

## 1 HOUSE BILL NO. 66

2 INTRODUCED BY B. HOVEN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE DEPARTMENT OF REVENUE TO SERVE AND  
6 CONSENT TO SERVICE OF NOTICES OF LEVY BY ELECTRONIC MEANS; PROVIDING FOR RULEMAKING  
7 AUTHORITY; AND AMENDING SECTIONS 15-1-706 AND 25-13-402, MCA."

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

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11 **Section 1.** Section 15-1-706, MCA, is amended to read:

12 **"15-1-706. Execution upon warrant.** (1) Upon receipt of a copy of the filed warrant and notice from the  
13 department by electronic or other means that the applicable hearing provisions have been complied with, the  
14 sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as  
15 prescribed for execution upon a judgment.

16 (2) A notice of levy may be made by means of a certified letter or, upon written consent of the recipient,  
17 by electronic means by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation  
18 in excess of actual expenses incurred in enforcing the warrant.

19 (3) When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon  
20 earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies  
21 to all pay periods beginning during the 120-day period.

22 (4) A sheriff or agent shall return a warrant, along with any funds collected, within 90 days of the date  
23 of the warrant.

24 (5) If the warrant is returned not satisfied in full, the department has the same remedies to collect the  
25 deficiency as are available for any civil judgment."

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27 **Section 2.** Section 25-13-402, MCA, is amended to read:

28 **"25-13-402. How writ executed.** (1) (a) The sheriff or levying officer shall, subject to subsections (6)  
29 and (7), execute the writ against the property of the judgment debtor not later than 120 days after receipt of the  
30 writ by:

1 (i) levying on a sufficient amount of property if there is sufficient property;  
2 (ii) collecting or selling the things in action; and  
3 (iii) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as  
4 much of the proceeds as will satisfy the judgment.

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

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

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

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

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

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

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

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

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

9 (c) Except as provided in subsection (8), multiple levies served under this subsection (6) have priority  
10 according to the date and time of service upon the employer.

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

13 (7) (a) A levy upon a state tax refund or any other funds that are due to the judgment debtor from a  
14 Montana state agency continues in effect for 120 days or until the judgment is satisfied, whichever occurs first.

15 (b) Upon written consent of the department of revenue, service of the writ upon the department may be  
16 accomplished by electronic means.

17 (c) The levy applies to any funds due on or after the date of service through the expiration of the writ.

18 (d) Payment of funds withheld from a judgment debtor must be remitted to the sheriff or levying officer  
19 within 10 days of the date the funds would have been sent to the judgment debtor in the normal course of  
20 business. Any levy on state funds is subordinate to the department of revenue's right of offset for delinquent taxes  
21 or other debt as provided in 15-30-2609, 15-30-2629, 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516,  
22 15-70-110, 15-72-113, Title 17, chapter 4, and 39-51-1307.

23 (8) This section is not intended to supersede any state or federal laws regarding priority that must be  
24 given to certain levies and executions."  
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26 **NEW SECTION. Section 3. Rulemaking.** The department shall adopt rules to define and implement  
27 service of process by electronic means where authorized by law.  
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29 **NEW SECTION. Section 4. Codification instruction.** [Section 3] is intended to be codified as an  
30 integral part of Title 15, chapter 1, part 7, and the provisions of Title 15, chapter 1, part 7, apply to [section 3].  
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