

HOUSE BILL NO. 639

INTRODUCED BY CORNE', BRADLEY

IN THE HOUSE

FEBRUARY 6, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LOCAL GOVERNMENT.

FEBRUARY 14, 1987                  COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 16, 1987                  PRINTING REPORT.

FEBRUARY 17, 1987                  SECOND READING, DO PASS.

FEBRUARY 18, 1987                  ENGROSSING REPORT.

                                      THIRD READING, PASSED.  
                                      AYES, 86; NOES, 2.

                                      TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 19, 1987                  INTRODUCED AND REFERRED TO COMMITTEE  
ON LOCAL GOVERNMENT.

MARCH 12, 1987                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 17, 1987                    ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

MARCH 19, 1987                    ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

MARCH 20, 1987                    ON MOTION, TAKEN FROM SECOND READING  
AND REREFERRED TO COMMITTEE  
ON LOCAL GOVERNMENT.

MARCH 25, 1987                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1987

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

MARCH 30, 1987

SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL  
PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.  
AYES, 33; NOES, 17.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 639  
 2 INTRODUCED BY Carne' Bradley  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 REGISTRATION OF INDIVIDUALS ACTING AS PROCESS SERVERS;  
 6 AUTHORIZING REGISTERED PROCESS SERVERS TO ACT AS LEVYING  
 7 OFFICERS; AND AMENDING SECTIONS 25-3-201 THROUGH 25-3-205,  
 8 25-3-301, 25-3-302, 25-13-203, 25-13-301 THROUGH 25-13-307,  
 9 AND 25-13-401 THROUGH 25-13-404, MCA."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Registered process server --  
 13 levying officer. (1) Any person who makes more than 10  
 14 services of process, as defined in 25-3-101, within this  
 15 state during 1 calendar year shall file a verified  
 16 certificate of registration as a process server with the  
 17 county clerk and recorder of the county in which he resides  
 18 or has his principal place of business.

19 (2) [Sections 1 through 8] do not apply to:

20 (a) a sheriff, constable, coroner, elisor, or other  
 21 government employee who is acting in the course of his  
 22 employment;

23 (b) a licensed attorney or his employees;

24 (c) a person appointed by a court to serve process; or

25 (d) a licensed private investigator.

1 (3) A registered process server may act as a levying  
 2 officer under Title 25, chapter 13.

3 NEW SECTION. Section 2. Contents of registration  
 4 certificate. The certificate of registration of a process  
 5 server must contain the following statements:

6 (1) the name, age, address, and telephone number of  
 7 the registrant;

8 (2) that the registrant has not been convicted of a  
 9 felony;

10 (3) that the registrant has been a resident of this  
 11 state for a period of 1 year immediately preceding the  
 12 filing of the certificate; and

13 (4) that the registrant will perform his duties as a  
 14 process server in compliance with the provisions of law  
 15 governing the service of process in this state.

16 NEW SECTION. Section 3. Fee -- duration of  
 17 certificate. (1) A certificate of registration as a process  
 18 server must be accompanied by a fee of \$100 at the time the  
 19 certificate is filed. The fee must be deposited in the  
 20 county general fund.

21 (2) A certificate of registration is effective for a  
 22 period of 2 years from the date of filing. A new  
 23 certificate must be filed upon expiration of a certificate  
 24 and a new registration fee must accompany the new  
 25 certificate.

1        NEW SECTION. Section 4. List of process servers. The  
 2 county clerk and recorder shall maintain a list of all  
 3 process servers registered in the county. The county clerk  
 4 and recorder shall assign a number to each registered  
 5 process server. Upon renewal of a certificate of  
 6 registration, the same number may be assigned.

7        NEW SECTION. Section 5. Bond required. The county  
 8 clerk and recorder may not accept a certificate of  
 9 registration as a process server unless the certificate is  
 10 accompanied by a surety bond of \$2,000, conditioned upon  
 11 compliance with [sections 1 through 8] and all laws  
 12 governing service of process in this state.

13        NEW SECTION. Section 6. Action on bond. (1) Any  
 14 person who recovers damages for an injury caused by a  
 15 service of process, made by a registered process server,  
 16 that did not comply with the law governing service of  
 17 process in this state may recover the amount of damages from  
 18 the bond required under [section 5].

19        (2) If there has been recovery against a registered  
 20 process server's bond, the registrant must file a new bond  
 21 within 30 days or reinstate the bond. If the bond has not  
 22 been reinstated or filed within 30 days, the county clerk  
 23 and recorder must revoke the registrant's certificate.

24        NEW SECTION. Section 7. Revocation or suspension of  
 25 certificate. (1) A certificate of registration of a

1 registered process server may be revoked or suspended by the  
 2 county clerk and recorder of the county of registration  
 3 whenever the registrant makes a service of process not  
 4 complying with the law.

5        (2) The county clerk and recorder may conduct an  
 6 investigation concerning the revocation or suspension of a  
 7 certificate based on the complaint of a person alleging  
 8 injury caused by improper service of process by the  
 9 registrant.

10        (3) The county clerk and recorder may refer the  
 11 certificate revocation or suspension matter to the county  
 12 attorney for his consideration. The county attorney may  
 13 instruct the clerk and recorder to suspend, revoke, or  
 14 reinstate the certificate.

15        NEW SECTION. Section 8. Proof of service --  
 16 requirements. A proof of service of process signed by a  
 17 registered process server must indicate the county in which  
 18 he is registered and the number assigned to him under  
 19 [section 4].

20        Section 9. Section 25-3-201, MCA, is amended to read:

21        "25-3-201. Delivery of papers to officer. (1) It is  
 22 the duty of the clerk of any district court, at the request  
 23 of a party in any civil action pending in such court or his  
 24 agent or attorney, to forward by mail any process, summons,  
 25 or other papers required in the cause; and it is the duty of

1 the sheriff, registered process server, or other officer to  
 2 whom said papers may be directed to receive the same at the  
 3 place where the same are directed. When process in one  
 4 county is intended for service in another, it is the duty of  
 5 the clerk to forward the same in like manner.

6 (2) If the papers are delivered for service away from  
 7 the county seat, all necessary copies thereof must be  
 8 furnished for service.

9 (3) If any sheriff, registered process server, or  
 10 other officer refuses to receive any summons or other  
 11 process at the point where directed to him or to serve the  
 12 same, he is guilty of a misdemeanor and upon conviction  
 13 thereof must be fined in any sum not exceeding \$100."

14 Section 10. Section 25-3-202, MCA, is amended to read:

15 "25-3-202. When officer's execution of process  
 16 justified and required. A sheriff, registered process  
 17 server, or other ministerial officer is justified in the  
 18 execution of and must execute all process and orders regular  
 19 on their face and issued by competent authority, whatever  
 20 may be the defect in the proceedings upon which they were  
 21 issued."

22 Section 11. Section 25-3-203, MCA, is amended to read:

23 "25-3-203. Prepayment of cost of service. In no case  
 24 shall the officer or registered process server receiving  
 25 papers for service be required to serve the same unless the

1 person in whose behalf the service is made or his agent or  
 2 attorney first pay the cost of the service upon a demand  
 3 therefor by the officer or registered process server."

4 Section 12. Section 25-3-204, MCA, is amended to read:

5 "25-3-204. Officer to exhibit process. The officer or  
 6 registered process server executing such process must, then  
 7 and at all times subsequent so long as he retains it, upon  
 8 request, show the same with all papers attached to any  
 9 person interested therein."

10 Section 13. Section 25-3-205, MCA, is amended to read:

11 "25-3-205. Execution of process when sheriff a party.  
 12 When the sheriff is a party to an action or proceeding, the  
 13 process and orders therein which it would otherwise be the  
 14 duty of the sheriff to execute must be executed by the  
 15 coroner of the county or a registered process server."

