

# MAINE STATE LEGISLATURE

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# ONE HUNDRED AND FOURTH LEGISLATURE

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**Legislative Document**

**No. 1152**

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S. P. 333

In Senate, March 4, 1969

Referred to Committee on Judiciary. Sent down for concurrence and 1,000 ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Mills of Franklin.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-NINE

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### AN ACT Relating to Poor Debtors.

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Be it enacted by the People of the State of Maine, as follows :

**Sec. 1. R. S., T. 14, cc. 503 & 505, repealed.** Chapters 503 and 505 of Title 14 of the Revised Statutes are repealed.

**Sec. 2. R. S., T. 14, c. 504, additional.** Title 14 of the Revised Statutes is amended by adding a new chapter 504, to read as follows :

#### CHAPTER 504

#### DISCLOSURES AND ARRESTS

#### SUBCHAPTER I

#### PROCEDURE

§ 3561. Person or persons entitled to disclosure process

The owner of a judgment remaining unsatisfied in any part may have a disclosure of the business and property affairs of any judgment debtor, including corporations, at any time, by proceedings as provided for in this chapter.

No judgment debtor, or officer of a judgment corporation, thus cited, shall be arrested, except for contempt as provided under section 3583.

§ 3562. Person or persons entitled to hear disclosures

Disclosures shall be heard by Judges of the District Court or referees appointed by the court for the purpose of hearing disclosure. Referees shall

be appointed and compensated in such manner as may be provided for by court rule. If the disclosure is heard by a referee any orders that may issue as a result thereof shall be reviewed and issued by the court.

§ 3563. Application and subpoenas in the disclosure process

The owner of a judgment described in section 3561, or his attorney, may make application in writing to a Judge of the District Court in the division in which the debtor or the creditor resides or has a place of business, or in the case of a corporation, in which said corporation has an established place of business or in which any officer of the corporation, on whom the subpoena is served resides, or, if the judgment debtor is a nonresident of this State, in the division in which he may be found, stating the court and the term at which the judgment was entered, the date of the judgment, the amount of the judgment, the amount due thereon, specifying the parties to the action, the court in which entered, and asking for a subpoena to be issued to the debtor or to an officer of the debtor corporation to appear and make disclosure. Any false swearing or failure to comply with any provision of this section shall be punishable as contempt of court.

Upon filing such application a subpoena shall be issued, along with a copy of the application, under the hand and seal of the court or a facsimile thereof and shall contain the following:

To the above named defendant:

You are hereby subpoenaed and are required to appear before \_\_\_\_\_, Judge of the District Court, on \_\_\_\_\_ day of \_\_\_\_\_, in the Year \_\_\_\_\_, at the \_\_\_\_\_ District Court, located at \_\_\_\_\_, at \_\_\_\_\_ (AM or PM) to DISCLOSE ALL OF YOUR ASSETS HELD BY YOU WHICH ARE NOT EXEMPT BY STATUTE.

**IF YOU FAIL TO APPEAR YOU MAY BE JAILED FOR CONTEMPT OF COURT.**

**IF YOU APPEAR AND HONESTLY DISCLOSE YOU WILL NOT BE JAILED BUT WILL BE GIVEN AN OATH FOR HONEST DISCLOSURE.**

**OR**

To the above named Defendant:

You are hereby subpoenaed and are required to appear before \_\_\_\_\_, a Referee appointed by \_\_\_\_\_, Judge of the District Court, on \_\_\_\_\_ day of \_\_\_\_\_, in the Year \_\_\_\_\_, at the \_\_\_\_\_, a place designated by the Honorable Judge of the District Court, at \_\_\_\_\_ (AM or PM) to DISCLOSE ALL OF YOUR ASSETS HELD BY YOU WHICH ARE NOT EXEMPT BY STATUTE.

**IF YOU FAIL TO APPEAR YOU MAY BE JAILED FOR CONTEMPT OF COURT.**

**IF YOU APPEAR AND HONESTLY DISCLOSE YOU WILL NOT BE JAILED BUT WILL BE GIVEN AN OATH FOR HONEST DISCLOSURE.**

**§ 3564. Amendment of errors in application and subpoena**

No application or subpoena shall be deemed incorrect for want of form only, or of circumstantial errors or mistakes, provided the persons involved can rightly understand and the case be rightly understood. Such errors and mistakes may be amended on application of either party.

**§ 3565. Service**

The subpoena and application may be served by any officer qualified to serve civil process in said county by giving to the debtor or to an officer of the debtor corporation in hand an attested copy of the application and subpoena or by registered or certified mail to addressee only return receipt requested. If due service is not made, the court may order further notice.

Such service shall be at least 7 days before the time set for said disclosure hearing.

