

SENATE BILL NO. 89

INTRODUCED BY MAZUREK

IN THE SENATE

January 11, 1985	Introduced and referred to Committee on Judiciary.
January 28, 1985	Committee recommend bill do pass as amended. Report adopted.
January 29, 1985	Bill printed and placed on members' desks.
January 30, 1985	Second reading, do pass. On motion, bill segregated and placed on second reading on 22nd Legislative Day. Motion adopted.
January 31, 1985	Second reading, do pass as amended.
February 1, 1985	Correctly engrossed.
February 2, 1985	Third reading, passed. Ayes, 44; Noes, 2. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Judiciary.
March 20, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1985	Second reading, concurred in.
March 25, 1985	Third reading, concurred in. Returned to Senate with amendments.

IN THE SENATE

March 25, 1985

Received from House.

April 2, 1985

Second reading, amendments
concurrent in.

April 4, 1985

Third reading, amendments
concurrent in.
Ayes, 49; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 Senate BILL NO. 89
2 INTRODUCED BY Harquah

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
5 RELATING TO GARNISHMENT OF PERSONAL SERVICES EARNINGS;
6 AMENDING SECTION 25-13-614, MCA; AND PROVIDING AN IMMEDIATE
7 EFFECTIVE DATE."

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

10 Section 1. Section 25-13-614, MCA, is amended to read:

11 "25-13-614. Earnings of judgment debtor. (1) ~~Except as~~
12 ~~provided in this section, the~~ The earnings of the judgment
13 debtor for his personal services rendered at any time within
14 45 days next preceding the levy of execution or attachment,
15 ~~when it appears by the debtor's affidavit or otherwise that~~
16 ~~such are exempt, subject to the limitations in subsection~~
17 ~~(2), if upon a hearing held pursuant to [section 2], the~~
18 ~~court determines that the~~ earnings are necessary for the use
19 of his family supported in whole or in part by his labor,
20 ~~are exempt.~~

21 (2) Earnings for personal services are ~~exempt under~~
22 ~~this section from~~ subject to execution, garnishment, and
23 attachment, to the extent allowed by 15 U.S.C. 1673, upon
24 judgments or orders for maintenance or child support only to
25 the extent allowed by 15 U.S.C. 1673; and to satisfy

1 ~~(3) Whenever debts are incurred by any such person the~~
2 ~~judgment debtor or his wife or family for gasoline and for~~
3 ~~the common necessities of life, then the one-half of such~~
4 ~~earnings are nevertheless subject to execution, garnishment,~~
5 ~~and attachment to satisfy debts so incurred.~~

6 ~~(4)~~ (3) The words "his family", as used in this
7 section, except to the extent that these words include a
8 person covered by a judgment or order under subsection (2),
9 are to be construed to include:

- 10 (a) the judgment debtor's spouse;
- 11 (b) every person who resides with the judgment debtor
- 12 under his care or maintenance and who is:
 - 13 (i) a minor child of the judgment debtor or of his
 - 14 spouse or former spouse;
 - 15 (ii) a minor grandchild, brother, or sister or minor
 - 16 child of a brother or sister of the judgment debtor or of
 - 17 his spouse;
 - 18 (iii) a father, mother, grandfather, or grandmother of
 - 19 the judgment debtor or of his spouse or former spouse;
 - 20 (iv) an unmarried sister, brother, or any other
 - 21 relative of the judgment debtor mentioned in this section
 - 22 who has attained the age of majority and is unable to care
 - 23 for or support himself."

24 NEW SECTION. Section 2. Execution against earnings of
25 judgment debtor -- affidavit of exemption -- hearing. (1) A



1 judgment debtor may exempt earnings, for his personal
2 services, as provided in 25-13-614, by filing an affidavit
3 with the court that issued the writ of execution or
4 attachment declaring that such earnings are necessary for
5 the use of his family supported in whole or in part by his
6 labor.

