

SENATE BILL NO. 433

Introduced: 02/16/83

Referred to Committee on Judiciary: 02/16/83

Hearing: 2/17/83

Died in Committee.

1 *Senators* BILL NO. 433
2 INTRODUCED BY Bob Bonds
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING WHICH
5 PROPERTY OF A JUDGMENT DEBTOR IS EXEMPT FROM EXECUTION OF A
6 CIVIL JUDGMENT; PREVENTING WAIVER OF EXEMPTIONS;
7 ESTABLISHING A PROCEDURE TO DETERMINE THE VALUE AND EXEMPT
8 PORTION OF PARTIALLY EXEMPT PROPERTY; PROVIDING FOR
9 EXECUTION ON AND SALE OF PARTIALLY EXEMPT PROPERTY;
10 PROVIDING FOR JUDICIAL RELIEF AND THE PAYMENT OF COSTS AND
11 ATTORNEY FEES; REPEALING SECTIONS 25-13-601, 25-13-602,
12 25-13-611 THROUGH 25-13-614, 25-13-616, AND 25-13-617, MCA."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Definitions. As used in [sections 1 through
16 11], the following definitions apply:
17 (1) "Dependent" means a spouse and any other natural
18 person over one-half of whose support is derived from the
19 debtor.
20 (2) "Individual" means a natural person who is a
21 judgment debtor.
22 (3) "Lien" means a charge against or interest in
23 property to secure payment of a debt or performance of an
24 obligation.
25 (4) "Security interest" means an interest in property

1 created by contract to secure payment or performance of an
2 obligation.
3 (5) "Statutory lien" means a lien arising by force of
4 a statute under specified circumstances or conditions but
5 does not include a security interest or judicial lien.
6 (6) "Value" means fair market value of an individual's
7 interest in property, exclusive of valid liens.
8 Section 2. Property exempt without limitation. An
9 individual is entitled to exemption from execution of the
10 following property:
11 (1) a burial plot for the individual and his family;
12 (2) health aids reasonably necessary to enable the
13 individual or a dependent to work or to sustain health;
14 (3) benefits the individual has received or is
15 entitled to receive under federal social security or state
16 unemployment compensation or under federal, state, or local
17 public assistance laws;
18 (4) benefits paid or payable for medical, surgical, or
19 hospital care to the extent they are or will be used to pay
20 for the care;
21 (5) veterans' benefits; and
22 (6) an award under the Crime Victims Compensation Act
23 of Montana.
24 Section 3. Property exempt to extent reasonably
25 necessary for support. (1) In addition to the property

1 covered by [section 2], an individual is entitled to
2 exemption from execution of the following property to the
3 extent reasonably necessary for his support and the support
4 of his dependents:

5 (a) benefits paid or payable by reason of disability,
6 illness, or unemployment;

7 (b) money or property received and the right to
8 receive money or property for alimony or maintenance;

9 (c) proceeds of insurance, a court judgment, or a
10 settlement of a legal action or claim accruing as a result
11 of bodily injury to the individual;

12 (d) proceeds of insurance, a court judgment, or a
13 settlement of a legal action or claim accruing as a result
14 of the wrongful death of another person of whom the
15 individual was a dependent;

16 (e) proceeds or benefits paid or payable on the death
17 of an insured if the individual was the spouse or a
18 dependent of the insured; and

19 (f) assets held, payments made, and amounts payable
20 under a stock bonus, pension, profit-sharing, annuity, or
21 similar plan or contract, providing benefits by reason of
22 age, illness, disability, or length of service.

23 (2) For purposes of this section, the phrase "property
24 to the extent reasonably necessary for his support and the
25 support of his dependents" means property required to meet

1 the present and anticipated needs of the individual and his
2 dependents, as determined by a court.

3 Section 4. Exemption of unmatured life insurance
4 contracts. (1) Except as provided in subsection (2) and in
5 addition to the property covered by [sections 2 and 3], an
6 individual is entitled to an exemption of any unmatured life
7 insurance contracts owned by him.

8 (2) If the contracts have accrued dividends, interest,
9 and loan values of more than \$4,000 that are available to
10 the individual, a creditor may, in the court in which the
11 judgment sought to be enforced was rendered, petition for
12 and obtain an order requiring the individual debtor to pay
13 the creditor the amount of the accrued dividends, interest,
14 and loan values in excess of \$4,000 or the amount of the
15 creditor's claim, whichever is less, and authorizing the
16 creditor on the debtor's behalf to obtain payment of the
17 same.

18 Section 5. Exemptions of personal property subject to
19 value limitations. In addition to the property covered by
20 [sections 2 through 4], an individual is entitled to
21 exemption of:

22 (1) the following property, not exceeding \$500 in
23 value for any one item:

24 (a) furnishings and appliances, not exceeding an
25 aggregate value of \$3,000, reasonably necessary for one

1 household;

2 (b) wearing apparel, not exceeding an aggregate value
3 of \$1,500, if reasonably held for the personal use of the
4 individual or a dependent; and

5 (c) family portraits and heirlooms not exceeding an
6 aggregate value of \$750;

7 (2) jewelry, not exceeding \$500 in aggregate value, if
8 held for the personal use of the individual or a dependent;

9 (3) implements, professional books, and tools of the
10 trade, not exceeding an aggregate value of \$2,500,
11 reasonably necessary to the individual in the exercise of
12 the trade, calling, or profession by which he earns his
13 livelihood;

14 (4) one motor vehicle not exceeding \$1,500 in value.
15 If the motor vehicle also qualifies for an exemption as a
16 tool of the trade under subsection (3), any unused portion
17 of that exemption may be applied to increase the exempted
18 value of the motor vehicle allowed under this subsection.

