

SENATE BILL NO. 132

INTRODUCED BY

*Bishop* *Hallgren*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CONCERNING ESTATES AND TRUSTS; REMOVING THE STATUTE OF LIMITATIONS OF 1 YEAR AFTER LETTERS TESTAMENTARY OR OF ADMINISTRATION ARE ISSUED; REVISING THE TREATMENT OF CERTAIN TRANSFERS FOR PROBATE PURPOSES; CLARIFYING THE AUGMENTED ESTATE; CLARIFYING THE DISTRIBUTION OF LAPSED DEVISES; CLARIFYING THE APPLICATION OF SURVIVAL STATUTES; EXCLUDING JOINT ACCOUNTS FROM TRANSACTIONS INVOLVING BENEFICIARIES FOR WHOM STATUTORY SUBSTITUTES ARE PROVIDED IN CASE OF THE DEATH OF THE BENEFICIARY; CLARIFYING THE PASSING OF PROPERTY IN CASES IN WHICH A FUTURE INTEREST IS CREATED BY POWER OF APPOINTMENT; CLARIFYING THE APPLICATION AND EFFECT OF A DISCLAIMER; CLARIFYING THE APPLICATION OF HONORARY TRUSTS; CLARIFYING DISTRIBUTION BY REPRESENTATION; CLARIFYING TRANSFERS MADE IN CONTEMPLATION OF DEATH; CLARIFYING THE APPLICATION OF THE TERMS OF A MULTIPLE-PERSON ACCOUNT; CLARIFYING PROVISIONS GOVERNING REVOCABLE TRUSTS; CLARIFYING A TRUSTEE'S LIABILITY UNDER A REVOCABLE TRUST; AND AMENDING SECTIONS 27-2-404, 72-1-103, 72-2-116, 72-2-221, 72-2-222, 72-2-223, 72-2-224, 72-2-225, 72-2-227, 72-2-331, 72-2-332, 72-2-613, 72-2-712, 72-2-716, 72-2-717, 72-2-719, 72-2-721, 72-2-811, 72-2-813, 72-2-814, 72-2-1017, 72-3-102, 72-3-122, 72-3-131, 72-3-132, 72-3-317, 72-6-201, 72-6-213, 72-6-226, 72-16-301, 72-33-701, AND 72-34-513, MCA."

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

Section 1. Section 27-2-404, MCA, is amended to read:

"27-2-404. When a party dies before action commenced. (1) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof of the action and the cause of action survives, an action may be commenced by his the deceased's representatives after the expiration of that time and within 1 year from his death.

~~(2) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced~~

1 ~~against his representatives after the expiration of that time and within 1 year after the issuing of letters~~  
 2 ~~testamentary or of administration. If a person against whom a cause of action exists dies without the state,~~  
 3 ~~the time which elapses between his death and the expiration of 1 year after the issuing within the state of~~  
 4 ~~letters testamentary or letters of administration is not a part of the time limited for the commencement of~~  
 5 ~~an action therefor against his executor or administrator."~~

6

7 **Section 2.** Section 72-1-103, MCA, is amended to read:

8 **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent  
 9 chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise  
 10 requires, in chapters 1 through 5, the following definitions apply:

11 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an  
 12 individual authorized to make decisions concerning another's health care, and an individual authorized to  
 13 make decisions for another under a natural death act.

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

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

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

19 (b) a charitable trust, includes any person entitled to enforce the trust;

20 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

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

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

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

25 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a  
 26 trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee, or taker in default of a  
 27 power of appointment; and a person in whose favor a power of attorney or a power held in any individual,  
 28 fiduciary, or representative capacity is exercised.

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

30 (a) an insurance or annuity policy, an account with POD designation, or a security registered in

1 beneficiary form (TOD);

2 (b) a pension, profit-sharing, retirement, or similar benefit plan; or

3 (c) any other nonprobate transfer at death.

4 (5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate  
5 succession from the parent whose relationship is involved and excludes a person who is only a stepchild,  
6 a foster child, a grandchild, or any more remote descendant.

7 (6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of  
8 the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the  
9 estate that arise at or after the death of the decedent or after the appointment of a conservator, including  
10 funeral expenses and expenses of administration.

11 (b) The term does not include estate or inheritance taxes or demands or disputes regarding title of  
12 a decedent or protected person to specific assets alleged to be included in the estate.

13 (7) "Clerk" or "clerk of court" means the clerk of the district court.

14 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected  
15 person.

16 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs  
17 of decedents.

18 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with  
19 the relationship of parent and child at each generation being determined by the definition of child and parent  
20 contained in this section.

21 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property  
22 and when used as a verb means to dispose of real or personal property by will.

23 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3,  
24 in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or  
25 trustee is the devisee and the beneficiaries are not devisees.

26 (13) "Disability" means cause for a protective order as described by 72-5-409.

27 (14) "Distributee" means any person who has received property of a decedent from the decedent's  
28 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only  
29 to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of  
30 a testamentary trust to whom the trustee has distributed property received from a personal representative

1 is a distributee of the personal representative. For purposes of this provision, "testamentary trustee"  
2 includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

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

5 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

6 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

7 (18) "Foreign personal representative" means a personal representative appointed by another  
8 jurisdiction.

9 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested  
10 persons.

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

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

17 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and  
18 the state, who are entitled under the statutes of intestate succession to the property of a decedent.

19 (23) "Incapacitated person" has the meaning provided in 72-5-101.

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

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

28 (26) "Issue" of a person means a descendant as defined in subsection (10).

29 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under  
30 circumstances that entitle one or more to the whole of the property on the death of the other or others but

1 excludes forms of co-ownership registration in which the underlying ownership of each party is in  
2 proportion to that party's contribution.

3 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

4 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and  
5 letters of conservatorship.

6 (30) "Minor" means a person who is under 18 years of age.

7 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as  
8 security.

9 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the  
10 time of death.

11 (33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture,  
12 association, government or governmental subdivision or agency, or any other legal or commercial entity.

13 (34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died  
14 without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose  
15 relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

16 (35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency  
17 or subdivision, or any other person authorized or obligated by law or a governing instrument to make  
18 payments.

19 (36) "Person" means an individual, a corporation, an organization, or other legal entity.

20 (37) "Personal representative" includes executor, administrator, successor personal representative,  
21 special administrator, and persons who perform substantially the same function under the law governing  
22 their status. "General personal representative" excludes special administrator.

23 (38) "Petition" means a written request to the court for an order after notice.

24 (39) "Proceeding" includes action at law and suit in equity.

25 (40) "Property" includes both real and personal property or any interest in that property and means  
26 anything that may be the subject of ownership.

27 (41) "Protected person" has the meaning provided in 72-5-101.

28 (42) "Protective proceeding" has the meaning provided in 72-5-101.

29 (43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of  
30 indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out

1 of production under such a title or lease; collateral trust certificate; transferable share; voting trust  
2 certificate; in general, any interest or instrument commonly known as a security; any certificate of interest  
3 or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant  
4 or right to subscribe to or purchase any of the foregoing.

5 (44) "Settlement", in reference to a decedent's estate, includes the full process of administration,  
6 distribution, and closing.

7 (45) "Special administrator" means a personal representative as described by chapter 3, part 7.

8 (46) "State" means a state of the United States, the District of Columbia, the Commonwealth of  
9 Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

10 (47) "Successor personal representative" means a personal representative, other than a special  
11 administrator, who is appointed to succeed a previously appointed personal representative.

12 (48) "Successors" means persons, other than creditors, who are entitled to property of a decedent  
13 under the decedent's will or chapters 1 through 5.

14 (49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

15 (50) "Survive", ~~except for purposes of Title 72, chapter 6, part 3,~~ means that an individual has  
16 neither predeceased an event, including the death of another individual, nor is considered to have  
17 predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives",  
18 "survived", "survivor", and "surviving".

19 (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

20 (52) "Testator" includes an individual of either sex.

21 (53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and  
22 however created. The term also includes a trust created or determined by judgment or decree under which  
23 the trust is to be administered in the manner of an express trust. The term excludes other constructive  
24 trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined  
25 in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this  
26 title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting  
27 trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends,  
28 interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under  
29 which a person is nominee or escrowee for another.

30 (54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or

1 confirmed by court.

2 (55) "Ward" means an individual described in 72-5-101.

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

6

7 **Section 3.** Section 72-2-116, MCA, is amended to read:

8 **"72-2-116. Representation.** (1) As used in this section, the following definitions apply:

9 (a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant,  
10 parent, or grandparent who either predeceased the decedent or is considered to have predeceased the  
11 decedent under 72-2-114.

12 (b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is  
13 considered to have predeceased the decedent under 72-2-114.

14 (2) (a) If, under 72-2-113(1), a decedent's intestate estate or a part of the intestate estate passes  
15 by representation to the decedent's descendants, the estate or part of the estate ~~is divided into decedent's~~  
16 ~~descendants and the estate or part of the estate~~ is divided into as many equal shares as there are:

17 (i) surviving descendants in the generation nearest to the decedent that contains one or more  
18 surviving descendants; and

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

20 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
21 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
22 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
23 surviving descendants.

24 (3) (a) If, under 72-2-113(3) or (4), a decedent's intestate estate or a part of the intestate estate  
25 passes by representation to the descendants of the decedent's deceased parents or either of them or to  
26 the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate  
27 or part of the estate is divided into as many equal shares as there are:

28 (i) surviving descendants in the generation nearest the deceased parents or either of them or  
29 nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

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

1 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
 2 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
 3 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
 4 surviving descendants."

5

6 **Section 4.** Section 72-2-221, MCA, is amended to read:

7 **"72-2-221. Elective share.** (1) The surviving spouse of a decedent who dies domiciled in this state  
 8 has a right of election, under the limitations and conditions stated in this part, to take an elective-share  
 9 amount equal to the value of the elective-share percentage of the augmented estate, determined by the  
 10 length of time the spouse and the decedent were married to each other, in accordance with the following  
 11 schedule:

12 If the decedent and the 13 spouse were married to 14 each other:	The elective-share percentage is:
15 Less than 1 year	supplemental amount only
16 1 year but less than 2 years	3% of the augmented estate
17 2 years but less than 3 years	6% of the augmented estate
18 3 years but less than 4 years	9% of the augmented estate
19 4 years but less than 5 years	12% of the augmented estate
20 5 years but less than 6 years	15% of the augmented estate
21 6 years but less than 7 years	18% of the augmented estate
22 7 years but less than 8 years	21% of the augmented estate
23 8 years but less than 9 years	24% of the augmented estate
24 9 years but less than 10 years	27% of the augmented estate
25 10 years but less than 11 years	30% of the augmented estate
26 11 years but less than 12 years	34% of the augmented estate
27 12 years but less than 13 years	38% of the augmented estate
28 13 years but less than 14 years	42% of the augmented estate
29 14 years but less than 15 years	46% of the augmented estate
30 15 years or more	50% of the augmented estate



1 (2) If the sum of the amounts described in ~~72-2-222(2)(c), (2)(d), and (2)(e)~~ and 72-2-227(1)(a), and  
2 ~~(1)(e)~~ and that part of the elective-share amount payable from the decedent's probate estate and  
3 ~~reclaimable estates~~ nonprobate transfers to others under 72-2-227(2) and (3) is less than \$50,000, the  
4 surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of  
5 the amounts described in those sections. The supplemental elective-share amount is payable from the  
6 decedent's probate estate and from recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers  
7 to others in the order of priority set forth in 72-2-227(2) and (3).

8 (3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving  
9 spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but  
10 are in addition to the elective-share and supplemental elective-share amounts.

11 ~~(3)~~(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state  
12 to take an elective share in property in this state is governed by the law of the decedent's domicile at  
13 death."

14  
15 **Section 5.** Section 72-2-222, MCA, is amended to read:

16 **"72-2-222. Augmented estate.** (1) (a) As used in this section, the following definitions apply:

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

19 (j) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to  
20 persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors,  
21 estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

22 (k) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the  
23 fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and  
24 the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who  
25 survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

26 (l) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of  
27 the decedent to the decedent's surviving spouse.

28 (m) ~~(iv)~~ (iv) "Nonadverse party" means a person who does not have a substantial beneficial interest in  
29 the trust or other property arrangement that would be adversely affected by the exercise or nonexercise  
30 of the power that person possesses respecting the trust or other property arrangement. A person having

1 a general power of appointment over property is considered to have a beneficial interest in the property.

2 (v) "Power" or "power of appointment" includes a power to designate the beneficiary of a  
3 beneficiary designation.

4 ~~(iii)~~(vi) "Presently exercisable general power of appointment" means a power of appointment under  
5 which, at the time in question, the decedent, ~~by an~~ whether or not the decedent then had the capacity to  
6 exercise of the power, ~~held a power could have created an~~ to create a present or future interest, ~~present~~  
7 or future, in the decedent, ~~or the decedent's creditors, the decedent's estate, or the creditors of the~~  
8 decedent's estate and includes a power to revoke or invade the principal of a trust or other property  
9 arrangement.

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

12 (viii) "Property" includes values subject to a beneficiary designation.

13 ~~(v)~~(ix) "Right to income" includes a right to payments under ~~an~~ a commercial or private annuity,  
14 an annuity trust, a unitrust, or a similar contractual arrangement.

15 (x) "Transfer", as it relates to a transfer by or of the decedent, includes:

16 (A) an exercise or release of a presently exercisable general power of appointment held by the  
17 decedent;

18 (B) a lapse at death of a presently exercisable general power of appointment held by the decedent;  
19 and

20 (C) an exercise, release, or lapse of a general power of appointment that the decedent created in  
21 the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a  
22 nonadverse party.

23 ~~(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of~~  
24 ~~property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted~~  
25 ~~value of any present or future interest then held by the surviving spouse and the commuted value of~~  
26 ~~amounts payable to the surviving spouse after the decedent's death under any trust, life insurance~~  
27 ~~settlement option, annuity contract, public or private pension, disability compensation, death benefit or~~  
28 ~~retirement plan, or any similar arrangement, exclusive of the federal social security system.~~

29 (b)(i) As used in subsections subsection (2)(b)(iii)(A), and (2)(b)(iv), "transfer" includes an exercise  
30 or release of a power of appointment but does not include a lapse of a power of appointment "termination":

1 (A) with respect to a right or interest in property, means that the right or interest terminated by the  
 2 terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

3 (B) with respect to a power over property, means that the power terminated by exercise, release,  
 4 lapse, or default or otherwise.

5 (ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power  
 6 terminated by exercise or release, but not by lapse or by default or otherwise.

7 (2) The augmented estate consists of the sum of:

8 (a) the value of the decedent's probate estate, reduced by funeral and administration expenses,  
 9 homestead allowance, family allowances ~~and exemptions~~, exempt property, and enforceable claims;

10 (b) the value of the decedent's ~~reclaimable estate~~ nonprobate transfers to other, which ~~is~~ are  
 11 composed of all property, whether real or personal, movable or immovable, wherever situated, not included  
 12 in the decedent's probate estate, of any of the following types:

13 (i) ~~property, to the extent the passing of the principal thereof to or for the benefit of any person,~~  
 14 ~~other than the decedent's surviving spouse, was subject to~~ of any of the following types that passed  
 15 outside probate at the decedent's death:

16 (A) property over which the decedent alone, immediately before death, held a presently exercisable  
 17 general power of appointment held by the decedent alone, if the decedent held that power immediately  
 18 before death or if and to the extent the decedent, while married to the surviving spouse and during the  
 19 2-year period preceding the decedent's death, released that power or exercised that power in favor of any  
 20 person other than the decedent or the decedent's estate, spouse, or surviving spouse; the amount included  
 21 is the value of the property subject to the power, to the extent that the property was passed at the  
 22 decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person  
 23 other than the decedent's estate or surviving spouse;

24 ~~(ii)(B) the decedent's fractional interest in property, to the extent of the decedent's unilaterally~~  
 25 ~~severable interest therein, held by the decedent and any other person, except the decedent's surviving~~  
 26 ~~spouse, in joint tenancy with the right of survivorship, if the decedent held that interest immediately before~~  
 27 ~~death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year~~  
 28 ~~period preceding the decedent's death, transferred that interest to any person the amount included is the~~  
 29 value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of  
 30 survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

1 (C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership  
 2 registration with the right of survivorship; the amount included is the value of the decedent's ownership  
 3 interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the  
 4 benefit of any person other than the decedent's estate or surviving spouse; or

5 ~~###(D)~~ proceeds of insurance, including accidental death benefits, on the life of the decedent  
 6 payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance  
 7 policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was  
 8 subject to immediately before death or if and to the extent that the decedent alone and immediately before  
 9 death held a presently exercisable general power of appointment held by the decedent alone immediately  
 10 before death or if and to the extent the decedent, while married to the surviving spouse and during the  
 11 2-year period preceding the decedent's death, transferred that policy to any person other than the  
 12 decedent's surviving spouse over the policy or its proceeds; and the amount included is the value of the  
 13 proceeds, to the extent that they were payable at the decedent's death to or for the benefit of any person  
 14 other than the decedent's estate or surviving spouse;

15 ~~(iv)(iii)~~ property transferred in any of the following forms by the decedent to any person other than  
 16 a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the  
 17 benefit of any person other than the surviving spouse, if the transfer is of any of the following types:

18 (A) any irrevocable transfer to the extent that in which the decedent retained at the time of or  
 19 during the 2-year period preceding death the right to the possession or enjoyment of, or right to the income  
 20 from, the property if and to the extent that the decedent's right terminated at or continued beyond the  
 21 decedent's death; the amount included is the value of the fraction of the property to which the decedent's  
 22 right related, to the extent that the fraction of the property was passed outside probate to or for the benefit  
 23 of any person other than the decedent's estate or surviving spouse; or

24 (B) any transfer to the extent that at the time of or during the 2-year period preceding the  
 25 decedent's death, in which the decedent created a power over the income or principal was subject to a  
 26 power of the transferred property, exercisable by the decedent alone or in conjunction with any other  
 27 person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, or  
 28 the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the  
 29 property subject to the power, to the extent that the power was exercisable at the decedent's death to or  
 30 for the benefit of any person other than the decedent's surviving spouse or to the extent that the property

- 1 subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise,  
 2 to or for the benefit of any person other than the decedent's estate or surviving spouse; and
- 3 (iii) property that passed during marriage and during the 2-year period preceding the decedent's  
 4 death as a result of a transfer by the decedent if the transfer was of any of the following types:
- 5 (A) any property that passed as a result of the termination of a right or interest in, or power over,  
 6 property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B),  
 7 (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the  
 8 amount included is the value of the property that would have been included under these subsections,  
 9 except that that property is valued at the time that the right, interest, or power terminated, and is included  
 10 only to the extent that the property passed upon termination to or for the benefit of any person other than  
 11 the decedent or the decedent's estate, spouse, or surviving spouse;
- 12 (B) any transfer of or relating to an insurance policy on the life of the decedent if the proceeds  
 13 would have been included in the augmented estate under subsection (2)(b)(i)(D) had the transfer not  
 14 occurred; the amount included is the value of the insurance proceeds to the extent that the proceeds were  
 15 payable at the decedent's death to or for the benefit of any person other than the decedent's estate or  
 16 surviving spouse; or
- 17 (C) any transfer of property, to the extent the decedent's contribution to it, as a percentage of the  
 18 whole, was made during the 2-year period preceding the decedent's death, by which the property is held  
 19 at the time of or during the 2-year period preceding the decedent's death by the decedent and another,  
 20 other than the decedent's surviving spouse, with right of survivorship; or
- 21 (D) any transfer not otherwise included in the augmented estate, made to or for the benefit of a  
 22 donee during the 2-year period preceding the decedent's death person other than the decedent's surviving  
 23 spouse; the amount included is the value of the transferred property to the extent that the aggregate  
 24 transfers to any one donee in either of the 2 years ~~exceed~~ exceeded \$10,000;
- 25 (c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are  
 26 composed of all property that passed outside probate at the decedent's death from the decedent to which  
 27 the surviving spouse succeeds by reason of the decedent's death, other than by homestead allowance,  
 28 exempt property, family allowance, testate succession, or intestate succession, including the proceeds of  
 29 insurance, including: accidental death benefits, on the life of the decedent and including benefits payable  
 30 under a retirement plan in which the decedent was a participant, exclusive of

1 (i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship,  
 2 to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

3 (ii) the decedent's ownership interest in property or accounts held in co-ownership registration with  
 4 the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse  
 5 as surviving co-owner; and

6 (iii) all other property that would have been included in the augmented estate under subsection  
 7 (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse,  
 8 surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding  
 9 property passing to the surviving spouse under the federal social security system; and

10 (d) except to the extent included in the augmented estate under subsection (2)(a) or (2)(c), the  
 11 value of:

12 (i) property that was owned by the decedent's surviving spouse at the decedent's death, reduced  
 13 by enforceable claims against that property or that spouse, plus the value of amounts including:

14 (A) the surviving spouse's fractional interest in property held in joint tenancy with the right of  
 15 survivorship;

16 (B) the surviving spouse's ownership interest in property or accounts held in co-ownership  
 17 registration with the right of survivorship; and

18 (C) property that passed to the surviving spouse by reason of the decedent's death, but not  
 19 including the spouse's right to homestead allowance, family allowance, exempt property, or payments  
 20 under the federal social security system; and

21 (ii) property that would have been includable included in the surviving spouse's reclaimable estate  
 22 nonprobate transfers to others, other than the spouse's fractional and ownership interests included in  
 23 subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse predeceased been the decedent. However, amounts  
 24 Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the  
 25 fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and  
 26 (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before  
 27 the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.  
 28 For purposes of this subsection (2)(d)(ii), proceeds of insurance that would have been includable included  
 29 in the surviving spouse's reclaimable estate nonprobate transfers to others under subsection (2)(b)(iii)  
 30 (2)(b)(i)(D) are not valued as if the surviving spouse were deceased. The value of property included under

1 this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property  
 2 and is reduced by enforceable claims against the surviving spouse.

3 ~~(3) Any transfer or exercise or release of a power of appointment~~ The value of any property is  
 4 excluded from the decedent's ~~reclaimable estate~~ nonprobate transfers to others:

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

7 (b) if ~~irrevocably made~~ the property was transferred with the written ~~consent or joinder of,~~ or if  
 8 the transfer was consented to in writing by, the surviving spouse.

9 (4) ~~Property is valued as of the decedent's death, but an irrevocable transfer of property during~~  
 10 ~~the 2 year period preceding the decedent's death that is included in the decedent's reclaimable estate under~~  
 11 ~~subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv) is valued as of the time of the transfer. If the terms of more~~  
 12 ~~than one~~ The value of property includes the commuted value of any present or future interest and the  
 13 commuted value of amounts payable under any trust, life insurance settlement option, annuity contract,  
 14 public or private pension, disability compensation, death benefit or retirement plan, or any similar  
 15 arrangement, exclusive of the federal social security system.

16 (5) In case of overlapping application to the same property of the provisions of subsection (2)(b)  
 17 apply, the property is included in the augmented estate under the provision ~~that yields~~ yielding the highest  
 18 value, but under any one, but only one, of the overlapping provisions if they all yield the same value. For  
 19 purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release  
 20 of a power of appointment.

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

30 (b) ~~The written notice of intention to file a petition for the elective share or that a petition for the~~

1 ~~elective share has been filed must be mailed to the payor's or other third party's main office or home by~~  
2 ~~certified mail, return receipt requested, or served upon the payor or other third party in the same manner~~  
3 ~~as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective~~  
4 ~~share or that a petition for the elective share has been filed, a payor or other third party may pay any~~  
5 ~~amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction~~  
6 ~~of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced,~~  
7 ~~to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the~~  
8 ~~county of the decedent's residence. The court shall hold the funds or item of property and, upon its~~  
9 ~~determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no~~  
10 ~~petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an~~  
11 ~~elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated~~  
12 ~~beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third~~  
13 ~~party from all claims for the value of amounts paid to or items of property transferred to or deposited with~~  
14 ~~the court.~~

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

18 ~~(6) (a) A person who purchases property from a recipient for value and without notice or who~~  
19 ~~receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation~~  
20 ~~is neither obligated under this part to return the payment, item of property, or benefit nor liable under this~~  
21 ~~part for the amount of the payment or the value of the item of property or benefit. However, a person who,~~  
22 ~~not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable~~  
23 ~~estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount~~  
24 ~~of the payment or the value of the item of property or benefit, as provided in 72-2-227.~~

25 ~~(b) If any section or part of any section of this part is preempted by federal law with respect to a~~  
26 ~~payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person~~  
27 ~~who, not for value, receives the payment, item of property, or other benefit is obligated to return that~~  
28 ~~payment, item of property, or benefit, or is personally liable for the amount of that payment or the value~~  
29 ~~of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled~~  
30 ~~to it were that section or part of that section not preempted."~~



1           **Section 6.** Section 72-2-223, MCA, is amended to read:

2           **"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse.** (1)

3           The right of election may be exercised only by a surviving spouse who is living when the petition for the  
4           elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse  
5           personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator,  
6           guardian, or agent under the authority of a power of attorney.

7           (2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the  
8           court shall set aside that portion of the elective-share and supplemental elective-share amounts due from  
9           the decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to  
10          others under 72-2-227(2) and (3) and shall appoint a trustee to administer that property for the support of  
11          the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by  
12          an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an  
13          incapacitated person. The trustee shall administer the trust in accordance with the following terms and such  
14          additional terms as the court determines appropriate:

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

20          (b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on  
21          behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains  
22          capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership  
23          of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse  
24          declaring the termination.

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

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

29                  (ii) to that predeceased spouse's heirs under 72-2-721."  
30

1           **Section 7.** Section 72-2-224, MCA, is amended to read:

2           **"72-2-224. Waiver of right to elect and of other rights.** (1) The right of election of a surviving  
3 spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family  
4 allowance or any of them may be waived, wholly or partially, before or after marriage, by a written  
5 contract, agreement, or waiver signed by the surviving spouse. The written contract, agreement, or waiver  
6 is enforceable without consideration.

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

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

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

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

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

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

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

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

25           **NEW SECTION. Section 8. Personal liability of recipients.** (1) Only original recipients of the  
26 decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate  
27 transfers to others, to the extent the donees have the property or its proceeds, are liable to make a  
28 proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental  
29 elective-share amount. A person liable to make contribution may choose to give up the proportional part  
30 of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the

1 person is liable.

2 (2) If any section or part of any section of this part is preempted by federal law with respect to a  
3 payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to  
4 others, a person who, not for value, receives the payment, item of property, or other benefit is obligated  
5 to return that payment, item of property, or benefit or is personally liable for the amount of that payment  
6 or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have  
7 been entitled to it were that section or part of that section not preempted.

8

9 **NEW SECTION. Section 9. Protection of payors and other third parties.** (1) Although under  
10 72-2-222 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers  
11 to others, a payor or other third party is not liable for having made a payment or transferred an item of  
12 property or other benefit to a beneficiary designated in a governing instrument or for having taken any other  
13 action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof  
14 of the decedent's death, before the payor or other third party received written notice from the surviving  
15 spouse or spouse's representative of an intention to file a petition for the elective share or that a petition  
16 for the elective share has been filed. A payor or other third party is liable for payments made or other  
17 actions taken after the payor or other third party received written notice of an intention to file a petition  
18 for the elective share or that a petition for the elective share has been filed.

19 (2) The written notice of intention to file a petition for the elective share or that a petition for the  
20 elective share has been filed must be mailed to the payor's or other third party's main office or home by  
21 certified mail, return receipt requested, or served upon the payor or other third party in the same manner  
22 as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective  
23 share or that a petition for the elective share has been filed, a payor or other third party may pay any  
24 amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction  
25 of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced,  
26 to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the  
27 county of the decedent's residence. The court shall hold the funds or item of property and, upon its  
28 determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no  
29 petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an  
30 elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated

1 beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third  
2 party from all claims for the value of amounts paid to or items of property transferred to or deposited with  
3 the court.

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

7

8 **Section 10.** Section 72-2-225, MCA, is amended to read:

9 **"72-2-225. Proceeding for elective share -- time limit.** (1) Except as provided in subsection (2), the  
10 election must be made by filing in the court and mailing or delivering to the personal representative, if any,  
11 a petition for the elective share within 9 months after the date of the decedent's death or within 6 months  
12 after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give  
13 notice of the time and place set for hearing to persons interested in the estate and to the distributees and  
14 recipients of portions of the augmented estate whose interests will be adversely affected by the taking of  
15 the elective share. Except as provided in subsection (2), the decedent's ~~reclaimable estate,~~ nonprobate  
16 transfers to others described in 72-2-222(2)(b), is not included within the augmented estate for the purpose  
17 of computing the elective share if the petition is filed more than 9 months after the decedent's death.

18 (2) Within 9 months after the decedent's death, the surviving spouse may petition the court for  
19 an extension of time for making an election. If, within 9 months after the decedent's death, the spouse  
20 gives notice of the petition to all persons interested in the decedent's ~~reclaimable estate,~~ nonprobate  
21 transfers to others the court for cause shown by the surviving spouse may extend the time for election.  
22 If the court grants the spouse's petition for an extension, the decedent's ~~reclaimable estate,~~ nonprobate  
23 transfers to others described in 72-2-222(2)(b), is not excluded from the augmented estate for the purpose  
24 of computing the elective-share and supplemental elective-share amounts if the spouse makes an election  
25 by filing in the court and mailing or delivering to the personal representative, if any, a petition for the  
26 elective share within the time allowed by the extension.