16 Section 14. Section 25-3-301, MCA, is amended to read:

17 "25-3-301. Time and manner of return. (1) It shall be  
 18 the duty of the sheriff or other person serving a summons or  
 19 other process or order required by any of the provisions of  
 20 this code, issued out of any of the district courts of this  
 21 state, to make due and legal return of such service and file  
 22 the same with the clerk of the court in which such action or  
 23 proceeding is pending not more than 10 days after the making  
 24 of such service where the same was made in the county in  
 25 which such action or proceeding is pending and not more than

1 15 days after the making of such service when the same was  
 2 made outside of the county in which such action or  
 3 proceeding is pending. Any failure to make and file such  
 4 return as required may be punished as a contempt of court.

5 (2) When process or a notice is returnable to another  
 6 county or was forwarded under 25-3-201, the sheriff or a  
 7 registered process server may enclose his return of such  
 8 process or notice in an envelope addressed to the officer  
 9 who sent it and deposit it in the post office, prepaying  
 10 postage."

11 Section 15. Section 25-3-302, MCA, is amended to read:

12 "25-3-302. ~~Sheriff's~~---return Return prima facie  
 13 evidence. The return of the sheriff or registered process  
 14 server upon process or notices is prima facie evidence of  
 15 the facts in such return stated."

16 Section 16. Section 25-13-203, MCA, is amended to  
 17 read:

18 "25-13-203. Judgments requiring the performance of  
 19 specific acts. (1) When the judgment requires the  
 20 performance of any other act than those designated in  
 21 25-13-201 and 25-13-202, a certified copy of the judgment  
 22 may be served upon the party against whom the same is  
 23 rendered or upon the person or officer required thereby or  
 24 by law to obey the same, and obedience thereto may be  
 25 enforced by the court.

1 (2) Where a judgment directs a party to make a deposit  
 2 or delivery or to convey real property, if the direction is  
 3 disobeyed, the court, besides punishing the disobedience as  
 4 a contempt, may by order require the sheriff or levying  
 5 officer, who may be a registered process server, to take and  
 6 deposit or deliver the money or other personal property or  
 7 to convey the real property in conformity with the direction  
 8 of the court."

9 Section 17. Section 25-13-301, MCA, is amended to  
 10 read:

11 "25-13-301. Form and contents of writ. (1) The writ of  
 12 execution must:

13 (a) be issued in the name of the state of Montana,  
 14 sealed with the seal of the court, and subscribed by the  
 15 clerk;

16 (b) be directed to the sheriff or levying officer;

17 (c) intelligibly refer to the judgment, stating the  
 18 court and the county where it was entered and, if it is for  
 19 money, the amount thereof and the amount actually due  
 20 thereon; and

21 (d) require the sheriff or levying officer to act  
 22 substantially as provided in this part.

23 (2) In executions, the amount thereof must be computed  
 24 and stated as near as may be in dollars and cents, rejecting  
 25 fractions of a cent."

1 Section 18. Section 25-13-302, MCA, is amended to  
2 read:

3 "25-13-302. Execution against principal debtor before  
4 surety. Upon the rendition of any judgment, if it shall be  
5 shown that one or more of the defendants against whom the  
6 judgment is to be rendered are principal debtors and others  
7 of the said defendants are sureties of such principal  
8 debtor, the court may order the judgment so to state, and  
9 upon the issuance of an execution upon such judgment, it  
10 shall direct the sheriff or levying officer to make the  
11 amount due thereon out of the goods and chattels, lands and  
12 tenements of the principal debtor or debtors or, if  
13 sufficient thereof cannot be found within his county to  
14 satisfy the same, to levy and make the same out of the  
15 property, personal or real, of the judgment debtor who was  
16 surety."

17 Section 19. Section 25-13-303, MCA, is amended to  
18 read:

19 "25-13-303. Execution when only some of defendants  
20 served. When a writ of execution is issued on a judgment  
21 recovered against two or more persons in an action upon a  
22 joint contract, in which action all the defendants were not  
23 served with summons or did not appear, it must direct the  
24 sheriff or levying officer to satisfy the judgment out of  
25 the joint property of all the defendants and the individual

1 property only of the defendants who were served or who  
2 appeared in the action."

3 Section 20. Section 25-13-304, MCA, is amended to  
4 read:

5 "25-13-304. Execution against property of judgment  
6 debtor. If the writ be against the property of the judgment  
7 debtor, it shall require the sheriff or levying officer to  
8 satisfy the judgment, with interest, out of the personal  
9 property of such debtor and, if sufficient personal property  
10 cannot be found, out of his real property as provided in  
11 25-13-305."

12 Section 21. Section 25-13-305, MCA, is amended to  
13 read:

14 "25-13-305. Execution of lien on real property. If the  
15 judgment be a lien upon real property, the writ shall  
16 require the sheriff or levying officer to satisfy the  
17 judgment, with interest, out of the real property belonging  
18 to the judgment debtor on the day when the judgment was  
19 docketed or at any time thereafter or, if the execution be  
20 issued to a county other than the one in which the judgment  
21 was recovered, on the day when the transcript of the docket  
22 was filed in the office of the clerk of the district court  
23 of such county, stating such day, or any time thereafter."

24 Section 22. Section 25-13-306, MCA, is amended to  
25 read:

1 "25-13-306. Execution against property in hands of  
 2 representative. If the writ be against real or personal  
 3 property in the hands of the personal representatives,  
 4 heirs, devisees, legatees, tenants of real property, or  
 5 trustees, it shall require the sheriff or levying officer to  
 6 satisfy the judgment, with interest, out of such property."

7 Section 23. Section 25-13-307, MCA, is amended to  
 8 read:

9 "25-13-307. Execution requiring delivery of possession  
 10 of property. If the writ be for the delivery of the  
 11 possession of real or personal property, it must require the  
 12 sheriff or levying officer to deliver the possession of the  
 13 same, particularly describing it, to the party entitled  
 14 thereto and may at any time require the sheriff or levying  
 15 officer to satisfy any costs, damages, rents, or profits  
 16 recovered by the same judgment out of the personal property  
 17 of the person against whom it was rendered, the value of the  
 18 property for which the judgment was rendered to be specified  
 19 therein, if a delivery cannot be had, and if sufficient  
 20 personal property cannot be found, then out of the real  
 21 property, as provided in 25-13-305."

22 Section 24. Section 25-13-401, MCA, is amended to  
 23 read:

24 "25-13-401. To whom execution issued. Where the  
 25 execution is against the property of the judgment debtor, it

1 may be issued to the sheriff or levying officer of any  
 2 county in the state. Where it requires the delivery of real  
 3 or personal property, it must be issued to the sheriff or  
 4 levying officer of the county where the property or some  
 5 part thereof is situated. Executions may be issued at the  
 6 same time to different counties."

7 Section 25. Section 25-13-402, MCA, is amended to  
 8 read:

9 "25-13-402. How writ executed. The sheriff or levying  
 10 officer must execute the writ against the property of the  
 11 judgment debtor by levying on a sufficient amount of  
 12 property, if there be sufficient, collecting or selling the  
 13 things in action, and selling the other property and paying  
 14 to the plaintiff or his attorney so much of the proceeds as  
 15 will satisfy the judgment. Any excess in the proceeds over  
 16 the judgment and accruing costs must be returned to the  
 17 judgment debtor unless otherwise directed by the judgment or  
 18 order of the court. When there is more property of the  
 19 judgment debtor than is sufficient to satisfy the judgment  
 20 and accruing costs within the view of the sheriff or levying  
 21 officer, he must levy only on such part of the property as  
 22 the judgment debtor may indicate if the property indicated  
 23 be amply sufficient to satisfy the judgment and costs."

24 Section 26. Section 25-13-403, MCA, is amended to  
 25 read:



1 "25-13-403. Security for sheriff's costs when property  
2 seized. If the sheriff or levying officer will incur  
3 substantial costs in transporting, keeping, or storing the  
4 property seized, the party requesting service of a writ of  
5 execution shall provide a bond or other security to pay for  
6 all costs which may be incurred as a result of the service  
7 of such writ."