**§ 3566. New disclosures**

At any time after the expiration of 3 years from the termination of any proceedings under this chapter, and while the judgment remains in force, the judgment creditor may again prevail himself of all the provisions of this chapter where the original debt, exclusive of costs, exceeds \$20.

**§ 3567. Continuances**

Continuances are allowed only at the discretion of the Judge of the District Court with no more than one continuance allowed, except for extraordinary circumstances.

## SUBCHAPTER II

### EXAMINATION AND DISCLOSURE

**§ 3568. Appearance and examination**

At such time and place as designated in the subpoena, the debtor or the officer of the debtor corporation shall appear and submit himself to examination on oath concerning his estate and effects or the estate and effects of the debtor corporation, their disposal and his ability or the ability of the debtor corporation to pay the judgment.

**§ 3569. Procedures on examination**

The petitioner may propose to the debtor or the officer of the debtor corporation interrogatories pertinent to the inquiry. The examination shall be sworn to by the debtor or the officer of the debtor corporation. If the petitioner is absent and does not submit interrogatories beforehand to the court, the court shall default the petitioner and the petitioner shall not be allowed to bring another disclosure in regard to the same debt for a period of 3 years.

### § 3570. Evidence

After the examination of the debtor or the officer of the debtor corporation, other competent evidence may be introduced by either party, and the debtor or the officer of the debtor corporation may then be further examined. Depositions may be used in such disclosure, and the court may, at the request of either party, issue subpoenas to witnesses who are entitled to the same fees as witnesses before a District Court.

### § 3571. Administration of the oath upon honest disclosure

If, on such examination and hearing the debtor discloses all real and personal estate or interest that is not exempted by statute from attachment and execution or income of any kind or nature, that there has been no fraud, deceit or conveyance in defraud of creditors, then the court shall administer to him the oath prescribed in section 3572.

This section shall not be construed to mean that the debtor or the debtor corporation must have no assets of any kind or income of any kind in order to be entitled to the administering of the oath.

### § 3572. Oath upon honest disclosure

Oath: "I \_\_\_\_\_, solemnly swear (or "affirm") "that I have no real or personal estate or interest in any except what is exempted by statute from attachment and execution or income of any kind other than what I have now disclosed; and, that since any part of this debt or cause of action accrued I have not directly or indirectly sold or conveyed or disposed of or entrusted to any person any of my real or personal property to secure it or to receive any benefit from it to myself or others with an intent to defraud any of my creditors; So help me God." (or, "This I do under the pains and penalties of perjury.")

### § 3573. Failure to obtain benefit of the oath

If upon such disclosure the debtor fails to obtain the benefit of the oath provided in section 3572, the court shall, under its hand and seal, indorse a certificate of that fact upon the execution in force at the time of said disclosure, and a copy of said certificate shall be indorsed on every subsequent execution issued on said judgment or any judgment founded thereon. The debtor who fails to obtain benefit of the oath may be subject to contempt proceedings. Such indorsement shall state the reason or reasons for such failure to obtain the oath.

### § 3574. Disclosure before judgment

When a person is served with a summons or mesne process in any action he may at any time before final judgment appear before a Judge of the District Court or any court before which such process is pending and submit himself to examination. Such court shall give notice to the creditor in accordance with section 3565. Such disclosure shall be had in accordance with this chapter and with like effect. The court may continue the cause of action to permit such disclosure to be taken.

SUBCHAPTER III  
ADMINISTRATION AFTER DISCLOSURE

§ 3575. Orders after disclosure

If, upon disclosure, the debtor discloses any bank bills, notes, accounts, bonds or other contracts or other property which cannot come at to be attached under common law and are not exempted from attachment and the creditor and the debtor cannot reach an agreement to apply the same towards the debt, the court shall appraise and set off enough of such property to satisfy the debt, costs and charges. The creditor, or his attorney, may select the property to be appraised. If the creditor accepts it, the property may be assigned and delivered by the debtor to him and applied towards the satisfaction of his demand. If any particular article of such property which is necessary or convenient to be applied in satisfaction of the execution exceeds the amount due thereon and is not divisible in its nature, the creditor may take it and is to pay the surplus to the debtor or secure it to the satisfaction of the court.

Nothing in this section shall be construed to mean property other than that which cannot be come at to be attached under the common law or the laws of this State and nothing in this section shall be construed as to mean income or wages.

§ 3576. No wage assignment or orders for partial payments

The debtor shall not be required to assign any sums due him as wages for his personal labor which would be exempt from attachment on trustee process under section 2602 or any other law of this State or of the United States. The court shall not order any form of partial payments by the debtor to the judgment creditor. Any voluntary agreement for partial payments or time payments shall be valid and proper but shall not be punishable in any manner if defaulted upon.