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

29 (4) After notice and hearing, the court shall determine the elective-share and supplemental  
30 elective-share amounts and shall order its payment from the assets of the augmented estate or by

1 contribution as appears appropriate under 72-2-227. If it appears that a fund or property included in the  
 2 augmented estate has not come into the possession of the personal representative or has been distributed  
 3 by the personal representative, the court nevertheless shall fix the liability of any person who has any  
 4 interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The  
 5 proceeding may be maintained against fewer than all persons against whom relief could be sought, but no  
 6 person is subject to contribution in any greater amount than the person would have been under 72-2-227  
 7 if relief had been secured against all persons subject to contribution.

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

10  
 11 **Section 11.** Section 72-2-227, MCA, is amended to read:

12 ~~"72-2-227. Charging spouse with owned assets and gifts received—liability of others for balance~~  
 13 **of Sources from which elective share payable.** (1) In the proceeding for an elective share, the following are  
 14 applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the  
 15 decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to  
 16 others:

17 (a) amounts included in the augmented estate under 72-2-222(2)(a) that pass or have passed to  
 18 the surviving spouse by testate or intestate succession;

19 (b) amounts included in the augmented estate under 72-2-222(2)(c);

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

22 (d) amounts included in the augmented estate under 72-2-222(2)(d) up to the applicable percentage  
 23 thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share  
 24 percentage set forth in the schedule in 72-2-221(1) appropriate to the length of time the spouse and the  
 25 decedent were married to each other.

26 (2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the  
 27 surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's  
 28 probate estate and ~~that portion of in~~ the decedent's ~~reclaimable estate~~ nonprobate transfers to others, other  
 29 than amounts ~~irrevocably transferred within 2 years before the decedent's death~~ included under  
 30 72-2-222(2)(b)(iii)(A) or 72-2-222(2)(b)(iii)(C), are applied first to satisfy the unsatisfied balance of the

1 elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that  
 2 portion of the decedent's ~~reclaimable estate~~ nonprobate transfers to others are applied so that liability for  
 3 the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is  
 4 equitably apportioned among the recipients of the decedent's probate estate and of that portion of the  
 5 decedent's ~~reclaimable estate~~ nonprobate transfers to others in proportion to the value of their interests  
 6 therein.

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

13 ~~(4) Only original recipients of the reclaimable estate described in 72-2-222(2)(b) and the donees~~  
 14 ~~of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds are~~  
 15 ~~liable to make a proportional contribution toward satisfaction of the surviving spouse's elective share or~~  
 16 ~~supplemental elective share amount. A person liable to contribution may choose to give up the proportional~~  
 17 ~~part of the reclaimable estate or to pay the value of the amount for which the person is liable."~~

18  
 19 **Section 12.** Section 72-2-331, MCA, is amended to read:

20 **"72-2-331. Entitlement of spouse -- premarital will.** (1) If a testator's surviving spouse married the  
 21 testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share,  
 22 no less than the value of the share of the estate the spouse would have received if the testator had died  
 23 intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator  
 24 who was born before the testator married the surviving spouse and who is not a child of the surviving  
 25 spouse nor devised to the descendant of such a child or passes under 72-2-613 or 72-2-614 to such a child  
 26 or to a descendant of such a child, unless:

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

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

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

4 (2) In satisfying the share provided by this section, devises made by the will to the testator's  
5 surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator  
6 who was born before the testator married the surviving spouse and who is not a child of the surviving  
7 spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate  
8 as provided in 72-3-901."

9

10 **Section 13.** Section 72-2-332, MCA, is amended to read:

11 **"72-2-332. Omitted children.** (1) Except as provided in subsection (2), if a testator fails to provide  
12 in the testator's will for any of the testator's children born or adopted after the execution of the will, the  
13 omitted after-born or after-adopted child receives a share in the estate as follows:

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

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

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

23 (ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's  
24 estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all  
25 omitted after-born and after-adopted children with the children to whom devises were made under the will  
26 and had given an equal share of the estate to each child.

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

30 (iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who

1 were living when the will was executed abate ratably. In abating the devises of the then-living children, the  
 2 court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the  
 3 testator.

4 (2) Subsections (1)(a), and (1)(b), ~~and (3)~~ do not apply if:

5 (a) it appears from the will that the omission was intentional; or

6 (b) the testator provided for the omitted after-born or after-adopted child by transfer outside the  
 7 will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's  
 8 statements or is reasonably inferred from the amount of the transfer or other evidence.

9 (3) ~~Except as provided in subsection (2), if~~ If at the time of execution of the will the testator fails  
 10 to provide in the testator's will for a living child solely because the testator believes the child to be dead,  
 11 the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

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

14  
 15 **Section 14.** Section 72-2-613, MCA, is amended to read:

16 **"72-2-613. Antilapse -- deceased devisee -- class gifts.** (1) As used in this section, the following  
 17 definitions apply:

18 (a) "Alternative devise" means a devise that is expressly created by the will and that under the  
 19 terms of the will may take effect instead of another devise on the happening of one or more events,  
 20 including survival of the testator or failure to survive the testator, whether an event is expressed in  
 21 condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative  
 22 devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure,  
 23 the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

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

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

28 (d) "Devisee" includes:

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

30 (ii) an individual or class member who was deceased at the time the testator executed the testator's



1 will as well as an individual or class member who was then living but who failed to survive the testator;  
2 and

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

4 (e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the  
5 donor of a power of appointment but not a child of the testator or donor.

6 (f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither  
7 predeceased the testator nor is considered to have predeceased the testator under 72-2-712.

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

10 (2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent,  
11 or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will,  
12 the following apply:

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

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

28 (c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the  
29 individual survives me" or in a devise to "my surviving children", are not, in the absence of additional  
30 evidence, a sufficient indication of an intent contrary to the application of this section.

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

4 (e) Unless the language creating a power of appointment expressly excludes the substitution of  
 5 the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a  
 6 power of appointment may be substituted for the appointee under this section, whether or not the  
 7 descendant is an object of the power.

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

11 (a) Except as provided in subsection (3)(b), the devised property passes under the primary  
 12 substitute gift.

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

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

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

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

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

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

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

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

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

25 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
 26 younger-generation devise."

27  
 28 **Section 15.** Section 72-2-712, MCA, is amended to read:

29 **"72-2-712. Requirement of survival by one hundred twenty hours.** (1) For the purposes of chapters  
 30 1 through 5, ~~except for purposes of Title 72, chapter 6, part 3, and~~ except as provided in subsection (4),

1 an individual who is not established by clear and convincing evidence to have survived an event, including  
2 the death of another individual, by 120 hours is considered to have predeceased the event.

3 (2) Except as provided in subsection (4) ~~and except for a security registered in beneficiary form~~  
4 ~~(TOD) under Title 72, chapter 6, part 3~~, for purposes of a provision of a governing instrument that relates  
5 to an individual surviving an event, including the death of another individual, an individual who is not  
6 established by clear and convincing evidence to have survived the event by 120 hours is considered to have  
7 predeceased the event.

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

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

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

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

18 (4) ~~This section does~~ Survival by 120 hours is not apply required if:

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

21 (b) the governing instrument expressly indicates that an individual is not required to survive an  
22 event, including the death of another individual, by any specified period or expressly requires the individual  
23 to survive the event by a specified period; However, survival of the event or the specified period must be  
24 established by clear and convincing evidence.

25 (c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest  
26 or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become  
27 invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and  
28 convincing evidence; or

29 (d) the application of ~~this section~~ a 120-hour requirement of survival to multiple governing  
30 instruments would result in an unintended failure or duplication of a disposition. However, survival must

1 be established by clear and convincing evidence.

2 (5) (a) A payor or other third party is not liable for having made a payment or transferred an item  
3 of property or any other benefit to a beneficiary designated in a governing instrument who, under this  
4 section, is not entitled to the payment or item of property, or for having taken any other action in good faith  
5 reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the  
6 payor or other third party received written notice of a claimed lack of entitlement under this section. A  
7 payor or other third party is liable for a payment made or other action taken after the payor or other third  
8 party received written notice of a claimed lack of entitlement under this section.

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

20 (6) (a) A person who purchases property for value and without notice or who receives a payment  
21 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated  
22 under this section to return the payment, item of property, or benefit nor liable under this section for the  
23 amount of the payment or the value of the item of property or benefit. However, a person who, not for  
24 value, receives a payment, item of property, or other benefit to which the person is not entitled under this  
25 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount  
26 of the payment or the value of the item of property or benefit, to the person who is entitled to it under this  
27 section.

28 (b) If this section or any part of this section is preempted by federal law with respect to a payment,  
29 an item of property, or any other benefit covered by this section, a person who, not for value, receives the  
30 payment, item of property, or other benefit to which the person is not entitled under this section is

1 obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the  
2 payment or the value of the item of property or benefit, to the person who would have been entitled to it  
3 were this section or part of this section not preempted."  
4

5 **Section 16.** Section 72-2-716, MCA, is amended to read:

6 **"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death**  
7 **registration -- deceased beneficiary.** (1) As used in this section, the following definitions apply:

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

13 (b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary  
14 must survive the decedent and includes:

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

16 (ii) an individual or class member who was deceased at the time the beneficiary designation was  
17 executed as well as an individual or class member who was then living but who failed to survive the  
18 decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint  
19 and survivorship account.

20 (c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary  
21 designation in the form of a class gift.

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

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

26 (f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who  
27 neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-712.

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

30 (a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a

1 class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the  
2 beneficiary's surviving descendants. They take by representation the property to which the beneficiary  
3 would have been entitled had the beneficiary survived the decedent.

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

16 (c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to  
17 an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are  
18 not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application  
19 of this section.

20 (d) If a governing instrument creates an alternative beneficiary designation with respect to a  
21 beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute  
22 gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of  
23 the alternative beneficiary designation is entitled to take.

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

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

28 (b) If there is a younger-generation beneficiary designation, the property passes under the  
29 younger-generation substitute gift and not under the primary substitute gift.

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

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

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

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

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

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

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

10 (D) would have taken effect had all the deceased beneficiaries who left surviving descendants  
11 survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary  
12 designation.

13 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
14 younger-generation beneficiary designation.

15 (4) (a) A payor is protected from liability in making payments under the terms of the beneficiary  
16 designation until the payor has received written notice of a claim to a substitute gift under this section.  
17 Payment made before the receipt of written notice of a claim to a substitute gift under this section  
18 discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a  
19 payment made after the payor has received written notice of the claim. A recipient is liable for a payment  
20 received, whether or not written notice of the claim is given.

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

29 (5) (a) A person who purchases property for value and without notice or who receives a payment  
30 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated

1 under this section to return the payment, item of property, or benefit nor liable under this section for the  
2 amount of the payment or the value of the item of property or benefit. However, a person who, not for  
3 value, receives a payment, item of property, or other benefit to which the person is not entitled under this  
4 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount  
5 of the payment or the value of the item of property or benefit, to the person who is entitled to it under this  
6 section.

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

13

14 **Section 17.** Section 72-2-717, MCA, is amended to read:

15 **"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.**

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

17 (a) "Alternative future interest" means an expressly created future interest that may take effect  
18 in possession or enjoyment instead of another future interest on the happening of one or more events,  
19 including survival of an event or failure to survive an event, whether an event is expressed in  
20 condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create  
21 an alternative future interest with respect to a future interest created in a nonresiduary devise in the will,  
22 whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary  
23 clause.

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

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

29 (d) "Distribution date" with respect to a future interest means the time when the future interest  
30 is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end



1 of a calendar day, but may occur at a time during the course of a day.

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

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

8 (g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who  
9 neither predeceased the distribution date nor is considered to have predeceased the distribution date under  
10 72-2-712.

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

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

18 (b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other  
19 than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or  
20 "family" or a class described by language of similar import, a substitute gift is created in the surviving  
21 descendants of any deceased beneficiary ~~or beneficiary's surviving descendants~~. The property to which the  
22 beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving  
23 beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes  
24 the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries  
25 survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for  
26 the deceased beneficiary take by representation the share to which the deceased beneficiary would have  
27 been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection  
28 (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one  
29 or more surviving descendants.

30 (c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in

1 the absence of additional evidence, a sufficient indication of an intent contrary to the application of this  
2 section. Words of survivorship include words of survivorship that relate to the distribution date or to an  
3 earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent,  
4 condition-subsequent, or any other form.

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

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

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

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

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

16 (i) "Primary future interest" means the future interest that would have taken effect had all the  
17 deceased beneficiaries of the alternative future interests who left surviving descendants survived the  
18 distribution date.

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

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

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

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

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

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

27 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
28 younger-generation future interest.

29 (4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there  
30 is no surviving taker, the property passes in the following order:

1 (a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the  
 2 transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this  
 3 section, the residuary clause is treated as creating a future interest under the terms of a trust.

4 (b) if no taker is produced by the application of subsection (4)(a), the property passes to the  
 5 transferor's heirs under 72-2-721.

6 (5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future  
 7 interest was created by the exercise of a power of appointment:

8 (a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as  
 9 creating a future interest under the terms of a trust; and

10 (b) if no taker is produced by the application of subsection (5)(a), the property passes as provided  
 11 in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a  
 12 nongeneral power and means the donee if the power was a general power."

13  
 14 **Section 18.** Section 72-2-719, MCA, is amended to read:

15 **"72-2-719. Representation -- per capita at each generation -- per stirpes.** (1) As used in this  
 16 section, the following definitions apply:

17 (a) "Deceased child" or "deceased descendant" means a child or a descendant who either  
 18 predeceased the distribution date or is considered to have predeceased the distribution date under  
 19 72-2-712.

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

23 (c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child,  
 24 or a descendant who neither predeceased the distribution date nor is considered to have predeceased the  
 25 distribution date under 72-2-712.

26 (2) (a) If a governing instrument calls for property to be distributed "per capita at each generation",  
 27 the property is divided into as many equal shares as there are:

28 (i) surviving descendants in the generation nearest to the designated ancestor that contains one or  
 29 more surviving descendants; and

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

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

5 (3) (a) If ~~an applicable statute~~ or a governing instrument calls for property to be distributed "~~by~~  
 6 ~~representation~~" or "per stirpes", the property is divided into as many equal shares as there are:

7 (i) surviving children of the designated ancestor; and

8 (ii) deceased children who left surviving descendants.

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

12 (4) (a) If an applicable statute or a governing instrument calls for property to be distributed "by  
 13 representation", the property is divided into as many equal shares as there are:

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

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

17 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
 18 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
 19 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
 20 surviving descendants.

21 ~~(4)(5)~~ For the purposes of subsections (2) ~~and (3)~~ through (4), an individual who is deceased and  
 22 left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a  
 23 descendant of the designated ancestor is not entitled to a share."

24  
 25 **Section 19.** Section 72-2-721, MCA, is amended to read:

26 **"72-2-721. ~~Future interests~~ Interests in "heirs" and like.** If an applicable statute or a governing  
 27 instrument calls for a present or future distribution to or creates a present or future interest in a designated  
 28 individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the  
 29 property passes to those persons, including the state ~~under 72-2-115~~, and in such shares as would succeed  
 30 to the designated individual's intestate estate under the intestate succession law of the designated

1 individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if  
2 the designated individual died at that time. If the designated individual's surviving spouse is living but is  
3 remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is  
4 not an heir of the designated individual."

5

6 **Section 20.** Section 72-2-811, MCA, is amended to read:

7 **"72-2-811. Disclaimer of property interests.** (1) (a) A person or the representative of a person to  
8 whom an interest in or with respect to property or an interest in the property devolves by whatever means  
9 may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

10 (b) The right to disclaim exists notwithstanding:

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

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

14 (c) For purposes of this subsection (1), the "representative of a person" includes a personal  
15 representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated  
16 person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained  
17 person, or a person whose identity or address is unknown; and an agent acting on behalf of the person  
18 within the authority of a power of attorney. The representative of a person may rely on a general family  
19 benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

20 (2) The following rules govern the time when a disclaimer must be filed or delivered:

21 (a) If the property or interest has devolved to the disclaimant under a testamentary instrument or  
22 by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after  
23 the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest,  
24 not later than 9 months after the event determining that the taker of the property or interest is finally  
25 ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the  
26 county in which proceedings for the administration of the estate of the deceased owner or deceased donee  
27 of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by  
28 certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent  
29 or donee of the power.

30 (b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument

1 or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after  
2 the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than  
3 9 months after the event determining that the taker of the property or interest is finally ascertained and the  
4 taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of  
5 the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the  
6 existence of the interest. The effective date of a revocable instrument or contract is the date on which the  
7 maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable  
8 ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed  
9 by certified mail, return receipt requested, to the person who has legal title to or possession of the interest  
10 disclaimed.

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

16 (d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be  
17 recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed  
18 is located.

19 (3) The disclaimer must:

- 20 (a) describe the property or interest disclaimed;  
21 (b) declare the disclaimer and extent of the disclaimer; and  
22 (c) be signed by the disclaimant.

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

- 24 (a) If property or an interest in property devolves to a disclaimant under a testamentary instrument,  
25 under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and  
26 the decedent has not provided for another disposition of that interest, should it be disclaimed, or of  
27 disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had  
28 predeceased the decedent, but if by law or under the testamentary instrument the descendants of the  
29 disclaimant would ~~take the disclaimant's share in the disclaimed interest~~ by representation or otherwise  
30 were the disclaimant to predecease the decedent, the disclaimed interest passes by representation, or

1 passes as directed by the governing instrument, to the descendants of the disclaimant who survive the  
2 decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate  
3 or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates  
4 back for all purposes to the date of the death of the decedent.

5 (b) If property or an interest in property devolves to a disclaimant under a nontestamentary  
6 instrument or contract and the instrument or contract does not provide for another disposition of that  
7 interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest  
8 devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by  
9 law or under the nontestamentary instrument or contract the descendants of the disclaimant would ~~take~~  
10 ~~the disclaimant's share in the disclaimed interest~~ by representation or otherwise were the disclaimant to  
11 predecease the effective date of the instrument, the disclaimed interest passes by representation, or passes  
12 as directed by the governing instrument, to the descendants of the disclaimant who survive the effective  
13 date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes  
14 effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the  
15 disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed  
16 interest.

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

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

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

22 (b) a written waiver of the right to disclaim;

23 (c) an acceptance of the property or interest or benefit under it; or

24 (d) a sale of the property or interest under judicial sale made before the disclaimer is made.

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

27 (7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the  
28 time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not  
29 become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after  
30 October 1, 1993."

1           **Section 21.** Section 72-2-813, MCA, is amended to read:

2           **"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance,**  
3 **and beneficiary designations.** (1) For purposes of this section, the following definitions apply:

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

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

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

12           (2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this  
13 chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted  
14 spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent  
15 died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

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

17           (a) revokes any revocable:

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

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

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

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

28           (4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired  
29 for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing  
30 declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and



1 location of the property, which records are relied upon, in the ordinary course of transactions involving such  
2 property, as evidence of ownership.

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

6 (6) A wrongful acquisition of property or interest by a killer not covered by this section must be  
7 treated in accordance with the principle that a killer cannot profit from the killer's wrong.

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

16 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item  
17 of property or any other benefit to a beneficiary designated in a governing instrument affected by an  
18 intentional and felonious killing, or for having taken any other action in good faith reliance on the validity  
19 of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor  
20 or other third party received written notice of a claimed forfeiture or revocation under this section. A payor  
21 or other third party is liable for a payment made or other action taken after the payor or other third party  
22 received written notice of a claimed forfeiture or revocation under this section.

23 (b) Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to  
24 the payor's or other third party's main office or home by certified mail, return receipt requested, or served  
25 upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of  
26 written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay  
27 any amount owed or transfer or deposit any item of property held by it to or with the court having  
28 jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been  
29 commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates  
30 located in the county of the decedent's residence. The court shall hold the funds or item of property and,

1 upon its determination under this section, shall order disbursement in accordance with the determination.  
2 Payments, transfers, or deposits made to or with the court discharge the payor or other third party from  
3 all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

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

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

18 (10) For the purposes of this section, a felonious and intentional killing includes a deliberate  
19 homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."  
20

21 **Section 22.** Section 72-2-814, MCA, is amended to read:

22 **"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other**  
23 **changes of circumstances.** (1) As used in this section, the following definitions apply:

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

26 (b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity  
27 of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A  
28 decree of separation that does not terminate the status of husband and wife is not a divorce for purposes  
29 of this section.

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

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

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

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

12 (2) Except as provided by the express terms of a governing instrument, a court order, or a contract  
13 relating to the division of the marital estate made between the divorced individuals before or after the  
14 marriage, divorce, or annulment, the divorce or annulment of a marriage:

15 (a) revokes any revocable:

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

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

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

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

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

1 of transactions involving such property, as evidence of ownership.

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

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

8 (6) No change of circumstances other than as described in this section and in 72-2-813 effects a  
9 revocation.

10 (7) (a) A payor or other third party is not liable for having made a payment or transferred an item  
11 of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,  
12 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the  
13 governing instrument, before the payor or other third party received written notice of the divorce,  
14 annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken  
15 after the payor or other third party received written notice of a claimed forfeiture or revocation under this  
16 section.

17 (b) Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed  
18 to the payor's or other third party's main office or home by certified mail, return receipt requested, or  
19 served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt  
20 of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount  
21 owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the  
22 probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or  
23 with the court having jurisdiction of probate proceedings relating to decedents' estates located in the  
24 county of the decedent's residence. The court shall hold the funds or item of property and, upon its  
25 determination under this section, shall order disbursement or transfer in accordance with the determination.  
26 Payments, transfers, or deposits made to or with the court discharge the payor or other third party from  
27 all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

28 (8) (a) A person who purchases property from a former spouse, relative of a former spouse, or any  
29 other person for value and without notice or who receives from a former spouse, relative of a former  
30 spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally

1 enforceable obligation is neither obligated under this section to return the payment, item of property, or  
 2 benefit nor liable under this section for the amount of the payment or the value of the item of property or  
 3 benefit. However, a former spouse, relative of a former spouse, or other person who, not for value,  
 4 received a payment, item of property, or other benefit to which that person is not entitled under this section  
 5 is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the  
 6 payment or the value of the item of property or benefit, to the person who is entitled to it under this  
 7 section.

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

15

16 **Section 23.** Section 72-2-1017, MCA, is amended to read:

17 "**72-2-1017. Honorary trusts -- trusts for pets.** (1) A Subject to subsection (3), a trust for a  
 18 ~~noncharitable corporation or unincorporated society or for a lawful noncharitable purpose~~ may be performed  
 19 by the trustee for 21 years but no longer, ~~whether or not there is a beneficiary who can seek the trust's~~  
 20 ~~enforcement or termination and~~ whether or not the terms of the trust contemplate a longer duration if:

21 (a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be  
 22 selected by the trustee; and

23 (b) there is no definite or definitely ascertainable beneficiary designated.

24 (2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a  
 25 designated domestic or pet animal ~~and the animal's offspring~~ is valid. ~~Except as expressly provided~~  
 26 ~~otherwise in the trust instrument, the following provisions apply:~~

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

29 ~~(b) The trust terminates at the earlier of 21 years after the trust was created or when no living~~  
 30 ~~animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer~~

1 within this subsection, to presume against the merely precatory or honorary nature of the disposition, and  
 2 to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the  
 3 transferor's intent.

4 (3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those  
 5 subsections is subject to the following provisions:

6 (a) Except as expressly provided in the trust instrument, no portion of the principal or income may  
 7 be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit  
 8 of a covered animal.

9 ~~(e)~~(b) Upon termination, the trustee shall transfer the unexpended trust property in the following  
 10 order:

11 (i) as directed in the trust instrument;

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

14 (iii) if no taker is produced by the application of subsection ~~(2)(e)(i)~~ (3)(b)(i) or ~~(2)(e)(iii)~~ (3)(b)(ii), to  
 15 the transferor's heirs under 72-2-721.

16 ~~(d)~~(c) For the purposes of 72-2-717, the residuary clause is treated as creating a future interest  
 17 under the terms of a trust.

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

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

24 ~~(g) A governing instrument must be liberally construed to bring the transfer within the applicability~~  
 25 ~~of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry~~  
 26 ~~out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's~~  
 27 ~~intent.~~

28 ~~(h)~~(f) A court may reduce the amount of the property transferred if it determines that that amount  
 29 substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes  
 30 as unexpended trust property under subsection ~~(2)(e)~~ (3)(b).

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

7  
8        **Section 24.** Section 72-3-102, MCA, is amended to read:

9        "**72-3-102. Necessity of probate of will.** Except as provided in 72-3-1101, to be effective to prove  
10 the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of  
11 informal probate by the clerk or an adjudication of probate by the court, ~~except that a duly executed and~~  
12 ~~unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

13        ~~(1) no court proceeding concerning the succession or administration of the estate has occurred;~~

14 and

15        ~~(2) either:~~

16        ~~(a) the devisee or his successors and assigns possessed the property devised in accordance with~~  
17 ~~the provisions of the will; or~~

18        ~~(b) the property devised was not possessed or claimed by anyone by virtue of the decedent's title~~  
19 ~~during the time period for testacy proceedings."~~

20  
21        **Section 25.** Section 72-3-122, MCA, is amended to read:

22        "**72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions.** (1) No  
23 informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a  
24 proceeding to probate a will previously probated at the testator's domicile and appointment proceedings  
25 relating to an estate in which there has been a prior appointment, may be commenced more than 3 years  
26 after the decedent's death, except:

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

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

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

7 (d) ~~if no proceeding concerning the succession or administration of the estate has occurred within~~  
 8 ~~3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter~~  
 9 ~~for the sole purpose of establishing a devise of property which the devisee or his successors and assigns~~  
 10 ~~possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue~~  
 11 ~~of the decedent's title during the 3-year period, and the order of the court must be limited to that property~~  
 12 an informal appointment or a formal testacy or appointment proceeding may be commenced after the time  
 13 period if no proceedings concerning the succession or estate administration have occurred within the 3-  
 14 year period after the decedent's death, but the personal representative has no right to possess estate assets  
 15 provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate,  
 16 and claims other than expenses of administration may not be presented against the estate; and

17 (e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's  
 18 death for the purpose of establishing an instrument to direct or control the ownership of property passing  
 19 or distributable after the decedent's death from one other than the decedent when the property is to be  
 20 appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's  
 21 estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

22 (2) These limitations do not apply to proceedings to construe probated wills or determine heirs of  
 23 an intestate.

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

27  
 28 **Section 26.** Section 72-3-317, MCA, is amended to read:

29 "**72-3-317. Effect of formal testacy order -- modification or vacation -- fact of death -- remedies**  
 30 **of alleged decedent.** Subject to appeal and subject to vacation as provided ~~herein and~~ in 72-3-318 and this



1 section, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left  
2 no valid will and determining heirs, is final as to all persons with respect to all issues concerning the  
3 decedent's estate that the court considered or might have considered incident to its rendition relevant to  
4 the question of whether the decedent left a valid will and to the determination of heirs, except that:

5 (1) the court shall entertain a petition for modification or vacation of its order and probate of  
6 another will of the decedent if it is shown that the proponents of the later-offered will:

7 (a) were unaware of its existence at the time of the earlier proceeding; or

8 (b) were unaware of the earlier proceeding and were given no notice ~~thereof~~ of the proceeding,  
9 except by publication;

10 (2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the  
11 decedent may be reconsidered if it is shown that one or more persons were omitted from the determination  
12 and it is also shown that the persons:

13 (a) were unaware of their relationship to the decedent; or

14 (b) were unaware of ~~his~~ the decedent's death; or

15 (c) were given no notice of any proceeding concerning ~~his~~ the decedent's estate, except by  
16 publication;

17 (3) a petition for vacation under either (1) or (2) above must be filed prior to the earlier of the  
18 following time limits:

19 (a) if a personal representative has been appointed for the estate, the time of entry of any order  
20 approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing  
21 of the closing statement;

22 (b) whether or not a personal representative has been appointed for the estate of the decedent,  
23 the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate  
24 a will of the decedent;

25 (c) 12 months after the entry of the order sought to be vacated;

26 (4) the order originally rendered in the testacy proceeding may be modified or vacated, if  
27 appropriate under the circumstances, by the order of probate of the later-offered will or the order  
28 redetermining heirs;

29 (5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the  
30 hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed

1 to the alleged decedent at ~~his~~ the last known address and the court finds that a search under 72-3-306 was  
2 made. If the alleged decedent is not dead, even if notice was sent and search was made, ~~he~~ the alleged  
3 decedent may recover estate assets in the hands of the personal representative. In addition to any remedies  
4 available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent  
5 may recover any estate or its proceeds from distributees that is in their hands or the value of distributions  
6 received by them, to the extent that any recovery from distributees is equitable in view of all of the  
7 circumstances."

8

9 **Section 27.** Section 72-3-131, MCA, is amended to read:

10 **"72-3-131. Compromise of controversies.** (1) A compromise of any controversy as to admission  
11 to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity,  
12 or effect of any ~~probate will~~ governing instrument, the rights or interests in the estate of the decedent, of  
13 any successor, or the administration of the estate, if approved in a formal proceeding in the court for that  
14 purpose, is binding on all the parties ~~thereto~~ to the proceeding, including those unborn, unascertained, or  
15 who could not be located.

