

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 437

7 H.P. 322

House of Representatives, February 5, 1985

8 On Motion of Representative Brannigan of Portland House reconsidered
9 reference to the Committee on Business and Commerce and on further
10 motion of same Representative referred to the Committee on Judiciary and
ordered printed. Sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Representative Manning of Portland.

Cosponsored by Senator Carpenter of Aroostook.

12 STATE OF MAINE
13

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

17 AN ACT to Revise the Laws Pertaining to Real
18 Estate Attachments, Disclosure
19 Proceedings, Levy on Execution and
20 Exempt Property.
21

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

24 Sec. 1. 9-A MRSA §5-104, as enacted by PL 1973,
25 c. 762, §1, is amended to read:

26 §5-104. No garnishment before judgment

27 Prior to entry of judgment in an action against
28 the consumer for debt arising from a consumer credit
29 transaction, the creditor may not obtain an interest
30 in any property of the debtor by attachment, garnish-
31 ment or like proceedings, except as specified in this
32 section.

33 A creditor may proceed pursuant to the Maine
34 Rules of Civil Procedure, Rule 4A(b)-(h), to obtain a

1 prejudgment real estate attachment provided the com-
2 plaint seeks \$400 or more in damages, and provide
3 that the creditor notifies the consumer, by certified
4 letter mailed to the consumer's last known address,
5 that an attachment has been recorded against the con-
6 sumer's right, title or interest in real estate,
7 specifying the registry of deeds in which the attach-
8 ment has been recorded.

9 Sec. 2. 14 MRSA §3122, as repealed and replaced
10 by PL 1981, c. 389, §1, is amended by adding at the
11 end a new paragraph to read:

12 Notwithstanding Title 4, section 155, subsection
13 8, the court may transfer to another division the
14 proceedings held pursuant to this section and sec-
15 tions 3125, 3135, 3136 and 3137 only upon written
16 motion of a party, for good cause shown.

17 Sec. 3. 14 MRSA §4154, as repealed and replaced
18 by PL 1983, c. 125, §3, is amended to read:

19 §4154. Optional method of attachment

20 Any interest in real or personal property, which
21 is not exempt from attachment and execution, may be
22 attached by the plaintiff by the filing in the regis-
23 try of deeds for the county in which the property is
24 located or the proper place pursuant to Title 11,
25 section 9-401, subsection 1, of an attested copy of
26 the court order approving the real or personal prop-
27 erty attachment, provided that the order shall be
28 filed within 30 days after the order approving the
29 attachment, or within such additional time as the
30 court may allow upon a timely motion. Fees for the
31 recording of the order shall be as otherwise provided
32 for similar documents. The Notwithstanding section
33 4454, the filing shall constitute perfection of the
34 attachment and service of a copy of the court's order
35 shall be made upon the defendant in accordance with
36 the Maine Rules of Civil Procedure pertaining to ser-
37 vice of writs of attachment.

38 Sec. 4. 14 MRSA §4422, first ¶, as enacted by PL
39 1981, c. 431, §2, is amended to read:

1 The following property is exempt from attachment
2 and execution, except to the extent it has been
3 fraudulently conveyed by the debtor.

4 Sec. 5. 14 MRSA §4422, sub-§3, as enacted by PL
5 1981, c. 431, §2, is amended to read:

6 3. Clothing; furniture; appliances; and similar
7 items. The debtor's interest, not to exceed \$200 in
8 value in any particular item, or \$4,000 in aggregate
9 value, in household furnishings, household goods,
10 wearing apparel, appliances, books, animals, crops or
11 musical instruments, that are held primarily for the
12 personal, family or household use of the debtor or a
13 dependant of the debtor.

14 Sec. 6. 14 MRSA §4751, as amended by PL 1983, c.
15 125, §6, is further amended to read:

16 §4751. Goods sold on execution

17 All chattels, real and personal liable at common
18 law to attachment and not exempted therefrom by statute,
19 may be taken and sold on execution as prescribed
20 in this subchapter and subchapter IV. Credits of a
21 sole proprietorship doing business under an assumed
22 or trade name, partnership or corporation, other than
23 designated payroll accounts expressly so designated
24 to the credit holder by the account owner, may be
25 taken on execution by an officer and turned over to
26 the judgment creditor to be applied to the judgment,
27 together with interest and costs.

28 STATEMENT OF FACT

29 Maine is the only state, of the 11 states which
30 has adopted some form of the Uniform Consumer Credit
31 Code, to prohibit prejudgment real estate attachments
32 in consumer credit cases. Since prejudgment real estate
33 attachments have no possessory aspects, can only
34 be obtained upon a showing of the moving party's
35 "likelihood of success on the merits" and, except in
36 unusual instances, after notice and hearing, the law
37 is changed to allow such attachments where the amount
38 in controversy is not insubstantial and the consumer
39 is notified of the attachment.

1 This bill corrects an omission in the Revised
2 Statutes, Title 14, section 4154, by clearly stating
3 that the attachment made pursuant to this section is
4 perfected without the necessity of a sheriff filing a
5 return at the registry of deeds.

6 This bill specifies that only payroll accounts
7 which have been particularly and expressly so desig-
8 nated by the account owner to the credit holder may
9 not be turned over upon levy. The obligations of the
10 credit holder are limited solely to determining
11 whether the account holder has made the required ex-
12 press designation to it.

13 The credits of any judgment debtor engaged in
14 business may be levied upon, regardless of the form
15 in which that business is conducted.

16 Under current law, it has happened that a credi-
17 tor has been successful in setting aside a fraudulent
18 conveyance made by a debtor only to have the debtor
19 then claim an exemption in the property. This change
20 prevents a claim of exemption after the debtor has
21 demonstrated bad faith.

22 The change to the Revised Statutes, Title 14,
23 section 4422, subsection 3, brings Maine law into
24 conformity with the Federal Bankruptcy Amendments of
25 1984.

26 The change to the Revised Statutes, Title 14,
27 section 3122 allows a change in venue in disclosure
28 proceedings only when good cause is shown in a writ-
29 ten motion filed by the plaintiff or defendant.

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