19 Section 6. Claims enforceable against exempt property.
20 Notwithstanding other provisions of [sections 1 through 11]:

21 (1) a creditor may levy against any property otherwise
22 exempt to enforce a claim for:

23 (a) child support or maintenance;

24 (b) federal, state, or local taxes; or

25 (c) a special assessment imposed to defray costs of a

1 public improvement benefiting the property.

2 (2) [sections 1 through 11] do not affect any
3 statutory lien or security interest in property.

4 Section 7. Waiver of exemptions. A waiver of any
5 exemption provided under [sections 1 through 11] in favor of
6 an unsecured creditor is unenforceable.

7 Section 8. Petition for order relating to limited
8 value exemptions -- objection. (1) A writ of execution for a
9 claim not covered by [section 6] may not be issued against
10 an individual's property of a kind listed in [section 5]
11 unless this section has been complied with.

12 (2) Before a writ of execution is issued, the judgment
13 creditor shall file with the court:

14 (a) an affidavit:

15 (i) stating that he has reason to believe the
16 individual has property of a kind listed in [section 5];

17 (ii) identifying the property;

18 (iii) stating the exempt and nonexempt value of the
19 property; and

20 (iv) setting forth facts constituting the basis for the
21 belief that the property exists and that a portion is not
22 exempt; and

23 (b) a petition for an order notifying the individual
24 of:

25 (i) the creditor's claim of a right to a writ of

1 execution against that part of the property identified as
2 nonexempt;

3 (ii) the individual's right to contest the creditor's
4 claim of a right to a writ by filing with the clerk of
5 court, on or before a date fixed by the court but not
6 exceeding 20 days after the service of the order, a written
7 objection to the proposed writ. The notice must state that:

8 (A) the objection must set forth a statement of the
9 grounds for the objection, the value of the property in
10 question, and the amount of the debt which the individual
11 believes chargeable against the property; and

12 (B) the individual has a right to describe the
13 property in lieu of setting forth its value; and

14 (iii) the possible consequences of failure to respond
15 to the notice.

16 (3) An order issued pursuant to a petition under
17 subsection (2)(b) must be served on the individual by the
18 sheriff in the manner provided by law for the service of
19 process.

20 (4) If the individual fails to respond to the order
21 issued under this section within the time provided by the
22 court, the court shall order the individual to appear and
23 disclose the description, location, and value of his
24 property. If the individual fails to appear and disclose the
25 information specified in the order, he waives the right to

1 object to the issuance of the writ against the property.

2 Section 9. Hearing to determine value. Upon receipt of
3 a written objection, the court shall set a time and place
4 for a hearing to determine the value of the property exempt
5 or partially exempt under [section 5]. Notice of the hearing
6 must be served in the manner provided by law for the service
7 of process on the individual filing the objection. At the
8 hearing the court shall determine the value of any property
9 exempt or partially exempt under [section 5] and the
10 property, if any, against which the writ is to be issued
11 and, if appropriate, shall order the writ to be issued.

12 Section 10. Execution and sale -- payment of costs.

13 (1) Execution and sale of the kind of property listed in
14 [section 5] must be made in accordance with Title 25,
15 chapter 13, parts 4 and 7. The creditor may not receive
16 proceeds from the sale of the property before the individual
17 is paid the full amount of his exemptions under [section 5].

18 (2) Costs incurred in obtaining a writ of execution
19 and making a levy on property of a kind listed in [section
20 5] must be paid out of the proceeds of the sale of property
21 of that kind. If the proceeds of a sale of the property are
22 insufficient to pay the costs incurred in proceedings
23 commenced under [section 8], the creditor shall pay the
24 costs and may not recover them from the debtor,
25 notwithstanding any agreement of the parties to the

1 contrary.

2 Section 11. Judicial relief. (1) If a sale of property
3 partly exempt under [section 5] yields less than the full
4 amount of the exemption under that section, the judgment
5 creditor shall pay to the individual an amount equal to the
6 remaining amount of the exemption. The court may also, in
7 its discretion, award costs and reasonable attorney fees to
8 either party.

9 (2) An individual or the spouse or a dependent of the
10 individual is entitled to injunctive relief, damages, or
11 both, against a creditor or other person to prevent or
12 redress a violation of [sections 1 through 11]. A court may,
13 in its discretion, award costs and reasonable attorney fees
14 to a party entitled to injunctive relief or damages.

15 (3) For excusable neglect, the court may relieve a
16 person from the consequences of failing to take timely
17 action to assert his rights under [sections 1 through 11].

18 Section 12. Repealer. Sections 25-13-601, 25-13-602,
19 25-13-611 through 25-13-614, 25-13-616, and 25-13-617, MCA,
20 are repealed.

21 Section 13. Severability. If a part of this act is
22 invalid, all valid parts that are severable from the invalid
23 part remain in effect. If a part of this act is invalid in
24 one or more of its applications, the part remains in effect
25 in all valid applications that are severable from the

1 invalid applications.

2 Section 14. Codification instruction. Sections 1
3 through 11 are intended to be codified as an integral part
4 of Title 25, chapter 13, and the provisions of Title 25,
5 chapter 13, apply to sections 1 through 11.

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