16 (2) An approved compromise is binding even though it may affect a trust or an inalienable interest.  
17 A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

18

19 **Section 28.** Section 72-3-132, MCA, is amended to read:

20 **"72-3-132. Procedure for securing court approval of compromise.** The procedure for securing court  
21 approval of a compromise is as follows:

22 (1) The terms of the compromise ~~shall~~ must be set forth in an agreement in writing which ~~shall~~  
23 must be executed by all competent persons and parents acting for any minor child having beneficial  
24 interests or having claims which will or may be affected by the compromise. Execution is not required by  
25 any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably  
26 be ascertained.

27 (2) Any interested person, including the personal representative, if any, or a trustee, then may  
28 submit the agreement to the court for its approval and for execution by the personal representative, the  
29 trustee of every affected testamentary trust, and other fiduciaries and representatives.

30 (3) After notice to all interested persons or their representatives, including the personal

1 representative of ~~the~~ any estate and all affected trustees of trusts, the court, if it finds that the contest or  
2 controversy is in good faith and that the effect of the agreement upon the interests of persons represented  
3 by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement  
4 and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only  
5 by their parents may be bound only if their parents join with other competent persons in execution of the  
6 compromise.

7 (4) Upon the making of the order and the execution of the agreement, all further disposition of the  
8 estate is in accordance with the terms of the agreement."

9

10 **Section 29.** Section 72-6-201, MCA, is amended to read:

11 **"72-6-201. Definitions.** In this part, the following definitions apply:

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

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

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

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

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

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

24 (7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant  
25 to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other  
26 disposition of all or part of an account pursuant to a pledge.

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

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

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

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

8 (10) "Request" means a request for payment that complies with all terms of the account, including  
9 special requirements concerning necessary signatures and regulations of the financial institution; however,  
10 for purposes of this part, if terms of the account condition payment on advance notice, a request for  
11 payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for  
12 payment.

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

16 (12) "Terms of the account" includes the deposit agreement and other terms and conditions of the  
17 contract of deposit, including the type of account, the parties to the account, and the form, of the contract  
18 of deposit."

19

20 **Section 30.** Section 72-6-213, MCA, is amended to read:

21 **"72-6-213. Alteration of rights.** (1) Rights at death under 72-6-212 are determined by the ~~type~~  
22 terms of the account at the death of a party. The ~~type terms~~ of an account may be altered by written notice  
23 given by a party to the financial institution to change the ~~type terms~~ of account or to stop or vary payment  
24 under the terms of the account. The notice must be signed by a party and received by the financial  
25 institution during the party's lifetime.

26 (2) A right of survivorship arising from the express terms of the account, from 72-6-212, or from  
27 a POD designation may not be altered by will."

28

29 **Section 31.** Section 72-6-226, MCA, is amended to read:

30 **"72-6-226. Discharge.** (1) Payment made pursuant to this part in accordance with the ~~type terms~~

1 of an account discharges the financial institution from all claims for amounts so paid, whether or not the  
 2 payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or  
 3 their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled,  
 4 incapacitated, or deceased when payment is requested, received, or made.

5 (2) Protection under this section does not extend to payments made after a financial institution has  
 6 received written notice from a party, or from the personal representative, surviving spouse, or heir or  
 7 devisee of a deceased party, to the effect that payments in accordance with the terms of the account,  
 8 including one having an agency designation, should not be permitted and after the financial institution has  
 9 had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is  
 10 withdrawn by the person giving it, the successor of any deceased party shall concur in a request for  
 11 payment if the financial institution is to be protected under this section. Unless a financial institution has  
 12 been served with process in an action or proceeding, no other notice or other information shown to have  
 13 been available to the financial institution affects its right to protection under this section.

14 (3) A financial institution that receives written notice pursuant to this section or otherwise has  
 15 reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make  
 16 payments in accordance with the terms of the account.

17 (4) Protection of a financial institution under this section does not affect the rights of parties in  
 18 disputes between themselves or their successors concerning the beneficial ownership of sums on deposit  
 19 in accounts or payments made from accounts."  
 20

21 **Section 32.** Section 72-16-301, MCA, is amended to read:

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

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

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

30 (c) when the transfer is of property made by a resident or by a nonresident when ~~such~~ the

1 nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made  
 2 in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or  
 3 enjoyment at or after ~~such~~ death.

4 (2) ~~No~~ A transfer made before the 3-year period ending on the date of the decedent's death ~~shall~~  
 5 be is not considered to have been made in contemplation of death.

6 (3) ~~Every~~ Each transfer during the 3-year period ending on the date of the decedent's death must  
 7 be considered to have been made in contemplation of death, except:

8 (a) ~~no~~ a transfer shown to be a bona fide sale for an adequate and full consideration in money or  
 9 money's worth may not be considered to be a gift made in contemplation of death;

10 (b) ~~if the a transfer was a gift to a donee made during the calendar year and if the decedent was~~  
 11 ~~not required by~~ to the extent that the transfer was excluded from the definition of taxable gifts by reason  
 12 of section 6019 2503(b) of the internal revenue code to file any gift tax return for the year with respect  
 13 to the donee, the transfer Internal Revenue Code may not be considered to be a gift made in contemplation  
 14 of death.

15 (4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy."  
 16

17 **Section 33.** Section 72-33-701, MCA, is amended to read:

18 **"72-33-701. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust  
 19 instrument otherwise provides or ~~where~~ when the joint action of the trustor and all beneficiaries is required,  
 20 during the time that ~~a trust is revocable and~~ the person holding the power to revoke the trust is competent:

21 (1) ~~The~~ the person holding the power to revoke, and not the beneficiary, has the rights afforded  
 22 beneficiaries under chapters 33 through 36-;

23 (2) ~~The~~ the duties of the trustee are owed to the person holding the power to revoke."  
 24

25 **Section 34.** Section 72-34-513, MCA, is amended to read:

26 **"72-34-513. Nonliability for following instructions under revocable trust.** (1) Notwithstanding  
 27 72-34-512, a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted  
 28 pursuant to written directions from the person holding the power to revoke made when the person is  
 29 competent, including a person to whom the power to direct the trustee is delegated.

30 (2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the

1 beneficiary in that part of the trust property."  
2

3 **NEW SECTION. Section 35. Nonliability for refusing to follow directions under revocable trust.**

4 A trustee of a revocable trust is not liable for refusing to follow directions from a person holding the power  
5 to revoke, including a person to whom the power to direct the trustee is delegated, if in accordance with  
6 the trust instrument, the person holding the power is determined to be incompetent, as that or any similar  
7 term or phrase is defined in the trust instrument, or, in the absence of a provision in the trust instrument,  
8 if the trustee reasonably believes that the person holding the power is incompetent.  
9

10 **NEW SECTION. Section 36. Codification instruction.** (1) [Sections 8 and 9] are intended to be  
11 codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2,  
12 apply to [sections 8 and 9].

13 (2) [Section 35] is intended to be codified as an integral part of Title 72, chapter 34, part 5, and  
14 the provisions of Title 72, chapter 34, part 5, apply to [section 35].

15 -END-

## 1 SENATE BILL NO. 132

2 INTRODUCED BY BISHOP, HALLIGAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CONCERNING ESTATES AND  
5 TRUSTS; REMOVING THE STATUTE OF LIMITATIONS OF 1 YEAR AFTER LETTERS TESTAMENTARY OR  
6 OF ADMINISTRATION ARE ISSUED; REVISING THE TREATMENT OF CERTAIN TRANSFERS FOR PROBATE  
7 PURPOSES; CLARIFYING THE AUGMENTED ESTATE; CLARIFYING THE DISTRIBUTION OF LAPSED  
8 DEVICES; CLARIFYING THE APPLICATION OF SURVIVAL STATUTES; EXCLUDING JOINT ACCOUNTS  
9 FROM TRANSACTIONS INVOLVING BENEFICIARIES FOR WHOM STATUTORY SUBSTITUTES ARE  
10 PROVIDED IN CASE OF THE DEATH OF THE BENEFICIARY; CLARIFYING THE PASSING OF PROPERTY IN  
11 CASES IN WHICH A FUTURE INTEREST IS CREATED BY POWER OF APPOINTMENT; CLARIFYING THE  
12 APPLICATION AND EFFECT OF A DISCLAIMER; CLARIFYING THE APPLICATION OF HONORARY TRUSTS;  
13 CLARIFYING DISTRIBUTION BY REPRESENTATION; CLARIFYING TRANSFERS MADE IN CONTEMPLATION  
14 OF DEATH; CLARIFYING THE APPLICATION OF THE TERMS OF A MULTIPLE-PERSON ACCOUNT;  
15 CLARIFYING PROVISIONS GOVERNING REVOCABLE TRUSTS; CLARIFYING A TRUSTEE'S LIABILITY  
16 UNDER A REVOCABLE TRUST; AND AMENDING SECTIONS 27-2-404, 72-1-103, 72-2-116, 72-2-221,  
17 72-2-222, 72-2-223, 72-2-224, 72-2-225, 72-2-227, 72-2-331, 72-2-332, 72-2-613, 72-2-712, 72-2-716,  
18 72-2-717, 72-2-719, 72-2-721, 72-2-811, 72-2-813, 72-2-814, 72-2-1017, 72-3-102, 72-3-122,  
19 72-3-131, 72-3-132, 72-3-317, 72-6-201, 72-6-213, 72-6-226, 72-16-301, 72-16-308, 72-33-701, AND  
20 72-34-513, MCA."

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
24 **Section 1.** Section 27-2-404, MCA, is amended to read:

25 **"27-2-404. When a party dies before action commenced.** ~~(1)~~ If a person entitled to bring an action  
26 dies before the expiration of the time limited for the commencement ~~thereof~~ of the action and the cause  
27 of action survives, an action may be commenced by ~~his~~ the deceased's representatives after the expiration  
28 of that time and within 1 year from ~~his~~ death.

29 ~~(2) If a person against whom an action may be brought dies before the expiration of the time~~  
30 ~~limited for the commencement thereof and the cause of action survives, an action may be commenced~~



1 ~~against his representatives after the expiration of that time and within 1 year after the issuing of letters~~  
 2 ~~testamentary or of administration. If a person against whom a cause of action exists dies without the state,~~  
 3 ~~the time which elapses between his death and the expiration of 1 year after the issuing within the state of~~  
 4 ~~letters testamentary or letters of administration is not a part of the time limited for the commencement of~~  
 5 ~~an action therefor against his executor or administrator."~~

6  
 7 **Section 2.** Section 72-1-103, MCA, is amended to read:

8 **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent  
 9 chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise  
 10 requires, in chapters 1 through 5, the following definitions apply:

11 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an  
 12 individual authorized to make decisions concerning another's health care, and an individual authorized to  
 13 make decisions for another under a natural death act.

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

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

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

19 (b) a charitable trust, includes any person entitled to enforce the trust;

20 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

21 (i) ~~an insurance or annuity policy,~~ an account with POD designation, or a security registered in  
 22 beneficiary form (TOD); OR

23 ~~(ii) a pension, profit sharing, retirement, or similar benefit plan; or~~

24 ~~(iii)(lll)~~ any other nonprobate transfer at death; and

25 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a  
 26 trust beneficiary; a beneficiary of a beneficiary designation; a donee, ~~appointee, or taker in default of a~~  
 27 ~~power of appointment;~~ and a person in whose favor a power of attorney or a power held in any individual,  
 28 fiduciary, or representative capacity is exercised.

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

30 (a) ~~an insurance or annuity policy,~~ an account with POD designation, or a security registered in

1 beneficiary form (TOD); OR

2 ~~(b) a pension, profit sharing, retirement, or similar benefit plan; or~~

3 ~~(c)(B)~~ any other nonprobate transfer at death.

4 (5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate  
5 succession from the parent whose relationship is involved and excludes a person who is only a stepchild,  
6 a foster child, a grandchild, or any more remote descendant.

7 (6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of  
8 the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the  
9 estate that arise at or after the death of the decedent or after the appointment of a conservator, including  
10 funeral expenses and expenses of administration.

11 (b) The term does not include estate or inheritance taxes or demands or disputes regarding title of  
12 a decedent or protected person to specific assets alleged to be included in the estate.

13 (7) "Clerk" or "clerk of court" means the clerk of the district court.

14 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected  
15 person.

16 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs  
17 of decedents.

18 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with  
19 the relationship of parent and child at each generation being determined by the definition of child and parent  
20 contained in this section.

21 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property  
22 and when used as a verb means to dispose of real or personal property by will.

23 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3,  
24 in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or  
25 trustee is the devisee and the beneficiaries are not devisees.

26 (13) "Disability" means cause for a protective order as described by 72-5-409.

27 (14) "Distributee" means any person who has received property of a decedent from the decedent's  
28 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only  
29 to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of  
30 a testamentary trust to whom the trustee has distributed property received from a personal representative

1 is a distributee of the personal representative. For purposes of this provision, "testamentary trustee"  
2 includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

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

5 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

6 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

7 (18) "Foreign personal representative" means a personal representative appointed by another  
8 jurisdiction.

9 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested  
10 persons.

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

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

17 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and  
18 the state, who are entitled under the statutes of intestate succession to the property of a decedent.

19 (23) "Incapacitated person" has the meaning provided in 72-5-101.

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

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

28 (26) "Issue" of a person means a descendant as defined in subsection (10).

29 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under  
30 circumstances that entitle one or more to the whole of the property on the death of the other or others but

1 excludes forms of co-ownership registration in which the underlying ownership of each party is in  
2 proportion to that party's contribution.

3 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

4 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and  
5 letters of conservatorship.

6 (30) "Minor" means a person who is under 18 years of age.

7 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as  
8 security.

9 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the  
10 time of death.

11 (33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture,  
12 association, government or governmental subdivision or agency, or any other legal or commercial entity.

13 (34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died  
14 without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose  
15 relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

16 (35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency  
17 or subdivision, or any other person authorized or obligated by law or a governing instrument to make  
18 payments.

19 (36) "Person" means an individual, a corporation, an organization, or other legal entity.

20 (37) "Personal representative" includes executor, administrator, successor personal representative,  
21 special administrator, and persons who perform substantially the same function under the law governing  
22 their status. "General personal representative" excludes special administrator.

23 (38) "Petition" means a written request to the court for an order after notice.

24 (39) "Proceeding" includes action at law and suit in equity.

25 (40) "Property" includes both real and personal property or any interest in that property and means  
26 anything that may be the subject of ownership.

27 (41) "Protected person" has the meaning provided in 72-5-101.

28 (42) "Protective proceeding" has the meaning provided in 72-5-101.

29 (43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of  
30 indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out

1 of production under such a title or lease; collateral trust certificate; transferable share; voting trust  
2 certificate; in general, any interest or instrument commonly known as a security; any certificate of interest  
3 or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant  
4 or right to subscribe to or purchase any of the foregoing.

5 (44) "Settlement", in reference to a decedent's estate, includes the full process of administration,  
6 distribution, and closing.

7 (45) "Special administrator" means a personal representative as described by chapter 3, part 7.

8 (46) "State" means a state of the United States, the District of Columbia, the Commonwealth of  
9 Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

10 (47) "Successor personal representative" means a personal representative, other than a special  
11 administrator, who is appointed to succeed a previously appointed personal representative.

12 (48) "Successors" means persons, other than creditors, who are entitled to property of a decedent  
13 under the decedent's will or chapters 1 through 5.

14 (49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

15 (50) "Survive", ~~except for purposes of Title 72, chapter 6, part 3~~, means that an individual has  
16 neither predeceased an event, including the death of another individual, nor is considered to have  
17 predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives",  
18 "survived", "survivor", and "surviving".

19 (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

20 (52) "Testator" includes an individual of either sex.

21 (53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and  
22 however created. The term also includes a trust created or determined by judgment or decree under which  
23 the trust is to be administered in the manner of an express trust. The term excludes other constructive  
24 trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined  
25 in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this  
26 title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting  
27 trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends,  
28 interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under  
29 which a person is nominee or escrowee for another.

30 (54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or

1 confirmed by court.

2 (55) "Ward" means an individual described in 72-5-101.

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

6

7 **Section 3.** Section 72-2-116, MCA, is amended to read:

8 **"72-2-116. Representation.** (1) As used in this section, the following definitions apply:

9 (a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant,  
10 parent, or grandparent who either predeceased the decedent or is considered to have predeceased the  
11 decedent under 72-2-114.

12 (b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is  
13 considered to have predeceased the decedent under 72-2-114.

14 (2) (a) If, under 72-2-113(1), a decedent's intestate estate or a part of the intestate estate passes  
15 by representation to the decedent's descendants, the estate or part of the estate ~~is divided into decedent's~~  
16 ~~descendants and the estate or part of the estate~~ is divided into as many equal shares as there are:

17 (i) surviving descendants in the generation nearest to the decedent that contains one or more  
18 surviving descendants; and

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

20 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
21 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
22 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
23 surviving descendants.

24 (3) (a) If, under 72-2-113(3) or (4), a decedent's intestate estate or a part of the intestate estate  
25 passes by representation to the descendants of the decedent's deceased parents or either of them or to  
26 the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate  
27 or part of the estate is divided into as many equal shares as there are:

28 (i) surviving descendants in the generation nearest the deceased parents or either of them or  
29 nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

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

1 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
 2 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
 3 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
 4 surviving descendants."

5

6 **Section 4.** Section 72-2-221, MCA, is amended to read:

7 **"72-2-221. Elective share.** (1) The surviving spouse of a decedent who dies domiciled in this state  
 8 has a right of election, under the limitations and conditions stated in this part, to take an elective-share  
 9 amount equal to the value of the elective-share percentage of the augmented estate, determined by the  
 10 length of time the spouse and the decedent were married to each other, in accordance with the following  
 11 schedule:

12 If the decedent and the	The elective-share
13 spouse were married to	percentage is:
14 each other:	
15 Less than 1 year	supplemental amount only
16 1 year but less than 2 years	3% of the augmented estate
17 2 years but less than 3 years	6% of the augmented estate
18 3 years but less than 4 years	9% of the augmented estate
19 4 years but less than 5 years	12% of the augmented estate
20 5 years but less than 6 years	15% of the augmented estate
21 6 years but less than 7 years	18% of the augmented estate
22 7 years but less than 8 years	21% of the augmented estate
23 8 years but less than 9 years	24% of the augmented estate
24 9 years but less than 10 years	27% of the augmented estate
25 10 years but less than 11 years	30% of the augmented estate
26 11 years but less than 12 years	34% of the augmented estate
27 12 years but less than 13 years	38% of the augmented estate
28 13 years but less than 14 years	42% of the augmented estate
29 14 years but less than 15 years	46% of the augmented estate
30 15 years or more	50% of the augmented estate

1 (2) If the sum of the amounts described in 72-2-222~~(2)(e)~~(2)(d), ~~and (2)(d)~~ and 72-2-227(1)(a), and  
 2 ~~(1)(e)~~ and that part of the elective-share amount payable from the decedent's probate estate and  
 3 ~~reclaimable estates~~ nonprobate transfers to others under 72-2-227(2) and (3) is less than \$50,000, the  
 4 surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of  
 5 the amounts described in those sections. The supplemental elective-share amount is payable from the  
 6 decedent's probate estate and from recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers  
 7 to others in the order of priority set forth in 72-2-227(2) and (3).

8 (3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving  
 9 spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but  
 10 are in addition to the elective-share and supplemental elective-share amounts.

11 ~~(3)(4)~~ The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state  
 12 to take an elective share in property in this state is governed by the law of the decedent's domicile at  
 13 death."

14  
 15 **Section 5.** Section 72-2-222, MCA, is amended to read:

16 **"72-2-222. Augmented estate.** (1) (a) As used in this section, the following definitions apply:

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

19 (i) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to  
 20 persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors,  
 21 estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

22 (ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the  
 23 fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and  
 24 the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who  
 25 survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

26 (iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of  
 27 the decedent to the decedent's surviving spouse.

28 ~~(iii)(iv)~~ (iv) "Nonadverse party" means a person who does not have a substantial beneficial interest in  
 29 the trust or other property arrangement that would be adversely affected by the exercise or nonexercise  
 30 of the power that person possesses respecting the trust or other property arrangement. A person having



1 a general power of appointment over property is considered to have a beneficial interest in the property.

2 (v) "Power" or "power of appointment" includes a power to designate the beneficiary of a  
3 beneficiary designation.

4 ~~(iii)~~(vi) "Presently exercisable general power of appointment" means a power of appointment under  
5 which, at the time in question, the decedent, ~~by an~~ whether or not the decedent then had the capacity to  
6 exercise of the power, held a power ~~could have created an~~ to create a present or future interest, ~~present~~  
7 ~~or future,~~ in the decedent, ~~or the decedent's creditors,~~ the decedent's estate, or the creditors of the  
8 decedent's estate and includes a power to revoke or invade the principal of a trust or other property  
9 arrangement.

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

12 (viii) "Property" includes values subject to a beneficiary designation.

13 ~~(v)~~(ix) "Right to income" includes a right to payments under ~~an~~ a commercial or private annuity,  
14 an annuity trust, a unitrust, or a similar ~~contractual~~ arrangement.

15 (x) "Transfer", as it relates to a transfer by or of the decedent, includes:

16 (A) an exercise or release of a presently exercisable general power of appointment held by the  
17 decedent;

18 (B) a lapse at death of a presently exercisable general power of appointment held by the decedent;  
19 and

20 (C) an exercise, release, or lapse of a general power of appointment that the decedent created in  
21 the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a  
22 nonadverse party.

23 ~~(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of~~  
24 ~~property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted~~  
25 ~~value of any present or future interest then held by the surviving spouse and the commuted value of~~  
26 ~~amounts payable to the surviving spouse after the decedent's death under any trust, life insurance~~  
27 ~~settlement option, annuity contract, public or private pension, disability compensation, death benefit or~~  
28 ~~retirement plan, or any similar arrangement, exclusive of the federal social security system.~~

29 (b)(i) As used in subsections ~~subsection (2)(b)(iii)(A), and (2)(b)(iv),~~ "transfer" includes an exercise  
30 or release of a power of appointment but does not include a lapse of a power of appointment "termination":

1 (A) with respect to a right or interest in property, means that the right or interest terminated by the  
 2 terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

3 (B) with respect to a power over property, means that the power terminated by exercise, release,  
 4 lapse, or default or otherwise.

5 (ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power  
 6 terminated by exercise or release, but not by lapse or by default or otherwise.

7 (2) The augmented estate consists of the sum of:

8 (a) the value of the decedent's probate estate, reduced by funeral and administration expenses,  
 9 homestead allowance, family allowances ~~and exemptions~~, exempt property, and enforceable claims;

10 (b) the value of the decedent's ~~reclaimable estate~~ nonprobate transfers to other OTHERS, which  
 11 is are composed of all property, whether real or personal, movable or immovable, wherever situated, not  
 12 included in the decedent's probate estate, of any of the following types:

13 (i) ~~property, to the extent the passing of the principal thereof to or for the benefit of any person,~~  
 14 ~~other than the decedent's surviving spouse, was subject to~~ of any of the following types that passed  
 15 outside probate at the decedent's death:

16 (A) property over which the decedent alone, immediately before death, held a presently exercisable  
 17 general power of appointment held by the decedent alone, if the decedent held that power immediately  
 18 before death or if and to the extent the decedent, while married to the surviving spouse and during the  
 19 2-year period preceding the decedent's death, released that power or exercised that power in favor of any  
 20 person other than the decedent or the decedent's estate, spouse, or surviving spouse; the amount included  
 21 is the value of the property subject to the power, to the extent that the property was passed at the  
 22 decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person  
 23 other than the decedent's estate or surviving spouse;

24 ~~(((B) the decedent's fractional interest in property, to the extent of the decedent's unilaterally~~  
 25 ~~severable interest therein, held by the decedent and any other person, except the decedent's surviving~~  
 26 ~~spouse, in joint tenancy with the right of survivorship, if the decedent held that interest immediately before~~  
 27 ~~death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year~~  
 28 ~~period preceding the decedent's death, transferred that interest to any person the amount included is the~~  
 29 value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of  
 30 survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

1 OR

2 (C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership  
 3 registration with the right of survivorship; the amount included is the value of the decedent's ownership  
 4 interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the  
 5 benefit of any person other than the decedent's estate or surviving spouse; or

6 ~~(iii)(D) proceeds of insurance, including accidental death benefits, on the life of the decedent~~  
 7 ~~payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance~~  
 8 ~~policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was~~  
 9 ~~subject to immediately before death or if and to the extent that the decedent alone and immediately before~~  
 10 ~~death held a presently exercisable general power of appointment held by the decedent alone immediately~~  
 11 ~~before death or if and to the extent the decedent, while married to the surviving spouse and during the~~  
 12 ~~2-year period preceding the decedent's death, transferred that policy to any person other than the~~  
 13 ~~decedent's surviving spouse over the policy or its proceeds; and the amount included is the value of the~~  
 14 ~~proceeds, to the extent that they were payable at the decedent's death to or for the benefit of any person~~  
 15 ~~other than the decedent's estate or surviving spouse;~~

16 ~~(iv)(ii) property transferred in any of the following forms by the decedent to any person other than~~  
 17 ~~a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the~~  
 18 ~~benefit of any person other than the surviving spouse, if the transfer is of any of the following types:~~

19 ~~(A) any irrevocable transfer to the extent that in which the decedent retained at the time of or~~  
 20 ~~during the 2-year period preceding death the right to the possession or enjoyment of, or right to the income~~  
 21 ~~from, the property if and to the extent that the decedent's right terminated at or continued beyond the~~  
 22 ~~decedent's death; the amount included is the value of the fraction of the property to which the decedent's~~  
 23 ~~right related, to the extent that the fraction of the property was passed outside probate to or for the benefit~~  
 24 ~~of any person other than the decedent's estate or surviving spouse; or~~

25 ~~(B) any transfer to the extent that at the time of or during the 2-year period preceding the~~  
 26 ~~decedent's death, in which the decedent created a power over the income or principal was subject to a~~  
 27 ~~power of the transferred property, exercisable by the decedent alone or in conjunction with any other~~  
 28 ~~person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, or~~  
 29 ~~the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the~~  
 30 ~~property subject to the power, to the extent that the power was exercisable at the decedent's death to or~~

1 for the benefit of any person other than the decedent's surviving spouse or to the extent that the property  
 2 subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise,  
 3 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

4 (iii) property that passed during marriage and during the 2-year period preceding the decedent's  
 5 death as a result of a transfer by the decedent if the transfer was of any of the following types:

6 (A) any property that passed as a result of the termination of a right or interest in, or power over,  
 7 property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B),  
 8 (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the  
 9 amount included is the value of the property that would have been included under these subsections,  
 10 except that that property is valued at the time that the right, interest, or power terminated, and is included  
 11 only to the extent that the property passed upon termination to or for the benefit of any person other than  
 12 the decedent or the decedent's estate, spouse, or surviving spouse; OR

13 ~~(B) any transfer of or relating to an insurance policy on the life of the decedent if the proceeds~~  
 14 ~~would have been included in the augmented estate under subsection (2)(b)(i)(D) had the transfer not~~  
 15 ~~occurred; the amount included is the value of the insurance proceeds to the extent that the proceeds were~~  
 16 ~~payable at the decedent's death to or for the benefit of any person other than the decedent's estate or~~  
 17 ~~surviving spouse; or~~

18 ~~(C)(B) any transfer of property, to the extent the decedent's contribution to it, as a percentage of~~  
 19 ~~the whole, was made during the 2-year period preceding the decedent's death, by which the property is~~  
 20 ~~held at the time of or during the 2-year period preceding the decedent's death by the decedent and another,~~  
 21 ~~other than the decedent's surviving spouse, with right of survivorship; or~~

22 ~~(D) any transfer not otherwise included in the augmented estate, made to or for the benefit of a~~  
 23 ~~donee during the 2-year period preceding the decedent's death person other than the decedent's surviving~~  
 24 ~~spouse; the amount included is the value of the transferred property to the extent that the aggregate~~  
 25 ~~transfers to any one donee in either of the 2 years ~~exceed~~ exceeded \$10,000;~~

26 (c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are  
 27 composed of all property that passed outside probate at the decedent's death from the decedent to which  
 28 the surviving spouse succeeds by reason of the decedent's death, other than by homestead allowance,  
 29 exempt property, family allowance, testate succession, or intestate succession, including the proceeds of  
 30 insurance, including: accidental death benefits, on the life of the decedent and including benefits payable

1 ~~under a retirement plan in which the decedent was a participant, exclusive of~~

2 (i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship,  
3 to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

4 (ii) the decedent's ownership interest in property or accounts held in co-ownership registration with  
5 the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse  
6 as surviving co-owner; and

7 (III) PROCEEDS OF INSURANCE, INCLUDING ACCIDENTAL DEATH BENEFITS, ON THE LIFE OF THE  
8 DECEDENT IF THE DECEDENT OWNED THE INSURANCE POLICY IMMEDIATELY BEFORE DEATH OR IF  
9 AND TO THE EXTENT THAT THE DECEDENT ALONE AND IMMEDIATELY BEFORE DEATH HELD A  
10 PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT OVER THE POLICY OR ITS PROCEEDS;  
11 THE AMOUNT INCLUDED IS THE VALUE OF THE PROCEEDS, TO THE EXTENT THAT THEY WERE  
12 PAYABLE AT THE DECEDENT'S DEATH; AND

13 ~~(iii)~~ (IV) all other property that would have been included in the augmented estate under subsection  
14 (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse,  
15 surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding  
16 property passing to the surviving spouse under the federal social security system; and

17 (d) except to the extent included in the augmented estate under subsection (2)(a) or (2)(c), the  
18 value of:

19 (i) property that was owned by the decedent's surviving spouse at the decedent's death, reduced  
20 by enforceable claims against that property or that spouse, plus the value of amounts including:

21 (A) the surviving spouse's fractional interest in property held in joint tenancy with the right of  
22 survivorship;

23 (B) the surviving spouse's ownership interest in property or accounts held in co-ownership  
24 registration with the right of survivorship; and

25 (C) property that passed to the surviving spouse by reason of the decedent's death, but not  
26 including the spouse's right to homestead allowance, family allowance, exempt property, or payments  
27 under the federal social security system; and

28 (ii) property that would have been includable included in the surviving spouse's reclaimable estate  
29 nonprobate transfers to others, other than the spouse's fractional and ownership interests included in  
30 subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse predeceased been the decedent. However, amounts

1 Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the  
 2 fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and  
 3 (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before  
 4 the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.  
 5 For purposes of this subsection (2)(d)(ii), proceeds of insurance that would have been includable included  
 6 in the surviving spouse's reclaimable estate ~~nonprobate transfers to others~~ under subsection (2)(b)(iii)  
 7 (2)(b)(i)(D) are not valued as if the surviving spouse were deceased. The value of property included under  
 8 this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property  
 9 and is reduced by enforceable claims against the surviving spouse.

