
18 toward satisfaction of the surviving spouse's elective-share
19 of--the--surviving--spouse elective-share or supplemental
20 elective-share amount. A person liable to contribution may
21 choose to give up the property--transferred--to--him
22 proportional part of the reclaimable estate or to pay its
23 the value as of the time-it-is-considered-in-computing-the
24 augmented-estate amount for which the person is liable."

25 **Section 55.** Section 72-2-707, MCA, is amended to read:

1 "72-2-707. Procedure Proceeding for making-of--election
 2 elective share -- time limit. (1) The-surviving-spouse-may
 3 elect-to-take-his-elective-share--in--the--augmented--estate
 4 Except as provided in subsection (2), the election must be
 5 made by filing in the court and mailing or delivering to the
 6 personal representative, if any, a petition for the elective
 7 share within 9 months after the date of the decedent's death
 8 or within 6 months after the probate of the decedent's will,
 9 whichever limitation ~~last~~ later expires. The surviving
 10 spouse shall give notice of the time and place set for
 11 hearing to persons interested in the estate and to the
 12 distributees and recipients of portions of the augmented
 13 estate whose interests will be adversely affected by the
 14 taking of the elective share. However,--the--nonprobate
 15 transfers Except as provided in subsection (2), the
 16 decedent's reclaimable estate, described in
 17 72-2-705(1)(2)(b), shall is not be included within the
 18 augmented estate for the purpose of computing the elective
 19 share if the petition is filed ~~later~~ more than 9 months
 20 after the decedent's death. The-court-may-extend-the-time
 21 for-election-as-it-sees-fit-for-cause-shown-by-the-surviving
 22 spouse-before-the-time-for-election-has-expired.

23 (2) The-surviving-spouse-shall-give-notice-of-the--time
 24 and--place--set--for--hearing--to--persons-interested-in-the
 25 estate-and-to-the-distributees-and-recipients-of-portions-of

1 the-augmented-net-estate-whose-interests-will--be--adversely
 2 affected--by--the--taking--of--the--elective-share. Within 9
 3 months after the decedent's death, the surviving spouse may
 4 petition the court for an extension of time for making an
 5 election. If, within 9 months after the decedent's death,
 6 the spouse gives notice of the petition to all persons
 7 interested in the decedent's reclaimable estate, the court
 8 for cause shown by the surviving spouse may extend the time
 9 for election. If the court grants the spouse's petition for
 10 an extension, the decedent's reclaimable estate, described
 11 in 72-2-705(2)(b), is not excluded from the augmented estate
 12 for the purpose of computing the elective-share and
 13 supplemental elective-share amounts if the spouse makes an
 14 election by filing in the court and mailing or delivering to
 15 the personal representative, if any, a petition for the
 16 elective share within the time allowed by the extension.

17 (3) The surviving spouse may withdraw his a demand for
 18 an elective share at any time before entry of a final
 19 determination by the court.

20 (4) After notice and hearing, the court shall determine
 21 the amount---of--the--elective--share elective-share and
 22 supplemental elective-share amounts and shall order its
 23 payment from the assets of the augmented net estate or by
 24 contribution as appears appropriate under 72-2-706. If it
 25 appears that a fund or property included in the augmented

1 net estate has not come into the possession of the personal
 2 representative or has been distributed by the personal
 3 representative, the court nevertheless shall fix the
 4 liability of any person who has any interest in the fund or
 5 property or who has possession thereof, whether as trustee
 6 or otherwise. The proceeding may be maintained against fewer
 7 than all persons against whom relief could be sought, but no
 8 person is subject to contribution in any greater amount than
 9 he the person would have been under 72-2-706 if relief had
 10 been secured against all persons subject to contribution.

11 (5) The order or judgment of the court may be enforced
 12 as necessary in suit for contribution or payment in other
 13 courts of this state or other jurisdictions."

14 **NEW SECTION. Section 56.** Applicable law. This part
 15 applies to the estate of a decedent who dies domiciled in
 16 this state. Rights to homestead allowance, exempt property,
 17 and family allowance for a decedent who dies not domiciled
 18 in this state are governed by the law of the decedent's
 19 domicile at death.

20 **Section 57.** Section 72-2-801, MCA, is amended to read:

21 "72-2-801. Homestead allowance. {+} A decedent's
 22 surviving spouse ~~of-a-decedent-who--was--domiciled--in--this~~
 23 ~~state~~ is entitled to a homestead allowance of \$20,000. If
 24 there is no surviving spouse, each minor child and each
 25 dependent child of the decedent is entitled to a homestead

1 allowance amounting to \$20,000, divided by the number of
 2 minor and dependent children of the decedent.

3 {+2} The homestead allowance is exempt from and has
 4 priority over all claims against the estate.

5 {+3} Homestead allowance is in addition to any share
 6 passing to the surviving spouse or minor or dependent child
 7 by the will of the decedent unless otherwise provided, by
 8 intestate succession, or by way of elective share."

9 **Section 58.** Section 72-2-802, MCA, is amended to read:

10 "72-2-802. Exempt property. {+} In addition to the
 11 homestead allowance, the decedent's surviving spouse ~~of--a~~
 12 ~~decedent--who--was--domiciled-in-this-state~~ is entitled from
 13 the estate to a value, not exceeding ~~\$3,500~~ \$10,000 in
 14 excess of any security interests therein, in household
 15 furniture, automobiles, furnishings, appliances, and
 16 personal effects. If there is no surviving spouse, the
 17 decedent's children ~~of-the-decedent~~ are entitled jointly to
 18 the same value. If encumbered chattels are selected and if
 19 the value in excess of security interests, plus that of
 20 other exempt property, is less than ~~\$3,500~~ \$10,000 or if
 21 there is not ~~\$3,500~~ \$10,000 worth of exempt property in the
 22 estate, the spouse or children are entitled to other assets
 23 of the estate, if any, to the extent necessary to make up
 24 the ~~\$3,500~~ \$10,000 value.

25 {+2} Rights to exempt property and assets needed to make

up a deficiency of exempt property have priority over all claims against the estate, ~~except-that~~ but the right to any assets to make up a deficiency of exempt property ~~shall~~ abate abates as necessary to permit prior earlier payment of homestead allowance and family allowance.

{3} These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will ~~of-the-decedent~~ unless otherwise provided, by intestate succession, or by way of elective share."

Section 59. Section 72-2-803, MCA, is amended to read:

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

{2} It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody, ~~but-in-case--any~~ If a minor child or

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

{3} The family allowance is exempt from and has priority over all claims ~~but-not-over~~ except the homestead allowance.

{4}{2} The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

{5} The death of any person entitled to family allowance terminates his the right to allowances not yet paid."

Section 60. Section 72-2-804, MCA, is amended to read:

"72-2-804. Source, determination, and documentation. (1) If the estate is otherwise sufficient, property specifically devised ~~is~~ may not be used to satisfy rights to homestead and allowance or exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these those

1 selections if the surviving spouse, the children, or the
 2 guardians of the minor children are unable or fail to do so
 3 within a reasonable time or if there are is no guardians
 4 guardian of the a minor children child. The personal
 5 representative may execute an instrument or deed of
 6 distribution to establish the ownership of property taken as
 7 homestead allowance or exempt property. He The personal
 8 representative may determine the family allowance in a lump
 9 sum not exceeding \$6,000 \$18,000 or periodic installments
 10 not exceeding \$500 \$1,500 per month for 1 year and may
 11 disburse funds of the estate in payment of the family
 12 allowance and any part of the homestead allowance payable in
 13 cash.

14 {2} The personal representative or any interested
 15 person aggrieved by any selection, determination, payment,
 16 proposed payment, or failure to act under this section may
 17 petition the court for appropriate relief, which relief may
 18 provide include a family allowance ~~larger-or--smaller~~ other
 19 than that which the personal representative determined or
 20 could have determined.

21 (2) If the right to an elective share is exercised on
 22 behalf of a surviving spouse who is an incapacitated person,
 23 the personal representative may add any unexpended portions
 24 payable under the homestead allowance, exempt property, and
 25 family allowance to the trust established under

1 72-2-703(2)."

2 NEW SECTION. Section 61. Scope. In the absence of a
 3 finding of a contrary intention, the rules of construction
 4 in [sections 61 through 72] control the construction of a
 5 governing instrument. The rules of construction in [sections
 6 61 through 72] apply to a governing instrument of any type,
 7 except as the application of a particular section is limited
 8 by its terms to a specific type or types of provision or
 9 governing instrument.

10 NEW SECTION. Section 62. Requirement of survival by
 11 one hundred twenty hours. (1) For the purposes of chapters 1
 12 through 5, except for purposes of [sections 103 through 112]
 13 and except as provided in subsection (4), an individual who
 14 is not established by clear and convincing evidence to have
 15 survived an event, including the death of another
 16 individual, by 120 hours is considered to have predeceased
 17 the event.

18 (2) Except as provided in subsection (4) and except for
 19 a security registered in beneficiary form (TOD) under
 20 [sections 103 through 112], for purposes of a provision of a
 21 governing instrument that relates to an individual surviving
 22 an event, including the death of another individual, an
 23 individual who is not established by clear and convincing
 24 evidence to have survived the event by 120 hours is
 25 considered to have predeceased the event.

1 (3) (a) Except as provided in subsection (4), if:

2 (i) it is not established by clear and convincing
3 evidence that one of two co-owners with right of
4 survivorship survived the other co-owner by 120 hours,
5 one-half of the property passes as if one had survived by
6 120 hours and one-half as if the other had survived by 120
7 hours; and

8 (ii) there are more than two co-owners and it is not
9 established by clear and convincing evidence that at least
10 one of them survived the others by 120 hours, the property
11 passes in the proportion that one bears to the whole number
12 of co-owners.

13 (b) For the purposes of this subsection (3), "co-owners
14 with right of survivorship" includes joint tenants, tenants
15 by the entirety, and other co-owners of property or
16 accounts held under circumstances that entitle one or more
17 to the whole of the property or account on the death of the
18 other or others.

19 (4) This section does not apply if:

20 (a) the governing instrument contains language dealing
21 explicitly with simultaneous deaths or deaths in a common
22 disaster and that language is operable under the facts of
23 the case;

24 (b) the governing instrument expressly indicates that
25 an individual is not required to survive an event, including

1 the death of another individual, by any specified period or
2 expressly requires the individual to survive the event by a
3 specified period;

4 (c) the imposition of a 120-hour requirement of
5 survival would cause a nonvested property interest or a
6 power of appointment to fail to qualify for validity under
7 70-1-802(1)(a), (2)(a), or (3)(a) or to become invalid under
8 70-1-802(1)(b), (2)(b), or (3)(b); or

9 (d) the application of this section to multiple
10 governing instruments would result in an unintended failure
11 or duplication of a disposition.

12 (5) (a) A payor or other third party is not liable for
13 having made a payment or transferred an item of property or
14 any other benefit to a beneficiary designated in a governing
15 instrument who, under this section, is not entitled to the
16 payment or item of property, or for having taken any other
17 action in good faith reliance on the beneficiary's apparent
18 entitlement under the terms of the governing instrument.
19 before the payor or other third party received written
20 notice of a claimed lack of entitlement under this section.
21 A payor or other third party is liable for a payment made or
22 other action taken after the payor or other third party
23 received written notice of a claimed lack of entitlement
24 under this section.

25 (b) Written notice of a claimed lack of entitlement

1 under subsection (5)(a) must be mailed to the payor's or
 2 other third party's main office or home by certified mail,
 3 return receipt requested, or served upon the payor or other
 4 third party in the same manner as a summons in a civil
 5 action. Upon receipt of written notice of a claimed lack of
 6 entitlement under this section, a payor or other third party
 7 may pay any amount owed or transfer or deposit any item of
 8 property held by it to or with the court having jurisdiction
 9 of the probate proceedings relating to the decedent's estate
 10 or, if no proceedings have been commenced, to or with the
 11 court having jurisdiction of probate proceedings relating to
 12 decedents' estates located in the county of the decedent's
 13 residence. The court shall hold the funds or item of
 14 property and, upon its determination under this section,
 15 shall order disbursement in accordance with the
 16 determination. Payments, transfers, or deposits made to or
 17 with the court discharge the payor or other third party from
 18 all claims for the value of amounts paid to or items of
 19 property transferred to or deposited with the court.

20 (6) (a) A person who purchases property for value and
 21 without notice or who receives a payment or other item of
 22 property in partial or full satisfaction of a legally
 23 enforceable obligation is neither obligated under this
 24 section to return the payment, item of property, or benefit
 25 nor liable under this section for the amount of the payment

1 or the value of the item of property or benefit. However, a
 2 person who, not for value, receives a payment, item of
 3 property, or other benefit to which the person is not
 4 entitled under this section is obligated to return the
 5 payment, item of property, or benefit, or is personally
 6 liable for the amount of the payment or the value of the
 7 item of property or benefit, to the person who is entitled
 8 to it under this section.

9 (b) If this section or any part of this section is
 10 preempted by federal law with respect to a payment, an item
 11 of property, or any other benefit covered by this section, a
 12 person who, not for value, receives the payment, item of
 13 property, or other benefit to which the person is not
 14 entitled under this section is obligated to return the
 15 payment, item of property, or benefit, or is personally
 16 liable for the amount of the payment or the value of the
 17 item of property or benefit, to the person who would have
 18 been entitled to it were this section or part of this
 19 section not preempted.

20 NEW SECTION. Section 63. Power of appointment --
 21 meaning of specific reference requirement. If a governing
 22 instrument creating a power of appointment expressly
 23 requires that the power be exercised by a reference, an
 24 express reference, or a specific reference to the power or
 25 its source, it is presumed that the donor's intention, in

1 requiring that the donee exercise the power by making
2 reference to the particular power or to the creating
3 instrument, was to prevent an inadvertent exercise of the
4 power.

5 NEW SECTION. Section 64. Class gifts construed to
6 accord with intestate succession. (1) Adopted individuals
7 and individuals born out of wedlock and their respective
8 descendants if appropriate to the class are included in
9 class gifts and other terms of relationship in accordance
10 with the rules for intestate succession. Terms of
11 relationship that do not differentiate relationships by
12 blood from those by affinity, such as "uncles", "aunts",
13 "nieces", or "nephews", are construed to exclude relatives
14 by affinity. Terms of relationship that do not differentiate
15 relationships by the half blood from those by the whole
16 blood, such as "brothers", "sisters", "nieces", or
17 "nephews", are construed to include both types of
18 relationships.

19 (2) In addition to the requirements of subsection (1),
20 in construing a dispositive provision of a transferor who is
21 not the natural parent, an individual born to the natural
22 parent is not considered the child of that parent unless the
23 individual lived while a minor as a regular member of the
24 household of that natural parent or of that parent's parent,
25 brother, sister, spouse, or surviving spouse.

1 (3) In addition to the requirements of subsection (1),
2 in construing a dispositive provision of a transferor who is
3 not the adopting parent, an adopted individual is not
4 considered the child of the adopting parent unless the
5 adopted individual lived while a minor, either before or
6 after the adoption, as a regular member of the household of
7 the adopting parent.

8 NEW SECTION. Section 65. Life insurance -- retirement
9 plan -- account with POD designation -- transfer-on-death
10 registration -- deceased beneficiary. (1) As used in this
11 section, the following definitions apply:

12 (a) "Alternative beneficiary designation" means a
13 beneficiary designation that is expressly created by the
14 governing instrument and that under the terms of the
15 governing instrument may take effect instead of another
16 beneficiary designation on the happening of one or more
17 events, including survival of the decedent or failure to
18 survive the decedent, whether an event is expressed in
19 condition-precedent, condition-subsequent, or any other
20 form.

21 (b) "Beneficiary" means the beneficiary of a
22 beneficiary designation and includes:

23 (i) a class member if the beneficiary designation is in
24 the form of a class gift; and

25 (ii) an individual or class member who was deceased at

1 the time the beneficiary designation was executed as well as
 2 an individual or class member who was then living but who
 3 failed to survive the decedent.

4 (c) "Beneficiary designation" includes an alternative
 5 beneficiary designation and a beneficiary designation in the
 6 form of a class gift.

7 (d) "Class member" includes an individual who fails to
 8 survive the decedent but who would have taken under a
 9 beneficiary designation in the form of a class gift had the
 10 individual survived the decedent.

11 (e) "Stepchild" means a child of the decedent's
 12 surviving, deceased, or former spouse but not a child of the
 13 decedent.

14 (f) "Surviving beneficiary" or "surviving descendant"
 15 means a beneficiary or a descendant who neither predeceased
 16 the decedent nor is considered to have predeceased the
 17 decedent under [section 62].

18 (2) If a beneficiary fails to survive the decedent and
 19 is a grandparent, a descendant of a grandparent, or a
 20 stepchild of the decedent, the following provisions apply:

21 (a) Except as provided in subsection (2)(d), if the
 22 beneficiary designation is not in the form of a class gift
 23 and the deceased beneficiary leaves surviving descendants, a
 24 substitute gift is created in the beneficiary's surviving
 25 descendants. They take by representation the property to

1 which the beneficiary would have been entitled had the
 2 beneficiary survived the decedent.

3 (b) Except as provided in subsection (2)(d), if the
 4 beneficiary designation is in the form of a class gift,
 5 other than a beneficiary designation to "issue",
 6 "descendants", "heirs of the body", "heirs", "next of kin",
 7 "relatives", or "family" or a class described by language of
 8 similar import, a substitute gift is created in the deceased
 9 beneficiary or beneficiary's surviving descendants. The
 10 property to which the beneficiaries would have been entitled
 11 had all of them survived the decedent passes to the
 12 surviving beneficiaries and the surviving descendants of the
 13 deceased beneficiaries. Each surviving beneficiary takes the
 14 share to which the surviving beneficiary would have been
 15 entitled had the deceased beneficiaries survived the
 16 decedent. Each deceased beneficiary's surviving descendants
 17 who are substituted for the deceased beneficiary take by
 18 representation the share to which the deceased beneficiary
 19 would have been entitled had the deceased beneficiary
 20 survived the decedent. For purposes of this subsection (b),
 21 "deceased beneficiary" means a class member who failed to
 22 survive the decedent and left one or more surviving
 23 descendants.

24 (c) For the purposes of [section 61], words of
 25 survivorship, such as in a beneficiary designation to an

1 individual "if the individual survives me" or in a
2 beneficiary designation to "my surviving children", are not,
3 in the absence of additional evidence, a sufficient
4 indication of an intent contrary to the application of this
5 section.

6 (d) If a governing instrument creates an alternative
7 beneficiary designation with respect to a beneficiary
8 designation for which a substitute gift is created by
9 subsection (2)(a) or (2)(b), the substitute gift is
10 superseded by the alternative beneficiary designation only
11 if an expressly designated beneficiary of the alternative
12 beneficiary designation is entitled to take.

13 (3) If, under subsection (2), substitute gifts are
14 created and not superseded with respect to more than one
15 beneficiary designation and the beneficiary designations are
16 alternative beneficiary designations, one to the other, the
17 determination of which of the substitute gifts takes effect
18 is resolved as follows:

19 (a) Except as provided in subsection (3)(b), the
20 property passes under the primary substitute gift.

21 (b) If there is a younger-generation beneficiary
22 designation, the property passes under the
23 younger-generation substitute gift and not under the primary
24 substitute gift.

25 (c) As used in this subsection (3), the following

1 definitions apply:

2 (i) "Primary beneficiary designation" means the
3 beneficiary designation that would have taken effect had all
4 the deceased beneficiaries of the alternative beneficiary
5 designations who left surviving descendants survived the
6 decedent.

7 (ii) "Primary substitute gift" means the substitute gift
8 created with respect to the primary beneficiary designation.

9 (iii) "Younger-generation beneficiary designation" means
10 a beneficiary designation that:

11 (A) is to a descendant of a beneficiary of the primary
12 beneficiary designation;

13 (B) is an alternative beneficiary designation with
14 respect to the primary beneficiary designation;

15 (C) is a beneficiary designation for which a substitute
16 gift is created; and

17 (D) would have taken effect had all the deceased
18 beneficiaries who left surviving descendants survived the
19 decedent except the deceased beneficiary or beneficiaries of
20 the primary beneficiary designation.

21 (iv) "Younger-generation substitute gift" means the
22 substitute gift created with respect to the
23 younger-generation beneficiary designation.

24 (4) (a) A payor is protected from liability in making
25 payments under the terms of the beneficiary designation

1 until the payor has received written notice of a claim to a
 2 substitute gift under this section. Payment made before the
 3 receipt of written notice of a claim to a substitute gift
 4 under this section discharges the payor, but not the
 5 recipient, from all claims for the amounts paid. A payor is
 6 liable for a payment made after the payor has received
 7 written notice of the claim. A recipient is liable for a
 8 payment received, whether or not written notice of the claim
 9 is given.

10 (b) The written notice of the claim must be mailed to
 11 the payor's main office or home by certified mail, return
 12 receipt requested, or served upon the payor in the same
 13 manner as a summons in a civil action. Upon receipt of
 14 written notice of the claim, a payor may pay any amount owed
 15 by it to the court having jurisdiction of the probate
 16 proceedings relating to the decedent's estate or, if no
 17 proceedings have been commenced, to the court having
 18 jurisdiction of probate proceedings relating to decedents'
 19 estates located in the county of the decedent's residence.
 20 The court shall hold the funds and, upon its determination
 21 under this section, shall order disbursement in accordance
 22 with the determination. Payment made to the court discharges
 23 the payor from all claims for the amounts paid.

24 (5) (a) A person who purchases property for value and
 25 without notice or who receives a payment or other item of

1 property in partial or full satisfaction of a legally
 2 enforceable obligation is neither obligated under this
 3 section to return the payment, item of property, or benefit
 4 nor liable under this section for the amount of the payment
 5 or the value of the item of property or benefit. However, a
 6 person who, not for value, receives a payment, item of
 7 property, or other benefit to which the person is not
 8 entitled under this section is obligated to return the
 9 payment, item of property, or benefit, or is personally
 10 liable for the amount of the payment or the value of the
 11 item of property or benefit, to the person who is entitled
 12 to it under this section.

13 (b) If this section or any part of this section is
 14 preempted by federal law with respect to a payment, an item
 15 of property, or any other benefit covered by this section, a
 16 person who, not for value, receives the payment, item of
 17 property, or other benefit to which the person is not
 18 entitled under this section is obligated to return the
 19 payment, item of property, or benefit, or is personally
 20 liable for the amount of the payment or the value of the
 21 item of property or benefit, to the person who would have
 22 been entitled to it were this section or part of this
 23 section not preempted.

24 NEW SECTION. **Section 66.** Survivorship with respect to
 25 future interests under terms of trust -- substitute takers.

1 (1) As used in this section, the following definitions
2 apply:

3 (a) "Alternative future interest" means an expressly
4 created future interest that may take effect in possession
5 or enjoyment instead of another future interest on the
6 happening of one or more events, including survival of an
7 event or failure to survive an event, whether an event is
8 expressed in condition-precedent, condition-subsequent, or
9 any other form. A residuary clause in a will does not create
10 an alternative future interest with respect to a future
11 interest created in a nonresiduary devise in the will,
12 whether or not the will specifically provides that lapsed or
13 failed devises are to pass under the residuary clause.

14 (b) "Beneficiary" means the beneficiary of a future
15 interest and includes a class member if the future interest
16 is in the form of a class gift.

17 (c) "Class member" includes an individual who fails to
18 survive the distribution date but who would have taken under
19 a future interest in the form of a class gift had the
20 individual survived the distribution date.

21 (d) "Distribution date" with respect to a future
22 interest means the time when the future interest is to take
23 effect in possession or enjoyment. The distribution date
24 need not occur at the beginning or end of a calendar day,
25 but may occur at a time during the course of a day.

1 (e) "Future interest" includes an alternative future
2 interest and a future interest in the form of a class gift.

3 (f) "Future interest under the terms of a trust" means
4 a future interest that was created by a transfer creating a
5 trust or to an existing trust or by an exercise of a power
6 of appointment to an existing trust that directs the
7 continuance of an existing trust, designates a beneficiary
8 of an existing trust, or creates a trust.

9 (g) "Surviving beneficiary" or "surviving descendant"
10 means a beneficiary or a descendant who neither predeceased
11 the distribution date nor is considered to have predeceased
12 the distribution date under [section 62].

13 (2) A future interest under the terms of a trust is
14 contingent on the beneficiary surviving the distribution
15 date. If a beneficiary of a future interest under the terms
16 of a trust fails to survive the distribution date, the
17 following provisions apply:

18 (a) Except as provided in subsection (2)(d), if the
19 future interest is not in the form of a class gift and the
20 deceased beneficiary leaves surviving descendants, a
21 substitute gift is created in the beneficiary's surviving
22 descendants. They take by representation the property to
23 which the beneficiary would have been entitled had the
24 beneficiary survived the distribution date.

25 (b) Except as provided in subsection (2)(d), if the

1 future interest is in the form of a class gift, other than a
 2 future interest to "issue", "descendants", "heirs of the
 3 body", "heirs", "next of kin", "relatives", or "family" or a
 4 class described by language of similar import, a substitute
 5 gift is created in the deceased beneficiary or beneficiary's
 6 surviving descendants. The property to which the
 7 beneficiaries would have been entitled had all of them
 8 survived the distribution date passes to the surviving
 9 beneficiaries and the surviving descendants of the deceased
 10 beneficiaries. Each surviving beneficiary takes the share to
 11 which the surviving beneficiary would have been entitled had
 12 the deceased beneficiaries survived the distribution date.
 13 Each deceased beneficiary's surviving descendants who are
 14 substituted for the deceased beneficiary take by
 15 representation the share to which the deceased beneficiary
 16 would have been entitled had the deceased beneficiary
 17 survived the distribution date. For purposes of this
 18 subsection (2), "deceased beneficiary" means a class member
 19 who failed to survive the distribution date and left one or
 20 more surviving descendants.

21 (c) For the purposes of [section 61], words of
 22 survivorship attached to a future interest are not, in the
 23 absence of additional evidence, a sufficient indication of
 24 an intent contrary to the application of this section. Words
 25 of survivorship include words of survivorship that relate to

1 the distribution date or to an earlier or an unspecified
 2 time, whether those words of survivorship are expressed in
 3 condition-precedent, condition-subsequent, or any other
 4 form.

5 (d) If a governing instrument creates an alternative
 6 future interest with respect to a future interest for which
 7 a substitute gift is created by subsection (2)(a) or (2)(b),
 8 the substitute gift is superseded by the alternative future
 9 interest only if an expressly designated beneficiary of the
 10 alternative future interest is entitled to take in
 11 possession or enjoyment.

12 (3) If, under subsection (2), substitute gifts are
 13 created and not superseded with respect to more than one
 14 future interest and the future interests are alternative
 15 future interests, one to the other, the determination of
 16 which of the substitute gifts takes effect is resolved as
 17 follows:

18 (a) Except as provided in subsection (3)(b), the
 19 property passes under the primary substitute gift.

20 (b) If there is a younger-generation future interest,
 21 the property passes under the younger-generation substitute
 22 gift and not under the primary substitute gift.

23 (c) As used in this subsection (3), the following
 24 definitions apply:

25 (i) "Primary future interest" means the future interest

1 that would have taken effect had all the deceased
2 beneficiaries of the alternative future interests who left
3 surviving descendants survived the distribution date.

4 (ii) "Primary substitute gift" means the substitute gift
5 created with respect to the primary future interest.

6 (iii) "Younger-generation future interest" means a
7 future interest that:

8 (A) is to a descendant of a beneficiary of the primary
9 future interest;

10 (B) is an alternative future interest with respect to
11 the primary future interest;

12 (C) is a future interest for which a substitute gift is
13 created; and

14 (D) would have taken effect had all the deceased
15 beneficiaries who left surviving descendants survived the
16 distribution date except the deceased beneficiary or
17 beneficiaries of the primary future interest.

18 (iv) "Younger-generation substitute gift" means the
19 substitute gift created with respect to the
20 younger-generation future interest.

21 (4) If, after the application of subsections (2) and
22 (3), there is no surviving taker, the property passes in the
23 following order:

24 (a) if the trust was created in a nonresiduary devise
25 in the transferor's will or in a codicil to the transferor's

1 will, the property passes under the residuary clause in the
2 transferor's will. For purposes of this section, the
3 residuary clause is treated as creating a future interest
4 under the terms of a trust.

5 (b) if no taker is produced by the application of
6 subsection (4)(a), the property passes to the transferor's
7 heirs under [section 70].

8 NEW SECTION. **Section 67.** Class gifts to "descendants",
9 "issue", or "heirs of the body" -- form of distribution if
10 none specified. If a class gift in favor of "descendants",
11 "issue", or "heirs of the body" does not specify the manner
12 in which the property is to be distributed among the class
13 members, the property is distributed among the class members
14 who are living when the interest is to take effect in
15 possession or enjoyment in such shares as they would receive
16 under the applicable law of intestate succession if the
17 designated ancestor had then died intestate owning the
18 subject matter of the class gift.

19 NEW SECTION. **Section 68.** Representation -- per capita
20 at each generation -- per stirpes. (1) As used in this
21 section, the following definitions apply:

22 (a) "Deceased child" or "deceased descendant" means a
23 child or a descendant who either predeceased the
24 distribution date or is considered to have predeceased the
25 distribution date under [section 62].

1 (b) "Distribution date", with respect to an interest,
2 means the time when the interest is to take effect in
3 possession or enjoyment. The distribution date need not
4 occur at the beginning or end of a calendar day but may
5 occur at a time during the course of a day.

6 (c) "Surviving ancestor", "surviving child", or
7 "surviving descendant" means an ancestor, a child, or a
8 descendant who neither predeceased the distribution date nor
9 is considered to have predeceased the distribution date
10 under [section 62].

11 (2) (a) If an applicable statute or a governing
12 instrument calls for property to be distributed "by
13 representation" or "per capita at each generation", the
14 property is divided into as many equal shares as there are:

15 (i) surviving descendants in the generation nearest to
16 the designated ancestor that contains one or more surviving
17 descendants; and

18 (ii) deceased descendants in the same generation who
19 left surviving descendants, if any.

20 (b) Each surviving descendant in the nearest generation
21 is allocated one share. The remaining shares, if any, are
22 combined and then divided in the same manner among the
23 surviving descendants of the deceased descendants as if the
24 surviving descendants who were allocated a share and their
25 surviving descendants had predeceased the distribution date.

1 (3) (a) If a governing instrument calls for property to
2 be distributed "per stirpes", the property is divided into
3 as many equal shares as there are:

4 (i) surviving children of the designated ancestor; and
5 (ii) deceased children who left surviving descendants.

6 (b) Each surviving child is allocated one share. The
7 share of each deceased child with surviving descendants is
8 divided in the same manner, with subdivision repeating at
9 each succeeding generation until the property is fully
10 allocated among surviving descendants.

11 (4) For the purposes of subsections (2) and (3), an
12 individual who is deceased and left no surviving descendant
13 is disregarded and an individual who leaves a surviving
14 ancestor who is a descendant of the designated ancestor is
15 not entitled to a share.

16 NEW SECTION. Section 69. Worthier title doctrine
17 abolished. The doctrine of worthier title is abolished as a
18 rule of law and as a rule of construction. Language in a
19 governing instrument describing the beneficiaries of a
20 disposition as the transferor's "heirs", "heirs at law",
21 "next of kin", "distributees", "relatives", or "family" or
22 language of similar import does not create or presumptively
23 create a reversionary interest in the transferor.

24 NEW SECTION. Section 70. Future interests in "heirs"
25 and like. If an applicable statute or a governing instrument

calls for a future distribution to or creates a future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state under 72-2-207, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

NEW SECTION. Section 71. Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-103. A decree of separation that

does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as provided by the express terms of a

governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument that are not revoked by this section are given effect as if the former spouse and relatives of the former spouse disclaimed the revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-104 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing

instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or

deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other

person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

NEW SECTION. Section 72. Honorary trusts -- trusts for pets. (1) A trust for a noncharitable corporation or unincorporated society or for a lawful noncharitable purpose may be performed by the trustee for 21 years but no longer, whether or not there is a beneficiary who can seek the trust's enforcement or termination and whether or not the terms of the trust contemplate a longer duration.

(2) Subject to the provisions of this subsection, a trust for the care of a designated domestic or pet animal and the animal's offspring is valid. Except as expressly provided otherwise in the trust instrument, the following provisions apply:

(a) No portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of a covered animal.

(b) The trust terminates at the earlier of 21 years after the trust was created or when no living animal is

covered by the trust.

(c) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection (2)(c)(i) or (2)(c)(ii), to the transferor's heirs under [section 70].

(d) For the purposes of [section 66], the residuary clause is treated as creating a future interest under the terms of a trust.

(e) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(f) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(g) A governing instrument must be liberally construed to bring the transfer within the applicability of this

section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(h) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (2)(c).

(i) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Section 73. Section 72-3-212, MCA, is amended to read:

"72-3-212. Informal probate -- clerk to make findings.

In an informal proceeding for original probate of a will, the clerk shall determine whether:

- (1) the application is complete;
- (2) the applicant has made oath or affirmation that the

statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103~~(2)~~;

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired."

Section 74. Section 72-3-213, MCA, is amended to read:

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

(2) The application ~~shall~~ must be denied if it indicates that a personal representative has been appointed

in another county of this state or, except as provided in subsection (3) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will ~~which~~ that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together 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~~ that does not provide for probate of a will after death and ~~which~~ that 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~~ that relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, ~~shall~~ must be declined."

Section 75. Section 72-3-222, MCA, is amended to read:

"72-3-222. Informal appointment -- clerk to make findings. In informal appointment proceedings, the clerk

~~must~~ shall determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103~~(21)~~;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by 72-3-106 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling ~~him~~ the person to the appointment."

Section 76. Section 72-11-101, MCA, is amended to read:

"72-11-101. Degrees of kindred kinship -- how computed. The degree of kindred kinship is established by the number of generations, and each generation is called a degree."

Section 77. Section 72-11-102, MCA, is amended to read:

"72-11-102. Degrees Types of kindred kinship -- lineal and collateral consanguinity. ~~The series--of--degrees--forms~~

~~the--line;--the--series--of--degrees~~ There are two types of kinship, lineal and collateral. Lineal kinship, or the direct line of consanguinity, is the relationship between persons, ~~who descend from one another is--called--direct--or lineal--consanguinity;~~ of whom is a descendant of the other, and ~~the--series--of--degrees~~ Collateral kinship is the relationship between persons ~~people~~ who do not descend from one another but spring from a common ancestor ~~is--called--the collateral~~ but are not in a direct line or collateral consanguinity."

Section 78. Section 72-11-103, MCA, is amended to read:

"72-11-103. Degrees--of--kindred-----ascending--and descending--direct--line Computation of degrees in lineal kinship. The direct--line--is--divided--into--a--direct--line descending--and--a--direct--line--ascending degree of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins. The child is, with regard to the parent, in the first degree; the grandchild is, with regard to the grandparent, in the is that--which--connects--an--ancestor--with--those--who--descend--from him--The second degree; is--that--which--connects--a--person--with those--from--whom--he--descends and vice versa as to the parent and grandparent with regard to their respective children and grandchildren."

Section 79. Section 72-11-104, MCA, is amended to read:

"72-11-104. Degrees---of---kindred-----computation Computation of degrees in direct--line collateral kinship. In the--direct--line--there--are--as--many--degrees--as--there--are generations--Thus,--the--son--is--with--regard--to--the--father--in the--first The degree of collateral kinship of two persons is computed by commencing with one of the persons, ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins,~~--the--grandson~~ Siblings are related to each other in the second degree,~~--and--vice--versa--with--regard--to--the--father and--grandfather--toward--the--sons--and--grandsons~~ uncle and niece are related to each other in the third degree, and first cousins are related to each other in the fourth degree."

Section 80. Section 72-12-200, MCA, is amended to read:

"72-12-200. Fees and expenses -- by whom paid. When the validity or probate of a will is contested through court action, the attorney fees and expenses costs, as provided in 25-10-201, incurred in defending the validity or probate of the will must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs, as provided in

25-10-201, but not attorney fees, must be paid by the party who resisted the revocation or out of the property of the decedent, as the court directs."

Section 81. Section 72-16-313, MCA, is amended to read:

"72-16-313. Exemptions of spouse and other relatives.

(1) The clear value of all property distributed or passing to a decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 2.

(b) any ~~child---to---whom~~ stepchild, as defined in 72-2-512, of the decedent, ~~prior-to-the-transfer---~~ stood--in the--mutually--acknowledged--relationship--of--a--parent--or stepparent, provided the relationship began on or before the ~~child's~~ stepchild's 18th birthday.

(3) The following amounts are exempt:

(a) property of the clear value of \$7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of \$1,000 transferred

to each of the persons described in 72-16-321(2)."

Section 82. Section 72-36-206, MCA, is amended to read:

"72-36-206. Effects on real property transactions. (1)

This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts. ~~This--section--does--not affect-conveyances-recorded-prior-to-October-17-1989.~~

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance ~~shall~~ must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration,

1 despite any valid trust which may exist.

2 (5) Unless limitations upon a trustee's power or
3 authority are set forth in the recorded conveyance of real
4 property to the trustee or in a separate trust instrument
5 (or portion thereof, or abstract thereof) recorded in the
6 same county, there are no limitations upon the trustee's
7 power or authority to convey or encumber the real property
8 in favor of third persons who were without actual knowledge
9 and who acted for a valuable consideration. A separate trust
10 instrument incorporated by reference in a conveyance to a
11 trustee cannot limit the trustee's power or authority to
12 convey or encumber unless the limitations are set forth in
13 the trust instrument (or portion thereof or abstract
14 thereof) which is also recorded in the county where the real
15 property is located. An amendment to a recorded trust
16 instrument may not affect the power or authority of a
17 trustee to convey or encumber unless it is also recorded in
18 the same place.

19 (6) A subsequent conveyance from a person designated in
20 the original conveyance as trustee (or from his successor
21 trustee) conveys the whole estate vested in the trustee,
22 except as limited by the terms of the conveyance. The
23 identity of any successor trustee may be established by a
24 recorded affidavit of the successor trustee specifying his
25 the successor trustee's name and address and the date and

1 circumstances of his succession, and confirming that he the
2 successor trustee is currently lawfully serving in such that
3 capacity.

4 (7) In an action or proceeding by a third person
5 involving the real property granted to a trustee, the person
6 designated as trustee in the original conveyance, or the
7 successor trustee as established in subsection (6), or, if
8 none, the person then actually serving as trustee, or, if
9 none, any beneficiary designated by the court to represent
10 the interests of the beneficiaries, shall be considered the
11 only necessary representative of the trust and of all
12 persons with an interest therein in the trust. A judgment is
13 binding upon and conclusive against the trust and all
14 persons interested therein in the trust as to all matters
15 finally adjudicated in the judgment.

