

## HOUSE BILL NO. 37

INTRODUCED BY ELLINGSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE STATUTE OF LIMITATIONS EXTENSION FOR A PERSON INCARCERATED ON A CRIMINAL CHARGE OR UNDER A SENTENCE FOR A TERM LESS THAN LIFE; AMENDING SECTION 27-2-401, MCA; AND PROVIDING FOR RETROACTIVE APPLICABILITY."

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

**Section 1.** Section 27-2-401, MCA, is amended to read:

**"27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor, or seriously mentally ill, or imprisoned on a criminal charge or under a sentence for a term less than for life, the time of ~~such~~ the disability is not a part of the time ~~limited~~ limit for commencing the action. However, the time ~~so limited~~ limit cannot be extended more than 5 years by ~~any such~~ the disability ~~except minority of serious mental illness.~~

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded was under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of ~~such~~ the disability, maintain an action to recover damages. In ~~such~~ the action, ~~he~~ the person may recover ~~such~~ the sum or the value of ~~such~~ the property ~~as he~~ that the person would have received upon the final distribution of the estate if an action had been seasonably commenced by the personal representative.

(3) ~~No~~ A person may ~~not~~ avail himself of claim a disability unless it existed when ~~his~~ the right of action or entry accrued.

(4) When ~~two or more~~ both disabilities referred to in subsection (1) coexist at the time the right of action or entry accrues, the limitation does not attach until ~~all~~ both are removed."

**NEW SECTION. Section 2. Applicability -- retroactive effect.** [Section 1] applies retroactively, within the meaning of 1-2-109, as provided in this section. If a cause of action accrued before [the

1 effective date of this act} to a person incarcerated on a criminal charge or under a sentence for a term less  
2 than life, the person must bring an action by the earlier of the following dates:

3 (1) the last day on which the action could have been brought under 27-2-401 as that section read  
4 prior to [the effective date of this act]; or

5 (2) the last day on which an action can be brought under 27-2-401, as amended by [section 1],  
6 for a cause of action that accrued on [the effective date of this act].

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