

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1137

H. P. 850

House of Representatives, February 25, 1971

Referred to Committee on Judiciary. Sent up for Concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Lund of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Relating to the Enforcement of Money Judgments.

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

Sec. 1. R. S., T. 14, c. 502, additional. Title 14 of the Revised Statutes is amended by adding a new chapter 502 to read as follows:

CHAPTER 502

ENFORCEMENT OF MONEY JUDGMENTS

§ 3121. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. **Earnings.** "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commissions, bonuses or otherwise, and includes periodic payments pursuant to a pension or retirement program.

2. **Disposable earnings.** "Disposable earnings" means that part of the earnings of any judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

3. **Judgment creditor.** "Judgment creditor" means any person, corporation, partnership, or other entity who or which is the owner of any judgment unsatisfied in whole or in part.

4. **Judgment debtor.** "Judgment debtor" means any person, corporation, partnership or other entity against whom or which a judgment has been entered and that judgment is unsatisfied in whole or in part.

Whenever a judgment creditor or judgment debtor is a corporation or other legal entity and is required to perform any act under this section, such acts shall be performed by the officers of the corporation or by the persons controlling the entity whichever is appropriate. Except where the personal appearance or testimony is required in response to a subpoena or capias to bring in under this chapter, the judgment creditor or judgment debtor may act by or through an attorney.

§ 3122. Subpoena to appear and disclose

A judgment creditor shall have the right, for the purpose of a hearing, to subpoena the judgment debtor to appear before a Judge of the District Court in the division in which the judgment debtor resides, or, if the judgment debtor is a nonresident of this State, in the division in which he is commorant, or in the case of a corporation, in the division in which said corporation has an established place of business or if said corporation has no established place of business in this State, then in any division in which a civil summons could be served on said corporation. Such subpoenas will be issued in blank by the clerks of the District Courts in the manner of the issuance of summons, and shall be in substantially the following form:

SUBPOENA

STATE OF MAINE

....., ss.

TO:
.....
.....

You are hereby required, in the name of the State of Maine, to appear before the Judge of the
Division of the District Court on the
day of, 19..., at
o'clock in the noon, to disclose on oath, what assets and income you have which may be used to satisfy a judgment recovered against you in the Court on the day of, 19..., by
..... said judgment being in the amount of plus costs of Court in the amount of and
for execution(s) issued on said judgment.

FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR ARREST.

Dated at, Maine this day of
....., 19....

.....
Clerk

RETURN OF SERVICE

STATE OF MAINE

....., ss., 19...

I have this day made service on the within named by giving in hand at o'clock in the noon, a true and attested copy of the within subpoena.

..... Deputy Sheriff

Fees:

Service

Travel

§ 3123. Service of disclosure subpoena

The subpoena set forth in section 3122 may be served by an officer qualified to serve civil process by giving to the judgment debtor at least 20 days prior to the disclosure hearing an attested copy of the subpoena in hand, provided that service of the subpoena on corporations may be made by any method by which civil summons may be served on corporations.

§ 3124. Successive disclosures

A judgment creditor may subpoena the judgment debtor to disclose no more often than once every 6 months except upon motion for good cause shown.

§ 3125. Appearance and examination of debtor; hearing

At the time and place indicated in the subpoena, the judgment debtor shall appear at a hearing held to determine his ability to pay the judgment. Failure of the judgment creditor to appear in person or by attorney shall result in termination of the disclosure hearing. Hearing so terminated shall be considered a completed hearing for purposes of section 3124.

§ 3126. Fees and costs

The subpoena and return of service shall be filed with the clerk, together with a filing fee of \$5. Said fee and actual costs of service shall be added to the judgment unless the judgment creditor or his attorney fails to appear in accordance with section 3125.

§ 3127. Installment payments

Upon a disclosure hearing where it is shown that the judgment debtor is receiving or will receive money or earnings from a source other than a source which is otherwise exempt from trustee process, attachment and execution, the court may order that the judgment debtor make specified installment payments to the judgment creditor; provided that the maximum amount of earnings for any workweek which is subjected to such an installment order may not exceed:

1. Percent. Twenty-five percent of the judgment debtor's disposable earnings for that week, or

2. Federal minimum hourly wage. The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by section 206 (a) (1) of Title 29 of the United States Code in effect at the time the earnings are payable, whichever is less.

