

Amendments to Senate Bill No. 231  
1st Reading Copy

Requested by Senator Jesse Laslovich

For the Senate Judiciary Committee

Prepared by Valencia Lane  
January 26, 2005 (4:46pm)

1. Title, line 16 through line 18.  
**Strike:** "PROVIDING" on line 16 through "ACCOUNT;" on line 18
2. Title, line 18.  
**Following:** "27-1-717,"  
**Insert:** "AND"
3. Title, line 19.  
**Following:** "28-1-1001,"  
**Strike:** "AND 72-6-211,"
4. Page 2, line 16.  
**Following:** "the"  
**Strike:** "district"
5. Page 2, line 27.  
**Following:** "envelope"  
**Insert:** ", postage prepaid, and deposit it in the post office"
6. Page 2, line 27 through line 28.  
**Following:** "sent it" on line 27  
**Strike:** remainder of line 27 through "prepaid" on line 28  
**Insert:** ", who shall return it to the clerk according to the provisions and timeframes of subsection (1)"
7. Page 6, line 15 through line 20.  
**Following:** "transfer." on line 15  
**Strike:** remainder of line 15 through "assignor." on line 20  
**Insert:** "A person obligated to pay money may discharge the obligation by paying the person to whom the money is owed up to the time of a transfer of the right to receive the money. If, after a transfer of the right to receive the money, the debtor pays the assignor, payment of the original obligation to the assignor is a credit against the debt but does not abrogate or otherwise affect the assignee's remedies for penalties, collection costs, or other amounts owing."
8. Page 6, line 22 through page 7, line 8.  
**Strike:** section 8 in its entirety

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BILL NO. 231

INTRODUCED BY Jude P. Land

(Primary Sponsor)

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

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

Section 1. Section 15-16-403, MCA, is amended to read:

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

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

2 "25-1-1101. Registered process server -- levying officer. (1) Any person who makes more than 10  
3 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate  
4 of registration as a process server with the clerk of the district court of the county in which ~~he~~ the person resides  
5 ~~or has his in which the person's principal place of business is located.~~ A registered process server may make  
6 service of process in any county in this state.

7 (2) This part does not apply to:

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

10 (b) a licensed attorney.

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

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

14 "25-3-301. Time and manner of return. (1) ~~It shall be the duty of the~~ The sheriff or other person  
15 serving a summons or other process or order required by any of the provisions of ~~this code law,~~ issued out of  
16 for any of the ~~district~~ courts of this state, ~~to shall~~ make due and legal return of ~~such the~~ service and file the ~~same~~  
17 return with the clerk of the court in which ~~such the~~ action or proceeding is pending. The return must be made  
18 within not more than 10 days after the making of such the service where if the same service was made in the  
19 county in which such the action or proceeding is pending and not more than within 15 days after the making of  
20 such the service when the same service was made outside of the county in which such the action or proceeding  
21 is pending. Any failure to make and file such the return as required may be punished as a contempt of court.

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

25 (3) In compliance with the provisions of subsection (1) and in lieu of returning a summons, other  
26 process, or order to the clerk of court, the sheriff or levying officer may enclose the return of the summons,  
27 postage prepaid, and deposit it in the post office  
28 process, or order in an envelope addressed to the officer, agent, or attorney who sent it and deposit it in the post-  
29 office, postage prepaid."

30 , who shall return it to the clerk according to the  
provisions and timeframes of subsection (1)."

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

1 of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the  
 2 action allowed under subsection (3). The statute of limitations for the liability created under this section begins  
 3 to run anew each time the payee or the payee's assignee mails a demand meeting the requirements of this  
 4 section.

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

7 (8) Making partial payments of amounts owed under this section or entering into an agreement for  
 8 paying in whole or in part amounts owed under this section does not waive any right that the payee or the  
 9 payee's assignee may have under this section. Once a demand required under this section is made, the demand  
 10 is not required to be repeated upon partial payment of amounts owed under this section."  
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12 Section 7. Section 28-1-1001, MCA, is amended to read:

13 "28-1-1001. **Rights arising out of obligation transferable.** A right arising out of an obligation is the  
 14 property of the person to whom it is due and may be transferred as ~~such~~ the property of that person. A transfer  
 15 by written, oral, electronic, or other means creates a valid assignment upon the transfer. Unless otherwise  
 16 provided, a person obligated to pay money may discharge the obligation by paying the person to whom the money is owed up to the  
 17 time of a transfer of the right to receive the money. If, after a transfer of the right to receive the money, the  
 18 debtor pays the assignor, payment of the original obligation to the assignor is a credit against the debt but does not  
 19 abrogate or otherwise affect the assignee's remedies for the penalties, collection costs, or other amounts owing. assignor."  
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22 ~~Section 8. Section 72-6-211, MCA, is amended to read:~~

23 ~~"72-6-211. **Ownership during lifetime.** (1) In this section, "net contribution" of a party means the sum~~  
 24 ~~of all deposits to an account made by or for the party, less all payments from the account made to or for the party~~  
 25 ~~that have not been paid to or applied to the use of another party and a proportionate share of any charges~~  
 26 ~~deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not~~  
 27 ~~included in the current balance. The term includes deposit life insurance proceeds added to the account by~~  
 28 ~~reason of death of the party whose net contribution is in question.~~

29 ~~(2) During the lifetime of all parties, an account belongs to the parties in proportion to the net~~  
 30 ~~contribution of each to the sums on deposit unless there is clear and convincing evidence of a different intent~~

~~1 As between parties married to each other, in the absence of proof otherwise, the net contribution of each is  
2 presumed to be an equal amount.~~

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

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

6 (5) All deposits in an account are subject to attachment, levy, or other legal process by the judgment  
7 creditors of the owner or owners of the account to the full extent necessary to satisfy the attachment, levy, or  
8 other legal process."

9 - END -