

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1461

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H. P. 1126

House of Representatives, March 13, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Perkins of South Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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AN ACT Revising the Enforcement of Money Judgments Act.

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

Sec. 1. R. S., T. 14, § 3122, amended. That part of section 3122 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, under the caption SUBPOENA, is amended to read as follows:

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 sitting at .....

....., **Maine** 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

Sec. 2. R. S., T. 14, § 3122, amended. That part of section 3122 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, under the caption RETURN OF SERVICE, is amended to read as follows:

**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 .....

Sec. 3. R. S., T. 14, § 3123, amended. Section 3123 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, is amended to read as follows:

**§ 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~~ 10 days prior to the disclosure hearing ~~an attested~~ copy of the subpoena in hand, provided that service of the subpoena on judgment debtors other than natural persons may be made by any method by which civil summons may be served.

Sec. 4. R. S., T. 14, § 3129, amended. Section 3129 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, is amended to read as follows:

**§ 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.

Sec. 5. R. S., T. 14, § 3130, repealed and replaced. Section 3130 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, is repealed and the following enacted in place thereof:

**§ 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 including the items required in an affidavit under section 3127 and which in addition shall state the total amount of installment payments received since such installment payment order was entered, the balance due to the judgment creditor and the number of installments required to retire the balance remaining on such judgment, if any, which number shall equal the balance due divided by the dollar amount provided for each installment in such installment payment order.

Sec. 6. R. S., T. 14, § 3131, repealed and replaced. Section 3131 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, is repealed and the following enacted in place thereof:

**§ 3131. Turn over orders, sales**

Where it is shown at a disclosure hearing that the judgment debtor owns personal or real property which is not exempt from attachment and execution, the court shall determine the value of such property and the extent to which such property is exempt from attachment and execution. Upon request of the judgment creditor, the court shall order the judgment debtor to turn over to the judgment creditor in partial or full satisfaction of the judgment and costs such items of nonexempt property, the value of which as so determined is less than or equal to the judgment and costs. If the value of the nonexempt property as determined by the court is in excess of the judgment and costs and if either the judgment creditor and judgment debtor cannot agree as to which items of property shall be applied to the satisfaction of the judgment or such property is not subject to physical division or it is otherwise impracticable to provide for satisfaction of the judgment in kind, the court shall order the sale by the judgment creditor of such property. The judgment creditor shall sell the property in a commercially reasonable manner within 30 days after the date of said order. The judgment creditor shall remit to the judgment debtor any excess of the proceeds of said sale over the amount of the judgment and costs plus the expenses of the sale and shall file with the court, and mail or deliver to the judgment debtor, an affidavit setting forth the date, place, manner, expenses and proceeds of the sale and reciting that a copy of the affidavit has been mailed or delivered to the judgment debtor.

Sec. 7. R. S., T. 14, § 3135, amended. Section 3135 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, is amended by adding after the 2nd sentence a new sentence to read as follows:

The personal recognizance of the judgment debtor shall be given to the judge of the District Court, or in his absence or disability, to the sheriff, in which event it shall be filed with the court.

Sec. 8. R. S., T. 14, § 3136, amended. Section 3136 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, is amended to read as follows:

**§ 3136. Contempt, ex parte proceedings**

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, or if a judgment debtor fails to appear after having given his personal recognizance, 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 and be punished by such reasonable fine or imprisonment as the circumstances require. In addition, the judgment creditor may proceed ex parte and the court may enter orders pursuant to sections 3127, 3130, 3131, 3132 and 3137, except that no earnings shall be subject to an installment payment order under section 3127 or an order to an employer or payor of earnings under section 3137 except for the excess of earnings over \$100 per week. ~~If the judgment debtor fails to appear at said show cause hearing, the court may issue a capias to bring in~~

**Sec. 9. R. S., T. 14, § 3137, amended.** Section 3137 of Title 14 of the Revised Statutes, as enacted by section 1 of chapter 408 of the public laws of 1971, is amended to read as follows:

**§ 3137. Orders to employers or payors of earnings**

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 or if the judgment debtor fails to appear after having given his personal recognizance, the court may order the employer or other payor of earnings of the judgment debtor to pay subsequent installments on ~~any such~~ installment payment order directly to the judgment creditor; provided that no such payment shall be made from earnings not subject to an installment payment order under section 3127 and in the case of such an order made ex parte, to the limitation set forth in section 3136.

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

STATEMENT OF FACT

The changes and additions will provide for a more expeditious and practical method of enforcing money judgments by creditors against debtors without constitutional deprivation to debtors.