

1 *House* BILL NO. *763*
 2 INTRODUCED BY *Ramirez Meloy*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
 5 ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE
 6 ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR
 7 PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR
 8 IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301,
 9 93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION
 10 93-4302, R.C.M. 1947."

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

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
 18 attached, as security for the satisfaction of any judgment
 19 that may be recovered, ~~unless the defendant gives security~~
 20 ~~to pay such judgment, as in this chapter provided, as~~
 21 follows:

- 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

1 property, or

2 (ii) if is originally secured, and such security has,
 3 without any act of the plaintiff, or the person to whom the
 4 security was given, become ~~become~~ valueless, and in

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 is:

21 (a) leaving or about to leave this state taking with
 22 him property, money, or other effects which might be
 23 subjected to payment of the debt; or

24 (b) disposing or about to dispose of his property
 25 which would be subject to execution;

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2 the property to be attached.

3 Section 3. Section 93-4304, R.C.M. 1947, is amended to
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5 "93-4304. Undertaking. ~~(1)~~ Before issuing the writ,
6 the ~~clerk~~ court must require a written undertaking on the
7 part of the plaintiff, with two ~~(2)~~ or more sufficient
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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~~ ~~(\$1,000)~~, then in a sum equal to such
13 amount, ~~but in~~ In no case shall an undertaking be required
14 exceeding in amount the sum of ~~twenty-thousand-dollars~~
15 ~~(\$20,000)~~. The condition of such undertaking shall be to the
16 effect that if the defendant recovered judgment, or if the
17 court ~~shall~~ finally ~~decide~~ decides that the plaintiff was
18 not entitled to an attachment, the plaintiff will pay all
19 costs that may be awarded to the defendant, and all damages
20 he may sustain by reason of the issuing ~~out~~ of the
21 attachment, not exceeding the sum specified in the
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 notice to the defendant of not less than ~~two~~ ~~(2)~~ days nor
4 more than ~~ten~~ ~~(10)~~ days, must justify before a judge of the
5 district court, ~~or before the clerk thereof~~, and upon
6 failure to justify, or if others in their place fail to
7 justify, at the time and place appointed, the ~~clerk~~ or judge
8 shall issue an order vacating the writ of attachment."

9 Section 4. There is a new R.C.M. section numbered
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12 having jurisdiction of the cause may issue a writ of
13 attachment when:

14 (1) he has received the affidavit described in
15 93-4302.1;

16 (2) he has approved the undertaking required in
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
24 on the property and in three public places in the county
25 where the property is located; or

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
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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).

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 16 merit of the underlying action, the need for the prejudgment
 17 seizure of property, or both. The writ shall be quashed if
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 6 are required to be shown by the affidavit specified in
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8 Section 7. Repealer. Section 93-4302, R.C.M. 1947, is
 9 repealed.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 763

INTRODUCED BY RAMIREZ, MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301, 93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION 93-4302, R.C.M. 1947."

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

"93-4301. When attachment may issue. (1) The A plaintiff, at the time of issuing the summons, or at any 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 to pay such judgment as in this chapter provided as follows:~~

(2) Property may be attached in: in

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

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

property; or

(ii) if is originally secured, and such security has, without any act of the plaintiff, or the person to whom the security was given, becomes become valueless; and in (b) an action based upon a statutory stockholders' liability.

(3) Attachment may not issue if the defendant gives security to pay the judgment."

Section 2. There is a new R.C.M. section numbered 93-4302.1 that reads as follows:

93-4302.1. Affidavit required for attachment. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 93-4301(2);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant is:

(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

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25 sufficiency of the sureties. If he fails to do so, he is

1 deemed to have waived all objections to them.

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THIRD READING

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 11 ~~section-93-4302 93-4302.1."~~

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 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"
9. Amend page 5, section 4, line 1.
Following: line 25 on page 4
Strike: "(b)"
Insert: "(ii) of his right to attachment and the necessity for seizure
and"

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"

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INTRODUCED BY RAMIREZ, MELOY

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(2) Property may be attached in:

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(a) is 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

(b) is disposing or about to dispose of his property which would be subject to execution;

1 (C) HAS THE POWER TO DISPOSE OF OR CONCEAL OR REMOVE
2 FROM THE STATE PROPERTY WHICH WOULD BE SUBJECT TO EXECUTION;

3 OR

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
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8 Section 3. Section 93-4304, R.C.M. 1947, is amended to
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23 (3) the party seeking attachment has made a prima
24 facie showing:

25 (a) IN THE CASE OF REAL PROPERTY, OF HIS RIGHT TO

1 ATTACHMENT AND THE NECESSITY FOR SEIZURE:

2 (E) IN THE CASE OF PERSONAL PROPERTY:

3 (II) of his right to possession ATTACHMENT 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

9 ~~(b)(III) OF HIS RIGHT TO ATTACHMENT AND THE NECESSITY~~
10 FOR SEIZURE AND that the delay caused by notice and a
11 hearing would seriously impair the remedy sought by the
12 party seeking possession. Evidence of such impairment must
13 be presented in open court and the court must set forth with
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 OR 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
22 held within 3 days after the seizure. Notice ~~shall be given~~
23 ~~the defendant as required in 93-4304.1 (3)(a) OF THE RIGHT~~
24 TO A POSTSEIZURE HEARING SHALL BE SERVED PERSONALLY ON THE
25 DEFENDANT, OR IF THE DEFENDANT CANNOT BE FOUND FOR PERSONAL

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 quashed if
6 the court makes a preliminary finding that:

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

10 (b) ~~there is no~~ THE PLAINTIFF 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 ~~shall~~ MAY issue upon
16 affidavit. A writ to attach the property of the defendant
17 ~~must~~ MAY 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
23 repealed.

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