10 ~~(3) Any transfer or exercise or release of a power of appointment~~ The value of any property is  
 11 excluded from the decedent's reclaimable estate ~~nonprobate transfers to others~~:

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

14 (b) if ~~irrevocably made~~ the property was transferred with the written ~~consent or~~ joinder of, or if  
 15 the transfer was consented to in writing by, the surviving spouse; OR

16 (C) IF THE PROPERTY IS LIFE INSURANCE, ACCIDENT INSURANCE, PENSION, PROFIT-SHARING,  
 17 RETIREMENT, AND OTHER BENEFIT PLANS PAYABLE TO PERSONS OTHER THAN THE DECEDENT'S  
 18 SURVIVING SPOUSE OR THE DECEDENT'S ESTATE.

19 ~~(4) Property is valued as of the decedent's death, but an irrevocable transfer of property during~~  
 20 ~~the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under~~  
 21 ~~subsections (2)(b)(i), (2)(b)(iii), and (2)(b)(iv) is valued as of the time of the transfer. If the terms of more~~  
 22 ~~than one~~ The value of property includes the commuted value of any present or future interest and the  
 23 commuted value of amounts payable under any trust, life insurance settlement option, annuity contract,  
 24 public or private pension, disability compensation, death benefit or retirement plan, or any similar  
 25 arrangement, exclusive of the federal social security system.

26 (5) In case of overlapping application to the same property of the provisions of subsection (2)(b)  
 27 apply, the property is included in the augmented estate under the provision ~~that yields~~ yielding the highest  
 28 value, but under any one, but only one, of the overlapping provisions if they all yield the same value. For  
 29 purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release  
 30 of a power of appointment.

1           ~~(5) (a) Although under this section a payment, item of property, or other benefit is included in the~~  
2 ~~decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or~~  
3 ~~transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or~~  
4 ~~for having taken any other action in good faith reliance on the validity of a governing instrument, upon~~  
5 ~~request and satisfactory proof of the decedent's death, before the payor or other third party received~~  
6 ~~written notice from the surviving spouse or spouse's representative of an intention to file a petition for the~~  
7 ~~elective share or that a petition for the elective share has been filed. A payor or other third party is liable~~  
8 ~~for payments made or other actions taken after the payor or other third party received written notice of an~~  
9 ~~intention to file a petition for the elective share or that a petition for the elective share has been filed.~~

10           ~~(b) The written notice of intention to file a petition for the elective share or that a petition for the~~  
11 ~~elective share has been filed must be mailed to the payor's or other third party's main office or home by~~  
12 ~~certified mail, return receipt requested, or served upon the payor or other third party in the same manner~~  
13 ~~as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective~~  
14 ~~share or that a petition for the elective share has been filed, a payor or other third party may pay any~~  
15 ~~amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction~~  
16 ~~of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced,~~  
17 ~~to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the~~  
18 ~~county of the decedent's residence. The court shall hold the funds or item of property and, upon its~~  
19 ~~determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no~~  
20 ~~petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an~~  
21 ~~elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated~~  
22 ~~beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third~~  
23 ~~party from all claims for the value of amounts paid to or items of property transferred to or deposited with~~  
24 ~~the court.~~

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

28           ~~(6) (a) A person who purchases property from a recipient for value and without notice or who~~  
29 ~~receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation~~  
30 ~~is neither obligated under this part to return the payment, item of property, or benefit nor liable under this~~

1 part for the amount of the payment or the value of the item of property or benefit. However, a person who,  
 2 not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable  
 3 estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount  
 4 of the payment or the value of the item of property or benefit, as provided in 72-2-227.

5 ~~(b) If any section or part of any section of this part is preempted by federal law with respect to a~~  
 6 ~~payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person~~  
 7 ~~who, not for value, receives the payment, item of property, or other benefit is obligated to return that~~  
 8 ~~payment, item of property, or benefit, or is personally liable for the amount of that payment or the value~~  
 9 ~~of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled~~  
 10 ~~to it were that section or part of that section not preempted."~~

11  
 12 **Section 6.** Section 72-2-223, MCA, is amended to read:

13 **"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse.** (1)

14 The right of election may be exercised only by a surviving spouse who is living when the petition for the  
 15 elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse  
 16 personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator,  
 17 guardian, or agent under the authority of a power of attorney.

18 (2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the  
 19 court shall set aside that portion of the elective-share and supplemental elective-share amounts due from  
 20 the decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to  
 21 others under 72-2-227(2) and (3) and shall appoint a trustee to administer that property for the support of  
 22 the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by  
 23 an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an  
 24 incapacitated person. The trustee shall administer the trust in accordance with the following terms and such  
 25 additional terms as the court determines appropriate:

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



1 (b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on  
2 behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains  
3 capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership  
4 of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse  
5 declaring the termination.

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

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

10 (ii) to that predeceased spouse's heirs under 72-2-721."

11

12 **Section 7.** Section 72-2-224, MCA, is amended to read:

13 **"72-2-224. Waiver of right to elect and of other rights.** (1) The right of election of a surviving  
14 spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family  
15 allowance or any of them may be waived, wholly or partially, before or after marriage, by a written  
16 contract, agreement, or waiver signed by the surviving spouse. The written contract, agreement, or waiver  
17 is enforceable without consideration.

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

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

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

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

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

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

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

29 (4) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the  
30 property or estate of a present or prospective spouse or a complete property settlement entered into after

1 or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance,  
 2 exempt property, and family allowance by each spouse in the property of the other and a renunciation by  
 3 each of all benefits that would otherwise pass to that spouse from the other by intestate succession or by  
 4 virtue of any will executed before the waiver or property settlement."

5  
 6 **NEW SECTION. Section 8. Personal liability of recipients.** (1) Only original recipients of the  
 7 decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate  
 8 transfers to others, to the extent the donees have the property or its proceeds, are liable to make a  
 9 proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental  
 10 elective-share amount. A person liable to make contribution may choose to give up the proportional part  
 11 of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the  
 12 person is liable.

13 (2) If any section or part of any section of this part is preempted by federal law with respect to a  
 14 payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to  
 15 others, a person who, not for value, receives the payment, item of property, or other benefit is obligated  
 16 to return that payment, item of property, or benefit or is personally liable for the amount of that payment  
 17 or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have  
 18 been entitled to it were that section or part of that section not preempted.

19  
 20 **NEW SECTION. Section 9. Protection of payors and other third parties.** (1) Although under  
 21 72-2-222 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers  
 22 to others, a payor or other third party is not liable for having made a payment or transferred an item of  
 23 property or other benefit to a beneficiary designated in a governing instrument or for having taken any other  
 24 action in ~~good faith~~ reliance on the validity of a governing instrument, upon request and satisfactory proof  
 25 of the decedent's death, before the payor or other third party received written notice from the surviving  
 26 spouse or spouse's representative of an intention to file a petition for the elective share or that a petition  
 27 for the elective share has been filed. A payor or other third party is liable ONLY for ~~payments made or other~~  
 28 actions taken 2 OR MORE BUSINESS DAYS after the payor or other third party received written notice of  
 29 an intention to file a petition for the elective share or that a petition for the elective share has been filed.  
 30 THE WRITTEN NOTICE MUST INDICATE THE NAME OF THE DECEDENT, THE DATE OF THE DECEDENT'S

1 DEATH, THE NAME OF THE PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR  
 2 ITEM OF PROPERTY OR OTHER BENEFIT, AND A STATEMENT THAT THE SPOUSE INTENDS TO FILE A  
 3 PETITION FOR THE ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS BEEN FILED.  
 4 ANY FORM OF SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN SUBSECTION (2) IS NOT  
 5 SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN  
 6 PURSUANT TO THE GOVERNING INSTRUMENT.

7 (2) The written notice ~~of intention to file a petition for the elective share or that a petition for the~~  
 8 ~~elective share has been filed~~ must be mailed to the payor's or other third party's main office or home by  
 9 certified mail, return receipt requested, or served upon the payor or other third party in the same manner  
 10 as a summons in a civil action. NOTICE TO A SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD  
 11 PARTY DOES NOT CONSTITUTE NOTICE TO THE PAYOR OR OTHER THIRD PARTY. Upon receipt of  
 12 written notice of intention to file a petition for the elective share or that a petition for the elective share has  
 13 been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of  
 14 property held by it to or with the court having jurisdiction of the probate proceedings relating to the  
 15 decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of  
 16 probate proceedings relating to decedents' estates located in the county of the decedent's residence. THE  
 17 AVAILABILITY OF AN ACTION UNDER THIS SECTION DOES NOT PREVENT THE PAYOR OR OTHER THIRD  
 18 PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT.  
 19 IF PROBATE PROCEEDINGS HAVE NOT BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL  
 20 FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD  
 21 PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT MAY  
 22 NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT, TRANSFER,  
 23 OR DEPOSIT. The court shall hold the funds or item of property and, upon its determination under  
 24 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the  
 25 court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn  
 26 under 72-2-225(3), the court shall order disbursement to the designated beneficiary. A FILING FEE, IF ANY,  
 27 MAY, IN THE DISCRETION OF THE COURT, BE CHARGED UPON DISBURSEMENT EITHER TO THE  
 28 RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT. Payments, transfers,  
 29 or deposits made to or with the court discharge the payor or other third party from all claims UNDER THE  
 30 GOVERNING INSTRUMENT OR APPLICABLE LAW for the value of amounts paid to or items of property

1 transferred to or deposited with the court.

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

5

6 **Section 10.** Section 72-2-225, MCA, is amended to read:

7 **"72-2-225. Proceeding for elective share -- time limit.** (1) Except as provided in subsection (2), the  
8 election must be made by filing in the court and mailing or delivering to the personal representative, if any,  
9 a petition for the elective share within 9 months after the date of the decedent's death or within 6 months  
10 after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give  
11 notice of the time and place set for hearing to persons interested in the estate and to the distributees and  
12 recipients of portions of the augmented estate whose interests will be adversely affected by the taking of  
13 the elective share. Except as provided in subsection (2), the decedent's ~~reclaimable estate,~~ nonprobate  
14 transfers to others described in 72-2-222(2)(b), is not included within the augmented estate for the purpose  
15 of computing the elective share if the petition is filed more than 9 months after the decedent's death.

16 (2) Within 9 months after the decedent's death, the surviving spouse may petition the court for  
17 an extension of time for making an election. If, within 9 months after the decedent's death, the spouse  
18 gives notice of the petition to all persons interested in the decedent's ~~reclaimable estate,~~ nonprobate  
19 transfers to others the court for cause shown by the surviving spouse may extend the time for election.  
20 If the court grants the spouse's petition for an extension, the decedent's ~~reclaimable estate,~~ nonprobate  
21 transfers to others described in 72-2-222(2)(b), is not excluded from the augmented estate for the purpose  
22 of computing the elective-share and supplemental elective-share amounts if the spouse makes an election  
23 by filing in the court and mailing or delivering to the personal representative, if any, a petition for the  
24 elective share within the time allowed by the extension.

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

27 (4) After notice and hearing, the court shall determine the elective-share and supplemental  
28 elective-share amounts and shall order its payment from the assets of the augmented estate or by  
29 contribution as appears appropriate under 72-2-227. If it appears that a fund or property included in the  
30 augmented estate has not come into the possession of the personal representative or has been distributed

1 by the personal representative, the court nevertheless shall fix the liability of any person who has any  
 2 interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The  
 3 proceeding may be maintained against fewer than all persons against whom relief could be sought, but no  
 4 person is subject to contribution in any greater amount than the person would have been under 72-2-227  
 5 if relief had been secured against all persons subject to contribution.

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

8

9 **Section 11.** Section 72-2-227, MCA, is amended to read:

10 "**~~72-2-227. Charging spouse with owned assets and gifts received—liability of others for balance~~**  
 11 **of Sources from which elective share payable.** (1) In the proceeding for an elective share, the following are  
 12 applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the  
 13 decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to  
 14 others:

15 (a) amounts included in the augmented estate under 72-2-222(2)(a) that pass or have passed to  
 16 the surviving spouse by testate or intestate succession;

17 (b) amounts included in the augmented estate under 72-2-222(2)(c);

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

20 (d) amounts included in the augmented estate under 72-2-222(2)(d) up to the applicable percentage  
 21 thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share  
 22 percentage set forth in the schedule in 72-2-221(1) appropriate to the length of time the spouse and the  
 23 decedent were married to each other.

24 (2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the  
 25 surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's  
 26 probate estate and ~~that portion of~~ in the decedent's ~~reclaimable estate~~ nonprobate transfers to others, other  
 27 than amounts ~~irrevocably transferred within 2 years before the decedent's death~~ included under  
 28 72-2-222(2)(b)(iii)(A) or 72-2-222(2)(b)(iii)(C)(B), are applied first to satisfy the unsatisfied balance of the  
 29 elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that  
 30 portion of the decedent's ~~reclaimable estate~~ nonprobate transfers to others are applied so that liability for

1 the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is  
 2 equitably apportioned among the recipients of the decedent's probate estate and of that portion of the  
 3 decedent's ~~reclaimable estate~~ nonprobate transfers to others in proportion to the value of their interests  
 4 therein.

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

11 ~~(4) Only original recipients of the reclaimable estate described in 72-2-222(2)(b) and the donees~~  
 12 ~~of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds are~~  
 13 ~~liable to make a proportional contribution toward satisfaction of the surviving spouse's elective share or~~  
 14 ~~supplemental elective share amount. A person liable to contribution may choose to give up the proportional~~  
 15 ~~part of the reclaimable estate or to pay the value of the amount for which the person is liable."~~

16

17 **Section 12.** Section 72-2-331, MCA, is amended to read:

18 **"72-2-331. Entitlement of spouse -- premarital will.** (1) If a testator's surviving spouse married the  
 19 testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share,  
 20 no less than the value of the share of the estate the spouse would have received if the testator had died  
 21 intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator  
 22 who was born before the testator married the surviving spouse and who is not a child of the surviving  
 23 spouse nor devised to the descendant of such a child or passes under 72-2-613 or 72-2-614 to such a child  
 24 or to a descendant of such a child, unless:

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

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

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

1 the amount of the transfer or other evidence.

2 (2) In satisfying the share provided by this section, devises made by the will to the testator's  
3 surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator  
4 who was born before the testator married the surviving spouse and who is not a child of the surviving  
5 spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate  
6 as provided in 72-3-901."

7  
8 **Section 13.** Section 72-2-332, MCA, is amended to read:

9 **"72-2-332. Omitted children.** (1) Except as provided in subsection (2), if a testator fails to provide  
10 in the testator's will for any of the testator's children born or adopted after the execution of the will, the  
11 omitted after-born or after-adopted child receives a share in the estate as follows:

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

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

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

21 (ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's  
22 estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all  
23 omitted after-born and after-adopted children with the children to whom devises were made under the will  
24 and had given an equal share of the estate to each child.

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

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

1 testator.

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

3 (a) it appears from the will that the omission was intentional; or

4 (b) the testator provided for the omitted after-born or after-adopted child by transfer outside the  
5 will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's  
6 statements or is reasonably inferred from the amount of the transfer or other evidence.

7 (3) ~~Except as provided in subsection (2), if~~ If at the time of execution of the will the testator fails  
8 to provide in the testator's will for a living child solely because the testator believes the child to be dead,  
9 the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

10 (4) In satisfying a share provided by subsection (1)(a), devises made by the will abate as provided  
11 in 72-3-901."

12

13 **Section 14.** Section 72-2-613, MCA, is amended to read:

14 **"72-2-613. Antilapse -- deceased devisee -- class gifts.** (1) As used in this section, the following  
15 definitions apply:

16 (a) "Alternative devise" means a devise that is expressly created by the will and that under the  
17 terms of the will may take effect instead of another devise on the happening of one or more events,  
18 including survival of the testator or failure to survive the testator, whether an event is expressed in  
19 condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative  
20 devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure,  
21 the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

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

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

26 (d) "Devisee" includes:

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

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

30 and



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

2 (e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the  
3 donor of a power of appointment but not a child of the testator or donor.

4 (f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither  
5 predeceased the testator nor is considered to have predeceased the testator under 72-2-712.

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

8 (2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent,  
9 or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will,  
10 the following apply:

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

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

26 (c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the  
27 individual survives me" or in a devise to "my surviving children", are not, in the absence of additional  
28 evidence, a sufficient indication of an intent contrary to the application of this section.

29 (d) If the will creates an alternative devise with respect to a devise for which a substitute gift is  
30 created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise only if an

1 expressly designated devisee of the alternative devise is entitled to take under the will.

2 (e) Unless the language creating a power of appointment expressly excludes the substitution of  
3 the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a  
4 power of appointment may be substituted for the appointee under this section, whether or not the  
5 descendant is an object of the power.

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

9 (a) Except as provided in subsection (3)(b), the devised property passes under the primary  
10 substitute gift.

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

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

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

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

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

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

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

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

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

23 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
24 younger-generation devise."

25

26 **Section 15.** Section 72-2-712, MCA, is amended to read:

27 **"72-2-712. Requirement of survival by one hundred twenty hours.** (1) For the purposes of chapters  
28 1 through 5, ~~except for purposes of Title 72, chapter 6, part 3, and~~ except as provided in subsection (4),  
29 an individual who is not established by clear and convincing evidence to have survived an event, including  
30 the death of another individual, by 120 hours is considered to have predeceased the event.

1 (2) Except as provided in subsection (4) ~~and except for a security registered in beneficiary form~~  
2 ~~(TOD) under Title 72, chapter 6, part 3~~, for purposes of a provision of a governing instrument that relates  
3 to an individual surviving an event, including the death of another individual, an individual who is not  
4 established by clear and convincing evidence to have survived the event by 120 hours is considered to have  
5 predeceased the event.

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

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

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

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

16 (4) ~~This section does~~ Survival by 120 hours is not apply required if:

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

19 (b) the governing instrument expressly indicates that an individual is not required to survive an  
20 event, including the death of another individual, by any specified period or expressly requires the individual  
21 to survive the event by a specified period; However, survival of the event or the specified period must be  
22 established by clear and convincing evidence.

23 (c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest  
24 or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become  
25 invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and  
26 convincing evidence; or

27 (d) the application of ~~this section~~ a 120-hour requirement of survival to multiple governing  
28 instruments would result in an unintended failure or duplication of a disposition. However, survival must  
29 be established by clear and convincing evidence.

30 (5) (a) A payor or other third party is not liable for having made a payment or transferred an item

1 of property or any other benefit to a beneficiary designated in a governing instrument who, under this  
2 section, is not entitled to the payment or item of property, or for having taken any other action in good faith  
3 reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the  
4 payor or other third party received written notice of a claimed lack of entitlement under this section. A  
5 payor or other third party is liable for a payment made or other action taken after the payor or other third  
6 party received written notice of a claimed lack of entitlement under this section.

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

18 (6) (a) A person who purchases property for value and without notice or who receives a payment  
19 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated  
20 under this section to return the payment, item of property, or benefit nor liable under this section for the  
21 amount of the payment or the value of the item of property or benefit. However, a person who, not for  
22 value, receives a payment, item of property, or other benefit to which the person is not entitled under this  
23 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount  
24 of the payment or the value of the item of property or benefit, to the person who is entitled to it under this  
25 section.

26 (b) If this section or any part of this section is preempted by federal law with respect to a payment,  
27 an item of property, or any other benefit covered by this section, a person who, not for value, receives the  
28 payment, item of property, or other benefit to which the person is not entitled under this section is  
29 obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the  
30 payment or the value of the item of property or benefit, to the person who would have been entitled to it

1 were this section or part of this section not preempted."

2

3 **Section 16.** Section 72-2-716, MCA, is amended to read:

4 **"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death**  
5 **registration -- deceased beneficiary.** (1) As used in this section, the following definitions apply:

6 (a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created  
7 by the governing instrument and that under the terms of the governing instrument may take effect instead  
8 of another beneficiary designation on the happening of one or more events, including survival of the  
9 decedent or failure to survive the decedent, whether an event is expressed in condition-precedent,  
10 condition-subsequent, or any other form.

11 (b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary  
12 must survive the decedent and includes:

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

14 (ii) an individual or class member who was deceased at the time the beneficiary designation was  
15 executed as well as an individual or class member who was then living but who failed to survive the  
16 decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint  
17 and survivorship account.

18 (c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary  
19 designation in the form of a class gift.

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

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

24 (f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who  
25 neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-712.

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

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

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

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

14 (c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to  
15 an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are  
16 not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application  
17 of this section.

18 (d) If a governing instrument creates an alternative beneficiary designation with respect to a  
19 beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute  
20 gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of  
21 the alternative beneficiary designation is entitled to take.

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

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

26 (b) If there is a younger-generation beneficiary designation, the property passes under the  
27 younger-generation substitute gift and not under the primary substitute gift.

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

29 (i) "Primary beneficiary designation" means the beneficiary designation that would have taken  
30 effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving

1 descendants survived the decedent.

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

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

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

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

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

8 (D) would have taken effect had all the deceased beneficiaries who left surviving descendants  
9 survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary  
10 designation.

11 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
12 younger-generation beneficiary designation.

13 (4) (a) A payor is protected from liability in making payments under the terms of the beneficiary  
14 designation until the payor has received written notice of a claim to a substitute gift under this section.  
15 Payment made before the receipt of written notice of a claim to a substitute gift under this section  
16 discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a  
17 payment made after the payor has received written notice of the claim. A recipient is liable for a payment  
18 received, whether or not written notice of the claim is given.

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

27 (5) (a) A person who purchases property for value and without notice or who receives a payment  
28 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated  
29 under this section to return the payment, item of property, or benefit nor liable under this section for the  
30 amount of the payment or the value of the item of property or benefit. However, a person who, not for

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

5 (b) If this section or any part of this section is preempted by federal law with respect to a payment,  
6 an item of property, or any other benefit covered by this section, a person who, not for value, receives the  
7 payment, item of property, or other benefit to which the person is not entitled under this section is  
8 obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the  
9 payment or the value of the item of property or benefit, to the person who would have been entitled to it  
10 were this section or part of this section not preempted."  
11

12 **Section 17.** Section 72-2-717, MCA, is amended to read:

13 **"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.**

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

15 (a) "Alternative future interest" means an expressly created future interest that may take effect  
16 in possession or enjoyment instead of another future interest on the happening of one or more events,  
17 including survival of an event or failure to survive an event, whether an event is expressed in  
18 condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create  
19 an alternative future interest with respect to a future interest created in a nonresiduary devise in the will,  
20 whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary  
21 clause.

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

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

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

30 (e) "Future interest" includes an alternative future interest and a future interest in the form of a



1 class gift.

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

6 (g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who  
7 neither predeceased the distribution date nor is considered to have predeceased the distribution date under  
8 72-2-712.

9 (2) A future interest under the terms of a trust is contingent on the beneficiary surviving the  
10 distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the  
11 distribution date, the following provisions apply:

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

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

28 (c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in  
29 the absence of additional evidence, a sufficient indication of an intent contrary to the application of this  
30 section. Words of survivorship include words of survivorship that relate to the distribution date or to an

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

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

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

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

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

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

14 (i) "Primary future interest" means the future interest that would have taken effect had all the  
15 deceased beneficiaries of the alternative future interests who left surviving descendants survived the  
16 distribution date.

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

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

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

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

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

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

25 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
26 younger-generation future interest.

27 (4) ~~Except as provided in subsection (5), if, after the application of subsections (2) and (3), there~~  
28 is no surviving taker, the property passes in the following order:

29 (a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the  
30 transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this

1 section, the residuary clause is treated as creating a future interest under the terms of a trust.

2 (b) if no taker is produced by the application of subsection (4)(a), the property passes to the  
3 transferor's heirs under 72-2-721.

4 (5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future  
5 interest was created by the exercise of a power of appointment;

6 (a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as  
7 creating a future interest under the terms of a trust; and

8 (b) if no taker is produced by the application of subsection (5)(a), the property passes as provided  
9 in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a  
10 nongeneral power and means the donee if the power was a general power."

11

12 **Section 18.** Section 72-2-719, MCA, is amended to read:

13 **"72-2-719. Representation -- per capita at each generation -- per stirpes.** (1) As used in this  
14 section, the following definitions apply:

15 (a) "Deceased child" or "deceased descendant" means a child or a descendant who either  
16 predeceased the distribution date or is considered to have predeceased the distribution date under  
17 72-2-712.

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

21 (c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child,  
22 or a descendant who neither predeceased the distribution date nor is considered to have predeceased the  
23 distribution date under 72-2-712.

24 (2) (a) If a governing instrument calls for property to be distributed "per capita at each generation",  
25 the property is divided into as many equal shares as there are:

26 (i) surviving descendants in the generation nearest to the designated ancestor that contains one or  
27 more surviving descendants; and

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

29 (b) Each surviving descendant in the nearest generation is allocated one share. The remaining  
30 shares, if any, are combined and then divided in the same manner among the surviving descendants of the

1 deceased descendants as if the surviving descendants who were allocated a share and their surviving  
 2 descendants had predeceased the distribution date.

3 (3) (a) ~~If an applicable statute or a governing instrument calls for property to be distributed "by~~  
 4 ~~representation" or "per stirpes", the property is divided into as many equal shares as there are:~~

5 (i) surviving children of the designated ancestor; and

6 (ii) deceased children who left surviving descendants.

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

10 (4) (a) If an applicable statute or a governing instrument calls for property to be distributed "by  
 11 representation", the property is divided into as many equal shares as there are:

12 (i) surviving descendants in the generation nearest to the designated ancestor that contains one or  
 13 more surviving descendants; and

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

15 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
 16 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
 17 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
 18 surviving descendants.

19 ~~(4)(5)~~ For the purposes of subsections (2) ~~and (3)~~ through (4), an individual who is deceased and  
 20 left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a  
 21 descendant of the designated ancestor is not entitled to a share."

22

23 **Section 19.** Section 72-2-721, MCA, is amended to read:

24 **"72-2-721. ~~Future interests~~ Interests in "heirs" and like.** If an applicable statute or a governing  
 25 instrument calls for a present or future distribution to or creates a present or future interest in a designated  
 26 individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the  
 27 property passes to those persons, including the state ~~under 72-2-115~~, and in such shares as would succeed  
 28 to the designated individual's intestate estate under the intestate succession law of the designated  
 29 individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if  
 30 the designated individual died at that time. If the designated individual's surviving spouse is living but is

1 remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is  
2 not an heir of the designated individual."

3

4 **Section 20.** Section 72-2-811, MCA, is amended to read:

5 "72-2-811. **Disclaimer of property interests.** (1) (a) A person or the representative of a person to  
6 whom an interest in or with respect to property or an interest in the property devolves by whatever means  
7 may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

8 (b) The right to disclaim exists notwithstanding:

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

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

12 (c) For purposes of this subsection (1), the "representative of a person" includes a personal  
13 representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated  
14 person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained  
15 person, or a person whose identity or address is unknown; and an agent acting on behalf of the person  
16 within the authority of a power of attorney. The representative of a person may rely on a general family  
17 benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

18 (2) The following rules govern the time when a disclaimer must be filed or delivered:

19 (a) If the property or interest has devolved to the disclaimant under a testamentary instrument or  
20 by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after  
21 the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest,  
22 not later than 9 months after the event determining that the taker of the property or interest is finally  
23 ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the  
24 county in which proceedings for the administration of the estate of the deceased owner or deceased donee  
25 of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by  
26 certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent  
27 or donee of the power.

28 (b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument  
29 or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after  
30 the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than

1 9 months after the event determining that the taker of the property or interest is finally ascertained and the  
 2 taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of  
 3 the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the  
 4 existence of the interest. The effective date of a revocable instrument or contract is the date on which the  
 5 maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable  
 6 ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed  
 7 by certified mail, return receipt requested, to the person who has legal title to or possession of the interest  
 8 disclaimed.