In the case of earnings for any pay period other than a week, the multiple of the federal minimum hourly wage equivalent in effect to that set forth in subsection 2 as prescribed by regulations of the Secretary of Labor of the United States shall limit the amount of the installment order.

§ 3128. Factors in determining the amount of the installment order

In fixing the amount of installment payments, the court may take into consideration: The reasonable requirements of the judgment debtor and his dependents; any payments required to be made by him in satisfaction of other judgment orders and wage assignments; the amount due on the judgment; the amount of money or earnings being or to be received; and any other factors and circumstances which the court shall deem material and relevant. The court may prescribe the time, places and manner in which the payments are to be made.

§ 3129. Modification of the installment order

The court may at any time, on its own motion or on the motion of any party and upon notice and hearing, make an order suspending, revising or revoking any order made pursuant to this chapter upon a showing that the altered circumstances of either party so require.

§ 3130. Provisional installment payment order

Pending the sale of any property under section 3131, the court may issue an installment payment order as provided in section 3127. Upon the completion of the sale, the judgment creditor must file with the court an affidavit stating:

1. Copy mailed. Copy of said affidavit has been mailed to the judgment debtor;
2. Date and place. The date and place of the sale;
3. Costs. The costs of the sale;
4. Payments. Total amount of installment payments received since such installment payment order was entered;
5. Proceeds. The proceeds of sale; and
6. Balance. The balance due to the judgment creditor which balance shall equal the amount of the judgment less the sum specified in subsections 4 and 5. In addition, the judgment creditor shall also state in such affidavit the number of installments required to retire the balance remaining on such judgment which number shall equal the balance due divided by the dollar amount provided for each installment in such installment payment order.

§ 3131. Turn over order, appraisal and setoff

Where it is shown at a disclosure hearing that the judgment debtor owns any personal or real property which is not exempt from attachment and execution and upon the request of the judgment creditor, the court shall order the judgment debtor to turn over to the judgment creditor such non-exempt property as will satisfy the judgment and costs. The court shall determine the value of any property disclosed and the extent to which the property is exempt from attachment and execution. If the judgment creditor cannot agree as to which items of property shall be applied to the satisfaction of the judgment, the court shall set off enough property as will satisfy the judgment. The judgment creditor shall sell the property in the manner provided in chapter 509, except that the time of sale shall be within 60 days after the date of this turn over order.

§ 3132. Lien on real estate and personal property

Upon the request of the judgment creditor, the court shall order a lien on so much of the judgment debtor's property which is not exempt from attachment and execution as will satisfy the judgment and costs. Such a lien shall be ineffective against third persons until the judgment creditor files the lien order, if the property is real estate, with the register of deeds of the county where the real estate lies; and, if the property is personal property, with the filing officer where a filing would be required to perfect a security interest in such property under Title 11, section 9-401. Such a lien shall continue until the judgment and costs are satisfied. If the judgment debtor transfers, conceals or otherwise disposes of the property subject to a lien order, he may be held in contempt of court in proceedings under section 3136.

§ 3133. Judgment creditor's remedies

Where it is shown at a disclosure hearing that the judgment debtor has money or earnings, or property which is not exempt from trustee process, attachment or execution the judgment creditor may have any combinations of orders pursuant to sections 3127, 3130, 3131 and 3132 which will aid in enforcing his money judgment.

§ 3134. Failure to appear

If the judgment debtor fails to appear after being duly served with a subpoena under section 3123 and the judgment creditor has not failed to appear at the time and place named in said subpoena, the judge shall upon the request of the judgment creditor issue a *capias* to bring in the debtor to a disclosure hearing at a time and date specified in said *capias*.

§ 3135. *Capias* to bring in

After a *capias* to bring in has been issued pursuant to section 3134, the sheriff shall cause the judgment debtor to appear at the time and place stated in the *capias* to bring in and to that end may, if necessary, take the judgment debtor into custody, provided that the sheriff shall not incarcerate the judgment debtor but shall deliver the judgment debtor to the District Court. If

the time set for the disclosure hearing is more than 3 hours subsequent to the delivery of the judgment debtor to the District Court, the judgment debtor shall be released upon his personal recognizance for his appearance at the disclosure hearing without the necessity of a hearing before a bail commissioner. If, upon hearing, the judgment debtor does not show good cause for his failure to appear after being duly served with a subpoena under section 3123, he shall be ordered to pay the costs of issuing and serving said *capias* to bring in. After the question of costs of issuing and serving said *capias* has been determined, the judge shall proceed with the examination required by section 3122.

