

SENATE BILL NO. 411

INTRODUCED BY D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING WILLS TO ALLOW FOR AUDIO, VISUAL, AND AUDIOVISUAL RECORDINGS TO BE TREATED AS WILLS, TO BE INCORPORATED INTO WILLS, AND TO DISPOSE OF TANGIBLE PERSONAL PROPERTY; ~~AND~~ AMENDING SECTIONS 72-1-103, 72-2-522, 72-2-523, 72-2-527, 72-2-528, 72-2-529, 72-2-530, AND 72-2-533, 72-2-534, 72-2-535, 72-2-537, 72-3-202, 72-3-212, 72-3-301, AND 72-3-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

**NEW SECTION. SECTION 1. AUDIOVISUAL RECORDING PERMITTED -- REQUIREMENTS AND STANDARDS -- COURT FINDINGS -- WRITTEN TRANSCRIPT.** (1) ALTHOUGH A TESTATOR MAY NOT HAVE EXECUTED A WILL IN CONFORMITY WITH 72-2-522 OR A DOCUMENT OR WRITING THAT SATISFIES THE REQUIREMENTS OF 72-2-523, AN AUDIOVISUAL RECORDING MAY BE TREATED AS IF IT WAS EXECUTED IN COMPLIANCE WITH 72-2-522 IN A FORMAL PROCEEDING IF THE PROPONENT ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT THE DECEDENT INTENDED THE AUDIOVISUAL RECORDING TO CONSTITUTE:

(A) THE DECEDENT'S WILL;  
(B) A PARTIAL OR COMPLETE REVOCATION OF THE WILL;  
(C) AN ADDITION TO OR AN ALTERATION OF THE WILL; OR  
(D) A PARTIAL OR COMPLETE REVIVAL OF THE DECEDENT'S FORMERLY REVOKED WILL OR OF A FORMERLY REVOKED PORTION OF THE WILL.

(2) TO SATISFY THE CLEAR AND CONVINCING STANDARD IN SUBSECTION (1), THE COURT SHALL MAKE THE FOLLOWING FINDINGS IN THE FORMAL PROCEEDING:

(A) THE DECEDENT WAS OF SOUND MIND AT THE TIME OF THE AUDIOVISUAL RECORDING;  
(B) THE DECEDENT MADE THE AUDIOVISUAL RECORDING OF THE DECEDENT'S OWN FREE AND VOLUNTARY WILL;  
(C) THE DECEDENT WAS NOT UNDER ANY CONSTRAINT OR UNDUE INFLUENCE AT THE TIME OF THE

AUDIOVISUAL RECORDING; AND

(D) THE AUDIOVISUAL RECORDING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AUDIOVISUAL  
RECORDING OFFERED BY THE PROPONENT.

(3) IN ADDITION TO THE REQUIREMENTS IN SUBSECTION (2) AND 72-3-313, AND AFTER NOTICE AND  
HEARING, THE COURT SHALL INCLUDE A WRITTEN TRANSCRIPT OF THE AUDIOVISUAL RECORDING IN THE COURT'S ORDER.  
TO THE EXTENT THE PERSONAL REPRESENTATIVE REQUIRES AN AUTHENTICATED, EXEMPLIFIED, OR CERTIFIED COPY OF  
THE TESTATOR'S LAST WILL AND TESTAMENT FOR ANY ANCILLARY PROBATE PROCEEDING IN ANOTHER JURISDICTION, AN  
ORDER EXECUTED IN CONFORMITY WITH THIS SECTION IS INTENDED TO CONSTITUTE A WRITTEN RECORD OF THE  
TESTATOR'S LAST WILL AND TESTAMENT.

**SECTION 2. SECTION 72-1-103, MCA, IS AMENDED TO READ:**

**"72-1-103. General definitions.** Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections and unless the context otherwise requires, in chapters 1 through 6, the following definitions apply:

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

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

(3) "Audiovisual recording" means a video on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form with a date and time stamp prior to the decedent's date of death and depicting the decedent's face and an audible testamentary intention.

~~(3)~~(4) "Beneficiary", as it relates to:

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

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

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

(i) an account with POD designation or a security registered in beneficiary form (TOD); or

(ii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

~~(4)~~(5) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an account with POD designation or a security registered in beneficiary form (TOD); or

(b) any other nonprobate transfer at death.

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

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

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

~~(7)~~(8) "Clerk" or "clerk of court" means the clerk of the district court.

