

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 327

6
7 H.P. 267

House of Representatives, January 31, 1983

8 Reference to the Committee on Judiciary, sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Manning of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Revise the Laws Pertaining
18 to Prejudgment Attachment, Execution
19 of Judgments, Disclosure of Assets
20 and Exemptions.
21

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

24 Sec. 1. 14 MRSA §3131, as repealed and replaced
25 by PL 1973, c. 477, §6, is amended by adding a new
26 paragraph at the end to read:

27 When the judgment creditor has obtained a lien
28 pursuant to section 3132 on the judgment debtor's
29 interest in any motor vehicle for which a certificate
30 of title must be obtained, the court, upon request of
31 the judgment creditor, shall order the judgment
32 debtor to turn over to the judgment creditor such a
33 certificate of title which is in the possession, cus-
34 tody or control of the judgment debtor.

1 Sec. 2. 14 MRS §3132, as enacted by PL 1971, c.
2 408, §1, is amended to read:

3 §3132. Lien on real estate and personal property

4 Upon the request of the judgment creditor, the
5 court shall order a lien on so much of the judgment
6 debtor's property which is not exempt from attachment
7 and execution as will satisfy the judgment and costs.
8 Such a lien shall be ineffective against ~~third~~ 3rd
9 persons until the judgment creditor files the lien
10 order, if the property is real estate, with the
11 register of deeds of the county where the real estate
12 lies; and, if the property is personal property, with
13 the filing officer where a filing would be required
14 to perfect a security interest in ~~such~~ that property
15 under Title 11, section 9-401; and, if the property
16 is a motor vehicle for which a certificate of title
17 must be obtained, until the judgment creditor per-
18 fects the lien pursuant to Title 29, chapter 21, sub-
19 chapter III. Such a lien shall continue until the
20 judgment and costs are satisfied. If the judgment
21 debtor transfers, conceals or otherwise disposes of
22 the property subject to a lien order, he may be held
23 in contempt of court in proceedings under section
24 3136.

25 Sec. 3. 14 MRS §4154, as amended by PL 1981, c.
26 279, §5, is repealed and the following enacted in its
27 place:

28 §4154. Optional method of attachment

29 Any interest in real or personal property, which
30 is not exempt from attachment and execution, may be
31 attached by the plaintiff by the filing in the regis-
32 try of deeds for the county in which the property is
33 located or the proper place pursuant to Title 11,
34 section 9-401, subsection 1, of an attested copy of
35 the court order approving the real or personal prop-
36 erty attachment, provided that the order shall be
37 filed within 30 days after the order approving the
38 attachment, or within such additional time as the
39 court may allow upon a timely motion. Fees for the
40 recording of the order shall be as otherwise provided
41 for similar documents. The filing shall constitute
42 perfection of the attachment and service of a copy of

1 the court's order shall be made upon the defendant in
2 accordance with the Maine Rules of Civil Procedure
3 pertaining to service of writs of attachment.

4 Sec. 4. 14 MRSA §4421, sub-§1-A is enacted to
5 read:

6 1-A. Debtor. "Debtor" means an individual
7 debtor.

8 Sec. 5. 14 MRSA §4651, as amended by PL 1981, c.
9 160, is further amended to read:

10 §4651. Issue and return

11 Executions may be issued on a judgment of the
12 Superior Court or the District Court after 24 hours
13 from the time the judgment has become final by the
14 expiration of the time for appeal, by dismissal of an
15 appeal or on certificate of decision from the Law
16 Court, unless the court has pursuant to rule ordered
17 execution at an earlier time, and shall be returnable
18 within one year after issuance.

19 The filing with a registry of deeds or the proper
20 place for perfecting a security interest in personal
21 property pursuant to Title 11, section 9-401, subsec-
22 tion 1, of an execution, or an attested copy thereof,
23 issued by any court of competent jurisdiction shall
24 create a lien in favor of each judgment creditor upon
25 the right, title and interest of each judgment debtor
26 in so much of the judgment debtor's real estate which
27 is not exempt from attachment and execution as will
28 satisfy the judgment, together with interest and
29 costs and which is lying within the county in which
30 the registry of deeds is located and personal prop-
31 erty which are not exempt from attachment and execu-
32 tion as will satisfy the judgment together with
33 interest and costs. A lien created by this paragraph
34 is void unless the judgment creditor notifies the
35 judgment debtor, by certified mail to his last known
36 address, of the existence of the lien. The notice
37 shall contain the following:

38 1. Filing of lien. The fact that a lien has been
39 filed;

1 In conjunction with section 1, section 2 provides
2 that a court-ordered lien on a motor vehicle is not
3 perfected until the judgment creditor has followed
4 the steps already required for other lienholders on
5 motor vehicles.

6 Section 3 provides an optional method of perfect-
7 ing court-approved prejudgment attachments of real
8 and personal property. For instance, if actual
9 seizure of property by the sheriff is not required or
10 desired by the plaintiff, he may simply file an
11 attested copy of the court's order in the appropriate
12 place, pay the requisite filing fees, and serve a
13 copy of the order on the defendant.

14 When the Legislature enacted the new set of ex-
15 emptions of property to be used in bankruptcy pro-
16 ceedings, it followed, for the most part, existing
17 federal law. Section 4 clarifies the original
18 legislative intent to be that the exemptions apply
19 only in the case of individual debtors.

20 Currently, judgment liens can be filed only with
21 respect to real estate. Section 5 extends the sim-
22 plified, nonpossessory judgment lien procedure to
23 nonexempt personal property of the judgment debtor.
24 When a judgment creditor has obtained a prejudgment
25 attachment and perfected it, fairness and equity dic-
26 tate that a timely filed judgment lien should be
27 deemed effective as of the date the judgment creditor
28 first perfected his interest. Section 5 accomplishes
29 this objective and clarifies the original intent of
30 the enacting legislation to provide that the judgment
31 lien, once filed, need not be renewed and continues
32 until the underlying judgment is paid.

33 Section 6 simplifies the procedure for applying a
34 corporate judgment debtor's credits, including bank
35 accounts, to the judgment debt. The sheriff is
36 empowered to present the judgment execution, e.g., to
37 the corporate judgment debtor's bank, which must turn
38 over to the sheriff the amount of the account, if
39 any. The sheriff, in turn, pays the judgment credi-
40 tor. Exception is made to any corporate bank account
41 designated as a payroll account.

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