16 (8) The designation of the name of a trust in a
17 recorded conveyance vests the estate in the trustee of the
18 trust. A subsequent conveyance may be made by the trustee.
19 The identity of a party serving as trustee may be
20 established by a recorded affidavit of the party or by other
21 recorded instrument, specifying the trustee's name and
22 address and confirming that he the party is currently
23 serving as the trustee."

24 NEW SECTION. Section 83. Nonprobate transfers on
25 death. (1) A provision for a nonprobate transfer on death in

an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state.

NEW SECTION. **Section 84.** Definitions. In [sections 84

through 102], the following definitions apply:

(1) "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party or

a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(a) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(b) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment that complies with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; however, for purposes of [sections 84 through 102], if terms of the account condition payment on advance notice, a request for payment is treated

as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

NEW SECTION. **Section 85.** Limitation on scope of [sections 84 through 102]. [Sections 84 through 102] do not apply to:

(1) an account established for a partnership, joint venture, or other organization for a business purpose;

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

NEW SECTION. **Section 86.** Types of account -- existing accounts. (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject

to [section 91(3)], either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after [the effective date of this act], whether in the form prescribed in [section 87] or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of [sections 84 through 102], and is governed by [sections 84 through 102].

NEW SECTION. Section 87. Forms. (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of [sections 84 through 102] applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

.....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties

but have no ownership or rights at death unless
named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or
More Agents]:

.....

[Select One And Initial]:

..... AGENCY DESIGNATION SURVIVES
DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON
DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain
provisions in substantially the form provided in subsection
(1) is governed by the provisions of [sections 84 through
102] applicable to the type of account that most nearly
conforms to the depositor's intent.

NEW SECTION. Section 88. Designation of agent. (1) By
a writing signed by all parties, the parties may designate
as agent or all parties on an account a person other than a
party.

(2) Unless the terms of an agency designation provide
that the authority of the agent terminates on disability or
incapacity of a party, the agent's authority survives
disability and incapacity. The agent may act for a disabled
or incapacitated party until the authority of the agent is
terminated.

(3) Death of the sole party or last-surviving party
terminates the authority of an agent.

**NEW SECTION. Section 89. Applicability of [sections 90
through 102].** The provisions of [sections 90 through 95]
concerning beneficial ownership as between parties or as
between parties and beneficiaries apply only to
controversies between those persons and their creditors and
other successors and do not apply to the right of those
persons to payment as determined by the terms of the
account. [Sections 96 through 102] govern the liability and
setoff rights of financial institutions that make payments
pursuant to it.

NEW SECTION. Section 90. Ownership during lifetime.
(1) In this section, "net contribution" of a party means the
sum of all deposits to an account made by or for the party,
less all payments from the account made to or for the party
that have not been paid to or applied to the use of another
party and a proportionate share of any charges deducted from
the account, plus a proportionate share of any interest or
dividends earned, whether or not included in the current
balance. The term includes deposit life insurance proceeds
added to the account by reason of death of the party whose
net contribution is in question.

(2) During the lifetime of all parties, an account
belongs to the parties in proportion to the net contribution

1 of each to the sums on deposit unless there is clear and
 2 convincing evidence of a different intent. As between
 3 parties married to each other, in the absence of proof
 4 otherwise, the net contribution of each is presumed to be an
 5 equal amount.

6 (3) A beneficiary in an account having a POD
 7 designation has no right to sums on deposit during the
 8 lifetime of any party.

9 (4) An agent in an account with an agency designation
 10 has no beneficial right to sums on deposit.

11 **NEW SECTION. Section 91. Rights at death.** (1) Except
 12 as otherwise provided in [sections 84 through 102], on the
 13 death of a party, sums on deposit in a multiple-party
 14 account belong to the surviving party or parties. If two or
 15 more parties survive and one is the surviving spouse of the
 16 decedent, the amount to which the decedent, immediately
 17 before death, was beneficially entitled under [section 90]
 18 belongs to the surviving spouse. If two or more parties
 19 survive and none is the surviving spouse of the decedent,
 20 the amount to which the decedent, immediately before death,
 21 was beneficially entitled under [section 90] belongs to the
 22 surviving parties in equal shares and augments the
 23 proportion to which each survivor, immediately before the
 24 decedent's death, was beneficially entitled under [section
 25 90] and the right of survivorship continues between the

1 surviving parties.

2 (2) In an account with a POD designation:

3 (a) on the death of one of two or more parties, the
 4 rights in sums on deposit are governed by subsection (1);

5 (b) on the death of the sole party or the last survivor
 6 of two or more parties, sums on deposit belong to the
 7 surviving beneficiary or beneficiaries. If two or more
 8 beneficiaries survive, sums on deposit belong to them in
 9 equal and undivided shares and there is no right of
 10 survivorship in the event of the death of a beneficiary
 11 thereafter. If no beneficiary survives, sums on deposit
 12 belong to the estate of the last-surviving party.

13 (3) Sums on deposit in a single-party account without a
 14 POD designation, or in a multiple-party account that, by the
 15 terms of the account, is without right of survivorship, are
 16 not affected by the death of a party, but the amount to
 17 which the decedent, immediately before death, was
 18 beneficially entitled under [section 90] is transferred as
 19 part of the decedent's estate. A POD designation in a
 20 multiple-party account without right of survivorship is
 21 ineffective. For purposes of this section, designation of an
 22 account as a tenancy in common establishes that the account
 23 is without right of survivorship.

24 (4) The ownership right of a surviving party or
 25 beneficiary, or of the decedent's estate, in sums on deposit

is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

NEW SECTION. Section 92. Alteration of rights. (1) Rights at death under [section 91] are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(2) A right of survivorship arising from the express terms of the account, from [section 91], or from a POD designation may not be altered by will.

NEW SECTION. Section 93. Accounts and transfers nontestamentary. Except as provided in Title 72, chapter 2, part 7, or as a consequence of and to the extent directed by [section 94], a transfer resulting from the application of [section 91] is effective by reason of the terms of the account involved and [sections 84 through 102] and is not

testamentary or subject to Title 72, chapters 1 through 5.

NEW SECTION. Section 94. Rights of creditors and others. (1) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under [sections 84 through 102] is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.

(2) A surviving party or beneficiary who receives payment from an account after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under [section 90], to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within 1 year after death of the decedent.

(3) A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other

1 account of the decedent.

2 (4) Sums recovered by the personal representative must
3 be administered as part of the decedent's estate. This
4 section does not affect the protection from claims of the
5 personal representative or estate of a deceased party
6 provided in [section 101] for a financial institution that
7 makes payment in accordance with the terms of the account.

8 NEW SECTION. Section 95. Community property and
9 tenancy by entireties. (1) A deposit of community property
10 in an account does not alter the community character of the
11 property or community rights in the property, but a right of
12 survivorship between parties married to each other that
13 arises from the express terms of the account or [section 91]
14 may not be altered by will.

15 (2) [Sections 84 through 102] do not affect the law
16 governing tenancy by the entireties.

17 NEW SECTION. Section 96. Authority of financial
18 institution. A financial institution may enter into a
19 contract of deposit for a multiple-party account to the same
20 extent it may enter into a contract of deposit for a
21 single-party account and may provide for a POD designation
22 and an agency designation in either a single-party account
23 or a multiple-party account. A financial institution need
24 not inquire as to the source of a deposit to an account or
25 as to the proposed application of a payment from an account.

1 NEW SECTION. Section 97. Payment on multiple-party
2 account. A financial institution, on request, may pay sums
3 on deposit in a multiple-party account to:

4 (1) one or more of the parties, whether or not another
5 party is disabled, incapacitated, or deceased when payment
6 is requested and whether or not the party making the request
7 survives another party; or

8 (2) the personal representative, if any, or, if there
9 is none, the heirs or devisees of a deceased party if proof
10 of death is presented to the financial institution, showing
11 that the deceased party was the survivor of all other
12 persons named on the account as either a party or
13 beneficiary, unless the account is without right of
14 survivorship under [section 91].

15 NEW SECTION. Section 98. Payment on POD designation. A
16 financial institution, on request, may pay sums on deposit
17 in an account with a POD designation to:

18 (1) one or more of the parties, whether or not another
19 party is disabled, incapacitated, or deceased when the
20 payment is requested and whether or not a party survives
21 another party;

22 (2) the beneficiary or beneficiaries, if proof of death
23 is presented to the financial institution, showing that the
24 beneficiary or beneficiaries survived all persons named as
25 parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary.

NEW SECTION. Section 99. Payment to designated agent.

A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

NEW SECTION. Section 100. Payment to minor. If a

financial institution is required or permitted to make payment pursuant to [sections 84 through 102] to a minor designated as a beneficiary, payment may be made pursuant to the Montana Uniform Transfers to Minors Act Title 72 chapter 26.

NEW SECTION. Section 101. Discharge. (1) Payment made

pursuant to [sections 84 through 102] in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors.

Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(2) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

NEW SECTION. Section 102. Setoff. Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is either the proportion to which the party is, or immediately before death was, beneficially entitled under [section 90] or, in the absence of proof of that proportion, an equal share with all parties.

NEW SECTION. Section 103. Definitions. As used in [sections 103 through 112], the following definitions apply:

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of

securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

NEW SECTION. Section 104. Registration in beneficiary form -- sole or joint tenancy ownership. Only individuals whose registration of a security shows sole ownership by one

individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety, or as owners of community property held in survivorship form and not as tenants in common.

NEW SECTION. Section 105. Registration in beneficiary form -- applicable law. (1) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state:

(a) of organization of the issuer or registering entity;

(b) of the location of the registering entity's principal office;

(c) of the office of its transfer agent or its office making the registration; or

(d) listed as the owner's address at the time of registration.

(2) A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

NEW SECTION. Section 106. Origination of registration

in beneficiary form. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

NEW SECTION. Section 107. Form of registration in beneficiary form. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

NEW SECTION. Section 108. Effect of registration in beneficiary form. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

NEW SECTION. Section 109. Ownership on death of owner. On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary

form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

NEW SECTION. Section 110. Protection of registering entity. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by [sections 103 through 112].

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in [sections 103 through 112].

(3) (a) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with [section 109] and does so in good faith reliance on:

(i) the registration;

(ii) [sections 103 through 112]; and

(iii) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(b) The protections of [sections 103 through 112] do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under [sections 103 through 112].

(4) The protection provided by [sections 103 through 112] to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

NEW SECTION. Section 111. Nontestamentary transfer on death. (1) A transfer on death, resulting from a registration in beneficiary form, is effective by reason of the contract regarding the registration between the owner and the registering entity and [sections 103 through 112]

and is not testamentary.

(2) [Sections 103 through 112] do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

NEW SECTION. Section 112. Terms, conditions, and forms for registration. (1) (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:

(i) registrations in beneficiary form; and
(ii) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the

descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death that governs inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(b) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.;

(c) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

Section 113. Section 72-31-201, MCA, is amended to read:

"72-31-201. Statutory short form of general power of attorney ---format-requirements---joint-agents. (1) The use of the following statutory form,--or--a--form--substantially

similar--to--the--following--form,--in--the--creation of a power of attorney is lawful,--and--when--used,--the--form--must--be construed--in--accordance--with--the--provisions--of--this--part legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED EXPLAINED IN 72-31-202 THROUGH-72-31-216 THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THE-USE-OF-ANY OTHER-OR-DIFFERENT-FORM-OF-POWER-OF-ATTORNEY-DESIRED-BY--THE PARTIES--IS-ALSO-PERMITTED. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY MAY-BE-REVOKED-BY YOU IF YOU LATER WISH TO DO SO. THIS-POWER-OF-ATTORNEY AUTHORIZES-BUT-DOES-NOT-REQUIRE-THE-ATTORNEY-IN-FACT-TO-ACT FOR-YOU.

Know--all--by--these--presents,--which--are--intended--to constitute--a--STATUTORY--SHORT-FORM-POWER-OF-ATTORNEY--pursuant to--this--section:

That I (insert your name and address of---the---principal) do---hereby appoint (insert the name and address of the attorney-in-fact--or--each-attorney-in-fact-if-more-than-one is-designated person appointed) as my attorney(s)--in-fact agent (attorney-in-fact) to act {jointly} for me in any lawful way with respect to the following initialed subjects:

{NOTE:--if-more-than-one-attorney-in-fact--is--designated and--the--principal-wishes--each-attorney-in-fact--alone--to--be able--to--exercise--the--power--conferred,--delete--the--word "jointly".--Failure--to--delete--the--word--"jointly"--will--require the-attorneys-in-fact--to--act--unanimously.}

First:--in--my--name, place, and--stead--in--any--way--that--I myself--could--do,--if--I--were--personally--present,--with--respect to--the--following--matters--as--each--of--them--is--defined--in 72-31-202-through-72-31-216:

{To--grant--to--the--attorney--in--fact--any--of--the--following powers,--make--a--check--or--"X"--in--the--line--in--front--of--each power--being--granted. To--delete--any--of--the--following--powers, do--not--make--a--check--or--"X"--in--the--line--in--front--of--the power. You may, but need not, cross out each power--being deleted--with--a--line--drawn--through--it--(or--in--similar fashion). Failure--to--make--a--check--or--"X"--in--the--line--in front--of--the--power--will--have--the--effect--of--deleting--the power--unless--the--line--in--front--of--the--power--of--(s)--is checked--or--X-ed.}

Check--or--"X"

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER

1 YOU ARE GRANTING.

2 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF
 3 IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.
 4 INITIAL

- 5 (A) real property transactions;
 6 (B) tangible personal property transactions;
 7 (C) stock and bond, ~~share~~, ~~and~~ ~~commodity~~
 8 ~~transactions~~;
 9 (D) commodity and option transactions;
 10 ~~(B)~~(E) banking and other financial institution
 11 ~~transactions~~;
 12 ~~(E)~~(F) business operating transactions;
 13 ~~(F)~~(G) insurance and annuity transactions;
 14 ~~(G)~~(H) estate, trust, and other beneficiary
 15 ~~transactions~~;
 16 ~~..... (H) gift transactions~~;
 17 ~~..... (I) fiduciary transactions~~;
 18 ~~(J)~~(I) claims and litigation;
 19 ~~(K)~~(J) personal and family maintenance;
 20 ~~(L)~~(K) benefits from social security, medicare,
 21 medicaid, or other governmental programs or from military
 22 service;
 23 ~~..... (M) records, reports, and statements~~;
 24 (L) retirement plan transactions;
 25 ~~(N)~~(M) all other tax matters;

1 ~~(N)~~ all of the powers listed in (A) through
 2 ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY
 3 OTHER LINES IF YOU INITIAL LINE (N).

4 Second:--(You--must--indicate--below--whether--or--not--this
 5 power--of--attorney--will--be--effective--if--you--become
 6 incompetent--Make-a-check-or-"X"--in-the-line-in-front-of-the
 7 statement-that-expresses-your-intent:)

8 SPECIAL INSTRUCTIONS:

9 ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS
 10 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

11
 12
 13
 14
 15
 16
 17

18 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF
 19 ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT
 20 IS REVOKED.

21 This power of attorney revokes all previous powers of
 22 attorney signed by me.

23 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS
 24 POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY
 25 SIGNED BY YOU.

1 IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL
 2 PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ
 3 THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS
 4 CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF
 5 THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

6 This power of attorney shall will continue to be
 7 effective if I become disabled, incapacitated, or
 8 incompetent. ~~it shall not be affected by my later disability~~
 9 ~~or incompetency.~~

10 ~~-----This power of attorney shall not be effective if~~
 11 ~~I become incompetent.~~

12 ~~Third:--(You must indicate below whether or not this~~
 13 ~~power of attorney authorizes the attorney in fact to~~
 14 ~~transfer your property directly to the attorney in fact.~~
 15 ~~Make a check or "X" in the line in front of the statement~~
 16 ~~that expresses your intent.)~~

17 ~~-----This power of attorney authorizes the~~
 18 ~~attorney in fact to receive the transfer directly.~~

19 ~~-----This power of attorney does not authorize the~~
 20 ~~attorney in fact to receive the transfer directly.~~

21 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS
 22 POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED,
 23 INCAPACITATED, OR INCOMPETENT.

24 If it becomes necessary to appoint a conservator of my
 25 estate or guardian of my person, I nominate my agent.

1 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO
 2 NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

3 If any agent named by me dies, becomes incompetent,
 4 resigns or refuses to accept the office of agent, I name the
 5 following (each to act alone and successively, in the order
 6 named) as successor(s) to the agent:

7 1.

8 2.

9 3.

10 For purposes of this subsection, a person is considered
 11 to be incompetent if and while: (1) the person is a minor;
 12 (2) the person is an adjudicated incompetent or disabled
 13 person; (3) a conservator has been appointed to act for the
 14 person; (4) a guardian has been appointed to act for the
 15 person; or (5) the person is unable to give prompt and
 16 intelligent consideration to business matters as certified
 17 by a licensed physician.

18 I agree that any third party who receives a copy of this
 19 document may act under it. I may revoke this power of
 20 attorney by a written document that expressly indicates my
 21 intent to revoke. Revocation of the power of attorney is not
 22 effective as to a third party until the third party learns
 23 of the revocation. I agree to indemnify the third party for
 24 any claims that arise against the third party because of
 25 reliance on this power of attorney.

1 in--witness--whereof-i-have-hereunto-signed-my-name-this
 2 -----day-of-----19--
 3 -----
 4 {Signature-of-Principal}
 5 {Acknowledgment}
 6 Specimen-Signature-of-Attorney(s)-in-Fact
 7 -----
 8 -----
 9 Signed this day of, 19...
 10 -----
 11 (Your Signature)
 12 -----
 13 (Your Social Security Number)
 14 State of
 15 (County) of
 16 This document was acknowledged before me on
 17 (Date) by.....
 18 (Name of Principal)
 19
 20 (Signature of Notarial Officer)
 21
 22 (Seal, if any) (Title (and Rank))
 23 [My commission expires:.....]
 24 BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT
 25 ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN

1 AGENT.
 2 (2) Any--of--the--powers--of-the-form-in-subsection-(1)
 3 that-are-not-checked-or-X-ed-are-withheld-by--the--principal
 4 from--the--attorney-in-fact--unless--the-power-of-(0)-on-the
 5 form-in-subsection-(1)-is-checked-or-X-ed--The--withholding
 6 by--the--principal--from--the-attorney-in-fact-of-any-of-the
 7 powers-of-(A)-through-(M)--in-addition-to-the-withholding-of
 8 the--power--of--(0)--on--the--form--in--subsection--(1)
 9 automatically-constitutes-withholding-of-the-powers-of-(N);
 10 (3)--To--constitute--a--"A statutory short-form power of
 11 attorney"--as-this-phrase-is-used-in is legally sufficient
 12 under this part, if the wording and content of the form in
 13 subsection-(1)-must-be-duplicated-on--a--form substantially
 14 complies with similar--to--the-form-provided-in subsection
 15 (1), the notices-must-appear--in--a--conspicuous--place--and
 16 manner--the-second-and-third-parts-must-be form is properly
 17 completed, and the signature of the principal must--be is
 18 acknowledged.
 19 (4)--All--powers--enumerated--in--72-31-202--through
 20 72-31-216-may-be-legally-performed-by--an-attorney-in-fact
 21 acting-on-behalf-of-a-principal.
 22 (3) If the line in front of (N) of the form under
 23 subsection (1) is initialed, an initial on the line in front
 24 of any other power does not limit the powers granted by line
 25 (N)."

NEW SECTION. Section 114. Durable power of attorney. A power of attorney legally sufficient under this part is durable to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent." showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

NEW SECTION. Section 115. Construction of powers generally. By executing a statutory power of attorney with respect to a subject listed in 72-31-201(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent for that subject to:

(1) demand, receive, and obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, and deliver a deed,

revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) in general, do any other lawful act with respect to the subject.

Section 116. Section 72-31-202, MCA, is amended to read:

1 "72-31-202. Real Construction of power relating to real
 2 property transactions. ~~{t}~~ In a statutory short-form power
 3 of attorney, the language conferring granting general
 4 authority power with respect to real property transactions
 5 means that the principal authorizes the attorney-in-fact
 6 empowers the agent to:

7 ~~{a}~~(1) to accept as a gift or as security for a loan,
 8 or to reject, demand, buy, lease, receive, or otherwise
 9 acquire either ownership or possession of any estate or an
 10 interest in real property or a right incident to real
 11 property;

12 ~~{b}~~(2) to sell, exchange, or convey, either with or
 13 without covenants; quitclaim; release; surrender;
 14 mortgage; encumber; partition; or consent to the
 15 partitioning; subdivide; apply for zoning, rezoning, or
 16 other governmental permits; plat or consent to platting;
 17 develop; grant options concerning; lease; or sublet; or
 18 otherwise dispose of any estate or an interest in real
 19 property or a right incident to real property;

20 ~~{c}~~(3) to release in whole or in part, assign the whole
 21 or a part of, satisfy in whole or in part, and enforce, by
 22 action, proceeding, litigation or otherwise, any a mortgage,
 23 deed of trust, encumbrance, lien, or other claim to real
 24 property that exists or is claimed to exist in favor of the
 25 principal asserted;

1 ~~{d}~~(4) to do any act of management or of conservation
 2 with respect to any estate or an interest in real property
 3 or a right incident to real property, owned or claimed to be
 4 owned by the principal, including, by way of illustration
 5 but not of restriction, power to:

6 ~~(a)~~ insure insuring against any a casualty, liability,
 7 or loss;

8 ~~(b)~~ to obtain or regain obtaining or regaining
 9 possession or protect protecting the estate or interest or
 10 right, by action, proceeding, litigation or otherwise;

11 ~~(c)~~ to pay, compromise, or contest paying,
 12 compromising, or contesting taxes or assessments, to apply,
 13 or applying for and receive receiving refunds in connection
 14 with taxes or assessments them; and

15 ~~(d)~~ to purchase purchasing supplies, hire hiring
 16 assistance or labor, and make making repairs or alterations
 17 in the structures or lands real property;

18 ~~{e}~~(5) to use in any way, develop, modify, alter,
 19 replace, remove, erect, or install structures or other
 20 improvements upon any real property in or incident to which
 21 the principal has or claims to have any estate or an
 22 interest or right;

23 ~~{f}~~(6) to demand, receive, or obtain by action,
 24 proceeding, or otherwise any money or other thing of value
 25 to which the principal is, may become, or may claim to be

entitled--as-the-proceeds-of-an-interest-in-real-property-or
 of-one-or--more--of--the--transactions--enumerated--in--this
 section;--to-conserve; invest; disburse; or-utilize-anything
 received-for-purposes-enumerated-in--this--section;--and--to
 reimburse-the-attorney-in-fact-for-any-expenditures-properly
 made--by-the-attorney-in-fact-in-the-execution-of-the-powers
 conferred-on-the-attorney-in-fact--by--the--statutory--short
 form-power-of-attorney;

{g}--to participate in any a reorganization with respect
 to real property or a legal entity that owns an interest in
or right incident to real property and receive and hold any
 shares of stock or instrument--of--similar--character
obligations received in accordance---with a plan of
 reorganization and to act with respect to the-shares them,
 including;by-way-of-illustration-but--not--of--restriction;
 power;

{a} to--sell selling or to otherwise dispose disposing
 of the-shares them;

{b} to-exercise exercising or sell--any selling an
 option, conversion, or similar right with respect to the
 shares; them; and

{c} to-vote-on-the-shares voting them in person or by
 the-granting-of-a proxy;

{h}--to-agree--and--contract;--in--any-manner;--with-any
 person;--and-on--any--terms--that--the--attorney-in-fact--may

select;--for--the--accomplishment--of--any--of--the-purposes
 enumerated-in-this-section-and-to-perform; rescind; reform;
 release;--or--modify--an--agreement;--contract; or-any-other
 similar-agreement-or-contract-made-by-or-on--behalf--of--the
 principal;

{i}--to--execute;--acknowledge;--seal;--and--deliver-any
 deed; revocation; mortgage; lease; notice; check;--or--other
 instrument--that--the--attorney-in-fact-considers-useful-for
 the-accomplishment-of-any-of-the-purposes-enumerated-in-this
 section;

{j}--to-prosecute;--defend;--submit---to---arbitration;
 settle;--and--propose-or-accept-a-compromise-with-respect-to
 any-claim-existing-in-favor--of--or--against--the--principal
 based--on--or--involving--any--real-estate-transaction-or-to
 intervene-in-any-action-or-proceeding-relating-to-the-claim;

{k}--to-hire; discharge; and--compensate--any--attorney;
 accountant;--expert--witness;--or--other--assistant-when-the
 attorney-in-fact-considers-that-action-to-be--desirable--for
 the--proper-execution-of-any-of-the-powers-described-in-this
 section-and-for-the-keeping-of-needed-records; and

{i}--in-general-and-in-addition-to-all-the-specific-acts
 in-this-section; to-do-any-other-act--with--respect--to--any
 estate-or

{7} change the form of title of an interest in or right
incident to real property;

{8} dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

~~{2}--All---powers---described---in---this---section---are exercisable---equally---with---respect---to---any---estate---or---interest in---real---property---owned---by---the---principal---at---the---giving---of---the power---of---attorney---or---acquired---after---that---time; whether located in Montana or elsewhere."~~

Section 117. Section 72-31-203, MCA, is amended to read:

"72-31-203. Tangible Construction of power relating to tangible personal property transactions. ~~{i}~~ In a statutory short--form power of attorney, the language conferring general authority granting power with respect to tangible personal property transactions ~~means--that--the--principal~~ authorizes the attorney-in-fact empowers the agent to:

~~{a}{1}~~ {1} to accept as a gift or as security for a loan, ~~or--to~~ reject, demand, buy, receive, or otherwise acquire either ownership or possession of any tangible personal property or any an interest in tangible personal property;

~~{b}{2}~~ {2} to sell, exchange, convey either with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, ~~or-sublet~~ sublease to others, or otherwise dispose of any tangible personal property or any

an interest in any tangible personal property;

~~{c}{3}~~ {3} to release ~~in-whole-or-in-part~~, assign the-whole ~~or--a--part-of~~, satisfy ~~in-whole-or-in-part~~, and or enforce, by ~~action;--proceeding; litigation~~ or otherwise, any a mortgage, security interest, encumbrance, lien, or other claim ~~that-exists-or-is-claimed-to-exist-in-favor~~ on behalf of the principal with respect to any tangible personal property or any an interest in tangible personal property; and

~~{d}{4}~~ {4} to do any an act of management or of conservation with respect to any tangible personal property or ~~to-any~~ an interest in any tangible personal property ~~owned--or-claimed-to-be-owned-by~~ on behalf of the principal, including, ~~by-way-of-illustration-but--not--of--restriction;~~ power;

{a} to-insure insuring against any casualty, liability, or loss;

{b} to obtain obtaining or ~~regain~~ regaining possession or protect protecting the ~~tangible--personal~~ property or interest, ~~in--any--tangible--personal--property~~ by ~~action;~~ proceeding; litigation or otherwise;

{c} to-pay, ~~compromise;~~ paying, compromising or contest contesting taxes or assessments, ~~and-to--apply~~ or applying for and receive receiving refunds in connection with taxes or assessments;

1 (d) move moving from place to place;

2 (e) store storing for hire or on a gratuitous

3 bailment; and

4 (f) use, alter, using, altering, and make making

5 repairs or alterations of any tangible personal property or

6 interest in any tangible personal property;

7 (g) to demand, receive, or obtain by action,

8 proceeding, or otherwise any money or other thing of value

9 to which the principal is, may become, or may claim to be

10 entitled as the proceeds of any tangible personal property

11 or of any interest in any tangible personal property or of

12 one or more of the transactions enumerated in this section;

13 to conserve, invest, disburse, or utilize anything received

14 for purposes enumerated in this section; and to reimburse

15 the attorney in fact for any expenditures properly made by

16 the attorney in fact in the execution of the powers

17 conferred on the attorney in fact by the statutory short

18 form power of attorney;

19 (h) to agree and contract in any manner with any

20 person and on any terms that the attorney in fact may

21 select for the accomplishment of any of the purposes

22 enumerated in this section and to perform, rescind, reform,

23 release, or modify any agreement or contract or any other

24 similar agreement or contract made by or on behalf of the

25 principal;

1 (i) to execute, acknowledge, seal, and deliver any

2 conveyance, mortgage, lease, notice, check, or other

3 instrument that the attorney in fact considers useful for

4 the accomplishment of any of the purposes enumerated in this

5 section;

6 (j) to prosecute, defend, submit to arbitration,

7 settle, and propose or accept a compromise with respect to

8 any claim existing in favor of or against the principal

9 based on or involving any tangible personal property

10 transaction or to intervene in any action or proceeding

11 relating to a claim;

12 (k) to hire, discharge, and compensate any attorney,

13 accountant, expert, witness, or other assistant when the

14 attorney in fact considers that action to be desirable for

15 the proper execution by the attorney in fact of any of the

16 powers described in this section and for the keeping of

17 needed records; and

18 (l) in general and in addition to all the specific acts

19 listed in this section, to do any other acts with respect to

20 any tangible personal property or interest in any tangible

21 personal property;

22 (m) All powers described in this section are

23 exercisable equally with respect to any tangible personal

24 property or interest in any tangible personal property owned

25 by the principal at the giving of the power of attorney or

1 acquired--after--that--time,--whether--located-in-Montana-or
2 elsewhere."

3 **Section 118.** Section 72-31-204, MCA, is amended to
4 read:

5 "72-31-204. Bond, share, and commodity Construction of
6 power relating to stock and bond transactions. (i) In a
7 statutory short-form power of attorney, the language
8 conferring--general authority granting power with respect to
9 stock and bond, share, and commodity transactions means that
10 the principal authorizes the attorney-in-fact:

11 (a)--to accept as a gift or as security for a loan or to
12 reject, demand, empowers the agent to buy, receive, or
13 otherwise acquire either ownership or possession of any
14 bond, share, instrument of similar character, commodity
15 interest, or any instrument with respect to the bond, share,
16 or interest, together with the interest, dividends,
17 proceeds, or other distributions connected with any of those
18 instruments;

19 (b)--to sell, or sell short and to exchange, transfer
20 either with or without a guaranty, release, surrender,
21 hypothecate, pledge, grant options concerning loan, trade
22 in, or otherwise to dispose of any bond, share, instrument
23 of similar character, stocks, bonds, mutual funds, and all
24 other types of securities and financial instruments except
25 commodity interest, or any instrument with respect to the

1 bond, share, or interest; futures contracts; call and put
2 options on stocks and stock indexes; receive certificates
3 and other evidences of ownership with respect to securities;
4 exercise voting rights with respect to securities in person
5 or by proxy; enter into voting trusts; and consent to
6 limitations on the right to vote.

7 (c)--to release in whole or in part, assign the whole or
8 a part of, satisfy in whole or in part, and enforce by
9 action, proceeding, or otherwise any pledge, encumbrance,
10 lien, or other claim as to any bond, share, instrument of
11 similar character, commodity interest, or any interest with
12 respect to the bond, share, or interest when the pledge,
13 encumbrance, lien, or other claim is owned or claimed to be
14 owned by the principal;

15 (d)--to do any act of management or of conservation with
16 respect to any bond, share, instrument of similar character,
17 commodity interest, or any instrument with respect to the
18 interest owned or claimed to be owned by the principal or in
19 which the principal has or claims to have an interest,
20 including by way of illustration but not of restriction,
21 power to insure against any casualty, liability, or loss, to
22 obtain or regain possession or protect the principal's
23 interest by action, proceeding, or otherwise, to pay,
24 compromise, or contest taxes or assessments, to apply for
25 and receive refunds in connection with taxes or assessments;

1 to--consent--to--and--participate--in--any---reorganization,
 2 recapitalization,--liquidation,merger,consolidation,sale,
 3 lease,or-other-change-in-or-revival--of--a--corporation--or
 4 other---association,--in--the--financial--structure--of--any
 5 corporation-or-other--association,--or--in--the--priorities,
 6 voting--rights,--or-other-special-rights-with-respect-to-the
 7 corporation-or-association,--to-become-a-depositor--with--any
 8 protective,--reorganization,--or--similar--committee--of-the
 9 bond,--share,--other--instrument---of---similar---character,
 10 commodity--interest,--or--any-instrument-with-respect-to-the
 11 bond,share,or-interest-belonging-to-the-principal,--to-make
 12 any--payments--reasonably--incident--to--the--foregoing,--to
 13 exercise-or-sell-any-option,conversion,or--similar--right,
 14 to--vote--in--person--or--by-the-granting-of-a-proxy-with-or
 15 without-the-power--of--substitution,--either--discretionary,
 16 general,--or-otherwise,for-the-accomplishment-of-any-of-the
 17 purposes-enumerated-in-this-section;

18 {e}--to-carry-in-the-name-of-a-nominee-selected--by--the
 19 attorney-in-fact--any-evidence-of-the-ownership-of-any-bond,
 20 share,other--instrument--of--similar--character,--commodity
 21 interest,--or-instrument-with-respect-to-the-bond,share,or
 22 interest,--belonging-to-the-principal;

23 {f}--to-employ,--in-any-way-believed-to-be--desirable--by
 24 the--attorney-in-fact,--any-bond,share,other-instrument-of
 25 similar-character,commodity--interest,--or--any--instrument

1 with--respect--to--the-bond,share,or-interest-in-which-the
 2 principal-has--or--claims--to--have--any--interest--for--the
 3 protection--or--continued--operation--of--any-speculative-or
 4 margin---transaction---personally---begun---or---personally
 5 guaranteed,--in-whole-or-in-part,--by-the-principal;

6 {g}--to---demand,--receive,--or---obtain---by--action,
 7 proceeding,or-otherwise-any-money-or-other-thing--of--value
 8 to--which--the--principal-is,--may-become,or-may-claim-to-be
 9 entitled-as-the-proceeds-of-any-interest-in-a--bond,--share,
 10 other--instrument--of-similar-character,commodity-interest,
 11 or-any-instrument-with-respect-to-the-bond,share,interest,
 12 or-of-one-or-more-of-the--transactions--enumerated--in--this
 13 section,--to-serve,invest,disburse,or-utilize-anything
 14 received-for-purposes-enumerated-in--this--section,--and--to
 15 reimburse-the-attorney-in-fact-for-any-expenditures-properly
 16 made--by-the-attorney-in-fact-in-the-execution-of-the-powers
 17 conferred-on-the-attorney-in-fact-by--the--statutory--short
 18 form-power-of-attorney;

19 {h}--to--agree--and--contract,--in--any-manner,--with-any
 20 broker--or--other--person,--and--on--any--terms---that---the
 21 attorney-in-fact--selects,--for-the-accomplishment-of-any-of
 22 the-purposes-enumerated-in--this--section--and--to--perform,
 23 rescind,--reform,--release,--or--modify--the--agreement--or
 24 contract-or-any-other-similar-agreement-made-by-or-on-behalf
 25 of-the-principal;

{i}--to-execute,--acknowledge,--seal,--and--deliver--any consent,--agreement,--authorization,--assignment,--revocation, notice,--waiver-of-notice,--check,--or--other--instrument--that the-attorney-in-fact-considers-useful-for-the-accomplishment of-any-of-the-purposes-enumerated-in-this-section;

{j}--to--execute,--acknowledge,--and--file-any-report-or certificate-required-by-law-or-governmental-regulation;

{k}--to--prosecute,--defend,--submit---to---arbitration, settle,--and--propose-or-accept-a-compromise-with-respect-to any-claim-existing-in-favor--of--or--against--the--principal based---on--or--involving--any--bond,--share,--or--commodity transaction--or--to--intervene--in--any--related--action--or proceeding;

{l}--to-hire,--discharge,--and--compensate--any--attorney, accountant,--expert--witness,--or--other--assistant-when-the attorney-in-fact-considers-that-action-to-be--desirable--for the--proper-execution-of-any-of-the-powers-described-in-this section-and-for-the-keeping-of-needed-records,--and

{m}--in-general-and-in-addition-to-all-the-specific-acts listed-in-this-section,--to-do-any-other-acts-with-respect-to any-interest-in-any-bond,--share,--other-instrument-of-similar character,--commodity-interest,--or-instrument-with-respect-to a-commodity;

{2}--All--powers---described---in---this---section---are exercisable--equally--with--respect--to--any-interest-in-any

bond,--share,--instrument--of--similar--character,--commodity interest,--or-instrument-with-respect-to-a-commodity-owned-by the--principal--at--the--giving--of-the-power-of-attorney-or acquired-after-that-time,--whether--located--in--Montana--or elsewhere."

NEW SECTION. Section 119. Construction of power relating to commodity and option transactions. In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts; call and put options on stocks and stock indexes traded on a regulated option exchange; and establish, continue, modify, and terminate option accounts with a broker.

Section 120. Section 72-31-205, MCA, is amended to read:

"72-31-205. Banking Construction of power relating to banking and other financial institution transactions. {1} In a statutory short--form power of attorney, the language conferring--general-authority granting power with respect to banking and other financial institution transactions means that--the-principal-authorizes-the-attorney-in-fact empowers the agent to:

{a}{1} to continue, modify, and terminate any--deposit an account or other banking arrangement made by or on behalf

1 of the principal prior--to--the-execution-of-the-power-of
2 attorney;

3 (b)(2) to-open-in-the-name-of-the-principal-alone-or-in
4 a---way---that---clearly---evidences---the---principal---and
5 attorney-in-fact-relationship-a-deposit establish, modify,
6 and terminate an account of--any--type or other banking
7 arrangement with any a bank, trust company, savings and loan
8 association, credit union, thrift company, brokerage firm,
9 or other financial institution that-serves-as-a-depository
10 for-funds selected by the attorney-in-fact agent;

11 (3) to hire a safe deposit box or space in a vault
12 space;

13 (4) and--to--make--other-contracts-for-the-procuring-of
14 contract to procure other services made available by--the
15 banking from a financial institution as the attorney-in-fact
16 agent considers desirable;

17 (c)(5) to--make--sign--and-deliver-checks-or-drafts-for
18 any-purpose-and-to withdraw by check, order, or otherwise
19 any--funds money or property of the principal deposited with
20 or left in the custody of any--banking a financial
21 institution--wherever--located--either-before-or-after-the
22 execution-of-the-power-of-attorney;

23 (d)(6) to-prepare-any-necessary-financial-statements-of
24 the-assets-and-liabilities-or-income--and--expenses--of--the
25 principal-for-submission-to-any-banking-institution;

1 (e)--to receive bank statements, vouchers, notices, or
2 other and similar documents from any--banking a financial
3 institution and to act with respect to them;

4 (f)(7) to enter at-any-time-any a safe deposit box or
5 vault that-the-principal-could-enter-if--personally--present
6 and withdraw or add to the contents;

7 (g)(8) to borrow money at any an interest rate the
8 attorney-in-fact-selects agreeable to the agent and--to
9 pledge as security any--assets personal property of the
10 principal the--attorney-in-fact--considers---desirable---or
11 necessary for--borrowing--and--to in order to borrow, pay,
12 renew, or extend the time of payment of any a debt of the
13 principal;

14 (h)(9) to make, assign, draw, endorse, discount,
15 guarantee, and negotiate all promissory notes, bills--of
16 exchange, checks, drafts, or and other negotiable or
17 nonnegotiable paper of the principal or payable to the
18 principal or the principal's order; to receive the cash or
19 other proceeds of any-of those transactions; and to accept
20 any--bill--of-exchange-or a draft drawn by any a person upon
21 the principal and pay it when due;

22 (i)(10) to receive for the principal and to-deal-in--and
23 to--deal-with-any act upon a sight draft, warehouse receipt,
24 or other negotiable or nonnegotiable instrument in-which-the
25 principal-has-or-claims-to-have-an-interest;

{j}(11) to apply for and to receive letters of credit, credit cards, and traveler's checks from any banking a financial institution selected by the attorney in fact, giving and give an indemnity or other agreement in connection with the letters of credit that the attorney in fact considers desirable or necessary; and

{k}(12) to consent to an extension in of the time of payment with respect to any commercial paper or any banking a financial transaction in which the principal has an interest or by which the principal is or might be affected in any way; with a financial institution.