~~(8)~~(9) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

~~(9)~~(10) "Court" means the district court in this state having jurisdiction in matters relating to the affairs of decedents.

~~(10)~~(11) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

~~(11)~~(12) "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

~~(12)~~(13) "Devisee" means a person designated in a will to receive a devise. For purposes of chapter 3, in the case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee

1 is the devisee and the beneficiaries are not devisees.

2 ~~(13)~~(14)"Disability" means cause for a protective order as described by 72-5-409.

3 ~~(14)~~(15)"Distributee" means any person who has received property of a decedent from the decedent's  
4 personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the  
5 extent of distributed assets or increment to distributed assets remaining in the trustee's hands. A beneficiary of  
6 a testamentary trust to whom the trustee has distributed property received from a personal representative is a  
7 distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a  
8 trustee to whom assets are transferred by will, to the extent of the devised assets.

9 ~~(15)~~(16)"Estate" includes the property of the decedent, trust, or other person whose affairs are subject  
10 to chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

11 ~~(16)~~(17)"Exempt property" means that property of a decedent's estate that is described in 72-2-413.

12 ~~(17)~~(18)"Fiduciary" includes a personal representative, guardian, conservator, and trustee.

13 ~~(18)~~(19)"Foreign personal representative" means a personal representative appointed by another  
14 jurisdiction.

15 ~~(19)~~(20)"Formal proceedings" means proceedings conducted before a judge with notice to interested  
16 persons.

17 ~~(20)~~(21)"Governing instrument" means a deed; will; trust; insurance or annuity policy; account with  
18 POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar  
19 benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive,  
20 appointive, or nominative instrument of any similar type.

21 ~~(24)~~(22)"Guardian" means a person who has qualified as a guardian of a minor or incapacitated person  
22 pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

23 ~~(22)~~(23)"Heirs", except as controlled by 72-2-721, means persons, including the surviving spouse and  
24 the state, who are entitled under the statutes of intestate succession to the property of a decedent.

25 ~~(23)~~(24)"Incapacitated person" has the meaning provided in 72-5-101.

26 ~~(24)~~(25)"Informal proceedings" means proceedings conducted without notice to interested persons by  
27 the clerk of court for probate of a will or appointment of a personal representative.

28 ~~(25)~~(26)"Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and

any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

~~(26)~~(27) "Issue" of a person means a descendant.

~~(27)~~(28) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~(28)~~(29) "Lease" includes an oil, gas, coal, or other mineral lease.

~~(29)~~(30) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~(30)~~(31) "Minor" means a person who is under 18 years of age.

~~(34)~~(32) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

~~(32)~~(33) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

~~(33)~~(34) "Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

~~(34)~~(35) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under chapters 1 through 5 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

~~(35)~~(36) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

~~(36)~~(37) "Person" means an individual, a corporation, an organization, or other legal entity.

~~(37)~~(38) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their

status. "General personal representative" excludes special administrator.

~~(38)~~(39)"Petition" means a written request to the court for an order after notice.

~~(39)~~(40)"Proceeding" includes action at law and suit in equity.

~~(40)~~(41)"Property" includes both real and personal property or any interest in that property and means anything that may be the subject of ownership.

~~(41)~~(42)"Protected person" has the meaning provided in 72-5-101.

~~(42)~~(43)"Protective proceeding" has the meaning provided in 72-5-101.

~~(43)~~(44)"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(44)~~(45)"Security" includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; transferable share; voting trust certificate; in general, any interest or instrument commonly known as a security; any certificate of interest or participation; or any temporary or interim certificate, receipt, or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing.

~~(45)~~(46)"Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

~~(46)~~(47)"Sign" means, with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~(47)~~(48)"Special administrator" means a personal representative as described by chapter 3, part 7.

~~(48)~~(49)"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(49)~~(50)"Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(50)~~(51)"Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or chapters 1 through 5.

~~(51)~~(52)"Supervised administration" refers to the proceedings described in chapter 3, part 4.

(52)(53)"Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-114 or 72-2-712. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

(53)(54)"Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(54)(55)"Testator" includes an individual of either sex, as defined in 1-1-201.

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

(56)(57)"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(57)(58)"Verification" has the meaning provided in 25-4-203 and may be proved by an unsworn written verification in accordance with 1-6-105.

(58)(59)"Ward" means an individual described in 72-5-101.