8 Section 27. Section 25-13-404, MCA, is amended to  
9 read:

10 "25-13-404. Return of the execution. (1) Except as  
11 provided in subsection (2), execution may be made  
12 returnable, at any time not less than 10 or more than 60  
13 days after its receipt by the sheriff or levying officer, to  
14 the clerk of the court in which the judgment was rendered.

15 (2) The writ of execution issued by the county  
16 treasurer under 15-16-401 may be made returnable, at any  
17 time not less than 10 or more than 90 days after its receipt  
18 by the sheriff or levying officer, to the county treasurer  
19 of the county in which the writ was issued."

-End-

1 HOUSE BILL NO. 639  
 2 INTRODUCED BY CORNE', BRADLEY  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 REGISTRATION OF INDIVIDUALS ACTING AS PROCESS SERVERS;  
 6 AUTHORIZING REGISTERED PROCESS SERVERS TO ACT AS LEVYING  
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 8 25-3-301, 25-3-302, 25-13-203, 25-13-301 THROUGH 25-13-307,  
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Registered process server --  
 13 levying officer. (1) Any person who makes more than 10  
 14 services of process, as defined in 25-3-101, within this  
 15 state during 1 calendar year shall file a verified  
 16 certificate of registration as a process server with the  
 17 county clerk and recorder of the county in which he resides  
 18 or has his principal place of business.

- 19 (2) [Sections 1 through 8] do not apply to:  
 20 (a) a sheriff, constable, coroner, elisor, or other  
 21 government employee who is acting in the course of his  
 22 employment;  
 23 (b) a licensed attorney or his employees;  
 24 (c) a person appointed by a court to serve process; or  
 25 (d) a licensed private investigator.

1 (3) A registered process server may act as a levying  
 2 officer under Title 25, chapter 13.

3 NEW SECTION. Section 2. Contents of registration  
 4 certificate. The certificate of registration of a process  
 5 server must contain the following statements:

- 6 (1) the name, age, address, and telephone number of  
 7 the registrant;  
 8 (2) that the registrant has not been convicted of a  
 9 felony;  
 10 (3) that the registrant has been a resident of this  
 11 state for a period of 1 year immediately preceding the  
 12 filing of the certificate; and  
 13 (4) that the registrant will perform his duties as a  
 14 process server in compliance with the provisions of law  
 15 governing the service of process in this state.

16 NEW SECTION. Section 3. Fee -- duration of  
 17 certificate. (1) A certificate of registration as a process  
 18 server must be accompanied by a fee of \$100 at the time the  
 19 certificate is filed. The fee must be deposited in the  
 20 county general fund.

21 (2) A certificate of registration is effective for a  
 22 period of 2 years from the date of filing. A new  
 23 certificate must be filed upon expiration of a certificate  
 24 and a new registration fee must accompany the new  
 25 certificate.



1        NEW SECTION. Section 4. List of process servers --  
 2        IDENTIFICATION. (1) The county clerk and recorder shall  
 3        maintain a list of all process servers registered in the  
 4        county. The county clerk and recorder shall assign a number  
 5        to each registered process server. Upon renewal of a  
 6        certificate of registration, the same number may be  
 7        assigned.

8        (2) DURING THE COURSE OF SERVING PROCESS OR ACTING AS  
 9        A LEVYING OFFICER, A REGISTERED PROCESS SERVER MUST HAVE IN  
 10       HIS POSSESSION A BADGE WITH THE NUMBER ASSIGNED UNDER  
 11       SUBSECTION (1) AND AN IDENTIFICATION CARD THAT HAS ATTACHED  
 12       A PHOTOGRAPH OF THE REGISTERED PROCESS SERVER.

13       NEW SECTION. Section 5. Bond required. The county  
 14       clerk and recorder may not accept a certificate of  
 15       registration as a process server unless the certificate is  
 16       accompanied by a surety bond of \$2,000, conditioned upon  
 17       compliance with [sections 1 through 8] and all laws  
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 22       that did not comply with the law governing service of  
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25       (2) If there has been recovery against a registered

1       process server's bond, the registrant must file a new bond  
 2       within 30 days or reinstate the bond. If the bond has not  
 3       been reinstated or filed within 30 days, the county clerk  
 4       and recorder must revoke the registrant's certificate.

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 22       requirements. A proof of service of process signed by a  
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 25       [section 4].

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 3 the same with the clerk of the court in which such action or  
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 25 specific acts. (1) When the judgment requires the

1 performance of any other act than those designated in  
 2 25-13-201 and 25-13-202, a certified copy of the judgment  
 3 may be served upon the party against whom the same is  
 4 rendered or upon the person or officer required thereby or  
 5 by law to obey the same, and obedience thereto may be  
 6 enforced by the court.

7 (2) Where a judgment directs a party to make a deposit  
 8 or delivery or to convey real property, if the direction is  
 9 disobeyed, the court, besides punishing the disobedience as  
 10 a contempt, may by order require the sheriff or levying  
 11 officer, who may be a registered process server, to take and  
 12 deposit or deliver the money or other personal property or  
 13 to convey the real property in conformity with the direction  
 14 of the court."

15 Section 17. Section 25-13-301, MCA, is amended to  
 16 read:

17 "25-13-301. Form and contents of writ. (1) The writ of  
 18 execution must:

19 (a) be issued in the name of the state of Montana,  
 20 sealed with the seal of the court, and subscribed by the  
 21 clerk;

22 (b) be directed to the sheriff or levying officer;

23 (c) intelligibly refer to the judgment, stating the  
 24 court and the county where it was entered and, if it is for  
 25 money, the amount thereof and the amount actually due

1 thereon; and

2 (d) require the sheriff or levying officer to act  
3 substantially as provided in this part.

4 (2) In executions, the amount thereof must be computed  
5 and stated as near as may be in dollars and cents, rejecting  
6 fractions of a cent."

7 Section 18. Section 25-13-302, MCA, is amended to  
8 read:

9 "25-13-302. Execution against principal debtor before  
10 surety. Upon the rendition of any judgment, if it shall be  
11 shown that one or more of the defendants against whom the  
12 judgment is to be rendered are principal debtors and others  
13 of the said defendants are sureties of such principal  
14 debtor, the court may order the judgment so to state, and  
15 upon the issuance of an execution upon such judgment, it  
16 shall direct the sheriff or levying officer to make the  
17 amount due thereon out of the goods and chattels, lands and  
18 tenements of the principal debtor or debtors or, if  
19 sufficient thereof cannot be found within his county to  
20 satisfy the same, to levy and make the same out of the  
21 property, personal or real, of the judgment debtor who was  
22 surety."

23 Section 19. Section 25-13-303, MCA, is amended to  
24 read:

25 "25-13-303. Execution when only some of defendants

1 served. When a writ of execution is issued on a judgment  
2 recovered against two or more persons in an action upon a  
3 joint contract, in which action all the defendants were not  
4 served with summons or did not appear, it must direct the  
5 sheriff or levying officer to satisfy the judgment out of  
6 the joint property of all the defendants and the individual  
7 property only of the defendants who were served or who  
8 appeared in the action."

9 Section 20. Section 25-13-304, MCA, is amended to  
10 read:

11 "25-13-304. Execution against property of judgment  
12 debtor. If the writ be against the property of the judgment  
13 debtor, it shall require the sheriff or levying officer to  
14 satisfy the judgment, with interest, out of the personal  
15 property of such debtor and, if sufficient personal property  
16 cannot be found, out of his real property as provided in  
17 25-13-305."

18 Section 21. Section 25-13-305, MCA, is amended to  
19 read:

20 "25-13-305. Execution of lien on real property. If the  
21 judgment be a lien upon real property, the writ shall  
22 require the sheriff or levying officer to satisfy the  
23 judgment, with interest, out of the real property belonging  
24 to the judgment debtor on the day when the judgment was  
25 docketed or at any time thereafter or, if the execution be

1 issued to a county other than the one in which the judgment  
2 was recovered, on the day when the transcript of the docket  
3 was filed in the office of the clerk of the district court  
4 of such county, stating such day, or any time thereafter."