{l} to demand, receive, obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any banking transaction and to reimburse the attorney in fact for any expenditures properly made in the execution of the powers conferred upon the attorney in fact by the statutory short form power of attorney;

{m} to execute, acknowledge, and deliver any instrument of any kind, in the name of the principal or otherwise, that the attorney in fact considers useful for the accomplishment of any of the purposes enumerated in this section;

{n} to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal

based on or involving any banking transaction or to intervene in any related action or proceeding;

{o} to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney in fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

{p} in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any banking transaction that does or may in any way affect the financial or other interests of the principal;

{2} All powers described in this section are exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or engaged in after that time, whether conducted in Montana or elsewhere."

Section 121. Section 72-31-206, MCA, is amended to read:

"72-31-206. Business Construction of power relating to business operating transactions. {1} In a statutory short form power of attorney, the language conferring general authority granting power with respect to business operating transactions means that the principal authorizes the attorney in fact empowers the agent:

{a}(1) to operate, buy, sell, enlarge, reduce, and

1 terminate a business interest;

2 (2) to the extent that an agent is permitted by law to
3 act for a principal and subject to the terms of the
4 partnership agreement, to:

5 (a) discharge--and perform any a duty or discharge a
6 liability and also--to exercise any a right, power,
7 privilege, or option that the principal has, may have, or
8 claims to have under any a partnership agreement, whether or
9 not the principal is a general-or-limited partner;

10 (b) to enforce the terms of a partnership agreement for
11 the-protection-of--the--principal, by action,--proceeding,
12 litigation or otherwise,--as-the-attorney-in-fact-considers
13 desirable-or-necessary; and

14 (c) to defend, submit to arbitration, settle, or
15 compromise any--action-or-other-legal-proceeding litigation
16 to which the principal is a party because of membership in
17 the partnership;

18 (b)(3) to exercise in person or by proxy or to enforce,
19 by action,--proceeding, litigation or otherwise, any a right,
20 power, privilege, or option that the principal has or claims
21 to have as the holder of any a bond, share, or other
22 instrument of similar character and to defend, submit to
23 arbitration, settle, or compromise any-action-or-other-legal
24 proceeding litigation to which the principal is a party
25 because of a bond, share, or other similar instrument of

1 similar-character;

2 (c)(4) with respect to any a business enterprise-that
3 is owned solely by the principal, to:

4 (i)(a) to continue, modify, renegotiate, extend, and
5 terminate any-contractual-arrangements a contract made with
6 any--person, an individual or a legal entity, firm,
7 association, or corporation by or on behalf of the principal
8 with respect to the business enterprise--prior--to--the
9 granting before execution of the power of attorney;

10 (ii)(b) to determine:

11 (i) the--policy--of--the--business-enterprise-as-to the
12 location of the-site-or-sites-to-be-used-for its operation;

13 (ii) the nature and extent of the its business to--be
14 undertaken-by-it;

15 (iii) the methods of manufacturing, selling,
16 merchandising, financing, accounting, and advertising to-be
17 employed in its operation;

18 (iv) the amount and types of insurance to-be carried;

19 (v) the mode of securing engaging, compensating, and
20 dealing with its accountants, attorneys, servants, and other
21 agents and employees required--for--its-operation; and-to
22 agree-and-to-contract-in-any-manner,--with-any-person,--and-on
23 any-terms-that-the-attorney-in-fact-considers--desirable--or
24 necessary--for--effectuating--any-or-all-of-the-decisions-of
25 the-attorney-in-fact-as-to-policy-and-to--perform,--rescind,

~~reform; release; or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;~~

~~{iii}(c) to change the name or form of organization under which the business enterprise is operated and to enter into a partnership agreement with other persons or to organize a corporation to take over all or part of the operation of the business or any part of the business, as the attorney-in-fact considers desirable or necessary; and~~

~~{iv}(d) to demand and receive all money that is or may become due to the principal or that may be claimed by or for the principal or on the principal's behalf in the operation of the business enterprise; to and control and disburse the funds money in the operation of the enterprise in any way that the attorney-in-fact considers desirable or necessary; and to engage in any banking transactions that the attorney-in-fact considers desirable or necessary for effectuating the execution of any of the powers of the attorney-in-fact described in this subsection {i}(c) business;~~

(5) to put additional capital into a business in which the principal has an interest;

(6) to join in a plan of reorganization, consolidation, or merger of the business;

(7) to sell or liquidate a business or part of it at

the time and upon the terms the agent considers desirable;

(8) to establish the value of a business under a buyout agreement to which the principal is a party;

~~{d}(9) to prepare, sign, file, and deliver all reports, compilations of information, returns, or other papers with respect to any a business operating transaction of the principal that are required by any a governmental agency, department, or instrumentality or that the attorney-in-fact agent considers desirable or necessary for any purpose and to make any related payments; and~~

~~{e}(10) to pay, compromise, or contest taxes or assessments and to do any other act or acts that the attorney-in-fact agent considers desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments in connection with the principal's respect to a business operations, including power to attempt attempts to recover, in any manner permitted by law, sums money paid before or after the execution of the power of attorney as taxes, fines, penalties, or assessments;~~

~~{f} to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any business operation of the principal; to conserve, invest, disburse, or use anything so~~

received-for-purposes-enumerated-in--this--section;--and--to
reimburse-the-attorney-in-fact-for-any-expenditures-properly
made--by-the-attorney-in-fact-in-the-execution-of-the-powers
conferred-upon-the-attorney-in-fact-by-the--statutory--short
form-power-of-attorney;

{g}--to--execute;--acknowledge;--seal;--and--deliver-any
deed;--assignment;--mortgage;--lease;--notice;--consent;
agreement;--authorization;--check;--or-other-instrument-that
the-attorney-in-fact-considers-useful-for-the-accomplishment
of-any-of-the-purposes-enumerated-in-this-section;

{h}--to--prosecute;--defend;--submit--to--arbitration;
settle;--and--propose-or-accept-a-compromise-with-respect-to
any-claim-existing-in-favor--of--or--against--the--principal
based--on-or-involving-any-business-operating-transaction-or
to-intervene-in-any-related-action-or-proceeding;

{i}--to-hire;--discharge;--and--compensate--any--attorney;
accountant;--expert--witness;--or--other--assistant-when-the
attorney-in-fact-considers-that-action-to-be-desirable--for
the--proper--execution-by-the-attorney-in-fact-of-any-of-the
powers-described-in-this-section--and--for--the--keeping--of
needed-records;--and

{j}--in-general-and-in-addition-to-all-the-specific-acts
listed--in--this--section;--to--do--any--other--act-that-the
attorney-in-fact-considers-desirable-or-necessary--for--the
furtherance--or-protection-of-the-interests-of-the-principal

in-any-business;

{2}--All--powers---described---in---this---section---are
exercisable--equally--with--respect-to-any-business-in-which
the-principal-is-interested-at-the-time--of--giving--of--the
power---of--attorney--or--in--which--the--principal--becomes
interested-after-that-time;--whether-operated-in--Montana--or
elsewhere."

Section 122. Section 72-31-207, MCA, is amended to
read:

"72-31-207. Insurance Construction of power relating to
insurance transactions. {1} In a statutory short-form power
of attorney, the language conferring--general--authority
granting power with respect to insurance and annuity
transactions means--that--the--principal--authorizes--the
attorney-in-fact empowers the agent to:

{a}{1} to continue, pay the premium or assessment on,
modify, rescind, release, or terminate any a contract of
life;--accident;--health;--or--disability--insurance--or--any
contract--for--the--provision-of-health-care-services-or-any
combination-of-these-contracts procured by or on behalf of
the principal prior-to-the-granting-of-the-power-of-attorney
that insures or provides an annuity to either the principal
or any-other another person, without-regard--to whether or
not the principal is or--is--not a beneficiary under the
contract;

(b)(2) to procure new, different, or and additional contracts of ~~life, accident, health, or disability~~ insurance and annuities for the principal ~~or contracts for provision of health care services for the principal, to and the principal's spouse, children, and other dependents and to~~ select the amount, the type of insurance or annuity, and the mode of payment ~~under each contract~~;

(3) to pay the premium or assessment on, modify, rescind, release, or terminate any a contract of insurance or annuity procured by the attorney-in-fact agent;

(4) ~~and to~~ designate the beneficiary of the contract; provided, however, that the attorney-in-fact an agent may not be named a beneficiary, except if permitted under 72-31-208, the attorney-in-fact may be named the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary under the a contract that was procured by the principal prior to the granting before executing of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the contract;

(c)(5) ~~with respect to any contract of life, accident, health, disability, or liability insurance as to which the~~

~~principal has or claims to have any one or more of the powers described in this section, to apply for and receive any available a loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, or annuity;~~

(6) to surrender and ~~then to~~ receive the cash surrender value;

(7) to exercise any an election ~~as to beneficiary or mode of payment~~;

(8) to change the manner of paying premiums;

(9) to change or convert the type of insurance contract, ~~and or annuity, with respect to which the principal has or claims to have a power described in this section;~~

(10) to change the beneficiary of the a contract of insurance, or annuity; provided, however, that the attorney-in-fact the agent may not be designated a new beneficiary, except if to the extent permitted under 72-31-208, the attorney-in-fact may be the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact was named as a beneficiary under the contract that was procured by the principal prior to the granting of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the

1 contract by subsection (4);

2 {d}--to--demand;--receive;--or--obtain--by--action;

3 proceeding;--or--otherwise--any--money;--dividend;--or--other--thing

4 of--value--to--which--the--principal--is;--may--become;--or--may--claim

5 to--be--entitled--as--the--proceeds--of--any--contract--of--insurance

6 or--of--one--or--more--of--the--transactions--enumerated--in--this

7 section;--to--conserve;--invest;--disburse;--or--utilize--anything

8 received--for--purposes--enumerated--in--this--section;--and--to

9 reimburse--the--attorney--in--fact--for--any--expenditures--properly

10 made--by--the--attorney--in--fact--in--the--execution--of--the--powers

11 conferred--on--the--attorney--in--fact--by--the--statutory--short

12 form--power--of--attorney;

13 {e}(11) to apply for and procure any--available

14 governmental government aid in--the--guaranteeing--or--paying--of

15 to guarantee or pay premiums of any a contract of insurance

16 on the life of the principal;

17 {f}(12) to collect, sell, assign, hypothecate, borrow

18 upon, or pledge the interest of the principal in any a

19 contract of insurance or annuity; and

20 {g}(13) to pay from any proceeds or otherwise,

21 compromise, or contest, or--to and apply for refunds in

22 connection with any a tax or assessment levied by a taxing

23 authority with respect to any a contract of insurance or

24 annuity or the its proceeds of--the--refunds or liability

25 accruing by reason of the tax or assessment;

1 {h}--to--agree--and--contract;--in--any--manner;--with--any

2 person;--and--on--any--terms--that--the--attorney--in--fact--selects;

3 for--the--accomplishment--of--any--of--the--purposes--enumerated--in

4 this--section--and--to--perform;--rescind;--reform;--release;--or

5 modify--the--agreement--or--contract;

6 {i}--to--execute;--acknowledge;--seal;--and--deliver--any

7 consent;--demand;--request;--application;--agreement;--indemnity;

8 authorization;--assignment;--pledge;--notice;--check;--receipt;

9 waiver;--or--other--instrument--that--the--attorney--in--fact

10 considers--useful--for--the--accomplishment--of--any--of--the

11 purposes--enumerated--in--this--section;

12 {j}--to--continue;--procure;--pay--the--premium--or--assessment

13 on;--modify;--rescind;--release;--terminate;--or--otherwise--deal

14 with--any--contract--of--insurance;--other--than--those--enumerated

15 in--subsection--{i}{a}--or--{i}{b};--whether--fire;--marine;

16 burglary;--compensation;--liability;--hurricane;--casualty;--or

17 other--type;--or--any--combination--of--insurance--or--to--do--any--act

18 or--acts--with--respect--to--the--contract--or--with--respect--to--its

19 proceeds--or--enforcement--that--the--attorney--in--fact--considers

20 desirable--or--necessary--for--the--promotion--or--protection--of

21 the--interests--of--the--principal;

22 {k}--to--prosecute;--defend;--submit--to--arbitration;

23 settle;--and--propose--or--accept--a--compromise--with--respect--to

24 any--claim--existing--in--favor--of--or--against--the--principal

25 based--on--or--involving--any--insurance--transaction--or--to

1 intervene in any related action or proceeding;

2 (i) to hire, discharge, and compensate any attorney,
3 accountant, expert witness, or other assistant when the
4 attorney in fact considers the action to be desirable for
5 the proper execution by the attorney in fact of any of the
6 powers described in this section and for the keeping of
7 needed records; and

8 (m) in general and in addition to all the specific acts
9 listed in this section, to do any other acts in connection
10 with procuring, supervising, managing, modifying, enforcing,
11 and terminating contracts of insurance or for the provisions
12 of health care services in which the principal is the
13 insured or is otherwise in any way interested;

14 (2) All powers described in this section are
15 exercisable with respect to any contract of insurance or for
16 the provision of health care service in which the principal
17 is in any way interested, whether made in Montana or
18 elsewhere."

19 Section 123. Section 72-31-208, MCA, is amended to
20 read:

21 "72-31-208. Beneficiary Construction of power relating
22 to estate, trust, and other beneficiary transactions. (i) In
23 the a statutory short-form power of attorney, the language
24 conferring general authority granting power with respect to
25 estate, trust, and other beneficiary transactions, means

1 that the principal authorizes the attorney in fact

2 (a) to represent and empowers the agent to act for the
3 principal in all ways and in all matters affecting any that
4 affect a trust, probate estate, guardianship,
5 conservatorship, escrow, custodianship, or other fund out of
6 from which the principal is, may become, entitled or claims
7 to be entitled as a beneficiary to some a share or payment,
8 including but not limited to the following:

9 (i)(1) to accept, reject, disclaim, receive, receipt
10 for, sell, assign, release, pledge, exchange, or consent to
11 a reduction in or modification of any a share in or payment
12 from the fund;

13 (ii)(2) to demand or obtain, by action, proceeding,
14 litigation or otherwise, any money or other thing of value
15 to which the principal is, may become, or may claim claims
16 to be entitled by reason of the fund;

17 (3) to initiate, participate in, and oppose any
18 proceeding, judicial, or otherwise, for the ascertainment of
19 litigation to ascertain the meaning, validity, or effect of
20 any a deed, will, declaration of trust, or other instrument
21 or transaction affecting in any way the interest of the
22 principal;

23 (4) to initiate, participate in, and oppose any
24 proceeding, judicial, or otherwise, for the removal,
25 substitution, litigation to remove, substitute, or surcharge

1 of a fiduciary;

2 (5) to conserve, invest, disburse, or and use anything
3 received for purposes-listed-in-this-section an authorized
4 purpose; and to--reimburse--the--attorney-in-fact--for--any
5 expenditures--properly--made--by-the-attorney-in-fact-in-the
6 execution-of-the-powers-conferred-on-the-attorney-in-fact-by
7 the-statutory-short-form-power-of-attorney;

8 {iii}-to-prepare,-sign,-file,-and-deliver--all--reports,
9 compilations-of-information,-returns,-or-papers-with-respect
10 to--any--interest--had--or--claimed--by--or-on-behalf-of-the
11 principal-in-the-fund,-to-pay,-compromise,-contest,-or-apply
12 for-and-receive--refunds--in--connection--with--any--tax--or
13 assessment,-with--respect-to-any-interest-had-or-claimed-by
14 or-on-behalf-of-the-principal-in-the-fund-or-with-respect-to
15 any-property-in-which-an-interest-is-had-or-claimed;

16 {iv}-to-agree-and--contract--in--any--manner,-with--any
17 person,-and--on-any-terms-the-attorney-in-fact-selects,-for
18 the-accomplishment-of-the-purposes-listed--in--this--section
19 and--to--perform,-rescind,-reform,-release,-or-modify-the
20 agreement-or-contract-or--any--other--similar--agreement--or
21 contract-made-by-or-on-behalf-of-the-principal;

22 {v}-to--execute,-acknowledge,-verify,-seal,-file,-and
23 deliver-any--deed,-assignment,-mortgage,-lease,-consent,
24 designation,-pleading,-notice,-demand,-election,-conveyance,
25 release,-assignment,-check,-pledge,-waiver,-admission-of

1 service,-notice-of-appearance,-or-other-instrument-that--the
2 attorney-in-fact--considers-useful-for-the-accomplishment-of
3 any-of-the-purposes-enumerated-in-this-section;

4 {vi}-to-submit-to-arbitration,-settle,-and--propose--or
5 accept-a-compromise-with-respect-to-any-controversy-or-claim
6 that--affects--the-administration-of-the-fund,-in-any-one-of
7 which-the-principal-has-or-claims-to-have-an-interest-and-to
8 do-any-and-all-acts-that-the-attorney-in-fact--considers--to
9 be-desirable-or-necessary-in-effectuating-the-compromise;

10 {vii}-to--hire,-discharge,-and-compensate-any-attorney,
11 accountant,-expert-witness,-or--other--assistant--when--the
12 attorney-in-fact--considers--that-action-to-be-desirable-for
13 the-proper-execution-by-the-attorney-in-fact-of-any--of--the
14 powers--described--in--this--section--and-for-the-keeping-of
15 needed-records;

16 {viii}{6} to transfer any--part--or--all--of--any an
17 interest that of the principal may-have in any-interests--in
18 real estate property, stocks, bonds, bank accounts with
19 financial institutions, insurance, and any other assets--of
20 any--kind--and--nature property to the trustee of any a
21 revocable trust created by the principal as grantor settlor.

22 {b)-in-general-and-in-addition-to-all-the-specific--acts
23 listed-in-this-section,-to-do-any-other-acts-with-respect-to
24 the-administration-of-a-trust,-probate-estate,-guardianship,
25 conservatorship,-escrow,-custodianship,-or--other-fund-in

1 which-the-principal-has-or-claims-to-have-an-interest--as--a
2 beneficiary-

3 {2}--For--the--purposes--of-subsection-{1},--"fund"--means
4 any-trust, probate--estate,--guardianship,--conservatorship,
5 escrow,--custodianship,--or--any--other--fund--in--which-the
6 principal-has-or-claims-to-have-an-interest-

7 {3}--All--powers---described---in---this---section---are
8 exercisable--equally--with--respect-to-the-administration-or
9 disposition-of--any--trust, probate--estate,--guardianship,
10 conservatorship,--escrow,--custodianship,--or--other-fund-in
11 which-the-principal-is-interested-at-the-giving-of-the-power
12 of-attorney-or-becomes--interested--after--that--time--as--a
13 beneficiary, whether-located-in-Montana-or-elsewhere-

14 **Section 124.** Section 72-31-211, MCA, is amended to
15 read:

16 "72-31-211. Claims Construction of power relating to
17 claims and litigation. {1} In a statutory short--form power
18 of attorney, the language conferring-general-authority with
19 respect to claims and litigation means--that--the--principal
20 authorizes-the-attorney-in-fact empowers the agent to:

21 {a}(1) to assert and prosecute before any a court, or
22 administrative board,--department,--commissioner,--or--other
23 tribunal--any-cause-of-action, agency a claim, counterclaim,
24 or offset, or-defense, that-the-principal-has-or--claims--to
25 have and defend against any an individual, partnership,

1 association, corporation a legal entity, or government, or
2 other--person--or--instrumentality, including,--by--way--of
3 illustration--and--not--of-restriction, power-to-sue-for-the
4 recovery-of-land-or-of-any suits to recover property or
5 other thing of value, for-the-recovery-of to recover damages
6 sustained by the principal in--any--manner, for--the
7 elimination-or-modification-of to eliminate or modify tax
8 liability, for or to seek an injunction, for specific
9 performance, or for-any other relief;

10 {b}(2) to bring an action of--interpleader--or--other
11 action to determine adverse claims, to intervene or
12 interplead in any-action-or-proceeding litigation, and to
13 act in-any-litigation as amicus curiae;

14 {c}(3) in connection with any-action-or-proceeding-or
15 controversy-at-law--or--otherwise,--to--apply--for--and,--if
16 possible litigation, procure a---libel---judgment, an
17 attachment, a garnishment, libel, an order of arrest, or
18 other preliminary, provisional, or intermediate relief and
19 to-resort-to-and-to-utilize-in-all-ways-permitted-by-law-any
20 use an available procedure for---the---effectuation---or
21 satisfaction--of-the to effect or satisfy a judgment, order,
22 or decree obtained;

23 {d}(4) in connection with any-action-or-proceeding,--at
24 law--or--otherwise litigation, to perform any lawful act that
25 the--principal--might--perform, including,--by---way---of

1 ~~illustration--and--not-of-restriction~~ acceptance of tender,
 2 offer of judgment, admission of any facts, submission of any
 3 a controversy on an agreed statement of facts, and consent
 4 to examination before trial, ~~and generally-to-bind~~ binding
 5 the principal in ~~the--conduct--of--any~~ litigation or
 6 ~~controversy-as-seems-desirable-to-the-attorney-in-fact~~;

7 ~~(e)(5)~~ to submit to arbitration, settle, and propose or
 8 accept a compromise with respect to any a claim ~~existing-in~~
 9 ~~favor-of-or-against-the-principal~~ or any litigation ~~to-which~~
 10 ~~the-principal-is, may-become, or-may-be-designated-a-party~~;

11 ~~(f)(6)~~ to waive the issuance and service of ~~a--summons~~
 12 ~~citation,--or--other~~ process upon the principal; i to accept
 13 service of process; i to appear for the principal; i to
 14 designate persons upon whom process directed to the
 15 principal may be served; i to execute and file or deliver
 16 stipulations on the principal's behalf; i to verify
 17 pleadings; i to ~~appeal-to~~ seek appellate tribunals review;
 18 to procure and give surety and indemnity bonds ~~at-the-times~~
 19 ~~and-to-the-extent-the-attorney-in-fact--considers--desirable~~
 20 ~~or--necessary~~; i to contract and pay for the preparation and
 21 printing of records and briefs; i or to and receive, i and
 22 execute, and file or deliver any a consent, waiver, release,
 23 confession of judgment, satisfaction of judgment, notice,
 24 agreement, or other instrument ~~that--the--attorney-in-fact~~
 25 ~~considers--desirable--or--necessary~~ in connection with the

1 prosecution, settlement, or defense of any a claim by or
 2 ~~against--the--principal--or--of--any~~ litigation to-which-the
 3 ~~principal-is, may-become, or-may-be-designated-a-party~~;

4 ~~(g)(7)~~ to ~~appear-for,--represent,--and~~ act for the
 5 principal with respect to bankruptcy or insolvency
 6 proceedings, whether voluntary or involuntary, ~~whether-of~~
 7 concerning the principal or of some other person, with
 8 respect to any a reorganization proceeding or ~~with-respect~~
 9 ~~to-any~~ a receivership or application for the appointment of
 10 a receiver or trustee that ~~in--any--way~~ affects any an
 11 interest of the principal in ~~any-real~~ property; bond; share;
 12 ~~commodity-interest, tangible--personal--property,~~ or other
 13 thing of value; and

14 ~~(h)--to--hire,--discharge,--and-compensate-any-attorney,~~
 15 ~~accountant, expert-witness,--or--other--assistant--when--the~~
 16 ~~attorney-in-fact--considers--that-action-to-be-desirable-for~~
 17 ~~the-proper-execution-of-any-of-the-powers-described-in--this~~
 18 ~~section~~;

19 ~~(i)(8)~~ to pay, ~~from--funds--in--the--control--of--the~~
 20 ~~attorney-in-fact--or-for-the-account-of-the-principal,~~ any a
 21 judgment against the principal or any a settlement that may
 22 be made in connection with any transaction enumerated in
 23 ~~this-section~~ to litigation and receive and conserve any
 24 money or other things thing of value paid in settlement of
 25 or as proceeds of one or more of the transactions enumerated

in this section, and to receive, endorse, and deposit checks, and

(j) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any claim by or against the principal or with litigation to which the principal is, may become, or may be designated a party;

(2) All powers described in this section are exercisable equally with respect to any a claim or litigation existing at the giving of the power of attorney or arising after that time, whether arising in Montana or elsewhere."

Section 125. Section 72-31-212, MCA, is amended to read:

"72-31-212. Family Construction of power relating to personal and family maintenance. (i) In a statutory short form power of attorney, the language conferring general authority granting power with respect to personal and family maintenance means that the principal authorizes the attorney-in-fact empowers the agent to:

(a)(1) to do all the acts necessary for maintaining to maintain the customary standard of living of the principal and the principal's spouse, children, and other dependents individuals customarily or legally entitled to be supported by the principal, including, by way of illustration and not

of restriction, power to provide providing living quarters by purchase, lease, or other contract or by payment of paying the operating costs, including interest, amortization payments, repairs, and taxes, of on premises owned by the principal and occupied by the principal's family or dependents those individuals;

(2) to provide for the individuals described in subsection (1) normal domestic help for the operation of the household; to provide usual vacations and usual travel expenses; to provide usual educational facilities; and to provide funds for all the current living costs of the spouse, children, and other dependents, including, among other things, shelter, clothing, food, appropriate education, and incidentals other current living costs;

(b)(3) to pay for the individuals described in subsection (1) necessary medical, dental, and surgical care, hospitalization, and custodial care for the spouse, children, and other dependents of the principal;

(c)(4) to continue whatever any provision has been made by the principal, either prior to or after the execution of the power of attorney, for the principal's spouse, children, and other dependents with respect to individuals described in subsection (1) for automobiles or other means of transportation, including, by way of illustration but not of restriction, power to license, insure, and replace any

1 automobiles-owned-by-the-principal-and-customarily-used-by
2 the-spouse, children, or other dependents registering,
3 licensing, insuring, and replacing them;

4 {d}(5) to--continue--whatever maintain or open charge
5 accounts have-been-operated-by-the-principal--prior--to--the
6 execution-of-the-power-of-attorney-or-after-execution-of-the
7 power--of--attorney for the convenience of the principal's
8 spouse, children, or other dependents, to individuals
9 described in subsection (1) and open new accounts the
10 attorney-in-fact agent considers to-be desirable for--the
11 accomplishment--of--any--of--the--purposes-enumerated-in-this
12 section to accomplish a lawful purpose; and to pay the items
13 charged-on--those--accounts--by--any--person--authorized--or
14 permitted--by--the--principal--to--make-charges-prior-to-the
15 execution-of-the-power-of-attorney;

16 {e}(6) to continue payments incidental to the
17 membership or affiliation of the principal in any a church,
18 club, society, order, or other organization or to continue
19 contributions to those organizations;

20 {f)--to-demand, receive, or obtain--by--action,
21 proceeding, or otherwise any money or other thing of value
22 to which the principal is, may become, or may claim--to--be
23 entitled--to--as--salary, wages, commission, or other
24 remuneration--for--services--performed, as a dividend or
25 distribution upon any stock, or as interest or principal

1 upon--any--indebtedness--or--any--periodic--distribution--of
2 profits--from--any--partnership--or--business--in--which--the
3 principal-has-or-claims-an-interest-and-to-endorse, collect,
4 or otherwise realize upon any instrument--for--the--payment
5 received;

6 {g)--to--use--any--asset--of--the--principal--for--the
7 performance--of--the--powers--enumerated--in--this--section,
8 including, by way of illustration and not of restriction,
9 power--to--draw--money--by--check--or--otherwise--from--any--bank
10 deposit-of-the-principal, to--sell--any--interest--in--real
11 property, bonds, shares, commodity interests, tangible
12 personal property, or other assets of the principal, and to
13 borrow--money--and--pledge--as--security--for--a--loan, any asset,
14 including insurance, that belongs to the principal;

15 {h)--to--execute, acknowledge, verify, seal, file, and
16 deliver any application, consent, petition, notice, release,
17 waiver, agreement, or other instrument--that--the
18 attorney-in-fact-considers-useful-for-the-accomplishment--of
19 any-of-the-purposes-enumerated-in-this-section;

20 {i)--to--hire, discharge, and compensate any attorney,
21 accountant, or other assistant--when--the--attorney-in-fact
22 considers--that--action--to--be--desirable--for--the--proper
23 execution-by-any-of-the-powers-described-in-this-section-and
24 for-the-keeping-of-needed-records; and

25 {j)--in-general--and--in-addition--to--all--the--specific--acts

~~listed in this section, to do any other acts for the welfare of the spouse, children, or other dependents or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends, and organizations as are appropriate.~~

~~(2) All powers described in this section are exercisable equally whether the acts required for their execution relate to real or personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether those acts are performable in Montana or elsewhere."~~

NEW SECTION. Section 126. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs or from military service. In a statutory power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs or from civil or military service empowers the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in 72-31-212(1), and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

NEW SECTION. Section 127. Construction of power relating to retirement plan transactions. In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to:

(1) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(2) designate beneficiaries under those plans and change existing designations;

(3) make voluntary contributions to those plans;

(4) exercise the investment powers available under any self-directed retirement plan;

(5) make "rollovers" of plan benefits into other retirement plans;

(6) if authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and

(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

NEW SECTION. **Section 128.** Construction of power relating to tax matters. In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code section 2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax

years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority.

NEW SECTION. **Section 129.** Existing interests -- foreign interests. The powers described in this part are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the power of attorney is executed in this state.

NEW SECTION. **Section 130.** Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

NEW SECTION. **Section 131.** Application of [sections 103 through 112]. [Sections 103 through 112] apply to registrations of securities in beneficiary form made before

or after [the effective date of this act], by decedents dying on or after [the effective date of this act].

NEW SECTION. Section 132. Codification instruction.

(1) [Section 21] is intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [section 21].

(2) [Section 34] is intended to be codified as an integral part of Title 72, chapter 2, part 3, and the provisions of Title 72, chapter 2, part 3, apply to [section 34].

(3) [Section 47] is intended to be codified as an integral part of Title 72, chapter 2, part 5, and the provisions of Title 72, chapter 2, part 5, apply to [section 47].

(4) [Section 56] is intended to be codified as an integral part of Title 72, chapter 2, part 8, and the provisions of Title 72, chapter 2, part 8, apply to [section 56].

(5) [Sections 61 through 72 and 83 through 112] are intended to be codified as an integral part of Title 72, chapter 1, and chapter 2, parts 1 through 8, and the provisions of Title 72, chapter 1, and chapter 2, parts 1 through 8, apply to [sections 61 through 72 and 83 through 112].

(6) [Sections 114, 115, 119, and 126 through 130] are

intended to be codified as an integral part of Title 72, chapter 31, part 2, and the provisions of Title 72, chapter 31, part 2, apply to [sections 114, 115, 119, and 126 through 130].

NEW SECTION. Section 133. Repealer. Sections 32-1-442,

32-1-443, 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501, 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103, 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108, 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113, 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105, 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205, 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305, 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310, 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315, 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320, 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333, 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204, 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502, 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604, 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704, 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001, 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102, 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301, 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, and 72-31-216, MCA, are repealed.

1 NEW SECTION. **Section 134.** Retroactive applicability.

2 The amendment to 72-36-206(1) applies retroactively, within
3 the meaning of 1-2-109, to conveyances recorded on or before
4 October 1, 1989. The amendment also applies to conveyances
5 recorded after October 1, 1989.

6 NEW SECTION. **Section 135.** Saving clause. [This act]
7 does not affect rights and duties that matured, penalties
8 that were incurred, or proceedings that were begun before
9 [the effective date of this act].

 -End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 119 (first reading copy -- white), respectfully report that Senate Bill No. 119 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 145, line 25.

Following: "intent."

Insert: "However, any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account."

2. Page 154, lines 8 and 9.

Following: "representative" on line 8

Strike: remainder of line 8 through "party" on line 9

Insert: "or a successor claiming under 72-3-1101"

-END-

119
These were the only amendments on Senate Bill 119 that were made in the Judiciary Committee. The entire bill will be printed on reference when it has completed both houses.

APV
Sec. of Senate

Amd. Coord.

390948SC.San

Corrected
Number

119
SB
SECOND READING

SENATE BILL NO. 119
INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
LAW CONCERNING ESTATES, WILLS, AND DONATIVE TRANSFERS;
REVISING THE ELECTIVE SHARE OF A SURVIVING SPOUSE;
INCREASING EXEMPT PROPERTY; REVISING THE LAW CONCERNING
WRITINGS INTENDED AS WILLS; REVISING THE RULES OF
CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING
INSTRUMENTS; REVISING THE LAW CONCERNING PROBATE AND
NONPROBATE TRANSFERS; PROVIDING FOR HONORARY TRUSTS AND
TRUSTS FOR PETS; PROVIDING FOR NONPROBATE TRANSFERS ON
DEATH; PROVIDING FOR PAYABLE-ON-DEATH DESIGNATIONS ON
ACCOUNTS IN FINANCIAL INSTITUTIONS; PROVIDING FOR
TRANSFER-ON-DEATH REGISTRATION FOR SECURITIES; REVISING THE
STATUTORY FORM POWER OF ATTORNEY; AMENDING SECTIONS 3-7-402,
70-1-703, 72-1-103, 72-1-108, 72-2-101, 72-2-102, 72-2-103,
72-2-104, 72-2-105, 72-2-201, 72-2-202, 72-2-203, 72-2-204,
72-2-205, 72-2-206, 72-2-207, 72-2-210, 72-2-212, 72-2-213,
72-2-214, 72-2-301, 72-2-302, 72-2-304, 72-2-305, 72-2-306,
72-2-311, 72-2-312, 72-2-313, 72-2-314, 72-2-321, 72-2-322,
72-2-323, 72-2-401, 72-2-402, 72-2-502, 72-2-504, 72-2-512,
72-2-513, 72-2-514, 72-2-515, 72-2-516, 72-2-517, 72-2-518,
72-2-519, 72-2-601, 72-2-602, 72-2-702, 72-2-703, 72-2-704,
72-2-705, 72-2-706, 72-2-707, 72-2-801, 72-2-802, 72-2-803,

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO INTRODUCED COPY (WHITE) PLUS
YELLOW AMENDMENTS FOR COMPLETE TEXT.

72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, AND
72-31-216, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY

HOUSE STANDING COMMITTEE REPORT

March 30, 1993
Page 2 of 2

March 30, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 119 (third reading copy -- blue) be concurred in as
amended.

Signed: Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Jim Rice

1. Page 40, line 10.

Following: line 9

Insert: "(5)(a) if there is no surviving descendant,
grandparent, or descendant of a grandparent, to the person
of the closest degree of kinship with the decedent. Except
as provided in subsection (5)(b), if more than one person is
of that closest degree, those persons share equally.
(b) If more than one person is of the closest degree as
provided in subsection (5)(a) but they claim through different
ancestors, those who claim through the nearer ancestor shall
receive to the exclusion of those claiming through a more remote
ancestor."

2. Page 41, lines 12 through 16.

Following: "." on line 12

Strike: remainder of line 12 through "." on line 16

Insert: "The share of each deceased descendant in the same
generation as the surviving descendant is divided in the
same manner, with the subdivision repeating at each
succeeding generation until the property is fully allocated
among surviving descendants."

3. Page 42, lines 6 through 10.

Following: "." on line 6

Strike: remainder of line 6 through "." on line 10

Insert: "The share of each deceased descendant in the same
generation as the surviving descendant is divided in the
same manner, with the subdivision repeating at each
succeeding generation until the property is fully allocated
among surviving descendants."

4. Page 121, line 11.

Strike: "an applicable statute or"

5. Page 121, lines 12 and 13.

Following: "distributed" on line 12

Strike: remainder of line 12 through "or" on line 13

6. Page 122, line 1.

Following: "if"

Insert: "an applicable statute or"

7. Page 122, line 2.

Following: "distributed"

Insert: "'by representation" or"

-END-

Committee Vote:

Yes 12, No 1.

710844SC.Hss

SB 119
HOUSE

710844SC.Hss

1 SENATE BILL NO. 119
2 INTRODUCED BY HALLIGAN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAW CONCERNING ESTATES, WILLS, AND DONATIVE TRANSFERS;
6 REVISING THE ELECTIVE SHARE OF A SURVIVING SPOUSE;
7 INCREASING EXEMPT PROPERTY; REVISING THE LAW CONCERNING
8 WRITINGS INTENDED AS WILLS; REVISING THE RULES OF
9 CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING
10 INSTRUMENTS; REVISING THE LAW CONCERNING PROBATE AND
11 NONPROBATE TRANSFERS; PROVIDING FOR HONORARY TRUSTS AND
12 TRUSTS FOR PETS; PROVIDING FOR NONPROBATE TRANSFERS ON
13 DEATH; PROVIDING FOR PAYABLE-ON-DEATH DESIGNATIONS ON
14 ACCOUNTS IN FINANCIAL INSTITUTIONS; PROVIDING FOR
15 TRANSFER-ON-DEATH REGISTRATION FOR SECURITIES; REVISING THE
16 STATUTORY FORM POWER OF ATTORNEY; AMENDING SECTIONS 3-7-402,
17 32-3-501, 70-1-703, 72-1-103, 72-1-108, 72-2-101, 72-2-102,
18 72-2-103, 72-2-104, 72-2-105, 72-2-201, 72-2-202, 72-2-203,
19 72-2-204, 72-2-205, 72-2-206, 72-2-207, 72-2-210, 72-2-212,
20 72-2-213, 72-2-214, 72-2-301, 72-2-302, 72-2-304, 72-2-305,
21 72-2-306, 72-2-311, 72-2-312, 72-2-313, 72-2-314, 72-2-321,
22 72-2-322, 72-2-323, 72-2-401, 72-2-402, 72-2-502, 72-2-504,
23 72-2-512, 72-2-513, 72-2-514, 72-2-515, 72-2-516, 72-2-517,
24 72-2-518, 72-2-519, 72-2-601, 72-2-602, 72-2-702, 72-2-703,
25 72-2-704, 72-2-705, 72-2-706, 72-2-707, 72-2-801, 72-2-802,

1 72-2-803, 72-2-804, 72-3-212, 72-3-213, 72-3-222, 72-11-101,
2 72-11-102, 72-11-103, 72-11-104, 72-12-206, 72-16-313,
3 72-31-201, 72-31-202, 72-31-203, 72-31-204, 72-31-205,
4 72-31-206, 72-31-207, 72-31-208, 72-31-211, 72-31-212, AND
5 72-36-206, MCA; REPEALING SECTIONS 32-1-442, 32-1-443,
6 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501,
7 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103,
8 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108,
9 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113,
10 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105,
11 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205,
12 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305,
13 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310,
14 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315,
15 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320,
16 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333,
17 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204,
18 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502,
19 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604,
20 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704,
21 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001,
22 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102,
23 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301,
24 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, AND
25 72-31-216, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY

DATE."