7 (2) When an affidavit of exemption is filed, the court
8 shall set the matter for hearing within 14 days to determine
9 eligibility for and the amount of exemption, if any, under
10 25-13-614. The court shall immediately mail a copy of the
11 affidavit and notice of hearing to the party who requested
12 issuance of the writ of execution or attachment.

13 (3) The sheriff shall hold all money received from the
14 execution in a fiduciary account, pending a final order of
15 the court.

16 NEW SECTION. Section 3. Codification instruction.
17 Section 2 is intended to be codified as an integral part of
18 Title 25, chapter 13, part 4, and the provisions of Title
19 25, chapter 13, part 4, apply to section 2.

20 NEW SECTION. Section 4. Saving clause. This act does
21 not affect rights and duties that matured, penalties that
22 were incurred, or proceedings that were begun before the
23 effective date of this act.

24 NEW SECTION. Section 5. Effective date. This act is
25 effective on passage and approval.

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 89
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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
RELATING TO GARNISHMENT OF PERSONAL SERVICES EARNINGS;
AMENDING SECTION 25-13-614, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

Section 1. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) ~~Except as provided in this section, the~~ The earnings of the judgment debtor for his personal services rendered at any time within 45 days next preceding the levy of execution or attachment, ~~when it appears by the debtor's affidavit or otherwise that such are exempt, subject to the limitations in subsection (2), if upon a hearing held pursuant to [section 2], the court determines that the earnings are necessary for the use of his family supported in whole or in part by his labor, are exempt.~~

(2) Earnings for personal services are ~~exempt under this section from~~ subject to execution, garnishment, and attachment, to the extent allowed by 15 U.S.C. 1673, upon judgments or orders for maintenance or child support only to the extent allowed by 15 U.S.C. 1673, and to satisfy

~~(3) Whenever debts are incurred by any such person the judgment debtor or his wife or family for gasoline and for the common necessities of life, then the one-half of such earnings are nevertheless subject to execution, garnishment, and attachment to satisfy debts so incurred.~~

~~(4)~~ (3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:

(a) the judgment debtor's spouse;

(b) every person who resides with the judgment debtor under his care or maintenance and who is:

(i) a minor child of the judgment debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

NEW SECTION. Section 2. Execution against earnings of judgment debtor -- affidavit of exemption -- hearing. (1) NO



1 EXECUTION AGAINST THE EARNINGS OF A JUDGMENT DEBTOR MAY TAKE
 2 PLACE UNLESS THE DEBTOR HAS BEEN GIVEN NOTICE OF THE
 3 OPPORTUNITY TO FILE AN AFFIDAVIT PURSUANT TO THIS SECTION. A
 4 judgment debtor may exempt earnings for his personal
 5 services, as provided in 25-13-614, by filing an affidavit
 6 with the court that issued the writ of execution or
 7 attachment declaring that such earnings are necessary for
 8 the use of his family supported in whole or in part by his
 9 labor.

10 (2) When an affidavit of exemption is filed, the court
 11 shall UPON MOTION OF THE JUDGMENT CREDITOR set the matter
 12 for hearing within 14 days to determine eligibility for and
 13 the amount of exemption, if any, under 25-13-614. The court
 14 shall immediately mail a copy of the affidavit and notice of
 15 hearing to the party who requested issuance of the writ of
 16 execution or attachment. IF NO MOTION IS FILED, LEVY OF
 17 EXECUTION UPON THE EARNINGS IS AUTOMATICALLY STAYED.

18 (3) The sheriff shall hold all money received from the
 19 execution in a fiduciary account, pending a final order of
 20 the court DIRECTING DISPOSITION OF THE MONEY FOLLOWING THE
 21 HEARING ON THE AFFIDAVIT.

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 23 Section 2 is intended to be codified as an integral part of
 24 Title 25, chapter 13, part 4, and the provisions of Title
 25 25, chapter 13, part 4, apply to section 2.

