



AN ACT REVISING PROBATE LAWS REGARDING PLEADINGS, EVIDENCE, AND SUPERVISED ADMINISTRATION; PROVIDING PROVISIONS RELATED TO UNSWORN STATEMENTS; REVISING PROVISIONS RELATED TO THE VERIFICATION OF PLEADINGS; REQUIRING THAT AN AFFIDAVIT OR VERIFIED PETITION BE ACCEPTED AS EVIDENCE IN AN UNCONTESTED PROBATE OR TRUST PROCEEDING; REQUIRING PLEADINGS IN PROBATE PROCEEDINGS TO BE SIGNED BY AN ATTORNEY; REQUIRING THAT GUARDIANS, PERSONAL REPRESENTATIVES, AND CONSERVATORS ACKNOWLEDGE FIDUCIARY RESPONSIBILITIES; PROVIDING FOR PRESUMPTIVE ENTITLEMENT OF SUPERVISED ADMINISTRATION UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 1-1-203, 25-4-203, 72-1-206, AND 72-3-401, MCA.

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

Section 1. Section 1-1-203, MCA, is amended to read:

"1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Affidavit" means a sworn written declaration made before an officer authorized to administer oaths or an unsworn written declaration made under penalty of perjury as provided in [section 2].

(~~1~~)(2) "Execution" of an instrument means subscribing and delivering it, with or without affixing a seal.

(~~2~~)(3) "Folio", when used as a measure for computing fees, means 100 words, counting every two letters or numbers necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(~~3~~)(4) "Printing" means the act of reproducing a design on a surface by any process.

(~~4~~)(5) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs that person's own name as a witness.

(~~5~~)(6) "Subscribing witness" means a person who sees a writing executed or hears it acknowledged and at the request of the party signs the person's name as a witness.

(6)(7) "Writing" includes printing."

Section 2. Unsworn declarations -- penalty of perjury. (1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by a person's sworn written declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved by an unsworn written declaration, certificate, verification, or statement that is subscribed by the person as true under penalty of perjury in substantially the following form:

(a) If executed within the state:

"I declare under penalty of perjury that the foregoing is true and correct.

.....

.....

Date and place

Signature"

(b) If executed in any place outside the state:

"I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

.....

.....

Date and place

Signature"

(2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury as provided in 45-7-201 and is punishable as the offense of false swearing as provided in 45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not limited to the official proceedings referenced in 45-7-201.

(3) This section does not apply to writings requiring an acknowledgment, deposition, oath of office, or oath required to be taken before a special official other than a notary public.

Section 3. Section 25-4-203, MCA, is amended to read:

"25-4-203. Verification of pleadings. (1) In any case in which an affidavit of a verification by affidavit is required, except as otherwise specifically provided, the ~~affidavit of verification~~ verification by affidavit must be to the effect that the pleading is true to the knowledge of the deponent, except as to the matters stated in the affidavit on information and belief, and that as to those the deponent believes it to be true. The verification must

be made by the party or, if there are several parties united in interest or pleading, by ~~one~~ at least one of the parties acquainted with the facts if the party is in the county and capable of making the ~~affidavit~~ verification. The verification may also be made by the agent or attorney of the party if the party is absent from the county ~~where~~ in which the attorney resides or ~~is from~~ if, for any other cause, the party is unable to verify the pleading, ~~and in~~. In that case, the verification must state that the deponent is the agent or attorney of the party, the reason why the verification is made by the agent or attorney, and that the matters stated in the pleadings are true to the best knowledge, information, and belief of the agent or attorney.

(2) When a corporation is a party, the verification may be made by any officer of the corporation and must state ~~what~~ the office of the officer ~~is~~ and that the matters stated in the verification are true to the best knowledge, information, and belief of the officer. If there is no officer of the corporation within the county, the verification may be made by the corporation's attorney."

Section 4. Section 72-1-206, MCA, is amended to read:

"72-1-206. Oath or affirmation on filed documents. (1) Except as otherwise specifically provided in this code ~~or by rule~~, every document filed with the court under this code, including applications, petitions, reports, accounts, objections, responses, and demands for notice, ~~shall be deemed to~~ must include an oath, affirmation, declaration under penalty of perjury as provided in [section 2], or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed;.

(2) A deliberate falsification therein shall constitute of any document filed with the court pursuant to this section constitutes the offense of perjury and is punishable as the offense of false swearing."

Section 5. Permitted pleadings -- verification required. (1) The following pleadings are permitted in probate and trust proceedings:

- (a) an application, petition, report, or account filed pursuant to this title; and
- (b) an objection or response filed pursuant to this title to an application, petition, report, or account.

(2) Except as provided in 25-4-203 regarding verification by an agent or attorney, the verification must be made as follows:

(a) An application must be verified by the applicant or, if there are two or more parties joining the application, by any one of the applicants.

(b) A petition must be verified by the petitioner or, if there are two or more parties joining the petition, by any one of the petitioners.

(c) A report or account must be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any one of the persons having the duty.

(d) An objection or response must be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any one of the objectors or respondents.

Section 6. Affidavit or verified petition as evidence in uncontested proceedings. In any probate or trust matter, an affidavit or verified petition must be received as evidence when offered in an uncontested proceeding under this title.

Section 7. Attorney signature -- pleadings. In addition to the verification required by 25-4-203 and [section 5], every application and other pleading filed in connection with any probate or trust proceeding must be signed by the attorney of the person filing the pleading if the person is represented by an attorney. The verification must be made by the person executing or filing the document with the court as provided in [section 5].

Section 8. Acknowledgment of fiduciary relationship and obligations -- personal representative, guardian, or conservator. (1) Every applicant for appointment as the personal representative of a decedent's estate, as a guardian, or as a conservator shall sign and verify before a notary public or under penalty of perjury the following statement:

"By signing, accepting, or acting under this appointment, I acknowledge that I will assume the duties and responsibilities of a fiduciary and that I must work exclusively for the benefit of the decedent's estate and its beneficiaries, the ward under any guardianship, or the protected person under any conservatorship. I also acknowledge that the primary duty of a personal representative, guardian, or conservator is the duty of loyalty to and protection of the best interests of the estate, ward, or protected person. Therefore, I acknowledge that:

I may not use any of the property or other assets of the decedent's estate, ward, or protected person for my own personal benefit;

I must direct any benefit derived from this appointment to the decedent's estate, ward, or protected

person; and

I must avoid conflicts of interest and must use ordinary skill and prudence in carrying out the duties of this appointment."

(2) The statement in subsection (1) must be sworn before a notary public or executed under penalty of perjury in the following format:

"I declare under penalty of perjury under the laws of the state of Montana that the foregoing is true and correct.

Signed this ... day of, 20....

.....

Signature of applicant"

(3) This section applies to all applications for appointment as a personal representative or as a special administrator under Title 72, chapter 3, parts 2, 3, 4, and 7.

Section 9. Section 72-3-401, MCA, is amended to read:

"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement. (1)

Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.

(2) If a probate estate has not been closed within 3 years after the first appointment of a personal representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent is entitled to petition for supervised administration under this section and is presumptively entitled to receive an order for supervised administration. The burden of proof to show cause why supervised administration should not be granted is on the personal representative or administrator."

Section 10. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 1, chapter 6, and the provisions of Title 1, chapter 6, apply to [section 2].

(2) [Sections 5 through 8] are intended to be codified as an integral part of Title 72, and the provisions of Title 72 apply to [sections 5 through 8].

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 0337, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2011.

Speaker of the House

Signed this _____ day
of _____, 2011.

SENATE BILL NO. 337

INTRODUCED BY A. BLEWETT, SHOCKLEY

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