§ 3136. Contempt

Whenever a judgment debtor fails to comply with any order under sections 3131 and 3132 and a judgment creditor complains in writing to the court that such an order has been disregarded or disobeyed by the judgment debtor, summary process shall issue by order of the judge, requiring the judgment debtor to appear for a hearing on a day certain and show cause why he shall not be adjudged guilty of contempt. If the judgment debtor fails to appear at said show-cause hearing, the court may issue a *capias* to bring in.

§ 3137. Failure to comply with installment payment order

If the judgment debtor fails to make 3 consecutive payments as required by the installment payment order and fails to show sufficient cause why he is not complying with said order, the court may order the employer or other payor of earnings of the judgment debtor to pay an amount not to exceed:

1. Percent. Twenty-five percent of the judgment debtor's disposable earnings for that week, or
2. Federal minimum hourly wage. The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by section 206 (a) (1) of Title 29 of the United States Code in effect at the time the earnings are payable, whichever is less.

In the case of earnings for any pay period other than a week, the multiple of the federal minimum hourly wage equivalent in effect to that set forth in subsection 2 as prescribed by regulations of the Secretary of Labor of the United States shall limit the amount of the order.

No employer may discharge any employee because his earnings have been subjected to such an order.

Sec. 2. R. S., T. 14, § 2602, sub-§ 6, amended. Subsection 6 of section 2602 of Title 14 of the Revised Statutes, as amended, is further amended to read as follows:

6. **Wages.** By reason of any amount due from him to the principal defendant as wages for his personal labor or that of his wife or minor children ~~until after judgment, and not exceeding \$40 of the amount due and payable to him per week as wages for his personal labor, and \$10 shall be exempt in all cases.~~ Moreover, wages of minor children and of women are

not, in any case, subject to trustee process on account of any debt of parent or husband.

Sec. 3. R. S., T. 14, § 3701, amended. Section 3701 of Title 14 of the Revised Statutes is amended to read as follows:

§ 3701. Body execution

In any civil action, except where express provision is by law made to the contrary, an execution shall **not** run against the body of the judgment debtor. ~~He may be arrested and imprisoned thereon for the purpose of obtaining a discovery of his property wherewith to satisfy it.~~

Sec. 4. R. S., T. 14, § 4051, amended. The first sentence of section 4051 of Title 14 of the Revised Statutes is amended to read as follows:

No person shall be arrested in a civil action, on mesne process or execution or on a warrant for taxes on any legal holiday ~~the day of annual Thanksgiving; the 19th day of April; the 30th day of May; the 4th day of July; the first Monday of September; Veterans Day; November 11th; or Christmas.~~

Sec. 5. R. S., T. 14, § 4401, sub-§ 1, amended. Subsection 1 of section 4401 of Title 14 of the Revised Statutes, as amended, is further amended to read as follows:

1. **Apparel, household furniture and goods, bed.** The debtor's apparel; household furniture and goods necessary for himself, wife and children, not exceeding \$500 in value, and one bed, bedstead and necessary bedding for each such person, one radio and one television not exceeding \$200 in total values, guns not exceeding \$150 in value and one automobile or truck not exceeding \$600 in value.

Sec. 6. R. S., T. 14, § 4551, repealed and replaced. Section 4451 of Title 14 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 4551. Homestead exemption

Except as provided in section 4552, a homestead whenever acquired shall be exempt from attachment, execution or forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon; provided that only so much of such property as does not exceed \$3,000 in value is exempt. The term homestead means a lot of land and the buildings thereon owned by the householder who uses the same as his principal place of abode.

Sec. 7. R. S., T. 14, §§ 4552-4554, repealed and replaced. Section 4552, as last amended by sections 1 and 2 of chapter 315 of the public laws of 1969, section 4553, as amended by section 3 of chapter 315 of the public laws of 1969, and section 4554, all of Title 14 of the Revised Statutes, are repealed and the following enacted in place thereof:

§ 4552. Exceptions

The homestead shall not be exempt from any of the following: Claims secured by real estate mortgages on the homestead; claims secured by security

interests in the homestead or claims of lien creditors pursuant to Title 10, chapter 603.