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

Section 1. Section 3-7-402, MCA, is amended to read:

"3-7-402. Disqualification of water judge or master.

(1) A water judge may withdraw or may disqualify himself-or the water master in any proceeding or pertinent portion thereof of a proceeding in which his the judge's or the water master's impartiality might reasonably be questioned.

(2) A water judge may also withdraw or may disqualify himself-or the water master in the following circumstances:

(a) if he the judge or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice he the judge or the water master served as a lawyer in the matter in controversy or a lawyer with whom he the judge or the water master previously practiced law served during such the association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if he the judge or the water master has served in governmental employment and in such that capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if he the judge or the water master knows that he the judge or the water master, individually or as a fiduciary, or his the judge's or the water master's spouse or minor child residing in his the judge's or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if he the judge or the water master or his the judge's or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through ~~72-11-105~~ 72-11-104) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should ~~inform--himself~~ be informed about his the judge's and the water master's personal and fiduciary financial interests and make a reasonable effort to ~~inform--himself~~ be informed about the personal financial interests of his the judge's and the water master's spouse

and minor children residing in ~~his~~ the judge's or the water master's respective household."

Section 2. Section 70-1-703, MCA, is amended to read:

"70-1-703. **Conveyances to an estate.** Unless a contrary intention appears, a devise, as defined in 72-1-103~~(b)~~, or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in ~~his~~ that person's will, or may be used to satisfy claims for debts or taxes."

Section 3. Section 72-1-103, MCA, is amended to read:

"72-1-103. **General definitions.** Subject to additional definitions contained in the subsequent chapters ~~which that~~ are applicable to specific chapters, ~~or parts, or sections~~ and unless the context otherwise requires, in ~~this--code~~ chapters 1 through 5, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

~~††(2)~~ "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

~~†2†(3)~~ "Beneficiary", as it relates to:

(a) a trust beneficiaries beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; ~~and,~~

~~(b) as-it-relates-to~~ a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an insurance or annuity policy, an account with POD designation, or a security registered in beneficiary form (TOD);

(ii) a pension, profit-sharing, retirement, or similar benefit plan; or

(iii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee, or taker in default of a power of appointment; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(i) an insurance or annuity policy, an account with POD

designation, or a security registered in beneficiary form (TOD);

(ii) a pension, profit-sharing, retirement, or similar benefit plan; or

(iii) any other nonprobate transfer at death.

~~†3†~~(5) "Child" includes any an individual entitled to take as a child under this-code chapters 1 through 5 by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

~~†4†~~(6) "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

~~†5†~~(7) "Clerk" or "clerk of court" means the clerk of the district court.

~~†6†~~(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

~~†7†~~(9) "Court" means the district court in this state

having jurisdiction in matters relating to the affairs of decedents. ~~This--court--in--this-state-is-known-as-district court--~~

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

~~†8†~~(11) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

~~†9†~~(12) "Devisee" means any a person designated in a will to receive a devise. ~~in~~ For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

~~†10†~~(13) "Disability" means cause for a protective order as described by 72-5-409.

~~†11†~~(14) "Distributee" means any person who has received property of a decedent from ~~his~~ the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in ~~his~~ the trustee's hands. A beneficiary of a testamentary trust to

1 whom the trustee has distributed property received from a
2 personal representative is a distributee of the personal
3 representative. For purposes of this provision,
4 "testamentary trustee" includes a trustee to whom assets are
5 transferred by will, to the extent of the devised assets.

6 ~~†12†~~(15) "Estate" includes the property of the decedent,
7 trust, or other person whose affairs are subject to this
8 code chapters 1 through 5 as originally constituted and as
9 it exists from time to time during administration.

10 ~~†13†~~(16) "Exempt property" means that property of a
11 decedent's estate which that is described in 72-2-802.

12 ~~†14†~~(17) "Fiduciary" includes a personal representative,
13 guardian, conservator, and trustee.

14 ~~†15†~~(18) "Foreign personal representative" means a
15 personal representative of appointed by another
16 jurisdiction.

17 ~~†16†~~(19) "Formal proceedings" means those proceedings
18 conducted before a judge with notice to interested persons.

19 (20) "Governing instrument" means a deed; will; trust;
20 insurance or annuity policy; account with POD designation;
21 security registered in beneficiary form (TOD); pension,
22 profit-sharing, retirement, or similar benefit plan;
23 instrument creating or exercising a power of appointment or
24 a power of attorney; or dispositive, appointive, or
25 nominative instrument of any similar type.

1 ~~†17†~~(21) "Guardian" means a person who has qualified as
2 a guardian of a minor or incapacitated person pursuant to
3 testamentary or court appointment but excludes one who is
4 merely a guardian ad litem.

5 ~~†18†~~(22) "Heirs", except as controlled by [section 70],
6 means those persons, including the surviving spouse and the
7 state, who are entitled under the statutes of intestate
8 succession to the property of a decedent.

9 ~~†19†~~(23) "Incapacitated person" ~~is--as-defined~~ has the
10 meaning provided in 72-5-101.

11 ~~†20†~~(24) "Informal proceedings" means those proceedings
12 conducted without notice to interested persons by the clerk
13 of court for probate of a will or appointment of a personal
14 representative.

15 ~~†21†~~(25) "Interested person" includes heirs, devisees,
16 children, spouses, creditors, beneficiaries, and any others
17 having a property right in or claim against a trust estate
18 or the estate of a decedent, ward, or protected person which
19 may-be-affected-by-the-proceeding. It The term also includes
20 persons having priority for appointment as personal
21 representative and other fiduciaries representing interested
22 persons. The meaning as it relates to particular persons may
23 vary from time to time and must be determined according to
24 the particular purposes of and matter involved in any
25 proceeding.

1 †22†(26) "Issue" of a person means ~~all--his--lineal~~
 2 ~~descendants--of--all--generations,--with-the-relationship-of~~
 3 ~~parent-and-child-at-each-generation-being-determined-by--the~~
 4 ~~definitions--of--child--and--parent-contained-in-this-code a~~
 5 ~~descendant as defined in subsection (10).~~

6 (27) "Joint tenants with the right of survivorship"
 7 includes co-owners of property held under circumstances that
 8 entitle one or more to the whole of the property on the
 9 death of the other or others but excludes forms of
 10 co-ownership registration in which the underlying ownership
 11 of each party is in proportion to that party's contribution.

12 †23†(28) "Lease" includes an oil, gas, coal, or other
 13 mineral lease.

14 †24†(29) "Letters" includes letters testamentary,
 15 letters of guardianship, letters of administration, and
 16 letters of conservatorship.

17 †25†(30) "Minor" means a person who is under 18 years of
 18 age.

19 †26†(31) "Mortgage" means any conveyance, agreement, or
 20 arrangement in which property is used as security.

21 †27†(32) "Nonresident decedent" means a decedent who was
 22 domiciled in another jurisdiction at the time of his death.

23 †28†(33) "Organization" ~~includes means~~ a corporation,
 24 ~~government--or--governmental-subdivision-or-agency,~~ business
 25 trust, estate, trust, partnership, joint venture, or

1 association, ~~two--or--more-persons-having-a-joint-or-common~~
 2 interest government or governmental subdivision or agency,
 3 or any other legal or commercial entity.

4 †29†(34) "Parent" includes any person entitled to take,
 5 or who would be entitled to take if the child died without a
 6 will, as a parent under ~~this-code chapters 1 through 5~~ by
 7 intestate succession from the child whose relationship is in
 8 question and excludes any person who is only a stepparent,
 9 foster parent, or grandparent.

10 (35) "Payor" means a trustee, insurer, business entity,
 11 employer, government, governmental agency or subdivision, or
 12 any other person authorized or obligated by law or a
 13 governing instrument to make payments.

14 †30†(36) "Person" means an individual, a corporation, an
 15 organization, or other legal entity.

16 †31†(37) "Personal representative" includes executor,
 17 administrator, successor personal representative, special
 18 administrator, and persons who perform substantially the
 19 same function under the law governing their status. "General
 20 personal representative" excludes special administrator.

21 †32†(38) "Petition" means a written request to the court
 22 for an order after notice.

23 †33†(39) "Proceeding" includes action at law and suit in
 24 equity.

25 †34†(40) "Property" includes both real and personal

property or any interest therein in that property and means anything that may be the subject of ownership.

~~†35†~~(41) "Protected person" ~~is--as--defined~~ has the meaning provided in 72-5-101.

~~†36†~~(42) "Protective proceeding" ~~is-as-defined~~ has the meaning provided in 72-5-101.

~~†37†~~(43) "Securities Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; or, in general, any interest or instrument commonly known as a security; or any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for; or any warrant or right to subscribe to or purchase any of the foregoing.

~~†38†~~(44) "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

~~†39†~~(45) "Special administrator" means a personal representative as described by chapter 3, part 7.

~~†40†~~(46) "State" ~~includes--any means a~~ state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and or any territory or insular possession

subject to the ~~legislative--authority~~ jurisdiction of the United States.

~~†41†~~(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~†42†~~(48) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his the decedent's will or this-code chapters 1 through 5.

~~†43†~~(49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive", except for purposes of [sections 103 through 112], means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-205 or [section 62]. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

~~†44†~~(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

~~†45†~~(53) "Trust" includes any an express trust, private or charitable, with additions thereto, wherever and however created. ~~It~~ The term also includes a trust created or determined by judgment or decree under which the trust is to

1 be administered in the manner of an express trust. "Trust"
 2 The term excludes other constructive trusts; and it excludes
 3 resulting trusts; conservatorships; personal
 4 representatives; trust accounts as defined in [sections 83
 5 through 112]; custodial arrangements pursuant to chapter 26
 6 of this title; business trusts providing for certificates
 7 to be issued to beneficiaries; common trust funds; voting
 8 trusts; security arrangements; liquidation trusts; and
 9 trusts for the primary purpose of paying debts, dividends,
 10 interest, salaries, wages, profits, pensions, or employee
 11 benefits of any kind; and any arrangement under which a
 12 person is nominee or escrowee for another.

13 {46}{54} "Trustee" includes an original, additional, or
 14 successor trustee, whether or not appointed or confirmed by
 15 court.

16 {47}{55} "Ward" ~~is--as--defined~~ means an individual
 17 described in 72-5-101.

18 {48}{56} "Will" includes codicil and any testamentary
 19 instrument which that merely appoints an executor, or
 20 revokes or revises another will, nominates a guardian, or
 21 expressly excludes or limits the right of an individual or
 22 class to succeed to property of the decedent passing by
 23 intestate succession."

24 **Section 4.** Section 72-1-108, MCA, is amended to read:

25 "72-1-108. ~~Evidential--rules--applicable---~~ evidence as

1 to Evidence of death or status. {1} In proceedings--under
 2 ~~this--code~~ addition to the rules of evidence in courts of
 3 general jurisdiction, ~~including-any-relating-to-simultaneous~~
 4 ~~deaths,--are-applicable-unless-specifically-displaced-by--the~~
 5 ~~code;~~ the following rules relating to a determination of
 6 death or status apply:

7 {2}{1} ~~In-addition,--the--following--rules--relating--to~~
 8 ~~determination--of--death--and--status--are-applicable;~~ Death
 9 occurs when an individual is determined to be dead under
 10 50-22-101.

11 {a}{2} A certified or authenticated copy of a death
 12 certificate purporting to be issued by an official or agency
 13 of the place where the death purportedly occurred is prima
 14 facie proof evidence of the fact, place, date, and time of
 15 death and the identity of the decedent.

16 {b}{3} A certified or authenticated copy of any record
 17 or report of a governmental agency, domestic or foreign,
 18 that ~~a-person~~ an individual is missing, detained, dead, or
 19 alive is prima facie evidence of the status and of the
 20 dates, circumstances, and places disclosed by the record or
 21 report.

22 {c}{4} In the absence of prima facie evidence of death
 23 under subsection (2){a} or (2){b} (3), the fact of death may
 24 be established by clear and convincing evidence, including
 25 circumstantial evidence.

~~(d)~~(5) A--person An individual whose death is not established under subsections (2)(a) through (2)(c) (4), who is absent for a continuous period of 5 years, during which he the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours."

Section 5. Section 72-2-101, MCA, is amended to read:

"72-2-101. Renunciation--of--succession Disclaimer of property interests. (1) (a) A person or his--personal representative--or the representative of an-incapacitated--or protected a person who--is--an--heir,--devisee,--person succeeding--to--a--renounced--interest,--donee,--appointee, grantee,--recipient,--or--beneficiary-under-a-trust-or-other nontestamentary-instrument-or-under-a-power--of--appointment

exercised--by--a-testamentary-or-nontestamentary-instrument, surviving--joint-owner--or--surviving--joint--tenant,--or beneficiary--or--owner--of--an--insurance--contract--or--any incident--of--ownership--therein--may--renounce, to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part,--the-right-of-succession-to-any-property-or interest--therein,--including-a-future-interest, by delivering or filing a written renunciation disclaimer under this section. The-instrument-shall:

(a)--describe-the-property-or-interest-renounced;

(b)--be-signed-by-the-person-renouncing;--and

(c)--declare-the-renunciation-and-the-extent-of--thereof.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose

identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The--court--may--direct--or--permit--a--trustee--under--a--testamentary--or--nontestamentary--instrument--to--renounce--or--power--of--administration--management--or--allocation--of--benefit--upon--finding--that--such--restriction--on--the--exercise--of--the--power--may--defeat--or--impair--the--accomplishment--of--the--purposes--of--the--trust--whether--by--the--imposition--of--tax--the--allocation--of--beneficial--interest--inconsistent--with--such--purposes--or--by--other--reason--Such--authority--shall--be--exercised--after--hearing--and--upon--notice--to--all--known--persons--beneficially--interested--in--such--trust--in--the--manner--directed--by--the--court. The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after

the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable

ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the joint tenant by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.

(3)(d) The instrument of renunciation must be received by the transferor of the interest, his legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes, the instrument must be received not later than the date which is 9 months after the later of the date on which the transfer creating the interest in a person is made or the date on which the person attains 18 years of age, if the circumstances that establish the right of a person to renounce an interest

arise as a result of the death of an individual, the instrument must also be filed in the court of the county where proceedings concerning the decedent's estate are pending or where they would be pending if commenced. If real property or an interest therein in the property is renounced disclaimed, a copy of the renunciation disclaimer may be recorded in the office of the county clerk and recorder of the county in which the real estate is situated property or interest disclaimed is located. No person entitled to a copy of the instrument is liable for any proper distribution or disposition made without actual notice of the renunciation, and no person making a proper distribution or disposition in reliance upon the renunciation is liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(3) The disclaimer must:

(a) describe the property or interest disclaimed;

(b) declare the disclaimer and extent of the disclaimer; and

(c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) Unless the transferor of the interest has otherwise provided, the If property or an interest renounced in property devolves to a disclaimant under a testamentary

1 instrument, under a power of appointment exercised by a
 2 testamentary instrument, or under the laws of intestacy and
 3 the decedent has not provided for another disposition of
 4 that interest, should it be disclaimed, or of disclaimed or
 5 failed interests in general, the disclaimed interest
 6 devolves as though if the person-renouncing disclaimant had
 7 predeceased the decedent or, but if the--appointment--was
 8 exercised--by-a by law or under the testamentary instrument,
 9 as-though-the-person-renouncing-had-predeceased-the-donee-of
 10 the-power the descendants of the disclaimant would take the
 11 disclaimant's share by representation were the disclaimant
 12 to predecease the decedent, the disclaimed interest passes
 13 by representation to the descendants of the disclaimant who
 14 survive the decedent. A future interest that takes effect in
 15 possession or enjoyment after the termination of the estate
 16 or interest renounced disclaimed takes effect as though if
 17 the person--renouncing disclaimant had predeceased the
 18 decedent or---the--donee--of--the--power. A renunciation
 19 disclaimer relates back for all purposes to the date of the
 20 death of the decedent or-the-donee-of-the-power.

21 (b) If property or an interest in property devolves to
 22 a disclaimant under a nontestamentary instrument or contract
 23 and the instrument or contract does not provide for another
 24 disposition of that interest, should it be disclaimed, or of
 25 disclaimed or failed interests in general, the disclaimed

1 interest devolves as if the disclaimant had predeceased the
 2 effective date of the instrument or contract, but if by law
 3 or under the nontestamentary instrument or contract the
 4 descendants of the disclaimant would take the disclaimant's
 5 share by representation were the disclaimant, to predecease
 6 the effective date of the instrument, the disclaimed
 7 interest passes by representation to the descendants of the
 8 disclaimant who survive the effective date of the
 9 instrument. A disclaimer relates back for all purposes to
 10 that date. A future interest that takes effect in possession
 11 or enjoyment at or after the termination of the disclaimed
 12 interest takes effect as if the disclaimant had died before
 13 the effective date of the instrument or contract that
 14 transferred the disclaimed interest.

15 (c) The disclaimer or the written waiver of the right
 16 to disclaim is binding upon the disclaimant or person
 17 waiving and on all persons claiming through or under either
 18 of them.

19 (b) (a) The right to renounce disclaim property or an
 20 interest therein in the property is barred by:

21 ++(a) an assignment, conveyance, encumbrance, pledge,
 22 or transfer of the property or interest, or a contract
 23 therefor;

24 ++(b) a written waiver of the right to renounce
 25 disclaim;

~~{iii}~~(c) an acceptance of the property or interest or benefit thereunder under it; or

~~{iv}~~(d) a sale of the property or interest under judicial sale made before the renunciation--is--effected disclaimer is made.

~~{b}~~--The--right--to--renounce--exists--notwithstanding--any limitation--on--the--interest--of--the--person--renouncing--in--the nature--of--a--spendthrift--provision--or--similar--restriction.

~~{c}~~--A--renunciation--or--a--written--waiver--of--the--right--to renounce--is--binding--upon--the--person--renouncing--or--person waiving--and--all--persons--claiming--through--or--under--him.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein in property under any other statute.

(7) ~~Within 30 days of receipt of a written instrument of renunciation by the transferor of the interest, the renouncer, his legal representative, the personal representative of the decedent, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates, as the case may be, shall attempt to notify in writing those persons who are known or ascertainable with reasonable diligence who are recipients or potential recipients of the renounced interest of the renunciation and the interest or potential interest such recipient will~~

~~receive as a result of the renunciation.~~

~~{8}~~--Any An interest in property which that exists on July 17, 1983, may be renounced after October 17, 1983, as provided in this section. An interest that has arisen prior to July 17, 1983, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section [the effective date of this act] as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after [the effective date of this act]."

Section 6. Section 72-2-102, MCA, is amended to read:

"72-2-102. Waiver of right to elect and of other rights by spouse. (1) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure surviving spouse.

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(a) the surviving spouse did not execute the waiver voluntarily; or

1 (b) the waiver was unconscionable when it was executed
 2 and, before execution of the waiver, the surviving spouse:

3 (i) was not provided a fair and reasonable disclosure
 4 of the property or financial obligations of the decedent;

5 (ii) did not voluntarily and expressly waive, in
 6 writing, any right to disclosure of the property or
 7 financial obligations of the decedent beyond the disclosure
 8 provided; and

9 (iii) did not have or reasonably could not have had an
 10 adequate knowledge of the property or financial obligations
 11 of the decedent.

12 (3) An issue of unconscionability of a waiver is for
 13 decision by the court as a matter of law.

14 (4) Unless it provides to the contrary, a waiver of
 15 "all rights", (or equivalent language), in the property or
 16 estate of a present or prospective spouse or a complete
 17 property settlement entered into after or in anticipation of
 18 separation or divorce is a waiver of all rights to elective
 19 share, homestead allowance, exempt property, and family
 20 allowance by each spouse in the property of the other and a
 21 renunciation by each of all benefits which that would
 22 otherwise pass to him that spouse from the other by
 23 intestate succession or by virtue of the provisions--of any
 24 will executed before the waiver or property settlement."

25 **Section 7.** Section 72-2-103, MCA, is amended to read:

1 **"72-2-103. Effect of divorce, annulment, or decree of**
 2 **separation decree. (1) A--person An individual** who is
 3 divorced from the decedent or whose marriage to the decedent
 4 has been annulled is not a surviving spouse unless by virtue
 5 of a subsequent marriage he the individual is married to the
 6 decedent at the time of death. A decree of separation which
 7 that does not terminate the status of husband and wife is
 8 not a divorce for purposes of this section.

9 (2) For purposes of chapter 2, parts 2, 6, 7, and 8 and
 10 of 72-3-501 through 72-3-508, a surviving spouse does not
 11 include:

12 (a) a-person an individual who obtains or consents to a
 13 final decree or judgment of divorce from the decedent or an
 14 annulment of their marriage, which decree or judgment is not
 15 recognized as valid in this state, unless they subsequently
 16 they participate in a marriage ceremony purporting to marry
 17 each to the other or subsequently live together as man
 18 husband and wife;

19 (b) a--person an individual who, following a an invalid
 20 decree or judgment of divorce or annulment obtained by the
 21 decedent, participates in a marriage ceremony with a third
 22 person individual; or

23 (c) a-person an individual who was a party to a valid
 24 proceeding concluded by an order purporting to terminate all
 25 marital property rights."

Section 8. Section 72-2-104, MCA, is amended to read:

"72-2-104. Homicide-----effect Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

{1}(2) A surviving spouse, heir, or devisee An individual who feloniously and intentionally kills the decedent is not entitled to any forfeits all benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to

or for the benefit of the killer passes as if the killer had predeceased the decedent with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

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

{3}--A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

{4}--Any other acquisition of property or interest by the killer shall be treated in accordance with the

principles-of-this-section:

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

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

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer;

and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument that are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a

1 killer not covered by this section must be treated in
 2 accordance with the principle that a killer cannot profit
 3 from the killer's wrong.

4 (7) After all right to appeal has been exhausted, a
 5 judgment of conviction establishing criminal accountability
 6 for the felonious and intentional killing of the decedent
 7 conclusively establishes the convicted individual as the
 8 decedent's killer for purposes of this section. In the
 9 absence of a conviction, the court, upon the petition of an
 10 interested person, shall determine whether, under the
 11 preponderance of evidence standard, the individual would be
 12 found criminally accountable for the felonious and
 13 intentional killing of the decedent. If the court determines
 14 that under that standard the individual would be found
 15 criminally accountable for the felonious and intentional
 16 killing of the decedent, the determination conclusively
 17 establishes that individual as the decedent's killer for
 18 purposes of this section.

19 (8) (a) A payor or other third party is not liable for
 20 having made a payment or transferred an item of property or
 21 any other benefit to a beneficiary designated in a governing
 22 instrument affected by an intentional and felonious killing,
 23 or for having taken any other action in good faith reliance
 24 on the validity of the governing instrument, upon request
 25 and satisfactory proof of the decedent's death, before the

1 payor or other third party received written notice of a
 2 claimed forfeiture or revocation under this section. A payor
 3 or other third party is liable for a payment made or other
 4 action taken after the payor or other third party received
 5 written notice of a claimed forfeiture or revocation under
 6 this section.

7 (b) Written notice of a claimed forfeiture or
 8 revocation under subsection (8)(a) must be mailed to the
 9 payor's or other third party's main office or home by
 10 certified mail, return receipt requested, or served upon the
 11 payor or other third party in the same manner as a summons
 12 in a civil action. Upon receipt of written notice of a
 13 claimed forfeiture or revocation under this section, a payor
 14 or other third party may pay any amount owed or transfer or
 15 deposit any item of property held by it to or with the court
 16 having jurisdiction of the probate proceedings relating to
 17 the decedent's estate or, if no proceedings have been
 18 commenced, to or with the court having jurisdiction of
 19 probate proceedings relating to decedents' estates located
 20 in the county of the decedent's residence. The court shall
 21 hold the funds or item of property and, upon its
 22 determination under this section, shall order disbursement
 23 in accordance with the determination. Payments, transfers,
 24 or deposits made to or with the court discharge the payor or
 25 other third party from all claims for the value of amounts

paid to or items of property transferred to or deposited with the court.

(9) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have

been entitled to it were this section or part of this section not preempted.

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

Section 9. Section 72-2-105, MCA, is amended to read:

"72-2-105. Contracts concerning succession. (1) A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after July 1, 1975, can may be established only by:

(a) provisions of a will stating material provisions of the contract;

(b) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) a writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."

Section 10. Section 72-2-201, MCA, is amended to read:

"72-2-201. Intestate estate. (1) Any part of the a decedent's estate of-a-decedent not effectively disposed of by his will passes by intestate succession to his the decedent's heirs as prescribed in the following-sections--of

1 ~~this code~~ chapters 1 through 5, except as modified by the
 2 decendent's will.

3 (2) A decedent may by will expressly exclude or limit
 4 the right of an individual or class to succeed to property
 5 of the decedent passing by intestate succession. If that
 6 individual or a member of that class survives the decedent,
 7 the share of the decedent's intestate estate to which that
 8 individual or class would have succeeded passes as if that
 9 individual or each member of that class had disclaimed an
 10 intestate share."

11 **Section 11.** Section 72-2-202, MCA, is amended to read:

12 **"72-2-202. Share of spouse.** The intestate share of the
 13 a decedent's surviving spouse is:

14 (1) if there is no surviving issue or if there are
 15 surviving issue all of whom are issue of the surviving
 16 spouse also, the entire remaining intestate estate if:

17 (a) no descendant or parent of the decedent survives
 18 the decedent; or

19 (2)(b) if there are surviving issue one or more of whom
 20 are not issue all of the decedent's surviving descendants
 21 are also descendants of the surviving spouse, as follows:

22 (a) if there is surviving only one child or the issue
 23 of one child, one-half of the intestate estate;

24 (b) if there are surviving two or more children, the
 25 issue of two or more deceased children, or one or more

1 children and the issue of one or more deceased children,
 2 one-third of the intestate estate and there is no other
 3 descendant of the surviving spouse who survives the
 4 decedent;

5 (2) the first \$200,000, plus three-fourths of any
 6 balance of the intestate estate, if no descendant of the
 7 decedent survives the decedent but a parent of the decedent
 8 survives the decedent;

9 (3) the first \$150,000, plus one-half of any balance of
 10 the intestate estate, if all of the decedent's surviving
 11 descendants are also descendants of the surviving spouse and
 12 the surviving spouse has one or more surviving descendants
 13 who are not descendants of the decedent;

14 (4) the first \$100,000, plus one-half of any balance of
 15 the intestate estate, if one or more of the decedent's
 16 surviving descendants are not descendants of the surviving
 17 spouse."

18 **Section 12.** Section 72-2-203, MCA, is amended to read:

19 **"72-2-203. Share of heirs other than surviving spouse.**
 20 The Any part of the intestate estate not passing to the
 21 decedent's surviving spouse under 72-2-202, or the entire
 22 intestate estate if there is no surviving spouse, passes as
 23 follows in the following order to the individuals designated
 24 below who survive the decedent:

25 (1) to the issue of the decedent, if they are all of

1 ~~the--same--degree--of--kinship--to--the--decendent,--they--take~~
 2 ~~equally,--but--if--of--unequal--degree,--then--those--of--more--remote~~
 3 ~~degree--take~~ decendent's descendants by representation;

4 (2) if there is no surviving issue descendant, to his
 5 parent--or the decendent's parents equally if both survive or
 6 to the surviving parent;

7 (3) if there is no surviving issue--or descendant or
 8 parent, to the brothers--and--sisters--and--the--children--or
 9 grandchildren--of--any--deceased--brother--or--sister, descendants
 10 of the decendent's parents or either of them by
 11 representation;

12 (4) if there is no surviving issue descendant, parent,
 13 brother,--sister, or children--or--grandchildren--of--a--deceased
 14 brother--or--sister,--to--the--next--of--kin--in--equal--degree,
 15 except--that--where--there--are--two--or--more--collateral--kindred
 16 in--equal--degree--but--claiming--through--different--ancestors,
 17 those--who--claim--through--the--nearer--ancestors--must--be
 18 preferred--to--those--claiming--through--an--ancestor--more--remote
 19 descendant of a parent and the decendent is:

20 (a) survived by one or more grandparents or descendants
 21 of grandparents:

22 (i) one-half to:

23 (A) the decendent's paternal grandparents equally if
 24 both survive;

25 (B) the surviving paternal grandparent; or

1 (C) the descendants of the decendent's paternal
 2 grandparents or either of them if both are deceased, the
 3 descendants taking by representation; and

4 (ii) the other one-half to the decendent's maternal
 5 relatives in the same manner; or

6 (b) not survived by a grandparent or descendant of a
 7 grandparent on either the paternal or the maternal side, the
 8 entire estate to the decendent's relatives on the other side
 9 in the same manner as the half.

10 (5) (A) IF THERE IS NO SURVIVING DESCENDANT,
 11 GRANDPARENT, OR DESCENDANT OF A GRANDPARENT, TO THE PERSON
 12 OF THE CLOSEST DEGREE OF KINSHIP WITH THE DECEDENT. EXCEPT
 13 AS PROVIDED IN SUBSECTION (5)(B), IF MORE THAN ONE PERSON IS
 14 OF THAT CLOSEST DEGREE, THOSE PERSONS SHARE EQUALLY.

15 (B) IF MORE THAN ONE PERSON IS OF THE CLOSEST DEGREE AS
 16 PROVIDED IN SUBSECTION (5)(A) BUT THEY CLAIM THROUGH
 17 DIFFERENT ANCESTORS, THOSE WHO CLAIM THROUGH THE NEARER
 18 ANCESTOR SHALL RECEIVE TO THE EXCLUSION OF THOSE CLAIMING
 19 THROUGH A MORE REMOTE ANCESTOR."

20 **Section 13.** Section 72-2-204, MCA, is amended to read:

21 **"72-2-204. Representation.** (1) As used in this section,
 22 the following definitions apply:

23 (a) "Deceased descendant", "deceased parent", or
 24 "deceased grandparent" means a descendant, parent, or
 25 grandparent who either predeceased the decendent or is

considered to have predeceased the decedent under 72-2-205.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-205.

(2) (a) If representation is called for by this code, under 72-2-203(1), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into decedent's descendants and the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving heirs descendants in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner generation nearest to the decedent that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their

surviving descendants had predeceased the decedent. THE SHARE OF EACH DECEASED DESCENDANT IN THE SAME GENERATION AS THE SURVIVING DESCENDANT IS DIVIDED IN THE SAME MANNER, WITH THE SUBDIVISION REPEATING AT EACH SUCCEEDING GENERATION UNTIL THE PROPERTY IS FULLY ALLOCATED AMONG SURVIVING DESCENDANTS.

(3) (a) If, under 72-2-203(3) or (4), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent. THE

SHARE OF EACH DECEASED DESCENDANT IN THE SAME GENERATION AS THE SURVIVING DESCENDANT IS DIVIDED IN THE SAME MANNER, WITH THE SUBDIVISION REPEATING AT EACH SUCCEEDING GENERATION UNTIL THE PROPERTY IS FULLY ALLOCATED AMONG SURVIVING DESCENDANTS."

Section 14. Section 72-2-205, MCA, is amended to read:

"72-2-205. Requirement that heir survive decedent by for one hundred twenty hours. Any-person An individual who fails to survive the decedent by 120 hours is deemed considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. ~~If the-time-of-death-of-the-decedent-or-of--the-person--who-would-otherwise-be-an-heir-or-the-times-of-death-of-both-cannot--be--determined--and it cannot--be~~ is not established by clear and convincing evidence that the-person an individual who would otherwise be an heir ~~has~~ survived the decedent by 120 hours, it is ~~deemed~~ considered that the ~~person~~ individual failed to survive for the required period. This section is not to be applied where if its application would result in a taking of intestate estate by the state under 72-2-207."

Section 15. Section 72-2-206, MCA, is amended to read:

"72-2-206. **Advancements.** (1) ~~If a-person~~ an individual dies intestate as to all ~~his~~ or a portion of the

individual's estate, property ~~which-he~~ the decedent gave ~~in his~~ during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the ~~latter's~~ heir's intestate share of the-estate only if:

(a) the decedent declared in a contemporaneous writing ~~by-the-decedent or the heir~~ acknowledged in writing ~~by--the heir-to-be~~ that the gift is an advancement; or

(b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) ~~For this-purpose~~ purposes of subsection (1), the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of ~~death--of the decedent~~ decedent's death, whichever first occurs.

(3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate share--to--be--received--by-the-recipient's-issue estate, unless the ~~declaration-or-acknowledgment~~ decedent's contemporaneous writing provides otherwise."

Section 16. Section 72-2-207, MCA, is amended to read:

"72-2-207. No taker ~~---escheat-to-state.~~ If there is no

taker under the provisions of ~~72-2-202-and-72-2-203~~ this chapter, the intestate estate passes to the state of Montana."

Section 17. Section 72-2-210, MCA, is amended to read:

"72-2-210. Persons Individuals related to decedent through two lines. ~~A-person~~ An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle him the individual to the larger share."

Section 18. Section 72-2-212, MCA, is amended to read:

"72-2-212. Afterborn heirs. ~~Relatives-of--the--decedent conceived-before-his-death-but-born-thereafter-inherit-as-if they--had--been--born--in--the--lifetime-of-the-decedent. An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.~~"

Section 19. Section 72-2-213, MCA, is amended to read:

"72-2-213. ~~Establishment--of--parent-child~~ Parent and child relationship. (1) ~~If~~ Except as provided in subsections (2) and (3), for the purposes of intestate succession, ~~a relationship--of--parent--and--child--must-be-established-to determine-succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6,~~

part 1.

~~(1)(2)~~ (2) An adopted person individual is the child of an adopting parent or parents and not of the natural parents, ~~except-that~~ but adoption of a child by the spouse of a either natural parent has no effect on:

(a) the relationship between the child and either natural parent; or

(b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

~~(2)--In-cases-not-covered-by-subsection-(1),-a-person-is the-child-of-its-parents-regardless-of-the-marital-status-of its--parents,--and--the-parent-and-child-relationship-may-be established-under--the--Uniform--Parentage--Act,--Title--40, chapter-6,--part-1.~~

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child.

Section 20. Section 72-2-214, MCA, is amended to read:

"72-2-214. Alienage. No person individual is disqualified to take as an heir because he the individual or ~~a-person~~ an individual through whom he the individual claims is or has been an alien ~~unless-the-country-in-which-he resides-does-not-allow-reciprocity.~~"

NEW SECTION. **Section 21.** Debts to decedent. A debt

owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

Section 22. Section 72-2-301, MCA, is amended to read:

"72-2-301. Who may make a will. Any---person An individual 18 or more years of age who is of sound mind may make a will."

Section 23. Section 72-2-302, MCA, is amended to read:

"72-2-302. Execution -- witnessed wills -- holographic wills. (1) Except as provided ~~for--holographic--wills,~~ writings-within-72-2-312,--and--wills--within in 72-2-303, 72-2-306, 72-2-312, and subsection (2) of this section, every a will ~~shall~~ must be:

(a) in writing;

(b) signed by the testator or in the testator's name by some other person individual in the testator's conscious presence and by his the testator's direction; and

(c) ~~shall---be~~ signed by at least two persons individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in subsection (1)(b) or the testator's acknowledgment of the that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting."

Section 24. Section 72-2-304, MCA, is amended to read:

"72-2-304. Self-proved will. (1) Any A will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I,, the testator, sign my name to this instrument this day of 19..... and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my ~~last~~ will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

1
2 Testator
3 We,, the witnesses, sign our
4 names to this instrument, being first duly sworn, and do
5 hereby declare to the undersigned authority that the
6 testator signs and executes this instrument as ~~his last~~ the
7 testator's will and that he the testator signs it willingly
8 (or willingly directs another to sign for ~~him~~ the testator),
9 and that each of us, in the presence and hearing of the
10 testator, hereby signs this will as witness to the
11 testator's signing, and that to the best of our knowledge
12 the testator is 18 years of age or older, of sound mind, and
13 under no constraint or undue influence.
14
15 Witness
16
17 Witness
18 THE STATE OF
19 COUNTY OF
20 Subscribed, sworn to, and acknowledged before me by
21, the testator, and subscribed and sworn to before
22 me by and, witnesses, this day
23 of
24 (SEAL) (Signed).....
25 (Official capacity of officer)

1
2 (2) An attested will may be made self-proved at any
3 time ~~subsequent--to~~ after its execution ~~be-made-self-proved~~
4 by the acknowledgment thereof by the testator and the
5 affidavits of the witnesses, each made before an officer
6 authorized to administer oaths under the laws of the state
7 where in which the acknowledgment occurs and evidenced by
8 the officer's certificate, under the official seal, attached
9 or annexed to the will in substantially the following form:
10 THE STATE OF
11 COUNTY OF
12 We,, and, the testator
13 and the witnesses, respectively, whose names are signed to
14 the attached or foregoing instrument, being first duly
15 sworn, do hereby declare to the undersigned authority that
16 the testator signed and executed the instrument as ~~his last~~
17 the testator's will and that he ~~had~~ the testator signed
18 willingly (or willingly directed another to sign for ~~him~~ the
19 testator), and that he the testator executed it as ~~his~~ the
20 testator's free and voluntary act for the purposes therein
21 expressed, and that each of the witnesses, in the presence
22 and hearing of the testator, signed the will as witness and
23 that to the best of ~~his~~ the witness's knowledge the testator
24 was at that time 18 ~~or more~~ years of age or older, of sound
25 mind, and under no constraint or undue influence.

1 Testator
 2 Witness
 3 Witness
 4 Subscribed, sworn to, and acknowledged before me by
 5, the testator, and subscribed and sworn to before
 6 me by and, witnesses, this day
 7 of,

8 (SEAL) (Signed).....
 9 (Official capacity of officer)
 10

11 (3) A signature affixed to a self-proving affidavit
 12 attached to a will is considered a signature affixed to the
 13 will if necessary to prove the will's due execution."

14 **Section 25.** Section 72-2-305, MCA, is amended to read:

15 "72-2-305. Who may witness. (1) ~~Any~~--person An
 16 individual generally competent to be a witness may act as a
 17 witness to a will.

18 (2) ~~A The signing of a will is not invalid because the~~
 19 ~~will is signed~~ by an interested witness does not invalidate
 20 the will or any provision of it."

21 **Section 26.** Section 72-2-306, MCA, is amended to read:

22 "72-2-306. Choice of law as to execution. A written
 23 will is valid if executed in compliance with 72-2-302 or
 24 ~~72-2-303~~ [section 34] or if its execution complies with the
 25 law at the time of execution of the place where the will is

1 executed or of the law of the place where at the time of
 2 execution or at the time of death the testator is domiciled,
 3 has a place of abode, or is a national."