§ 3577. Property to be returned debtor after 30 days

If the petitioner does not accept property appraised and set off, the court shall make a record of such property and cause such property to be kept safely and secured for the term of 30 days thereafter, to be delivered to the petitioner with the assignment, on demand, within that time. If not so demanded, they shall be returned to the debtor or officer of the debtor corporation.

§ 3578. Lien on real estate

If an execution debtor or the officer of a debtor corporation discloses real estate liable to be seized on execution, the court shall give the petitioner a certificate thereof, stating the names of the parties and the amount of the execution. The petitioner shall have a lien thereon for 30 days thereafter if he files the certificate with the register of deeds of the county or district where the real estate lies within 5 days from the date of the disclosure. The register shall enter and file it like officers' returns of attachments.

**§ 3579. Lien on personal property**

If the debtor or the officer of the debtor corporation discloses personal estate liable to be seized on execution, the petitioner shall have a lien on it, or so much of it as the court judges necessary, for 30 days. If the debtor or the officer of the debtor corporation transfers, conceals or otherwise disposes of it within said time or suffers it to be done or refuses to surrender it on demand to any proper officer having an execution on the same judgment the debtor shall have no benefit from the oath. The petitioner may recover in a civil action against him or any person fraudulently aiding in such transfers, concealment or disposal, double the amount due on said execution. The debtor shall be subject to contempt proceedings.

**§ 3580. Persons holding property in trust, fraud or concealment may be compelled to testify**

If the court finds reasonable cause to believe that any other person holds any property or credits of the debtor in trust for him or in fraud of his creditors, or if the petitioner shall make oath that he believes that other persons so hold property of the debtor, the court shall issue a similar subpoena to such person to appear and testify in relation thereto, said service to be the same as under this chapter. The testimony of such witness may be reduced to writing and signed by him, and if it shall satisfactorily appear to the court from all the evidence in the case that such person so holds property or credits of the debtor, he shall so certify upon the execution. The petitioner shall have a lien upon said property or credits for 30 days succeeding such disclosure, to be enforced by complaint seeking equitable relief or trustee process, and if upon such complaint or trustee process the court finds such property or credits to be so held as aforesaid, it may order the same, or so much of them as may be necessary to satisfy the judgment and all costs, to be conveyed, transferred or assigned to the petitioner. If the parties cannot agree upon the value of such property or credits they shall be assigned to the petitioner if he shall give such trustee a bond sufficient to said trustee for the surplus of the proceeds of such property or credits, after satisfying said judgment and costs.

**SUBCHAPTER IV****PENALTIES****§ 3581. False disclosure; liability**

When a debtor, authorized or required to disclose on oath, willfully discloses falsely or withholds or suppresses the truth, the creditor of record or in interest may bring a civil action against him, whether he is criminally prosecuted or not, particularly alleging the false oath and fraudulent concealment of his estate or property. On oath before a Judge of the District Court he may declare his belief of the truth of the allegations of the complaint. Such judge shall certify the oath on the complaint. The complaint shall be served in the same manner as in a civil action. If the creditor prevails in the action, judgment shall be rendered against the debtor for double the amount of the debt and charges on the former judgment.

**§ 3582. Fraudulent concealment or transfer, liabilities**

Whoever knowingly aids or assists a debtor in a fraudulent transfer or concealment of his property, to secure it from creditors and to prevent its attachment or seizure on execution, is liable to any creditor suing therefor in a civil action, in double the amount of property so fraudulently transferred or concealed, not exceeding double the amount of such creditor's demand.

**§ 3583. Penalty for noncompliance**

The only penalty in this chapter, other than that which is mentioned in sections 3581 and 3582, shall be for contempt under section 255.

There shall be no *caipias* execution issued or *caipias* to bring in issued. At the hearing for contempt, if it be for nonappearance, the debtor shall be notified in writing of a new date and time for the disclosure hearing, said notice to be given to the creditor no less than 7 days in advance of said hearing.

**SUBCHAPTER V****MESNE PROCESS****§ 3584. Arrest of debtor about to leave the State**

Any person, whether a resident of the State or not, may be arrested and held to bail or committed to prison on mesne process in any action, if the sum demanded amounts to \$20, when he is about to depart and reside beyond the limits of the State with property or means of his own exceeding the amount required for his immediate support.

The Maine Rules of Civil Procedure shall govern this situation.

**§ 3585. Disclosure on arrest; notification**

A debtor arrested or imprisoned under mesne process, on request to the officer or jailor who has him in custody, may be taken before a District Court Judge as soon as possible to disclose the actual state of his affairs.

Any debtor arrested under this process shall be advised of his right to make disclosure by the arresting officer or jailor.

**§ 3586. Disclosure under mesne process**

Disclosure under mesne process shall be the same as disclosure proceedings in this chapter, with exceptions noted.