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

14 (d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be  
 15 recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed  
 16 is located.

17 (3) The disclaimer must:

- 18 (a) describe the property or interest disclaimed;
- 19 (b) declare the disclaimer and extent of the disclaimer; and
- 20 (c) be signed by the disclaimant.

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

- 22 (a) If property or an interest in property devolves to a disclaimant under a testamentary instrument,  
 23 under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and  
 24 the decedent has not provided for another disposition of that interest, should it be disclaimed, or of  
 25 disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had  
 26 predeceased the decedent, but if by law or under the testamentary instrument the descendants of the  
 27 disclaimant would ~~take the disclaimant's share~~ in the disclaimed interest by representation or otherwise  
 28 were the disclaimant to predecease the decedent, THEN the disclaimed interest passes by representation,  
 29 or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the  
 30 decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate

1 or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates  
2 back for all purposes to the date of the death of the decedent.

3 (b) If property or an interest in property devolves to a disclaimant under a nontestamentary  
4 instrument or contract and the instrument or contract does not provide for another disposition of that  
5 interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest  
6 devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by  
7 law or under the nontestamentary instrument or contract the descendants of the disclaimant would ~~take~~  
8 ~~the disclaimant's share in the disclaimed interest~~ by representation or otherwise were the disclaimant to  
9 predecease the effective date of the instrument, THEN the disclaimed interest passes by representation,  
10 or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the  
11 effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest  
12 that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes  
13 effect as if the disclaimant had died before the effective date of the instrument or contract that transferred  
14 the disclaimed interest.

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

17 (5) The right to disclaim property or an interest in the property is barred by:

18 (a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a  
19 contract therefor;

20 (b) a written waiver of the right to disclaim;

21 (c) an acceptance of the property or interest or benefit under it; or

22 (d) a sale of the property or interest under judicial sale made before the disclaimer is made.

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

25 (7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the  
26 time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not  
27 become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after  
28 October 1, 1993."

29  
30 **Section 21.** Section 72-2-813, MCA, is amended to read:

1           **"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance,**  
2 **and beneficiary designations.** (1) For purposes of this section, the following definitions apply:

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

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

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

11           (2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this  
12 chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted  
13 spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent  
14 died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

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

16           (a) revokes any revocable:

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

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

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

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

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



1 property, as evidence of ownership.

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

5 (6) A wrongful acquisition of property or interest by a killer not covered by this section must be  
6 treated in accordance with the principle that a killer cannot profit from the killer's wrong.

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

15 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item  
16 of property or any other benefit to a beneficiary designated in a governing instrument affected by an  
17 intentional and felonious killing, or for having taken any other action in good faith reliance on the validity  
18 of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor  
19 or other third party received written notice of a claimed forfeiture or revocation under this section. A  
20 PAYOR OR OTHER THIRD PARTY DOES NOT HAVE A DUTY OR OBLIGATION TO MAKE ANY  
21 DETERMINATION AS TO WHETHER THE DECEDENT WAS A VICTIM OF A HOMICIDE OR TO SEEK ANY  
22 EVIDENCE WITH RESPECT TO A HOMICIDE EVEN IF THE CIRCUMSTANCES OF THE DECEDENT'S DEATH  
23 ARE SUSPICIOUS OR QUESTIONABLE AS TO THE BENEFICIARY'S PARTICIPATION IN A HOMICIDE. A  
24 payor or other third party is ONLY liable for ~~a payment made or other action~~ ACTIONS taken 2 OR MORE  
25 BUSINESS DAYS after THE ACTUAL RECEIPT BY the payor or other third party ~~received~~ OF written notice  
26 ~~of a claimed forfeiture or revocation under this section.~~ THE PAYOR OR OTHER THIRD PARTY MAY BE  
27 LIABLE FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT ONLY IF THE FORM OF THE  
28 SERVICE IS THAT DESCRIBED IN SUBSECTION (8)(B).

29 (b) THE WRITTEN NOTICE MUST INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE  
30 PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER

1 BENEFIT, AND A STATEMENT THAT A CLAIM OF FORFEITURE OR REVOCATION IS BEING MADE UNDER  
2 THIS SECTION. Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed  
3 to the payor's or other third party's main office or home by certified mail, return receipt requested, or  
4 served upon the payor or other third party in the same manner as a summons in a civil action. NOTICE TO  
5 A SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD PARTY DOES NOT CONSTITUTE NOTICE  
6 TO THE PAYOR OR OTHER THIRD PARTY. Upon receipt of written notice of a claimed forfeiture or  
7 revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit  
8 any item of property held by it to or with the court having jurisdiction of the probate proceedings relating  
9 to the decedent's estate or, if no proceedings have been commenced, to or with the court having  
10 jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's  
11 residence. IN ADDITION TO THE ACTIONS AVAILABLE UNDER THIS SECTION, THE PAYOR OR OTHER  
12 THIRD PARTY MAY TAKE ANY ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. IF  
13 PROBATE PROCEEDINGS HAVE NOT BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL  
14 FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD  
15 PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT MAY  
16 NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE  
17 COURT OF AMOUNTS OWED OR TRANSFERRED TO OR DEPOSITED WITH THE COURT OR ANY ITEM OF  
18 PROPERTY. The court shall hold the funds or item of property and, upon its determination under this  
19 section, shall order disbursement in accordance with the determination. A FILING FEE, IF ANY, MAY BE  
20 CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY  
21 ON DEPOSIT WITH THE COURT, IN THE DISCRETION OF THE COURT. Payments, transfers, or deposits  
22 made to or with the court discharge the payor or other third party from all claims for the value of amounts  
23 paid to or items of property transferred to or deposited with the court.

24 (9) (a) A ~~person~~ BONA FIDE PURCHASER who purchases property ~~for value and without notice~~  
25 or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable  
26 obligation is neither obligated under this section to return the payment, item of property, or benefit nor  
27 liable under this section for the amount of the payment or the value of the item of property or benefit.  
28 However, a person who, not for value, receives a payment, item of property, or other benefit to which the  
29 person is not entitled under this section is obligated to return the payment, item of property, or benefit, or  
30 is personally liable for the amount of the payment or the value of the item of property or benefit, to the

1 person who is entitled to it under this section.

2 (b) If this section or any part of this section is preempted by federal law, OTHER THAN THE  
 3 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, with respect to a  
 4 payment, an item of property, or any other benefit covered by this section, a person who, not for value,  
 5 receives the payment, item of property, or other benefit to which the person is not entitled under this  
 6 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount  
 7 of the payment or the value of the item of property or benefit, to the person who would have been entitled  
 8 to it were this section or part of this section not preempted.

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

11

12 **Section 22.** Section 72-2-814, MCA, is amended to read:

13 **"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other**  
 14 **changes of circumstances.** (1) As used in this section, the following definitions apply:

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

17 (b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity  
 18 of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A  
 19 decree of separation that does not terminate the status of husband and wife is not a divorce for purposes  
 20 of this section.

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

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

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

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

1 divorced individual in place of the individual's former spouse or in place of the former spouse's relative and  
2 whether or not the divorced individual then had the capacity to exercise the power.

3 (2) Except as provided by the express terms of a governing instrument, a court order, or a contract  
4 relating to the division of the marital estate made between the divorced individuals before or after the  
5 marriage, divorce, or annulment, the divorce or annulment of a marriage:

6 (a) revokes any revocable:

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

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

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

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

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

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

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

29 (6) No change of circumstances other than as described in this section and in 72-2-813 effects a  
30 revocation.

1 (7) (a) A payor or other third party is not liable for having made a payment or transferred an item  
2 of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,  
3 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the  
4 governing instrument, before the payor or other third party received written notice of the divorce,  
5 annulment, or remarriage. A PAYOR OR OTHER THIRD PARTY DOES NOT HAVE A DUTY OR OBLIGATION  
6 TO INQUIRE AS TO THE CONTINUED MARITAL RELATIONSHIP BETWEEN THE DECEDENT AND A  
7 BENEFICIARY OR TO SEEK ANY EVIDENCE WITH RESPECT TO A MARITAL RELATIONSHIP. A payor or  
8 other third party is ONLY liable for ~~a payment made or other action~~ ACTIONS taken 2 OR MORE BUSINESS  
9 DAYS after THE ACTUAL RECEIPT BY the payor or other third party ~~received~~ OF written notice ~~of a claimed~~  
10 ~~forfeiture or revocation under this section.~~ THE PAYOR OR OTHER THIRD PARTY MAY BE LIABLE FOR  
11 ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT ONLY IF THE FORM OF SERVICE IS  
12 THAT DESCRIBED IN SUBSECTION (7)(B).

13 (b) THE WRITTEN NOTICE MUST INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE  
14 PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER  
15 BENEFIT, AND A STATEMENT THAT A DISSOLUTION, ANNULMENT, OR REMARRIAGE OF THE  
16 DECEDENT AND THE DESIGNATED BENEFICIARY OCCURRED. Written notice of the divorce, annulment,  
17 or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or  
18 home by certified mail, return receipt requested, or served upon the payor or other third party in the same  
19 manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or  
20 remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of  
21 property held by it to or with the court having jurisdiction of the probate proceedings relating to the  
22 decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of  
23 probate proceedings relating to decedents' estates located in the county of the decedent's residence. IN  
24 ADDITION TO THE ACTIONS AVAILABLE UNDER THIS SECTION, THE PAYOR OR OTHER THIRD PARTY  
25 MAY TAKE ANY ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. IF PROBATE  
26 PROCEEDINGS HAVE NOT BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH  
27 THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY,  
28 WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT MAY NOT  
29 CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF  
30 AMOUNTS OWED OR TRANSFERRED TO OR DEPOSITED WITH THE COURT OR ANY ITEM OF PROPERTY.

1 The court shall hold the funds or item of property and, upon its determination under this section, shall order  
 2 disbursement or transfer in accordance with the determination. A FILING FEE, IF ANY, MAY, IN THE  
 3 DISCRETION OF THE COURT, BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR  
 4 AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT. Payments, transfers, or deposits  
 5 made to or with the court discharge the payor or other third party from all claims for the value of amounts  
 6 paid to or items of property transferred to or deposited with the court.

7 (8) (a) A ~~person~~ BONA FIDE PURCHASER who purchases property from a former spouse, relative  
 8 of a former spouse, or any other person ~~for value and without notice~~ or who receives from a former spouse,  
 9 relative of a former spouse, or any other person a payment or other item of property in partial or full  
 10 satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment,  
 11 item of property, or benefit nor liable under this section for the amount of the payment or the value of the  
 12 item of property or benefit. However, a former spouse, relative of a former spouse, or other person who,  
 13 not for value, received a payment, item of property, or other benefit to which that person is not entitled  
 14 under this section is obligated to return the payment, item of property, or benefit, or is personally liable for  
 15 the amount of the payment or the value of the 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 preempted by federal law, OTHER THAN THE  
 18 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, with respect to a  
 19 payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the  
 20 former spouse, or any other person who, not for value, received a payment, item of property, or other  
 21 benefit to which that person is not entitled under this section is obligated to return that payment, item of  
 22 property, or benefit, or is personally liable for the amount of the payment or the value of the item of  
 23 property or benefit, to the person who would have been entitled to it were this section or part of this  
 24 section not preempted."

25

26 **Section 23.** Section 72-2-1017, MCA, is amended to read:

27 "**72-2-1017. Honorary trusts -- trusts for pets.** (1) A Subject to subsection (3), a trust ~~for a~~  
 28 ~~noncharitable corporation or unincorporated society or for a lawful noncharitable purpose~~ may be performed  
 29 by the trustee for 21 years but no longer, ~~whether or not there is a beneficiary who can seek the trust's~~  
 30 ~~enforcement or termination and~~ whether or not the terms of the trust contemplate a longer duration if:

1 (a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be  
 2 selected by the trustee; and

3 (b) there is no definite or definitely ascertainable beneficiary designated.

4 (2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a  
 5 designated domestic or pet animal ~~and the animal's offspring~~ is valid. ~~Except as expressly provided~~  
 6 ~~otherwise in the trust instrument, the following provisions apply:~~

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

9 ~~(b) The trust terminates at the earlier of 21 years after the trust was created or when no living~~  
 10 ~~animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer~~  
 11 ~~within this subsection, to presume against the merely precatory or honorary nature of the disposition, and~~  
 12 ~~to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the~~  
 13 ~~transferor's intent.~~

14 (3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those  
 15 subsections is subject to the following provisions:

16 (a) Except as expressly provided OTHERWISE in the trust instrument, no portion of the principal or  
 17 income may be converted to the use of the trustee or to any use other than for the trust's purposes or for  
 18 the benefit of a covered animal.

19 ~~(b)~~ Upon termination, the trustee shall transfer the unexpended trust property in the following  
 20 order:

21 (i) as directed in the trust instrument;

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

24 (iii) if no taker is produced by the application of subsection ~~(2)(e)(i)~~ (3)(b)(i) or ~~(2)(e)(ii)~~ (3)(b)(ii), to  
 25 the transferor's heirs under 72-2-721.

26 ~~(c)~~ For the purposes of 72-2-717, the residuary clause is treated as creating a future interest  
 27 under the terms of a trust.

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

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

4           ~~(g) A governing instrument must be liberally construed to bring the transfer within the applicability~~  
5 ~~of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry~~  
6 ~~out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's~~  
7 ~~intent.~~

8           ~~(h)(f)~~ A court may reduce the amount of the property transferred if it determines that that amount  
9 substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes  
10 as unexpended trust property under subsection ~~(2)(e)~~ (3)(b).

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

17  
18           **Section 24.** Section 72-3-102, MCA, is amended to read:

19           "**72-3-102. Necessity of probate of will.** Except as provided in 72-3-1101, to be effective to prove  
20 the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of  
21 informal probate by the clerk or an adjudication of probate by the court, ~~except that a duly executed and~~  
22 ~~unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

23           ~~(1) no court proceeding concerning the succession or administration of the estate has occurred;~~  
24 and

25           ~~(2) either:~~

26           ~~(a) the devisee or his successors and assigns possessed the property devised in accordance with~~  
27 ~~the provisions of the will; or~~

28           ~~(b) the property devised was not possessed or claimed by anyone by virtue of the decedent's title~~  
29 ~~during the time period for testacy proceedings."~~



1           **Section 25.** Section 72-3-122, MCA, is amended to read:

2           **"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions.** (1) No  
3 informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a  
4 proceeding to probate a will previously probated at the testator's domicile and appointment proceedings  
5 relating to an estate in which there has been a prior appointment, may be commenced more than 3 years  
6 after the decedent's death, except:

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

11           (b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the  
12 estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at  
13 any time within 3 years after the conservator becomes able to establish the death of the protected person;

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

17           ~~(d) if no proceeding concerning the succession or administration of the estate has occurred within~~  
18 ~~3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter~~  
19 ~~for the sole purpose of establishing a devise of property which the devisee or his successors and assigne~~  
20 ~~possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue~~  
21 ~~of the decedent's title during the 3-year period, and the order of the court must be limited to that property~~  
22 an informal appointment or a formal testacy or appointment proceeding may be commenced after the time  
23 period if no proceedings concerning the succession or estate administration have occurred within the 3-  
24 year period after the decedent's death, but the personal representative has no right to possess estate assets  
25 provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate,  
26 and claims other than expenses of administration may not be presented against the estate; and

27           (e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's  
28 death for the purpose of establishing an instrument to direct or control the ownership of property passing  
29 or distributable after the decedent's death from one other than the decedent when the property is to be  
30 appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's

1 estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

2 (2) These limitations do not apply to proceedings to construe probated wills or determine heirs of  
3 an intestate.

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

7  
8 **Section 26.** Section 72-3-317, MCA, is amended to read:

9 **"72-3-317. Effect of formal testacy order -- modification or vacation -- fact of death -- remedies**  
10 **of alleged decedent.** Subject to appeal and subject to vacation as provided ~~herein and~~ in 72-3-318 and this  
11 section, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left  
12 no valid will and determining heirs, is final as to all persons with respect to all issues concerning the  
13 decedent's estate that the court considered or might have considered incident to its rendition relevant to  
14 the question of whether the decedent left a valid will and to the determination of heirs, except that:

15 (1) the court shall entertain a petition for modification or vacation of its order and probate of  
16 another will of the decedent if it is shown that the proponents of the later-offered will;

17 (a) were unaware of its existence at the time of the earlier proceeding; or

18 (b) were unaware of the earlier proceeding and were given no notice ~~thereof~~ of the proceeding,  
19 except by publication;

20 (2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the  
21 decedent may be reconsidered if it is shown that one or more persons were omitted from the determination  
22 and it is also shown that the persons;

23 (a) were unaware of their relationship to the decedent; or

24 (b) were unaware of ~~his~~ the decedent's death; or

25 (c) were given no notice of any proceeding concerning ~~his~~ the decedent's estate, except by  
26 publication;

27 (3) a petition for vacation under either (1) or (2) above must be filed prior to the earlier of the  
28 following time limits:

29 (a) if a personal representative has been appointed for the estate, the time of entry of any order  
30 approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing

1 of the closing statement;

2 (b) whether or not a personal representative has been appointed for the estate of the decedent,  
3 the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate  
4 a will of the decedent;

5 (c) 12 months after the entry of the order sought to be vacated;

6 (4) the order originally rendered in the testacy proceeding may be modified or vacated, if  
7 appropriate under the circumstances, by the order of probate of the later-offered will or the order  
8 redetermining heirs;

9 (5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the  
10 hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed  
11 to the alleged decedent at ~~his~~ the last known address and the court finds that a search under 72-3-306 was  
12 made. If the alleged decedent is not dead, even if notice was sent and search was made, ~~he~~ the alleged  
13 decedent may recover estate assets in the hands of the personal representative. In addition to any remedies  
14 available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent  
15 may recover any estate or its proceeds from distributees that is in their hands or the value of distributions  
16 received by them, to the extent that any recovery from distributees is equitable in view of all of the  
17 circumstances."

18

19 **Section 27.** Section 72-3-131, MCA, is amended to read:

20 "**72-3-131. Compromise of controversies.** (1) A compromise of any controversy as to admission  
21 to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity,  
22 or effect of any ~~probate will~~ governing instrument, the rights or interests in the estate of the decedent, of  
23 any successor, or the administration of the estate, if approved in a formal proceeding in the court for that  
24 purpose, is binding on all the parties ~~thereto~~ to the proceeding, including those unborn, unascertained, or  
25 who could not be located.

26 (2) An approved compromise is binding even though it may affect a trust or an inalienable interest.  
27 A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

28

29 **Section 28.** Section 72-3-132, MCA, is amended to read:

30 "**72-3-132. Procedure for securing court approval of compromise.** The procedure for securing court

1 approval of a compromise is as follows:

2 (1) The terms of the compromise ~~shall~~ must be set forth in an agreement in writing which ~~shall~~  
3 must be executed by all competent persons and parents acting for any minor child having beneficial  
4 interests or having claims which will or may be affected by the compromise. Execution is not required by  
5 any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably  
6 be ascertained.

7 (2) Any interested person, including the personal representative, if any, or a trustee, then may  
8 submit the agreement to the court for its approval and for execution by the personal representative, the  
9 trustee of every affected testamentary trust, and other fiduciaries and representatives.

10 (3) After notice to all interested persons or their representatives, including the personal  
11 representative of ~~the~~ any estate and all affected trustees of trusts, the court, if it finds that the contest or  
12 controversy is in good faith and that the effect of the agreement upon the interests of persons represented  
13 by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement  
14 and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only  
15 by their parents may be bound only if their parents join with other competent persons in execution of the  
16 compromise.

17 (4) Upon the making of the order and the execution of the agreement, all further disposition of the  
18 estate is in accordance with the terms of the agreement."  
19

20 **Section 29.** Section 72-6-201, MCA, is amended to read:

21 **"72-6-201. Definitions.** In this part, the following definitions apply:

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

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

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

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

30 (5) "Multiple-party account" means an account payable on request to one or more of two or more

1 parties, whether or not a right of survivorship is mentioned.

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

4 (7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant  
5 to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other  
6 disposition of all or part of an account pursuant to a pledge.

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

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

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

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

18 (10) "Request" means a request for payment that complies with all terms of the account, including  
19 special requirements concerning necessary signatures and regulations of the financial institution; however,  
20 for purposes of this part, if terms of the account condition payment on advance notice, a request for  
21 payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for  
22 payment.

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

26 (12) "Terms of the account" includes the deposit agreement and other terms and conditions of the  
27 contract of deposit, including the type of account, the parties to the account, and the form, of the contract  
28 of deposit."

29

30 **Section 30.** Section 72-6-213, MCA, is amended to read:

1           **"72-6-213. Alteration of rights.** (1) Rights at death under 72-6-212 are determined by the ~~type~~  
2 terms of the account at the death of a party. The ~~type terms~~ of an account may be altered by written notice  
3 given by a party to the financial institution to change the ~~type terms~~ of account or to stop or vary payment  
4 under the terms of the account. The notice must be signed by a party and received by the financial  
5 institution during the party's lifetime.

6           (2) A right of survivorship arising from the express terms of the account, from 72-6-212, or from  
7 a POD designation may not be altered by will."

8  
9           **Section 31.** Section 72-6-226, MCA, is amended to read:

10           **"72-6-226. Discharge.** (1) Payment made pursuant to this part in accordance with the ~~type terms~~  
11 of an account discharges the financial institution from all claims for amounts so paid, whether or not the  
12 payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or  
13 their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled,  
14 incapacitated, or deceased when payment is requested, received, or made.

15           (2) Protection under this section does not extend to payments made after a financial institution has  
16 received written notice from a party, or from the personal representative, surviving spouse, or heir or  
17 devisee of a deceased party, to the effect that payments in accordance with the terms of the account,  
18 including one having an agency designation, should not be permitted and after the financial institution has  
19 had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is  
20 withdrawn by the person giving it, the successor of any deceased party shall concur in a request for  
21 payment if the financial institution is to be protected under this section. Unless a financial institution has  
22 been served with process in an action or proceeding, no other notice or other information shown to have  
23 been available to the financial institution affects its right to protection under this section.

24           (3) A financial institution that receives written notice pursuant to this section or otherwise has  
25 reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make  
26 payments in accordance with the terms of the account.

27           (4) Protection of a financial institution under this section does not affect the rights of parties in  
28 disputes between themselves or their successors concerning the beneficial ownership of sums on deposit  
29 in accounts or payments made from accounts."

1           **Section 32.** Section 72-16-301, MCA, is amended to read:

2           "**72-16-301. Taxable transfers generally -- contemplation of death.** (1) ~~A~~ Except as provided in this  
3 section, a tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed, or any  
4 interest ~~therein~~ in the property or income ~~therefrom~~ from the property in trust or otherwise to any person,  
5 association, or corporation in the following cases, ~~except as provided in this section:~~

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

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

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

14           (2) ~~No~~ A transfer made before the 3-year period ending on the date of the decedent's death ~~shall~~  
15 ~~be is not~~ considered to have been made in contemplation of death.

16           (3) ~~Every~~ Each transfer during the 3-year period ending on the date of the decedent's death must  
17 be considered to have been made in contemplation of death, except:

18           (a) ~~no~~ a transfer shown to be a bona fide sale for an adequate and full consideration in money or  
19 money's worth may not be considered to be a gift made in contemplation of death;

20           (b) ~~if the~~ a transfer ~~was a gift to a donee made during the calendar year and if the decedent was~~  
21 ~~not required by~~ to the extent that the transfer was excluded from the definition of taxable gifts by reason  
22 of section 6019 2503(b) of the internal revenue code to file any gift tax return for the year with respect  
23 to the donee, the transfer Internal Revenue Code may not be considered to be a gift made in contemplation  
24 of death.

25           (4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy."  
26

27           **SECTION 33. SECTION 72-16-308, MCA, IS AMENDED TO READ:**

28           "**72-16-308. Tax to be on clear market value -- deductions allowed in determining value -- valuation**  
29 **of certain farm and business property.** (1) The tax ~~so~~ imposed ~~shall~~ must be upon the clear market value  
30 of ~~such~~ the property passing by ~~any such~~ transfer to each person, institution, association, corporation, or

1 body politic at the rates ~~hereinafter~~ prescribed in this section and only upon the excess of the exemption  
 2 ~~hereinafter~~ granted to ~~such~~ the person, institution, association, corporation, or body politic.

3 (2) In determining the clear market value of the property ~~so~~ passing by ~~any such~~ the transfer, the  
 4 following deductions and no other ~~shall be~~ are allowed:

5 (a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's  
 6 joint interest in property and for which the decedent was jointly and severally liable is deductible only to  
 7 the extent of one-half or other proper fraction representing decedent's share of the property;

8 (b) expenses of funeral and last illness;

9 (c) all Montana state, county, municipal, and federal taxes, including all penalties and interest  
 10 ~~thereon~~, owing by decedent at the date of death;

11 (d) the ordinary expenses of administration, including:

12 (i) the commissions and fees of executors and administrators and their attorneys actually allowed  
 13 and paid;

14 (ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to  
 15 terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and  
 16 all other proceedings instituted for the determination of inheritance tax; ~~and~~

17 (e) federal estate taxes due or paid; and

18 (f) the annual gift exclusion provided in section 2503(b) of the Internal Revenue Code.

19 (3) In determining clear market value, the valuation of certain farm and other real property may be  
 20 made under 72-16-331 through 72-16-342."

21

22 **Section 34.** Section 72-33-701, MCA, is amended to read:

23 **"72-33-701. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust  
 24 instrument otherwise provides or ~~where~~ when the joint action of the trustor and all beneficiaries is required,  
 25 during the time that ~~a trust is revocable and~~ the person holding the power to revoke the trust is competent:

26 (1) ~~The~~ the person holding the power to revoke, and not the beneficiary, has the rights afforded  
 27 beneficiaries under chapters 33 through 36-;

28 (2) ~~The~~ the duties of the trustee are owed to the person holding the power to revoke."

29

30 **Section 35.** Section 72-34-513, MCA, is amended to read:





## 1 SENATE BILL NO. 132

2 INTRODUCED BY BISHOP, HALLIGAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CONCERNING ESTATES AND  
 5 TRUSTS; REMOVING THE STATUTE OF LIMITATIONS OF 1 YEAR AFTER LETTERS TESTAMENTARY OR  
 6 OF ADMINISTRATION ARE ISSUED; REVISING THE TREATMENT OF CERTAIN TRANSFERS FOR PROBATE  
 7 PURPOSES; CLARIFYING THE AUGMENTED ESTATE; CLARIFYING THE DISTRIBUTION OF LAPSED  
 8 DEVISES; CLARIFYING THE APPLICATION OF SURVIVAL STATUTES; EXCLUDING JOINT ACCOUNTS  
 9 FROM TRANSACTIONS INVOLVING BENEFICIARIES FOR WHOM STATUTORY SUBSTITUTES ARE  
 10 PROVIDED IN CASE OF THE DEATH OF THE BENEFICIARY; CLARIFYING THE PASSING OF PROPERTY IN  
 11 CASES IN WHICH A FUTURE INTEREST IS CREATED BY POWER OF APPOINTMENT; CLARIFYING THE  
 12 APPLICATION AND EFFECT OF A DISCLAIMER; CLARIFYING THE APPLICATION OF HONORARY TRUSTS;  
 13 CLARIFYING DISTRIBUTION BY REPRESENTATION; CLARIFYING TRANSFERS MADE IN CONTEMPLATION  
 14 OF DEATH; CLARIFYING THE APPLICATION OF THE TERMS OF A MULTIPLE-PERSON ACCOUNT;  
 15 CLARIFYING PROVISIONS GOVERNING REVOCABLE TRUSTS; CLARIFYING A TRUSTEE'S LIABILITY  
 16 UNDER A REVOCABLE TRUST; AND AMENDING SECTIONS 27-2-404, 72-1-103, 72-2-116, 72-2-221,  
 17 72-2-222, 72-2-223, 72-2-224, 72-2-225, 72-2-227, 72-2-331, 72-2-332, 72-2-613, 72-2-712, 72-2-716,  
 18 72-2-717, 72-2-719, 72-2-721, 72-2-811, 72-2-813, 72-2-814, 72-2-1017, 72-3-102, 72-3-122,  
 19 72-3-131, 72-3-132, 72-3-317, 72-6-201, 72-6-213, 72-6-226, 72-16-301, 72-16-308, 72-33-701, AND  
 20 72-34-513, MCA."

21

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
 NOT BE REPRINTED. PLEASE REFER TO SECOND  
 READING COPY (YELLOW) FOR COMPLETE TEXT.