4 **Section 27.** Section 72-2-311, MCA, is amended to read:

5 "72-2-311. Incorporation by reference. Any A writing in
 6 existence when a will is executed may be incorporated by
 7 reference if the language of the will manifests this intent
 8 and describes the writing sufficiently to permit its
 9 identification."

10 **Section 28.** Section 72-2-312, MCA, is amended to read:

11 "72-2-312. Separate writing identifying disposition of
 12 tangible personal property. (1) Whether or not the
 13 provisions relating to holographic wills apply, a will may
 14 refer to a written statement or list to dispose of items of
 15 tangible personal property not otherwise specifically
 16 disposed of by the will, other than money, ~~evidences of~~
 17 ~~indebtedness, documents of title, and securities and~~
 18 ~~property used in trade or business.~~

19 (2) To be admissible under this section as evidence of
 20 the intended disposition, the writing must ~~either be in the~~
 21 ~~handwriting of the testator or be signed by him~~ the testator
 22 and must describe the items and the devisees with reasonable
 23 certainty.

24 (3) The writing may be:

25 (a) referred to as one to be in existence at the time

1 of the testator's death;

2 (b) prepared before or after the execution of the will;

3 (c) altered by the testator after its preparation; and

4 (d) a writing which that has no significance apart from
5 its effect upon the dispositions made by the will."

6 **Section 29.** Section 72-2-313, MCA, is amended to read:

7 "72-2-313. **Events of independent significance.** A will
8 may dispose of property by reference to acts and events
9 which that have significance apart from their effect upon
10 the dispositions made by the will, whether they occur before
11 or after the execution of the will or before or after the
12 testator's death. The execution or revocation of a will of
13 another person is such an event."

14 **Section 30.** Section 72-2-314, MCA, is amended to read:

15 "72-2-314. **Testamentary additions to trusts.** (1) (a) A
16 will may validly devise or bequest, the validity of which is
17 determinable by the law of this state, may be made by a will
18 property to the trustee of a trust established or to be
19 established;

20 (i) during the testator's lifetime by the testator, or
21 by the testator and some other person, or by some other
22 person, (including a funded or unfunded life insurance
23 trust, although the trustor settlor has reserved any or all
24 rights of ownership of the insurance contracts); or

25 (ii) at the testator's death by the testator's devise to

1 the trustee if the trust is identified in the testator's
2 will and its terms are set forth in a written instrument,
3 (other than a will), executed before, or concurrently with,
4 or after the execution of the testator's will or in the
5 valid last another individual's will of a person who if that
6 other individual has predeceased the testator, (regardless
7 of the existence, size, or character of the corpus of the
8 trust).

9 (b) The devise is not invalid because the trust is
10 amendable or revocable or because the trust was amended
11 after the execution of the will or after the testator's
12 death of the testator.

13 (2) Unless the testator's will provides otherwise, the
14 property so devised to a trust described in subsection (1)
15 is not deemed to be held under a testamentary trust of the
16 testator but it becomes a part of the trust to which it is
17 given devised and shall must be administered and disposed of
18 in accordance with the provisions of the governing
19 instrument or will setting forth the terms of the trust,
20 including any amendments thereto made before or after the
21 testator's death of the testator (regardless of whether made
22 before or after the execution of the testator's will) and if
23 the testator's will so provides, including any amendments to
24 the trust made after the death of the testator.

25 (3) A Unless the testator's will provides otherwise, a

1 revocation or termination of the trust before the testator's
2 death of-the-testator causes the devise to lapse."

3 **Section 31.** Section 72-2-321, MCA, is amended to read:

4 "72-2-321. Revocation by writing or act. (1) A will or
5 any part thereof of a will is revoked:

6 ~~{1}(a)~~ by executing a subsequent will which that
7 revokes the prior previous will or part expressly or by
8 inconsistency; or

9 ~~{2}(b)~~ by being-burned,-torn,-canceled,-obliterated,-or
10 destroyed performing a revocatory act on the will if the
11 testator performed the act with the intent and for the
12 purpose of revoking it-by-the-testator the will or part of
13 the will or by if another person individual performed the
14 act in his the testator's conscious presence and by his the
15 testator's direction. For purposes of this subsection (b),
16 "revocatory act on the will" includes burning, tearing,
17 canceling, obliterating, or destroying the will or any part
18 of it. A burning, tearing, or canceling is a revocatory act
19 on the will, whether or not the burn, tear, or cancellation
20 touched any of the words on the will.

21 (2) If a subsequent will does not expressly revoke a
22 previous will, the execution of the subsequent will wholly
23 revokes the previous will by inconsistency if the testator
24 intended the subsequent will to replace rather than
25 supplement the previous will.

1 (3) The testator is presumed to have intended a
2 subsequent will to replace rather than supplement a previous
3 will if the subsequent will makes a complete disposition of
4 the testator's estate. If this presumption arises and is not
5 rebutted by clear and convincing evidence, the previous will
6 is revoked and only the subsequent will is operative on the
7 testator's death.

8 (4) The testator is presumed to have intended a
9 subsequent will to supplement rather than replace a previous
10 will if the subsequent will does not make a complete
11 disposition of the testator's estate. If this presumption
12 arises and is not rebutted by clear and convincing evidence,
13 the subsequent will revokes the previous will only to the
14 extent the subsequent will is inconsistent with the previous
15 will and each will is fully operative on the testator's
16 death to the extent they are not inconsistent."

17 **Section 32.** Section 72-2-322, MCA, is amended to read:

18 "~~72-2-322. Revocation by divorce--or annulment no~~
19 ~~revocation-by-other change in of circumstances. {1}-If-after~~
20 ~~executing-a-will-the-testator-is-divorced--or-his--marriage~~
21 ~~annulled,-the--divorce-or-annulment-revokes-any-disposition~~
22 ~~or-appointment-of-property-made-by-the-will--to--the--former~~
23 ~~spouse,-any-provision-conferring-a-general-or-special-power~~
24 ~~of-appointment-on-the-former-spouse,-and-any--nomination--of~~
25 ~~the--former--spouse--as--executor,-trustee,-conservator,-or~~

guardian, unless the will expressly provides otherwise.

(2) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent.

(3) If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse.

(4) For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of 72-2-103(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(5) No Except as provided in 72-2-104 and [section 71], a change of circumstances other than as described in this section revokes does not revoke a will or any part of it."

Section 33. Section 72-2-323, MCA, is amended to read:

"72-2-323. Revival of revoked will. (1) If a second subsequent will which had it remained effective at death, would have that wholly revoked the first a previous will in whole or in part is thereafter revoked by acts a revocatory act under 72-2-321(1)(b), the first previous will is remains

revoked in whole or in part unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the second subsequent will or from the testator's contemporary or subsequent declarations that he the testator intended the first previous will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under 72-2-321(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(2)(3) If a second subsequent will which had it remained effective at death, would have that revoked the first a previous will in whole or in part is thereafter revoked by a third another, later will, the first previous will is remains revoked in whole or in part, except unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the third later will that the testator intended the first previous will to take effect."

NEW SECTION. Section 34. Writings intended as wills.

Although a document or writing added upon a document was not executed in compliance with 72-2-302, the document or

writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

- (1) the decedent's will;
- (2) a partial or complete revocation of the will;
- (3) an addition to or an alteration of the will; or
- (4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

Section 35. Section 72-2-401, MCA, is amended to read:

"72-2-401. Duty of custodian to--deliver of will -- liability. ~~{1}~~ After the death of a testator and on request of an interested person, any a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court.

~~{2}~~--Any A person who willfully fails to deliver a will is liable to any person aggrieved for the any damages which that may be sustained by the failure. Any A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court."

Section 36. Section 72-2-402, MCA, is amended to read:

"72-2-402. Deposit of will with court -- ~~confidentiality---examination-by-conservator---delivery in~~ testator's lifetime. ~~{1}~~ A will may be deposited by the testator or his the testator's agent with any court for safekeeping, under rules of the court. The will ~~shall~~ must be sealed and kept confidential.

~~{2}~~ During the testator's lifetime, a deposited will ~~shall~~ may be delivered only to him the testator or to a person authorized in writing signed by him the testator to receive the will.

~~{3}~~ A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ~~assure~~ ensure that it will be resealed and ~~left~~ kept on deposit after the examination.

~~{4}~~ Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him that person on request, or the court may deliver the will to the appropriate court."

Section 37. Section 72-2-502, MCA, is amended to read:

"72-2-502. Will construed-to may pass all property -- and after-acquired property. A will is-construed-to-pass may provide for the passage of all property which the testator owns at his death--including and all property acquired by the estate after the execution--of--the--will testator's

1 death."

2 **Section 38.** Section 72-2-504, MCA, is amended to read:

3 "72-2-504. Choice of law as to meaning and effect of
 4 wills governing instrument. The meaning and legal effect of
 5 a disposition-in-a-will-shall--be governing instrument is
 6 determined by the local law of a-particular the state
 7 selected by the testator transferor in his the governing
 8 instrument unless the application of that law is contrary to
 9 the provisions relating to the elective share described in
 10 part 7, the provisions relating to exempt property and
 11 allowances described in part 8, or any other public policy
 12 of this state otherwise applicable to the disposition."

13 **Section 39.** Section 72-2-512, MCA, is amended to read:

14 "72-2-512. Antilapse -- deceased devisee -- class
 15 gifts. (1) As used in this section, the following
 16 definitions apply:

17 (a) "Alternative devise" means a devise that is
 18 expressly created by the will and that under the terms of
 19 the will may take effect instead of another devise on the
 20 happening of one or more events, including survival of the
 21 testator or failure to survive the testator, whether an
 22 event is expressed in condition-precedent,
 23 condition-subsequent, or any other form. A residuary clause
 24 constitutes an alternative devise with respect to a
 25 nonresiduary devise only if the will specifically provides

1 that, upon lapse or failure, the nonresiduary devise or
 2 nonresiduary devises in general pass under the residuary
 3 clause.

4 (b) "Class member" includes an individual who fails to
 5 survive the testator but who would have taken under a devise
 6 in the form of a class gift had the individual survived the
 7 testator.

8 (c) "Devise" includes an alternative devise, a devise
 9 in the form of a class gift, and an exercise of a power of
 10 appointment.

11 (d) "Devisee" includes:

12 (i) a class member if the devise is in the form of a
 13 class gift;

14 (ii) an individual or class member who was deceased at
 15 the time the testator executed the testator's will as well
 16 as an individual or class member who was then living but who
 17 failed to survive the testator; and

18 (iii) an appointee under a power of appointment
 19 exercised by the testator's will.

20 (e) "Stepchild" means a child of the surviving,
 21 deceased, or former spouse of the testator or of the donor
 22 of a power of appointment but not a child of the testator or
 23 donor.

24 (f) "Surviving devisee" or "surviving descendant" means
 25 a devisee or a descendant who neither predeceased the

testator nor is considered to have predeceased the testator under [section 62].

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

{1}(2) If a devisee who fails to survive the testator and is a grandparent, or a lineal descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply: ~~of-the-testator-is-dead-at-the time-of--execution-of--the--will,--fails--to--survive--the testator,--or-is-treated-as-if-he-predeceased--the--testator, the--issue--of-the-deceased-devisee-who-survive-the-testator by-120-hours-take-in-place-of-the-deceased--devisee--and--if they--are--all-of-the-same-degree-of-kinship-to-the-devisee, they-take-equally,--but-if-of-unequal-degree--then--those--of more-remote-degree-take-by-representation.~~

~~{2}--One--who--would--have--been-a-devisee-under-a-class gift-if-he-had-survived-the-testator-is-treated-as-a-devisee for-purposes-of-this--section--whether--his--death--occurred before-or-after-the-execution-of-the-will.~~

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by

representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this subsection (b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of [section 47], words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a

1 sufficient indication of an intent contrary to the
2 application of this section.

3 (d) If the will creates an alternative devise with
4 respect to a devise for which a substitute gift is created
5 by subsection (2)(a) or (2)(b), the substitute gift is
6 superseded by the alternative devise only if an expressly
7 designated devisee of the alternative devise is entitled to
8 take under the will.

9 (e) Unless the language creating a power of appointment
10 expressly excludes the substitution of the descendants of an
11 appointee for the appointee, a surviving descendant of a
12 deceased appointee of a power of appointment may be
13 substituted for the appointee under this section, whether or
14 not the descendant is an object of the power.

15 (3) If, under subsection (2), substitute gifts are
16 created and not superseded with respect to more than one
17 devise and the devises are alternative devises, one to the
18 other, the determination of which of the substitute gifts
19 takes effect is resolved as follows:

20 (a) Except as provided in subsection (3)(b), the
21 devised property passes under the primary substitute gift.

22 (b) If there is a younger-generation devise, the
23 devised property passes under the younger-generation
24 substitute gift and not under the primary substitute gift.

25 (c) As used in this subsection (3), the following

1 definitions apply:

2 (i) "Primary devise" means the devise that would have
3 taken effect had all the deceased devisees of the
4 alternative devises who left surviving descendants survived
5 the testator.

6 (ii) "Primary substitute gift" means the substitute gift
7 created with respect to the primary devise.

8 (iii) "Younger-generation devise" means a devise that:
9 (A) is to a descendant of a devisee of the primary
10 devise;

11 (B) is an alternative devise with respect to the
12 primary devise;

13 (C) is a devise for which a substitute gift is created;
14 and

15 (D) would have taken effect had all the deceased
16 devisees who left surviving descendants survived the
17 testator except the deceased devisee or devisees of the
18 primary devise.

19 (iv) "Younger-generation substitute gift" means the
20 substitute gift created with respect to the
21 younger-generation devise."

22 **Section 40.** Section 72-2-513, MCA, is amended to read:

23 **"72-2-513. Failure of devise testamentary provision.**

24 **(1) Except as provided in 72-2-512, if a devise, other than**
25 **a residuary devise, that fails for any reason, it becomes a**

1 part of the residue.

2 (2) Except as provided in 72-2-512, if the residue is
3 devised to two or more persons, and the share of one-of--the
4 a residuary devisees devisee that fails for any reason, his
5 share passes to the other residuary devisee or to other
6 residuary devisees in proportion to their-interests the
7 interest of each in the remaining part of the residue."

8 **Section 41.** Section 72-2-514, MCA, is amended to read:

9 "72-2-514. **Nonexoneration** ---specific-devise-subject-to
10 security-interest. A specific devise passes subject to any
11 security interest existing at the date of death, without
12 right of exoneration, regardless of a general directive in
13 the will to pay debts."

14 **Section 42.** Section 72-2-515, MCA, is amended to read:

15 "72-2-515. **Ademption by satisfaction.** (1) Property
16 which that a testator gave in his the testator's lifetime to
17 a person is treated as a satisfaction of a devise to--that
18 person, in whole or in part, only if:

19 (a) the will provides for deduction of the lifetime
20 gift;

21 (b) or the testator declares declared in a
22 contemporaneous writing that the gift is-to-be-deducted-from
23 the--devise--or is in satisfaction of the devise or the
24 devisee--acknowledges--in--writing--that--the--gift--is--in
25 satisfaction that its value is to be deducted from the value

1 of the devise; or

2 (c) the devisee acknowledged in writing that the gift
3 is in satisfaction of the devise or that its value is to be
4 deducted from the value of the devise.

5 (2) For purpose purposes of partial satisfaction,
6 property given during the testator's lifetime is valued as
7 of the time the devisee came into possession or enjoyment of
8 the property or as-of-the-time-of at the testator's death of
9 the-testator, whichever occurs first.

10 (3) If the devisee fails to survive the testator, the
11 gift is treated as a full or partial satisfaction of the
12 devise, as appropriate, in applying 72-2-512 and 72-2-513,
13 unless the testator's contemporaneous writing provides
14 otherwise."

15 **Section 43.** Section 72-2-516, MCA, is amended to read:

16 "72-2-516. **Nonademption of specific devises in-certain**
17 **cases -- unpaid proceeds of sale, condemnation, or insurance**
18 **-- sale by conservator or agent.** (1) A specific devisee has
19 the right to the specifically devised property in the
20 testator's estate at death and:

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

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

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and

(d) property owned by the testator at his death, and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(2) If specifically devised property is sold or mortgaged by a conservator or an agent acting within the authority of a durable power of attorney for a an incapacitated principal who-is-under-a-disability or if a condemnation award, or insurance proceeds, or recovery for an injury to property are is paid to a conservator or an

agent acting within the authority of a durable power of attorney for a an incapacitated 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 amount of the unpaid loan, the condemnation award, or the insurance proceeds, or the recovery. 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.

(3) The right of the specific devisee under this subsection (2) is reduced by any right he the devisee has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal;

(a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal."

Section 44. Section 72-2-517, MCA, is amended to read:

"72-2-517. Changes Increase in devised securities -- distributions--prior--to--death accessions. (1) If the a testator intended-a-specific-devise-of--certain executes a will that devises securities rather--than-the-equivalent value--thereof--the-specific-devisee-is-entitled-only-to and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and if the securities are of any of the following types:

(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 organization acquired by reason of action initiated by the entity organization or any successor, related, or acquiring organization, excluding any securities acquired by exercise of purchase options;

(c)(b) securities of another entity--owned-by--the testator organization acquired as a result of a merger,

consolidation, reorganization, or other ~~similar--action~~ initiated distribution by the entity organization or any successor, related, or acquiring organization; and or

(d)(c) any-additional securities of the entity-owned-by the--testator same organization acquired as a result of a plan of reinvestment.

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

Section 45. Section 72-2-518, MCA, is amended to read:

"72-2-518. No--implied--exercise Exercise of power of appointment. A In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a general residuary clause in a will or a will making general disposition of all of the testator's property does-not expresses an intention to exercise a power of appointment held by the testator unless only if:

(1) specific-reference-is-made-to the power or-there-is some-other-indication-of is a general power and the creating instrument does not contain a gift if the power is not exercised; or

(2) the testator's will manifests an intention to include the property subject to the power."

Section 46. Section 72-2-519, MCA, is amended to read:

"72-2-519. ~~Penalty clause for contest unenforceable.~~ A provision in a will purporting to penalize ~~any an~~ interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings."

NEW SECTION. Section 47. Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

Section 48. Section 72-2-601, MCA, is amended to read:

"72-2-601. ~~Omitted~~ Entitlement of spouse -- premarital will. (1) ~~If a testator-fails-to-provide-by-will-for-his~~ testator's surviving spouse who married the testator after the execution of the will, the omitted surviving spouse shall be entitled to receive, as an intestate share, no less than the value of the same share of the estate he the spouse would have received if the decedent-left-no-will testator had died intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor devised or passes under 72-2-512 or 72-2-513 to a descendant of such a child, unless:

(a) ~~it appears from the will that--the--omission--was intentional~~ or other evidence that the will was made in

contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements of-the-testator or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying a the share provided by this section, the devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-512 or 72-2-513 to a descendant of such a child, abate as provided in 72-3-901."

Section 49. Section 72-2-602, MCA, is amended to read:

"72-2-602. ~~Pretermitted--child~~ Omitted children. (1) ~~if~~ Except as provided in subsection (2), if a testator fails to provide in his the testator's will for any of his the testator's children born or adopted after the execution of his the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the

testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which he the child would have received if had the testator had died intestate unless: the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an

omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsections (1)(a), (1)(b), and (3) do not apply if:

(a) it appears from the will that the omission was intentional;

~~(b) --when--the--will--was--executed--the--testator--had--one--or--more--children--and--devised--substantially--all--his--estate--to--the--other--parent--of--the--omitted--child; or~~

~~(c)~~(b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements of the testator or is reasonably inferred from the amount of the transfer or other evidence.

~~(2)(3)~~ If Except as provided in subsection (2), if at the time of execution of the will the testator fails to

1 provide in his the testator's will for a living child solely
 2 because he the testator believes the child to be dead, the
 3 child receives-a is entitled to share in the estate equal-in
 4 value-to-that-which-he-would-have-received-if--the--testator
 5 had---died--intestate as if the child were an omitted
 6 after-born or after-adopted child.

7 {3}(4) In satisfying a share provided by this--section
 8 subsection (1)(a), the devises made by the will abate as
 9 provided in 72-3-901."

10 **Section 50.** Section 72-2-702, MCA, is amended to read:

11 "72-2-702. Right-to-elective Elective share. (1) if--a
 12 married--person--domiciled--in--this--state--dies,--the The
 13 surviving spouse of a decedent who dies domiciled in this
 14 state has a right of election, under the limitations and
 15 conditions stated in this part, to take an elective-share-of
 16 one-third elective-share amount equal to the value of the
 17 elective-share percentage of the augmented estate under--the
 18 limitations--and--conditions--hereinafter--stated-, determined
 19 by the length of time the spouse and the decedent were
 20 married to each other, in accordance with the following
 21 schedule:

22 If the decedent and the The elective-share
 23 spouse were married to percentage is:
 24 each other:
 25 Less than 1 year supplemental amount only

1 1 year but less than 2 years 3% of the augmented estate
 2 2 years but less than 3 years 6% of the augmented estate
 3 3 years but less than 4 years 9% of the augmented estate
 4 4 years but less than 5 years 12% of the augmented estate
 5 5 years but less than 6 years 15% of the augmented estate
 6 6 years but less than 7 years 18% of the augmented estate
 7 7 years but less than 8 years 21% of the augmented estate
 8 8 years but less than 9 years 24% of the augmented estate
 9 9 years but less than 10 years 27% of the augmented estate
 10 10 years but less than 11 years 30% of the augmented estate
 11 11 years but less than 12 years 34% of the augmented estate
 12 12 years but less than 13 years 38% of the augmented estate
 13 13 years but less than 14 years 42% of the augmented estate
 14 14 years but less than 15 years 46% of the augmented estate
 15 15 years or more 50% of the augmented estate

16 (2) If the sum of the amounts described in
 17 72-2-705(2)(c) and (2)(d) and 72-2-706(1)(a) and (1)(c) and
 18 that part of the elective-share amount payable from the
 19 decedent's probate and reclaimable estates under 72-2-706(2)
 20 and (3) is less than \$50,000, the surviving spouse is
 21 entitled to a supplemental elective-share amount equal to
 22 \$50,000, minus the sum of the amounts described in those
 23 sections. The supplemental elective-share amount is payable
 24 from the decedent's probate estate and from recipients of
 25 the decedent's reclaimable estate in the order of priority

1 set forth in 72-2-706(2) and (3).

2 ~~†2) (3)~~ If--a-married-person-not-domiciled-in-this-state
 3 dies,--the The right, if any, of the surviving spouse of a
 4 decendent who dies domiciled outside this state to take an
 5 elective share in property in this state is governed by the
 6 law of the decedent's domicile at death."

7 **Section 51.** Section 72-2-703, MCA, is amended to read:

8 **"72-2-703. Right of election personal to surviving**
 9 **spouse. (1)** The right of election of--the--surviving--spouse
 10 may be exercised only by him a surviving spouse who is
 11 living when the petition for the elective share is filed in
 12 the court under 72-2-707(1). If the election is not
 13 exercised by the surviving spouse personally, it may be
 14 exercised on the surviving spouse's behalf by the surviving
 15 spouse's conservator, guardian, or agent under the authority
 16 of a power of attorney.

17 (2) In--the--case--of--a--protected If the election is
 18 exercised on behalf of a surviving spouse who is an
 19 incapacitated person, the--right--of--election--may--be--exercised
 20 only--by--order--of the court in--which--protective--proceedings
 21 as--to--his--property--are--pending--after--finding--that--exercise
 22 is--necessary--to--provide--adequate shall set aside that
 23 portion of the elective-share and supplemental
 24 elective-share amounts due from the decedent's probate
 25 estate and recipients of the decedent's reclaimable estate

1 under 72-2-706(2) and (3) and shall appoint a trustee to
 2 administer that property for the support for--the--protected
 3 person--during--his--probable--life--expectancy of the surviving
 4 spouse. For the purposes of this subsection, an election on
 5 behalf of a surviving spouse by an agent under a durable
 6 power of attorney is presumed to be on behalf of a surviving
 7 spouse who is an incapacitated person. The trustee shall
 8 administer the trust in accordance with the following terms
 9 and such additional terms as the court determines
 10 appropriate:

11 (a) Expenditures of income and principal may be made in
 12 the manner, when, and to the extent that the trustee
 13 determines suitable and proper for the surviving spouse's
 14 support, without court order but with regard to other
 15 support, income, and property of the surviving spouse
 16 exclusive of benefits of medical or other forms of
 17 assistance from any state or federal government or
 18 governmental agency for which the surviving spouse qualifies
 19 on the basis of need.

20 (b) During the surviving spouse's incapacity, neither
 21 the surviving spouse nor anyone acting on behalf of the
 22 surviving spouse has a power to terminate the trust; but if
 23 the surviving spouse regains capacity, the surviving spouse
 24 then acquires the power to terminate the trust and acquire
 25 full ownership of the trust property free of trust by

1 delivering to the trustee a writing signed by the surviving
 2 spouse declaring the termination.

3 (c) Upon the surviving spouse's death, the trustee
 4 shall transfer the unexpended trust property in the
 5 following order:

6 (i) under the residuary clause, if any, of the will of
 7 the predeceased spouse against whom the elective share was
 8 taken, as if that predeceased spouse died immediately after
 9 the surviving spouse; or

10 (ii) to that predeceased spouse's heirs under [section
 11 70]."

12 **Section 52.** Section 72-2-704, MCA, is amended to read:

13 "72-2-704. Surviving--spouse----allowance----exemptions
 14 Effect of election on statutory benefits. A If the right of
 15 election is exercised by or on behalf of the surviving
 16 spouse, is-entitled--to the surviving spouse's homestead
 17 allowance, exempt property, and family allowance, if any,
 18 are not charged against but are in addition to the whether
 19 or--not--he--elects-to-take-an-elective-share elective-share
 20 and supplemental elective-share amounts."

21 **Section 53.** Section 72-2-705, MCA, is amended to read:

22 "72-2-705. Augmented estate. (1) (a) As used in this
 23 section, the following definitions apply:

24 (i) "Bona fide purchaser" means a purchaser for value
 25 in good faith and without notice of an adverse claim.

1 (ii) "Nonadverse party" means a person who does not have
 2 a substantial beneficial interest in the trust or other
 3 property arrangement that would be adversely affected by the
 4 exercise or nonexercise of the power that person possesses
 5 respecting the trust or other property arrangement. A person
 6 having a general power of appointment over property is
 7 considered to have a beneficial interest in the property.

8 (iii) "Presently exercisable general power of
 9 appointment" means a power of appointment under which, at
 10 the time in question, the decedent by an exercise of the
 11 power could have created an interest, present or future, in
 12 the decedent or the decedent's creditors.

13 (iv) "Probate estate" means property, whether real or
 14 personal, movable or immovable, wherever situated, that
 15 would pass by intestate succession if the decedent died
 16 without a valid will.

17 (v) "Right to income" includes a right to payments
 18 under an annuity or similar contractual arrangement.

19 (vi) "Value of property owned by the surviving spouse at
 20 the decedent's death" and "value of property to which the
 21 surviving spouse succeeds by reason of the decedent's death"
 22 include the commuted value of any present or future interest
 23 then held by the surviving spouse and the commuted value of
 24 amounts payable to the surviving spouse after the decedent's
 25 death under any trust, life insurance settlement option,

annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(b) As used in subsections (2)(b)(iii) and (2)(b)(iv), "transfer" includes an exercise or release of a power of appointment but does not include a lapse of a power of appointment.

(2) The augmented estate means--the consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(b) the value of the decedent's reclaimable estate, which is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property, to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during

the 2-year period preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse, or surviving spouse;

(ii) property, to the extent of the decedent's unilaterally severable interest therein, held by the decedent and any other person, except the decedent's surviving spouse, with right of survivorship, if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse; and

(iv) the value of property transferred by the

1 decedent to anyone any person other than a bona fide
 2 purchaser by-the-decedent at any time during the decedent's
 3 marriage to the surviving spouse, to or for the benefit of
 4 any person other than the surviving spouse, ~~to--the--extent~~
 5 ~~that--the--decedent--did--not--receive--adequate--and--full~~
 6 ~~consideration-in-money-or-money's-worth-for-the-transfer~~, if
 7 the transfer is of any of the following types:

8 ~~(a)~~(A) any transfer ~~under-which to the extent that~~ the
 9 decedent retained at the time of his or during the 2-year
 10 period preceding death the possession or enjoyment of or
 11 right to income from the property;

12 ~~(b)~~(B) any transfer to the extent that ~~the-decedent~~
 13 retained at the time of his or during the 2-year period
 14 preceding the decedent's death, the income or principal was
 15 subject to a power, either exercisable by the decedent alone
 16 or in conjunction with any other person,--to--revoke--or--to
 17 consume,--invade,--or--dispose--of--the--principal or exercisable
 18 by a nonadverse party for his--own the benefit of the
 19 decedent or the decedent's estate;

20 ~~(c)~~(C) any transfer whereby of property to the extent
 21 the decedent's contribution to it, as a percentage of the
 22 whole, was made during the 2-year period preceding the
 23 decedent's death, by which the property is held at the time
 24 of or during the 2-year period preceding the decedent's
 25 death by the decedent and another, other than the decedent's

1 surviving spouse, with right of survivorship; or

2 ~~(d)~~(D) any transfer made to a donee ~~within-2--years--of~~
 3 during the 2-year period preceding the decedent's death of
 4 the-decedent to the extent that the aggregate transfers to
 5 any one donee in any either of the years exceed \$3,000
 6 \$10,000;

7 (c) the value of property to which the surviving spouse
 8 succeeds by reason of the decedent's death, other than by
 9 homestead allowance, exempt property, family allowance,
 10 testate succession, or intestate succession, including the
 11 proceeds of insurance, including accidental death benefits,
 12 on the life of the decedent and including benefits payable
 13 under a retirement plan in which the decedent was a
 14 participant, exclusive of the federal social security
 15 system; and

16 (d) the value of property owned by the surviving spouse
 17 at the decedent's death, reduced by enforceable claims
 18 against that property or that spouse, plus the value of
 19 amounts that would have been includable in the surviving
 20 spouse's reclaimable estate had the spouse predeceased the
 21 decedent. However, amounts that would have been includable
 22 in the surviving spouse's reclaimable estate under
 23 subsection (2)(b)(iii) are not valued as if the surviving
 24 spouse were deceased.

25 ~~(2)~~(3) any Any transfer or exercise or release of a

1 power of appointment is excluded from the decedent's
2 reclaimable estate:

3 (a) to the extent the decedent received adequate and
4 full consideration in money or money's worth for the
5 transfer, exercise, or release; or

6 (b) if irrevocably made with the written consent or
7 joinder of the surviving spouse.

8 (4) Property is valued as of the decedent's death,
9 except--that but an irrevocable transfer of property given
10 irrevocably-to-a--donee--during--lifetime--of--the--decedent
11 during the 2-year period preceding the decedent's death that
12 is included in the decedent's reclaimable estate under
13 subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv) is valued
14 as of the date-the-donee-came-into-possession-or-enjoyment
15 if-that-occurs-first time of the transfer. If the terms of
16 more than one of the provisions of subsection (2)(b) apply,
17 the property is included in the augmented estate under the
18 provision that yields the highest value. For purposes of
19 this subsection, an "irrevocable transfer of property"
20 includes an irrevocable exercise or release of a power of
21 appointment. Nothing--herein--shall-cause-to-be-included-in
22 the-augmented-estate-any-life-insurance,-accident-insurance,
23 joint-annuity,-or-pension-payable-to-a-person-other-than-the
24 surviving-spouse;

25 (3)--the-value-of-property-owned-by-the-surviving-spouse

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

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

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

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

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

(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is

prima facie evidence that the transfer described therein was made to a bona fide purchaser.

(5) (a) Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action.

1 Upon receipt of written notice of intention to file a
 2 petition for the elective share or that a petition for the
 3 elective share has been filed, a payor or other third party
 4 may pay any amount owed or transfer or deposit any item of
 5 property held by it to or with the court having jurisdiction
 6 of the probate proceedings relating to the decedent's estate
 7 or, if no proceedings have been commenced, to or with the
 8 court having jurisdiction of probate proceedings relating to
 9 decedents' estates located in the county of the decedent's
 10 residence. The court shall hold the funds or item of
 11 property and, upon its determination under 72-2-707(4),
 12 shall order disbursement in accordance with the
 13 determination. If no petition is filed in the court within
 14 the specified time under 72-2-707(1) or, if filed, the
 15 demand for an elective share is withdrawn under 72-2-707(3),
 16 the court shall order disbursement to the designated
 17 beneficiary. Payments, transfers, or deposits made to or
 18 with the court discharge the payor or other third party from
 19 all claims for the value of amounts paid to or items of
 20 property transferred to or deposited with the court.

21 (c) Upon petition to the probate court by the
 22 beneficiary designated in a governing instrument, the court
 23 may order that all or part of the property be paid to the
 24 beneficiary in an amount and subject to conditions
 25 consistent with this section.

1 (6) (a) A person who purchases property from a
 2 recipient for value and without notice or who receives a
 3 payment or other item of property in partial or full
 4 satisfaction of a legally enforceable obligation is neither
 5 obligated under this part to return the payment, item of
 6 property, or benefit nor liable under this part for the
 7 amount of the payment or the value of the item of property
 8 or benefit. However, a person who, not for value, receives a
 9 payment, item of property, or other benefit included in the
 10 decedent's reclaimable estate is obligated to return the
 11 payment, item of property, or benefit or is personally
 12 liable for the amount of the payment or the value of the
 13 item of property or benefit, as provided in 72-2-706.

14 (b) If any section or part of any section of this part
 15 is preempted by federal law with respect to a payment, an
 16 item of property, or any other benefit included in the
 17 decedent's reclaimable estate, a person who, not for value,
 18 receives the payment, item of property, or other benefit is
 19 obligated to return that payment, item of property, or
 20 benefit, or is personally liable for the amount of that
 21 payment or the value of that item of property or benefit, as
 22 provided in 72-2-706, to the person who would have been
 23 entitled to it were that section or part of that section not
 24 preempted."

25 **Section 54.** Section 72-2-706, MCA, is amended to read:

"72-2-706. Charging spouse with property owned assets and gifts received -- liability of others for balance of elective share. (1) In the proceeding for an elective share, values--included--in-the-augmented-estate-which-pass-or-have passed-to-the-surviving-spouse, or which would have passed to--the-spouse-but-were-renounced, the following are applied first to satisfy the elective--share elective-share amount and to reduce or eliminate any contributions due from other the decedent's probate estate and recipients of transfers included-in the augmented decedent's reclaimable estate--For purposes---of---this---subsection,---the---electing---spouse's beneficial-interest-in-any-life-estate-or-in-any-trust-shall be-computed-as-if-worth-one-half-of-the-total-value--of--the property-subject-to-the-life-estate, or-of-the-trust-estate, unless--higher--or--lower--values--for--these--interests-are established-by-proof:

(a) amounts included in the augmented estate that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under 72-2-705(2)(c);

(c) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(d) amounts included in the augmented estate under 72-2-705(2)(d) up to the applicable percentage thereof. For

purposes of this subsection (d), the "applicable percentage" is twice the elective-share percentage set forth in the schedule in 72-2-702(1) appropriate to the length of time the spouse and the decedent were married to each other.

(2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and that portion of the decedent's reclaimable estate, other than amounts irrevocably transferred within 2 years before the decedent's death, are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

(3) Remaining-property-of-the--augmented If, after the application of subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's

1 reclaimable estate is ~~so~~ applied so that liability for the
 2 unsatisfied balance of the elective-share-of-the-surviving
 3 spouse elective-share or supplemental elective-share amount
 4 is equitably apportioned among the recipients of the
 5 augmented that portion of the decedent's reclaimable estate
 6 in proportion to the value of their interests therein.

7 ~~{3}(4)~~ Only original transferees-from-or-appointees-of
 8 the-decedent-and-their-donees, recipients of the reclaimable
 9 estate described in 72-2-705(2)(b) and the donees of the
 10 recipients of the reclaimable estate to the extent the
 11 donees have the property or its proceeds, are subject-to-the
 12 liable to make a proportional contribution to--make-up--the
 13 toward satisfaction of the surviving spouse's elective-share
 14 of--the--surviving--spouse elective-share or supplemental
 15 elective-share amount. A person liable to contribution may
 16 choose to give up the property---transferred---to---him
 17 proportional part of the reclaimable estate or to pay its
 18 the value as of the time-it-is-considered-in--computing--the
 19 augmented-estate amount for which the person is liable."

20 **Section 55.** Section 72-2-707, MCA, is amended to read:

21 "72-2-707. Procedure Proceeding for making-of-election
 22 elective share -- time limit. (1) The-surviving--spouse--may
 23 elect--to--take--his--elective-share-in-the-augmented-estate
 24 Except as provided in subsection (2), the election must be
 25 made by filing in the court and mailing or delivering to the

1 personal representative, if any, a petition for the elective
 2 share within 9 months after the date of the decedent's death
 3 or within 6 months after the probate of the decedent's will,
 4 whichever limitation ~~last~~ later expires. The surviving
 5 spouse shall give notice of the time and place set for
 6 hearing to persons interested in the estate and to the
 7 distributees and recipients of portions of the augmented
 8 estate whose interests will be adversely affected by the
 9 taking of the elective share. However,--the--nonprobate
 10 transfers Except as provided in subsection (2), the
 11 decedent's reclaimable estate, described in
 12 72-2-705(1)(2)(b), shall is not be included within the
 13 augmented estate for the purpose of computing the elective
 14 share if the petition is filed ~~later~~ more than 9 months
 15 after the decedent's death. The-court-may--extend--the--time
 16 for-election-as-it-sees-fit-for-cause-shown-by-the-surviving
 17 spouse-before-the-time-for-election-has-expired;

18 (2) The--surviving-spouse-shall-give-notice-of-the-time
 19 and-place-set-for--hearing--to--persons--interested--in--the
 20 estate-and-to-the-distributees-and-recipients-of-portions-of
 21 the--augmented--net-estate-whose-interests-will-be-adversely
 22 affected-by-the-taking--of--the--elective--share: Within 9
 23 months after the decedent's death, the surviving spouse may
 24 petition the court for an extension of time for making an
 25 election. If, within 9 months after the decedent's death,

1 the spouse gives notice of the petition to all persons
 2 interested in the decedent's reclaimable estate, the court
 3 for cause shown by the surviving spouse may extend the time
 4 for election. If the court grants the spouse's petition for
 5 an extension, the decedent's reclaimable estate, described
 6 in 72-2-705(2)(b), is not excluded from the augmented estate
 7 for the purpose of computing the elective-share and
 8 supplemental elective-share amounts if the spouse makes an
 9 election by filing in the court and mailing or delivering to
 10 the personal representative, if any, a petition for the
 11 elective share within the time allowed by the extension.

