LC 0071/01

	1/ 7/ 2		
1	O House Bill No. 763	1	propertyv I orv
2	INTRODUCED BY Kaming Muloy	2	(ii) of is originally securedy and such security has,
3	0 0	3	without any act of the plaintiff $ au$ or the person to whom the
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE	4	security was given, <del>becomes</del> <u>become</u> valueless <del>y;</del> and <del>in</del>
5	ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE	5	(b) an action based upon a statutory stockholders*
6	ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR	6	liability.
7	PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR	7	[3] Attachment may not issue if the defendant gives
8	IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301,	8	security to pay the judgment."
9	93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION	9	Section 2. There is a new R.C.H. section numbered
10	93-4302+ R.C.N. 1947."	10	93-4302.1 that reads as follows:
11	•	11	93-4302.1. Affidavit required for attachment. When
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	attachment of a defendant's property is sought, an affidavit
13	Section 1. Section 93-4301, R.C.M. 1947, is amended to	13	must be made by the plaintiff or someone in his behalf
14	read as follows:	14	stating:
15	■93-4301. When attachment may issue. <u>[1]</u> The A	15	(1) facts which show the defendant is indebted to the
16	plaintiff, at the time of issuing the summons, or at any	16	plaintiff in the manner specified in 93-4301(2);
16	plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant	16 17	plaintiff in the manner specified in 93-4301(2); (2) that the attachment is not sought to hinder.
17	time afterward, may have the property of the defendant	17	(2) that the attachment is not sought to hinder.
17 13	time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment	17 18	(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;
17 13 19	time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered,-unless-the-defendent-gives-security	17 18 19	<ul> <li>(2) that the attachment is not sought to hinder,</li> <li>delay, or defraud any creditor of the defendant;</li> <li>(3) facts creating a reasonable belief that the</li> </ul>
17 13 19 20	time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered,unless-the-defendantgivessecurity topaysuchjudgment,asinthischapter-provided, -as	17 18 19 20	<ul> <li>(2) that the attachment is not sought to hinder,</li> <li>delay, or defraud any creditor of the defendant;</li> <li>(3) facts creating a reasonable belief that the</li> <li>defendant is:</li> </ul>
17 13 19 20 21	time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered,-unless-the-defendantgivessecurity topaysuchjudgment,asinthischapter-provided,-as follows:	17 18 19 20 21	<ul> <li>(2) that the attachment is not sought to hinder,</li> <li>delay, or defraud any creditor of the defendant;</li> <li>(3) facts creating a reasonable belief that the</li> <li>defendant is:</li> <li>(a) leaving or about to leave this state taking with</li> </ul>
17 13 19 20 21 22	time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless-the-defendant-gives-security topay-such-judgment, asin-this-chapter-provided, as follows; (2)Property_may_be_attached_ing fm	17 18 19 20 21 22	<ul> <li>(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;</li> <li>(3) facts creating a reasonable belief that the defendant is: <ul> <li>(a) leaving or about to leave this state taking with him property, money, or other effects which might be</li> </ul> </li> </ul>
17 13 19 20 21 22 23	time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless-the-defendant-gives-security topaysuchjudgment, asinthischapter-provided, as follows: (2)Property_may be attached_in: in (a) an action upon a contract, express or implied, for	17 18 19 20 21 22 23	<ul> <li>(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;</li> <li>(3) facts creating a reasonable belief that the defendant is: <ul> <li>(a) leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt; or</li> </ul> </li> </ul>

- or about to leave this state taking with
- oney, or other effects which might be
- ent of the debt; or
- ng or about to dispose of his property

-2-

LC 0071/01

(4) a particular description and the actual value of
 the property to be attached.