5 Section 22. Section 25-13-306, MCA, is amended to  
6 read:

7 "25-13-306. Execution against property in hands of  
8 representative. If the writ be against real or personal  
9 property in the hands of the personal representatives,  
10 heirs, devisees, legatees, tenants of real property, or  
11 trustees, it shall require the sheriff or levying officer to  
12 satisfy the judgment, with interest, out of such property."

13 Section 23. Section 25-13-307, MCA, is amended to  
14 read:

15 "25-13-307. Execution requiring delivery of possession  
16 of property. If the writ be for the delivery of the  
17 possession of real or personal property, it must require the  
18 sheriff or levying officer to deliver the possession of the  
19 same, particularly describing it, to the party entitled  
20 thereto and may at any time require the sheriff or levying  
21 officer to satisfy any costs, damages, rents, or profits  
22 recovered by the same judgment out of the personal property  
23 of the person against whom it was rendered, the value of the  
24 property for which the judgment was rendered to be specified  
25 therein, if a delivery cannot be had, and if sufficient

1 personal property cannot be found, then out of the real  
2 property, as provided in 25-13-305."

3 Section 24. Section 25-13-401, MCA, is amended to  
4 read:

5 "25-13-401. To whom execution issued. Where the  
6 execution is against the property of the judgment debtor, it  
7 may be issued to the sheriff or levying officer of any  
8 county in the state. Where it requires the delivery of real  
9 or personal property, it must be issued to the sheriff or  
10 levying officer of the county where the property or some  
11 part thereof is situated. Executions may be issued at the  
12 same time to different counties."

13 Section 25. Section 25-13-402, MCA, is amended to  
14 read:

15 "25-13-402. How writ executed. The sheriff or levying  
16 officer must execute the writ against the property of the  
17 judgment debtor by levying on a sufficient amount of  
18 property, if there be sufficient, collecting or selling the  
19 things in action, and selling the other property and paying  
20 to the plaintiff or his attorney so much of the proceeds as  
21 will satisfy the judgment. Any excess in the proceeds over  
22 the judgment and accruing costs must be returned to the  
23 judgment debtor unless otherwise directed by the judgment or  
24 order of the court. When there is more property of the  
25 judgment debtor than is sufficient to satisfy the judgment

1 and accruing costs within the view of the sheriff or levying  
2 officer, he must levy only on such part of the property as  
3 the judgment debtor may indicate if the property indicated  
4 be amply sufficient to satisfy the judgment and costs."

5 Section 26. Section 25-13-403, MCA, is amended to  
6 read:

7 "25-13-403. Security for ~~sheriff's~~ costs when property  
8 seized. If the sheriff or levying officer will incur  
9 substantial costs in transporting, keeping, or storing the  
10 property seized, the party requesting service of a writ of  
11 execution shall provide a bond or other security to pay for  
12 all costs which may be incurred as a result of the service  
13 of such writ."

14 Section 27. Section 25-13-404, MCA, is amended to  
15 read:

16 "25-13-404. Return of the execution. (1) Except as  
17 provided in subsection (2), execution may be made  
18 returnable, at any time not less than 10 or more than 60  
19 days after its receipt by the sheriff or levying officer, to  
20 the clerk of the court in which the judgment was rendered.

21 (2) The writ of execution issued by the county  
22 treasurer under 15-16-401 may be made returnable, at any  
23 time not less than 10 or more than 90 days after its receipt  
24 by the sheriff or levying officer, to the county treasurer  
25 of the county in which the writ was issued."

-End-

-13-



1                   HOUSE BILL NO. 639  
 2                   INTRODUCED BY CORNE', BRADLEY  
 3  
 4   A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5   REGISTRATION OF INDIVIDUALS ACTING AS PROCESS SERVERS;  
 6   AUTHORIZING REGISTERED PROCESS SERVERS TO ACT AS LEVYING  
 7   OFFICERS; AND AMENDING SECTIONS 25-3-201 THROUGH 25-3-205,  
 8   25-3-301, 25-3-302, 25-13-203, 25-13-301 THROUGH 25-13-307,  
 9   AND 25-13-401 THROUGH 25-13-404, MCA."  
 10  
 11   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12       NEW SECTION. Section 1. Registered process server --  
 13   levying officer. (1) Any person who makes more than 10  
 14   services of process, as defined in 25-3-101, within this  
 15   state during 1 calendar year shall file a verified  
 16   certificate of registration as a process server with the  
 17   county clerk and recorder of the county in which he resides  
 18   or has his principal place of business.  
 19       (2) [Sections 1 through 8] do not apply to:  
 20       (a) a sheriff, constable, coroner, elisor, or other  
 21   government employee who is acting in the course of his  
 22   employment;  
 23       (b) a licensed attorney or his employees;  
 24       (c) a person appointed by a court to serve process; or  
 25       (d) a licensed private investigator.

1                   (3) A registered process server may act as a levying  
 2   officer under Title 25, chapter 13.  
 3       NEW SECTION. Section 2. Contents of registration  
 4   certificate. The certificate of registration of a process  
 5   server must contain the following statements:  
 6       (1) the name, age, address, and telephone number of  
 7   the registrant;  
 8       (2) that the registrant has not been convicted of a  
 9   felony;  
 10       (3) that the registrant has been a resident of this  
 11   state for a period of 1 year immediately preceding the  
 12   filing of the certificate; and  
 13       (4) that the registrant will perform his duties as a  
 14   process server in compliance with the provisions of law  
 15   governing the service of process in this state.  
 16       NEW SECTION. Section 3. Fee -- duration of  
 17   certificate. (1) A certificate of registration as a process  
 18   server must be accompanied by a fee of \$100 at the time the  
 19   certificate is filed. The fee must be deposited in the  
 20   county general fund.  
 21       (2) A certificate of registration is effective for a  
 22   period of 2 years from the date of filing. A new  
 23   certificate must be filed upon expiration of a certificate  
 24   and a new registration fee must accompany the new  
 25   certificate.

1        NEW SECTION. Section 4. List of process servers --  
 2        IDENTIFICATION. (1) The county clerk and recorder shall  
 3        maintain a list of all process servers registered in the  
 4        county. The county clerk and recorder shall assign a number  
 5        to each registered process server. Upon renewal of a  
 6        certificate of registration, the same number may be  
 7        assigned.

8        (2) DURING THE COURSE OF SERVING PROCESS OR ACTING AS  
 9        A LEVYING OFFICER, A REGISTERED PROCESS SERVER MUST HAVE IN  
 10       HIS POSSESSION A BADGE WITH THE NUMBER ASSIGNED UNDER  
 11       SUBSECTION (1) AND AN IDENTIFICATION CARD THAT HAS ATTACHED  
 12       A PHOTOGRAPH OF THE REGISTERED PROCESS SERVER.

13       NEW SECTION. Section 5. Bond required. The county  
 14       clerk and recorder may not accept a certificate of  
 15       registration as a process server unless the certificate is  
 16       accompanied by a surety bond of \$2,000, conditioned upon  
 17       compliance with [sections 1 through 8] and all laws  
 18       governing service of process in this state.

19       NEW SECTION. Section 6. Action on bond. (1) Any  
 20       person who recovers damages for an injury caused by a  
 21       service of process, made by a registered process server,  
 22       that did not comply with the law governing service of  
 23       process in this state may recover the amount of damages from  
 24       the bond required under [section 5].

25       (2) If there has been recovery against a registered

1       process server's bond, the registrant must file a new bond  
 2       within 30 days or reinstate the bond. If the bond has not  
 3       been reinstated or filed within 30 days, the county clerk  
 4       and recorder must revoke the registrant's certificate.