12 (3) The surviving spouse may withdraw his a demand for
 13 an elective share at any time before entry of a final
 14 determination by the court.

15 (4) After notice and hearing, the court shall determine
 16 the ~~amount--of--the--elective--share~~ elective-share and
 17 supplemental elective-share amounts and shall order its
 18 payment from the assets of the augmented net estate or by
 19 contribution as appears appropriate under 72-2-706. If it
 20 appears that a fund or property included in the augmented
 21 net estate has not come into the possession of the personal
 22 representative or has been distributed by the personal
 23 representative, the court nevertheless shall fix the
 24 liability of any person who has any interest in the fund or
 25 property or who has possession thereof, whether as trustee

1 or otherwise. The proceeding may be maintained against fewer
 2 than all persons against whom relief could be sought, but no
 3 person is subject to contribution in any greater amount than
 4 he the person would have been under 72-2-706 if relief had
 5 been secured against all persons subject to contribution.

6 (5) The order or judgment of the court may be enforced
 7 as necessary in suit for contribution or payment in other
 8 courts of this state or other jurisdictions."

9 NEW SECTION. Section 56. Applicable law. This part
 10 applies to the estate of a decedent who dies domiciled in
 11 this state. Rights to homestead allowance, exempt property,
 12 and family allowance for a decedent who dies not domiciled
 13 in this state are governed by the law of the decedent's
 14 domicile at death.

15 **Section 57.** Section 72-2-801, MCA, is amended to read:

16 **"72-2-801. Homestead allowance.** ~~{1}~~ A decedent's
 17 surviving spouse of--a--decedent-who-was-domiciled-in-this
 18 state is entitled to a homestead allowance of \$20,000. If
 19 there is no surviving spouse, each minor child and each
 20 dependent child of the decedent is entitled to a homestead
 21 allowance amounting to \$20,000, divided by the number of
 22 minor and dependent children of the decedent.

23 ~~{2}~~ The homestead allowance is exempt from and has
 24 priority over all claims against the estate.

25 ~~{3}~~ Homestead allowance is in addition to any share

passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 58. Section 72-2-802, MCA, is amended to read:

"72-2-802. **Exempt property.** (1) In addition to the homestead allowance, the decedent's surviving spouse of-a ~~decedent-who-was-domiciled-in-this-state~~ is entitled from the estate to a value, not exceeding \$3,500 \$10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's ~~children of-the-decedent~~ are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$3,500 \$10,000 or if there is not \$3,500 \$10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$3,500 \$10,000 value.

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

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

Section 59. Section 72-2-803, MCA, is amended to read:

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

(2) It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody, ~~but---in---case---any~~ If a minor child or dependent child is not living with the surviving spouse, the allowance ~~may be made~~ may be made partially to the child or ~~his~~ the child's guardian or other person having ~~his~~ the child's care and custody and partially to the spouse, as their needs may appear.

{3} The family allowance is exempt from and has priority over all claims ~~but-not-over~~ except the homestead allowance.

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

{5} The death of any person entitled to family allowance terminates ~~his~~ the right to allowances not yet paid."

Section 60. Section 72-2-804, MCA, is amended to read:

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

(1) If the estate is otherwise sufficient, property specifically devised ~~is~~ may not be used to satisfy rights to homestead ~~and allowance or~~ exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make ~~these~~ those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there ~~are~~ is no ~~guardians~~ guardian of the ~~a~~ minor children ~~child~~. The personal representative may execute an instrument or deed of

distribution to establish the ownership of property taken as homestead allowance or exempt property. ~~He~~ The personal representative may determine the family allowance in a lump sum not exceeding ~~\$6,000~~ \$18,000 or periodic installments not exceeding ~~\$500~~ \$1,500 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash.

{2} The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which ~~relief~~ may provide include a family allowance ~~larger-or-smaller~~ other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under 72-2-703(2)."

NEW SECTION. Section 61. Scope. In the absence of a finding of a contrary intention, the rules of construction in {sections 61 through 72} control the construction of a governing instrument. The rules of construction in [sections

61 through 72] apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

NEW SECTION. Section 62. Requirement of survival by one hundred twenty hours. (1) For the purposes of chapters 1 through 5, except for purposes of [sections 103 through 112] and except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4) and except for a security registered in beneficiary form (TOD) under [sections 103 through 112], for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by

120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) This section does not apply if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period;

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a

1 power of appointment to fail to qualify for validity under
 2 70-1-802(1)(a), (2)(a), or (3)(a) or to become invalid under
 3 70-1-802(1)(b), (2)(b), or (3)(b); or

4 (d) the application of this section to multiple
 5 governing instruments would result in an unintended failure
 6 or duplication of a disposition.

7 (5) (a) A payor or other third party is not liable for
 8 having made a payment or transferred an item of property or
 9 any other benefit to a beneficiary designated in a governing
 10 instrument who, under this section, is not entitled to the
 11 payment or item of property, or for having taken any other
 12 action in good faith reliance on the beneficiary's apparent
 13 entitlement under the terms of the governing instrument,
 14 before the payor or other third party received written
 15 notice of a claimed lack of entitlement under this section.
 16 A payor or other third party is liable for a payment made or
 17 other action taken after the payor or other third party
 18 received written notice of a claimed lack of entitlement
 19 under this section.

20 (b) Written notice of a claimed lack of entitlement
 21 under subsection (5)(a) must be mailed to the payor's or
 22 other third party's main office or home by certified mail,
 23 return receipt requested, or served upon the payor or other
 24 third party in the same manner as a summons in a civil
 25 action. Upon receipt of written notice of a claimed lack of

1 entitlement under this section, a payor or other third party
 2 may pay any amount owed or transfer or deposit any item of
 3 property held by it to or with the court having jurisdiction
 4 of the probate proceedings relating to the decedent's estate
 5 or, if no proceedings have been commenced, to or with the
 6 court having jurisdiction of probate proceedings relating to
 7 decedents' estates located in the county of the decedent's
 8 residence. The court shall hold the funds or item of
 9 property and, upon its determination under this section,
 10 shall order disbursement in accordance with the
 11 determination. Payments, transfers, or deposits made to or
 12 with the court discharge the payor or other third party from
 13 all claims for the value of amounts paid to or items of
 14 property transferred to or deposited with the court.

15 (6) (a) A person who purchases property for value and
 16 without notice or who receives a payment or other item of
 17 property in partial or full satisfaction of a legally
 18 enforceable obligation is neither obligated under this
 19 section to return the payment, item of property, or benefit
 20 nor liable under this section for the amount of the payment
 21 or the value of the item of property or benefit. However, a
 22 person who, not for value, receives a payment, item of
 23 property, or other benefit to which the person is not
 24 entitled under this section is obligated to return the
 25 payment, item of property, or benefit, or is personally

liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

NEW SECTION. Section 63. Power of appointment -- meaning of specific reference requirement. If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

NEW SECTION. Section 64. Class gifts construed to

accord with intestate succession. (1) Adopted individuals and individuals born out of wedlock and their respective descendants if appropriate to the class are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or

after the adoption, as a regular member of the household of the adopting parent.

NEW SECTION. Section 65. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death registration -- deceased beneficiary. (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the

form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under [section 62].

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue",

1 "descendants", "heirs of the body", "heirs", "next of kin",
 2 "relatives", or "family" or a class described by language of
 3 similar import, a substitute gift is created in the deceased
 4 beneficiary or beneficiary's surviving descendants. The
 5 property to which the beneficiaries would have been entitled
 6 had all of them survived the decedent passes to the
 7 surviving beneficiaries and the surviving descendants of the
 8 deceased beneficiaries. Each surviving beneficiary takes the
 9 share to which the surviving beneficiary would have been
 10 entitled had the deceased beneficiaries survived the
 11 decedent. Each deceased beneficiary's surviving descendants
 12 who are substituted for the deceased beneficiary take by
 13 representation the share to which the deceased beneficiary
 14 would have been entitled had the deceased beneficiary
 15 survived the decedent. For purposes of this subsection (b),
 16 "deceased beneficiary" means a class member who failed to
 17 survive the decedent and left one or more surviving
 18 descendants.

19 (c) For the purposes of [section 61], words of
 20 survivorship, such as in a beneficiary designation to an
 21 individual "if the individual survives me" or in a
 22 beneficiary designation to "my surviving children", are not,
 23 in the absence of additional evidence, a sufficient
 24 indication of an intent contrary to the application of this
 25 section.

1 (d) If a governing instrument creates an alternative
 2 beneficiary designation with respect to a beneficiary
 3 designation for which a substitute gift is created by
 4 subsection (2)(a) or (2)(b), the substitute gift is
 5 superseded by the alternative beneficiary designation only
 6 if an expressly designated beneficiary of the alternative
 7 beneficiary designation is entitled to take.

8 (3) If, under subsection (2), substitute gifts are
 9 created and not superseded with respect to more than one
 10 beneficiary designation and the beneficiary designations are
 11 alternative beneficiary designations, one to the other, the
 12 determination of which of the substitute gifts takes effect
 13 is resolved as follows:

14 (a) Except as provided in subsection (3)(b), the
 15 property passes under the primary substitute gift.

16 (b) If there is a younger-generation beneficiary
 17 designation, the property passes under the
 18 younger-generation substitute gift and not under the primary
 19 substitute gift.

20 (c) As used in this subsection (3), the following
 21 definitions apply:

22 (i) "Primary beneficiary designation" means the
 23 beneficiary designation that would have taken effect had all
 24 the deceased beneficiaries of the alternative beneficiary
 25 designations who left surviving descendants survived the

1 decedent.

2 (ii) "Primary substitute gift" means the substitute gift
3 created with respect to the primary beneficiary designation.

4 (iii) "Younger-generation beneficiary designation" means
5 a beneficiary designation that:

6 (A) is to a descendant of a beneficiary of the primary
7 beneficiary designation;

8 (B) is an alternative beneficiary designation with
9 respect to the primary beneficiary designation;

10 (C) is a beneficiary designation for which a substitute
11 gift is created; and

12 (D) would have taken effect had all the deceased
13 beneficiaries who left surviving descendants survived the
14 decedent except the deceased beneficiary or beneficiaries of
15 the primary beneficiary designation.

16 (iv) "Younger-generation substitute gift" means the
17 substitute gift created with respect to the
18 younger-generation beneficiary designation.

19 (4) (a) A payor is protected from liability in making
20 payments under the terms of the beneficiary designation
21 until the payor has received written notice of a claim to a
22 substitute gift under this section. Payment made before the
23 receipt of written notice of a claim to a substitute gift
24 under this section discharges the payor, but not the
25 recipient, from all claims for the amounts paid. A payor is

1 liable for a payment made after the payor has received
2 written notice of the claim. A recipient is liable for a
3 payment received, whether or not written notice of the claim
4 is given.

5 (b) The written notice of the claim must be mailed to
6 the payor's main office or home by certified mail, return
7 receipt requested, or served upon the payor in the same
8 manner as a summons in a civil action. Upon receipt of
9 written notice of the claim, a payor may pay any amount owed
10 by it to the court having jurisdiction of the probate
11 proceedings relating to the decedent's estate or, if no
12 proceedings have been commenced, to the court having
13 jurisdiction of probate proceedings relating to decedents'
14 estates located in the county of the decedent's residence.
15 The court shall hold the funds and, upon its determination
16 under this section, shall order disbursement in accordance
17 with the determination. Payment made to the court discharges
18 the payor from all claims for the amounts paid.

19 (5) (a) A person who purchases property for value and
20 without notice or who receives a payment or other item of
21 property in partial or full satisfaction of a legally
22 enforceable obligation is neither obligated under this
23 section to return the payment, item of property, or benefit
24 nor liable under this section for the amount of the payment
25 or the value of the item of property or benefit. However, a

1 person who, not for value, receives a payment, item of
 2 property, or other benefit to which the person is not
 3 entitled under this section is obligated to return the
 4 payment, item of property, or benefit, or is personally
 5 liable for the amount of the payment or the value of the
 6 item of property or benefit, to the person who is entitled
 7 to it under this section.

8 (b) If this section or any part of this section is
 9 preempted by federal law with respect to a payment, an item
 10 of property, or any other benefit covered by this section, a
 11 person who, not for value, receives the payment, item of
 12 property, or other benefit to which the person is not
 13 entitled under this section is obligated to return the
 14 payment, item of property, or benefit, or is personally
 15 liable for the amount of the payment or the value of the
 16 item of property or benefit, to the person who would have
 17 been entitled to it were this section or part of this
 18 section not preempted

19 **NEW SECTION. Section 66. Survivorship with respect to**
 20 **future interests under terms of trust -- substitute takers.**

21 (1) As used in this section, the following definitions
 22 apply:

23 (a) "Alternative future interest" means an expressly
 24 created future interest that may take effect in possession
 25 or enjoyment instead of another future interest on the

1 happening of one or more events, including survival of an
 2 event or failure to survive an event, whether an event is
 3 expressed in condition-precedent, condition-subsequent, or
 4 any other form. A residuary clause in a will does not create
 5 an alternative future interest with respect to a future
 6 interest created in a nonresiduary devise in the will,
 7 whether or not the will specifically provides that lapsed or
 8 failed devises are to pass under the residuary clause.

9 (b) "Beneficiary" means the beneficiary of a future
 10 interest and includes a class member if the future interest
 11 is in the form of a class gift.

12 (c) "Class member" includes an individual who fails to
 13 survive the distribution date but who would have taken under
 14 a future interest in the form of a class gift had the
 15 individual survived the distribution date.

16 (d) "Distribution date" with respect to a future
 17 interest means the time when the future interest is to take
 18 effect in possession or enjoyment. The distribution date
 19 need not occur at the beginning or end of a calendar day,
 20 but may occur at a time during the course of a day.

21 (e) "Future interest" includes an alternative future
 22 interest and a future interest in the form of a class gift.

23 (f) "Future interest under the terms of a trust" means
 24 a future interest that was created by a transfer creating a
 25 trust or to an existing trust or by an exercise of a power

1 of appointment to an existing trust that directs the
2 continuance of an existing trust, designates a beneficiary
3 of an existing trust, or creates a trust.

4 (g) "Surviving beneficiary" or "surviving descendant"
5 means a beneficiary or a descendant who neither predeceased
6 the distribution date nor is considered to have predeceased
7 the distribution date under [section 62].

8 (2) A future interest under the terms of a trust is
9 contingent on the beneficiary surviving the distribution
10 date. If a beneficiary of a future interest under the terms
11 of a trust fails to survive the distribution date, the
12 following provisions apply:

13 (a) Except as provided in subsection (2)(d), if the
14 future interest is not in the form of a class gift and the
15 deceased beneficiary leaves surviving descendants, a
16 substitute gift is created in the beneficiary's surviving
17 descendants. They take by representation the property to
18 which the beneficiary would have been entitled had the
19 beneficiary survived the distribution date.

20 (b) Except as provided in subsection (2)(d), if the
21 future interest is in the form of a class gift, other than a
22 future interest to "issue", "descendants", "heirs of the
23 body", "heirs", "next of kin", "relatives", or "family" or a
24 class described by language of similar import, a substitute
25 gift is created in the deceased beneficiary or beneficiary's

1 surviving descendants. The property to which the
2 beneficiaries would have been entitled had all of them
3 survived the distribution date passes to the surviving
4 beneficiaries and the surviving descendants of the deceased
5 beneficiaries. Each surviving beneficiary takes the share to
6 which the surviving beneficiary would have been entitled had
7 the deceased beneficiaries survived the distribution date.
8 Each deceased beneficiary's surviving descendants who are
9 substituted for the deceased beneficiary take by
10 representation the share to which the deceased beneficiary
11 would have been entitled had the deceased beneficiary
12 survived the distribution date. For purposes of this
13 subsection (2), "deceased beneficiary" means a class member
14 who failed to survive the distribution date and left one or
15 more surviving descendants.

16 (c) For the purposes of [section 61], words of
17 survivorship attached to a future interest are not, in the
18 absence of additional evidence, a sufficient indication of
19 an intent contrary to the application of this section. Words
20 of survivorship include words of survivorship that relate to
21 the distribution date or to an earlier or an unspecified
22 time, whether those words of survivorship are expressed in
23 condition-precedent, condition-subsequent, or any other
24 form.

25 (d) If a governing instrument creates an alternative

1 future interest with respect to a future interest for which
 2 a substitute gift is created by subsection (2)(a) or (2)(b),
 3 the substitute gift is superseded by the alternative future
 4 interest only if an expressly designated beneficiary of the
 5 alternative future interest is entitled to take in
 6 possession or enjoyment.

7 (3) If, under subsection (2), substitute gifts are
 8 created and not superseded with respect to more than one
 9 future interest and the future interests are alternative
 10 future interests, one to the other, the determination of
 11 which of the substitute gifts takes effect is resolved as
 12 follows:

13 (a) Except as provided in subsection (3)(b), the
 14 property passes under the primary substitute gift.

15 (b) If there is a younger-generation future interest,
 16 the property passes under the younger-generation substitute
 17 gift and not under the primary substitute gift.

18 (c) As used in this subsection (3), the following
 19 definitions apply:

20 (i) "Primary future interest" means the future interest
 21 that would have taken effect had all the deceased
 22 beneficiaries of the alternative future interests who left
 23 surviving descendants survived the distribution date.

24 (ii) "Primary substitute gift" means the substitute gift
 25 created with respect to the primary future interest.

1 (iii) "Younger-generation future interest" means a
 2 future interest that:

3 (A) is to a descendant of a beneficiary of the primary
 4 future interest;

5 (B) is an alternative future interest with respect to
 6 the primary future interest;

7 (C) is a future interest for which a substitute gift is
 8 created; and

9 (D) would have taken effect had all the deceased
 10 beneficiaries who left surviving descendants survived the
 11 distribution date except the deceased beneficiary or
 12 beneficiaries of the primary future interest.

13 (iv) "Younger-generation substitute gift" means the
 14 substitute gift created with respect to the
 15 younger-generation future interest.

16 (4) If, after the application of subsections (2) and
 17 (3), there is no surviving taker, the property passes in the
 18 following order:

19 (a) if the trust was created in a nonresiduary devise
 20 in the transferor's will or in a codicil to the transferor's
 21 will, the property passes under the residuary clause in the
 22 transferor's will. For purposes of this section, the
 23 residuary clause is treated as creating a future interest
 24 under the terms of a trust.

25 (b) if no taker is produced by the application of

subsection (4)(a), the property passes to the transferor's heirs under [section 70].

NEW SECTION. Section 67. Class gifts to "descendants", "issue", or "heirs of the body" -- form of distribution if none specified. If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in such shares as they would receive under the applicable law of intestate succession if the designated ancestor had then died intestate owning the subject matter of the class gift.

NEW SECTION. Section 68. Representation -- per capita at each generation -- per stirpes. (1) As used in this section, the following definitions apply:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is considered to have predeceased the distribution date under [section 62].

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under [section 62].

(2) (a) If ~~an applicable statute~~ or a governing instrument calls for property to be distributed ~~by representation~~ or "per capita at each generation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) If AN APPLICABLE STATUTE OR a governing instrument calls for property to be distributed "BY REPRESENTATION" OR "per stirpes", the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) For the purposes of subsections (2) and (3), an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

NEW SECTION. Section 69. Worthier title doctrine abolished. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor.

NEW SECTION. Section 70. Future interests in "heirs" and like. If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons,

including the state under 72-2-207, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

NEW SECTION. Section 71. Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-103. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

1 (d) "Governing instrument" means a governing instrument
2 executed by the divorced individual before the divorce or
3 annulment of the individual's marriage to the individual's
4 former spouse.

5 (e) "Relative of the divorced individual's former
6 spouse" means an individual who is related to the divorced
7 individual's former spouse by blood, adoption, or affinity
8 and who, after the divorce or annulment, is not related to
9 the divorced individual by blood, adoption, or affinity.

10 (f) "Revocable", with respect to a disposition,
11 appointment, provision, or nomination, means one under which
12 the divorced individual, at the time of the divorce or
13 annulment, was alone empowered, by law or under the
14 governing instrument, to cancel the designation in favor of
15 the individual's former spouse or former spouse's relative,
16 whether or not the divorced individual was then empowered to
17 designate the divorced individual in place of the
18 individual's former spouse or in place of the former
19 spouse's relative and whether or not the divorced individual
20 then had the capacity to exercise the power.

21 (2) Except as provided by the express terms of a
22 governing instrument, a court order, or a contract relating
23 to the division of the marital estate made between the
24 divorced individuals before or after the marriage, divorce,
25 or annulment, the divorce or annulment of a marriage:

1 (a) revokes any revocable:

2 (i) disposition or appointment of property made by a
3 divorced individual to the individual's former spouse in a
4 governing instrument and any disposition or appointment
5 created by law or in a governing instrument to a relative of
6 the divorced individual's former spouse;

7 (ii) provision in a governing instrument conferring a
8 general or nongeneral power of appointment on the divorced
9 individual's former spouse or on a relative of the divorced
10 individual's former spouse; and

11 (iii) nomination in a governing instrument that
12 nominates a divorced individual's former spouse or a
13 relative of the divorced individual's former spouse to serve
14 in any fiduciary or representative capacity, including a
15 personal representative, executor, trustee, conservator,
16 agent, or guardian; and

17 (b) severs the interests of the former spouses in
18 property held by them at the time of the divorce or
19 annulment as joint tenants with the right of survivorship
20 and transforms the interests of the former spouses into
21 tenancies in common.

22 (3) A severance under subsection (2)(b) does not affect
23 any third-party interest in property acquired for value and
24 in good faith reliance on an apparent title by survivorship
25 in the survivor of the former spouses unless a writing

1 declaring the severance has been noted, registered, filed,
2 or recorded in records appropriate to the kind and location
3 of the property, which records are relied upon, in the
4 ordinary course of transactions involving such property, as
5 evidence of ownership.

6 (4) Provisions of a governing instrument that are not
7 revoked by this section are given effect as if the former
8 spouse and relatives of the former spouse disclaimed the
9 revoked provisions or, in the case of a revoked nomination
10 in a fiduciary or representative capacity, as if the former
11 spouse and relatives of the former spouse died immediately
12 before the divorce or annulment.

13 (5) Provisions revoked solely by this section are
14 revived by the divorced individual's remarriage to the
15 former spouse or by a nullification of the divorce or
16 annulment.

17 (6) No change of circumstances other than as described
18 in this section and in 72-2-104 effects a revocation.

19 (7) (a) A payor or other third party is not liable for
20 having made a payment or transferred an item of property or
21 any other benefit to a beneficiary designated in a governing
22 instrument affected by a divorce, annulment, or remarriage,
23 or for having taken any other action in good faith reliance
24 on the validity of the governing instrument, before the
25 payor or other third party received written notice of the

1 divorce, annulment, or remarriage. A payor or other third
2 party is liable for a payment made or other action taken
3 after the payor or other third party received written notice
4 of a claimed forfeiture or revocation under this section.

5 (b) Written notice of the divorce, annulment, or
6 remarriage under subsection (7)(a) must be mailed to the
7 payor's or other third party's main office or home by
8 certified mail, return receipt requested, or served upon the
9 payor or other third party in the same manner as a summons
10 in a civil action. Upon receipt of written notice of the
11 divorce, annulment, or remarriage, a payor or other third
12 party may pay any amount owed or transfer or deposit any
13 item of property held by it to or with the court having
14 jurisdiction of the probate proceedings relating to the
15 decedent's estate or, if no proceedings have been commenced,
16 to or with the court having jurisdiction of probate
17 proceedings relating to decedents' estates located in the
18 county of the decedent's residence. The court shall hold the
19 funds or item of property and, upon its determination under
20 this section, shall order disbursement or transfer in
21 accordance with the determination. Payments, transfers, or
22 deposits made to or with the court discharge the payor or
23 other third party from all claims for the value of amounts
24 paid to or items of property transferred to or deposited
25 with the court.

1 (8) (a) A person who purchases property from a former
 2 spouse, relative of a former spouse, or any other person for
 3 value and without notice or who receives from a former
 4 spouse, relative of a former spouse, or any other person a
 5 payment or other item of property in partial or full
 6 satisfaction of a legally enforceable obligation is neither
 7 obligated under this section to return the payment, item of
 8 property, or benefit nor liable under this section for the
 9 amount of the payment or the value of the item of property
 10 or benefit. However, a former spouse, relative of a former
 11 spouse, or other person who, not for value, received a
 12 payment, item of property, or other benefit to which that
 13 person is not entitled under this section is obligated to
 14 return the payment, item of property, or benefit, or is
 15 personally liable for the amount of the payment or the value
 16 of the item of property or benefit, to the person who is
 17 entitled to it under this section.

18 (b) If this section or any part of this section is
 19 preempted by federal law with respect to a payment, an item
 20 of property, or any other benefit covered by this section, a
 21 former spouse, relative of the former spouse, or any other
 22 person who, not for value, received a payment, item of
 23 property, or other benefit to which that person is not
 24 entitled under this section is obligated to return that
 25 payment, item of property, or benefit, or is personally

1 liable for the amount of the payment or the value of the
 2 item of property or benefit, to the person who would have
 3 been entitled to it were this section or part of this
 4 section not preempted.

5 NEW SECTION. **Section 72.** Honorary trusts -- trusts for
 6 pets. (1) A trust for a noncharitable corporation or
 7 unincorporated society or for a lawful noncharitable purpose
 8 may be performed by the trustee for 21 years but no longer,
 9 whether or not there is a beneficiary who can seek the
 10 trust's enforcement or termination and whether or not the
 11 terms of the trust contemplate a longer duration.

12 (2) Subject to the provisions of this subsection, a
 13 trust for the care of a designated domestic or pet animal
 14 and the animal's offspring is valid. Except as expressly
 15 provided otherwise in the trust instrument, the following
 16 provisions apply:

17 (a) No portion of the principal or income may be
 18 converted to the use of the trustee or to any use other than
 19 for the benefit of a covered animal.

20 (b) The trust terminates at the earlier of 21 years
 21 after the trust was created or when no living animal is
 22 covered by the trust.

23 (c) Upon termination, the trustee shall transfer the
 24 unexpended trust property in the following order:

25 (i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection (2)(c)(i) or (2)(c)(ii), to the transferor's heirs under [section 70].

(d) For the purposes of [section 66], the residuary clause is treated as creating a future interest under the terms of a trust.

(e) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(f) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(g) A governing instrument must be liberally construed to bring the transfer within the applicability of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(h) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (2)(c).

(i) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Section 73. Section 72-3-212, MCA, is amended to read:

"72-3-212. Informal probate -- clerk to make findings. In an informal proceeding for original probate of a will, the clerk shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103{2};

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired."

Section 74. Section 72-3-213, MCA, is amended to read:

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

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

(3) Informal probate of a will which that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together 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 that does not provide for probate of a will after death and which that 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 that relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, ~~shall~~ must be declined."

Section 75. Section 72-3-222, MCA, is amended to read:

"72-3-222. Informal appointment -- clerk to make findings. In informal appointment proceedings, the clerk ~~must~~ shall determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the

1 statements contained in the application are true to the best
2 of his the applicant's knowledge and belief;

3 (3) the applicant appears from the application to be an
4 interested person as defined in 72-1-103(2);

5 (4) on the basis of the statements in the application,
6 venue is proper;

7 (5) any will to which the requested appointment relates
8 has been formally or informally probated, but this
9 requirement does not apply to the appointment of a special
10 administrator;

11 (6) any notice required by 72-3-106 has been given;

12 (7) from the statements in the application, the person
13 whose appointment is sought has priority entitling him the
14 person to the appointment."

15 **Section 76.** Section 72-11-101, MCA, is amended to read:

16 "72-11-101. Degrees of kindred kinship -- how computed.
17 The degree of kindred kinship is established by the number
18 of generations, and each generation is called a degree "

19 **Section 77.** Section 72-11-102, MCA, is amended to read:

20 "72-11-102. Degrees Types of kindred kinship -- lineal
21 and collateral consanguinity. The-series-of-degrees-forms
22 the-line-the-series-of-degrees There are two types of
23 kinship, lineal and collateral. Lineal kinship, or the
24 direct line of consanguinity, is the relationship between
25 persons, who--descend--from one another-is-called-direct-or

1 ~~lineal-consanguinity, of whom is a descendant of the other.~~
2 ~~and---the---series---of---degrees~~ Collateral kinship is the
3 relationship between persons people who do-not descend from
4 one--another-but-spring from a common ancestor is-called-the
5 collateral but are not in a direct line or--collateral
6 consanguinity."

7 **Section 78.** Section 72-11-103, MCA, is amended to read:

8 "72-11-103. Degrees---of---kindred-----ascending--and
9 descending-direct-line Computation of degrees in lineal
10 kinship. The direct--line--is--divided--into-a-direct-line
11 descending-and-a-direct--line--ascending degree of lineal
12 kinship of two persons is computed by counting one degree
13 for each person in the line of ascent or descent, exclusive
14 of the person from whom the computing begins. The child is,
15 with regard to the parent, in the first degree; the
16 grandchild is, with regard to the grandparent, in the is
17 that--which-connects-an-ancestor-with-those-who-descend-from
18 him-The second degree: is-that-which-connects-a-person-with
19 those-from-whom-he-descends and vice versa as to the parent
20 and grandparent with regard to their respective children and
21 grandchildren."

22 **Section 79.** Section 72-11-104, MCA, is amended to read:

23 "72-11-104. Degrees---of---kindred-----computation
24 Computation of degrees in direct-line collateral kinship. In
25 the-direct-line-there-are--as--many--degrees--as--there--are

1 generations. ~~Thus, the son is with regard to the father in~~
 2 ~~the first~~ The degree of collateral kinship of two persons is
 3 computed by commencing with one of the persons, ascending
 4 from that person to a common ancestor, descending from that
 5 ancestor to the other person, and counting one degree for
 6 each person in the line of ascent and in the line of
 7 descent, exclusive of the person from whom the computation
 8 begins. ~~the grandson~~ Siblings are related to each other in
 9 the second degree, ~~and vice versa with regard to the father~~
 10 ~~and grandfather toward the sons and grandsons~~ uncle and
 11 niece are related to each other in the third degree, and
 12 first cousins are related to each other in the fourth
 13 degree."

14 **Section 80.** Section 72-12-206, MCA, is amended to read:

15 "72-12-206. Fees and expenses -- by whom paid. When the
 16 validity or probate of a will is contested through court
 17 action, the attorney fees and expenses costs, as provided in
 18 25-10-201, incurred in defending the validity or probate of
 19 the will must be paid by the party contesting the validity
 20 or probate of the will, if the will in probate is confirmed.
 21 If the probate is revoked, the costs, as provided in
 22 25-10-201, but not attorney fees, must be paid by the party
 23 who resisted the revocation or out of the property of the
 24 decedent, as the court directs."

25 **Section 81.** Section 72-16-313, MCA, is amended to read:

1 "72-16-313. Exemptions of spouse and other relatives.

2 (1) The clear value of all property distributed or passing
 3 to a decedent's surviving spouse is exempt.

4 (2) The clear value of all property distributed or
 5 passing to the following is exempt:

6 (a) any child or lineal descendant of the decedent. A
 7 determination as to establishment of the parent and child
 8 relationship or establishment of a person as a lineal
 9 descendant must be made in accordance with the rules for
 10 determining relationship for purposes of intestate
 11 succession under Title 72, chapter 2, part 2.

12 (b) any ~~child--to--whom~~ stepchild, as defined in
 13 72-2-512, of the decedent, prior to the transfer, stood in
 14 the--mutually--acknowledged--relationship--of--a--parent--or
 15 stepparent, provided the relationship began on or before the
 16 child's stepchild's 18th birthday.

17 (3) The following amounts are exempt:

18 (a) property of the clear value of \$7,000 transferred
 19 to each of the persons who have attained majority described
 20 in 72-16-321(1); and

21 (b) property of the clear value of \$1,000 transferred
 22 to each of the persons described in 72-16-321(2)."

23 **Section 82.** Section 72-36-206, MCA, is amended to read:

24 "72-36-206. Effects on real property transactions. (1)
 25 This section relates only to conveyances of real property to

or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts. ~~This section does not affect conveyances recorded prior to October 17, 1989.~~

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance ~~shall~~ must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument

(or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his the successor trustee's name and address and the date and circumstances of his succession, and confirming that he the successor trustee is currently lawfully serving in such that capacity.

(7) In an action or proceeding by a third person

1 involving the real property granted to a trustee, the person
 2 designated as trustee in the original conveyance, or the
 3 successor trustee as established in subsection (6), or, if
 4 none, the person then actually serving as trustee, or, if
 5 none, any beneficiary designated by the court to represent
 6 the interests of the beneficiaries, shall be considered the
 7 only necessary representative of the trust and of all
 8 persons with an interest therein in the trust. A judgment is
 9 binding upon and conclusive against the trust and all
 10 persons interested therein in the trust as to all matters
 11 finally adjudicated in the judgment.

12 (8) The designation of the name of a trust in a
 13 recorded conveyance vests the estate in the trustee of the
 14 trust. A subsequent conveyance may be made by the trustee.
 15 The identity of a party serving as trustee may be
 16 established by a recorded affidavit of the party or by other
 17 recorded instrument, specifying the trustee's name and
 18 address and confirming that he the party is currently
 19 serving as the trustee."

20 NEW SECTION. **Section 83. Nonprobate transfers on**
 21 **death.** (1) A provision for a nonprobate transfer on death in
 22 an insurance policy, contract of employment, bond, mortgage,
 23 promissory note, certificated or uncertificated security,
 24 account agreement, custodial agreement, deposit agreement,
 25 compensation plan, pension plan, individual retirement plan,

1 employee benefit plan, trust, conveyance, deed of gift,
 2 marital property agreement, or other written instrument of a
 3 similar nature is nontestamentary. This subsection includes
 4 a written provision that:

5 (a) money or other benefits due to, controlled by, or
 6 owned by a decedent before death must be paid after the
 7 decedent's death to a person whom the decedent designates
 8 either in the instrument or in a separate writing, including
 9 a will, executed either before or at the same time as the
 10 instrument or later;

11 (b) money due or to become due under the instrument
 12 ceases to be payable in the event of death of the promisee
 13 or the promisor before payment or demand; or

14 (c) any property controlled by or owned by the decedent
 15 before death that is the subject of the instrument passes to
 16 a person the decedent designates either in the instrument or
 17 in a separate writing, including a will, executed either
 18 before or at the same time as the instrument or later.

19 (2) This section does not limit rights of creditors
 20 under other laws of this state.

21 NEW SECTION. **Section 84. Definitions.** In {sections 84
 22 through 102}, the following definitions apply:

23 (1) "Account" means a contract of deposit between a
 24 depositor and a financial institution and includes a
 25 checking account, savings account, certificate of deposit,

1 and share account.

2 (2) "Agent" means a person authorized to make account
3 transactions for a party.

4 (3) "Beneficiary" means a person named as one to whom
5 sums on deposit in an account are payable on request after
6 death of all parties or for whom a party is named as
7 trustee.

8 (4) "Financial institution" means an organization
9 authorized to do business under state or federal laws
10 relating to financial institutions and includes a bank,
11 trust company, savings bank, building and loan association,
12 savings and loan company or association, and credit union.

13 (5) "Multiple-party account" means an account payable
14 on request to one or more of two or more parties, whether or
15 not a right of survivorship is mentioned.

16 (6) "Party" means a person who, by the terms of an
17 account, has a present right, subject to request, to payment
18 from the account other than as a beneficiary or agent.

19 (7) "Payment" of sums on deposit includes withdrawal,
20 payment to a party or third person pursuant to check or
21 other request, and a pledge of sums on deposit by a party or
22 a setoff, reduction, or other disposition of all or part of
23 an account pursuant to a pledge.

24 (8) "POD designation" means the designation of:

25 (a) a beneficiary in an account payable on request to

1 one party during the party's lifetime and on the party's
2 death to one or more beneficiaries or to one or more parties
3 during their lifetimes and on death of all of them to one or
4 more beneficiaries; or

5 (b) a beneficiary in an account in the name of one or
6 more parties as trustee for one or more beneficiaries if the
7 relationship is established by the terms of the account and
8 there is no subject of the trust other than the sums on
9 deposit in the account, whether or not payment to the
10 beneficiary is mentioned.

11 (9) "Receive", as it relates to notice to a financial
12 institution, means receipt in the office or branch office of
13 the financial institution in which the account is
14 established or, if the terms of the account require notice
15 at a particular place, in the place required.

16 (10) "Request" means a request for payment that complies
17 with all terms of the account, including special
18 requirements concerning necessary signatures and regulations
19 of the financial institution; however, for purposes of
20 [sections 84 through 102], if terms of the account condition
21 payment on advance notice, a request for payment is treated
22 as immediately effective and a notice of intent to withdraw
23 is treated as a request for payment.

24 (11) "Sums on deposit" means the balance payable on an
25 account, including interest and dividends earned, whether or

not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

NEW SECTION. Section 85. Limitation on scope of [sections 84 through 102]. [Sections 84 through 102] do not apply to:

(1) an account established for a partnership, joint venture, or other organization for a business purpose;

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

NEW SECTION. Section 86. Types of account -- existing accounts. (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to [section 91(3)], either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after (the

effective date of this act], whether in the form prescribed in [section 87] or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of [sections 84 through 102], and is governed by [sections 84 through 102].

NEW SECTION. Section 87. Forms. (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of [sections 84 through 102] applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:
.....

OWNERSHIP [Select One and Initial]:

..... **SINGLE-PARTY ACCOUNT**

..... **MULTIPLE-PARTY ACCOUNT**

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent. HOWEVER, ANY ONE PARTY MAY WITHDRAW THE ENTIRE AMOUNT ON DEPOSIT IN THE ACCOUNT. FURTHER, ANY ONE PARTY MAY CHANGE THE TYPE OF ACCOUNT.

RIGHTS AT DEATH [Select One and Initial]:

1 SINGLE-PARTY ACCOUNT

2 At death of party, ownership passes as part of

3 party's estate.

4 SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH)

5 DESIGNATION

6 [Name One or More Beneficiaries]:

7

8 At death of party, ownership passes to POD

9 beneficiaries and is not part of party's estate.

10 MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

11 At death of party, ownership passes to surviving

12 parties.

13 MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

14 AND POD (PAY ON DEATH) DESIGNATION

15 [Name One or More Beneficiaries]:

16

17 At death of last surviving party, ownership passes

18 to POD beneficiaries and is not part of last

19 surviving party's estate.

20 MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

21 At death of party, deceased party's ownership

22 passes as part of deceased party's estate.

23 AGENCY (POWER OF ATTORNEY) DESIGNATION

24 Agents may make account transactions for parties

25 but have no ownership or rights at death unless

1 named as POD beneficiaries.

2 [To Add Agency Designation to Account, Name One or

3 More Agents]:

4

5 [Select One And Initial]:

6 AGENCY DESIGNATION SURVIVES

7 DISABILITY OR INCAPACITY OF PARTIES

8 AGENCY DESIGNATION TERMINATES ON

9 DISABILITY OR INCAPACITY OF PARTIES

10 (2) A contract of deposit that does not contain

11 provisions in substantially the form provided in subsection

12 (1) is governed by the provisions of [sections 84 through

13 102] applicable to the type of account that most nearly

14 conforms to the depositor's intent.