3 Section 3. Section 93-4304, R.C.N. 1947, is amended to
4 read as follows:

5 \*93-4304. Undertaking. [1] Before issuing the writ. 6 the elerk court must require a written undertaking on the 7 part of the plaintiff, with two (2) or more sufficient 8 suretiesy to be approved by the clerk court, in a sum not 9 less than double the amount claimed by the plaintiff, if 10 such amount be one-thousand-dollars-(\$1,000) or under, or, 11 in case the amount so claimed by plaintiff shall exceed one 12 thousand-dollars--f\$1,000; then in a sum equal to such 13 amounty, but in In no case shall an undertaking be required 14 exceeding in amount the sum of twenty-thousand-dollars +\$20,0007. The condition of such undertaking shall be to the 15 16 effect that if the defendant recovered judgment, or if the 17 court shall finally decide decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all 18 19 costs that may be awarded to the defendant, and all damages 20 he may sustain by reason of the issuing <del>out</del> of the attachment, not exceeding the sum specified in the 21 22 undertaking.

23 <u>(2)</u> At any time within thirty--(30) days after the 24 service of summons, the defendant may except to the 25 sufficiency of the sureties. If he fails to do so, he is 1 deemed to have waived all objections to them.

(3) When excepted to, the plaintiff's sureties, upon 2 notice to the defendant of not less than two---{2} days nor 3 more than ten-f10+ days, must justify before a judge of the 4 5 district court, or-before-the-cferk-thereofy and upon failure to justify, or if others in their place fail to 6 7 justify, at the time and place appointed, the clerk-or judge shall issue an order vacating the writ of attachment." 9 Section 4. There is a new R.C.M. section numbered 9 10 93-4304.1 that reads as follows: 93-4304.1. Writ -- when issued. A judge of a court 11 12 having jurisdiction of the cause may issue a writ of 13 attachment when: (1) he has received the affidavit described in 14 15 93-4302-1: (2) he has approved the undertaking required in 16 93-4304; and 17 18 (3) the party seeking attachment has made a prima

19 facie showing:

(a) of his right to possession and the necessity for
seizure at a show cause hearing before the court with at
least 3 days\* notice to the defendant; if the defendant
cannot be found for personal service, notice shall be posted
on the property and in three public places in the county
where the property is located; or

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1 (b) that the delay caused by notice and a hearing 2 would seriously impair the remedy sought by the party 3 seeking possession. Evidence of such impairment must be 4 presented in open court and the court must set forth with 5 specificity the reasons why such delay would seriously 6 impair the remedy sought by the person seeking attachment. 7 Section 5. There is a new R.C.M. section numbered

8 93-4304.2 that reads as follows:

9 93-4304.2. Postseizure hearing. (1) When a writ has
10 been issued upon the showing specified in 93-4304.1 (3)(b).
11 the defendant may challenge the seizure of the property at a
12 hearing before the court to be held within 3 days after the
13 seizure. Notice shall be given the defendant as required in
14 93-4304.1 (3)(a).

15 (2) At such hearing the defendant may challenge the 16 merit of the underlying action. the need for the prejudgment 17 seizure of property. or both. The writ shall be quashed if 18 the court makes a preliminary finding that:

19 (a) there is no question of fact to be resolved and
20 that the plaintiff cannot establish the prima facie validity
21 of his claim; or

22 (b) there is no need for the continued attachment of 23 the defendant's property.

 24
 Section 6. Section 93-6908, R.C.M. 1947, is amended to

 25
 read as follows:

1 \*\*93-6908. Writ of attachment shall issue upon 2 affidavit. A writ to attach the property of the defendant 3 must be issued by the justice at the time of, or after 4 issuing summons and before answer, on receiving an affidavit 5 by or on behalf of the plaintiff, showing the same facts as 6 are required to be shown by the affidavit specified in 7 section -93-4302 93-4302.1.\*\*

