

1 Senate BILL NO. 134  
2 INTRODUCED BY Chute

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
5 93-4102, R.C.M. 1947, TO PROVIDE FOR A SHOW CAUSE HEARING  
6 BEFORE A SHERIFF MAY SEIZE PROPERTY."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 93-4102, R.C.M. 1947, is amended to  
10 read as follows:

11 "93-4102. Affidavit and its requisites. (1) When a  
12 delivery is claimed, an affidavit must be made by the  
13 plaintiff, or someone in his behalf, stating:

14 ~~1. That the plaintiff is the owner of the property~~  
15 ~~claimed, particularly describing it, or is lawfully entitled~~  
16 ~~to the possession thereof;~~

17 (a) Facts which establish reasonable belief that the  
18 plaintiff is the owner, or is lawfully entitled to  
19 possession and that the seizure is necessary to prevent the  
20 removal or destruction of the property;

21 ~~2. (b) That the property is wrongfully detained by~~  
22 ~~the defendant;~~

23 ~~3. (c) That the same has not been taken for a tax,~~  
24 ~~assessment, or fine, pursuant to statute; or seized, under~~  
25 ~~an execution or an attachment against the property of the~~

1 plaintiff; or, if so seized, that it is by statute exempt  
2 from seizure; and,

3 ~~4. The actual value of the property.~~

4 (d) Particularly describing the property and the  
5 actual value of the property.

6 (2) The sheriff shall make no seizure unless an order  
7 from a judge of the court having jurisdiction of the cause  
8 is attached to the affidavit. The judge may sign such an  
9 order if he is satisfied:

10 (a) That the party seeking possession of the property  
11 has made a prima facie showing of his right to possession  
12 and the necessity for seizure at a show cause hearing before  
13 him with at least three days' notice to the person holding  
14 possession of the property; or

15 (b) That the delay caused by notice and a hearing  
16 would seriously impair the remedy sought by the party  
17 seeking possession. Evidence of such impairment must be  
18 presented in open court and the court must set forth with  
19 specificity the reasons why such delay would seriously  
20 impair the remedy sought by the person seeking possession."

-End-

Approved by Committee on Judiciary

1 SENATE BILL NO. 134  
 2 INTRODUCED BY ROBERTS  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
 5 93-4102, R.C.M. 1947, TO PROVIDE FOR A SHOW CAUSE HEARING  
 6 BEFORE A SHERIFF MAY SEIZE PROPERTY."  
 7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 9 Section 1. Section 93-4102, R.C.M. 1947, is amended to  
 10 read as follows:  
 11 "93-4102. Affidavit and its requisites. (1) When a  
 12 delivery is claimed, an affidavit must be made by the  
 13 plaintiff PERSON CLAIMING THE PROPERTY, or someone in his  
 14 behalf, stating:  
 15 ~~1. That the plaintiff is the owner of the property~~  
 16 ~~claimed, particularly describing it, or is lawfully entitled~~  
 17 ~~to the possession thereof;~~  
 18 (a) Facts which establish reasonable belief that the  
 19 plaintiff PERSON CLAIMING THE PROPERTY is the owner, or is  
 20 lawfully entitled to possession and that the seizure is  
 21 necessary to prevent the removal or destruction of the  
 22 property;  
 23 2. (b) That the property is wrongfully detained by the  
 24 defendant;  
 25 3. (c) That the same has not been taken for a tax,

1 assessment, or fine, pursuant to statute; or seized, under  
 2 an execution or an attachment against the property of the  
 3 plaintiff PERSON CLAIMING THE PROPERTY; or, if so seized,  
 4 that it is by statute exempt from seizure; and,  
 5 ~~4. The actual value of the property;~~  
 6 (d) Particularly describing the property and the  
 7 actual value of the property.  
 8 (2) The sheriff shall make no seizure unless an order  
 9 from a judge of the court having jurisdiction of the cause  
 10 is attached to the affidavit. The judge may sign such an  
 11 order if he is satisfied:  
 12 (a) That the party seeking possession of the property  
 13 has made a prima facie showing of his right to possession  
 14 and the necessity for seizure at a show cause hearing before  
 15 him with at least three days' notice to the person holding  
 16 IN possession of the property, IF SUCH PERSON CANNOT BE  
 17 FOUND FOR PERSONAL SERVICE, NOTICE POSTED ON THE PROPERTY  
 18 AND IN THREE (3) PUBLIC PLACES IN THE COUNTY WHERE THE  
 19 PROPERTY IS LOCATED IS SUFFICIENT SERVICE FOR THIS PURPOSE;  
 20 or  
 21 (b) That the delay caused by notice and a hearing  
 22 would seriously impair the remedy sought by the party  
 23 seeking possession. Evidence of such impairment must be  
 24 presented in open court and the court must set forth with  
 25 specificity the reasons why such delay would seriously

1 impair the remedy sought by the person seeking possession."

