

SENATE BILL NO. 227
INTRODUCED BY J. LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A JUSTICE'S COURT WRIT OF EXECUTION MAY BE SERVED ANYWHERE IN THE STATE; REVISING THE PROCEDURE FOR A JUDGMENT DEBTOR TO CLAIM AN EXEMPTION FROM EXECUTION ON CERTAIN PROPERTY; PROVIDING A PROCEDURE FOR A LEVY ON A TAX REFUND OR OTHER STATE FUNDS THAT ARE DUE TO A JUDGMENT DEBTOR; PROVIDING THAT A LEVYING OFFICER MAY PERFORM CERTAIN TASKS THAT MAY BE PERFORMED BY A SHERIFF OR CONSTABLE; INCREASING THE TIME WHEN A JUSTICE MAY ISSUE AN ALIAS SUMMONS FROM 1 YEAR TO 2 YEARS FROM THE DATE OF THE FILING OF THE COMPLAINT; ~~PROVIDING THAT A PARTY AT THE PARTY'S DISCRETION MAY APPEAR IN CERTAIN JUSTICE'S COURT PRETRIAL PROCEEDINGS BY TELEPHONE CONFERENCE;~~ PROVIDING THAT A PARTY AT THE PARTY'S DISCRETION MAY APPEAR IN CERTAIN JUSTICE'S COURT PRETRIAL PROCEEDINGS BY TELEPHONE CONFERENCE; AND AMENDING SECTIONS 3-10-304, 25-13-212, 25-13-402, 25-14-101, 25-31-409, ~~25-31-710;~~ 25-31-710, AND 25-31-1104, MCA."

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

Section 1. Section 3-10-304, MCA, is amended to read:

"3-10-304. Territorial extent of civil jurisdiction. (1) The civil jurisdiction of a justice's court extends to the limits of the county in which it is held, and except as provided in subsection (2), intermediate and final process of a justice's court in a county may be issued to and served in any part of the county.

(2) A summons or a writ of execution of a justice's court may be served in any county of the state."

Section 2. Section 25-13-212, MCA, is amended to read:

"25-13-212. Claiming exemption -- process -- time for hearing. (1) To claim an exemption from execution, a judgment debtor shall file a written request for a hearing with the court that issued the execution accompanied by a written statement that describes the property that the judgment debtor claims is exempt and the reasons for the claim that the property is exempt and accompanied by copies of any documentation upon which the judgment debtor is relying for the exemption claim. ~~The request must be in writing, and a~~ A copy of the request, statement, and any documentation must be mailed by the judgment debtor on the date of filing to the

judgment creditor or the judgment creditor's attorney and to the sheriff or levying officer. The request, statement, and any documentation must be filed within 10 days, excluding weekends and holidays, of the date of:

- (a) the judgment debtor's receipt of notification of execution; if notification was by personal service; or
- (b) the date notification was mailed to the judgment debtor pursuant to 25-13-211(2).

(2) If the judgment debtor does not file a the request, statement, and any documentation for claiming an exemption hearing within the period provided for in subsection (1), the judgment debtor may not claim an exemption in the seized property.

(3) A court that receives a request for an exemption hearing, along with the statement and any documentation, shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of receipt of the request.

(4) The court shall forward the order determining the judgment debtor's exemption claim to the sheriff or levying officer."

Section 3. 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 subsections~~ (6) and (7), execute the writ against the property of the judgment debtor 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 third party or upon a department or person designated by the third party or by serving the writ 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 or supervising employee of the third party or to a department or person designated by the third party. Service may be mailed out of state, at the direction of the third party, if the third party processes garnishments or levies from a location outside the state. If service is by mail, it must be accompanied by a notice that the officer or employee receiving the writ is required to 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 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 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 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)~~ (8), 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) A levy upon a state tax refund or any other funds that are due to the judgment debtor from a Montana state agency continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to any funds due on or after the date of service through the expiration of the writ. Payment of funds

withheld from a judgment debtor must be remitted to the sheriff or levying officer within 10 days of the date the funds would have been sent to the judgment debtor in the normal course of business. ANY LEVY ON STATE FUNDS IS SUBORDINATE TO THE DEPARTMENT OF REVENUE'S RIGHT OF OFFSET FOR DELINQUENT TAXES OR OTHER DEBT AS PROVIDED IN 15-30-149, 15-30-310, 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516, 15-70-110, 15-72-113, TITLE 17, CHAPTER 4, AND 39-51-1307.

~~(7)~~(8) This section is not intended to supersede any state or federal laws regarding priority that must be given to certain levies and executions."

Section 4. Section 25-14-101, MCA, is amended to read:

"25-14-101. Debtor to answer concerning his debtor's property when execution unsatisfied. When an execution against property of the judgment debtor or of any one of several debtors in the same judgment, issued to a levying officer or the sheriff of the county where ~~he~~ the judgment debtor resides or, if ~~he~~ the judgment debtor does not reside in this state, to a levying officer or the sheriff of the county where the judgment is docketed, is returned unsatisfied in whole or in part, the judgment creditor, at any time after ~~such~~ the return is made, is entitled to an order from a judge of the court requiring ~~such~~ the judgment debtor to appear and answer concerning his the judgment debtor's property before ~~such~~ the judge or a referee appointed by ~~him~~ the judge at a time and place specified in the order; ~~but no~~ However, a judgment debtor who is a state resident may not be required to attend before a judge or referee ~~out of~~ outside the county in which ~~he~~ the judgment debtor resides."

Section 5. Section 25-31-409, MCA, is amended to read:

"25-31-409. Alias summons. If the summons is returned without being served upon any or all of the defendants, the justice, upon the demand of the plaintiff, may issue an alias summons in the same form as the original. The justice may, within ~~a year~~ 2 years from the date of the filing of the complaint, issue as many alias summonses as may be demanded by the plaintiff."

~~Section 6.~~ Section 25-31-710, MCA, is amended to read:

~~"25-31-710. Pretrial conferences or hearings -- appearance by telephone conference.~~ (1) At the discretion of the court, a A party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

- ~~(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing; and~~
- ~~(b) the party does not reside within the county in which the case is filed or the party's or the party's~~

attorney's principal place of business is not located in that county; and

~~_____ (c) at least 10 days before the pretrial conference or other hearing, the party or the party's attorney intending to appear by telephone conference provides written notice to the court and to all parties or the attorneys for the parties.~~

~~_____ (2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs."~~

SECTION 6. SECTION 25-31-710, MCA, IS AMENDED TO READ:

"25-31-710. Pretrial conferences or hearings -- appearance by telephone conference. (1) ~~At the discretion of the court, a~~ A party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing; ~~and~~

(b) the party does not reside within the county in which the case is filed or the party's or the party's attorney's principal place of business is not located in that county; and

~~_____ (c) at least 10 days before the pretrial conference or other hearing, the party or the party's attorney intending to appear by telephone conference provides written notice to the court and to all parties or the attorneys for the parties.~~

(2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs."

Section 7. Section 25-31-1104, MCA, is amended to read:

"25-31-1104. Manner of execution. The sheriff, ~~or constable, or levying officer~~ to whom the execution is directed ~~must~~ shall execute the ~~same~~ the execution in the same manner as the sheriff ~~or levying officer~~ is required by the provisions of Title 25, chapter 13, to proceed upon executions ~~directed to him;~~ and the When an execution is directed to a constable, when the execution is directed to him, the constable is vested for that purpose with all the powers of the sheriff or levying officer."

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