5       NEW SECTION. Section 7. Revocation or suspension of  
 6       certificate. (1) A certificate of registration of a  
 7       registered process server may be revoked or suspended by the  
 8       county clerk and recorder of the county of registration  
 9       whenever the registrant makes a service of process not  
 10       complying with the law.

11       (2) The county clerk and recorder may conduct an  
 12       investigation concerning the revocation or suspension of a  
 13       certificate based on the complaint of a person alleging  
 14       injury caused by improper service of process by the  
 15       registrant.

16       (3) The county clerk and recorder may refer the  
 17       certificate revocation or suspension matter to the county  
 18       attorney for his consideration. The county attorney may  
 19       instruct the clerk and recorder to suspend, revoke, or  
 20       reinstate the certificate.

21       NEW SECTION. Section 8. Proof of service --  
 22       requirements. A proof of service of process signed by a  
 23       registered process server must indicate the county in which  
 24       he is registered and the number assigned to him under  
 25       [section 4].

1 Section 9. Section 25-3-201, MCA, is amended to read:

2 "25-3-201. Delivery of papers to officer. (1) It is  
3 the duty of the clerk of any district court, at the request  
4 of a party in any civil action pending in such court or his  
5 agent or attorney, to forward by mail any process, summons,  
6 or other papers required in the cause; and it is the duty of  
7 the sheriff, registered process server, or other officer to  
8 whom said papers may be directed to receive the same at the  
9 place where the same are directed. When process in one  
10 county is intended for service in another, it is the duty of  
11 the clerk to forward the same in like manner.

12 (2) If the papers are delivered for service away from  
13 the county seat, all necessary copies thereof must be  
14 furnished for service.

15 (3) If any sheriff, registered process server, or  
16 other officer refuses to receive any summons or other  
17 process at the point where directed to him or to serve the  
18 same, he is guilty of a misdemeanor and upon conviction  
19 thereof must be fined in any sum not exceeding \$100."

20 Section 10. Section 25-3-202, MCA, is amended to read:

21 "25-3-202. When officer's execution of process  
22 justified and required. A sheriff, registered process  
23 server, or other ministerial officer is justified in the  
24 execution of and must execute all process and orders regular  
25 on their face and issued by competent authority, whatever

1 may be the defect in the proceedings upon which they were  
2 issued."

3 Section 11. Section 25-3-203, MCA, is amended to read:

4 "25-3-203. Prepayment of cost of service. In no case  
5 shall the officer or registered process server receiving  
6 papers for service be required to serve the same unless the  
7 person in whose behalf the service is made or his agent or  
8 attorney first pay the cost of the service upon a demand  
9 therefor by the officer or registered process server."

10 Section 12. Section 25-3-204, MCA, is amended to read:

11 "25-3-204. Officer to exhibit process. The officer or  
12 registered process server executing such process must, then  
13 and at all times subsequent so long as he retains it, upon  
14 request, show the same with all papers attached to any  
15 person interested therein."

16 Section 13. Section 25-3-205, MCA, is amended to read:

17 "25-3-205. Execution of process when sheriff a party.  
18 When the sheriff is a party to an action or proceeding, the  
19 process and orders therein which it would otherwise be the  
20 duty of the sheriff to execute must be executed by the  
21 coroner of the county or a registered process server."

22 Section 14. Section 25-3-301, MCA, is amended to read:

23 "25-3-301. Time and manner of return. (1) It shall be  
24 the duty of the sheriff or other person serving a summons or  
25 other process or order required by any of the provisions of

1 this code, issued out of any of the district courts of this  
 2 state, to make due and legal return of such service and file  
 3 the same with the clerk of the court in which such action or  
 4 proceeding is pending not more than 10 days after the making  
 5 of such service where the same was made in the county in  
 6 which such action or proceeding is pending and not more than  
 7 15 days after the making of such service when the same was  
 8 made outside of the county in which such action or  
 9 proceeding is pending. Any failure to make and file such  
 10 return as required may be punished as a contempt of court.

11 (2) When process or a notice is returnable to another  
 12 county or was forwarded under 25-3-201, the sheriff or a  
 13 registered process server may enclose his return of such  
 14 process or notice in an envelope addressed to the officer  
 15 who sent it and deposit it in the post office, prepaying  
 16 postage."

17 Section 15. Section 25-3-302, MCA, is amended to read:

18 "25-3-302. Sheriff's---return Return prima facie  
 19 evidence. The return of the sheriff or registered process  
 20 server upon process or notices is prima facie evidence of  
 21 the facts in such return stated."

22 Section 16. Section 25-13-203, MCA, is amended to  
 23 read:

24 "25-13-203. Judgments requiring the performance of  
 25 specific acts. (1) When the judgment requires the

1 performance of any other act than those designated in  
 2 25-13-201 and 25-13-202, a certified copy of the judgment  
 3 may be served upon the party against whom the same is  
 4 rendered or upon the person or officer required thereby or  
 5 by law to obey the same, and obedience thereto may be  
 6 enforced by the court.

7 (2) Where a judgment directs a party to make a deposit  
 8 or delivery or to convey real property, if the direction is  
 9 disobeyed, the court, besides punishing the disobedience as  
 10 a contempt, may by order require the sheriff or levying  
 11 officer, who may be a registered process server, to take and  
 12 deposit or deliver the money or other personal property or  
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 14 of the court."

15 Section 17. Section 25-13-301, MCA, is amended to  
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17 "25-13-301. Form and contents of writ. (1) The writ of  
 18 execution must:

19 (a) be issued in the name of the state of Montana,  
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 21 clerk;

22 (b) be directed to the sheriff or levying officer;

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 24 court and the county where it was entered and, if it is for  
 25 money, the amount thereof and the amount actually due

1 thereon; and

2 (d) require the sheriff or levying officer to act  
3 substantially as provided in this part.

4 (2) In executions, the amount thereof must be computed  
5 and stated as near as may be in dollars and cents, rejecting  
6 fractions of a cent."

7 Section 18. Section 25-13-302, MCA, is amended to  
8 read:

9 "25-13-302. Execution against principal debtor before  
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12 judgment is to be rendered are principal debtors and others  
13 of the said defendants are sureties of such principal  
14 debtor, the court may order the judgment so to state, and  
15 upon the issuance of an execution upon such judgment, it  
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17 amount due thereon out of the goods and chattels, lands and  
18 tenements of the principal debtor or debtors or, if  
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20 satisfy the same, to levy and make the same out of the  
21 property, personal or real, of the judgment debtor who was  
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4 served with summons or did not appear, it must direct the  
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6 the joint property of all the defendants and the individual  
7 property only of the defendants who were served or who  
8 appeared in the action."

9 Section 20. Section 25-13-304, MCA, is amended to  
10 read:

11 "25-13-304. Execution against property of judgment  
12 debtor. If the writ be against the property of the judgment  
13 debtor, it shall require the sheriff or levying officer to  
14 satisfy the judgment, with interest, out of the personal  
15 property of such debtor and, if sufficient personal property  
16 cannot be found, out of his real property as provided in  
17 25-13-305."

18 Section 21. Section 25-13-305, MCA, is amended to  
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21 judgment be a lien upon real property, the writ shall  
22 require the sheriff or levying officer to satisfy the  
23 judgment, with interest, out of the real property belonging  
24 to the judgment debtor on the day when the judgment was  
25 docketed or at any time thereafter or, if the execution be

1 issued to a county other than the one in which the judgment  
 2 was recovered, on the day when the transcript of the docket  
 3 was filed in the office of the clerk of the district court  
 4 of such county, stating such day, or any time thereafter."

5 Section 22. Section 25-13-306, MCA, is amended to  
 6 read:

7 "25-13-306. Execution against property in hands of  
 8 representative. If the writ be against real or personal  
 9 property in the hands of the personal representatives,  
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 12 satisfy the judgment, with interest, out of such property."