8 Section 7. Repeater. Section 93-4302, R.C.W. 1947, is
9 repealed.

-End-

LC 0071/01

### H3 0763/02

# Approved by Committee on Judiciary

1	HOUSE BILL NO. 763	1	property <b>v</b> i orv
		2	
2	INTRODUCED BY RAMIREZ, MELOY		<u>(ii) <del>if</del> is</u> originally secured <del>y</del> a
3		3	without any act of the plaintiffy or
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE	4	security was given, <del>becomes</del> <u>become</u> va
5	ATTACHMENT LAN; PROVIDING FOR JUDICIAL SUPERVISION OF THE	5	<u>(b)</u> an action based upon a s
Ġ	ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR	5	liability.
1	PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR	7	(3)_Attachment_may_not_issue
8	IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301,	8	security to pay the judgment."
9	93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION	9	Section 2. There is a new R.
10	93-4302+ R+C+M+ 1947+"	10	93-4302.1 that reads as follows:
11		11	93-4302.1. Affidavit required
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12	attachment of a defendant's property
13	Section 1. Section 93-4301, R.C.H. 1947, is amended to	13	must be made by the plaintiff or s
14	read ∋s follows:	14	stating:
15	™93-4301. When attachment may issue. <u>[1]</u> The A	15	(1) facts which show the defer
15	plaintiff, at the time of issuing the summons, or at any	16	plaintiff in the manner specified in
17	time afterward, may have the property of the defendant	17	(2) that the attachment is r
18	attached, as security for the satisfaction of any judgment	19	delay, or defraud any creditor of the
19	that may be recovered <del>,-unless-the-defendentgivessecurity</del>	19	(3) facts creating a reason
20	topaysuchjudgmentyasinthischapter-providedy-as	20	defendant is:
21	follows+_	21	(a) leaving or about to leave t
22	(2) Property may be attached in: In	22	him property, money, or other ef
23	[a] an action upon a contract, express or implied, for	23	subjected to payment of the debt; or
24	the direct payment of money, where the contract:	24	(b) disposing or about to dis
25	(i) is not secured by any mortgage or lien upon real	25	which would be subject to execution;

SECOND READING

1	property i orv
2	<u>{iii) <del>if</del> is</u> originally secured <del>y</del> and such security has,
3	without any act of the plaintiffy or the person to whom the
4	security was given, becomes become valuelessy: and in
5	(b) an action based upon a statutory stockholders'
5	liability.
7	(3) Attachment may not issue if the defendant gives
8	security to pay the judgment."
9	Section 2. There is a new R.C.M. section numbered
0	93-4302.1 that reads as follows:
1	93-4302.1. Affidavit required for attachment. When
2	attachment of a defendant's property is sought, an affidavit
3	must be made by the plaintiff or someone in his behalf
4	stating:
5	(1) facts which show the defendant is indebted to the
6	plaintiff in the manner specified in 93-4301(2);
7	(2) that the attachment is not sought to hinder,
9	delay, or defraud any creditor of the defendant;
9	(3) facts creating a reasonable belief that the
0	defendant is:
1	(a) leaving or about to leave this state taking with
2	him property, money, or other effects which might be
3	subjected to payment of the debt; or
4	(%) disposing or about to dispose of his property.

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#### HB 0763/02

(4) a particular description and the actual value of
 the property to be attached.

3 Section 3. Section 93-4304, R.C.M. 1947, is amended to
4 read as follows:

5 #93-4304. Undertaking. (1) Before issuing the write the clerk court must require a written undertaking on the 6 part of the plaintiff, with two (2) or more sufficient 7 sureties, to be approved by the <del>clerk</del> <u>court</u>, in a sum not 8 less than double the amount claimed by the plaintiff, if 9 such amount be one-thousand-dollars-(\$1,000) or under; or, 10 11 in case the amount so claimed by plaintiff shall exceed one 12 thousand--dollars-~{\$1,000}, then in a sum equal to such 13 amounty, but-in In no case shall an undertaking be required exceeding in amount the sum of twenty-thousand-dollars 14 f\$20,000; The condition of such undertaking shall be to the 15 effect that if the defendant recovered judgment, or if the 16 court shall finally decide decides that the plaintiff was 17 not entitled to an attachment, the plaintiff will pay all 18 costs that may be awarded to the defendant, and all damages 19 he may sustain by reason of the issuing <del>out</del> of the 20 attachment, not exceeding the sum specified in the 21 22 undertaking.