**§ 3587. Notice to plaintiff**

Previous to disclosure, the debtor, if he is not out on bond or bail, shall give to the creditor or one of them if more than one, his agent or attorney, due notice of his intention and of the time and place for said disclosure, that he may be present. Such notice shall be not less than 24 hours before said disclosure hearing.

**§ 3588. Discharge**



If the debtor is given the oath prescribed in section 3572, he shall thereupon be discharged from arrest, and the execution issuing on the judgment in the action shall run against his property.

§ 3589. Duration of the lien

All attachable property disclosed upon at the examination, or so much as the creditor designates to satisfy his demand, shall be held as attached from the time of disclosure until 30 days after final judgment, like other attachments. The judge shall make return thereof on the writ or process, certifying the fact that the property was so disclosed. If it is real estate, he shall certify it to the register of deeds like other attachments; and if the creditor requires at any time before final judgment, he shall take into his custody any part of the personal property so disclosed sufficient to secure the demand and hold it as in other cases.

§ 3590. Arrested debtor may give bond to disclose after judgment

When a person is arrested or imprisoned under mesne process in a civil action, he may disclose as provided in section 3568, or he may be released by giving bond to the plaintiff in a sum not exceeding the amount prayed for in the complaint upon which he is arrested or imprisoned, with surety or sureties, said bond to be approved by him or the District Court Judge where the imprisonment is made. This is conditioned that within 15 days after a judgment has become final for the plaintiff, by expiration of the time for appeal, by dismissal of an appeal or certificate of decision from the law court, he will notify the creditor, his agent or attorney, to attend his disclosure examination at a time not less than 7 days nor more than 30 days after such notice; that he will then and there submit himself to examination; make true disclosure of his business affairs and property on oath; and abide the order of the court thereon; and if the officer serving the writ takes such bond, he shall return it to the court where the action is pending.

§ 3591. Debtor free for 30-day lien period

If the debtor, on such examination, does not, in the opinion of the court in accordance with section 3571, entitle himself to the benefit of the oath provided and it appears that at the time he has real or personal property liable to attachment, the court shall permit him to go at large on his bond during the 30 days that the creditor's lien exists on the property disclosed. During that time, the creditor may enforce his lien on the property.

§ 3592. Application for examination

A debtor who has given bond under mesne process may apply in writing within the time limited in his bond to the Judge of the District Court wherein he gave bond, claiming the benefit of the oath authorized under section 3751. The court shall appoint a time and place for his examination and issue appropriate notice to the plaintiff, service of which shall be at least 7 days before said examination is to take place.

In all other instances wherein the debtor arrested or imprisoned under mesne process wishes to disclose his application to do so shall be made to the Judge

of the District Court wherein he was arrested and the judge will set the time, date and place in accordance with this chapter and notify the plaintiff giving the appropriate times allowed in this subsection in said notice.

## SUBCHAPTER VI

### EXEMPTIONS

#### § 3593. Criminals not precluded from the oath

No conviction or other disqualification to be a witness precludes a debtor from relief under this chapter.

#### § 3594. Holidays

No person shall be arrested on mesne process or contempt or on a warrant for taxes on the day annual Thanksgiving; the 19th day of April; the 30th day of May; the 4th of July; the first Monday of September; Veterans Day; November 11th; or Christmas.

On the day of any military training, inspection, review or election, no officer or soldier required by law to attend the same shall be arrested on any such processes.

#### § 3595. Election days

No elector shall be arrested, except for treason, felony or breach of the peace, on the days of election of United States, state or town officers.

Sec. 3. R. S., T. 14, §§ 253 - 254, repealed. Sections 253 and 254 of Title 14 of the Revised Statutes are repealed.

Sec. 4. R. S., T. 14, 255, additional. Title 14 of the Revised Statutes is amended by adding a new section 255 to read as follows:

§ 255. Debtor's refusal to testify, debtor's nonappearance, debtor's or creditor's refusal to comply with orders under chapter 504.

If the debtor or the officer of a debtor corporation or any other person duly served with a subpoena under chapter 504 refuses or neglects to appear, the court shall hold such person in contempt of court.

If the debtor or the officer of a debtor corporation or other person duly served with a subpoena under chapter 504 refuses to testify in obedience thereto, or refuses to answer any proper questions, or if the debtor or the officer of the debtor corporation refuses to make full disclosure upon all matters named in section 3568, or if said debtor or the officer of the debtor corporation or a creditor refuses to comply with any proper order of the court or perform the duty imposed upon him by chapter 504, he shall be adjudged to be in contempt and be committed to jail until he purges himself by due process of law or be fined or by both. The warrant of commitment shall state specifically the contempt of which the person is guilty.