

SENATE BILL NO. 231

INTRODUCED BY LASLOVICH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO JUDGMENTS AND THE
5 COLLECTION OF JUDGMENTS; PROVIDING THAT DISHONORED OR FRAUDULENT PAYMENTS OF
6 PROPERTY TAXES ARE SUBJECT TO THE PENALTIES FOR OTHER DISHONORED OR FRAUDULENT
7 PAYMENTS; CLARIFYING THAT A REGISTERED PROCESS SERVER MAY MAKE SERVICE OF PROCESS
8 IN ANY COUNTY IN THIS STATE; REVISING THE PROCEDURE FOR RETURNING A SUMMONS,
9 PROCESS, OR ORDER; PROVIDING THAT INTEREST ON JUDGMENTS ALSO APPLIES TO THE COST OF
10 OBTAINING OR ENFORCING A JUDGMENT; PROVIDING THAT SERVICE OF PROCESS MAY BE MAILED
11 OUT OF STATE, AT THE DIRECTION OF A THIRD PARTY, IF THE THIRD PARTY PROCESSES
12 GARNISHMENTS OR LEVIES FROM A LOCATION OUTSIDE THE STATE; PROVIDING THAT THE STATUTE
13 OF LIMITATIONS FOR THE LIABILITY FOR ISSUING A DISHONORED PAYMENT ~~BEGINS TO RUN ANEW~~
14 ~~EACH TIME THE PAYEE OR THE PAYEE'S ASSIGNEE MAILS A PROPER DEMAND~~ IS 6 YEARS FROM THE
15 DATE OF THE DEMAND FOR PAYMENT OF A SERVICE CHARGE; CLARIFYING THAT AN OBLIGATION IS
16 TRANSFERABLE PROPERTY AND PROVIDING FOR THE DISCHARGE OF A TRANSFERRED OBLIGATION;
17 ~~PROVIDING THAT DEPOSITS IN A MULTIPLE PERSON ACCOUNT ARE SUBJECT TO ATTACHMENT,~~
18 ~~LEVY, OR OTHER LEGAL PROCESS BY THE JUDGMENT CREDITORS OF THE OWNER OR OWNERS OF~~
19 ~~THE ACCOUNT~~; AND AMENDING SECTIONS 15-16-403, 25-1-1101, 25-3-301, 25-9-205, 25-13-402, 27-1-717,
20 AND 28-1-1001, AND ~~72-6-211~~, MCA."

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

23
24 **Section 1.** Section 15-16-403, MCA, is amended to read:
25 **"15-16-403. Lien on real property and improvements.** Every tax due upon real property is a lien
26 against the property assessed, and every tax due upon improvements upon real estate assessed to other than
27 the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January
28 1 in each year. A person who issues a check, draft, converted check, electronic funds transfer, or order for the
29 payment of real property taxes is subject to the liability provided in 27-1-717 if the instrument is dishonored or
30 if the issuer stops payment with the intent to fraudulently defeat a possessory lien or defraud the payee."

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Section 2. Section 25-1-1101, MCA, is amended to read:

"25-1-1101. Registered process server -- levying officer. (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the clerk of the district court of the county in which ~~he~~ the person resides or ~~has his~~ in which the person's principal place of business is located. A registered process server may make service of process in any county in this state.

(2) This part does not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; or

(b) a licensed attorney.

(3) A registered process server may act as a levying officer under Title 25, chapter 13."

Section 3. Section 25-3-301, MCA, is amended to read:

"25-3-301. Time and manner of return. (1) ~~It shall be the duty of the~~ The sheriff or other person serving a summons or other process or order required by any of the provisions of ~~this code law,~~ issued out of ~~for any of the district courts of this state, to~~ shall make due and legal return of ~~such the~~ such the service and file the ~~same~~ return with the clerk of the court in which ~~such the~~ such the action or proceeding is pending. The return must be made within not more than 10 days after the making of such the service where if the same service was made in the county in which such the action or proceeding is pending and not more than within 15 20 days after the making of such the service when the same service was made outside of the county in which such the action or proceeding is pending. Any failure to make and file such the return as required may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose ~~his~~ a return of ~~such~~ such process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, ~~prepaying postage~~ prepaid.

(3) In compliance with the provisions of subsection (1) and in lieu of returning a summons, other process, or order to the clerk of court, the sheriff or levying officer may enclose the return of the summons, process, or order in an envelope, POSTAGE PREPAID, AND DEPOSIT IT IN THE POST OFFICE addressed to the officer, agent, or attorney who sent it and deposit it in the post office, postage prepaid, WHO SHALL RETURN IT TO THE

1 CLERK OF COURT ACCORDING TO THE PROVISIONS AND TIMEFRAMES OF SUBSECTION (1)."

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3 **Section 4.** Section 25-9-205, MCA, is amended to read:

4 **"25-9-205. Amount of interest.** (1) Except as provided in subsection (2), interest is payable on
5 judgments recovered in the courts of this state and on the cost incurred to OBTAIN OR enforce a judgment at the
6 rate of 10% per annum ~~and no greater rate year.~~ Such ~~The~~ interest ~~must~~ may not be compounded ~~in any manner~~
7 ~~or form.~~

8 (2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that
9 specifies an interest rate must be paid at the rate specified in the contractual obligation."