13 Section 23. Section 25-13-307, MCA, is amended to  
 14 read:

15 "25-13-307. Execution requiring delivery of possession  
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 19 same, particularly describing it, to the party entitled  
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 21 officer to satisfy any costs, damages, rents, or profits  
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 23 of the person against whom it was rendered, the value of the  
 24 property for which the judgment was rendered to be specified  
 25 therein, if a delivery cannot be had, and if sufficient

1 personal property cannot be found, then out of the real  
 2 property, as provided in 25-13-305."

3 Section 24. Section 25-13-401, MCA, is amended to  
 4 read:

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13 Section 25. Section 25-13-402, MCA, is amended to  
 14 read:

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 17 judgment debtor by levying on a sufficient amount of  
 18 property, if there be sufficient, collecting or selling the  
 19 things in action, and selling the other property and paying  
 20 to the plaintiff or his attorney so much of the proceeds as  
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 22 the judgment and accruing costs must be returned to the  
 23 judgment debtor unless otherwise directed by the judgment or  
 24 order of the court. When there is more property of the  
 25 judgment debtor than is sufficient to satisfy the judgment

1 and accruing costs within the view of the sheriff or levying  
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3 the judgment debtor may indicate if the property indicated  
4 be amply sufficient to satisfy the judgment and costs."

5 Section 26. Section 25-13-403, MCA, is amended to  
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7 "25-13-403. Security for sheriff's costs when property  
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9 substantial costs in transporting, keeping, or storing the  
10 property seized, the party requesting service of a writ of  
11 execution shall provide a bond or other security to pay for  
12 all costs which may be incurred as a result of the service  
13 of such writ."

14 Section 27. Section 25-13-404, MCA, is amended to  
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16 "25-13-404. Return of the execution. (1) Except as  
17 provided in subsection (2), execution may be made  
18 returnable, at any time not less than 10 or more than 60  
19 days after its receipt by the sheriff or levying officer, to  
20 the clerk of the court in which the judgment was rendered.

21 (2) The writ of execution issued by the county  
22 treasurer under 15-16-401 may be made returnable, at any  
23 time not less than 10 or more than 90 days after its receipt  
24 by the sheriff or levying officer, to the county treasurer  
25 of the county in which the writ was issued."

-End-

-13-

HOUSE BILL NO. 639

INTRODUCED BY CORNE', BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGISTRATION OF INDIVIDUALS ACTING AS PROCESS SERVERS; AUTHORIZING REGISTERED PROCESS SERVERS TO ACT AS LEVYING OFFICERS; AND AMENDING SECTIONS 25-3-201 THROUGH 25-3-205, 25-3-301, 25-3-302, 25-13-203, 25-13-301 THROUGH 25-13-307, AND 25-13-401 THROUGH 25-13-404, MCA."

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

NEW SECTION. Section 1. Registered process server -- levying officer. (1) Any person who makes more than 10 services of process, as defined in 25-3-101, within this state during 1 calendar year shall file a verified certificate of registration as a process server with the county-clerk-and-recorder CLERK OF THE DISTRICT COURT of the county in which he resides or has his principal place of business.

(2) [Sections 1 through 9] do not apply to:

(a) a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of his employment; OR

(b) a licensed attorney or his employees;

(c) --a-person-appointed-by-a-court-to-serve-process--or

~~(d) --a-licensed-private-investigator.~~

(3) A registered process server may act as a levying officer under Title 25, chapter 13.

NEW SECTION. Section 2. Contents of registration certificate. The certificate of registration of a process server must contain the following statements:

(1) the name, age, address, and telephone number of the registrant;

(2) that the registrant has not been convicted of a felony;

(3) that the registrant has been a resident of this state for a period of 1 year immediately preceding the filing of the certificate; and

(4) that the registrant will perform his duties as a process server in compliance with the provisions of law governing the service of process in this state.

NEW SECTION. Section 3. Fee -- duration of certificate. (1) A certificate of registration as a process server must be accompanied by a fee of \$100 at the time the certificate is filed. The fee must be deposited in the county general fund FOR DISTRICT COURT OPERATIONS, UNLESS THE COUNTY HAS A DISTRICT COURT FUND. IF THE COUNTY HAS A DISTRICT COURT FUND, THE FEE MUST BE DEPOSITED IN THAT FUND.

(2) A certificate of registration is effective for a period of 2 years from the date of filing. A new





1 certificate must be filed upon expiration of a certificate  
 2 and a new registration fee must accompany the new  
 3 certificate.

4 NEW SECTION. -- SECTION 4. -- TRAINING AND CERTIFICATION OF  
 5 PROCESS SERVERS. -- (1) THE MONTANA LAW ENFORCEMENT ACADEMY  
 6 SHALL OFFER A COURSE OF INSTRUCTION FOR PROCESS SERVERS AND  
 7 LEVYING OFFICERS AT LEAST TWICE DURING EACH CALENDAR YEAR  
 8 AFTER 1987. EACH ENROLLEE WHO COMPLETES THE COURSE AND  
 9 PASSES AN EXAMINATION ADMINISTERED BY THE LAW ENFORCEMENT  
 10 ACADEMY MUST BE CERTIFIED BY THE LAW ENFORCEMENT ACADEMY AS  
 11 A TRAINED PROCESS SERVER AND LEVYING OFFICER.

12 (2) UPON APPLYING TO THE CLERK OF THE DISTRICT COURT  
 13 OF ANY COUNTY FOR REGISTRATION AS A PROCESS SERVER, AN  
 14 APPLICANT SHALL APPLY FOR ADMISSION TO THE LAW ENFORCEMENT  
 15 ACADEMY COURSE DESCRIBED IN SUBSECTION (1). FAILURE TO  
 16 ENROLL IN AND SUCCESSFULLY COMPLETE THIS COURSE WITHIN A  
 17 YEAR AFTER RECEIVING A CERTIFICATE OF REGISTRATION IS  
 18 GROUND FOR REVOCATION OF THE CERTIFICATE.

19 (3) EACH PROCESS SERVER WHO ENROLLS IN THE COURSE  
 20 DESCRIBED IN SUBSECTION (1) SHALL PAY A TUITION FEE TO THE  
 21 LAW ENFORCEMENT ACADEMY THAT IS SUFFICIENT TO PAY HIS SHARE  
 22 OF THE COSTS OF OFFERING THE COURSE.

23 NEW SECTION. SECTION 4. HANDBOOK FOR PROCESS SERVERS.  
 24 (1) THE DEPARTMENT OF COMMERCE SHALL PUBLISH A HANDBOOK FOR  
 25 PROCESS SERVERS AND LEVYING OFFICERS.

1 (2) EACH PERSON WHO APPLIES TO THE CLERK OF THE  
 2 DISTRICT COURT OF ANY COUNTY FOR REGISTRATION AS A PROCESS  
 3 SERVER MUST DEMONSTRATE THAT HE HAS PASSED AN EXAMINATION  
 4 BASED ON THE HANDBOOK AND ADMINISTERED BY THE BOARD OF  
 5 PRIVATE SECURITY PATROLMEN AND INVESTIGATORS PROVIDED FOR IN  
 6 2-15-1891.

7 (3) THE DEPARTMENT OF COMMERCE MAY CHARGE A REASONABLE  
 8 EXAMINATION FEE TO COVER THE COSTS OF PUBLISHING THE  
 9 HANDBOOK AND ADMINISTERING THE EXAMINATION PROVIDED FOR IN  
 10 THIS SECTION.

11 NEW SECTION. Section 5. List of process servers --  
 12 IDENTIFICATION. (1) The county clerk and recorder CLERK OF  
 13 THE DISTRICT COURT shall maintain a list of all process  
 14 servers registered in the county. The county clerk and  
 15 recorder CLERK OF THE DISTRICT COURT shall assign a number  
 16 to each registered process server. Upon renewal of a  
 17 certificate of registration, the same number may be  
 18 assigned.