-End-

SENATE BILL NO. 134  
INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
93-4102, R.C.M. 1947, TO PROVIDE FOR A SHOW CAUSE HEARING  
BEFORE A SHERIFF MAY SEIZE PROPERTY."

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

Section 1. Section 93-4102, R.C.M. 1947, is amended to  
read as follows:

"93-4102. Affidavit and its requisites. (1) When a  
delivery is claimed, an affidavit must be made by the  
plaintiff PERSON CLAIMING THE PROPERTY, or someone in his  
behalf, stating:

~~1--That the plaintiff is the owner of the property  
claimed, particularly describing it, or is lawfully entitled  
to the possession thereof;~~

(a) Facts which establish reasonable belief that the  
plaintiff PERSON CLAIMING THE PROPERTY is the owner, or is  
lawfully entitled to possession and that the seizure is  
necessary to prevent the removal or destruction of the  
property;

~~2--(b) That the property is wrongfully detained by the  
defendant;~~

~~3--(c) That the same has not been taken for a tax,~~

assessment, or fine, pursuant to statute; or seized, under  
an execution or an attachment against the property of the  
plaintiff PERSON CLAIMING THE PROPERTY; or, if so seized,  
that it is by statute exempt from seizure; and,

~~4--The actual value of the property;~~

(d) Particularly describing the property and the  
actual value of the property.

(2) The sheriff shall make no seizure unless an order  
from a judge of the court having jurisdiction of the cause  
is attached to the affidavit. The judge may sign such an  
order if he is satisfied;

(a) That the party seeking possession of the property  
has made a prima facie showing of his right to possession  
and the necessity for seizure at a show cause hearing before  
him with at least three days' notice to the person holding  
IN possession of the property, IF SUCH PERSON CANNOT BE  
FOUND FOR PERSONAL SERVICE, NOTICE POSTED ON THE PROPERTY  
AND IN THREE (3) PUBLIC PLACES IN THE COUNTY WHERE THE  
PROPERTY IS LOCATED IS SUFFICIENT SERVICE FOR THIS PURPOSE;  
or

(b) That the delay caused by notice and a hearing  
would seriously impair the remedy sought by the party  
seeking possession. Evidence of such impairment must be  
presented in open court and the court must set forth with  
specificity the reasons why such delay would seriously

1 impair the remedy sought by the person seeking possession."

-End-

SENATE BILL NO. 134  
INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 93-4102, R.C.M. 1947, TO PROVIDE FOR A SHOW CAUSE HEARING BEFORE A SHERIFF MAY SEIZE PROPERTY."

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

Section I. Section 93-4102, R.C.M. 1947, is amended to read as follows:

"93-4102. Affidavit and its requisites. (1) When a delivery is claimed, an affidavit must be made by the plaintiff PERSON CLAIMING THE PROPERTY, or someone in his behalf, stating:

~~1. That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof;~~

(a) Facts which establish reasonable belief that the plaintiff PERSON CLAIMING THE PROPERTY is the owner, or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

~~2. (b) That the property is wrongfully detained by the defendant;~~

~~3. (c) That the same has not been taken for a tax,~~

assessment, or fine, pursuant to statute; or seized, under an execution or an attachment against the property of the plaintiff PERSON CLAIMING THE PROPERTY; or, if so seized, that it is by statute exempt from seizure; and,

~~4. The actual value of the property.~~

(d) Particularly describing the property and the actual value of the property.

(2) The sheriff shall make no seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign such an order if he is satisfied:

(a) That the party seeking possession of the property has made a prima facie showing of his right to possession and the necessity for seizure at a show cause hearing before him with at least three days' notice to the person holding IN possession of the property, IF SUCH PERSON CANNOT BE FOUND FOR PERSONAL SERVICE, NOTICE POSTED ON THE PROPERTY AND IN THREE (3) PUBLIC PLACES IN THE COUNTY WHERE THE PROPERTY IS LOCATED IS SUFFICIENT SERVICE FOR THIS PURPOSE; or

(b) That the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court and the court must set forth with specificity the reasons why such delay would seriously

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1 impair the remedy sought by the person seeking possession."

-End-