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Section 1. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) ~~Except as provided--in--this-section, the~~ The earnings of the judgment debtor for his personal services rendered at any time within 45 days next preceding the levy of execution or attachment, ~~when--it--appears--by--the--debtor's--affidavit--or--otherwise--that such are exempt, subject to the limitations in subsection (2), if upon a hearing held pursuant to [section 2], the court determines that the~~ earnings are necessary for the use of his family supported in whole or in part by his labor, ~~are exempt.~~

(2) Earnings for personal services are ~~exempt under this-section-from~~ subject to execution, garnishment, and attachment, to the extent allowed by 15 U.S.C. 1673, upon judgments or orders for maintenance or child support only-to the-extent-allowed-by-15-U.S.C.-1673, and to satisfy

~~(3)--Whenever debts are incurred by any-such-person the judgment debtor or his wife-or family for gasoline and for the common necessities of life, then-the-one-half-of-such earnings-are-nevertheless-subject-to-execution, garnishment, and-attachment-to-satisfy-debts-so-incurred.~~

~~(4)~~ (3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:

(a) the judgment debtor's spouse;

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(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

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 4 judgment debtor may exempt earnings for his personal
 5 services, as provided in 25-13-614, by filing an affidavit
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 11 shall UPON MOTION OF THE JUDGMENT CREDITOR set the matter
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 14 shall immediately mail a copy of the affidavit and notice of
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-End-

STANDING COMMITTEE REPORT Page 1 of 3

Page 2 of 3
SB 89

HOUSE

MARCH 19 19 85

March 18 85

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE BILL

Bill No. 89

THIRD reading copy (BLUE color)

REVISING LAWS RELATING TO GARNISHMENT
OF PERSONAL SERVICES EARNINGS

Respectfully report as follows: That SENATE

Bill No. 89

BE AMENDED AS FOLLOWS:

1. Page 1, line 12.
Following: "the"
Strike: "The"
Insert: "Except as provided in subsection (2), the"

2. Page 1, line 13.
Following: "rendered"
Strike: "at any time within"
Insert: "during the"

3. Page 1, line 14.
Strike: "45 days next preceding"
Insert: "45-day period prior to"

4. Page 1, line 16.
Following: "exempt"
Strike: ", subject" through "that the" on line 18
Insert: "to the extent such"

5. Page 1, line 18.
Following: "for the"
Strike: "use"
Insert: "support"

6. Page 1, line 19.
Following: "family"
Strike: "supported" through "labor"

7. Page 1, line 21.
Following: "(2)"
Insert: "(a) No earnings are exempt unless the judgment debtor
complies with [section 2]. (b)"

8. Page 1, line 21.
Following: "Earnings"
Strike: "for personal services"

9. Page 1, line 22.
Strike: "subject" through "upon" on line 23.
Insert: "exempt under this section from"

10. Page 1, line 25
Strike: "and to satisfy"
Insert: "only to the extent allowed by 15 U.S.C. 1673. (c) One-half
of earnings are not exempt for"

11. Page 3, line 8.
Following: "the"
Strike: "use"
Insert: "support"

Following: "family"
Strike: "supported" through "labor" on line 9
Insert: ". The affidavit must include the address of the judgment
debtor or his attorney for purposes of service of notice under
subsection (2). Levy of execution of judgment is automatically stayed
by the filing of an affidavit"

12. Page 3, line 11.
Following: "shall"
Insert: "immediately mail a copy of the affidavit to the judgment
creditor and,"

Following: "CREDITOR"
Insert: ", "

XXXXXXXX

CONTINUED

Chairman.

CONTINUED

Chairman.

March 18 85

13. Page 3, line 14.
Following: "shall"
Strike: "immediately"

Following: "mail a"
Strike: "copy of the affidavit and"

14. Page 3, line 15.
Following: "to the"
Strike: "party" through "STAYED" on line 17
Insert: "parties"

15. Page 3, line 18.
Following: "(3)"
Strike: "The sheriff" through "AFFIDAVIT" on line 21.
Insert: "Following the hearing on the affidavit, the court shall
remove the stay, order the stay extended, or remove the stay to the
extent of nonexempt property"

sb89
pc2/kjp

AND AS AMENDED,
BE CONCURRED IN

[Handwritten signature] Feb 3/19

Tom Hannah
.....
REP. TOM HANNAH Chairman.

