1	SENATE BILL NO. 337
2	INTRODUCED BY A. BLEWETT, SHOCKLEY
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:
15	
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

2   NEW SECTION. **Section 2. Unsworn declarations -- penalty of perjury.** (1) Whenever, under any

3   law of this state or under any rule, order, or requirement made under the law of this state, any matter is required

4   or permitted to be supported, evidenced, established, or proved by a person's sworn written declaration,

5   verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced,

6   established, or proved by an unsworn written declaration, certificate, verification, or statement that is subscribed

7   by the person as true under penalty of perjury in substantially the following form:

8   (a) If executed within the state:

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

10   ....

11   Date and place   Signature"

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

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

14   and correct.

15   ....

16   Date and place   Signature"

17   (2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury

18   as provided in 45-7-201 ~~or, where applicable,~~ AND IS PUNISHABLE AS the offense of false swearing as provided in

19   45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not

20   limited to the official proceedings referenced in 45-7-201.

21   (3) This section does not apply to writings requiring an acknowledgment, deposition, oath of office, or

22   oath required to be taken before a special official other than a notary public.

23

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

25   **"25-4-203. Verification of pleadings.** (1) In any case in which ~~an affidavit of~~ a verification by affidavit

26   is required, except as otherwise specifically provided, the ~~affidavit of verification~~ verification by affidavit must be

27   to the effect that the pleading is true to the knowledge of the deponent, except as to the matters stated in the

28   affidavit on information and belief, and that as to those the deponent believes it to be true. The verification must

29   be made by the party or, if there are several parties united in interest or pleading, by ~~one~~ at least one of the

30   parties acquainted with the facts if the party is in the county and capable of making the ~~affidavit~~ verification. The

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,~~ AND IS PUNISHABLE AS the offense of false

19 swearing."

20

21   NEW SECTION. **Section 5. Permitted pleadings -- verification required.** (1) The following pleadings

22 are permitted in probate and trust proceedings:

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

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

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

26 be made as follows:

27   (a) An application must be verified by the applicant or, if there are two or more parties joining the

28 application, by any one of the applicants.

29   (b) A petition must be verified by the petitioner or, if there are two or more parties joining the petition, by

30 any one of the petitioners.

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

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

3   having the duty.

4   (d) An objection or response must be verified by the objector or respondent or, if there are two or more

5   parties joining in the objection or response, by any one of the objectors or respondents.

6

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

8   In any probate or trust matter, an affidavit or verified petition must be received as evidence when offered in an

9   uncontested proceeding under this title.

10

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

12 by 25-4-203 and [section 5], every application and other pleading filed in connection with any probate or trust

13 proceeding must be signed by the attorney of the person filing the pleading IF THE PERSON IS REPRESENTED BY AN

14 ATTORNEY. The verification must be made by the person executing or filing the document with the court as

15 provided in [section 5].

16

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

18 **representative, guardian, or conservator.** (1) Every applicant for appointment as the personal representative

19 of a decedent's estate, as a guardian, or as a conservator shall sign and verify before a notary public or under

20 penalty of perjury the following statement:

21   "By signing, accepting, or acting under this appointment, I acknowledge that I will assume the duties and

22 responsibilities of a fiduciary and that I must work exclusively for the benefit of the decedent's estate and its

23 beneficiaries, the ward under any guardianship, or the ~~conservatee~~ PROTECTED PERSON under any

24 conservatorship. I also acknowledge that the primary duty of a personal representative, guardian, or conservator

25 is the duty of loyalty to and protection of the best interests of the estate, ~~guardianship, or conservatorship~~ WARD,

26 OR PROTECTED PERSON. Therefore, I acknowledge that:

27   I may not use any of the property or other assets of the decedent's estate, ~~guardianship, or~~

28 ~~conservatorship~~ WARD, OR PROTECTED PERSON for my own personal benefit;

29   I must direct any benefit derived from this appointment to the decedent's estate, ~~guardianship, or~~

30 ~~conservatorship to which I am appointed~~ WARD, OR PROTECTED PERSON; and

1   I must avoid conflicts of interest and must use ordinary skill and prudence in carrying out the duties of

2   this appointment."

3   (2) The statement in subsection (1) must be sworn before a notary public or executed under penalty of

4   perjury in the following format:

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

6   correct.

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

8   ....

9   Signature of applicant"

10   (3) This section applies to all applications for appointment as a personal representative or as a special

11   administrator under Title 72, chapter 3, parts 2, 3, 4, and 7.

12

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

14   **"72-3-401. Supervised administration -- nature and purpose -- presumptive entitlement.** (1)

15   Supervised administration is a single in rem proceeding to secure complete administration and settlement of a

16   decedent's estate under the continuing authority of the court, which extends until entry of an order approving

17   distribution of the estate and discharging the personal representative or other order terminating the proceeding.

18   (2) If a probate estate has not been closed within 3 years after the first appointment of a personal

19   representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent

20   is entitled to petition for supervised administration under this section and is presumptively entitled to receive an

21   order for supervised administration. The burden of proof to show cause why supervised administration should

22   not be granted is on the personal representative or administrator."

23

24   NEW SECTION. **Section 10. Codification instruction.** (1) [Section 2] is intended to be codified as an

25   integral part of Title 1, chapter 6, and the provisions of Title 1, chapter 6, apply to [section 2].

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

27   of Title 72 apply to [sections 5 through 8].

28

29   NEW SECTION. **Section 11. Saving clause.** [This act] does not affect rights and duties that matured,

30   penalties that were incurred, or proceedings that were begun before [the effective date of this act].

31   - END -