

1 SENATE BILL NO. 337

2 INTRODUCED BY A. BLEWETT

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

13

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

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16 **Section 1.** Section 1-1-203, MCA, is amended to read:17 **"1-1-203. Terms relating to instruments and other writings.** Unless the context requires otherwise,
18 the following definitions apply in the Montana Code Annotated:19 (1) "Affidavit" means a sworn written declaration made before an officer authorized to administer oaths
20 or an unsworn written declaration made under penalty of perjury as provided in [section 2].21 ~~(1)~~(2) "Execution" of an instrument means subscribing and delivering it, with or without affixing a seal.22 ~~(2)~~(3) "Folio", when used as a measure for computing fees, means 100 words, counting every two letters
23 or numbers necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete
24 folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.25 ~~(3)~~(4) "Printing" means the act of reproducing a design on a surface by any process.26 ~~(4)~~(5) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name
27 is written near the mark by another person who also signs that person's own name as a witness.28 ~~(5)~~(6) "Subscribing witness" means a person who sees a writing executed or hears it acknowledged and
29 at the request of the party signs the person's name as a witness.30 ~~(6)~~(7) "Writing" includes printing."

1 verification may also be made by the agent or attorney of the party if the party is absent from the county ~~where~~
 2 in which the attorney resides or ~~is from~~ if, for any other cause, the party is unable to verify the pleading, ~~and in,~~
 3 In that case, the verification must state that the deponent is the agent or attorney of the party, the reason why the
 4 verification is made by the agent or attorney, and that the matters stated in the pleadings are true to the best
 5 knowledge, information, and belief of the agent or attorney.

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

10

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

12 **"72-1-206. Oath or affirmation on filed documents.** (1) Except as otherwise specifically provided in
 13 this code ~~or by rule,~~ every document filed with the court under this code, including applications, petitions, reports,
 14 accounts, objections, responses, and demands for notice, ~~shall be deemed to~~ must include an oath, affirmation,
 15 declaration under penalty of perjury as provided in [section 2], or statement to the effect that its representations
 16 are true as far as the person executing or filing it knows or is informed;.

17 (2) A deliberate falsification therein shall constitute of any document filed with the court pursuant to this
 18 section constitutes the offense of perjury or, where applicable, the offense of false swearing."

19

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

22 (a) an application, petition, report, or account filed pursuant to this title; and

23 (b) an objection or response filed pursuant to this title to an application, petition, report, or account.

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

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

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

30 (c) A report or account must be verified by the person who has the duty to make the report or account

1 or, if there are two or more persons having a duty to make the report or account, by any one of the persons
2 having the duty.

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

5
6 **NEW SECTION. Section 6. Affidavit or verified petition as evidence in uncontested proceedings.**

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

9
10 **NEW SECTION. Section 7. Attorney signature -- pleadings.** In addition to the verification required

11 by 25-4-203 and [section 5], every application and other pleading filed in connection with any probate or trust
12 proceeding must be signed by the attorney of the person filing the pleading. The verification must be made by
13 the person executing or filing the document with the court as provided in [section 5].

14
15 **NEW SECTION. Section 8. Acknowledgment of fiduciary relationship and obligations -- personal**

16 **representative, guardian, or conservator.** (1) Every applicant for appointment as the personal representative
17 of a decedent's estate, as a guardian, or as a conservator shall sign and verify before a notary public or under
18 penalty of perjury the following statement:

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

25 I may not use any of the property or other assets of the decedent's estate, guardianship, or
26 conservatorship for my own personal benefit;

27 I must direct any benefit derived from this appointment to the decedent's estate, guardianship, or
28 conservatorship to which I am appointed; and

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

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

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

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

6

7 Signature of applicant"

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

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

12 **"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement. (1)**

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

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

21

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

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

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

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