23 (2) At any time within thirty--(30) days after the
24 service of summons, the defendant may except to the
25 sufficiency of the sureties. If he fails to do so, he is

1 deemed to have waived all objections to them.

2 [3] When excepted to, the plaintiff's sureties, upon 3 more than ten-(10) days, must justify before a judge of the 4 district court, or--before--the--elerk--thereofy and upon 5 5 failure to justify, or if others in their place fail to 7 justify, at the time and place appointed, the <del>clerk-or</del> judge 8 shall issue an order vacating the writ of attachment." 9 Section 4. There is a new R.C.M. section numbered 10 93-4304.1 that reads as follows: 11 93-4304.1. Writ --- when issued. A judge of a court 12 having jurisdiction of the cause may issue a writ of 13 attachment when: 14 (1) he has received the affidavit described in 93-4302.1; 15 16 (2) he has approved the undertaking required in 93-4304; and 17 (3) the party seeking attachment has made a prima 18 facie showing: 19 (a) of his right to possession and the necessity for 20 21 seizure at a show cause hearing before the court with at 22 least 3 days' notice to the defendant; if the defendant 23 cannot be found for personal service, notice shall be posted on the property and in three public places in the county 24 25 where the property is located; or

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1 (b) that the delay caused by notice and a hearing 2 would seriously impair the remedy sought by the party 3 seeking possession. Evidence of such impairment must be 4 presented in open court and the court must set forth with 5 specificity the reasons why such delay would seriously 6 impair the remedy sought by the person seeking attachment. 7 Section 5. There is a new R.C.M. section numbered 8 93-4304.2 that reads as follows:

9 93-4304.2. Postseizure hearing. (1) When a writ has 19 been issued upon the showing specified in  $93+4304 \cdot 1$  (3)(b), 11 the defendant may challenge the seizure of the property at a 12 hearing before the court to be held within 3 days after the 13 seizure. Notice shall-be-aiven-the-defendant-as-required-in 93-4304+1-- (3) (a) OF\_\_THE\_\_RIGHT\_\_TO\_A\_POST-SELZURE\_HEARING 14 15 SHALL BE SERVED PERSONALLY ON THE DEFENDANT. OR IF THE DEFENDANT CANNOT BE FOUND FOR PERSONAL SERVICE. NOTICE SHALL 16 BE POSTED ON THE PROPERTY AND IN THREE PUBLIC PLACES IN THE 17 18 COUNTY WHERE THE PROPERTY IS LOCATED.

19 (2) At such hearing the defendant may challenge the
20 merit of the underlying action, the need for the prejudgment
21 seizure of property, or both. The writ shall be quashed if
22 the court makes a preliminary finding that:

(a) there is no question of fact to be resolved and
that the plaintiff cannot establish the prima facie validity
of his claim; or

(b) there is no need for the continued attachment of
 the defendant's property.

3 Section 6. Section 93-6908, R.C.H. 1947, is amended to
 4 read as follows:

5 #93-6908. Writ of attachment shall issue upon affidavit. A writ to attach the property of the defendant 6 7 must be issued by the justice at the time of, or after issuing summons and before answer; on receiving an affidavit 8 9 by or on behalf of the plaintiff, showing the same facts as 10 are required to be shown by the affidavit specified in 11 section-93-4302 93-4302.1.\* 12 Section 7. Repealer. Section 93-4302, R.C.H. 1947, is repealed. 13