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

**SECTION 3. SECTION 72-2-522, MCA, IS AMENDED TO READ:**

**"72-2-522. Execution -- witnessed wills -- holographic wills.** (1) Except as provided in 72-2-523, 72-2-526, 72-2-533, [section 1], and subsection (2) of this section, a will must be:

(a) in writing;

(b) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(c) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in subsection (1)(b) or the testator's acknowledgment of that signature or acknowledgment of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting."

**Section 4.** Section 72-2-523, MCA, is amended to read:

**"72-2-523. Writings and AUDIOVISUAL recordings intended as wills.** Although a document or writing added upon a document, or an audio, visual, or audiovisual recording was not executed in compliance with 72-2-522, the document or writing, or recording is treated as if it had been executed in compliance with that section if the proponent of the document or writing, or recording establishes by clear and convincing evidence that the decedent intended the document or writing, or recording to constitute:

- (1) the decedent's will;
- (2) a partial or complete revocation of the will;
- (3) an addition to or an alteration of the will; or
- (4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will."

**SECTION 5.** SECTION 72-2-527, MCA, IS AMENDED TO READ:

**"72-2-527. Revocation by writing or act.** (1) A will or any part of a will is revoked:

- (a) by executing a subsequent will or audiovisual recording that revokes the previous will or part expressly or by inconsistency; or
- (b) by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part of the will ~~or if another individual performed the act in the testator's conscious presence and by the testator's direction.~~ For the purposes of this subsection (b) (1)(b), "revocatory act on the will" includes an audiovisual recording expressly revoking in part or in whole the will or burning,



tearing, canceling, obliterating, or destroying ~~the~~ a written will or any part of it. A burning, tearing, or canceling is a revocatory act on ~~the~~ a written will, whether or not the burn, tear, or cancellation touched any of the words on the written will. For the purposes of a written will only, another person may perform the revocatory act in the testator's conscious presence and by the testator's direction.

(2) If a subsequent will or audiovisual recording does not expressly revoke a previous will, the execution of the subsequent will or audiovisual recording wholly revokes the previous will by inconsistency if the testator intended the subsequent will or audiovisual recording to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will or audiovisual recording to replace rather than supplement a previous will or audiovisual recording if the subsequent will or audiovisual recording makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will or audiovisual recording is revoked and only the subsequent will or audiovisual recording is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will or audiovisual recording to supplement rather than replace a previous will or audiovisual recording if the subsequent will or audiovisual recording does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will or audiovisual recording revokes the previous will or audiovisual recording only to the extent the subsequent will or audiovisual recording is inconsistent with the previous will or audiovisual recording and each will or audiovisual recording is fully operative on the testator's death to the extent they are not inconsistent.

(5) As used in this section, "audiovisual recording" refers only to an audiovisual recording made in conformity with [section 1].

**SECTION 6.** SECTION 72-2-528, MCA, IS AMENDED TO READ:

**"72-2-528. Revocation by change of circumstances.** Except as provided in 72-2-813 and 72-2-814, a change of circumstances does not revoke a will or an audiovisual recording made in conformity with [section 1] or any part of it."

**SECTION 7.** SECTION 72-2-529, MCA, IS AMENDED TO READ:

**"72-2-529. Revival of revoked will or audiovisual recording.** (1) If a subsequent will or an audiovisual recording that wholly revoked a previous will or an audiovisual recording is thereafter revoked by a revocatory act under 72-2-527(1)(b), the previous will or audiovisual recording remains revoked unless it is revived. The previous will or audiovisual recording is revived if it is evident from the circumstances of the revocation of the subsequent will or audiovisual recording or from the testator's contemporary or subsequent declarations that the testator intended the previous will or audiovisual recording to take effect as executed.

(2) If a subsequent will or audiovisual recording that partly revoked a previous will or audiovisual recording is thereafter revoked by a revocatory act under 72-2-527(1)(b), a revoked part of the previous will or audiovisual recording is revived unless it is evident from the circumstances of the revocation of the subsequent will or an audiovisual recording or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(3) If a subsequent will or audiovisual recording that revoked a previous will or an audiovisual recording in whole or in part is thereafter revoked by another, later will or an audiovisual recording, the previous will or audiovisual recording remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or an audiovisual recording or its revoked part is revived to the extent it appears from the terms of the later will or an audiovisual recording that the testator intended the previous will or an audiovisual recording to take effect.