19 (2) DURING THE COURSE OF SERVING PROCESS OR ACTING AS  
 20 A LEVYING OFFICER, A REGISTERED PROCESS SERVER MUST HAVE IN  
 21 HIS POSSESSION A BADGE AN IDENTIFICATION CARD WITH THE  
 22 NUMBER ASSIGNED UNDER SUBSECTION (1) AND AN IDENTIFICATION  
 23 CARD THAT HAS ATTACHED A PHOTOGRAPH OF THE REGISTERED  
 24 PROCESS SERVER. THE CLERK OF THE DISTRICT COURT SHALL  
 25 FURNISH THE IDENTIFICATION CARD, THE COST OF WHICH MUST BE

1 REIMBURSED BY THE PROCESS SERVER.

2 NEW SECTION. Section 6. Bond required. (1) The county  
3 ~~clerk-and-recorder~~ CLERK OF THE DISTRICT COURT may not  
4 accept a certificate of registration as a process server  
5 unless the certificate is accompanied by a surety bond of  
6 ~~\$2,000~~ \$10,000 PER INDIVIDUAL OR \$100,000 PER FIRM,  
7 conditioned upon compliance with [sections 1 through 8 9]  
8 and all laws governing service of process in this state.

9 (2) A LEVYING OFFICER MAY NOT LEVY ON A JUDGMENT THAT  
10 EXCEEDS THE VALUE OF THE BOND.

11 NEW SECTION. Section 7. Action on bond. (1) Any  
12 person who recovers damages for an injury caused by a  
13 service of process, made by a registered process server,  
14 that did not comply with the law governing service of  
15 process in this state may recover the amount of damages from  
16 the bond required under [section 5 6].

17 (2) If there has been recovery against a registered  
18 process server's bond, the registrant must file a new bond  
19 within 30 days or reinstate the bond. If the bond has not  
20 been reinstated or filed within 30 days, the county ~~clerk~~  
21 ~~and--recorder~~ ATTORNEY must revoke the registrant's  
22 certificate.

23 NEW SECTION. Section 8. Revocation or suspension of  
24 certificate. (1) A certificate of registration of a  
25 registered process server may be revoked or suspended by the

1 county ~~clerk--and--recorder~~ ATTORNEY of the county of  
2 registration whenever the registrant makes a service of  
3 process not complying with the law.

4 (2) The county ~~clerk-and-recorder~~ ATTORNEY may conduct  
5 an investigation concerning the revocation or suspension of  
6 a certificate based on the complaint of a person alleging  
7 injury caused by improper service of process by the  
8 registrant.

9 ~~(3) The--county--clerk--and--recorder--may--refer--the~~  
10 ~~certificate--revocation--or--suspension-matter-to-the-county~~  
11 ~~attorney-for-his--consideration--The--county--attorney--may~~  
12 ~~instruct--the--clerk--and--recorder--to--suspend, revoke, or~~  
13 ~~reinstate-the-certificate.~~ THE COUNTY ATTORNEY SHALL NOTIFY  
14 THE CLERK OF THE DISTRICT COURT WHEN A CERTIFICATE OF  
15 REGISTRATION IS SUSPENDED, REVOKED, OR REINSTATED.

16 NEW SECTION. Section 9. Proof of service --  
17 requirements. A proof of service of process signed by a  
18 registered process server must indicate the county in which  
19 he is registered and the number assigned to him under  
20 [section 4 5].

21 Section 10. Section 25-3-201, MCA, is amended to read:

22 "25-3-201. Delivery of papers to officer. (1) It is  
23 the duty of the clerk of any district court, at the request  
24 of a party in any civil action pending in such court or his  
25 agent or attorney, to forward by mail any process, summons,

1 or other papers required in the cause; and it is the duty of  
 2 the sheriff, registered process server, or other officer to  
 3 whom said papers may be directed to receive the same at the  
 4 place where the same are directed. When process in one  
 5 county is intended for service in another, it is the duty of  
 6 the clerk to forward the same in like manner.

7 (2) If the papers are delivered for service away from  
 8 the county seat, all necessary copies thereof must be  
 9 furnished for service.

10 (3) If any sheriff, registered process server, or  
 11 other officer refuses to receive any summons or other  
 12 process at the point where directed to him or to serve the  
 13 same, he is guilty of a misdemeanor and upon conviction  
 14 thereof must be fined in any sum not exceeding \$100."

15 Section 11. Section 25-3-202, MCA, is amended to read:

16 "25-3-202. When officer's execution of process  
 17 justified and required. A sheriff, registered process  
 18 server, or other ministerial officer is justified in the  
 19 execution of and must execute all process and orders regular  
 20 on their face and issued by competent authority, whatever  
 21 may be the defect in the proceedings upon which they were  
 22 issued."

23 Section 12. Section 25-3-203, MCA, is amended to read:

24 "25-3-203. Prepayment of cost of service. In no case  
 25 shall the officer or registered process server receiving

1 papers for service be required to serve the same unless the  
 2 person in whose behalf the service is made or his agent or  
 3 attorney first pay the cost of the service upon a demand  
 4 therefor by the officer or registered process server."

5 Section 13. Section 25-3-204, MCA, is amended to read:

6 "25-3-204. Officer to exhibit process. The officer or  
 7 registered process server executing such process must, then  
 8 and at all times subsequent so long as he retains it, upon  
 9 request, show the same with all papers attached to any  
 10 person interested therein."

11 Section 14. Section 25-3-205, MCA, is amended to read:

12 "25-3-205. Execution of process when sheriff a party.  
 13 When the sheriff is a party to an action or proceeding, the  
 14 process and orders therein which it would otherwise be the  
 15 duty of the sheriff to execute must be executed by the  
 16 coroner of the county or a registered process server."

17 Section 15. Section 25-3-301, MCA, is amended to read:

18 "25-3-301. Time and manner of return. (1) It shall be  
 19 the duty of the sheriff or other person serving a summons or  
 20 other process or order required by any of the provisions of  
 21 this code, issued out of any of the district courts of this  
 22 state, to make due and legal return of such service and file  
 23 the same with the clerk of the court in which such action or  
 24 proceeding is pending not more than 10 days after the making  
 25 of such service where the same was made in the county in

1 which such action or proceeding is pending and not more than  
2 15 days after the making of such service when the same was  
3 made outside of the county in which such action or  
4 proceeding is pending. Any failure to make and file such  
5 return as required may be punished as a contempt of court.

6 (2) When process or a notice is returnable to another  
7 county or was forwarded under 25-3-201, the sheriff or a  
8 registered process server may enclose his return of such  
9 process or notice in an envelope addressed to the officer  
10 who sent it and deposit it in the post office, prepaying  
11 postage."

12 Section 16. Section 25-3-302, MCA, is amended to read:

13 "25-3-302. Sheriff's---return Return prima facie  
14 evidence. The return of the sheriff or registered process  
15 server upon process or notices is prima facie evidence of  
16 the facts in such return stated."

17 Section 17. Section 25-13-203, MCA, is amended to  
18 read:

19 "25-13-203. Judgments requiring the performance of  
20 specific acts. (1) When the judgment requires the  
21 performance of any other act than those designated in  
22 25-13-201 and 25-13-202, a certified copy of the judgment  
23 may be served upon the party against whom the same is  
24 rendered or upon the person or officer required thereby or  
25 by law to obey the same, and obedience thereto may be

1 enforced by the court.

2 (2) Where a judgment directs a party to make a deposit  
3 or delivery or to convey real property, if the direction is  
4 disobeyed, the court, besides punishing the disobedience as  
5 a contempt, may by order require the sheriff or levying  
6 officer, who may be a registered process server, to take and  
7 deposit or deliver the money or other personal property or  
8 to convey the real property in conformity with the direction  
9 of the court."

10 Section 18. Section 25-13-301, MCA, is amended to  
11 read:

12 "25-13-301. Form and contents of writ. (1) The writ of  
13 execution must:

14 (a) be issued in the name of the state of Montana,  
15 sealed with the seal of the court, and subscribed by the  
16 clerk;

17 (b) be directed to the sheriff or levying officer;

18 (c) intelligibly refer to the judgment, stating the  
19 court and the county where it was entered and, if it is for  
20 money, the amount thereof and the amount actually due  
21 thereon; and

22 (d) require the sheriff or levying officer to act  
23 substantially as provided in this part.