## 1 SENATE BILL NO. 132

2 INTRODUCED BY BISHOP, HALLIGAN

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CONCERNING ESTATES AND  
 5 TRUSTS; REMOVING THE STATUTE OF LIMITATIONS OF 1 YEAR AFTER LETTERS TESTAMENTARY OR  
 6 OF ADMINISTRATION ARE ISSUED; REVISING THE TREATMENT OF CERTAIN TRANSFERS FOR PROBATE  
 7 PURPOSES; CLARIFYING THE AUGMENTED ESTATE; CLARIFYING THE DISTRIBUTION OF LAPSED  
 8 DEVISES; CLARIFYING THE APPLICATION OF SURVIVAL STATUTES; EXCLUDING JOINT ACCOUNTS  
 9 FROM TRANSACTIONS INVOLVING BENEFICIARIES FOR WHOM STATUTORY SUBSTITUTES ARE  
 10 PROVIDED IN CASE OF THE DEATH OF THE BENEFICIARY; CLARIFYING THE PASSING OF PROPERTY IN  
 11 CASES IN WHICH A FUTURE INTEREST IS CREATED BY POWER OF APPOINTMENT; CLARIFYING THE  
 12 APPLICATION AND EFFECT OF A DISCLAIMER; CLARIFYING THE APPLICATION OF HONORARY TRUSTS;  
 13 CLARIFYING DISTRIBUTION BY REPRESENTATION; CLARIFYING TRANSFERS MADE IN CONTEMPLATION  
 14 OF DEATH; CLARIFYING THE APPLICATION OF THE TERMS OF A MULTIPLE-PERSON ACCOUNT;  
 15 CLARIFYING PROVISIONS GOVERNING REVOCABLE TRUSTS; CLARIFYING A TRUSTEE'S LIABILITY  
 16 UNDER A REVOCABLE TRUST; AND AMENDING SECTIONS 27-2-404, 72-1-103, 72-2-116, 72-2-221,  
 17 72-2-222, 72-2-223, 72-2-224, 72-2-225, 72-2-227, 72-2-331, 72-2-332, 72-2-613, 72-2-712, 72-2-716,  
 18 72-2-717, 72-2-719, 72-2-721, 72-2-811, 72-2-813, 72-2-814, 72-2-1017, 72-3-102, 72-3-122,  
 19 72-3-131, 72-3-132, 72-3-317, 72-6-201, 72-6-213, 72-6-226, 72-16-301, 72-16-308, 72-33-701, AND  
 20 72-34-513, MCA."

21  
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
 24 **Section 1.** Section 27-2-404, MCA, is amended to read:

25 **"27-2-404. When a party dies before action commenced.** ~~{1}~~ If a person entitled to bring an action  
 26 dies before the expiration of the time limited for the commencement ~~thereof~~ of the action and the cause  
 27 of action survives, an action may be commenced by ~~his~~ the deceased's representatives after the expiration  
 28 of that time and within 1 year from ~~his~~ death.

29 ~~{2} If a person against whom an action may be brought dies before the expiration of the time~~  
 30 ~~limited for the commencement thereof and the cause of action survives, an action may be commenced~~

1 ~~against his representatives after the expiration of that time and within 1 year after the issuing of letters~~  
 2 ~~testamentary or of administration. If a person against whom a cause of action exists dies without the state,~~  
 3 ~~the time which elapses between his death and the expiration of 1 year after the issuing within the state of~~  
 4 ~~letters testamentary or letters of administration is not a part of the time limited for the commencement of~~  
 5 ~~an action therefor against his executor or administrator."~~

6

7 **Section 2.** Section 72-1-103, MCA, is amended to read:

8 **"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent  
 9 chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise  
 10 requires, in chapters 1 through 5, the following definitions apply:

11 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an  
 12 individual authorized to make decisions concerning another's health care, and an individual authorized to  
 13 make decisions for another under a natural death act.

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

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

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

19 (b) a charitable trust, includes any person entitled to enforce the trust;

20 (c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

21 ~~(i) an insurance or annuity policy, an account with POD designation, or a security registered in~~  
 22 beneficiary form (TOD); OR

23 ~~(ii) a pension, profit sharing, retirement, or similar benefit plan; or~~

24 ~~(iii)(iii)~~ any other nonprobate transfer at death; and

25 (d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a  
 26 trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee, or taker in default of a  
 27 power of appointment; and a person in whose favor a power of attorney or a power held in any individual,  
 28 fiduciary, or representative capacity is exercised.

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

30 (a) ~~an insurance or annuity policy, an account with POD designation, or a security registered in~~

1 beneficiary form (TOD); OR

2 ~~(b) a pension, profit sharing, retirement, or similar benefit plan; or~~

3 ~~(c)(B)~~ any other nonprobate transfer at death.

4 (5) "Child" includes an individual entitled to take as a child under chapters 1 through 5 by intestate  
5 succession from the parent whose relationship is involved and excludes a person who is only a stepchild,  
6 a foster child, a grandchild, or any more remote descendant.

7 (6) (a) "Claims", in respect to estates of decedents and protected persons, includes liabilities of  
8 the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the  
9 estate that arise at or after the death of the decedent or after the appointment of a conservator, including  
10 funeral expenses and expenses of administration.

11 (b) The term does not include estate or inheritance taxes or demands or disputes regarding title of  
12 a decedent or protected person to specific assets alleged to be included in the estate.

13 (7) "Clerk" or "clerk of court" means the clerk of the district court.

14 (8) "Conservator" means a person who is appointed by a court to manage the estate of a protected  
15 person.

16 (9) "Court" means the district court in this state having jurisdiction in matters relating to the affairs  
17 of decedents.

18 (10) "Descendant" of an individual means all of the individual's descendants of all generations, with  
19 the relationship of parent and child at each generation being determined by the definition of child and parent  
20 contained in this section.

21 (11) "Devise" when used as a noun means a testamentary disposition of real or personal property  
22 and when used as a verb means to dispose of real or personal property by will.

23 (12) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3,  
24 in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or  
25 trustee is the devisee and the beneficiaries are not devisees.

26 (13) "Disability" means cause for a protective order as described by 72-5-409.

27 (14) "Distributee" means any person who has received property of a decedent from the decedent's  
28 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only  
29 to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of  
30 a testamentary trust to whom the trustee has distributed property received from a personal representative

1 is a distributee of the personal representative. For purposes of this provision, "testamentary trustee"  
2 includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

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

5 (16) "Exempt property" means that property of a decedent's estate that is described in 72-2-413.

6 (17) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

7 (18) "Foreign personal representative" means a personal representative appointed by another  
8 jurisdiction.

9 (19) "Formal proceedings" means proceedings conducted before a judge with notice to interested  
10 persons.

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

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

17 (22) "Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and  
18 the state, who are entitled under the statutes of intestate succession to the property of a decedent.

19 (23) "Incapacitated person" has the meaning provided in 72-5-101.

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

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

28 (26) "Issue" of a person means a descendant as defined in subsection (10).

29 (27) "Joint tenants with the right of survivorship" includes co-owners of property held under  
30 circumstances that entitle one or more to the whole of the property on the death of the other or others but

1 excludes forms of co-ownership registration in which the underlying ownership of each party is in  
2 proportion to that party's contribution.

3 (28) "Lease" includes an oil, gas, coal, or other mineral lease.

4 (29) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and  
5 letters of conservatorship.

6 (30) "Minor" means a person who is under 18 years of age.

7 (31) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as  
8 security.

9 (32) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the  
10 time of death.

11 (33) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture,  
12 association, government or governmental subdivision or agency, or any other legal or commercial entity.

13 (34) "Parent" includes any person entitled to take, or who would be entitled to take if the child died  
14 without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose  
15 relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

16 (35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency  
17 or subdivision, or any other person authorized or obligated by law or a governing instrument to make  
18 payments.

19 (36) "Person" means an individual, a corporation, an organization, or other legal entity.

20 (37) "Personal representative" includes executor, administrator, successor personal representative,  
21 special administrator, and persons who perform substantially the same function under the law governing  
22 their status. "General personal representative" excludes special administrator.

23 (38) "Petition" means a written request to the court for an order after notice.

24 (39) "Proceeding" includes action at law and suit in equity.

25 (40) "Property" includes both real and personal property or any interest in that property and means  
26 anything that may be the subject of ownership.

27 (41) "Protected person" has the meaning provided in 72-5-101.

28 (42) "Protective proceeding" has the meaning provided in 72-5-101.

29 (43) "Security" includes any note; stock; treasury stock; bond; debenture; evidence of  
30 indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out

1 of production under such a title or lease; collateral trust certificate; transferable share; voting trust  
2 certificate; in general, any interest or instrument commonly known as a security; any certificate of interest  
3 or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant  
4 or right to subscribe to or purchase any of the foregoing.

5 (44) "Settlement", in reference to a decedent's estate, includes the full process of administration,  
6 distribution, and closing.

7 (45) "Special administrator" means a personal representative as described by chapter 3, part 7.

8 (46) "State" means a state of the United States, the District of Columbia, the Commonwealth of  
9 Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

10 (47) "Successor personal representative" means a personal representative, other than a special  
11 administrator, who is appointed to succeed a previously appointed personal representative.

12 (48) "Successors" means persons, other than creditors, who are entitled to property of a decedent  
13 under the decedent's will or chapters 1 through 5.

14 (49) "Supervised administration" refers to the proceedings described in chapter 3, part 4.

15 (50) "Survive", ~~except for purposes of Title 72, chapter 6, part 3,~~ means that an individual has  
16 neither predeceased an event, including the death of another individual, nor is considered to have  
17 predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives",  
18 "survived", "survivor", and "surviving".

19 (51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

20 (52) "Testator" includes an individual of either sex.

21 (53) "Trust" includes an express trust, private or charitable, with additions thereto, wherever and  
22 however created. The term also includes a trust created or determined by judgment or decree under which  
23 the trust is to be administered in the manner of an express trust. The term excludes other constructive  
24 trusts and excludes resulting trusts; conservatorships; personal representatives; trust accounts as defined  
25 in 72-6-111 and Title 72, chapter 6, parts 2 and 3; custodial arrangements pursuant to chapter 26 of this  
26 title; business trusts providing for certificates to be issued to beneficiaries; common trust funds; voting  
27 trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends,  
28 interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under  
29 which a person is nominee or escrowee for another.

30 (54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or



1 confirmed by court.

2 (55) "Ward" means an individual described in 72-5-101.

3 (56) "Will" includes codicil and any testamentary instrument that merely appoints an executor,  
4 revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an  
5 individual or class to succeed to property of the decedent passing by intestate succession."  
6

7 **Section 3.** Section 72-2-116, MCA, is amended to read:

8 **"72-2-116. Representation.** (1) As used in this section, the following definitions apply:

9 (a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant,  
10 parent, or grandparent who either predeceased the decedent or is considered to have predeceased the  
11 decedent under 72-2-114.

12 (b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is  
13 considered to have predeceased the decedent under 72-2-114.

14 (2) (a) If, under 72-2-113(1), a decedent's intestate estate or a part of the intestate estate passes  
15 by representation to the decedent's descendants, the estate or part of the estate ~~is divided into decedent's~~  
16 ~~descendants and the estate or part of the estate~~ is divided into as many equal shares as there are:

17 (i) surviving descendants in the generation nearest to the decedent that contains one or more  
18 surviving descendants; and

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

20 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
21 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
22 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
23 surviving descendants.

24 (3) (a) If, under 72-2-113(3) or (4), a decedent's intestate estate or a part of the intestate estate  
25 passes by representation to the descendants of the decedent's deceased parents or either of them or to  
26 the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate  
27 or part of the estate is divided into as many equal shares as there are:

28 (i) surviving descendants in the generation nearest the deceased parents or either of them or  
29 nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

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

1 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
 2 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
 3 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
 4 surviving descendants."

5  
 6 **Section 4.** Section 72-2-221, MCA, is amended to read:

7 **"72-2-221. Elective share.** (1) The surviving spouse of a decedent who dies domiciled in this state  
 8 has a right of election, under the limitations and conditions stated in this part, to take an elective-share  
 9 amount equal to the value of the elective-share percentage of the augmented estate, determined by the  
 10 length of time the spouse and the decedent were married to each other, in accordance with the following  
 11 schedule:

12 If the decedent and the	The elective-share
13 spouse were married to	percentage is:
14 each other:	
15 Less than 1 year	supplemental amount only
16 1 year but less than 2 years	3% of the augmented estate
17 2 years but less than 3 years	6% of the augmented estate
18 3 years but less than 4 years	9% of the augmented estate
19 4 years but less than 5 years	12% of the augmented estate
20 5 years but less than 6 years	15% of the augmented estate
21 6 years but less than 7 years	18% of the augmented estate
22 7 years but less than 8 years	21% of the augmented estate
23 8 years but less than 9 years	24% of the augmented estate
24 9 years but less than 10 years	27% of the augmented estate
25 10 years but less than 11 years	30% of the augmented estate
26 11 years but less than 12 years	34% of the augmented estate
27 12 years but less than 13 years	38% of the augmented estate
28 13 years but less than 14 years	42% of the augmented estate
29 14 years but less than 15 years	46% of the augmented estate
30 15 years or more	50% of the augmented estate

1 (2) If the sum of the amounts described in 72-2-222~~(2)(c)~~(2)(d), and ~~(2)(d)~~ and 72-2-227(1)(a), and  
 2 ~~(1)(e)~~ and that part of the elective-share amount payable from the decedent's probate estate and  
 3 ~~reclaimable estates~~ nonprobate transfers to others under 72-2-227(2) and (3) is less than \$50,000, the  
 4 surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000, minus the sum of  
 5 the amounts described in those sections. The supplemental elective-share amount is payable from the  
 6 decedent's probate estate and from recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers  
 7 to others in the order of priority set forth in 72-2-227(2) and (3).

8 (3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving  
 9 spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but  
 10 are in addition to the elective-share and supplemental elective-share amounts.

11 ~~(3)(4)~~ The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state  
 12 to take an elective share in property in this state is governed by the law of the decedent's domicile at  
 13 death."

14  
 15 **Section 5.** Section 72-2-222, MCA, is amended to read:

16 "72-2-222. **Augmented estate.** (1) (a) As used in this section, the following definitions apply:

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

19 (i) "Decedent's nonprobate transfers to others" means the decedent's nonprobate transfers to  
 20 persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors,  
 21 estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

22 (ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the  
 23 fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and  
 24 the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who  
 25 survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

26 (iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of  
 27 the decedent to the decedent's surviving spouse.

28 ~~(iv)~~ (iv) "Nonadverse party" means a person who does not have a substantial beneficial interest in  
 29 the trust or other property arrangement that would be adversely affected by the exercise or nonexercise  
 30 of the power that person possesses respecting the trust or other property arrangement. A person having

1 a general power of appointment over property is considered to have a beneficial interest in the property.

2 (v) "Power" or "power of appointment" includes a power to designate the beneficiary of a  
3 beneficiary designation.

4 ~~(iii)~~(vi) "Presently exercisable general power of appointment" means a power of appointment under  
5 which, at the time in question, the decedent, by ~~an~~ whether or not the decedent then had the capacity to  
6 exercise ~~of~~ the power, held a power ~~could have created an~~ to create a present or future interest, ~~present~~  
7 ~~or future,~~ in the decedent, ~~of~~ the decedent's creditors, the decedent's estate, or the creditors of the  
8 decedent's estate and includes a power to revoke or invade the principal of a trust or other property  
9 arrangement.

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

12 (viii) "Property" includes values subject to a beneficiary designation.

13 ~~(v)~~(ix) "Right to income" includes a right to payments under ~~an~~ a commercial or private annuity,  
14 an annuity trust, a unitrust, or a similar ~~contractual~~ arrangement.

15 (x) "Transfer", as it relates to a transfer by or of the decedent, includes:

16 (A) an exercise or release of a presently exercisable general power of appointment held by the  
17 decedent;

18 (B) a lapse at death of a presently exercisable general power of appointment held by the decedent;  
19 and

20 (C) an exercise, release, or lapse of a general power of appointment that the decedent created in  
21 the decedent and of a power described in subsection (2)(b)(ii)(B) that the decedent conferred on a  
22 nonadverse party.

23 ~~(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of~~  
24 ~~property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted~~  
25 ~~value of any present or future interest then held by the surviving spouse and the commuted value of~~  
26 ~~amounts payable to the surviving spouse after the decedent's death under any trust, life insurance~~  
27 ~~settlement option, annuity contract, public or private pension, disability compensation, death benefit or~~  
28 ~~retirement plan, or any similar arrangement, exclusive of the federal social security system.~~

29 (b)(i) As used in ~~subsections~~ subsection (2)(b)(iii)(A), and (2)(b)(iv), "transfer" includes an exercise  
30 or release of a power of appointment but does not include a lapse of a power of appointment "termination":

1 (A) with respect to a right or interest in property, means that the right or interest terminated by the  
 2 terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

3 (B) with respect to a power over property, means that the power terminated by exercise, release,  
 4 lapse, or default or otherwise.

5 (ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power  
 6 terminated by exercise or release, but not by lapse or by default or otherwise.

7 (2) The augmented estate consists of the sum of:

8 (a) the value of the decedent's probate estate, reduced by funeral and administration expenses,  
 9 homestead allowance, family allowances ~~and exemptions~~, exempt property, and enforceable claims;

10 (b) the value of the decedent's ~~reclaimable estate~~ nonprobate transfers to other OTHERS, which  
 11 ~~is~~ are composed of all property, whether real or personal, movable or immovable, wherever situated, not  
 12 included in the decedent's probate estate, of any of the following types:

13 (i) ~~property, to the extent the passing of the principal thereof to or for the benefit of any person,~~  
 14 ~~other than the decedent's surviving spouse, was subject to~~ of any of the following types that passed  
 15 outside probate at the decedent's death:

16 (A) property over which the decedent alone, immediately before death, held a presently exercisable  
 17 general power of appointment held by the decedent alone, if the decedent held that power immediately  
 18 before death or if and to the extent the decedent, while married to the surviving spouse and during the  
 19 2-year period preceding the decedent's death, released that power or exercised that power in favor of any  
 20 person other than the decedent or the decedent's estate, spouse, or surviving spouse; the amount included  
 21 is the value of the property subject to the power, to the extent that the property was passed at the  
 22 decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person  
 23 other than the decedent's estate or surviving spouse;

24 ~~(ii)(B) the decedent's fractional interest in property, to the extent of the decedent's unilaterally~~  
 25 ~~severable interest therein, held by the decedent and any other person, except the decedent's surviving~~  
 26 ~~spouse, in joint tenancy with the right of survivorship; if the decedent held that interest immediately before~~  
 27 ~~death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year~~  
 28 ~~period preceding the decedent's death, transferred that interest to any person~~ the amount included is the  
 29 value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of  
 30 survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

1 OR

2 (C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership  
 3 registration with the right of survivorship; the amount included is the value of the decedent's ownership  
 4 interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the  
 5 benefit of any person other than the decedent's estate or surviving spouse; or

6 ~~(iii)(D) proceeds of insurance, including accidental death benefits, on the life of the decedent~~  
 7 ~~payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance~~  
 8 ~~policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was~~  
 9 ~~subject to immediately before death or if and to the extent that the decedent alone and immediately before~~  
 10 ~~death held a presently exercisable general power of appointment held by the decedent alone immediately~~  
 11 ~~before death or if and to the extent the decedent, while married to the surviving spouse and during the~~  
 12 ~~2-year period preceding the decedent's death, transferred that policy to any person other than the~~  
 13 ~~decedent's surviving spouse over the policy or its proceeds; and the amount included is the value of the~~  
 14 ~~proceeds, to the extent that they were payable at the decedent's death to or for the benefit of any person~~  
 15 ~~other than the decedent's estate or surviving spouse;~~

16 ~~(iv)(ii) property transferred in any of the following forms by the decedent to any person other than~~  
 17 ~~a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the~~  
 18 ~~benefit of any person other than the surviving spouse, if the transfer is of any of the following types:~~

19 (A) any irrevocable transfer to the extent that in which the decedent retained at the time of or  
 20 during the 2-year period preceding death the right to the possession or enjoyment of, or right to the income  
 21 from, the property if and to the extent that the decedent's right terminated at or continued beyond the  
 22 decedent's death; the amount included is the value of the fraction of the property to which the decedent's  
 23 right related, to the extent that the fraction of the property was passed outside probate to or for the benefit  
 24 of any person other than the decedent's estate or surviving spouse; or

25 (B) any transfer ~~to the extent that at the time of or during the 2-year period preceding the~~  
 26 ~~decedent's death, in which the decedent created a power over~~ the income or principal ~~was subject to a~~  
 27 ~~power~~ of the transferred property, exercisable by the decedent alone or in conjunction with any other  
 28 person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, or  
 29 the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the  
 30 property subject to the power, to the extent that the power was exercisable at the decedent's death to or

1 for the benefit of any person other than the decedent's surviving spouse or to the extent that the property  
 2 subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise,  
 3 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

4 (iii) property that passed during marriage and during the 2-year period preceding the decedent's  
 5 death as a result of a transfer by the decedent if the transfer was of any of the following types:

6 (A) any property that passed as a result of the termination of a right or interest in, or power over,  
 7 property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B),  
 8 (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the  
 9 amount included is the value of the property that would have been included under these subsections,  
 10 except that that property is valued at the time that the right, interest, or power terminated, and is included  
 11 only to the extent that the property passed upon termination to or for the benefit of any person other than  
 12 the decedent or the decedent's estate, spouse, or surviving spouse; OR

13 ~~(B) any transfer of or relating to an insurance policy on the life of the decedent if the proceeds~~  
 14 ~~would have been included in the augmented estate under subsection (2)(b)(i)(D) had the transfer not~~  
 15 ~~occurred; the amount included is the value of the insurance proceeds to the extent that the proceeds were~~  
 16 ~~payable at the decedent's death to or for the benefit of any person other than the decedent's estate or~~  
 17 ~~surviving spouse; or~~

18 ~~(C)(B) any transfer of property, to the extent the decedent's contribution to it, as a percentage of~~  
 19 ~~the whole, was made during the 2-year period preceding the decedent's death, by which the property is~~  
 20 ~~held at the time of or during the 2-year period preceding the decedent's death by the decedent and another,~~  
 21 ~~other than the decedent's surviving spouse, with right of survivorship; or~~

22 ~~(D) any transfer not otherwise included in the augmented estate, made to or for the benefit of a~~  
 23 ~~donee during the 2-year period preceding the decedent's death person other than the decedent's surviving~~  
 24 ~~spouse; the amount included is the value of the transferred property to the extent that the aggregate~~  
 25 ~~transfers to any one donee in either of the 2 years ~~exceed~~ exceeded \$10,000;~~

26 (c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are  
 27 composed of all property that passed outside probate at the decedent's death from the decedent to which  
 28 the surviving spouse ~~succeeds~~ by reason of the decedent's death, other than by homestead allowance,  
 29 exempt property, family allowance, testate succession, or intestate succession, including the proceeds of  
 30 insurance, including: ~~accidental death benefits, on the life of the decedent and including benefits payable~~

1 ~~under a retirement plan in which the decedent was a participant, exclusive of~~

2 (i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship,

3 to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

4 (ii) the decedent's ownership interest in property or accounts held in co-ownership registration with

5 the right of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse

6 as surviving co-owner; and

7 (III) PROCEEDS OF INSURANCE, INCLUDING ACCIDENTAL DEATH BENEFITS, ON THE LIFE OF THE

8 DECEDENT IF THE DECEDENT OWNED THE INSURANCE POLICY IMMEDIATELY BEFORE DEATH OR IF

9 AND TO THE EXTENT THAT THE DECEDENT ALONE AND IMMEDIATELY BEFORE DEATH HELD A

10 PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT OVER THE POLICY OR ITS PROCEEDS;

11 THE AMOUNT INCLUDED IS THE VALUE OF THE PROCEEDS, TO THE EXTENT THAT THEY WERE

12 PAYABLE AT THE DECEDENT'S DEATH; AND

13 ~~(iii)~~ (IV) all other property that would have been included in the augmented estate under subsection

14 (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse,

15 surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, but excluding

16 property passing to the surviving spouse under the federal social security system; and

17 (d) except to the extent included in the augmented estate under subsection (2)(a) or (2)(c), the

18 value of:

19 (i) property that was owned by the decedent's surviving spouse at the decedent's death, reduced

20 by enforceable claims against that property or that spouse, plus the value of amounts including:

21 (A) the surviving spouse's fractional interest in property held in joint tenancy with the right of

22 survivorship;

23 (B) the surviving spouse's ownership interest in property or accounts held in co-ownership

24 registration with the right of survivorship; and

25 (C) property that passed to the surviving spouse by reason of the decedent's death, but not

26 including the spouse's right to homestead allowance, family allowance, exempt property, or payments

27 under the federal social security system; and

28 (ii) property that would have been includable included in the surviving spouse's reclaimable estate

29 nonprobate transfers to others, other than the spouse's fractional and ownership interests included in

30 subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse predeceased been the decedent. However, amounts



1 Property included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account the  
 2 fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and  
 3 (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before  
 4 the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts.  
 5 For purposes of this subsection (2)(d)(ii), proceeds of insurance that would have been includable included  
 6 in the surviving spouse's reclaimable estate nonprobate transfers to others under subsection (2)(b)(iii)  
 7 (2)(b)(i)(D) are not valued as if the surviving spouse were deceased. The value of property included under  
 8 this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included property  
 9 and is reduced by enforceable claims against the surviving spouse.

10 (3) Any transfer or exercise or release of a power of appointment The value of any property is  
 11 excluded from the decedent's reclaimable estate nonprobate transfers to others:

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

14 (b) if irrevocably made the property was transferred with the written consent or joinder of, or if  
 15 the transfer was consented to in writing by, the surviving spouse; OR

16 (C) IF THE PROPERTY IS LIFE INSURANCE, ACCIDENT INSURANCE, PENSION, PROFIT-SHARING,  
 17 RETIREMENT, AND OTHER BENEFIT PLANS PAYABLE TO PERSONS OTHER THAN THE DECEDENT'S  
 18 SURVIVING SPOUSE OR THE DECEDENT'S ESTATE.

19 (4) Property is valued as of the decedent's death, but an irrevocable transfer of property during  
 20 the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under  
 21 subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv) is valued as of the time of the transfer. If the terms of more  
 22 than one The value of property includes the commuted value of any present or future interest and the  
 23 commuted value of amounts payable under any trust, life insurance settlement option, annuity contract,  
 24 public or private pension, disability compensation, death benefit or retirement plan, or any similar  
 25 arrangement, exclusive of the federal social security system.

26 (5) In case of overlapping application to the same property of the provisions of subsection (2)(b)  
 27 apply, the property is included in the augmented estate under the provision that yields yielding the highest  
 28 value, but under any one, but only one, of the overlapping provisions if they all yield the same value. For  
 29 purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release  
 30 of a power of appointment.

1           ~~(5) (a) Although under this section a payment, item of property, or other benefit is included in the~~  
2 ~~decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or~~  
3 ~~transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or~~  
4 ~~for having taken any other action in good faith reliance on the validity of a governing instrument, upon~~  
5 ~~request and satisfactory proof of the decedent's death, before the payor or other third party received~~  
6 ~~written notice from the surviving spouse or spouse's representative of an intention to file a petition for the~~  
7 ~~elective share or that a petition for the elective share has been filed. A payor or other third party is liable~~  
8 ~~for payments made or other actions taken after the payor or other third party received written notice of an~~  
9 ~~intention to file a petition for the elective share or that a petition for the elective share has been filed.~~

10           ~~(b) The written notice of intention to file a petition for the elective share or that a petition for the~~  
11 ~~elective share has been filed must be mailed to the payor's or other third party's main office or home by~~  
12 ~~certified mail, return receipt requested, or served upon the payor or other third party in the same manner~~  
13 ~~as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective~~  
14 ~~share or that a petition for the elective share has been filed, a payor or other third party may pay any~~  
15 ~~amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction~~  
16 ~~of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced,~~  
17 ~~to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the~~  
18 ~~county of the decedent's residence. The court shall hold the funds or item of property and, upon its~~  
19 ~~determination under 72-2-225(4), shall order disbursement in accordance with the determination. If no~~  
20 ~~petition is filed in the court within the specified time under 72-2-225(1) or, if filed, the demand for an~~  
21 ~~elective share is withdrawn under 72-2-225(3), the court shall order disbursement to the designated~~  
22 ~~beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third~~  
23 ~~party from all claims for the value of amounts paid to or items of property transferred to or deposited with~~  
24 ~~the court.~~

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

28           ~~(6) (a) A person who purchases property from a recipient for value and without notice or who~~  
29 ~~receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation~~  
30 ~~is neither obligated under this part to return the payment, item of property, or benefit nor liable under this~~

1 ~~part for the amount of the payment or the value of the item of property or benefit. However, a person who,~~  
 2 ~~not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable~~  
 3 ~~estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount~~  
 4 ~~of the payment or the value of the item of property or benefit, as provided in 72-2-227.~~

5 ~~(b) If any section or part of any section of this part is preempted by federal law with respect to a~~  
 6 ~~payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person~~  
 7 ~~who, not for value, receives the payment, item of property, or other benefit is obligated to return that~~  
 8 ~~payment, item of property, or benefit, or is personally liable for the amount of that payment or the value~~  
 9 ~~of that item of property or benefit, as provided in 72-2-227, to the person who would have been entitled~~  
 10 ~~to it were that section or part of that section not preempted."~~

11  
 12 **Section 6.** Section 72-2-223, MCA, is amended to read:

13 **"72-2-223. Right of election personal to surviving spouse -- incapacitated surviving spouse.** (1)

14 The right of election may be exercised only by a surviving spouse who is living when the petition for the  
 15 elective share is filed in the court under 72-2-225(1). If the election is not exercised by the surviving spouse  
 16 personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator,  
 17 guardian, or agent under the authority of a power of attorney.

18 (2) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the  
 19 court shall set aside that portion of the elective-share and supplemental elective-share amounts due from  
 20 the decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to  
 21 others under 72-2-227(2) and (3) and shall appoint a trustee to administer that property for the support of  
 22 the surviving spouse. For the purposes of this subsection, an election on behalf of a surviving spouse by  
 23 an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an  
 24 incapacitated person. The trustee shall administer the trust in accordance with the following terms and such  
 25 additional terms as the court determines appropriate:

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

1 (b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on  
2 behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains  
3 capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership  
4 of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse  
5 declaring the termination.