§ 4553. Creditors claiming greater value

If the interest of a householder in his homestead exceeds \$3,000 it may be subjected to a forced sale. The householder may set off such part thereof which is of a value of \$3,000 and designate that portion as exempt from sale. If the householder fails to so designate such portion, the whole of the property shall be sold and the proceeds of said sale shall be distributed as follows:

1. Householder. To the householder in the amount of \$3,000; and said \$3,000 shall remain exempt from attachment and execution by any creditor for a period of one year. At the end of said period, if the \$3,000 is not re-invested in property which qualifies for a homestead exemption, the \$3,000 shall become subject to attachment and execution;
2. Creditor. To the creditor attaching or executing on the homestead to the extent of his claim; and
3. Balance. To the householder the balance of the proceeds.

§ 4554. Death of householder; mechanics liens

Subject to the exceptions in section 4552, the exempt portion of the homestead shall not be subject to claims of creditors of the householder or of his estate in the event of his death, testate or intestate.

Sec. 8. R. S., T. 18, § 1858, additional. Title 18 of the Revised Statutes is amended by adding a new section 1858 to read as follows:

§ 1858. Homestead exemption; exemptions from attachment and execution

Anything provided in this Title to the contrary notwithstanding, any part of the decedent's estate, whether real or personal property and whether the decedent died testate or intestate, which shall be exempt under Title 14, sections 4401 and 4552 on the date of death of decedent, shall not be liable for payment of debts of the decedent or claims against his estate and shall not be subject to sale by license of the probate court for payment of debts of the decedent or any other process or action for the payment of debts of the decedent.

Sec. 9. R. S., T. 19, § 722, amended. The 5th sentence of section 722 of Title 19 of the Revised Statutes is amended to read as follows:

When the husband or father is committed to jail on execution issued upon decree of alimony, or for payment of money instead thereof, or for the support of his minor children, or for support pending the divorce action, or for payment of counsel fees, the county having jurisdiction of the process shall bear the expense of his support and commitment and he may be discharged from imprisonment by payment of the execution and all costs and expenses of his commitment and support ~~and he shall not be entitled to relief therefrom under Title 14, chapters 503 and 505.~~

Sec. 10. Repealing clause. The following sections of Title 14 of the Revised Statutes are repealed:

Sections 253, 254, 1520, 1521, 3151 to 3154, 3201 to 3203, 3251 to 3257, 3301 to 3306, 3351 to 3353, 3401, 3402, 3451 to 3454, 3501 to 3505, 3551 to 3554, 3601 to 3606, 3651 to 3654, 3702 to 3721, 3801 to 3805, 3851 to 3852, 3901, 3951, 4001 to 4007, and 5051 to 5062.

STATEMENT OF FACT

The purpose of this bill is to change the procedures for the enforcement of money judgments. Among other things it removes the function of the present Disclosure Commissioners to the District Court, abolishes imprisonment in civil cases except for those involving child support and domestic relations, raises the personal property exemptions, changes the amount, effect and applicability of the homestead exemption, abolishes the "Poor Debtor Oath", introduces the concept of an installment payment order to satisfy money judgments in lieu of trustee process of wages, permits direct payment of portions of wages to judgment creditors in the event of default on an installment payment order and establishes procedures relating to the non-appearance of judgment debtors.

The bill has been prepared by a subcommittee of the Commercial Law Section of the Maine State Bar Association at the request of the Board of Governors of the Maine State Bar Association. The action was prompted by the frequent unfavorable publicity given to Maine's traditional disclosure process and imprisonment procedures. Such publicity has appeared in Consumer Reports, The Wall Street Journal, The New York Times and other national news media. Shortly after the Board of Governors authorized the project a three judge federal court held significant portions of the present procedures unconstitutional in the case of **Desmond v. Hachey** thereby making absolutely necessary some reform of the procedures.

The basic philosophy of the proposed legislation is that imprisonment for contract debt is an anachronism in today's society and that liability for a money judgment should be determined with reference to a judgment debtor's ability to pay from earnings rather than to his ownership of certain tangible assets. Moreover the abolition of Disclosure Commissioners avoids the potential for abuses and constitutional infirmities.