24 (2) In executions, the amount thereof must be computed  
25 and stated as near as may be in dollars and cents, rejecting

1 fractions of a cent."

2 Section 19. Section 25-13-302, MCA, is amended to  
3 read:

4 "25-13-302. Execution against principal debtor before  
5 surety. Upon the rendition of any judgment, if it shall be  
6 shown that one or more of the defendants against whom the  
7 judgment is to be rendered are principal debtors and others  
8 of the said defendants are sureties of such principal  
9 debtor, the court may order the judgment so to state, and  
10 upon the issuance of an execution upon such judgment, it  
11 shall direct the sheriff or levying officer to make the  
12 amount due thereon out of the goods and chattels, lands and  
13 tenements of the principal debtor or debtors or, if  
14 sufficient thereof cannot be found within his county to  
15 satisfy the same, to levy and make the same out of the  
16 property, personal or real, of the judgment debtor who was  
17 surety."

18 Section 20. Section 25-13-303, MCA, is amended to  
19 read:

20 "25-13-303. Execution when only some of defendants  
21 served. When a writ of execution is issued on a judgment  
22 recovered against two or more persons in an action upon a  
23 joint contract, in which action all the defendants were not  
24 served with summons or did not appear, it must direct the  
25 sheriff or levying officer to satisfy the judgment out of

1 the joint property of all the defendants and the individual  
2 property only of the defendants who were served or who  
3 appeared in the action."

4 Section 21. Section 25-13-304, MCA, is amended to  
5 read:

6 "25-13-304. Execution against property of judgment  
7 debtor. If the writ be against the property of the judgment  
8 debtor, it shall require the sheriff or levying officer to  
9 satisfy the judgment, with interest, out of the personal  
10 property of such debtor and, if sufficient personal property  
11 cannot be found, out of his real property as provided in  
12 25-13-305."

13 Section 22. Section 25-13-305, MCA, is amended to  
14 read:

15 "25-13-305. Execution of lien on real property. If the  
16 judgment be a lien upon real property, the writ shall  
17 require the sheriff or levying officer to satisfy the  
18 judgment, with interest, out of the real property belonging  
19 to the judgment debtor on the day when the judgment was  
20 docketed or at any time thereafter or, if the execution be  
21 issued to a county other than the one in which the judgment  
22 was recovered, on the day when the transcript of the docket  
23 was filed in the office of the clerk of the district court  
24 of such county, stating such day, or any time thereafter."

25 Section 23. Section 25-13-306, MCA, is amended to

1 read:

2 "25-13-306. Execution against property in hands of  
3 representative. If the writ be against real or personal  
4 property in the hands of the personal representatives,  
5 heirs, devisees, legatees, tenants of real property, or  
6 trustees, it shall require the sheriff or levying officer to  
7 satisfy the judgment, with interest, out of such property."

8 Section 24. Section 25-13-307, MCA, is amended to  
9 read:

10 "25-13-307. Execution requiring delivery of possession  
11 of property. If the writ be for the delivery of the  
12 possession of real or personal property, it must require the  
13 sheriff or levying officer to deliver the possession of the  
14 same, particularly describing it, to the party entitled  
15 thereto and may at any time require the sheriff or levying  
16 officer to satisfy any costs, damages, rents, or profits  
17 recovered by the same judgment out of the personal property  
18 of the person against whom it was rendered, the value of the  
19 property for which the judgment was rendered to be specified  
20 therein, if a delivery cannot be had, and if sufficient  
21 personal property cannot be found, then out of the real  
22 property, as provided in 25-13-305."

23 Section 25. Section 25-13-401, MCA, is amended to  
24 read:

25 "25-13-401. To whom execution issued. Where the

1 execution is against the property of the judgment debtor, it  
2 may be issued to the sheriff or levying officer of any  
3 county in the state. Where it requires the delivery of real  
4 or personal property, it must be issued to the sheriff or  
5 levying officer of the county where the property or some  
6 part thereof is situated. Executions may be issued at the  
7 same time to different counties."

8 Section 26. Section 25-13-402, MCA, is amended to  
9 read:

10 "25-13-402. How writ executed. The sheriff or levying  
11 officer must execute the writ against the property of the  
12 judgment debtor by levying on a sufficient amount of  
13 property, if there be sufficient, collecting or selling the  
14 things in action, and selling the other property and paying  
15 to the plaintiff or his attorney so much of the proceeds as  
16 will satisfy the judgment. Any excess in the proceeds over  
17 the judgment and accruing costs must be returned to the  
18 judgment debtor unless otherwise directed by the judgment or  
19 order of the court. When there is more property of the  
20 judgment debtor than is sufficient to satisfy the judgment  
21 and accruing costs within the view of the sheriff or levying  
22 officer, he must levy only on such part of the property as  
23 the judgment debtor may indicate if the property indicated  
24 be amply sufficient to satisfy the judgment and costs."

25 Section 27. Section 25-13-403, MCA, is amended to

1 read:

2 "25-13-403. Security for sheriff's costs when property  
3 seized. If the sheriff or levying officer will incur  
4 substantial costs in transporting, keeping, or storing the  
5 property seized, the party requesting service of a writ of  
6 execution shall provide a bond or other security to pay for  
7 all costs which may be incurred as a result of the service  
8 of such writ."

9 Section 28. Section 25-13-404, MCA, is amended to  
10 read:

11 "25-13-404. Return of the execution. (1) Except as  
12 provided in subsection (2), execution may be made  
13 returnable, at any time not less than 10 or more than 60  
14 days after its receipt by the sheriff or levying officer, to  
15 the clerk of the court in which the judgment was rendered.

16 (2) The writ of execution issued by the county  
17 treasurer under 15-16-401 may be made returnable, at any  
18 time not less than 10 or more than 90 days after its receipt  
19 by the sheriff or levying officer, to the county treasurer  
20 of the county in which the writ was issued."

21 ~~NEW-SECTION--SECTION-29--EXTENSION-OF-AUTHORITY--ANY~~  
22 ~~EXISTING-AUTHORITY-OF-THE-DEPARTMENT-OF-JUSTICE--TO-MAKE~~  
23 ~~RULES--ON--THE--SUBJECT--OF--THE--PROVISIONS--OF--THIS--ACT--IS~~  
24 ~~EXTENDED-TO-THE-PROVISIONS-OF-THIS-ACT.~~

-End-

STANDING COMMITTEE REPORT

SENATE

scrhb639.txt

March 24, 1987

MR. PRESIDENT

Local Government

We, your committee on.....

House Bill

639

having had under consideration..... No.....

third

blue

reading copy ( ) color

Corne (Pinsoneault)

PROVIDE FOR REGISTERED PROCESS SERVER

Respectfully report as follows: That.....House Bill..... No... 639.....

AMENDING LOCAL GOVERNMENT STANDING COMMITTEE REPORT, DATED MARCH 10, 1987

1. Strike: inserted material in amendment no. 5 in its entirety.

Insert: "NEW SECTION. Section 4. Handbook for process servers.

(1) The department of commerce shall publish a handbook for process servers and levying officers.

(2) Each person who applies to the clerk of the district court of any county for registration as a process server must demonstrate that he has passed an examination based on the handbook and administered by the board of private security patrolmen and investigators provided for in 2-15-1891.

(3) The department of commerce may charge a reasonable examination fee to cover the costs of publishing the handbook and administering the examination provided for in this section."

~~Numbered subsequent sections~~

2. Strike: amendment no. 22 in its entirety.

AND AS AMENDED,  
BE CONCURRED IN

DO PASS

DO NOT PASS

Beene  
Chairman.

Senator Crippen

8-25-87  
11:05  
24