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1 1 propertyy 1 ory HOUSE BILL NO. 763 2 INTRODUCED BY RAMIREZ. MELOY 2 (ii) if is originally securedy and such security has. without any act of the plaintiffy or the person to whom the 3 3 security was given, becomes become valuelessy: and in 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE 4 5 ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE 5 (b) an action based upon a statutory stockholders\* 6 ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR 5 liability. PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR 7 7 (3) Attachment may not issue if the defendant gives 8 IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301. 8 security to pay the judgment." 9 Section 2. There is a new R.C.N. section numbered 9 93-4304, AND 93-6908, R.C.H. 1947; AND REPEALING SECTION 10 10 93-4302.1 that reads as follows: 93-4302, R.C.M. 1947." 11 93-4302.1. Affidavit required for attachment. When 11 attachment of a defendant's property is sought, an affidavit 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12 13 13 Section 1. Section 93-4301. R.C.M. 1947. is amended to must be made by the plaintiff or someone in his behalf read as follows: 14 stating: 14 15 "93-4301. When attachment may issue. (1) The A 15 (1) facts which show the defendant is indebted to the 16 plaintiff in the manner specified in 93-4301(2): 16 plaintiff, at the time of issuing the summons, or at any 17 time afterward, may have the property of the defendant (2) that the attachment is not sought to hinder. 17 18 delay, or defraud any creditor of the defendant; 18 attachedy as security for the satisfaction of any judgment (3) facts creating a reasonable belief that the 19 that may be recoveredy-unless-the defendant--gives--security .19 defendant is: 20 20 to--pay--such--judgmenty--as--in--this--chapter-providedy-as 21 (a) leaving or about to leave this state taking with 21 follows+. 22 him property, money, or other effects which might be 22 (2) Property may be attached in: In subjected to payment of the debt; or 23 (a) an action upon a contract, express or implied, for 23 (b) disposing or about to dispose of his property 24 the direct payment of money, where the contract: 24 25 (i) is not secured by any mortgage or lien upon real 25 which would be subject to execution;

THIRD READING

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25

(4) a particular description and the actual value of
 the property to be attached.

3 Section 3. Section 93-4304, R.C.M. 1947, is amended to
4 read as follows:

5 "93-4304. Undertaking. [1] Before issuing the write 6 the clerk court must require a written undertaking on the 7 part of the plaintiff, with two 121 or more sufficient sureties, to be approved by the <del>clerk</del> court, in a sum not 8 less than double the amount claimed by the plaintiff, if 9 10 such amount be one-thousand-dollars-{\$1,000} or under, or, in case the amount so claimed by plaintiff shall exceed one 11 12 thousand-dollars--{\$1,000}, then in a sum equal to such amounty, but-in In no case shall an undertaking be required 13 exceeding in amount the sum of twenty-thousand-dollars 14 +\$20,000; The condition of such undertaking shall be to the 15 effect that if the defendant recovered judgment, or if the 16 court shall finally decide decides that the plaintiff was 17 not entitled to an attachment, the plaintiff will pay all 18 costs that may be awarded to the defendant, and all damages 19 he may sustain by reason of the issuing out of the 20 attachment, not exceeding the sum specified in the 21 22 undertaking.

23 <u>(2)</u> At any time within thirty--(30) days after the 24 service of summons, the defendant may except to the 25 sufficiency of the sureties. If he fails to do so, he is

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1 deemed to have waived all objections to them.

2 (3) When excepted to, the plaintiff's sureties, upon 3 notice to the defendant of not less than two--f2+ days nor more than ten-fl0; days, must justify before a judge of the 4 district court, or--before--the--clerk--thereof, and upon 5 6 failure to justify, or if others in their place fail to 7 justify, at the time and place appointed, the <del>clerk-or</del> judge shall issue an order vacating the writ of attachment." 8 9 Section 4. There is a new R.C.M. section numbered 10 93-4304-1 that reads as follows: 93-4304.1. Writ -- when issued. A judge of a court 11 having jurisdiction of the cause may issue a writ of 12 13 attachment when: (1) he has received the affidavit described in 14 93-4302.1; 15 (2) he has approved the undertaking required in 16 17 93-4304; and 18 (3) the party seeking attachment has made a prima 19 facie showing: 20 (a) of his right to possession and the necessity for 21 seizure at a show cause hearing before the court with at 22 least 3 days' notice to the defendant; if the defendant 23 cannot be found for personal service, notice shall be posted on the property and in three public places in the county 24

where the property is located; or

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#### HB 0763/02

1 (b) that the delay caused by notice and a hearing 2 would seriously impair the remedy sought by the party 3 seeking possession. Evidence of such impairment must be 4 presented in open court and the court must set forth with 5 specificity the reasons why such delay would seriously 6 impair the remedy sought by the person seeking attachment. 7 Section 5. There is a new R.C.M. section numbered

