

HOUSE BILL NO. 615

INTRODUCED BY S. MORIGEAU

A BILL FOR AN ACT ENTITLED: "AN ACT MODERNIZING CLAIM AND DELIVERY LAW; CONFIRMING THAT THE UNIFORM COMMERCIAL CODE REVISED ARTICLE NINE REMEDIES ARE AVAILABLE IN A CLAIM AND DELIVERY ACTION; AND AMENDING SECTIONS 27-17-205 AND 27-17-304, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 and 2] may be cited as the "Claim Delivery Modernization Act".

NEW SECTION. **Section 2. Remedies following delivery.** (1) When, as provided for in this chapter, the sheriff has taken property that is subject to a security interest arising under Title 30, chapter 9A, part 2, granted to plaintiff by defendant and return of the property is not required within 5 days after the taking and serving notice on the defendant, the sheriff shall deliver the property to the plaintiff.

(2) Upon delivery of the property by the sheriff, the plaintiff may then exercise the remedies available under Title 30, chapter 9A, part 6.

**Section 3.** Section 27-17-205, MCA, is amended to read:

**"27-17-205. Plaintiff's undertaking -- service and execution by sheriff.** Upon receipt of the affidavit and notice with a written undertaking, executed by two or more sufficient sureties approved by the sheriff, ~~to the effect that they are bound to the defendant~~ or a letter of credit issued by a regulated lender as defined in 31-1-111, in double the value of the property, as stated in the affidavit for the prosecution of the action, and for the return of the property to the defendant, if return of the property is adjudged, and for the payment to the defendant of the sum that may from any cause be recovered against the plaintiff, the sheriff shall take the property described in the affidavit, if it is in the possession of the defendant or the defendant's agent, and retain it in the sheriff's custody or deliver it to the plaintiff as provided in [section 2]. The sheriff shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking by delivering the papers to the defendant personally, if the defendant can be found, or to the defendant's agent from whose possession the property is

1 taken or, if neither can be found, by leaving the papers at the usual place of abode of either with some person  
2 of suitable age and discretion or, if neither have any known place of abode, by putting the papers in the nearest  
3 post office, directed to the defendant."  
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5 **Section 4.** Section 27-17-304, MCA, is amended to read:

6 **"27-17-304. When defendant may require return of property -- undertaking.** At any time before the  
7 delivery of the property to the plaintiff, the defendant may, if the defendant does not take exception to the sureties  
8 of the plaintiff, require the return of the property upon giving to the sheriff a written undertaking, executed by two  
9 or more sufficient sureties, ~~to the effect that they are bound~~ or a letter of credit issued by a regulated lender as  
10 defined in 31-1-111, in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery  
11 of the property to the plaintiff, if the delivery is adjudged, and for the payment to the plaintiff of the sum that may,  
12 for any cause, be recovered against the defendant."  
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14 NEW SECTION. **Section 5. Codification instruction.** [Section 2] is intended to be codified as an  
15 integral part of Title 27, chapter 17, part 3, and the provisions of Title 27, chapter 17, part 3, apply to [section 2].  
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17 NEW SECTION. **Section 6. Saving clause.** [This act] does not affect rights and duties that matured,  
18 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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