

HOUSE BILL NO. 66
INTRODUCED BY C. HARRIS
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAW RELATING TO THE ATTORNEY GENERAL'S ROLE IN BANKRUPTCY AND DEBT COLLECTION PROCEEDINGS; PROVIDING THAT THE ATTORNEY GENERAL SHALL REPRESENT THE STATE IN BANKRUPTCY PROCEEDINGS IN WHICH THE STATE IS A PARTY OR HAS AN INTEREST; PROVIDING THAT THE ATTORNEY GENERAL MAY ACT IN AN ADVISORY CAPACITY IN STATE DEBT COLLECTION PROCEEDINGS; AMENDING SECTIONS 2-15-501 AND 2-15-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-15-501, MCA, is amended to read:

"2-15-501. General duties. It is the duty of the attorney general:

(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(2) to represent the state in all bankruptcy proceedings in which the ~~state's interest may be affected~~ state is a party or has an interest and to advise in ~~other~~ debt collection proceedings ~~at the request of a state agency in which a state agency has requested the attorney general to provide advisory assistance to the agency;~~

(3) after judgment in any of the causes referred to in subsections (1) and (2), to direct the issuing of a process as may be necessary to carry the judgment into execution;

(4) to keep a register of all cases prosecuted or defended by the attorney general. The register must be open to the inspection of the public during business hours. The attorney general shall deliver the register to the attorney general's successor in office.

(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of the county attorney's duties or to prosecute or defend appropriate cases in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(7) to give an opinion in writing, without fee, to the legislature or either house of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, or to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. The attorney general shall give the opinion within 3 months following the date that it is requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court.

(8) to discharge the duties of a member of the board of examiners and state board of land commissioners;

(9) to perform all other duties as required by law."

Section 2. Section 2-15-503, MCA, is amended to read:

"2-15-503. Representation of state in bankruptcy and debt collection proceedings -- collection of fees from state agencies. (1) ~~In all matters involving bankruptcy or collection of debts owed to the state in which the attorney general provides legal assistance in which the state is a party or has an interest, the attorney general shall represent the state. In all matters regarding the collection of debts owed to the state, the attorney general may act in an advisory capacity to a state agency, the~~ The attorney general may charge a fee to the agency plus reimbursement for actual expenses reasonably incurred. The fee may be an hourly charge, or the attorney general may designate a percentage of collected proceeds to be retained for the costs of providing legal assistance or advice. The fees and expenses must be reasonably related to the costs of the attorney general in providing legal assistance or advice to state agencies in bankruptcy and debt collection matters.

(2) Fees and expenses retained by the attorney general under subsection (1) must be deposited in an account in the internal service fund for the costs of providing legal assistance or advice in bankruptcy and debt collection matters. Any funds in excess of the amount appropriated for operation of the bankruptcy program must be carried forward into the next fiscal year for continued operation of the program. Any excess funds carried forward into the next fiscal year, after meeting a 60-day working capital reserve, must be used to reduce the

designated percentage of the collected proceeds charged to the various agencies. All amounts collected that are not applied to fees must be deposited to the account or fund of the agency to which the debt was originally owed."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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