(4) As used in this section, "audiovisual recording" refers only to an audiovisual recording made in conformity with [section 1]."

**Section 8.** Section 72-2-530, MCA, is amended to read:

**"72-2-530. Incorporation by reference.** A writing or recording in existence when a will is executed OR WHEN AN AUDIOVISUAL RECORDING MADE IN CONFORMITY WITH [SECTION 1] IS MADE may be incorporated by reference if the language of the will OR THE AUDIOVISUAL RECORDING manifests this intent and describes the writing or recording sufficiently to permit its identification."

**Section 9.** Section 72-2-533, MCA, is amended to read:

1           **"72-2-533. Separate writing or AUDIOVISUAL recording identifying disposition of tangible**  
2 **personal property.** (1) Whether or not the provisions relating to holographic wills OR AUDIOVISUAL RECORDINGS  
3 apply, a will OR AN AUDIOVISUAL RECORDING may refer to a written statement of, OR list, ~~or audio, visual, or~~  
4 audiovisual recording to dispose of items of tangible personal property not otherwise specifically disposed of by  
5 the will OR AUDIOVISUAL RECORDING, other than money.

6           (2)     ~~(a) To For a writing to~~ To be admissible under this section as evidence of the intended  
7 disposition, the writing must be signed by the testator and must describe the items and the devisees with  
8 reasonable certainty.

9           ~~(b) For a recording to be admissible under this section as evidence of the intended disposition, the~~  
10 ~~recording must clearly demonstrate the testator's self-expression and must describe the items and the devisees~~  
11 ~~with reasonable certainty.~~

12           (3)     The writing or recording may be:

13           (a)     referred to as one to be in existence at the time of the testator's death;

14           (b)     prepared before or after the execution of the will OR THE AUDIOVISUAL RECORDING;

15           (c)     altered by the testator after its preparation; and

16           (d)     a writing that has no significance apart from its effect ~~upon~~ ON the dispositions made by the will  
17 OR AN AUDIOVISUAL RECORDING INTENDED AS A WILL."

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19           **SECTION 10. SECTION 72-2-534, MCA, IS AMENDED TO READ:**

20           **"72-2-534. Contracts concerning succession.** (1) A contract to make a will or devise or not to  
21 revoke a will or devise or to die intestate, if executed after July 1, 1975, may be established only by:

22           (a)     provisions of a will stating material provisions of the contract;

23           (b)     an express reference in a will to a contract and extrinsic evidence proving the terms of the  
24 contract; or

25           (c)     a writing signed by the decedent evidencing the contract.

26           (2)     The execution of a joint will or mutual wills does not create a presumption of a contract not to  
27 revoke the will or wills.

28           (3)     ~~An audiovisual recording does not satisfy the requirements under this section that establish a~~

1 contract to make a will or devise or not to revoke a will or devise or to die intestate."

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3 **SECTION 11.** SECTION 72-2-535, MCA, IS AMENDED TO READ:

4 **"72-2-535. Deposit of will with court in testator's lifetime.** A will may be deposited by the testator  
5 or the testator's agent with any court for safekeeping, under rules of the court. The will must be sealed and kept  
6 confidential. During the testator's lifetime, a deposited will may be delivered only to the testator or to a person  
7 authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a  
8 deposited will of a protected testator under procedures designed to maintain the confidential character of the  
9 document to the extent possible and to ensure that it will be resealed and kept on deposit after the examination.  
10 Upon being informed of the testator's death, the court shall notify any person designated to receive the will and  
11 deliver it to that person on request or the court may deliver the will to the appropriate court. An audiovisual  
12 recording intended as a will may not be deposited with the court during the decedent's lifetime, and the court  
13 may not take custody of any such audiovisual recordings."

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15 **SECTION 12.** SECTION 72-2-537, MCA, IS AMENDED TO READ:

16 **"72-2-537. Penalty clause for contest.** A provision in a will or in an audiovisual recording executed  
17 in conformity with [section 1] purporting to penalize an interested person for contesting the will or the  
18 audiovisual recording or instituting other proceedings relating to the estate is unenforceable if probable cause  
19 exists for instituting proceedings."

