

SENATE BILL NO. 275

INTRODUCED BY LAIBLE, JENT, YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS FOR THE COLLECTION OF JUDGMENTS AND FINES; REQUIRING THAT COLLECTION FEES BE ADDED TO THE AMOUNT OF THE JUDGMENT OR FINE BEING COLLECTED; INCREASING THE LENGTH OF A JUDGMENT LIEN FILED IN ANOTHER COUNTY AND A JUDGMENT LIEN RENDERED IN FEDERAL COURT FROM 6 YEARS TO 10 YEARS; REQUIRING EARNINGS WITHHELD FROM A JUDGMENT DEBTOR TO BE REMITTED TO THE SHERIFF OR LEVYING OFFICER ~~ON~~ WITHIN 5 DAYS OF THE DAY THE EARNINGS ARE WITHHELD; PROVIDING THAT FEES ASSESSED IN A MUNICIPAL COURT MAY NOT EXCEED THOSE FEES ASSESSED BY A JUSTICE'S COURT; EXPANDING THE LIABILITY FOR ISSUING A BAD CHECK TO INCLUDE A CONVERTED CHECK AND AN ELECTRONIC FUND TRANSFER; PROVIDING THAT ~~GRANTS OF ASSISTANCE ARE SUBJECT TO LEVY OR OTHER LEGAL PROCEEDINGS WITH RESPECT TO OBLIGATIONS TO PROVIDERS OF SERVICES RENDERED TO OR FOR A NEEDY PERSON~~ MONEY PAID UNDER TITLE 53 TO PROVIDERS OF GOODS AND SERVICES IS NOT EXEMPT FROM LEVY OR OTHER LEGAL PROCEEDINGS; AND AMENDING SECTIONS 3-10-601, 25-9-302, 25-9-303, 25-13-402, 25-30-102, 27-1-717, 46-17-303, 46-19-102, AND 53-2-607, MCA."

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

Section 1. Section 3-10-601, MCA, is amended to read:

"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Each justice's court shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) Except as provided in subsection (4), all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) Except as provided in 46-18-236(7), the county treasurer shall, as provided in 15-1-504, distribute

money received under subsection (2) as follows:

- (a) 50% to the department of revenue for deposit in the state general fund; and
- (b) 50% to the county general fund.

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute a suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the justice's court must be added to the judgment amount."

Section 2. Section 25-9-302, MCA, is amended to read:

"25-9-302. Filing of transcript of docket in another county -- lien -- expiration. (1) A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in that county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in subsection (2), the lien continues for ~~6~~ 10 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 3. Section 25-9-303, MCA, is amended to read:

"25-9-303. Filing of transcript of docket of federal court -- lien -- expiration. (1) A transcript of the original docket of a judgment that is rendered in the circuit or district court of the United States, ninth circuit, district of Montana, and that is certified by the clerk of court may be filed with the district court clerk of any county. From the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien expires. Except as provided in subsection (2), the lien continues for ~~6~~ 10 years unless the judgment is previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the

termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 4. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. (1) (a) The sheriff or levying officer shall, subject to subsection (6), execute the writ against the property of the judgment debtor ~~no~~ not later than 120 days after receipt of the writ by:

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

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

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

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

(ii) Service by mail upon a corporation or other legal entity must be consented to in writing by the corporation or other legal entity and may be made by mailing a copy of the writ to an officer, supervising employee of the third party, or other department or person designated by the third party. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ shall forward the writ to the person responsible for processing the levy for the third party if the officer or employee initially receiving the writ is not the proper party to process the levy. The writ ~~will~~ must be considered served on the date and time that the writ is received by the officer, supervising employee, or designee of the third party, but ~~no~~ not later than 5 business days after it is mailed.

(c) A levy under subsection (1)(b) is effective when the writ is served by personal service or by mail, as provided in subsection (1)(b)(ii).

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

(3) With respect to property held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based

on the assets held at the time of levy. Response must be made within 10 business days following the date of the levy by delivering the assets or payments to the sheriff or levying officer.

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

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

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

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

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

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

(7) ~~Nothing in this~~ This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 5. Section 25-30-102, MCA, is amended to read:

"25-30-102. Fees and fines -- collection. (1) (a) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(b) Fees assessed in municipal court may not exceed the fees authorized to be paid to a justice's court in 25-31-112.

(2) (a) The municipal court may contract with a private person or entity for the collection of any final judgment that requires a payment to the municipal court. The fee incurred by the municipal court must be added to the judgment.

(b) In the event that a private person or entity is retained to collect a judgment, the municipal court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute

suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment."

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

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

(a) dishonored for lack of funds or credit or because the issuer ~~has no~~ does not have an account with the drawee; or

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

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

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

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

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

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

(5) The remedy provided by this section:

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

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

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

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

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

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

Section 7. Section 46-17-303, MCA, is amended to read:

"46-17-303. Deposit of fines -- collection. (1) Except as provided in subsection (2), all fines imposed and collected by ~~a city~~ the court must be paid to the appropriate treasurer of the county, city, or town, ~~as the case may be~~, within 30 days of receipt. The ~~city~~ judge shall file a copy of any receipt given for a collected fine with the appropriate county, city, or town clerk, ~~as the case may be~~.

(2) (a) The ~~city~~ court may contract with a private person or entity for the collection of any final judgment that requires a payment to the ~~city~~ court.

(b) In the event that a private person or entity is retained to collect a judgment, the ~~city~~ court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The ~~city~~ court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the court must be added to the judgment amount.

(3) If the judgment is for a fine alone, execution may issue on the judgment for any unpaid interest

accrued on the judgment, costs, and fees in collecting the fine as on a judgment in a civil case."

Section 8. Section 46-19-102, MCA, is amended to read:

"46-19-102. Execution of fine judgment. (1) If the judgment is for a fine alone, execution may issue on the judgment, any unpaid interest accrued on the judgment, and costs and fees incurred in collecting the judgment as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained and allowed a credit for each day of incarceration as provided in 46-18-403.

(3) (a) The court may contract with a private person or entity for the collection of any judgment.

(b) In the event that a private person or entity is retained to collect a judgment, the court may assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedures and postjudgment remedies in the private person's or entity's own name.

(c) The court, after deducting the charges provided for in 46-18-236, may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the court must be added to the judgment amount."

Section 9. Section 53-2-607, MCA, is amended to read:

"53-2-607. Assistance not assignable or subject to legal process -- exceptions. (1) Except as otherwise provided in this title ~~and in subsection (2)~~, assistance granted TO A NEEDY PERSON under this title is not transferable or assignable at law or in equity and none of the money paid or payable under this title is subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(2) Money paid or payable under this title TO A PERSON OR ENTITY WHO IS NOT A NEEDY PERSON BUT WHO RECEIVES THE MONEY FOR PROVIDING GOODS OR SERVICES TO A NEEDY PERSON is subject to execution, levy, attachment, garnishment, or other legal process to pay obligations of a person or entity that is receiving the money or is entitled to the money for services rendered for or to a needy person."

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