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

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

10 (ii) to that predeceased spouse's heirs under 72-2-721."

11

12 **Section 7.** Section 72-2-224, MCA, is amended to read:

13 **"72-2-224. Waiver of right to elect and of other rights.** (1) The right of election of a surviving  
14 spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family  
15 allowance or any of them may be waived, wholly or partially, before or after marriage, by a written  
16 contract, agreement, or waiver signed by the surviving spouse. The written contract, agreement, or waiver  
17 is enforceable without consideration.

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

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

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

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

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

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

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

29 (4) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the  
30 property or estate of a present or prospective spouse or a complete property settlement entered into after

1 or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance,  
 2 exempt property, and family allowance by each spouse in the property of the other and a renunciation by  
 3 each of all benefits that would otherwise pass to that spouse from the other by intestate succession or by  
 4 virtue of any will executed before the waiver or property settlement."

5  
 6 **NEW SECTION. Section 8. Personal liability of recipients.** (1) Only original recipients of the  
 7 decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate  
 8 transfers to others, to the extent the donees have the property or its proceeds, are liable to make a  
 9 proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental  
 10 elective-share amount. A person liable to make contribution may choose to give up the proportional part  
 11 of the decedent's nonprobate transfers to the person or to pay the value of the amount for which the  
 12 person is liable.

13 (2) If any section or part of any section of this part is preempted by federal law with respect to a  
 14 payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to  
 15 others, a person who, not for value, receives the payment, item of property, or other benefit is obligated  
 16 to return that payment, item of property, or benefit or is personally liable for the amount of that payment  
 17 or the value of that item of property or benefit, as provided in 72-2-227, to the person who would have  
 18 been entitled to it were that section or part of that section not preempted.

19  
 20 **NEW SECTION. Section 9. Protection of payors and other third parties.** (1) Although under  
 21 72-2-222 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers  
 22 to others, a payor or other third party is not liable for having made a payment or transferred an item of  
 23 property or other benefit to a beneficiary designated in a governing instrument or for having taken any other  
 24 action in ~~good faith~~ reliance on the validity of a governing instrument, upon request and satisfactory proof  
 25 of the decedent's death, before the payor or other third party received written notice from the surviving  
 26 spouse or spouse's representative of an intention to file a petition for the elective share or that a petition  
 27 for the elective share has been filed. A payor or other third party is liable ONLY for ~~payments made or other~~  
 28 actions taken 2 OR MORE BUSINESS DAYS after the payor or other third party received written notice of  
 29 an intention to file a petition for the elective share or that a petition for the elective share has been filed.  
 30 THE WRITTEN NOTICE MUST INDICATE THE NAME OF THE DECEDENT, THE DATE OF THE DECEDENT'S

1 DEATH, THE NAME OF THE PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR  
 2 ITEM OF PROPERTY OR OTHER BENEFIT, AND A STATEMENT THAT THE SPOUSE INTENDS TO FILE A  
 3 PETITION FOR THE ELECTIVE SHARE OR THAT A PETITION FOR THE ELECTIVE SHARE HAS BEEN FILED.  
 4 ANY FORM OF SERVICE OF NOTICE OTHER THAN THAT DESCRIBED IN SUBSECTION (2) IS NOT  
 5 SUFFICIENT TO IMPOSE LIABILITY ON A PAYOR OR OTHER THIRD PARTY FOR ACTIONS TAKEN  
 6 PURSUANT TO THE GOVERNING INSTRUMENT.

7 (2) The written notice ~~of intention to file a petition for the elective share or that a petition for the~~  
 8 ~~elective share has been filed~~ must be mailed to the payor's or other third party's main office or home by  
 9 certified mail, return receipt requested, or served upon the payor or other third party in the same manner  
 10 as a summons in a civil action. NOTICE TO A SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD  
 11 PARTY DOES NOT CONSTITUTE NOTICE TO THE PAYOR OR OTHER THIRD PARTY. Upon receipt of  
 12 written notice of intention to file a petition for the elective share or that a petition for the elective share has  
 13 been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of  
 14 property held by it to or with the court having jurisdiction of the probate proceedings relating to the  
 15 decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of  
 16 probate proceedings relating to decedents' estates located in the county of the decedent's residence. THE  
 17 AVAILABILITY OF AN ACTION UNDER THIS SECTION DOES NOT PREVENT THE PAYOR OR OTHER THIRD  
 18 PARTY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT.  
 19 IF PROBATE PROCEEDINGS HAVE NOT BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL  
 20 FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD  
 21 PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT MAY  
 22 NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT, TRANSFER,  
 23 OR DEPOSIT. The court shall hold the funds or item of property and, upon its determination under  
 24 72-2-225(4), shall order disbursement in accordance with the determination. If no petition is filed in the  
 25 court within the specified time under 72-2-225(1) or, if filed, the demand for an elective share is withdrawn  
 26 under 72-2-225(3), the court shall order disbursement to the designated beneficiary. A FILING FEE, IF ANY,  
 27 MAY, IN THE DISCRETION OF THE COURT, BE CHARGED UPON DISBURSEMENT EITHER TO THE  
 28 RECIPIENT OR AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT. Payments, transfers,  
 29 or deposits made to or with the court discharge the payor or other third party from all claims UNDER THE  
 30 GOVERNING INSTRUMENT OR APPLICABLE LAW for the value of amounts paid to or items of property

1 transferred to or deposited with the court.

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

5

6 **Section 10.** Section 72-2-225, MCA, is amended to read:

7 "72-2-225. **Proceeding for elective share -- time limit.** (1) Except as provided in subsection (2), the  
8 election must be made by filing in the court and mailing or delivering to the personal representative, if any,  
9 a petition for the elective share within 9 months after the date of the decedent's death or within 6 months  
10 after the probate of the decedent's will, whichever limitation later expires. The surviving spouse shall give  
11 notice of the time and place set for hearing to persons interested in the estate and to the distributees and  
12 recipients of portions of the augmented estate whose interests will be adversely affected by the taking of  
13 the elective share. Except as provided in subsection (2), the decedent's ~~reclaimable estate,~~ nonprobate  
14 transfers to others described in 72-2-222(2)(b), is not included within the augmented estate for the purpose  
15 of computing the elective share if the petition is filed more than 9 months after the decedent's death.

16 (2) Within 9 months after the decedent's death, the surviving spouse may petition the court for  
17 an extension of time for making an election. If, within 9 months after the decedent's death, the spouse  
18 gives notice of the petition to all persons interested in the decedent's ~~reclaimable estate,~~ nonprobate  
19 transfers to others the court for cause shown by the surviving spouse may extend the time for election.  
20 If the court grants the spouse's petition for an extension, the decedent's ~~reclaimable estate,~~ nonprobate  
21 transfers to others described in 72-2-222(2)(b), is not excluded from the augmented estate for the purpose  
22 of computing the elective-share and supplemental elective-share amounts if the spouse makes an election  
23 by filing in the court and mailing or delivering to the personal representative, if any, a petition for the  
24 elective share within the time allowed by the extension.

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

27 (4) After notice and hearing, the court shall determine the elective-share and supplemental  
28 elective-share amounts and shall order its payment from the assets of the augmented estate or by  
29 contribution as appears appropriate under 72-2-227. If it appears that a fund or property included in the  
30 augmented estate has not come into the possession of the personal representative or has been distributed

1 by the personal representative, the court nevertheless shall fix the liability of any person who has any  
 2 interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The  
 3 proceeding may be maintained against fewer than all persons against whom relief could be sought, but no  
 4 person is subject to contribution in any greater amount than the person would have been under 72-2-227  
 5 if relief had been secured against all persons subject to contribution.

6 (5) The order or judgment of the court may be enforced as necessary in suit for contribution or  
 7 payment in other courts of this state or other jurisdictions."  
 8

9 **Section 11.** Section 72-2-227, MCA, is amended to read:

10 **"72-2-227. ~~Charging spouse with owned assets and gifts received — liability of others for balance~~**  
 11 **~~of Sources from which elective share payable.~~** (1) In the proceeding for an elective share, the following are  
 12 applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the  
 13 decedent's probate estate and recipients of the decedent's ~~reclaimable estate~~ nonprobate transfers to  
 14 others:

15 (a) amounts included in the augmented estate under 72-2-222(2)(a) that pass or have passed to  
 16 the surviving spouse by testate or intestate succession;

17 (b) amounts included in the augmented estate under 72-2-222(2)(c);

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

20 (d) amounts included in the augmented estate under 72-2-222(2)(d) up to the applicable percentage  
 21 thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share  
 22 percentage set forth in the schedule in 72-2-221(1) appropriate to the length of time the spouse and the  
 23 decedent were married to each other.

24 (2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the  
 25 surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's  
 26 probate estate and ~~that portion of~~ in the decedent's ~~reclaimable estate~~ nonprobate transfers to others, other  
 27 than amounts ~~irrevocably transferred within 2 years before the decedent's death~~ included under  
 28 72-2-222(2)(b)(iii)(A) or 72-2-222(2)(b)(iii)(B), are applied first to satisfy the unsatisfied balance of the  
 29 elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that  
 30 portion of the decedent's ~~reclaimable estate~~ nonprobate transfers to others are applied so that liability for



1 the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is  
 2 equitably apportioned among the recipients of the decedent's probate estate and of that portion of the  
 3 decedent's ~~reclaimable estate~~ nonprobate transfers to others in proportion to the value of their interests  
 4 therein.

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

11 ~~(4) Only original recipients of the reclaimable estate described in 72-2-222(2)(b) and the donees~~  
 12 ~~of the recipients of the reclaimable estate to the extent the donees have the property or its proceeds are~~  
 13 ~~liable to make a proportional contribution toward satisfaction of the surviving spouse's elective share or~~  
 14 ~~supplemental elective share amount. A person liable to contribution may choose to give up the proportional~~  
 15 ~~part of the reclaimable estate or to pay the value of the amount for which the person is liable."~~

16  
 17 **Section 12.** Section 72-2-331, MCA, is amended to read:

18 **"72-2-331. Entitlement of spouse -- premarital will.** (1) If a testator's surviving spouse married the  
 19 testator after the execution of the will, the surviving spouse is entitled to receive, as an intestate share,  
 20 no less than the value of the share of the estate the spouse would have received if the testator had died  
 21 intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator  
 22 who was born before the testator married the surviving spouse and who is not a child of the surviving  
 23 spouse nor devised to the descendant of such a child or passes under 72-2-613 or 72-2-614 to such a child  
 24 or to a descendant of such a child, unless:

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

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

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

1 the amount of the transfer or other evidence.

2 (2) In satisfying the share provided by this section, devises made by the will to the testator's  
3 surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator  
4 who was born before the testator married the surviving spouse and who is not a child of the surviving  
5 spouse or a devise or substitute gift under 72-2-613 or 72-2-614 to a descendant of such a child, abate  
6 as provided in 72-3-901."

7

8 **Section 13.** Section 72-2-332, MCA, is amended to read:

9 **"72-2-332. Omitted children.** (1) Except as provided in subsection (2), if a testator fails to provide  
10 in the testator's will for any of the testator's children born or adopted after the execution of the will, the  
11 omitted after-born or after-adopted child receives a share in the estate as follows:

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

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

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

21 (ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's  
22 estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all  
23 omitted after-born and after-adopted children with the children to whom devises were made under the will  
24 and had given an equal share of the estate to each child.

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

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

1 testator.

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

3 (a) it appears from the will that the omission was intentional; or

4 (b) the testator provided for the omitted after-born or after-adopted child by transfer outside the  
5 will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's  
6 statements or is reasonably inferred from the amount of the transfer or other evidence.

7 ~~(3) Except as provided in subsection (2), if~~ If at the time of execution of the will the testator fails  
8 to provide in the testator's will for a living child solely because the testator believes the child to be dead,  
9 the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

10 (4) In satisfying a share provided by subsection (1)(a), devises made by the will abate as provided  
11 in 72-3-901."

12

13 **Section 14.** Section 72-2-613, MCA, is amended to read:

14 **"72-2-613. Antilapse -- deceased devisee -- class gifts.** (1) As used in this section, the following  
15 definitions apply:

16 (a) "Alternative devise" means a devise that is expressly created by the will and that under the  
17 terms of the will may take effect instead of another devise on the happening of one or more events,  
18 including survival of the testator or failure to survive the testator, whether an event is expressed in  
19 condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative  
20 devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure,  
21 the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

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

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

26 (d) "Devisee" includes:

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

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

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

2 (e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the  
3 donor of a power of appointment but not a child of the testator or donor.

4 (f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither  
5 predeceased the testator nor is considered to have predeceased the testator under 72-2-712.

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

8 (2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent,  
9 or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will,  
10 the following apply:

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

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

26 (c) For purposes of 72-2-611, words of survivorship, such as in a devise to an individual "if the  
27 individual survives me" or in a devise to "my surviving children", are not, in the absence of additional  
28 evidence, a sufficient indication of an intent contrary to the application of this section.

29 (d) If the will creates an alternative devise with respect to a devise for which a substitute gift is  
30 created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise only if an

1 expressly designated devisee of the alternative devise is entitled to take under the will.

2 (e) Unless the language creating a power of appointment expressly excludes the substitution of  
3 the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a  
4 power of appointment may be substituted for the appointee under this section, whether or not the  
5 descendant is an object of the power.

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

9 (a) Except as provided in subsection (3)(b), the devised property passes under the primary  
10 substitute gift.

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

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

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

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

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

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

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

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

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

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

26 **Section 15.** Section 72-2-712, MCA, is amended to read:

27 **"72-2-712. Requirement of survival by one hundred twenty hours.** (1) For the purposes of chapters  
28 1 through 5, ~~except for purposes of Title 72, chapter 6, part 3, and~~ except as provided in subsection (4),  
29 an individual who is not established by clear and convincing evidence to have survived an event, including  
30 the death of another individual, by 120 hours is considered to have predeceased the event.

1           (2) Except as provided in subsection (4) ~~and except for a security registered in beneficiary form~~  
2 ~~(TOD) under Title 72, chapter 6, part 3~~, for purposes of a provision of a governing instrument that relates  
3 to an individual surviving an event, including the death of another individual, an individual who is not  
4 established by clear and convincing evidence to have survived the event by 120 hours is considered to have  
5 predeceased the event.

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

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

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

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

16           (4) ~~This section does~~ Survival by 120 hours is not apply required if:

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

19           (b) the governing instrument expressly indicates that an individual is not required to survive an  
20 event, including the death of another individual, by any specified period or expressly requires the individual  
21 to survive the event by a specified period; However, survival of the event or the specified period must be  
22 established by clear and convincing evidence.

23           (c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest  
24 or a power of appointment to fail to qualify for validity under 72-2-1002(1)(a), (2)(a), or (3)(a) or to become  
25 invalid under 72-2-1002(1)(b), (2)(b), or (3)(b); however, survival must be established by clear and  
26 convincing evidence; or

27           (d) the application of ~~this section~~ a 120-hour requirement of survival to multiple governing  
28 instruments would result in an unintended failure or duplication of a disposition, However, survival must  
29 be established by clear and convincing evidence.

30           (5) (a) A payor or other third party is not liable for having made a payment or transferred an item

1 of property or any other benefit to a beneficiary designated in a governing instrument who, under this  
2 section, is not entitled to the payment or item of property, or for having taken any other action in good faith  
3 reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the  
4 payor or other third party received written notice of a claimed lack of entitlement under this section. A  
5 payor or other third party is liable for a payment made or other action taken after the payor or other third  
6 party received written notice of a claimed lack of entitlement under this section.

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

18 (6) (a) A person who purchases property for value and without notice or who receives a payment  
19 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated  
20 under this section to return the payment, item of property, or benefit nor liable under this section for the  
21 amount of the payment or the value of the item of property or benefit. However, a person who, not for  
22 value, receives a payment, item of property, or other benefit to which the person is not entitled under this  
23 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount  
24 of the payment or the value of the item of property or benefit, to the person who is entitled to it under this  
25 section.

26 (b) If this section or any part of this section is preempted by federal law with respect to a payment,  
27 an item of property, or any other benefit covered by this section, a person who, not for value, receives the  
28 payment, item of property, or other benefit to which the person is not entitled under this section is  
29 obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the  
30 payment or the value of the item of property or benefit, to the person who would have been entitled to it

1 were this section or part of this section not preempted."

2

3 **Section 16.** Section 72-2-716, MCA, is amended to read:

4 **"72-2-716. Life insurance -- retirement plan -- account with POD designation -- transfer-on-death**  
5 **registration -- deceased beneficiary.** (1) As used in this section, the following definitions apply:

6 (a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created  
7 by the governing instrument and that under the terms of the governing instrument may take effect instead  
8 of another beneficiary designation on the happening of one or more events, including survival of the  
9 decedent or failure to survive the decedent, whether an event is expressed in condition-precedent,  
10 condition-subsequent, or any other form.

11 (b) "Beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary  
12 must survive the decedent and includes:

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

14 (ii) an individual or class member who was deceased at the time the beneficiary designation was  
15 executed as well as an individual or class member who was then living but who failed to survive the  
16 decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint  
17 and survivorship account.

18 (c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary  
19 designation in the form of a class gift.

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

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

24 (f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who  
25 neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-712.

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

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



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

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

14 (c) For the purposes of 72-2-711, words of survivorship, such as in a beneficiary designation to  
15 an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are  
16 not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application  
17 of this section.

18 (d) If a governing instrument creates an alternative beneficiary designation with respect to a  
19 beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute  
20 gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of  
21 the alternative beneficiary designation is entitled to take.

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

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

26 (b) If there is a younger-generation beneficiary designation, the property passes under the  
27 younger-generation substitute gift and not under the primary substitute gift.

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

29 (i) "Primary beneficiary designation" means the beneficiary designation that would have taken  
30 effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving

1 descendants survived the decedent.

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

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

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

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

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

8 (D) would have taken effect had all the deceased beneficiaries who left surviving descendants  
9 survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary  
10 designation.

11 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
12 younger-generation beneficiary designation.

13 (4) (a) A payor is protected from liability in making payments under the terms of the beneficiary  
14 designation until the payor has received written notice of a claim to a substitute gift under this section.  
15 Payment made before the receipt of written notice of a claim to a substitute gift under this section  
16 discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a  
17 payment made after the payor has received written notice of the claim. A recipient is liable for a payment  
18 received, whether or not written notice of the claim is given.

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

27 (5) (a) A person who purchases property for value and without notice or who receives a payment  
28 or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated  
29 under this section to return the payment, item of property, or benefit nor liable under this section for the  
30 amount of the payment or the value of the item of property or benefit. However, a person who, not for

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

5 (b) If this section or any part of this section is preempted by federal law with respect to a payment,  
6 an item of property, or any other benefit covered by this section, a person who, not for value, receives the  
7 payment, item of property, or other benefit to which the person is not entitled under this section is  
8 obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the  
9 payment or the value of the item of property or benefit, to the person who would have been entitled to it  
10 were this section or part of this section not preempted."

11

12 **Section 17.** Section 72-2-717, MCA, is amended to read:

13 **"72-2-717. Survivorship with respect to future interests under terms of trust -- substitute takers.**

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

15 (a) "Alternative future interest" means an expressly created future interest that may take effect  
16 in possession or enjoyment instead of another future interest on the happening of one or more events,  
17 including survival of an event or failure to survive an event, whether an event is expressed in  
18 condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create  
19 an alternative future interest with respect to a future interest created in a nonresiduary devise in the will,  
20 whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary  
21 clause.

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

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

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

30 (e) "Future interest" includes an alternative future interest and a future interest in the form of a

1 class gift.

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

6 (g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who  
7 neither predeceased the distribution date nor is considered to have predeceased the distribution date under  
8 72-2-712.

9 (2) A future interest under the terms of a trust is contingent on the beneficiary surviving the  
10 distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the  
11 distribution date, the following provisions apply:

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

16 (b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other  
17 than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or  
18 "family" or a class described by language of similar import, a substitute gift is created in the surviving  
19 descendants of any deceased beneficiary ~~or beneficiary's surviving descendants~~. The property to which the  
20 beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving  
21 beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes  
22 the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries  
23 survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for  
24 the deceased beneficiary take by representation the share to which the deceased beneficiary would have  
25 been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection  
26 (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one  
27 or more surviving descendants.

28 (c) For the purposes of 72-2-711, words of survivorship attached to a future interest are not, in  
29 the absence of additional evidence, a sufficient indication of an intent contrary to the application of this  
30 section. Words of survivorship include words of survivorship that relate to the distribution date or to an

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

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

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

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

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

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

14 (i) "Primary future interest" means the future interest that would have taken effect had all the  
15 deceased beneficiaries of the alternative future interests who left surviving descendants survived the  
16 distribution date.

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

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

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

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

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

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

25 (iv) "Younger-generation substitute gift" means the substitute gift created with respect to the  
26 younger-generation future interest.

27 (4) Except as provided in subsection (5), if, after the application of subsections (2) and (3), there  
28 is no surviving taker, the property passes in the following order:

29 (a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the  
30 transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this

1 section, the residuary clause is treated as creating a future interest under the terms of a trust.

2 (b) if no taker is produced by the application of subsection (4)(a), the property passes to the  
3 transferor's heirs under 72-2-721.

4 (5) If, after the application of subsections (2) and (3), there is no surviving taker and if the future  
5 interest was created by the exercise of a power of appointment:

6 (a) the property passes under the donor's gift-in-default clause, if any, which clause is treated as  
7 creating a future interest under the terms of a trust; and

8 (b) if no taker is produced by the application of subsection (5)(a), the property passes as provided  
9 in subsection (4). For purposes of subsection (4), "transferor" means the donor if the power was a  
10 nongeneral power and means the donee if the power was a general power."

11

12 **Section 18.** Section 72-2-719, MCA, is amended to read:

13 **"72-2-719. Representation -- per capita at each generation -- per stirpes.** (1) As used in this  
14 section, the following definitions apply:

15 (a) "Deceased child" or "deceased descendant" means a child or a descendant who either  
16 predeceased the distribution date or is considered to have predeceased the distribution date under  
17 72-2-712.

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

21 (c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child,  
22 or a descendant who neither predeceased the distribution date nor is considered to have predeceased the  
23 distribution date under 72-2-712.

24 (2) (a) If a governing instrument calls for property to be distributed "per capita at each generation",  
25 the property is divided into as many equal shares as there are:

26 (i) surviving descendants in the generation nearest to the designated ancestor that contains one or  
27 more surviving descendants; and

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

29 (b) Each surviving descendant in the nearest generation is allocated one share. The remaining  
30 shares, if any, are combined and then divided in the same manner among the surviving descendants of the

1 deceased descendants as if the surviving descendants who were allocated a share and their surviving  
2 descendants had predeceased the distribution date.

3 (3) (a) If ~~an applicable statute or~~ a governing instrument calls for property to be distributed "~~by~~  
4 ~~representation~~" or "per stirpes", the property is divided into as many equal shares as there are:

5 (i) surviving children of the designated ancestor; and

6 (ii) deceased children who left surviving descendants.

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

10 (4) (a) If an applicable statute or a governing instrument calls for property to be distributed "by  
11 representation", the property is divided into as many equal shares as there are:

12 (i) surviving descendants in the generation nearest to the designated ancestor that contains one or  
13 more surviving descendants; and

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

15 (b) Each surviving descendant in the nearest generation is allocated one share. The share of each  
16 deceased descendant in the same generation as the surviving descendant is divided in the same manner,  
17 with the subdivision repeating at each succeeding generation until the property is fully allocated among  
18 surviving descendants.

19 ~~(4)(5)~~ For the purposes of subsections (2) ~~and (3)~~ through (4), an individual who is deceased and  
20 left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a  
21 descendant of the designated ancestor is not entitled to a share."

22

23 **Section 19.** Section 72-2-721, MCA, is amended to read:

24 **"72-2-721. ~~Future interests~~ Interests in "heirs" and like.** If an applicable statute or a governing  
25 instrument calls for a present or future distribution to or creates a present or future interest in a designated  
26 individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the  
27 property passes to those persons, including the state ~~under 72-2-115~~, and in such shares as would succeed  
28 to the designated individual's intestate estate under the intestate succession law of the designated  
29 individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if  
30 the designated individual died at that time. If the designated individual's surviving spouse is living but is

1 remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is  
2 not an heir of the designated individual."

3

4 **Section 20.** Section 72-2-811, MCA, is amended to read:

5 **"72-2-811. Disclaimer of property interests.** (1) (a) A person or the representative of a person to  
6 whom an interest in or with respect to property or an interest in the property devolves by whatever means  
7 may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

8 (b) The right to disclaim exists notwithstanding:

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

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

12 (c) For purposes of this subsection (1), the "representative of a person" includes a personal  
13 representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated  
14 person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained  
15 person, or a person whose identity or address is unknown; and an agent acting on behalf of the person  
16 within the authority of a power of attorney. The representative of a person may rely on a general family  
17 benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

18 (2) The following rules govern the time when a disclaimer must be filed or delivered:

19 (a) If the property or interest has devolved to the disclaimant under a testamentary instrument or  
20 by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after  
21 the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest,  
22 not later than 9 months after the event determining that the taker of the property or interest is finally  
23 ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the  
24 county in which proceedings for the administration of the estate of the deceased owner or deceased donee  
25 of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by  
26 certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent  
27 or donee of the power.

28 (b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument  
29 or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after  
30 the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than



1 9 months after the event determining that the taker of the property or interest is finally ascertained and the  
2 taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of  
3 the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the  
4 existence of the interest. The effective date of a revocable instrument or contract is the date on which the  
5 maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable  
6 ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed  
7 by certified mail, return receipt requested, to the person who has legal title to or possession of the interest  
8 disclaimed.

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

14 (d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be  
15 recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed  
16 is located.

17 (3) The disclaimer must:

- 18 (a) describe the property or interest disclaimed;  
19 (b) declare the disclaimer and extent of the disclaimer; and  
20 (c) be signed by the disclaimant.

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

22 (a) If property or an interest in property devolves to a disclaimant under a testamentary instrument,  
23 under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and  
24 the decedent has not provided for another disposition of that interest, should it be disclaimed, or of  
25 disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had  
26 predeceased the decedent, but if by law or under the testamentary instrument the descendants of the  
27 disclaimant would ~~take the disclaimant's share~~ in the disclaimed interest by representation or otherwise  
28 were the disclaimant to predecease the decedent, THEN the disclaimed interest passes by representation,  
29 or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the  
30 decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate

1 or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates  
2 back for all purposes to the date of the death of the decedent.

3 (b) If property or an interest in property devolves to a disclaimant under a nontestamentary  
4 instrument or contract and the instrument or contract does not provide for another disposition of that  
5 interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest  
6 devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by  
7 law or under the nontestamentary instrument or contract the descendants of the disclaimant would ~~take~~  
8 ~~the disclaimant's share in the disclaimed interest~~ by representation or otherwise were the disclaimant to  
9 predecease the effective date of the instrument, THEN the disclaimed interest passes by representation,  
10 or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the  
11 effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest  
12 that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes  
13 effect as if the disclaimant had died before the effective date of the instrument or contract that transferred  
14 the disclaimed interest.

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

17 (5) The right to disclaim property or an interest in the property is barred by:

18 (a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a  
19 contract therefor;

20 (b) a written waiver of the right to disclaim;

21 (c) an acceptance of the property or interest or benefit under it; or

22 (d) a sale of the property or interest under judicial sale made before the disclaimer is made.

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

25 (7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the  
26 time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not  
27 become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after  
28 October 1, 1993."

29

30 **Section 21.** Section 72-2-813, MCA, is amended to read:

1           **"72-2-813. Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance,**  
2 **and beneficiary designations.** (1) For purposes of this section, the following definitions apply:

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

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

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

11           (2) An individual who feloniously and intentionally kills the decedent forfeits all benefits under this  
12 chapter with respect to the decedent's estate, including an intestate share, an elective share, an omitted  
13 spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent  
14 died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

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

16           (a) revokes any revocable:

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

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

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

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

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

1 property, as evidence of ownership.

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

5 (6) A wrongful acquisition of property or interest by a killer not covered by this section must be  
 6 treated in accordance with the principle that a killer cannot profit from the killer's wrong.

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

15 (8) (a) A payor or other third party is not liable for having made a payment or transferred an item  
 16 of property or any other benefit to a beneficiary designated in a governing instrument affected by an  
 17 intentional and felonious killing, or for having taken any other action in good faith reliance on the validity  
 18 of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor  
 19 or other third party received written notice of a claimed forfeiture or revocation under this section. A  
 20 PAYOR OR OTHER THIRD PARTY DOES NOT HAVE A DUTY OR OBLIGATION TO MAKE ANY  
 21 DETERMINATION AS TO WHETHER THE DECEDENT WAS A VICTIM OF A HOMICIDE OR TO SEEK ANY  
 22 EVIDENCE WITH RESPECT TO A HOMICIDE EVEN IF THE CIRCUMSTANCES OF THE DECEDENT'S DEATH  
 23 ARE SUSPICIOUS OR QUESTIONABLE AS TO THE BENEFICIARY'S PARTICIPATION IN A HOMICIDE. A  
 24 payor or other third party is ONLY liable for ~~a payment made or other action~~ ACTIONS taken 2 OR MORE  
 25 BUSINESS DAYS after THE ACTUAL RECEIPT BY the payor or other third party ~~received~~ OF written notice  
 26 ~~of a claimed forfeiture or revocation under this section.~~ THE PAYOR OR OTHER THIRD PARTY MAY BE  
 27 LIABLE FOR ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT ONLY IF THE FORM OF THE  
 28 SERVICE IS THAT DESCRIBED IN SUBSECTION (8)(B).