15 NEW SECTION. **Section 88.** Designation of agent. (1) By

16 a writing signed by all parties, the parties may designate

17 as agent of all parties on an account a person other than a

18 party.

19 (2) Unless the terms of an agency designation provide

20 that the authority of the agent terminates on disability or

21 incapacity of a party, the agent's authority survives

22 disability and incapacity. The agent may act for a disabled

23 or incapacitated party until the authority of the agent is

24 terminated.

25 (3) Death of the sole party or last-surviving party

1 terminates the authority of an agent.

2 NEW SECTION. Section 89. Applicability of [sections 90
3 through 102]. The provisions of [sections 90 through 95]
4 concerning beneficial ownership as between parties or as
5 between parties and beneficiaries apply only to
6 controversies between those persons and their creditors and
7 other successors and do not apply to the right of those
8 persons to payment as determined by the terms of the
9 account. [Sections 96 through 102] govern the liability and
10 setoff rights of financial institutions that make payments
11 pursuant to it.

12 NEW SECTION. Section 90. Ownership during lifetime.
13 (1) In this section, "net contribution" of a party means the
14 sum of all deposits to an account made by or for the party,
15 less all payments from the account made to or for the party
16 that have not been paid to or applied to the use of another
17 party and a proportionate share of any charges deducted from
18 the account, plus a proportionate share of any interest or
19 dividends earned, whether or not included in the current
20 balance. The term includes deposit life insurance proceeds
21 added to the account by reason of death of the party whose
22 net contribution is in question.

23 (2) During the lifetime of all parties, an account
24 belongs to the parties in proportion to the net contribution
25 of each to the sums on deposit unless there is clear and

1 convincing evidence of a different intent. As between
2 parties married to each other, in the absence of proof
3 otherwise, the net contribution of each is presumed to be an
4 equal amount.

5 (3) A beneficiary in an account having a POD
6 designation has no right to sums on deposit during the
7 lifetime of any party.

8 (4) An agent in an account with an agency designation
9 has no beneficial right to sums on deposit.

10 NEW SECTION. Section 91. Rights at death. (1) Except
11 as otherwise provided in [sections 84 through 102], on the
12 death of a party, sums on deposit in a multiple-party
13 account belong to the surviving party or parties. If two or
14 more parties survive and one is the surviving spouse of the
15 decedent, the amount to which the decedent, immediately
16 before death, was beneficially entitled under [section 90]
17 belongs to the surviving spouse. If two or more parties
18 survive and none is the surviving spouse of the decedent,
19 the amount to which the decedent, immediately before death,
20 was beneficially entitled under [section 90] belongs to the
21 surviving parties in equal shares and augments the
22 proportion to which each survivor, immediately before the
23 decedent's death, was beneficially entitled under [section
24 90] and the right of survivorship continues between the
25 surviving parties.

(2) In an account with a POD designation:

(a) on the death of one of two or more parties, the rights in sums on deposit are governed by subsection (1);

(b) on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares and there is no right of survivorship in the event of the death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last-surviving party.

(3) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by the death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under [section 90] is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(4) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before

the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

NEW SECTION. Section 92. Alteration of rights. (1)

Rights at death under [section 91] are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(2) A right of survivorship arising from the express terms of the account, from [section 91], or from a POD designation may not be altered by will.

NEW SECTION. Section 93. Accounts and transfers

nontestamentary. Except as provided in Title 72, chapter 2, part 7, or as a consequence of and to the extent directed by [section 94], a transfer resulting from the application of [section 91] is effective by reason of the terms of the account involved and [sections 84 through 102] and is not testamentary or subject to Title 72, chapters 1 through 5.

1 **NEW SECTION. Section 94. Rights of creditors and**
 2 **others.** (1) If other assets of the estate are insufficient,
 3 a transfer resulting from a right of survivorship or POD
 4 designation under [sections 84 through 102] is not effective
 5 against the estate of a deceased party to the extent needed
 6 to pay claims against the estate and statutory allowances to
 7 the surviving spouse and children.

8 (2) A surviving party or beneficiary who receives
 9 payment from an account after the death of a party is liable
 10 to account to the personal representative of the decedent
 11 for a proportionate share of the amount received to which
 12 the decedent, immediately before death, was beneficially
 13 entitled under [section 90], to the extent necessary to
 14 discharge the claims and allowances described in subsection
 15 (1) remaining unpaid after application of the decedent's
 16 estate. A proceeding to assert the liability may not be
 17 commenced unless the personal representative has received a
 18 written demand by the surviving spouse, a creditor, a child,
 19 or a person acting for a child of the decedent. The
 20 proceeding must be commenced within 1 year after death of
 21 the decedent.

22 (3) A surviving party or beneficiary against whom a
 23 proceeding to account is brought may join as a party to the
 24 proceeding a surviving party or beneficiary of any other
 25 account of the decedent.

1 (4) Sums recovered by the personal representative must
 2 be administered as part of the decedent's estate. This
 3 section does not affect the protection from claims of the
 4 personal representative or estate of a deceased party
 5 provided in [section 101] for a financial institution that
 6 makes payment in accordance with the terms of the account.

7 **NEW SECTION. Section 95. Community property and**
 8 **tenancy by entireties.** (1) A deposit of community property
 9 in an account does not alter the community character of the
 10 property or community rights in the property, but a right of
 11 survivorship between parties married to each other that
 12 arises from the express terms of the account or [section 91]
 13 may not be altered by will.

14 (2) [Sections 84 through 102] do not affect the law
 15 governing tenancy by the entireties.

16 **NEW SECTION. Section 96. Authority of financial**
 17 **institution.** A financial institution may enter into a
 18 contract of deposit for a multiple-party account to the same
 19 extent it may enter into a contract of deposit for a
 20 single-party account and may provide for a POD designation
 21 and an agency designation in either a single-party account
 22 or a multiple-party account. A financial institution need
 23 not inquire as to the source of a deposit to an account or
 24 as to the proposed application of a payment from an account.

25 **NEW SECTION. Section 97. Payment on multiple-party**

1 account. A financial institution, on request, may pay sums
2 on deposit in a multiple-party account to:

3 (1) one or more of the parties, whether or not another
4 party is disabled, incapacitated, or deceased when payment
5 is requested and whether or not the party making the request
6 survives another party; or

7 (2) the personal representative~~if any, or, if there~~
8 ~~is none, the heirs or devisees of a deceased party~~ OR A
9 SUCCESSOR CLAIMING UNDER 72-3-1101 if proof of death is
10 presented to the financial institution, showing that the
11 deceased party was the survivor of all other persons named
12 on the account as either a party or beneficiary, unless the
13 account is without right of survivorship under [section 91].

14 NEW SECTION. Section 98. Payment on POD designation. A
15 financial institution, on request, may pay sums on deposit
16 in an account with a POD designation to:

17 (1) one or more of the parties, whether or not another
18 party is disabled, incapacitated, or deceased when the
19 payment is requested and whether or not a party survives
20 another party;

21 (2) the beneficiary or beneficiaries, if proof of death
22 is presented to the financial institution, showing that the
23 beneficiary or beneficiaries survived all persons named as
24 parties; or

25 (3) the personal representative, if any, or, if there

1 is none, the heirs or devisees of a deceased party, if proof
2 of death is presented to the financial institution, showing
3 that the deceased party was the survivor of all other
4 persons named on the account as either a party or
5 beneficiary.

6 NEW SECTION. Section 99. Payment to designated agent.
7 A financial institution, on request of an agent under an
8 agency designation for an account, may pay to the agent sums
9 on deposit in the account, whether or not a party is
10 disabled, incapacitated, or deceased when the request is
11 made or received and whether or not the authority of the
12 agent terminates on the disability or incapacity of a party.

13 NEW SECTION. Section 100. Payment to minor. If a
14 financial institution is required or permitted to make
15 payment pursuant to [sections 84 through 102] to a minor
16 designated as a beneficiary, payment may be made pursuant to
17 the Montana Uniform Transfers to Minors Act, Title 72,
18 chapter 26.

19 NEW SECTION. Section 101. Discharge. (1) Payment made
20 pursuant to [sections 84 through 102] in accordance with the
21 type of account discharges the financial institution from
22 all claims for amounts so paid, whether or not the payment
23 is consistent with the beneficial ownership of the account
24 as between parties, beneficiaries, or their successors.
25 Payment may be made whether or not a party, beneficiary, or

1 agent is disabled, incapacitated, or deceased when payment
2 is requested, received, or made.

3 (2) Protection under this section does not extend to
4 payments made after a financial institution has received
5 written notice from a party, or from the personal
6 representative, surviving spouse, or heir or devisee of a
7 deceased party, to the effect that payments in accordance
8 with the terms of the account, including one having an
9 agency designation, should not be permitted and after the
10 financial institution has had a reasonable opportunity to
11 act on the notice when the payment is made. Unless the
12 notice is withdrawn by the person giving it, the successor
13 of any deceased party shall concur in a request for payment
14 if the financial institution is to be protected under this
15 section. Unless a financial institution has been served with
16 process in an action or proceeding, no other notice or other
17 information shown to have been available to the financial
18 institution affects its right to protection under this
19 section.

20 (3) A financial institution that receives written
21 notice pursuant to this section or otherwise has reason to
22 believe that a dispute exists as to the rights of the
23 parties may refuse, without liability, to make payments in
24 accordance with the terms of the account.

25 (4) Protection of a financial institution under this

1 section does not affect the rights of parties in disputes
2 between themselves or their successors concerning the
3 beneficial ownership of sums on deposit in accounts or
4 payments made from accounts.

5 NEW SECTION. Section 102. Setoff. Without qualifying
6 any other statutory right to setoff or lien and subject to
7 any contractual provision, if a party is indebted to a
8 financial institution, the financial institution has a right
9 to setoff against the account. The amount of the account
10 subject to setoff is either the proportion to which the
11 party is, or immediately before death was, beneficially
12 entitled under [section 90] or, in the absence of proof of
13 that proportion, an equal share with all parties.

14 NEW SECTION. Section 103. Definitions. As used in
15 [sections 103 through 112], the following definitions apply:

16 (1) "Beneficiary form" means a registration of a
17 security that indicates the present owner of the security
18 and the intention of the owner regarding the person who will
19 become the owner of the security upon the death of the
20 owner.

21 (2) "Register", including its derivatives, means to
22 issue a certificate showing the ownership of a certificated
23 security or, in the case of an uncertificated security, to
24 initiate or transfer an account showing ownership of
25 securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

NEW SECTION. Section 104. Registration in beneficiary form -- sole or joint tenancy ownership. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right

of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety, or as owners of community property held in survivorship form and not as tenants in common.

NEW SECTION. Section 105. Registration in beneficiary form -- applicable law. (1) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state:

(a) of organization of the issuer or registering entity;

(b) of the location of the registering entity's principal office;

(c) of the office of its transfer agent or its office making the registration; or

(d) listed as the owner's address at the time of registration.

(2) A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

NEW SECTION. Section 106. Origination of registration in beneficiary form. A security, whether evidenced by

certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

NEW SECTION. Section 107. Form of registration in beneficiary form. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

NEW SECTION. Section 108. Effect of registration in beneficiary form. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

NEW SECTION. Section 109. Ownership on death of owner. On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or

beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

NEW SECTION. Section 110. Protection of registering entity. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by [sections 103 through 112].

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in [sections 103 through 112].

(3) (a) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with [section 109] and does so in good faith reliance on:

(i) the registration;

1 (ii) [sections 103 through 112]; and
 2 (iii) information provided to it by affidavit of the
 3 personal representative of the deceased owner, or by the
 4 surviving beneficiary or by the surviving beneficiary's
 5 representatives, or other information available to the
 6 registering entity.

7 (b) The protections of [sections 103 through 112] do
 8 not extend to a reregistration or payment made after a
 9 registering entity has received written notice from any
 10 claimant to any interest in the security objecting to
 11 implementation of a registration in beneficiary form. No
 12 other notice or other information available to the
 13 registering entity affects its right to protection under
 14 [sections 103 through 112].

15 (4) The protection provided by [sections 103 through
 16 112] to the registering entity of a security does not affect
 17 the rights of beneficiaries in disputes between themselves
 18 and other claimants to ownership of the security transferred
 19 or its value or proceeds.

20 **NEW SECTION. Section 111. Nontestamentary transfer on**
 21 **death.** (1) A transfer on death, resulting from a
 22 registration in beneficiary form, is effective by reason of
 23 the contract regarding the registration between the owner
 24 and the registering entity and [sections 103 through 112]
 25 and is not testamentary.

1 (2) [Sections 103 through 112] do not limit the rights
 2 of creditors of security owners against beneficiaries and
 3 other transferees under other laws of this state.

4 **NEW SECTION. Section 112. Terms, conditions, and forms**
 5 **for registration.** (1) (a) A registering entity offering to
 6 accept registrations in beneficiary form may establish the
 7 terms and conditions under which it will receive requests
 8 for:

9 (i) registrations in beneficiary form; and
 10 (ii) implementation of registrations in beneficiary
 11 form, including requests for cancellation of previously
 12 registered TOD beneficiary designations and requests for
 13 reregistration to effect a change of beneficiary.

14 (b) The terms and conditions so established may provide
 15 for proving death, avoiding or resolving any problems
 16 concerning fractional shares, designating primary and
 17 contingent beneficiaries, and substituting a named
 18 beneficiary's descendants to take in the place of the named
 19 beneficiary in the event of the beneficiary's death.
 20 Substitution may be indicated by appending to the name of
 21 the primary beneficiary the letters LDPS, standing for
 22 "lineal descendants per stirpes". This designation
 23 substitutes a deceased beneficiary's descendants who survive
 24 the owner for a beneficiary who fails to so survive, the
 25 descendants to be identified and to share in accordance with

the law of the beneficiary's domicile at the owner's death that governs inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(b) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.;

(c) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TODD John S. Brown Jr. LDPS.

Section 113. Section 72-31-201, MCA, is amended to read:

"72-31-201. Statutory short form of general power of attorney ---format-requirements---joint-agents. (1) The use of the following statutory form, or a form substantially similar to the following form, in the creation of a power

of attorney is ~~lawful, and when used, the form must be construed in accordance with the provisions of this part~~ legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE ~~DEFINED~~ EXPLAINED IN 72-31-202 THROUGH 72-31-216 THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. ~~THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES IS ALSO PERMITTED. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY MAY BE REVOKED BY YOU IF YOU LATER WISH TO DO SO. THIS POWER OF ATTORNEY AUTHORIZES BUT DOES NOT REQUIRE THE ATTORNEY IN FACT TO ACT FOR YOU.~~

~~Know all by these presents, which are intended to constitute a STATUTORY SHORT FORM POWER OF ATTORNEY pursuant to this section:~~

That I (insert your name and address of ---the---principal) do---hereby appoint (insert the name and address of the attorney-in-fact or each attorney-in-fact if more than one is designated person appointed) as my attorney(s)-in-fact agent (attorney-in-fact) to act (jointly) for me in any lawful way with respect to the following initialed subjects:

~~{NOTE: if more than one attorney-in-fact is designated~~

1 and--the--principal-wishes-each-attorney-in-fact-alone-to-be
 2 able-to--exercise--the--power--conferred;--delete--the--word
 3 "jointly";--Failure-to-delete-the-word-"jointly"-will-require
 4 the-attorneys-in-fact-to-act-unanimously;}

5 First:--in--my--name;--place;--and--stead--in--any--way--that--I
 6 myself-could-do;--if--I--were--personally--present;--with--respect
 7 to--the--following--matters--as--each--of--them--is--defined--in
 8 72-31-202-through-72-31-216;

9 {To-grant-to-the-attorney-in-fact-any-of--the--following
 10 powers;--make--a--check--or--"X"--in-the-line-in-front-of-each
 11 power-being-granted--To-delete-any-of-the-following-powers;
 12 do--not--make--a--check--or--"X"--in-the-line-in-front-of-the
 13 power;--You-may;--but-need-not;--cross--out--each--power--being
 14 deleted--with--a--line--drawn--through--it--(or--in--similar
 15 fashion);--Failure--to--make--a--check--or--"X"--in-the-line-in
 16 front-of-the-power-will-have--the--effect--of--deleting--the
 17 power--unless--the--line--in--front--of--the--power--of--(0)--is
 18 checked-or-X-ed;}

19 Check-or-"X"

20 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE
 21 IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER
 22 POWERS.

23 TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE
 24 FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER
 25 YOU ARE GRANTING.

1 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF
 2 IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

3 INITIAL

4 (A) real property transactions;

5 (B) tangible personal property transactions;

6 (C) stock and bond;--share;--and--commodity
 7 transactions;

8 (D) commodity and option transactions;

9 {B}{E} banking and other financial institution
 10 transactions;

11 {B}{F} business operating transactions;

12 {F}{G} insurance and annuity transactions;

13 {G}{H} estate, trust, and other beneficiary
 14 transactions;

15 {H} gift transactions;

16 {I} fiduciary transactions;

17 {J}{I} claims and litigation;

18 {K}{J} personal and family maintenance;

19 {b}{K} benefits from social security, medicare,
 20 medicaid, or other governmental programs or from military
 21 service;

22 {M} records, reports, and statements;

23 (L) retirement plan transactions;

24 {N}{M} all other tax matters;

25 {0}{N} all--of-the-powers-listed-in-(A)-through

1 ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY
 2 OTHER LINES IF YOU INITIAL LINE (N).

3 Second:--(You--must--indicate--below--whether--or--not--this
 4 power--of--attorney--will--be--effective---if---you---become
 5 incompetent--Make-a-check-or-"X"-in-the-line-in-front-of-the
 6 statement-that-expresses-your-intent--)

7 SPECIAL INSTRUCTIONS:

8 ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS

9 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

10
 11
 12
 13
 14
 15
 16

17 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF
 18 ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT
 19 IS REVOKED.

20 This power of attorney revokes all previous powers of
 21 attorney signed by me.

22 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS
 23 POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY
 24 SIGNED BY YOU.

25 IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL

1 PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ
 2 THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS
 3 CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF
 4 THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

5 This power of attorney shall will continue to be
 6 effective if I become disabled, incapacitated, or
 7 incompetent. It shall not be affected by my later disability
 8 or incompetency.

9 -----This power of attorney shall not be effective--if
 10 I become incompetent.

11 Third:--(You--must--indicate--below--whether--or--not--this
 12 power--of--attorney--authorizes--the---attorney-in-fact---to
 13 transfer--your--property--directly--to-the-attorney-in-fact:
 14 Make-a-check-or-"X"-in-the-line-in-front-of--the--statement
 15 that-expresses-your-intent--)

16 -----This---power---of---attorney---authorizes---the
 17 attorney-in-fact-to-receive-the-transfer-directly.

18 -----This power of attorney--does--not--authorize--the
 19 attorney-in-fact-to-receive-the-transfer-directly.

20 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS
 21 POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED,
 22 INCAPACITATED, OR INCOMPETENT.

23 If it becomes necessary to appoint a conservator of my
 24 estate or guardian of my person, I nominate my agent.

25 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO

NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1.
2.
3.

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

In--witness--whereof--I--have--hereunto--signed--my--name--this

-----day-of-----, 19--

(Signature-of-Principal)

(Acknowledgment)

Specimen-Signature-of-Attorney(s)-in-Fact

Signed this day of, 19...

(Your Signature)

(Your Social Security Number)

State of

(County) of

This document was acknowledged before me on

..... (Date) by.....

..... (Name of Principal)

.....
(Signature of Notarial Officer)

(Seal, if any) (Title (and Rank))

[My commission expires:.....]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(2) Any of the powers of the form in subsection (1) that are not checked or X-ed are withheld by the principal from the attorney in fact unless the power of (0) on the form in subsection (1) is checked or X-ed. The withholding by the principal from the attorney in fact of any of the powers of (A) through (N), in addition to the withholding of the power of (0) on the form in subsection (1) automatically constitutes withholding of the powers of (N).

(3) To constitute a "A statutory short-form power of attorney", as this phrase is used in is legally sufficient under this part, if the wording and content of the form in subsection (1) must be duplicated on a form substantially complies with similar to the form provided in subsection (1), the notices must appear in a conspicuous place and manner, the second and third parts must be form is properly completed, and the signature of the principal must be is acknowledged.

(4) All powers enumerated in 72-31-202 through 72-31-216 may be legally performed by an attorney in fact acting on behalf of a principal.

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N)."

NEW SECTION. Section 114. Durable power of attorney. A

power of attorney legally sufficient under this part is durable to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent," showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

NEW SECTION. Section 115. Construction of powers generally. By executing a statutory power of attorney with respect to a subject listed in 72-31-201(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent for that subject to:

(1) demand, receive, and obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or

1 other instrument the agent considers desirable to accomplish
2 a purpose of a transaction;

3 (4) prosecute, defend, submit to arbitration, settle,
4 and propose or accept a compromise with respect to a claim
5 existing in favor of or against the principal or intervene
6 in litigation relating to the claim;

7 (5) seek on the principal's behalf the assistance of a
8 court to carry out an act authorized by the power of
9 attorney;

10 (6) engage, compensate, and discharge an attorney,
11 accountant, expert witness, or other assistant;

12 (7) keep appropriate records of each transaction,
13 including an accounting of receipts and disbursements;

14 (8) prepare, execute, and file a record, report, or
15 other document the agent considers desirable to safeguard or
16 promote the principal's interest under a statute or
17 governmental regulation;

18 (9) reimburse the agent for expenditures properly made
19 by the agent in exercising the powers granted by the power
20 of attorney; and

21 (10) in general, do any other lawful act with respect to
22 the subject.

23 **Section 116.** Section 72-31-202, MCA, is amended to
24 read:

25 **"72-31-202. Real Construction of power relating to real**

1 property transactions. ~~{t}~~ In a statutory short-form power
2 of attorney, the language conferring granting general
3 authority power with respect to real property transactions
4 ~~means that the principal authorizes the attorney in fact~~
5 empowers the agent to:

6 ~~{a}~~ (1) to accept as a gift or as security for a loan,
7 or to reject, demand, buy, lease, receive, or otherwise
8 acquire ~~either ownership or possession of any estate or an~~
9 interest in real property or a right incident to real
10 property;

11 ~~{b}~~ (2) to sell, exchange, or convey, either with or
12 without covenants; quitclaim; release; surrender;
13 mortgage; encumber; partition; or consent to the
14 partitioning; subdivide; apply for zoning, rezoning, or
15 other governmental permits; plat or consent to platting;
16 develop; grant options concerning; lease; or sublet; or
17 otherwise dispose of ~~any estate or an~~ interest in real
18 property or a right incident to real property;

19 ~~{c}~~ (3) to release in whole or in part, assign the whole
20 or a part of, satisfy in whole or in part, and enforce, by
21 action, proceeding, litigation or otherwise, any a mortgage,
22 deed of trust, encumbrance, lien, or other claim to real
23 property that exists or is claimed to exist in favor of the
24 principal asserted;

25 ~~{d}~~ (4) to do any act of management or of conservation

with respect to ~~any estate or an~~ interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including ~~by way of illustration but not of restriction, power to:~~

(a) ~~insure~~ insuring against any a casualty, liability, or loss;

(b) ~~to obtain or regain~~ obtaining or regaining possession or ~~protect~~ protecting the estate or interest or right, by ~~action, proceeding, litigation~~ or otherwise;

(c) ~~to pay, compromise, or contest~~ paying, compromising, or contesting taxes or assessments ~~to apply, or applying~~ for and ~~receive~~ receiving refunds in connection with ~~taxes or assessments~~ them; and

(d) ~~to purchase~~ purchasing supplies, ~~hire~~ hiring assistance or labor, and ~~make~~ making repairs or alterations in the ~~structures or lands~~ real property;

(e) ~~(5)~~ to use in ~~any way~~, develop, modify, alter, replace, remove, erect, or install structures or other improvements upon any real property in ~~or incident to~~ which the principal has or claims to have ~~any estate or an~~ interest or right;

(f) ~~(6)~~ to ~~demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in real property or~~

~~of one or more of the transactions enumerated in this section, to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section, and to reimburse the attorney in fact for any expenditures properly made by the attorney in fact in the execution of the powers conferred on the attorney in fact by the statutory short form power of attorney;~~

(g) ~~to participate in any a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold any shares of stock or instrument of similar character obligations received in accordance with a plan of reorganization and to act with respect to the shares them, including by way of illustration but not of restriction, power:~~

(a) ~~to sell~~ selling or to otherwise ~~dispose~~ disposing of the shares them;

(b) ~~to exercise~~ exercising or ~~sell any~~ selling an option, conversion, or similar right with respect to the ~~shares, them~~; and

(c) ~~to vote on the shares~~ voting them in person or by the ~~granting of a proxy~~;

(h) ~~to agree and contract in any manner with any person and on any terms that the attorney in fact may select for the accomplishment of any of the purposes~~

enumerated in this section and to perform, rescind, reform, release, or modify an agreement, contract, or any other similar agreement or contract made by or on behalf of the principal;

{i} to execute, acknowledge, seal, and deliver any deed, revocation, mortgage, lease, notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

{j} to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating to the claim;

{k} to hire, discharge, and compensate any attorney, accountant, expert, witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

{l} in general and in addition to all the specific acts in this section, to do any other act with respect to any estate or

(7) change the form of title of an interest in or right incident to real property;

(8) dedicate to public use, with or without

consideration, easements or other real property in which the principal has or claims to have an interest.

{2} All powers described in this section are exercisable equally with respect to any estate or interest in real property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere."

Section 117. Section 72-31-203, MCA, is amended to read:

"72-31-203. Tangible Construction of power relating to tangible personal property transactions. {1} In a statutory short-form power of attorney, the language conferring general authority granting power with respect to tangible personal property transactions means that the principal authorizes the attorney-in-fact empowers the agent to:

{a}(1) to accept as a gift or as security for a loan, or to reject, demand, buy, receive, or otherwise acquire either ownership or possession of any tangible personal property or any an interest in tangible personal property;

{b}(2) to sell, exchange, convey either with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, or sublet sublease to others, or otherwise dispose of any tangible personal property or an interest in any tangible personal property;

1 (c)(3) to release in-whole-or-in-part, assign the-whole
 2 or--a--part-of, satisfy in-whole-or-in-part, and or enforce,
 3 by action,--proceeding, litigation or otherwise, any a
 4 mortgage, security interest, encumbrance, lien, or other
 5 claim that-exists-or-is-claimed-to-exist-in-favor on behalf
 6 of the principal with respect to any tangible personal
 7 property or any an interest in tangible personal property;
 8 and

9 (d)(4) to do any an act of management or of
 10 conservation with respect to any tangible personal property
 11 or to-any an interest in any tangible personal property
 12 owned--or-claimed-to-be-owned-by on behalf of the principal,
 13 including,--by-way-of-illustration-but--not--of--restriction,
 14 power:

15 (a) to-insure insuring against any casualty, liability,
 16 or loss;

17 (b) to--obtain obtaining or regain regaining possession
 18 or protect protecting the tangible--personal property or
 19 interest, in--any--tangible--personal--property by action,
 20 proceeding, litigation or otherwise;

21 (c) to-pay,--compromise, paying, compromising or contest
 22 contesting taxes or assessments,--and-to--apply or applying
 23 for and receive receiving refunds in connection with taxes
 24 or assessments;

25 (d) move moving from place to place;

1 (e) store storing for hire or on a gratuitous
 2 bailment; and

3 (f) use,--alter, using, altering, and make making
 4 repairs or alterations of-any-tangible-personal-property--or
 5 interest-in-any-tangible-personal-property;

6 (g) to--demand,--receive,--or--obtain--by--action,
 7 proceeding,--or--otherwise--any--money--or--other--thing--of--value
 8 to--which--the--principal-is,--may-become,--or--may-claim-to-be
 9 entitled-as-the-proceeds-of-any-tangible--personal--property
 10 or--of--any-interest-in-any-tangible-personal-property--or--of
 11 one-or-more-of-the-transactions-enumerated-in-this--section,
 12 to--conserve,--invest,--disburse,--or--utilize--anything--received
 13 for-purposes-enumerated-in-this-section,--and--to--reimburse
 14 the--attorney-in-fact--for-any-expenditures--properly-made-by
 15 the--attorney-in-fact--in--the--execution--of--the--powers
 16 conferred--on--the--attorney-in-fact--by-the-statutory-short
 17 form-power-of-attorney;

18 (h) to-agree-and-contract,--in--any--manner,--with--any
 19 person,--and--on--any--terms--that--the-attorney-in-fact-may
 20 select,--for--the--accomplishment--of--any--of--the--purposes
 21 enumerated--in-this-section-and-to-perform,--rescind,--reform,
 22 release,--or-modify-any-agreement-or-contract--or--any--other
 23 similar--agreement--or--contract-made-by-or-on-behalf-of-the
 24 principal;

25 (i) to-execute,--acknowledge,--seal,--and--deliver--any

conveyance, mortgage, lease, notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;

(h) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any tangible personal property transaction or to intervene in any action or proceeding relating to a claim;

(i) to hire, discharge, and compensate any attorney, accountant, expert, witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and

(j) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to any tangible personal property or interest in any tangible personal property;

(2) All powers described in this section are exercisable equally with respect to any tangible personal property or interest in any tangible personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or

elsewhere."

Section 118. Section 72-31-204, MCA, is amended to read:

"72-31-204. Bond, share, and commodity Construction of power relating to stock and bond transactions. (1) In a statutory short-form power of attorney, the language conferring general authority granting power with respect to stock and bond, share, and commodity transactions means that the principal authorizes the attorney-in-fact:

(a) to accept as a gift or as security for a loan or to reject, demand, empowers the agent to buy, receive, or otherwise acquire either ownership or possession of any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest, together with the interest, dividends, proceeds, or other distributions connected with any of those instruments;

(b) to sell, or sell short and to exchange, transfer either with or without a guaranty, release, surrender, hypothecate, pledge, grant options concerning, loan, trade in, or otherwise to dispose of any bond, share, instrument of similar character, stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity interest, or any instrument with respect to the bond, share, or interest, futures contracts, call and put

1 options on stocks and stock indexes; receive certificates
 2 and other evidences of ownership with respect to securities;
 3 exercise voting rights with respect to securities in person
 4 or by proxy; enter into voting trusts; and consent to
 5 limitations on the right to vote.

6 {c}--to-release-in-whole-or-in-part; assign-the-whole-or
 7 a--part--of;--satisfy--in--whole--or-in-part;--and-enforce-by
 8 action; proceeding; or otherwise any pledge; encumbrance;
 9 lien; or other claim as to any bond; share; instrument of
 10 similar character; commodity interest; or any interest with
 11 respect to the bond; share; or interest when the pledge;
 12 encumbrance; lien; or other claim is owned or claimed to be
 13 owned by the principal;

14 {d}--to-do-any-act-of-management-or-of-conservation-with
 15 respect-to-any-bond; share; instrument of similar character;
 16 commodity interest; or any instrument with respect to the
 17 interest owned or claimed to be owned by the principal or in
 18 which the principal has or claims to have an interest;
 19 including; by way of illustration but not of restriction;
 20 power to insure against any casualty; liability; or loss; to
 21 obtain or regain possession or protect the principal's
 22 interest by action; proceeding; or otherwise; to pay;
 23 compromise; or contest taxes or assessments; to apply for
 24 and receive refunds in connection with taxes or assessments;
 25 to consent to and participate in any reorganization;

1 recapitalization; liquidation; merger; consolidation; sale;
 2 lease; or other change in or revival of a corporation or
 3 other association; in the financial structure of any
 4 corporation or other association; or in the priorities;
 5 voting rights; or other special rights with respect to the
 6 corporation or association; to become a depositor with any
 7 protective; reorganization; or similar committee of the
 8 bond; share; other instrument of similar character;
 9 commodity interest; or any instrument with respect to the
 10 bond; share; or interest belonging to the principal; to make
 11 any payments reasonably incident to the foregoing; to
 12 exercise or sell any option; conversion; or similar right;
 13 to vote in person or by the granting of a proxy with or
 14 without the power of substitution; either discretionary;
 15 general; or otherwise; for the accomplishment of any of the
 16 purposes enumerated in this section;

17 {e}--to-carry-in-the-name-of-a-nominee-selected-by-the
 18 attorney-in-fact any evidence of the ownership of any bond;
 19 share; other instrument of similar character; commodity
 20 interest; or instrument with respect to the bond; share; or
 21 interest; belonging to the principal;

22 {f}--to-employ; in any way believed to be desirable by
 23 the attorney-in-fact; any bond; share; other instrument of
 24 similar character; commodity interest; or any instrument
 25 with respect to the bond; share; or interest in which the

1 principal has or claims to have any interest for the
 2 protection or continued operation of any speculative or
 3 margin transaction personally begun or personally
 4 guaranteed, in whole or in part, by the principal;
 5 {g} to demand, receive, or obtain by action,
 6 proceeding, or otherwise any money or other thing of value
 7 to which the principal is, may become, or may claim to be
 8 entitled as the proceeds of any interest in a bond, share,
 9 other instrument of similar character, commodity interest,
 10 or any instrument with respect to the bond, share, interest,
 11 or of one or more of the transactions enumerated in this
 12 section; to conserve, invest, disburse, or utilize anything
 13 received for purposes enumerated in this section; and to
 14 reimburse the attorney in fact for any expenditures properly
 15 made by the attorney in fact in the execution of the powers
 16 conferred on the attorney in fact by the statutory short
 17 form power of attorney;
 18 {h} to agree and contract, in any manner, with any
 19 broker or other person, and on any terms that the
 20 attorney in fact selects, for the accomplishment of any of
 21 the purposes enumerated in this section and to perform,
 22 rescind, reform, release, or modify the agreement or
 23 contract or any other similar agreement made by or on behalf
 24 of the principal;
 25 {i} to execute, acknowledge, seal, and deliver any

1 consent, agreement, authorization, assignment, revocation,
 2 notice, waiver of notice, check, or other instrument that
 3 the attorney in fact considers useful for the accomplishment
 4 of any of the purposes enumerated in this section;
 5 {j} to execute, acknowledge, and file any report or
 6 certificate required by law or governmental regulation;
 7 {k} to prosecute, defend, submit to arbitration,
 8 settle, and propose or accept a compromise with respect to
 9 any claim existing in favor of or against the principal
 10 based on or involving any bond, share, or commodity
 11 transaction or to intervene in any related action or
 12 proceeding;
 13 {l} to hire, discharge, and compensate any attorney,
 14 accountant, expert witness, or other assistant when the
 15 attorney in fact considers that action to be desirable for
 16 the proper execution of any of the powers described in this
 17 section and for the keeping of needed records; and
 18 {m} in general and in addition to all the specific acts
 19 listed in this section, to do any other acts with respect to
 20 any interest in any bond, share, other instrument of similar
 21 character, commodity interest, or instrument with respect to
 22 a commodity;
 23 {2} All powers described in this section are
 24 exercisable equally with respect to any interest in any
 25 bond, share, instrument of similar character, commodity

1 interest-or-instrument-with-respect-to-a-commodity-owned-by
2 the--principal--at--the--giving--of--the--power--of--attorney--or
3 acquired-after-that-time--whether--located--in--Montana--or
4 elsewhere:"

5 NEW SECTION. Section 119. Construction of power
6 relating to commodity and option transactions. In a
7 statutory power of attorney, the language granting power
8 with respect to commodity and option transactions empowers
9 the agent to buy, sell, exchange, assign, settle, and
10 exercise commodity futures contracts; call and put options
11 on stocks and stock indexes traded on a regulated option
12 exchange; and establish, continue, modify, and terminate
13 option accounts with a broker.

14 **Section 120.** Section 72-31-205, MCA, is amended to
15 read:

16 "72-31-205. Banking Construction of power relating to
17 banking and other financial institution transactions. {t} In
18 a statutory short--form power of attorney, the language
19 conferring--general--authority granting power with respect to
20 banking and other financial institution transactions means
21 that--the--principal--authorizes--the--attorney-in-fact empowers
22 the agent to:

23 {a}{(1)} to continue, modify, and terminate any--deposit
24 an account or other banking arrangement made by or on behalf
25 of the principal prior--to--the--execution--of--the--power--of

1 attorney;

2 {b}{(2)} to open in the name of the principal alone or in
3 a--way--that--clearly--evidences--the--principal--and
4 attorney-in-fact relationship a deposit establish, modify,
5 and terminate an account of--any--type or other banking
6 arrangement with any a bank, trust company, savings and loan,
7 association, credit union, thrift company, brokerage firm,
8 or other financial institution that serves as a depository
9 for funds selected by the attorney-in-fact agent;

10 {3} to hire a safe deposit box or space in a vault
11 space;

12 {4} and--to--make--other--contracts--for--the--procuring--of
13 contract to procure other services made available by--the
14 banking from a financial institution as the attorney-in-fact
15 agent considers desirable;

16 {c}{(5)} to--make, sign, and deliver checks or drafts for
17 any purpose and to withdraw by check, order, or otherwise
18 any--funds money or property of the principal deposited with
19 or left in the custody of any--banking a financial
20 institution,--wherever--located,--either before or after the
21 execution of the power of attorney;

22 {d}{(6)} to prepare any necessary financial statements of
23 the assets and liabilities or income--and--expenses--of--the
24 principal for submission to any banking institution;

25 {e}--to receive bank statements, vouchers, notices, or

1 other and similar documents from any--banking a financial
 2 institution and to act with respect to them;

3 {f}(7) to enter at-any-time-any a safe deposit box or
 4 vault that-the-principal-could-enter-if--personally--present
 5 and withdraw or add to the contents;

6 {g}(8) to borrow money at any an interest rate the
 7 attorney-in-fact-selects agreeable to the agent and;--to
 8 pledge as security any--assets personal property of the
 9 principal the--attorney-in-fact--considers---desirable---or
 10 necessary for--borrowing;--and--to in order to borrow, pay,
 11 renew, or extend the time of payment of any a debt of the
 12 principal;

13 {h}(9) to make, assign, draw, endorse, discount,
 14 guarantee, and negotiate all promissory notes, bills--of
 15 exchange, checks, drafts, or and other negotiable or
 16 nonnegotiable paper of the principal or payable to the
 17 principal or the principal's order; to receive the cash or
 18 other proceeds of any-of those transactions; and to accept
 19 any--bill--of-exchange-or a draft drawn by any a person upon
 20 the principal and pay it when due;

21 {i}(10) to receive for the principal and to-deal-in--and
 22 to--deal-with-any act upon a sight draft, warehouse receipt,
 23 or other negotiable or nonnegotiable instrument in-which-the
 24 principal-has-or-claims-to-have-an-interest;

25 {j}(11) to apply for and to receive letters of credit,

1 credit cards, and traveler's checks from any-banking a
 2 financial institution selected--by--the--attorney-in-fact,
 3 giving and give an indemnity or other agreement in
 4 connection with the letters of credit that---the
 5 attorney-in-fact-considers-desirable-or-necessary; and

6 {k}(12) to consent to an extension in of the time of
 7 payment with respect to any commercial paper or any--banking
 8 a financial transaction in--which--the--principal--has-an
 9 interest-or-by-which-the-principal-is-or-might--be--affected
 10 in-any-way; with a financial institution.