8 93-4304-2 that reads as follows:

9 93-4304.2. Postseizure hearing. (1) When a writ has 10 been issued upon the showing specified in  $93-4304 \cdot 1$  (3)(b). 11 the defendant may challenge the seizure of the property at a 12 hearing before the court to be held within 3 days after the 13 seizure. Notice shall-be-given-the-defendant-as-required-in 14 93-4304+1--+37+07 OF THE RIGHT TO A POST-SEIZURE HEARING 15 SHALL BE SERVED PERSONALLY ON THE DEFENDANT. OR IF THE DEFENDANT CANNOT BE FOUND FOR PERSONAL SERVICE. NOTICE SHALL 15 BE POSTED ON THE PROPERTY AND IN THREE PUBLIC PLACES IN THE 17 18 COUNTY WHERE THE PROPERTY IS LOCATED. 19 (2) At such hearing the defendant may challenge the

20 merit of the underlying action, the need for the prejudgment 21 seizure of property, or both. The writ shall be quashed if 22 the court makes a preliminary finding that:

(a) there is no question of fact to be resolved and
that the plaintiff cannot establish the prima facie validity
of his claim; or

(b) there is no need for the continued attachment of
 the defendant's property.
 Section 6. Section 93-6908, R.C.M. 1947, is amended to
 read as follows:
 "93-6908. Writ of attachment shall issue upon

affidavit. A writ to attach the property of the defendant
must be issued by the justice at the time of, or after
issuing summons and before answer, on receiving an affidavit
by or on behalf of the plaintiff, showing the same facts as
are required to be shown by the affidavit specified in
section -93-4302 93-4302.1.\*\*
Section 7. Repealer. Section 93-4302, R.C.M. 1947, is

13 repealed.

-End-

March 16, 1977

## STANDING COMMITTEE REPORT Senate Committee on Judiciary

That House Bill No. 763 be amended as follows:

1. Amend page 2, section 2, line 20. Following: "defendant" Strike: "is" 2. Amend page 2, section 2, line 21. Following: "(a)" Insert: "is" 3. Amend page 2, section 2, line 23. Following: "debt;" Strike: "or" 4. Amend page 2, section 2, line 24. Following: "(b)" Insert: "is" 5. Amend page 2, section 2, line 25. Following: line 25 Insert: "(c) has the power to dispose of or conceal or remove 🛩 from the state property which would be subject to execution; or (d) is likely to suffer liens or encumbrances on his property which would be subject to execution;" 6. Amend page 3, section 3, line 16. Following: "defendant" Strike: "recovered" Insert: "recovers" 7. Amend page 4, section 4, line 20. Following: "(a)" Insert: "in the case of real property, of his right to attachment and the necessity for seizure; (b) in the case of personal property; (i)" 8. Amend page 4, section 4, line 20. Following: "to" Strike: "possession" Insert: "attachment" Amend page 5, section 4, line 1. 9. Following: line 25 on page 4 Strike: "(b)" Insert: "(ii) of his right to attachment and the necessity for seizure and"

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10. Amend page 5, section 5, line 10.
Following: "issued"
Insert: "upon real property or"
Following: "(b)"
Insert: "(ii)"

11. Amend page 5, section 5, line 23.
Following: "(a)"
Strike: "there is no question of fact to be resolved and that"

12. Amend page 6, section 5, line 1.
Following: "(b)"
Strike: "there is no"
Insert: "the plaintiff cannot establish by a preponderance of the
 evidence the"

13. Amend page 6, section 6, line 5.
Following: "attachment"
Strike: "shall"
Insert: "may"

14. Amend page 6, section 6, line 7.
Following: line 6
Strike: "must"
Insert: "may"

HOUSE BILL NO. 763 1 INTRODUCED BY RAMIREZ, MELOY 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE 4 ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE 5 ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR 6 PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR 7 IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301, B 93-4304. AND 93-6908. R.C.M. 1947; AND REPEALING SECTION 9 10 93-4302+ R.C.M. 1947.\* 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 12