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11 **Section 5.** Section 25-13-402, MCA, is amended to read:

12 **"25-13-402. How writ executed.** (1) (a) The sheriff or levying officer shall, subject to subsection (6),
13 execute the writ against the property of the judgment debtor not later than 120 days after receipt of the writ by:

14 (i) levying on a sufficient amount of property, if there is sufficient property;

15 (ii) collecting or selling the things in action; and

16 (iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as
17 much of the proceeds as will satisfy the judgment.

18 (b) (i) If the third party is a corporation or other legal entity, service must be accomplished by personally
19 serving the writ upon an officer or supervising employee of the third party or upon a department or person
20 designated by the third party or by serving the writ by mail, as provided in subsection (1)(b)(ii).

21 (ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the
22 corporation or other legal entity and may be made by mailing a copy of the writ to an officer or supervising
23 employee of the third party or to a department or person designated by the third party. Service may be mailed
24 out of state, at the direction of the third party, if the third party processes garnishments or levies from a location
25 outside the state. If service is by mail, it must be accompanied by a notice that the officer or employee receiving
26 the writ is required to forward the writ to the person responsible for processing the levy for the third party if the
27 officer or employee initially receiving the writ is not the proper party to process the levy. The writ must be
28 considered served on the date and time that the writ is received by the officer, supervising employee, or
29 designee of the third party, but not later than 5 business days after it is mailed.

30 (c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail,

1 as provided in subsection (1)(b)(ii).

2 (2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor
3 unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines
4 that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs,
5 the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if
6 the property indicated is sufficient to satisfy the judgment and costs.

7 (3) With respect to property held by a third party, including but not limited to banks, credit unions, and
8 other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy
9 based on the assets held at the time of levy. Response must be made within 10 business days following the date
10 of the levy by delivering the assets or payments to the sheriff or levying officer.

11 (4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied
12 upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment
13 debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment
14 creditor.

15 (5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to
16 time and as often as necessary, within the 120 days until the judgment is satisfied or the writ expires.

17 (6) (a) A levy upon the earnings of a judgment debtor continues in effect for 120 days or until the
18 judgment is satisfied, whichever occurs first. The levy applies to earnings due on or after the date of service
19 through the expiration of the writ. Earnings withheld from a judgment debtor must be remitted to the sheriff or
20 levying officer within 5 days of the day the earnings are withheld.

21 (b) The sheriff or levying officer shall clearly mark the expiration date upon all served copies of the writ
22 and notice.

23 (c) Except as provided in subsection (7), multiple levies served under this subsection (6) have priority
24 according to the date and time of service upon the employer.

25 (d) The return of service on a levy upon the earnings of a judgment debtor is returned in the same
26 manner provided for in 25-13-404.

27 (7) This section is not intended to supersede any state or federal laws regarding priority that must be
28 given to certain levies and executions."

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30 **Section 6.** Section 27-1-717, MCA, is amended to read:

1 **"27-1-717. Issuing a bad check, draft, converted check, electronic funds transfer, or order or**
2 **stopping payment -- civil liability -- statute of limitations.** (1) A person who issues a check, draft, converted
3 check, electronic funds transfer, or order for the payment of money is liable for a service charge, as provided
4 in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check,
5 draft, converted check, electronic funds transfer, or order is issued, or the payee's assignee, if the check, draft,
6 converted check, electronic funds transfer, or order is:

7 (a) dishonored for lack of funds or credit or because the issuer does not have an account with the
8 drawee; or

9 (b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops
10 payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

11 (2) The person who issues the check, draft, converted check, electronic funds transfer, or order is liable
12 to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than \$30. The
13 payee or the payee's assignee may waive the service charge. Demand for the service charge must be made
14 in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, converted
15 check, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay
16 the value of the check, draft, converted check, electronic funds transfer, or order and service charge and must
17 state the service charge provided for in this section.

18 (3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service
19 charge plus the greater of \$100 or three times the amount for which the check, draft, converted check, electronic
20 funds transfer, or order was issued. However, damages may not exceed the value of the check, draft, converted
21 check, electronic funds transfer, or order by more than \$500.

22 (4) The remedy provided by subsection (3) is available only if:

23 (a) the payee or the payee's assignee has made the written demand required in subsection (2) not less
24 than 10 days before commencing the action; and

25 (b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection
26 (2) prior to the commencement of the action.

27 (5) The remedy provided by this section:

28 (a) may be pursued notwithstanding the provisions of 27-1-312;

29 (b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute
30 providing a criminal penalty; and

1 (c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft.
 2 However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section
 3 apply.