11 {l}--to--demand,--receive,--obtain-by-action,--proceeding,
 12 or--otherwise--any--money--or--other--thing--of--value--to--which--the
 13 principal-is,--may-become,--or-may-claim-to-be-entitled-as-the
 14 proceeds--of--any--banking--transaction--and--to-reimburse-the
 15 attorney-in-fact-for-any-expenditures-properly-made--in--the
 16 execution--of--the-powers-conferred-upon-the-attorney-in-fact
 17 by-the-statutory-short-form-power-of-attorney;

18 {m}--to--execute,--acknowledge,--and-deliver-any-instrument
 19 of-any-kind,--in-the-name-of-the-principal-or--otherwise,--that
 20 the-attorney-in-fact-considers-useful-for-the-accomplishment
 21 of-any-of-the-purposes-enumerated-in-this-section;

22 {n}--to--prosecute,--defend,--submit---to---arbitration,
 23 settle,--and--propose-or-accept-a-compromise-with-respect-to
 24 any-claim-existing-in-favor-of--or--against--the--principal
 25 based---on--or--involving--any--banking--transaction--or--to

intervene in any related action or proceeding;

{o}--to hire, discharge, and--compensate--any--attorney,
accountant,--expert--witness,--or--other--assistant when the
attorney in fact considers that action to be--desirable--for
the--proper execution of any of the powers described in this
section and for the keeping of needed records; and

{p}--in general and in addition to all the specific acts
listed in this section, to do any other acts--in--connection
with--any--banking--transaction--that does or may in any way
affect the financial or other interests of the principal;

{2}--All--powers---described---in---this---section---are
exercisable--equally with respect to any banking transaction
engaged in by the principal at the giving of--the--power--of
attorney or engaged in after that time, whether conducted in
Montana or elsewhere."

Section 121. Section 72-31-206, MCA, is amended to
read:

"72-31-206. Business Construction of power relating to
business operating transactions. {i} In a statutory short
form power of attorney, the language conferring general
authority granting power with respect to business operating
transactions means---that--the--principal--authorizes--the
attorney in fact empowers the agent:

{a}{1} to operate, buy, sell, enlarge, reduce, and
terminate a business interest;

(2) to the extent that an agent is permitted by law to
act for a principal and subject to the terms of the
partnership agreement, to:

(a) discharge--and perform any a duty or discharge a
liability and also--to exercise any a right, power,
privilege, or option that the principal has, may have, or
claims to have under any a partnership agreement, whether or
not the principal is a general or limited partner;

(b) to enforce the terms of a partnership agreement for
the protection of--the--principal, by action,--proceeding,
litigation or otherwise, as the attorney in fact considers
desirable or necessary; and

(c) to defend, submit to arbitration, settle, or
compromise any--action or other legal proceeding litigation
to which the principal is a party because of membership in
the partnership;

{b}{3} to exercise in person or by proxy or to enforce,
by action,--proceeding, litigation or otherwise, any a right,
power, privilege, or option that the principal has or claims
to have as the holder of any a bond, share, or other
instrument of similar character and to defend, submit to
arbitration, settle, or compromise any action or other legal
proceeding litigation to which the principal is a party
because of a bond, share, or other similar instrument of
similar character;

1 ~~(c)(4)~~ with respect to any a business enterprise that
2 is owned solely by the principal, to:

3 ~~(i)(a)~~ to continue, modify, renegotiate, extend, and
4 terminate ~~any contractual arrangements~~ a contract made with
5 ~~any person,~~ an individual or a legal entity, firm,
6 association, or corporation by or on behalf of the principal
7 with respect to the business enterprise ~~prior to the~~
8 granting before execution of the power of attorney;

9 ~~(i)(b)~~ to determine:

10 (i) ~~the policy of the business enterprise as to~~ the
11 location of ~~the site or sites to be used for~~ its operation;

12 (ii) the nature and extent of the its business ~~to be~~
13 ~~undertaken by it;~~

14 (iii) the methods of manufacturing, selling,
15 merchandising, financing, accounting, and advertising ~~to be~~
16 employed in its operation;

17 (iv) the amount and types of insurance ~~to be~~ carried;

18 (v) the mode of securing ~~engaging,~~ compensating, and
19 dealing with its accountants, attorneys, servants, and other
20 agents and employees ~~required for its operation; and to~~
21 ~~agree and to contract in any manner, with any person, and on~~
22 ~~any terms that the attorney in fact considers desirable or~~
23 ~~necessary for effectuating any or all of the decisions of~~
24 ~~the attorney in fact as to policy and to perform, rescind,~~
25 ~~reform, release, or modify the agreement or contract or any~~

1 ~~other similar agreement or contract made by or on behalf of~~
2 ~~the principal;~~

3 ~~(iii)(c)~~ to change the name or form of organization
4 under which the business enterprise is operated and to enter
5 into a partnership agreement with other persons or to
6 organize a corporation to take over all or part of the
7 operation of the business ~~or any part of the business, as~~
8 ~~the attorney in fact considers desirable or necessary;~~ and

9 ~~(iv)(d)~~ to demand and receive all money ~~that is or may~~
10 ~~become due to the principal or that may be~~ claimed by ~~or for~~
11 the principal or on the principal's behalf in the operation
12 of the business enterprise, to and control and disburse the
13 funds money in the operation of the enterprise ~~in any way~~
14 ~~that the attorney in fact considers desirable or necessary,~~
15 ~~and to engage in any banking transactions that the~~
16 ~~attorney in fact considers desirable or necessary for~~
17 ~~effectuating the execution of any of the powers of the~~
18 ~~attorney in fact described in this subsection; (i)(f)~~
19 business;

20 (5) to put additional capital into a business in which
21 the principal has an interest;

22 (6) to join in a plan of reorganization, consolidation,
23 or merger of the business;

24 (7) to sell or liquidate a business or part of it at
25 the time and upon the terms the agent considers desirable;

(8) to establish the value of a business under a buyout agreement to which the principal is a party;

(d)(9) to prepare, sign, file, and deliver all reports, compilations of information, returns, or other papers with respect to any a business operating--transaction-of-the principal that are required by any a governmental agency, department, or instrumentality or that the attorney-in-fact agent considers desirable or-necessary-for-any--purpose and to make any related payments; and

(e)(10) to pay, compromise, or contest taxes or assessments and to do any other act or--acts that the attorney-in-fact agent considers desirable or-necessary to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments in--connection with the principal's respect to a business operations, including power---to--attempt attempts to recover, in any manner permitted by law, sums money paid before or after the execution of the power of attorney as--taxes,--fines, penalties, or--assessments,.

(f)--to--demand,--receive,--or--obtain--by--action, proceeding,--or--otherwise--any--money--or--other--thing--of--value to--which--the--principal--is,--may--become,--or--may--claim--to--be entitled--as--the--proceeds--of--any--business--operation--of--the principal,--to--conserve,--invest,--disburse,--or--use--anything--so received--for--purposes--enumerated--in--this--section,--and--to

reimburse--the--attorney--in--fact--for--any--expenditures--properly made--by--the--attorney--in--fact--in--the--execution--of--the--powers conferred--upon--the--attorney--in--fact--by--the--statutory--short form--power--of--attorney,

(g)--to--execute,--acknowledge,--seal,--and--deliver--any deed,--assignment,--mortgage,--lease,--notice,--consent, agreement,--authorization,--check,--or--other--instrument--that the--attorney--in--fact--considers--useful--for--the--accomplishment of--any--of--the--purposes--enumerated--in--this--section,

(h)--to--prosecute,--defend,--submit--to--arbitration, settle,--and--propose--or--accept--a--compromise--with--respect--to any--claim--existing--in--favor--of--or--against--the--principal based--on--or--involving--any--business--operating--transaction--or to--intervene--in--any--related--action--or--proceeding,

(i)--to--hire,--discharge,--and--compensate--any--attorney, accountant,--expert--witness,--or--other--assistant--when--the attorney--in--fact--considers--that--action--to--be--desirable--for the--proper--execution--by--the--attorney--in--fact--of--any--of--the powers--described--in--this--section--and--for--the--keeping--of needed--records,--and

(j)--in--general--and--in--addition--to--all--the--specific--acts listed--in--this--section,--to--do--any--other--act--that--the attorney--in--fact--considers--desirable--or--necessary--for--the furtherance--or--protection--of--the--interests--of--the--principal in--any--business,

{2}--All--powers---described---in---this---section---are
 exercisable--equally--with--respect-to-any-business-in-which
 the-principal-is-interested-at-the-time--of--giving--of--the
 power---of--attorney--or--in--which--the--principal--becomes
 interested-after-that-time,--whether-operated-in--Montana--or
 elsewhere."

Section 122. Section 72-31-207, MCA, is amended to
 read:

"72-31-207. Insurance Construction of power relating to
insurance transactions. {1} In a statutory short-form power
 of attorney, the language conferring--general--authority
granting power with respect to insurance and annuity
 transactions means---that--the--principal--authorizes--the
 attorney-in-fact empowers the agent to:

{a}{1} to continue, pay the premium or assessment on,
 modify, rescind, release, or terminate any a contract of
 life, accident, health, or disability insurance or any
 contract for the provision of health care services or any
 combination of these contracts procured by or on behalf of
 the principal prior to the granting of the power of attorney
 that insures or provides an annuity to either the principal
 or any other another person, without regard to whether or
 not the principal is or is not a beneficiary under the
 contract;

{b}{2} to procure new, different, or and additional

contracts of life, accident, health, or disability insurance
 and annuities for the principal or contracts for provision
 of health care services for the principal, to and the
 principal's spouse, children, and other dependents and to
 select the amount, the type of insurance or annuity, and the
 mode of payment under each contract;

{3} to pay the premium or assessment on, modify,
 rescind, release, or terminate any a contract of insurance
 or annuity procured by the attorney-in-fact agent;

{4} and to designate the beneficiary of the contract;
 provided, however, that the attorney-in-fact an agent may
 not be named a beneficiary, except if permitted under
 72-31-208, the attorney-in-fact may be named the beneficiary
 of death benefit proceeds under an insurance contract or if
 the attorney-in-fact of the contract or of an extension,
 renewal, or substitute for the contract only to the extent
 that the agent was named as a beneficiary under the a
 contract that was procured by the principal prior to the
 granting before executing of the power of attorney; the
 attorney-in-fact may continue to be named as the beneficiary
 under the contract or under any extension or renewal of or
 substitute for the contract;

{e}{5} with respect to any contract of life, accident,
 health, disability, or liability insurance as to which the
 principal has or claims to have any one or more of the

1 powers-described-in-this-section, to apply for and receive
2 any--available a loan on the security of the contract of
3 insurance, whether-for-the-payment-of-a-premium-or--for--the
4 procuring-of-cash, or annuity;

5 (6) to surrender and then-to receive the cash surrender
6 value;

7 (7) to exercise any an election as-to-beneficiary-or
8 mode-of-payment;

9 (8) to change the manner of paying premiums;

10 (9) to change or convert the type of insurance
11 contract,---and or annuity, with respect to which the
12 principal has or claims to have a power described in this
13 section;

14 (10) to change the beneficiary of the a contract of
15 insurance, or annuity; provided, however, that---the
16 attorney-in-fact the agent may not be designated a new
17 beneficiary, except if to the extent permitted under
18 72-31-200,---the--attorney-in-fact--may-be-the-beneficiary-of
19 death-benefit-proceeds-under-an-insurance-contract-or-if-the
20 attorney-in-fact---was---named---as---a---beneficiary---under---the
21 contract-that-was-procured-by-the--principal--prior--to--the
22 granting--of-the-power-of-attorney, the attorney-in-fact may
23 continue-to-be-named-as-the-beneficiary-under--the--contract
24 or--under--any-extension-or-renewal-of-or-substitute-for-the
25 contract by subsection (4);

1 (d)--to-demand,---receive,---or---obtain---by---action,
2 proceeding, or otherwise any money, dividend, or other thing
3 of value to which the principal is, may become, or may claim
4 to--be-entitled-as-the-proceeds-of-any-contract-of-insurance
5 or-of-one-or-more-of-the--transactions--enumerated--in--this
6 section;--to-serve, invest, disburse, or utilize anything
7 received-for-purposes-enumerated-in--this--section;--and--to
8 reimburse the attorney-in-fact-for-any-expenditures-property
9 made--by-the-attorney-in-fact-in-the-execution-of-the-powers
10 conferred-on-the-attorney-in-fact--by--the--statutory--short
11 form-power-of-attorney;

12 (e)(11) to apply for and procure any--available
13 governmental government aid in-the-guaranteeing-or-paying-of
14 to guarantee or pay premiums of any a contract of insurance
15 on the life of the principal;

16 (f)(12) to collect, sell, assign, hypothecate, borrow
17 upon, or pledge the interest of the principal in any a
18 contract of insurance or annuity; and

19 (g)(13) to pay from any proceeds or otherwise,
20 compromise, or contest, or--to and apply for refunds in
21 connection with any a tax or assessment levied by a taxing
22 authority with respect to any a contract of insurance or
23 annuity or the its proceeds of-the-refunds or liability
24 accruing by reason of the tax or assessment;

25 (h)--to-agree-and-contract,---in--any--manner,---with--any

person,--and-on-any-terms-that-the-attorney-in-fact-selects,
for-the-accomplishment-of-any-of-the-purposes-enumerated--in
this--section--and--to-perform,--rescind,--reform,--release,--or
modify-the-agreement-or-contract;

{i}--to-execute,--acknowledge,--seal,--and--deliver--any
consent,--demand,--request,--application,--agreement,--indemnity,
authorization,--assignment,--pledge,--notice,--check,--receipt,
waiver,--or--other--instrument--that--the--attorney-in-fact
considers--useful--for--the--accomplishment--of--any--of--the
purposes-enumerated-in-this-section;

{j}--to-continue,--procure,--pay-the-premium-or-assessment
on,--modify,--rescind,--release,--terminate,--or--otherwise--deal
with--any-contract-of-insurance,--other-than-those-enumerated
in--subsection--(i){a}--or--(i){b},--whether--fire,--marine,
burglary,--compensation,--liability,--hurricane,--casualty,--or
other-type,--or-any-combination-of-insurance-or-to-do-any-act
or--acts-with-respect-to-the-contract-or-with-respect-to-its
proceeds-or-enforcement--that--the-attorney-in-fact--considers
desirable--or--necessary--for-the-promotion-or-protection-of
the-interests-of-the-principal;

{k}--to--prosecute,--defend,--submit---to---arbitration,
settle,--and--propose-or-accept-a-compromise-with-respect-to
any-claim-existing-in-favor--of--or--against--the--principal
based--on--or--involving--any--insurance--transaction--or-to
intervene-in-any-related-action-or-proceeding;

{l}--to-hire,--discharge,--and--compensate--any--attorney,
accountant,--expert--witness,--or--other--assistant-when-the
attorney-in-fact-considers-the-action-to--be--desirable--for
the--proper--execution-by-the-attorney-in-fact-of-any-of-the
powers-described-in-this-section--and--for--the--keeping--of
needed-records,--and

{m}--in-general-and-in-addition-to-all-the-specific-acts
listed--in--this-section,--to-do-any-other-acts-in-connection
with-procuring,--supervising,--managing,--modifying,--enforcing,
and-terminating-contracts-of-insurance-or-for-the-provisions
of-health-care--services--in--which--the--principal--is--the
insured-or-is-otherwise-in-any-way-interested;

{2}--All---powers---described---in---this---section--are
exercisable-with-respect-to-any-contract-of-insurance-or-for
the-provision-of-health-care-service-in-which-the--principal
is--in--any--way--interested,--whether--made--in--Montana-or
elsewhere;"

Section 123. Section 72-31-208, MCA, is amended to
read:

"72-31-208. Beneficiary Construction of power relating
to estate, trust, and other beneficiary transactions. {i} In
the a statutory short-form power of attorney, the language
conferring-general-authority granting power with respect to
estate, trust, and other beneficiary transactions, means
that-the-principal-authorizes-the-attorney-in-fact;

1 ~~{a}--to-represent-and empowers the agent to act for the~~
 2 ~~principal in-all-ways-and in all matters affecting-any that~~
 3 ~~affect~~ a trust, probate estate, guardianship,
 4 conservatorship, escrow, custodianship, or other fund out-of
 5 ~~from~~ which the principal is, may become, entitled or claims
 6 to be entitled as a beneficiary to ~~some~~ a share or payment,
 7 including but-not-limited to the-following:

8 ~~{i}(1)~~ to accept, reject, disclaim, receive, receipt
 9 for, sell, assign, release, pledge, exchange, or consent to
 10 a reduction in or modification of ~~any~~ a share in or payment
 11 from the fund;

12 ~~{ii}(2)~~ to demand or obtain, by action, proceeding,
 13 litigation or otherwise, any money or other thing of value
 14 to which the principal is, may become, or ~~may-claim~~ claims
 15 to be entitled by reason of the fund;

16 . (3) to initiate, participate in, and oppose any
 17 ~~proceeding, judicial, or otherwise, for the ascertainment of~~
 18 litigation to ascertain the meaning, validity, or effect of
 19 any a deed, will, declaration of trust, or other instrument
 20 or transaction affecting in--any--way the interest of the
 21 principal;

22 (4) to initiate, participate in, and oppose any
 23 ~~proceeding, judicial, or otherwise, for the removal,~~
 24 ~~substitution, litigation to remove, substitute, or surcharge~~
 25 of a fiduciary;

1 (5) to conserve, invest, disburse, or and use anything
 2 received for ~~purposes-listed-in-this-section an authorized~~
 3 purpose; and to--reimburse--the--attorney-in-fact--for--any
 4 ~~expenditures--properly--made--by-the-attorney-in-fact-in-the~~
 5 ~~execution-of-the-powers-conferred-on-the-attorney-in-fact-by~~
 6 ~~the-statutory-short-form-power-of-attorney;~~

7 ~~{iii}-to-prepare, sign, file, and deliver--all--reports,~~
 8 ~~compilations-of-information, returns, or papers-with-respect~~
 9 ~~to--any--interest--had--or--claimed--by--or-on-behalf-of-the~~
 10 ~~principal-in-the-fund, to-pay, compromise, contest, or apply~~
 11 ~~for-and-receive--refunds--in--connection--with--any--tax--or~~
 12 ~~assessment,--with--respect-to-any-interest-had-or-claimed-by~~
 13 ~~or-on-behalf-of-the-principal-in-the-fund-or-with-respect-to~~
 14 ~~any-property-in-which-an-interest-is-had-or-claimed;~~

15 ~~{iv}-to-agree-and--contract--in--any--manner,--with--any~~
 16 ~~person,--and--on-any-terms-the-attorney-in-fact-selects, for~~
 17 ~~the-accomplishment-of-the-purposes-listed--in--this--section~~
 18 ~~and--to--perform,--rescind,--reform,--release, or-modify-the~~
 19 ~~agreement-or-contract-or--any--other--similar--agreement--or~~
 20 ~~contract-made-by-or-on-behalf-of-the-principal;~~

21 ~~{v}--to-execute, acknowledge,--verify, seal, file, and~~
 22 ~~deliver-any--deed,--assignment,--mortgage,--lease,--consent,~~
 23 ~~designation, pleading, notice, demand, election, conveyance,~~
 24 ~~release,--assignment,--check,--pledge,--waiver, admission-of~~
 25 ~~service, notice-of-appearance, or-other-instrument-that--the~~

attorney-in-fact--considers-useful-for-the-accomplishment-of
any-of-the-purposes-enumerated-in-this-section;

{vi}-to-submit-to-arbitration; settle;--and--propose--or
accept-a-compromise-with-respect-to-any-controversy-or-claim
that--affects--the-administration-of-the-fund; in-any-one-of
which-the-principal-has-or-claims-to-have-an-interest-and-to
do-any-and-all-acts-that-the-attorney-in-fact--considers--to
be-desirable-or-necessary-in-effectuating-the-compromise;

{vii}-to--hire;--discharge; and-compensate-any-attorney;
accountant; expert-witness;--or--other--assistant--when--the
attorney-in-fact--considers--that-action-to-be-desirable-for
the-proper-execution-by-the-attorney-in-fact-of-any--of--the
powers--described--in--this--section--and-for-the-keeping-of
needed-records;

{viii}{6} to transfer any--part--or--all--of--any an
interest that of the principal may-have in any-interests--in
real estate property, stocks, bonds, bank accounts with
financial institutions, insurance, and any other assets--of
any-kind--and--nature property to the trustee of any a
revocable trust created by the principal as grantor settlor.

{b}-in-general-and-in-addition-to-all-the-specific--acts
listed-in-this-section; to-do-any-other-acts-with-respect-to
the-administration-of-a-trust; probate-estate; guardianship;
conservatorship;--escrow;--custodianship;--or--other-fund-in
which-the-principal-has-or-claims-to-have-an-interest--as--a

beneficiary.

{2}--For--the--purposes--of-subsection-{1};--"fund"--means
any-trust; probate--estate;--guardianship;--conservatorship;
escrow;--custodianship;--or--any--other--fund--in--which-the
principal-has-or-claims-to-have-an-interest.

{3}--All--powers---described---in---this---section---are
exercisable--equally--with--respect-to-the-administration-or
disposition-of--any--trust;--probate--estate;--guardianship;
conservatorship;--escrow;--custodianship;--or--other-fund-in
which-the-principal-is-interested-at-the-giving-of-the-power
of-attorney-or-becomes--interested--after--that--time--as--a
beneficiary; whether-located-in-Montana-or-elsewhere."

Section 124. Section 72-31-211, MCA, is amended to
read:

"72-31-211. Claims Construction of power relating to
claims and litigation. {1} In a statutory short--form power
of attorney, the language conferring-general-authority with
respect to claims and litigation means--that--the--principal
authorizes-the-attorney-in-fact empowers the agent to:

{a}{1} to assert and prosecute before any a court; or
administrative board;--department;--commissioner;--or--other
tribunal--any-cause-of-action; agency a claim, counterclaim,
or offset, or defense; that-the-principal-has-or-claims--to
have and defend against any an individual, partnership;
association; corporation a legal entity, or government, or

1 other--person--or--instrumentality, including,--by--way--of
 2 illustration--and--not--of--restriction, power-to-sue-for-the
 3 recovery-of-land-or-of-any suits to recover property or
 4 other thing of value, for-the-recovery-of to recover damages
 5 sustained by the principal in--any--manner, for--the
 6 elimination-or-modification-of to eliminate or modify tax
 7 liability, for or to seek an injunction, for specific
 8 performance, or for-any other relief;

9 {b}{2} to bring an action of--interpleader--or--other
 10 action to determine adverse claims, to intervene or
 11 interplead in any-action-or-proceeding litigation, and to
 12 act in-any-litigation as amicus curiae;

13 {c}{3} in connection with any-action-or-proceeding-or
 14 controversy-at-law--or--otherwise,--to--apply--for--and,--if
 15 possible litigation, procure a---libel---judgment, an
 16 attachment, a garnishment, libel, an order of arrest, or
 17 other preliminary, provisional, or intermediate relief and
 18 to-resort-to-and-to-utilize-in-all-ways-permitted-by-law-any
 19 use an available procedure for---the---effectuation---or
 20 satisfaction--of-the to effect or satisfy a judgment, order,
 21 or decree obtained;

22 {d}{4} in connection with any-action-or-proceeding,--at
 23 law--or--otherwise litigation, to perform any lawful act that
 24 the--principal--might--perform, including,--by--way--of
 25 illustration--and--not--of--restriction, acceptance of tender,

1 offer of judgment, admission of any facts, submission of any
 2 a controversy on an agreed statement of facts, and consent
 3 to examination before trial, and generally-to-bind binding
 4 the principal in the--conduct--of--any litigation or
 5 controversy-as-seems-desirable-to-the-attorney-in-fact;

6 {e}{5} to submit to arbitration, settle, and propose or
 7 accept a compromise with respect to any a claim existing-in
 8 favor-of-or-against-the-principal or any litigation to-which
 9 the-principal-is, may-become, or may-be-designated-a-party;

10 {f}{6} to waive the issuance and service of a--summons,
 11 citation,--or--other process upon the principal; to accept
 12 service of process; to appear for the principal; to
 13 designate persons upon whom process directed to the
 14 principal may be served; to execute and file or deliver
 15 stipulations on the principal's behalf; to verify
 16 pleadings; to-appeal-to seek appellate tribunals review;
 17 to procure and give surety and indemnity bonds at-the-times
 18 and-to-the-extent-the-attorney-in-fact--considers--desirable
 19 or--necessary;--to contract and pay for the preparation and
 20 printing of records and briefs; or--to and receive, and
 21 execute, and file or deliver any a consent, waiver, release,
 22 confession of judgment, satisfaction of judgment, notice,
 23 agreement, or other instrument that--the--attorney-in-fact
 24 considers--desirable--or--necessary in connection with the
 25 prosecution, settlement, or defense of any a claim by or

1 against--the--principal--or--of--any litigation to which the
 2 principal is, may become, or may be designated a party;
 3 {g}(7) to appear--for,--represent,--and act for the
 4 principal with respect to bankruptcy or insolvency
 5 proceedings, whether voluntary or involuntary, whether of
 6 concerning the principal or of some other person, with
 7 respect to any a reorganization proceeding or with respect
 8 to any a receivership or application for the appointment of
 9 a receiver or trustee that in--any--way affects any an
 10 interest of the principal in any real property, bond, share,
 11 commodity interest, tangible--personal--property, or other
 12 thing of value; and
 13 {h}--to--hire,--discharge,--and compensate any attorney,
 14 accountant, expert witness, or other--assistant--when--the
 15 attorney in fact--considers--that action to be desirable for
 16 the proper execution of any of the powers described in--this
 17 section;
 18 {i}(8) to pay,--from--funds--in--the--control--of--the
 19 attorney in fact--or for the account of the principal, any a
 20 judgment against the principal or any a settlement that may
 21 be made in connection with any transaction enumerated in
 22 this section, to litigation and receive and conserve any
 23 money or other things thing of value paid in settlement of
 24 or as proceeds of one or more of the transactions enumerated
 25 in this--section,--and--to--receive,--endorse,--and--deposit

1 checks, and
 2 {j}--in general and in addition to all the specific acts
 3 listed in--this section, to do any other acts in connection
 4 with any claim by or against the principal or with
 5 litigation to which the principal is, may become, or may be
 6 designated a party.
 7 {2}--All powers---described---in---this---section---are
 8 exercisable---equally---with--respect--to--any a claim or
 9 litigation existing at the giving of the power of attorney
 10 or arising after that time, whether arising in Montana or
 11 elsewhere."
 12 Section 125. Section 72-31-212, MCA, is amended to
 13 read:
 14 "72-31-212. Family Construction of power relating to
 15 personal and family maintenance. {i} In a statutory short
 16 form power of attorney, the language conferring--general
 17 authority granting power with respect to personal and family
 18 maintenance means---that---the--principal--authorizes--the
 19 attorney in fact empowers the agent to:
 20 {a}(1) to do all the acts necessary for maintaining to
 21 maintain the customary standard of living of the principal
 22 and the principal's spouse, children, and other dependents
 23 individuals customarily or legally entitled to be supported
 24 by the principal, including, by way of illustration and not
 25 of restriction, power to provide providing living quarters

by purchase, lease, or other contract or ~~by payment of~~
~~paying~~ the operating costs, including interest, amortization
 payments, repairs, and taxes, of on premises owned by the
 principal and occupied by ~~the principal's family or~~
~~dependents~~ those individuals;

(2) to provide for the individuals described in
 subsection (1) normal domestic help ~~for the operation of the~~
 household; ~~to provide~~ usual vacations and usual travel
 expenses; ~~to provide usual educational facilities~~; and to
 provide funds for ~~all the current living costs of the~~
~~spouse, children, and other dependents, including, among~~
~~other things,~~ shelter, clothing, food, appropriate
education, and incidentals other current living costs;

(b)(3) to pay for the individuals described in
 subsection (1) necessary medical, dental, and surgical care,
 hospitalization, and custodial care ~~for the spouse,~~
~~children, and other dependents of the principal~~;

(c)(4) to continue whatever any provision has been made
 by the principal, ~~either prior to or after the execution of~~
~~the power of attorney,~~ for the principal's spouse, children,
 and ~~other dependents with respect to~~ individuals described
in subsection (1) for automobiles or other means of
 transportation, including, ~~by way of illustration but not of~~
~~restriction,~~ ~~power to license,~~ ~~insure,~~ ~~and replace any~~
~~automobiles owned by the principal and customarily used by~~

~~the spouse, children, or other dependents~~ registering,
licensing, insuring, and replacing them;

(d)(5) ~~to continue whatever~~ maintain or open charge
 accounts ~~have been operated by the principal prior to the~~
~~execution of the power of attorney or after execution of the~~
~~power of attorney~~ for the convenience of the principal's
 spouse, children, or other dependents, ~~to~~ individuals
described in subsection (1) and open new accounts the
 attorney-in-fact agent considers to be desirable for the
 accomplishment of any of the purposes enumerated in this
 section to accomplish a lawful purpose; and to pay the items
 charged on those accounts by any person authorized or
 permitted by the principal to make charges prior to the
 execution of the power of attorney;

(e)(6) to continue payments incidental to the
 membership or affiliation of the principal in a church,
 club, society, order, or other organization or to continue
 contributions to those organizations;

(f) ~~to demand, receive, or obtain by action,~~
~~proceeding, or otherwise any money or other thing of value~~
~~to which the principal is, may become, or may claim to be~~
~~entitled to as salary, wages, commission, or other~~
~~remuneration for services performed, as a dividend or~~
~~distribution upon any stock, or as interest or principal~~
~~upon any indebtedness or any periodic distribution of~~

profits--from--any--partnership--or--business--in--which--the
principal--has--or--claims--an--interest--and--to--endorse,--collect,
or--otherwise--realize--upon--any--instrument--for--the--payment
received;

{g}--to--use--any--asset--of--the--principal--for--the
performance--of--the--powers--enumerated--in--this--section,
including,--by--way--of--illustration--and--not--of--restriction,
power--to--draw--money--by--check--or--otherwise--from--any--bank
deposit--of--the--principal,--to--sell--any--interest--in--real
property,--bonds,--shares,--commodity--interests,--tangible
personal--property,--or--other--assets--of--the--principal,--and--to
borrow--money--and--pledge--as--security--for--a--loan,--any--asset,
including--insurance,--that--belongs--to--the--principal;

{h}--to--execute,--acknowledge,--verify,--seal,--file,--and
deliver--any--application,--consent,--petition,--notice,--release,
waiver,--agreement,--or--other--instrument--that--the
attorney--in--fact--considers--useful--for--the--accomplishment--of
any--or--the--purposes--enumerated--in--this--section,

{i}--to--hire,--discharge,--and--compensate--any--attorney,
accountant,--or--other--assistant--when--the--attorney--in--fact
considers--that--action--to--be--desirable--for--the--proper
execution--by--any--of--the--powers--described--in--this--section--and
for--the--keeping--of--needed--records,--and

{j}--in--general--and--in--addition--to--all--the--specific--acts
listed--in--this--section,--to--do--any--other--acts--for--the--wellfare

of--the--spouse,--children,--or--other--dependents--or--for--the
preservation--and--maintenance--of--the--other--personal
relationships--of--the--principal--to--parents,--relatives,
friends,--and--organizations--as--are--appropriate;

{2}--All--powers--described--in--this--section--are
exercisable--equally--whether--the--acts--required--for--their
execution--relate--to--real--or--personal--property--owned--by--the
principal--at--the--giving--of--the--power--of--attorney--or--acquired
after--that--time,--whether--those--acts--are--performable--in
Montana--or--elsewhere."

NEW SECTION. **Section 126.** Construction of power
relating to benefits from social security, medicare,
medicaid, or other governmental programs or from military
service. In a statutory power of attorney, the language
granting power with respect to benefits from social
security, medicare, medicaid or other governmental programs
or from civil or military service empowers the agent to:

{1} execute vouchers in the name of the principal for
allowances and reimbursements payable by the United States
or a foreign government or by a state or subdivision of a
state to the principal, including allowances and
reimbursements for transportation of the individuals
described in 72-31-212(1), and for shipment of their
household effects;

{2} take possession and order the removal and shipment

1 of property of the principal from a post, warehouse, depot,
2 dock, or other place of storage or safekeeping, either
3 governmental or private, and execute and deliver a release,
4 voucher, receipt, bill of lading, shipping ticket,
5 certificate, or other instrument for that purpose;

6 (3) prepare, file, and prosecute a claim of the
7 principal to a benefit or assistance, financial or
8 otherwise, to which the principal claims to be entitled,
9 under a statute or governmental regulation;

10 (4) prosecute, defend, submit to arbitration, settle,
11 and propose or accept a compromise with respect to any
12 benefits the principal may be entitled to receive; and

13 (5) receive the financial proceeds of a claim of the
14 type described in this section and conserve, invest,
15 disburse, or use anything received for a lawful purpose.

16 NEW SECTION. **Section 127.** Construction of power
17 relating to retirement plan transactions. In a statutory
18 power of attorney, the language granting power with respect
19 to retirement plan transactions empowers the agent to:

20 (1) select payment options under any retirement plan in
21 which the principal participates, including plans for
22 self-employed individuals;

23 (2) designate beneficiaries under those plans and
24 change existing designations;

25 (3) make voluntary contributions to those plans;

1 (4) exercise the investment powers available under any
2 self-directed retirement plan;

3 (5) make "rollovers" of plan benefits into other
4 retirement plans;

5 (6) if authorized by the plan, borrow from, sell assets
6 to, and purchase assets from the plan; and

7 (7) waive the right of the principal to be a
8 beneficiary of a joint or survivor annuity if the principal
9 is a spouse who is not employed.

10 NEW SECTION. **Section 128.** Construction of power
11 relating to tax matters. In a statutory power of attorney,
12 the language granting power with respect to tax matters
13 empowers the agent to:

14 (1) prepare, sign, and file federal, state, local, and
15 foreign income, gift, payroll, Federal Insurance
16 Contributions Act, and other tax returns; claims for
17 refunds; requests for extension of time; petitions regarding
18 tax matters; and any other tax-related documents, including
19 receipts, offers, waivers, consents (including consents and
20 agreements under Internal Revenue Code section 2032A or any
21 successor section), closing agreements, and any power of
22 attorney required by the internal revenue service or other
23 taxing authority with respect to a tax year upon which the
24 statute of limitations has not run and the following 25 tax
25 years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority.

NEW SECTION. Section 129. Existing interests -- foreign interests. The powers described in this part are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the power of attorney is executed in this state.

NEW SECTION. Section 130. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

NEW SECTION. Section 131. Application of [sections 103 through 112]. [Sections 103 through 112] apply to registrations of securities in beneficiary form made before or after [the effective date of this act], by decedents

dying on or after [the effective date of this act].

SECTION 132. SECTION 32-3-501, MCA, IS AMENDED TO READ:

"32-3-501. Shares. (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for, and transferred in such a manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

(4) This chapter does not restrict or prohibit the issuance of shares in any type of account described in [sections 84 through 102]. However, the party, the beneficiary, or the agent of an account may not vote, obtain loans, hold office, or be required to pay an entrance or membership fee unless the party, beneficiary, or agent is a member of the credit union."

NEW SECTION. Section 133. Codification instruction. (1) [Section 21] is intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [section 21].

(2) [Section 34] is intended to be codified as an integral part of Title 72, chapter 2, part 3, and the provisions of Title 72, chapter 2, part 3, apply to [section 34].

(3) [Section 47] is intended to be codified as an integral part of Title 72, chapter 2, part 5, and the

1 provisions of Title 72, chapter 2, part 5, apply to [section
2 47].

3 (4) [Section 56] is intended to be codified as an
4 integral part of Title 72, chapter 2, part 8, and the
5 provisions of Title 72, chapter 2, part 8, apply to [section
6 56].

7 (5) [Sections 61 through 72 and 83 through 112] are
8 intended to be codified as an integral part of Title 72,
9 chapter 1, and chapter 2, parts 1 through 8, and the
10 provisions of Title 72, chapter 1, and chapter 2, parts 1
11 through 8, apply to [sections 61 through 72 and 83 through
12 112].

13 (6) [Sections 114, 115, 119, and 126 through 130] are
14 intended to be codified as an integral part of Title 72,
15 chapter 31, part 2, and the provisions of Title 72, chapter
16 31, part 2, apply to [sections 114, 115, 119, and 126
17 through 130].

18 **NEW SECTION. Section 134. Repealer.** Sections 32-1-442,
19 32-1-443, 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303,
20 72-2-501, 72-2-503, 72-2-511, 72-10-101, 72-10-102,
21 72-10-103, 72-10-104, 72-10-105, 72-10-106, 72-10-107,
22 72-10-108, 72-10-109, 72-10-110, 72-10-111, 72-10-112,
23 72-10-113, 72-10-201, 72-10-202, 72-10-203, 72-10-204,
24 72-11-105, 72-11-201, 72-11-202, 72-11-203, 72-11-204,
25 72-11-205, 72-11-301, 72-11-302, 72-11-303, 72-11-304,

1 72-11-305, 72-11-306, 72-11-307, 72-11-308, 72-11-309,
2 72-11-310, 72-11-311, 72-11-312, 72-11-313, 72-11-314,
3 72-11-315, 72-11-316, 72-11-317, 72-11-318, 72-11-319,
4 72-11-320, 72-11-321, 72-11-322, 72-11-331, 72-11-332,
5 72-11-333, 72-12-104, 72-12-201, 72-12-202, 72-12-203,
6 72-12-204, 72-12-205, 72-12-301, 72-12-302, 72-12-501,
7 72-12-502, 72-12-503, 72-12-601, 72-12-602, 72-12-603,
8 72-12-604, 72-12-605, 72-12-701, 72-12-702, 72-12-703,
9 72-12-704, 72-12-801, 72-12-802, 72-12-803, 72-12-901,
10 72-12-1001, 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101,
11 72-13-102, 72-13-103, 72-13-201, 72-13-202, 72-13-203,
12 72-13-301, 72-31-209, 72-31-210, 72-31-213, 72-31-214,
13 72-31-215, and 72-31-216, MCA, are repealed.

14 **NEW SECTION. Section 135. Retroactive applicability.**
15 The amendment to 72-36-206(1) applies retroactively, within
16 the meaning of 1-2-109, to conveyances recorded on or before
17 October 1, 1989. The amendment also applies to conveyances
18 recorded after October 1, 1989.

19 **NEW SECTION. Section 136. Saving clause.** [This act]
20 does not affect rights and duties that matured, penalties
21 that were incurred, or proceedings that were begun before
22 [the effective date of this act].

-End-