13 Section 1. Section 93-4301, R.C.M. 1947, is amended to 14 read as follows:

15 #93-4301. When attachment may issue. (1) The A 16 plaintiff, at the time of issuing the summons, or at any 17 time afterward, may have the property of the defendant 19 attachedy as security for the satisfaction of any judgment 19 that may be recoveredy-unless-the-defendant--gives--security 20 to--pay--such--judgmenty--as--in--this--chapter-providedy-as 21 followsta

22 (2) Property may be attached in: In

23 (a) an action upon a contract, express or implied, for
 24 the direct payment of money, where the contract;

25 (i) is not secured by any mortgage or lien upon real

ł	property <del>vi</del> or <del>v</del>
2	(ii) if is originally secured, and such security has,
3	without any act of the plaintiffy or the person to whom the
4	security was given, <del>becomes <u>become</u> valueless<u>y:</u> and <del>in</del></del>
5	(b) an action based upon a statutory stockholders*
6	liability.
7	[3] Attachment may not issue if the defendant gives
8	security_to_pay_the_judgment.**
9	Section 2. There is a new R.C.M. section numbered
10	93-4302.1 that reads as follows:
11	93-4302.1. Affidavit required for attachment. When
12	attachment of a defendant's property is sought, an affidavit
13	must be made by the plaintiff or someone in his behalf
14	stating:
15	(1) facts which show the defendant is indebted to the
16	plaintiff in the manner specified in 93-4301(2);
17	(2) that the attachment is not sought to hinder.
18	delay, or defraud any creditor of the defendant;
19	(3) facts creating a reasonable belief that the
20	defendant <del>is</del> :
21	(a) IS leaving or about to leave this state taking
22	with him property, money, or other effects which might be
23	subjected to payment of the debt; <del>or</del>
24	(b) IS disposing or about to dispose of his property
25	which would be subject to execution;

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REFERENCE BILL

HB 763

1	(C) HAS THE POWER TO DISPOSE OF OR CONCEAL OR REMOVE
2	FROM THE STATE PROPERTY WHICH WOULD BE SUBJECT TO EXECUTION:
3	<u>ar</u>
4	(D) IS LIKELY TO SUFFER LIENS OR ENCUMBRANCES ON HIS
5	PROPERTY WHICH WOULD BE SUBJECT TO EXECUTION:
6	(4) a particular description and the actual value of
7	the property to be attached.
8	Section 3. Section 93-4304, R.C.M. 1947, is amended to
9	read as follows:
10	*93-4304. Undertaking. <u>[1]</u> Before issuing the writ,
11	the <del>clerk <u>court</u> must require a written undertaking on the</del>
12	part of the plaintiff, with two <del>(2)</del> or more sufficient
13	sureties, to be approved by the <del>clerk <u>court</u>,</del> in a sum not
14	less than double the amount claimed by the plaintiff, if
15	such amount be <del>one-thousand-dollers-(</del> \$1:000 <del>)</del> or under; or;
16	in case the amount so claimed by plaintiff shall exceed one
17	thousanddollarst\$1,000}, then in a sum equal to such
18	amount <del>y, but in In</del> no case shall an undertaking be required
19	exceeding in amount the sum of <del>twenty-thousand-dollars</del>
20	<code><code>{\$20,000}</code>. The condition of such undertaking shall be to the</code>
21	effect that if the defendant <del>recovered <u>RECOVERS</u> judgment,</del> or
22	if the court <del>shall</del> finally <del>decide</del> <u>decides</u> that the plaintiff
23	was not entitled to an attachment, the plaintiff will pay
24	all costs that may be awarded to the defendant, and all
25	damages he may sustain by reason of the issuing <del>out</del> of the

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1 attachment, not exceeding the sum specified in the
2 undertaking.

