

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1258

H. P. 1039

House of Representatives, March 11, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Livesay of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Revise the Debtor-Creditor Laws to Facilitate the Legal Collection of Debts.

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

Sec. 1. 14 MRSA § 3122, as last amended by PL 1973, c. 477, §§ 1 and 2, is repealed and the following enacted in its place:

§ 3122. Subpoena to appear and disclose

A judgment creditor may, for the purpose of a hearing, subpoena the judgment debtor to appear before a Judge of the District Court in the division in which the judgment debtor or judgment creditor 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 the corporation has an established place of business or if the corporation has no established place of business in this State, then, in any division in which a civil summons could be served on the corporation. The subpoenas shall 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:

SUBPOENAS

STATE OF MAINE

DISTRICT COURT

District

Division.....

.....,ss.

TO:

.....

.....

You are hereby required, in the name of the State of Maine, to appear before the Judge of the District Court, Division of on the day of, 19....., ato'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, bythis judgment being in the amount of plus costs of Court in the amount of and forexecution(s) issued on this judgment.

YOU ARE COMMANDED to produce at the examination
.....
.....
.....
.....

and all books, papers or records in your possession or control which may contain information concerning the property or income of, or indebtedness due judgment debtor,

FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR ARREST AND MAY ALSO RESULT IN A LIEN BEING PLACED AGAINST YOUR PROPERTY TO SECURE PAYMENT OF THIS JUDGMENT.

Dated at, Maine thisday of, 19

Name of Plaintiff's Attorney

Clerk

Address.....

Telephone.....

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 copy of..... the within subpoena.

..... Deputy Sheriff

Fees:

Service.....

Travel.....

Sec. 2. 14 MRSA § 3123, as amended by PL 1973, c. 477, § 3, is further amended by adding at the end 2 new sentences to read:

If in-hand service cannot be made upon the debtor, the court, for good cause shown, may order that service be made by any method by which civil summons may be made, and the court shall specify that method. That order for alternative service shall issue only upon written motion and the order and return of service shall be filed together with the subpoena pursuant to section 3126.

Sec. 3. 14 MRSA § 3125, 2nd sentence, as enacted by PL 1971, c. 408, § 1, is amended to read:

Failure of the judgment creditor to appear in person or by attorney shall result in termination of the disclosure hearing, unless the court orders the hearing continued to a date certain, upon application of either party for good cause shown.

Sec. 4. 14 MRSA § 3131, as repealed and replaced by PL 1973, c. 477, § 6, is repealed and the following enacted in its place:

§ 3131. Turn over orders, sales

Where it is shown at a disclosure hearing that the judgment debtor owns personal or real property that is not exempt from attachment and execution, the court shall, upon request of the judgment creditor, order the judgment debtor to turn over to the judgment creditor such items of nonexempt property. If the judgment creditor and judgment debtor cannot agree as to which items of property shall be applied to the satisfaction of the judgment, 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 a period of time set by the court. If the property is not sold within the period established by the court, it shall be returned to the judgment debtor unless the time for the sale is extended by the court for good cause shown, and the extension may be granted ex parte. The judgment creditor shall remit to the judgment debtor any excess of the proceeds of such sale over the amount of the judgment and costs plus the expenses of this

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 the deficiency balance remaining due, if any, and reciting that a copy of the affidavit has been mailed or delivered to the judgment debtor.

Sec. 5. 14 MRSA § 3132, as enacted by PL 1971, c. 408, § 1, is amended by adding at the end a new sentence to read:

If the debtor fails to appear for hearing, the court may in any event order the lien.

Sec. 6. 14 MRSA § 3137, as amended by PL 1973, c. 477, § 9, is further amended by adding at the end a new paragraph to read:

The State, its municipalities, agencies and subdivisions shall be exempt from orders under this section.

STATEMENT OF FACT

The purpose of this bill is to change the laws relating to enforcement of money judgments to facilitate the collection of debts. It would include the following changes.

1. Section 1 replaces the prior subpoena form with one which is more complete and provides the debtor with information concerning production of items at a disclosure.
2. Section 2 provides for alternative forms of service to be ordered by the court when in-hand service is not possible.
3. Section 3 provides a mechanism for continuance of disclosure hearings for good cause when the judgment creditor fails to appear.
4. Section 4 removes from the law the requirement that the court fix the value of property owned by the debtor which is not exempt from attachment. It also allows the creditor to sell the property within a reasonable time to be set by the court rather than with a fixed period of 30 days.
5. Section 5 provides that a court may order a lien even if the debtor fails to appear for hearing.
6. Section 6 specifically states that the State, its municipalities, agencies and subdivisions shall not be exempt from the application of section 3137 covering order to employers of a debtor to make payments directly to the creditor from the debtor's wages. Section 3137 also prevents an employer from discharging any employee because his earnings are subject to an order.