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"25-13-614. Earnings of judgment debtor. (1) Except as provided in this section, the The EXCEPT AS PROVIDED IN SUBSECTION (2), THE earnings of the judgment debtor for his personal services rendered at any time within DURING THE 45 days next preceding 45-DAY PERIOD PRIOR TO the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such are exempt, subject to the limitations in subsection (2), if upon a hearing held pursuant to section 2, the court determines that the TO THE EXTENT SUCH earnings are necessary for the use SUPPORT of his family supported in whole or in part by his labor, are exempt.

(2) (A) NO EARNINGS ARE EXEMPT UNLESS THE JUDGMENT DEBTOR COMPLIES WITH SECTION 2.

(B) Earnings for personal services are exempt under

this section from subject to execution, garnishment, and attachment to the extent allowed by 15 U.S.C. 1673, upon EXEMPT UNDER THIS SECTION FROM judgments or orders for maintenance or child support only to the extent allowed by 15 U.S.C. 1673, and to satisfy ONLY TO THE EXTENT ALLOWED BY 15 U.S.C. 1673.

(C) ONE-HALF OF EARNINGS ARE NOT EXEMPT FOR

(3) Whenever debts are incurred by any such person the judgment debtor or his wife or family for gasoline and for the common necessities of life, then the one-half of such earnings are nevertheless subject to execution, garnishment, and attachment to satisfy debts so incurred.

(4)(3) The words "his family", as used in this section, except to the extent that these words include a person covered by a judgment or order under subsection (2), are to be construed to include:

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1 the judgment debtor or of his spouse or former spouse;
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3 relative of the judgment debtor mentioned in this section
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9 PLACE UNLESS THE DEBTOR HAS BEEN GIVEN NOTICE OF THE
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12 services, as provided in 25-13-614, by filing an affidavit
13 with the court that issued the writ of execution or
14 attachment declaring that such earnings are necessary for
15 the use SUPPORT of his family supported-in-whole-or-in-part
16 by-his-labor. THE AFFIDAVIT MUST INCLUDE THE ADDRESS OF THE
17 JUDGMENT DEBTOR OR HIS ATTORNEY FOR PURPOSES OF SERVICE OF
18 NOTICE UNDER SUBSECTION (2). LEVY OF EXECUTION OF JUDGMENT
19 IS AUTOMATICALLY STAYED BY THE FILING OF AN AFFIDAVIT.

20 (2) When an affidavit of exemption is filed, the court
21 shall IMMEDIATELY MAIL A COPY OF THE AFFIDAVIT TO THE
22 JUDGMENT CREDITOR AND, UPON MOTION OF THE JUDGMENT CREDITOR,
23 set the matter for hearing within 14 days to determine
24 eligibility for and the amount of exemption, if any, under
25 25-13-614. The court shall immediately mail a copy--of--the

1 affidavit--and notice of hearing to the party-who-requested
2 issuance-of-the-writ--of--execution--or--attachment; IF--NO
3 MOTION--IS--FILED,--LEVY--OF--EXECUTION--UPON--THE--EARNINGS--IS
4 AUTOMATICALLY--STAYED PARTIES.

5 (3) The-sheriff-shall-hold-all-money-received-from-the
6 execution-in-a-fiduciary-account, pending-a-final--order--of
7 the--court DIRECTING-DISPOSITION-OF-THE-MONEY-FOLLOWING-THE
8 HEARING-ON--THE--AFFIDAVIT FOLLOWING THE HEARING ON THE
9 AFFIDAVIT, THE COURT SHALL REMOVE THE STAY, ORDER THE STAY
10 EXTENDED, OR REMOVE THE STAY TO THE EXTENT OF NONEXEMPT
11 PROPERTY.

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13 Section 2 is intended to be codified as an integral part of
14 Title 25, chapter 13, part 4, and the provisions of Title
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