3 <u>[2]</u> At any time within thirty--(30) days after the 4 service of summons, the defendant may except to the 5 sufficiency of the sureties. If he fails to do so, he is 6 deemed to have waived all objections to them.

7 [3] When excepted to, the plaintiff's sureties, upon 8 notice to the defendant of not less than two--+2 days nor more than ten-(10) days, must justify before a judge of the 9 district court. or--before--the--clerk--thereofy and upon 10 failure to justify, or if others in their place fail to 11 j.stify, at the time and place appointed, the clerk-or judge 12 shall issue an order vacating the writ of attachment." 13 14 Section 4. There is a new R.C.M. section numbered 15 93-4304.1 that reads as follows: 93-4304.1. Writ --- when issued. A judge of a court 16 17 having jurisdiction of the cause may issue a writ of 13 attacnment when: (1) he has received the affidavit described in 19 20 93-4302-1; 21 (2) he has approved the undertaking required in 22 93-4304; and (3) the party seeking attachment has made a prima 23 24 facie showing: (a) IN THE CASE OF REAL PROPERTY. OF HIS RIGHT TO 25 HB 763 -4-

HB 763

#### 1 ATTACHMENT AND THE NECESSITY EDR SEIZURE:

#### 2 (6) IN THE CASE OF PERSONAL PROPERTY:

3 (1) of his right to possession <u>AITACHMENI</u> and the 4 necessity for seizure at a show cause hearing before the 5 court with at least 3 days' notice to the defendant; if the 6 defendant cannot be found for personal service, notice shall 7 be posted on the property and in three public places in the 8 county where the property is located; or

++++(II) OF HIS RIGHT TO ATTACHMENT AND THE NECESSITY 9 FOR SEIZURE AND that the delay caused by notice and a 10 hearing would seriously impair the remedy sought by the 11 party seeking possession. Evidence of such impairment must 12 be presented in open court and the court must set forth with 13 14 specificity the reasons why such delay would seriously 15 impair the remedy sought by the person seeking attachment. 16 Section 5. There is a new R.C.M. section numbered 17 93-4304.2 that reads as follows:

18 93-4304.2. Postseizure hearing. (1) When a writ has 19 been issued UPON REAL PROPERTY DR upon the showing specified 20 in 93-4304.1 (3)(b)(II), the defendant may challenge the 21 seizure of the property at a hearing before the court to be held within 3 days after the seizure. Notice shall-be-given 22 23 IO A POSTSEIZURE HEARING SHALL BE SERVED PERSONALLY ON THE 24 DEFENDANT. OR IF THE DEFENDANT CANNOT BE EDUND FOR PERSONAL 25

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1 SERVICE. NOTICE SHALL BE POSTED ON THE PROPERTY AND IN THREE 2 PUBLIC PLACES IN THE COUNTY WHERE THE PROPERTY IS LOCATED. 3 (2) At such hearing the defendant may challenge the 4 merit of the underlying action, the need for the prejudgment 5 seizure of property, or both. The writ shall be guashed if the court makes a preliminary finding that: 6 7 (a) there--is--no--question-of-fact-to-be-resolved-and в that the plaintiff cannot establish the prima facie validity 9 of his claim; or 10 (b) there-is-no THE\_PLAINTIFE CANNOT\_ESTABLISH BY A 11 PREPONDERANCE \_OF THE EVIDENCE THE need for the continued 12 attachment of the defendant's property. 13 Section 6. Section 93-6908. R.C.M. 1947. is amended to 14 read as follows: 15 #93-6908. Writ of attachment shall MAY issue upon 16 affidavit. A writ to attach the property of the defendant 17 must HAY be issued by the justice at the time of, or after 18 issuing summons and before answer, on receiving an affidavit 19 by or on behalf of the plaintiff, showing the same facts as 20 are required to be shown by the affidavit specified in 21 section-93-4302 93-4302.1.\* 22 Section 7. Repealer. Section 93-4302, R.C.M. 1947, is

-End-

repealed.

23

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