29 (b) THE WRITTEN NOTICE MUST INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE  
 30 PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER

1 BENEFIT, AND A STATEMENT THAT A CLAIM OF FORFEITURE OR REVOCATION IS BEING MADE UNDER  
2 THIS SECTION. Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed  
3 to the payor's or other third party's main office or home by certified mail, return receipt requested, or  
4 served upon the payor or other third party in the same manner as a summons in a civil action. NOTICE TO  
5 A SALES REPRESENTATIVE OF THE PAYOR OR OTHER THIRD PARTY DOES NOT CONSTITUTE NOTICE  
6 TO THE PAYOR OR OTHER THIRD PARTY. Upon receipt of written notice of a claimed forfeiture or  
7 revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit  
8 any item of property held by it to or with the court having jurisdiction of the probate proceedings relating  
9 to the decedent's estate or, if no proceedings have been commenced, to or with the court having  
10 jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's  
11 residence. IN ADDITION TO THE ACTIONS AVAILABLE UNDER THIS SECTION, THE PAYOR OR OTHER  
12 THIRD PARTY MAY TAKE ANY ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. IF  
13 PROBATE PROCEEDINGS HAVE NOT BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL  
14 FILE WITH THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD  
15 PARTY, WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT MAY  
16 NOT CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE  
17 COURT OF AMOUNTS OWED OR TRANSFERRED TO OR DEPOSITED WITH THE COURT OR ANY ITEM OF  
18 PROPERTY. The court shall hold the funds or item of property and, upon its determination under this  
19 section, shall order disbursement in accordance with the determination. A FILING FEE, IF ANY, MAY BE  
20 CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR AGAINST THE FUNDS OR PROPERTY  
21 ON DEPOSIT WITH THE COURT, IN THE DISCRETION OF THE COURT. Payments, transfers, or deposits  
22 made to or with the court discharge the payor or other third party from all claims for the value of amounts  
23 paid to or items of property transferred to or deposited with the court.

24 (9) (a) A ~~person~~ BONA FIDE PURCHASER who purchases property ~~for value and without notice~~  
25 or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable  
26 obligation is neither obligated under this section to return the payment, item of property, or benefit nor  
27 liable under this section for the amount of the payment or the value of the item of property or benefit.  
28 However, a person who, not for value, receives a payment, item of property, or other benefit to which the  
29 person is not entitled under this section is obligated to return the payment, item of property, or benefit, or  
30 is personally liable for the amount of the payment or the value of the item of property or benefit, to the

1 person who is entitled to it under this section.

2 (b) If this section or any part of this section is preempted by federal law, OTHER THAN THE  
3 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, with respect to a  
4 payment, an item of property, or any other benefit covered by this section, a person who, not for value,  
5 receives the payment, item of property, or other benefit to which the person is not entitled under this  
6 section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount  
7 of the payment or the value of the item of property or benefit, to the person who would have been entitled  
8 to it were this section or part of this section not preempted.

9 (10) For the purposes of this section, a felonious and intentional killing includes a deliberate  
10 homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."  
11

12 **Section 22.** Section 72-2-814, MCA, is amended to read:

13 **"72-2-814. Revocation of probate and nonprobate transfers by divorce -- no revocation by other**  
14 **changes of circumstances.** (1) As used in this section, the following definitions apply:

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

17 (b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity  
18 of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A  
19 decree of separation that does not terminate the status of husband and wife is not a divorce for purposes  
20 of this section.

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

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

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

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

1 divorced individual in place of the individual's former spouse or in place of the former spouse's relative and  
2 whether or not the divorced individual then had the capacity to exercise the power.

3 (2) Except as provided by the express terms of a governing instrument, a court order, or a contract  
4 relating to the division of the marital estate made between the divorced individuals before or after the  
5 marriage, divorce, or annulment, the divorce or annulment of a marriage:

6 (a) revokes any revocable:

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

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

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

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

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

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

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

29 (6) No change of circumstances other than as described in this section and in 72-2-813 effects a  
30 revocation.

1           (7) (a) A payor or other third party is not liable for having made a payment or transferred an item  
 2 of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce,  
 3 annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the  
 4 governing instrument, before the payor or other third party received written notice of the divorce,  
 5 annulment, or remarriage. A PAYOR OR OTHER THIRD PARTY DOES NOT HAVE A DUTY OR OBLIGATION  
 6 TO INQUIRE AS TO THE CONTINUED MARITAL RELATIONSHIP BETWEEN THE DECEDENT AND A  
 7 BENEFICIARY OR TO SEEK ANY EVIDENCE WITH RESPECT TO A MARITAL RELATIONSHIP. A payor or  
 8 other third party is ONLY liable for ~~a payment made or other action~~ ACTIONS taken 2 OR MORE BUSINESS  
 9 DAYS after THE ACTUAL RECEIPT BY the payor or other third party ~~received~~ OF written notice ~~of a claimed~~  
 10 ~~forfeiture or revocation under this section.~~ THE PAYOR OR OTHER THIRD PARTY MAY BE LIABLE FOR  
 11 ACTIONS TAKEN PURSUANT TO THE GOVERNING INSTRUMENT ONLY IF THE FORM OF SERVICE IS  
 12 THAT DESCRIBED IN SUBSECTION (7)(B).

13           (b) THE WRITTEN NOTICE MUST INDICATE THE NAME OF THE DECEDENT, THE NAME OF THE  
 14 PERSON ASSERTING AN INTEREST, THE NATURE OF THE PAYMENT OR ITEM OF PROPERTY OR OTHER  
 15 BENEFIT, AND A STATEMENT THAT A DISSOLUTION, ANNULMENT, OR REMARRIAGE OF THE  
 16 DECEDENT AND THE DESIGNATED BENEFICIARY OCCURRED. Written notice of the divorce, annulment,  
 17 or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or  
 18 home by certified mail, return receipt requested, or served upon the payor or other third party in the same  
 19 manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or  
 20 remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of  
 21 property held by it to or with the court having jurisdiction of the probate proceedings relating to the  
 22 decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of  
 23 probate proceedings relating to decedents' estates located in the county of the decedent's residence. IN  
 24 ADDITION TO THE ACTIONS AVAILABLE UNDER THIS SECTION, THE PAYOR OR OTHER THIRD PARTY  
 25 MAY TAKE ANY ACTION AUTHORIZED BY LAW OR THE GOVERNING INSTRUMENT. IF PROBATE  
 26 PROCEEDINGS HAVE NOT BEEN COMMENCED, THE PAYOR OR OTHER THIRD PARTY SHALL FILE WITH  
 27 THE COURT A COPY OF THE WRITTEN NOTICE RECEIVED BY THE PAYOR OR OTHER THIRD PARTY,  
 28 WITH THE PAYMENT OF FUNDS OR TRANSFER OR DEPOSIT OF PROPERTY. THE COURT MAY NOT  
 29 CHARGE A FILING FEE TO THE PAYOR OR OTHER THIRD PARTY FOR THE PAYMENT TO THE COURT OF  
 30 AMOUNTS OWED OR TRANSFERRED TO OR DEPOSITED WITH THE COURT OR ANY ITEM OF PROPERTY.



1 The court shall hold the funds or item of property and, upon its determination under this section, shall order  
 2 disbursement or transfer in accordance with the determination. A FILING FEE, IF ANY, MAY, IN THE  
 3 DISCRETION OF THE COURT, BE CHARGED UPON DISBURSEMENT EITHER TO THE RECIPIENT OR  
 4 AGAINST THE FUNDS OR PROPERTY ON DEPOSIT WITH THE COURT. Payments, transfers, or deposits  
 5 made to or with the court discharge the payor or other third party from all claims for the value of amounts  
 6 paid to or items of property transferred to or deposited with the court.

7 (8) (a) A ~~person~~ BONA FIDE PURCHASER who purchases property from a former spouse, relative  
 8 of a former spouse, or any other person ~~for value and without notice~~ or who receives from a former spouse,  
 9 relative of a former spouse, or any other person a payment or other item of property in partial or full  
 10 satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment,  
 11 item of property, or benefit nor liable under this section for the amount of the payment or the value of the  
 12 item of property or benefit. However, a former spouse, relative of a former spouse, or other person who,  
 13 not for value, received a payment, item of property, or other benefit to which that person is not entitled  
 14 under this section is obligated to return the payment, item of property, or benefit, or is personally liable for  
 15 the amount of the payment or the value of the 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 preempted by federal law, OTHER THAN THE  
 18 FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED, with respect to a  
 19 payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the  
 20 former spouse, or any other person who, not for value, received a payment, item of property, or other  
 21 benefit to which that person is not entitled under this section is obligated to return that payment, item of  
 22 property, or benefit, or is personally liable for the amount of the payment or the value of the item of  
 23 property or benefit, to the person who would have been entitled to it were this section or part of this  
 24 section not preempted."

25

26 **Section 23.** Section 72-2-1017, MCA, is amended to read:

27 **"72-2-1017. Honorary trusts -- trusts for pets.** (1) A Subject to subsection (3), a trust for a  
 28 ~~noncharitable corporation or unincorporated society or for a lawful noncharitable purpose~~ may be performed  
 29 by the trustee for 21 years but no longer, ~~whether or not there is a beneficiary who can seek the trust's~~  
 30 ~~enforcement or termination and~~ whether or not the terms of the trust contemplate a longer duration if:

1           (a) a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be  
 2 selected by the trustee; and

3           (b) there is no definite or definitely ascertainable beneficiary designated.

4           (2) Subject to the provisions of subsection (3) and this subsection, a trust for the care of a  
 5 designated domestic or pet animal ~~and the animal's offspring~~ is valid. ~~Except as expressly provided~~  
 6 ~~otherwise in the trust instrument, the following provisions apply:~~

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

9           ~~(b) The trust terminates at the earlier of 21 years after the trust was created or when no living~~  
 10 animal is covered by the trust. A governing instrument must be liberally construed to bring the transfer  
 11 within this subsection, to presume against the merely precatory or honorary nature of the disposition, and  
 12 to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the  
 13 transferor's intent.

14           (3) In addition to the provisions of subsection (1) or (2), a trust covered by either of those  
 15 subsections is subject to the following provisions:

16           (a) Except as expressly provided OTHERWISE in the trust instrument, no portion of the principal or  
 17 income may be converted to the use of the trustee or to any use other than for the trust's purposes or for  
 18 the benefit of a covered animal.

19           ~~(b)~~ Upon termination, the trustee shall transfer the unexpended trust property in the following  
 20 order:

21           (i) as directed in the trust instrument;

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

24           (iii) if no taker is produced by the application of subsection ~~(2)(e)(i)~~ (3)(b)(i) or ~~(2)(e)(ii)~~ (3)(b)(ii), to  
 25 the transferor's heirs under 72-2-721.

26           ~~(c)~~ For the purposes of 72-2-717, the residuary clause is treated as creating a future interest  
 27 under the terms of a trust.

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

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

4           ~~(g)~~ A governing instrument must be liberally construed to bring the transfer within the applicability  
5 of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry  
6 out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's  
7 intent.

8           ~~(h)(f)~~ A court may reduce the amount of the property transferred if it determines that that amount  
9 substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes  
10 as unexpended trust property under subsection ~~(2)(e)~~ (3)(b).

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

17  
18           **Section 24.** Section 72-3-102, MCA, is amended to read:

19           "**72-3-102. Necessity of probate of will.** Except as provided in 72-3-1101, to be effective to prove  
20 the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of  
21 informal probate by the clerk or an adjudication of probate by the court, ~~except that a duly executed and~~  
22 ~~unrevoked will which has not been probated may be admitted as evidence of a devise if:~~

23           ~~(1) no court proceeding concerning the succession or administration of the estate has occurred;~~

24 and

25           ~~(2) either:~~

26           ~~(a) the devisee or his successors and assigns possessed the property devised in accordance with~~  
27 ~~the provisions of the will; or~~

28           ~~(b) the property devised was not possessed or claimed by anyone by virtue of the decedent's title~~  
29 ~~during the time period for testacy proceedings."~~

30

1           **Section 25.** Section 72-3-122, MCA, is amended to read:

2           **"72-3-122. Time limit on probate, testacy, and appointment proceedings -- exceptions.** (1) No  
3 informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a  
4 proceeding to probate a will previously probated at the testator's domicile and appointment proceedings  
5 relating to an estate in which there has been a prior appointment, may be commenced more than 3 years  
6 after the decedent's death, except:

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

11           (b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the  
12 estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at  
13 any time within 3 years after the conservator becomes able to establish the death of the protected person;

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

17           ~~(d) if no proceeding concerning the succession or administration of the estate has occurred within~~  
18 ~~3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter~~  
19 ~~for the sole purpose of establishing a devise of property which the devisee or his successors and assigns~~  
20 ~~possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue~~  
21 ~~of the decedent's title during the 3 year period, and the order of the court must be limited to that property~~  
22 an informal appointment or a formal testacy or appointment proceeding may be commenced after the time  
23 period if no proceedings concerning the succession or estate administration have occurred within the 3-  
24 year period after the decedent's death, but the personal representative has no right to possess estate assets  
25 provided in 72-3-606 beyond that necessary to confirm title to the property in the successors to the estate,  
26 and claims other than expenses of administration may not be presented against the estate; and

27           (e) a formal testacy proceeding may be commenced at any time after 3 years from the decedent's  
28 death for the purpose of establishing an instrument to direct or control the ownership of property passing  
29 or distributable after the decedent's death from one other than the decedent when the property is to be  
30 appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's

1 estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

2 (2) These limitations do not apply to proceedings to construe probated wills or determine heirs of  
3 an intestate.

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

7  
8 **Section 26.** Section 72-3-317, MCA, is amended to read:

9 **"72-3-317. Effect of formal testacy order -- modification or vacation -- fact of death -- remedies**  
10 **of alleged decedent.** Subject to appeal and subject to vacation as provided ~~herein and~~ in 72-3-318 and this  
11 section, a formal testacy order under 72-3-313 through 72-3-316, including an order that the decedent left  
12 no valid will and determining heirs, is final as to all persons with respect to all issues concerning the  
13 decedent's estate that the court considered or might have considered incident to its rendition relevant to  
14 the question of whether the decedent left a valid will and to the determination of heirs, except that:

15 (1) the court shall entertain a petition for modification or vacation of its order and probate of  
16 another will of the decedent if it is shown that the proponents of the later-offered will:

17 (a) were unaware of its existence at the time of the earlier proceeding; or

18 (b) were unaware of the earlier proceeding and were given no notice ~~thereof~~ of the proceeding,  
19 except by publication;

20 (2) if intestacy of all or part of the estate has been ordered, the determination of heirs of the  
21 decedent may be reconsidered if it is shown that one or more persons were omitted from the determination  
22 and it is also shown that the persons:

23 (a) were unaware of their relationship to the decedent; or

24 (b) were unaware of ~~his~~ the decedent's death; or

25 (c) were given no notice of any proceeding concerning ~~his~~ the decedent's estate, except by  
26 publication;

27 (3) a petition for vacation under either (1) or (2) above must be filed prior to the earlier of the  
28 following time limits:

29 (a) if a personal representative has been appointed for the estate, the time of entry of any order  
30 approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing

1 of the closing statement;

2 (b) whether or not a personal representative has been appointed for the estate of the decedent,  
3 the time prescribed by 72-3-122 when it is no longer possible to initiate an original proceeding to probate  
4 a will of the decedent;

5 (c) 12 months after the entry of the order sought to be vacated;

6 (4) the order originally rendered in the testacy proceeding may be modified or vacated, if  
7 appropriate under the circumstances, by the order of probate of the later-offered will or the order  
8 redetermining heirs;

9 (5) the finding of the fact of death is conclusive as to the alleged decedent only if notice of the  
10 hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed  
11 to the alleged decedent at ~~his~~ the last known address and the court finds that a search under 72-3-306 was  
12 made. If the alleged decedent is not dead, even if notice was sent and search was made, ~~he~~ the alleged  
13 decedent may recover estate assets in the hands of the personal representative. In addition to any remedies  
14 available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent  
15 may recover any estate or its proceeds from distributees that is in their hands or the value of distributions  
16 received by them, to the extent that any recovery from distributees is equitable in view of all of the  
17 circumstances."

18

19 **Section 27.** Section 72-3-131, MCA, is amended to read:

20 "**72-3-131. Compromise of controversies.** (1) A compromise of any controversy as to admission  
21 to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity,  
22 or effect of any ~~probate will~~ governing instrument, the rights or interests in the estate of the decedent, of  
23 any successor, or the administration of the estate, if approved in a formal proceeding in the court for that  
24 purpose, is binding on all the parties ~~thereto~~ to the proceeding, including those unborn, unascertained, or  
25 who could not be located.

26 (2) An approved compromise is binding even though it may affect a trust or an inalienable interest.  
27 A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it."

28

29 **Section 28.** Section 72-3-132, MCA, is amended to read:

30 "**72-3-132. Procedure for securing court approval of compromise.** The procedure for securing court

1 approval of a compromise is as follows:

2 (1) The terms of the compromise ~~shall~~ must be set forth in an agreement in writing which ~~shall~~  
3 must be executed by all competent persons and parents acting for any minor child having beneficial  
4 interests or having claims which will or may be affected by the compromise. Execution is not required by  
5 any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably  
6 be ascertained.

7 (2) Any interested person, including the personal representative, if any, or a trustee, then may  
8 submit the agreement to the court for its approval and for execution by the personal representative, the  
9 trustee of every affected testamentary trust, and other fiduciaries and representatives.

10 (3) After notice to all interested persons or their representatives, including the personal  
11 representative of ~~the~~ any estate and all affected trustees of trusts, the court, if it finds that the contest or  
12 controversy is in good faith and that the effect of the agreement upon the interests of persons represented  
13 by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement  
14 and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only  
15 by their parents may be bound only if their parents join with other competent persons in execution of the  
16 compromise.

17 (4) Upon the making of the order and the execution of the agreement, all further disposition of the  
18 estate is in accordance with the terms of the agreement."  
19

20 **Section 29.** Section 72-6-201, MCA, is amended to read:

21 **"72-6-201. Definitions.** In this part, the following definitions apply:

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

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

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

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

30 (5) "Multiple-party account" means an account payable on request to one or more of two or more

1 parties, whether or not a right of survivorship is mentioned.

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

4 (7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant  
5 to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other  
6 disposition of all or part of an account pursuant to a pledge.

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

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

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

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

18 (10) "Request" means a request for payment that complies with all terms of the account, including  
19 special requirements concerning necessary signatures and regulations of the financial institution; however,  
20 for purposes of this part, if terms of the account condition payment on advance notice, a request for  
21 payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for  
22 payment.

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

26 (12) "Terms of the account" includes the deposit agreement and other terms and conditions of the  
27 contract of deposit, including the type of account, the parties to the account, and the form, of the contract  
28 ~~of deposit.~~"

29

30 **Section 30.** Section 72-6-213, MCA, is amended to read:



1           **"72-6-213. Alteration of rights.** (1) Rights at death under 72-6-212 are determined by the ~~type~~  
2 terms of the account at the death of a party. The ~~type terms~~ of an account may be altered by written notice  
3 given by a party to the financial institution to change the ~~type terms~~ of account or to stop or vary payment  
4 under the terms of the account. The notice must be signed by a party and received by the financial  
5 institution during the party's lifetime.

6           (2) A right of survivorship arising from the express terms of the account, from 72-6-212, or from  
7 a POD designation may not be altered by will."

8  
9           **Section 31.** Section 72-6-226, MCA, is amended to read:

10           **"72-6-226. Discharge.** (1) Payment made pursuant to this part in accordance with the ~~type terms~~  
11 of an account discharges the financial institution from all claims for amounts so paid, whether or not the  
12 payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or  
13 their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled,  
14 incapacitated, or deceased when payment is requested, received, or made.

15           (2) Protection under this section does not extend to payments made after a financial institution has  
16 received written notice from a party, or from the personal representative, surviving spouse, or heir or  
17 devisee of a deceased party, to the effect that payments in accordance with the terms of the account,  
18 including one having an agency designation, should not be permitted and after the financial institution has  
19 had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is  
20 withdrawn by the person giving it, the successor of any deceased party shall concur in a request for  
21 payment if the financial institution is to be protected under this section. Unless a financial institution has  
22 been served with process in an action or proceeding, no other notice or other information shown to have  
23 been available to the financial institution affects its right to protection under this section.

24           (3) A financial institution that receives written notice pursuant to this section or otherwise has  
25 reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make  
26 payments in accordance with the terms of the account.

27           (4) Protection of a financial institution under this section does not affect the rights of parties in  
28 disputes between themselves or their successors concerning the beneficial ownership of sums on deposit  
29 in accounts or payments made from accounts."  
30

1           **Section 32.** Section 72-16-301, MCA, is amended to read:

2           **"72-16-301. Taxable transfers generally -- contemplation of death.** (1) ~~A~~ Except as provided in this  
3 section, a tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed, or any  
4 interest ~~therein~~ in the property or income ~~therefrom~~ from the property in trust or otherwise to any person,  
5 association, or corporation in the following cases, ~~except as provided in this section:~~

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

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

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

14           (2) ~~No~~ A transfer made before the 3-year period ending on the date of the decedent's death ~~shall~~  
15 ~~be~~ is not considered to have been made in contemplation of death.

16           (3) ~~Every~~ Each transfer during the 3-year period ending on the date of the decedent's death must  
17 be considered to have been made in contemplation of death, except:

18           (a) ~~no~~ a transfer shown to be a bona fide sale for an adequate and full consideration in money or  
19 money's worth may not be considered to be a gift made in contemplation of death;

20           (b) ~~if the~~ a transfer ~~was a gift to a donee made during the calendar year and if the decedent was~~  
21 ~~not required by~~ to the extent that the transfer was excluded from the definition of taxable gifts by reason  
22 of section 6019 2503(b) of the internal revenue code to file any gift tax return for the year with respect  
23 to the donee, the transfer Internal Revenue Code may not be considered to be a gift made in contemplation  
24 of death.

25           (4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy."  
26

27           **SECTION 33. SECTION 72-16-308, MCA, IS AMENDED TO READ:**

28           **"72-16-308. Tax to be on clear market value -- deductions allowed in determining value -- valuation**  
29 **of certain farm and business property.** (1) The tax ~~is~~ imposed ~~shall~~ must be upon the clear market value  
30 of ~~such~~ the property passing by ~~any such~~ transfer to each person, institution, association, corporation, or

1 body politic at the rates ~~hereinafter~~ prescribed in this section and only upon the excess of the exemption  
2 ~~hereinafter~~ granted to ~~such~~ the person, institution, association, corporation, or body politic.

3 (2) In determining the clear market value of the property ~~so~~ passing by ~~any such~~ the transfer, the  
4 following deductions and no other ~~shall be~~ are allowed:

5 (a) debts of the decedent owing at the date of death, provided that any debt secured by decedent's  
6 joint interest in property and for which the decedent was jointly and severally liable is deductible only to  
7 the extent of one-half or other proper fraction representing decedent's share of the property;

8 (b) expenses of funeral and last illness;

9 (c) all Montana state, county, municipal, and federal taxes, including all penalties and interest  
10 ~~thereon~~, owing by decedent at the date of death;

11 (d) the ordinary expenses of administration, including:

12 (i) the commissions and fees of executors and administrators and their attorneys actually allowed  
13 and paid;

14 (ii) attorneys' fees, filing fees, necessary expenses, and closing costs incident to proceedings to  
15 terminate joint tenancies, termination of life estates and transfers in contemplation of death, and any and  
16 all other proceedings instituted for the determination of inheritance tax; ~~and~~

17 (e) federal estate taxes due or paid; and

18 (f) the annual gift exclusion provided in section 2503(b) of the Internal Revenue Code.

19 (3) In determining clear market value, the valuation of certain farm and other real property may be  
20 made under 72-16-331 through 72-16-342."

21

22 **Section 34.** Section 72-33-701, MCA, is amended to read:

23 **"72-33-701. Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust  
24 instrument otherwise provides or ~~where~~ when the joint action of the trustor and all beneficiaries is required,  
25 during the time that ~~a trust is revocable and~~ the person holding the power to revoke the trust is competent:

26 (1) ~~The~~ the person holding the power to revoke, and not the beneficiary, has the rights afforded  
27 beneficiaries under chapters 33 through 36;

28 (2) ~~The~~ the duties of the trustee are owed to the person holding the power to revoke."

29

30 **Section 35.** Section 72-34-513, MCA, is amended to read:

1           **"72-34-513. Nonliability for following instructions under revocable trust.** (1) Notwithstanding  
2 72-34-512, a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted  
3 pursuant to written directions from the person holding the power to revoke made when the person is  
4 competent, including a person to whom the power to direct the trustee is delegated.

5           (2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the  
6 beneficiary in that part of the trust property."  
7

8           **NEW SECTION. Section 36. Nonliability for refusing to follow directions under revocable trust.**  
9 A trustee of a revocable trust is not liable for refusing to follow directions from a person holding the power  
10 to revoke, including a person to whom the power to direct the trustee is delegated, if in accordance with  
11 the trust instrument, the person holding the power is determined to be incompetent, as that or any similar  
12 term or phrase is defined in the trust instrument, or, in the absence of a provision in the trust instrument,  
13 if the trustee reasonably believes that the person holding the power is incompetent.  
14

15           **NEW SECTION. Section 37. Codification instruction.** (1) [Sections 8 and 9] are intended to be  
16 codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2,  
17 apply to [sections 8 and 9].

18           (2) [Section ~~35~~ 36] is intended to be codified as an integral part of Title 72, chapter 34, part 5, and  
19 the provisions of Title 72, chapter 34, part 5, apply to [section ~~35~~ 36].  
20

-END-

Conference Committee  
on SB 132  
Report No.1; April 12, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 132, met and considered:

The Governor's Amendments to SB 132 dated March 18, 1995

We recommend that the amendments to SB 132 considered above be accepted.

And that this Conference Committee report be adopted.

For the Senate:

Bishop

Chair

Jabs

Halligan

Amd. Coord.

Sec. of Senate

For the House:

S. Anderson

Chair

McGee

Kottel

ADOPT

REJECT

SB 132  
CCR#1

841538CC.SRF

GOVERNOR'S AMENDMENTS TO  
SENATE BILL NO. 132  
Reference Reading Copy  
March 18, 1995

1. Page 2, line 21.  
Following: "~~policy~~"  
Insert: "an insurance or annuity policy,"  
Following: "~~designation~~"  
Insert: ", "
2. Page 2, line 22  
Strike: "OR"
3. Page 2, line 24.  
Following: line 23  
Insert: "(ii) a pension, profit-sharing, retirement, or similar benefit plan; or"  
Re-number: subsequent subsection
4. Page 2, line 27.  
Following: "~~appointment~~"  
Insert: ", appointee, or taker in default of a power of appointment"
5. Page 2, line 30.  
Following: "~~policy~~"  
Insert: "an insurance or annuity policy,"  
Following: "~~designation~~"  
Insert: ", "
6. Page 3, line 1.  
Strike: "OR"
7. Page 3, line 3.  
Following: line 2  
Insert: "(b) a pension, profit-sharing, retirement, or similar benefit plan; or"  
Re-number: subsequent subsection
8. Page 12, line 1.  
Strike: "OR"
9. Page 12, line 5.  
Following: "~~or~~"  
Insert: "or"
10. Page 12, line 16.  
Following: line 15  
Insert: "(D) proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of

appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;"

11. Page 13, line 12.

Strike: "OR"

12. Page 13, line 18.

Following: line 17

Insert: "(B) any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under subsection (2)(b)(i)(D) had the transfer not occurred; the amount included is the value of the insurance proceeds to the extent that the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; or"

Renumber: subsequent subsection

13. Page 14, line 6.

Following: "and"

Insert: "and"

14. Page 14, lines 7 through 12.

Strike: subsection (iii) in its entirety

Renumber: subsequent subsection

15. Page 15, line 7.

Following: "~~deceased~~."

Insert: "For purposes of this subsection (2)(d)(ii), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under subsection (2)(b)(i)(D) are not valued as if the spouse were deceased."

16. Page 15, line 13.

Following: "~~or~~"

Insert: "or"

17. Page 15, lines 15 through 18.

Following: "spouse" on line 15

Strike: remainder of line 15 through "ESTATE" on line 18

18. Page 22, line 28.

Strike: "(B)"

Insert: "(C)"

19. Page 43, line 24.

Strike: "BONA FIDE PURCHASER"

Insert: "person"

Following: "~~notice~~"

Insert: "for value and without notice"

20. Page 44, lines 2 and 3.

Following: "law"

Strike: remainder of line 2 through "AMENDED," on line 3

21. Page 47, line 7.

Strike: "BONA FIDE PURCHASER"

Insert: "person"

22. Page 47, line 8.

Following: "~~notice~~"

Insert: "for value and without notice"

23. Page 47, lines 17 and 18.

Following: "law"

Strike: remainder of line 17 through "AMENDED," on line 18