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21 **SECTION 13.** SECTION 72-3-202, MCA, IS AMENDED TO READ:

22 **"72-3-202. Required contents of application.** Every application for informal probate of a will or for  
23 informal appointment of a personal representative, other than a special, ancillary, or successor representative,  
24 must contain the following:

- 25 (1) a statement of the interest of the applicant;
- 26 (2) the name and date of death of the decedent, the decedent's age, and the county and state of
- 27 the decedent's domicile at the time of death and the names and addresses of the spouse, children, heirs, and
- 28 devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the

- 1 applicant;
- 2 (3) if the decedent was not domiciled in the state at the time of death, a statement showing venue;
- 3 (4) a statement identifying and indicating the address of any personal representative of the
- 4 decedent appointed in this state or elsewhere whose appointment has not been terminated;
- 5 (5) a statement indicating whether the applicant has received a demand for notice or is aware of
- 6 any demand for notice of any probate or appointment proceeding concerning the decedent that may have been
- 7 filed in this state or elsewhere; and
- 8 (6) that the time limit for informal probate or appointment as provided in this chapter has not
- 9 expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from
- 10 death have passed, circumstances as described by 72-3-122 have occurred authorizing tardy probate or
- 11 appointment; and
- 12 (7) a statement that the application does not request informal probate of an audiovisual recording."
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14 **SECTION 14. SECTION 72-3-212, MCA, IS AMENDED TO READ:**

15 **"72-3-212. Informal probate -- clerk to make findings.** In an informal proceeding for original probate

16 of a will, the clerk shall determine whether:

- 17 (1) the application is complete;
- 18 (2) the applicant has made oath or affirmation that the statements contained in the application are
- 19 true to the best of the applicant's knowledge and belief;
- 20 (3) the applicant appears from the application to be an interested person as defined in 72-1-103;
- 21 (4) on the basis of the statements in the application, venue is proper;
- 22 (5) an original, duly executed, and apparently unrevoked will, an authenticated copy of a will
- 23 probated in another jurisdiction, or an authenticated copy of a will filed without probate in another jurisdiction
- 24 and proved, as provided in 72-3-220, is in the clerk's possession;
- 25 (6) any notice required by 72-3-106 has been given and that the application is not within 72-3-
- 26 213(5); and
- 27 (7) it appears from the application that the time limit for original probate has not expired; and
- 28 (8) the application does not request an informal probate of an audiovisual recording."

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**SECTION 15.** SECTION 72-3-301, MCA, IS AMENDED TO READ:

**"72-3-301. Petition for formal testacy or appointment -- contents -- last will.** (1) Petitions for formal probate of a will or audiovisual recording or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will or audiovisual recording:

- (a) requests an order as to the testacy of the decedent in relation to a particular instrument or audiovisual recording that may or may not have been informally probated and determining the heirs;
- (b) contains the statements required for informal applications as stated in 72-3-202 and the statements required by 72-3-203(1)(b) and (1)(c); and
- (c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition or, if the petitioner is in possession of an audiovisual recording, that a transcript of the audiovisual recording accompanies the petition and the petitioner will present the audiovisual recording at the hearing. If the original will is not in the possession of the court or does not accompany the petition, if an authenticated copy of a will probated in another jurisdiction does not accompany the petition, or if an authenticated copy of a will filed without probate in another jurisdiction and proved, as provided in 72-3-320, does not accompany the petition, the petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by 72-3-202 and 72-3-204, and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by 72-3-204(2) may be omitted."

**SECTION 16.** SECTION 72-3-305, MCA, IS AMENDED TO READ:

**"72-3-305. Notice of hearing on petition for formal testacy proceeding.** (1) Upon commencement of a formal testacy proceeding, the court or clerk shall fix a time and place of hearing.

(2) Notice shall be given in the manner prescribed by 72-1-301 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under 72-3-106 of this code.

Notice shall be given to the following persons:

(a) the surviving spouse, children, and other heirs of the decedent;

(b) the devisees and executors named in any will that is being or has been probated or offered for informal or formal probate in the county or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere; and

(c) any personal representative of the decedent whose appointment has not been terminated.

(3) In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(4) Notice may be given to other persons.

(5) Any notice provided under this section must expressly state whether the proceeding seeks to admit an audiovisual recording to probate in accordance with [section 1]."

NEW SECTION. SECTION 17. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 72, CHAPTER 2, PART 5, AND THE PROVISIONS OF TITLE 72, CHAPTER 2, PART 5, APPLY TO [SECTION 1].

NEW SECTION. SECTION 18. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2027.

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