4 (6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact
 5 of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the
 6 action allowed under subsection (3). The statute of limitations for the liability created under this section begins
 7 to run anew each time the payee or the payee's assignee mails a demand meeting the requirements of this
 8 section. HOWEVER, THE STATUTE OF LIMITATIONS MAY NOT EXTEND BEYOND IS 6 YEARS FROM THE DATE OF THE
 9 ORIGINAL NOTICE DEMAND UNDER SUBSECTION (2).

10 (7) This section applies to all checks, drafts, converted checks, electronic funds transfers, and orders,
 11 including those electronically presented for payment.

12 (8) Making partial payments of amounts owed under this section or entering into an agreement for
 13 paying in whole or in part amounts owed under this section does not waive any right that the payee or the
 14 payee's assignee may have under this section. Once a demand required under this section is made, the demand
 15 is not required to be repeated upon partial payment of amounts owed under this section."

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17 **Section 7.** Section 28-1-1001, MCA, is amended to read:

18 **"28-1-1001. Rights arising out of obligation transferable.** ~~(1)~~ A right arising out of an obligation is
 19 the property of the person to whom it is due and may be transferred as ~~such~~ the property of that person. ~~A~~
 20 UNLESS OTHERWISE PROVIDED BY LAW, A transfer by written, oral, electronic, or other means creates a valid
 21 assignment upon the transfer. Unless otherwise provided in law, administrative rule, or in the terms of a note,
 22 instrument, contract, or agreement creating the obligation, a person obligated to pay money may discharge the
 23 obligation by paying the person until, but not after, the person or assignee mails notice to the debtor that the
 24 amount due or to become due has been assigned and that payment is to be made to the assignee. After mailing
 25 of the notice, the debtor may discharge the obligation by paying the assignee and may not discharge the
 26 obligation by paying the assignor.

27 ~~———— (2) A PERSON OBLIGATED TO PAY MONEY MAY DISCHARGE THE OBLIGATION BY PAYING THE PERSON TO WHOM~~
 28 ~~THE MONEY IS OWED UP TO THE TIME OF A TRANSFER OF THE RIGHT TO RECEIVE THE MONEY. IF, AFTER A TRANSFER OF~~
 29 ~~THE RIGHT TO RECEIVE THE MONEY, THE DEBTOR PAYS THE ASSIGNOR, PAYMENT OF THE ORIGINAL OBLIGATION TO THE~~
 30 ~~ASSIGNOR IS A CREDIT AGAINST THE DEBT BUT DOES NOT ABROGATE OR OTHERWISE AFFECT THE ASSIGNEE'S REMEDIES~~

1 ~~FOR PENALTIES, COLLECTION COSTS, OR OTHER AMOUNTS OWING. THE PROVISIONS OF THIS SUBSECTION (2) APPLY ONLY~~

2 ~~IF:~~

3 ~~—— (A) THE PAYEE OR THE PAYEE'S ASSIGNEE HAS NOTIFIED THE DEBTOR OF THE ASSIGNMENT AND HAS MADE A~~
4 ~~WRITTEN DEMAND FOR PAYMENT AS REQUIRED UNDER 27-1-717(2) NOT LESS THAN 10 DAYS BEFORE COMMENCING AN~~
5 ~~ACTION FOR PAYMENT; AND~~

6 ~~—— (B) THE PAYEE HAS FAILED TO TENDER AN AMOUNT OF MONEY EQUAL TO THE AMOUNT DEMANDED PRIOR TO THE~~
7 ~~COMMENCEMENT OF THE ACTION."~~

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9 ~~—— **Section 8.** Section 72-6-211, MCA, is amended to read:~~

10 ~~—— **"72-6-211. Ownership during lifetime.** (1) In this section, "net contribution" of a party means the sum~~
11 ~~of all deposits to an account made by or for the party, less all payments from the account made to or for the party~~
12 ~~that have not been paid to or applied to the use of another party and a proportionate share of any charges~~
13 ~~deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not~~
14 ~~included in the current balance. The term includes deposit life insurance proceeds added to the account by~~
15 ~~reason of death of the party whose net contribution is in question.~~

16 ~~—— (2) During the lifetime of all parties, an account belongs to the parties in proportion to the net~~
17 ~~contribution of each to the sums on deposit unless there is clear and convincing evidence of a different intent.~~
18 ~~As between parties married to each other, in the absence of proof otherwise, the net contribution of each is~~
19 ~~presumed to be an equal amount.~~

20 ~~—— (3) A beneficiary in an account having a POD designation has no right to sums on deposit during the~~
21 ~~lifetime of any party.~~

22 ~~—— (4) An agent in an account with an agency designation has no beneficial right to sums on deposit.~~

23 ~~—— (5) All deposits in an account are subject to attachment, levy, or other legal process by the judgment~~
24 ~~creditors of the owner or owners of the account to the full extent necessary to satisfy the attachment, levy, or~~
25 ~~other legal process."~~

26

- END -