

HOUSE BILL 789

Introduced by Measure, et al.

2/12	Introduced
2/12	Referred to Judiciary
2/13	First Reading
2/19	Hearing
2/21	Tabled in Committee

1 *House* BILL NO. *789*
 2 INTRODUCED BY *Meaw-Cowley*
 3 *W. J. ...*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
 5 LAWS RELATING TO PROCESS SERVICE AND LEVYING ON JUDGMENTS;
 6 PROVIDING FOR APPOINTMENT OF LEVYING OFFICERS; REQUIRING A
 7 BOND FOR LEVYING OFFICERS; ELIMINATING REGISTRATION
 8 REQUIREMENT FOR PROCESS SERVERS; AMENDING SECTIONS 25-3-201,
 9 25-3-202, 25-3-203, 25-3-204, 25-3-205, 25-3-301, 25-3-302,
 10 AND 25-13-203, MCA; AND REPEALING SECTIONS 25-1-1101,
 11 25-1-1102, 25-1-1103, 25-1-1104, 25-1-1105, 25-1-1106,
 12 25-1-1107, 25-1-1111, AND 25-1-1112, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 NEW SECTION. **Section 1.** Appointment of levying officer
 16 -- bond required. (1) A city court judge, municipal court
 17 judge, justice of the peace, or district court judge may
 18 appoint an officer to levy execution under this chapter.
 19 (2) A levying officer shall file a surety bond of
 20 \$10,000 for an individual or \$100,000 for a firm with the
 21 clerk of the district court in the county in which the
 22 individual resides or has his place of business or in which
 23 the firm has its place of business upon appointment as
 24 provided in subsection (1).
 25 (3) A levying officer may not levy on a judgment that

1 exceeds the value of the bond.
 2 **Section 2.** Section 25-3-201, MCA, is amended to read:
 3 "25-3-201. Delivery of papers to officer. (1) It is the
 4 duty of the clerk of any district court, at the request of a
 5 party in any civil action pending in such court or his agent
 6 or attorney, to forward by mail any process, summons, or
 7 other papers required in the cause; and it is the duty of
 8 the sheriff~~7~~-registered-process-server~~7~~ or other officer to
 9 whom said papers may be directed to receive the same at the
 10 place where the same are directed. When process in one
 11 county is intended for service in another, it is the duty of
 12 the clerk to forward the same in like manner.
 13 (2) If the papers are delivered for service away from
 14 the county seat, all necessary copies thereof must be
 15 furnished for service.
 16 (3) If any sheriff~~7~~-registered-process-server~~7~~ or other
 17 officer refuses to receive any summons or other process at
 18 the point where directed to him or to serve the same, he is
 19 guilty of a misdemeanor and upon conviction thereof must be
 20 fined in any sum not exceeding \$100."
 21 **Section 3.** Section 25-3-202, MCA, is amended to read:
 22 "25-3-202. When officer's execution of process
 23 justified and required. A sheriff~~7~~---registered---process
 24 server~~7~~ or other ministerial officer is justified in the
 25 execution of and must execute all process and orders regular



-2-
 INTRODUCED BILL
 HB 789

1 on their face and issued by competent authority, whatever
2 may be the defect in the proceedings upon which they were
3 issued."

4 **Section 4.** Section 25-3-203, MCA, is amended to read:

5 "25-3-203. **Prepayment of cost of service.** In no case
6 shall the officer or registered process server receiving
7 papers for service be required to serve the same unless the
8 person in whose behalf the service is made or his agent or
9 attorney first pay the cost of the service upon a demand
10 therefor by the officer or registered process server."

11 **Section 5.** Section 25-3-204, MCA, is amended to read:

12 "25-3-204. **Officer to exhibit process.** The officer or
13 registered process server executing such process must, then
14 and at all times subsequent so long as he retains it, upon
15 request, show the same with all papers attached to any
16 person interested therein."

17 **Section 6.** Section 25-3-205, MCA, is amended to read:

18 "25-3-205. **Execution of process when sheriff a party.**
19 When the sheriff is a party to an action or proceeding, the
20 process and orders therein which it would otherwise be the
21 duty of the sheriff to execute must be executed by the
22 coroner of the county or a registered process server."

23 **Section 7.** Section 25-3-301, MCA, is amended to read:

24 "25-3-301. **Time and manner of return.** (1) It shall be
25 the duty of the sheriff or other person serving a summons or

1 other process or order required by any of the provisions of
2 this code, issued out of any of the district courts of this
3 state, to make due and legal return of such service and file
4 the same with the clerk of the court in which such action or
5 proceeding is pending not more than 10 days after the making
6 of such service where the same was made in the county in
7 which such action or proceeding is pending and not more than
8 15 days after the making of such service when the same was
9 made outside of the county in which such action or
10 proceeding is pending. Any failure to make and file such
11 return as required may be punished as a contempt of court.

12 (2) When process or a notice is returnable to another
13 county or was forwarded under 25-3-201, the sheriff or a
14 registered process server may enclose his return of such
15 process or notice in an envelope addressed to the officer
16 who sent it and deposit it in the post office, prepaying
17 postage."

18 **Section 8.** Section 25-3-302, MCA, is amended to read:

19 "25-3-302. **Return prima facie evidence.** The return of
20 the sheriff or registered process server upon process or
21 notices is prima facie evidence of the facts in such return
22 stated."

23 **Section 9.** Section 25-13-203, MCA, is amended to read:

24 "25-13-203. **Judgments requiring the performance of**
25 **specific acts.** (1) When the judgment requires the

1 performance of any other act than those designated in
2 25-13-201 and 25-13-202, a certified copy of the judgment
3 may be served upon the party against whom the same is
4 rendered or upon the person or officer required thereby or
5 by law to obey the same, and obedience thereto may be
6 enforced by the court.

7 (2) Where a judgment directs a party to make a deposit
8 or delivery or to convey real property, if the direction is
9 disobeyed, the court, besides punishing the disobedience as
10 a contempt, may by order require the sheriff or levying
11 officer~~er~~~~-who-may-be-a-registered-process-server~~ to take and
12 deposit or deliver the money or other personal property or
13 to convey the real property in conformity with the direction
14 of the court."

15 NEW SECTION. **Section 10.** Repealer. Sections 25-1-1101,
16 25-1-1102, 25-1-1103, 25-1-1104, 25-1-1105, 25-1-1106,
17 25-1-1107, 25-1-1111, and 25-1-1112, MCA, are repealed.

18 NEW SECTION. **Section 11.** Codification instruction.
19 [Section 1] is intended to be codified as an integral part
20 of Title 25, chapter 13, part 1, and the provisions of Title
21 25, chapter 13, part 1, apply to [section 1].

-End-