

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 322, L.D. 437)  
2 (New Title)  
3 FIRST REGULAR SESSION  
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5 ONE HUNDRED AND TWELFTH LEGISLATURE  
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7 Legislative Document

No. 1449

9 H.P. 1005

House of Representatives, May 1, 1985

10 Reported by Representative Lebowitz from the Committee on Judiciary  
11 and printed under Joint Rule 2. Original bill sponsored by Representative  
12 Manning of Portland. Cosponsored by Senator Carpenter of Aroostook.

EDWIN H. PERT, Clerk

13  
14 STATE OF MAINE  
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16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-FIVE  
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19 AN ACT to Revise the Laws Pertaining to Real  
20 Estate Attachments, Levy on Execution  
21 and Exempt Property.  
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23 Be it enacted by the People of the State of Maine as  
24 follows:

25 Sec. 1. 14 MRSA §4151 is amended by adding at  
26 the end a new paragraph to read:

27 Following the entry of judgment in a civil action  
28 and prior to the issuance of a writ of execution upon  
29 the judgment, any interest in real or personal prop-  
30 erty, which is not exempt from attachment and execu-  
31 tion, may be attached by the plaintiff by the filing  
32 in the registry of deeds for the county in which the  
33 property is located or the proper place pursuant to  
34 Title 11, section 9-401, subsection (1), of an at-  
35 tested copy of the court order awarding judgment.  
36 Fees for the recording of the order shall be as oth-

1 erwise provided for similar documents. Notwithstand-  
2 ing section 4454, the filing shall constitute perfec-  
3 tion of the attachment. The party whose property has  
4 been so attached shall be immediately notified by  
5 certified letter, mailed by the plaintiff to the  
6 party's last known address, which shall inform the  
7 party that an attachment has been filed against the  
8 party's real or personal property and shall specify  
9 the registry of deeds or office of the Secretary of  
10 State in which the attachment has been recorded.

11       Sec. 2. 14 MRSA §4154, as repealed and replaced  
12 by PL 1983, c. 125, §3, is amended to read:

13 §4154. Optional method of attachment

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

32       Sec. 3. 14 MRSA §4422, first ¶, as enacted by PL  
33 1981, c. 431, §2, is amended to read:

34       The following property is exempt from attachment  
35 and execution, except to the extent that it has been  
36 fraudulently conveyed by the debtor.

37       Sec. 4. 14 MRSA §4651, 3rd ¶, as enacted by PL  
38 1983, c. 125, §5, is amended to read:

39       If a lien created by this section is filed during  
40 the pendency of any prejudgment or post-judgment at-

1 attachment obtained in the underlying civil action, the  
2 effective date of the lien shall relate back to the  
3 date of perfection of the attachment. The lien cre-  
4 ated by this section shall continue so long as the  
5 judgment in the underlying civil action shall remain  
6 unpaid and unsatisfied, unless sooner released or  
7 otherwise discharged.

8 Sec. 5. 14 MRSA §4751, as amended by PL 1983, c.  
9 125, §6, is further amended to read:

10 §4751. Goods sold on execution

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

22 STATEMENT OF FACT

23 This new draft deletes section 1 of the original  
24 bill which would have permitted prejudgment attach-  
25 ment of real estate in a civil action involving a  
26 creditor in a consumer credit transaction seeking  
27 payment from a debtor in a consumer credit transac-  
28 tion. The Uniform Consumer Credit Code does not per-  
29 mit creditors to take security interests in real es-  
30 tate in a consumer credit transaction. This policy  
31 should not be circumvented by, in effect, permitting  
32 the creditor to take such a security interest by a  
33 prejudgment attachment of real estate once a civil  
34 action has been commenced. Also, consumer creditors  
35 are permitted to charge large interest rates to com-  
36 pensate them for the risks involved in consumer cred-  
37 it transactions.

38 This new draft deletes section 2 of the original  
39 bill which would have removed a court's authority on

1 its own motion to transfer certain post-judgment pro-  
2 ceedings to other courts where the interests of jus-  
3 tice or the convenience of the parties or witnesses  
4 necessitates such a transfer.

5 The new draft adds a section permitting property  
6 that may be attached after judgment in a civil action  
7 to be attached by the filing, in the appropriate reg-  
8 istry of deeds or the Secretary of State's office, of  
9 a copy of the court order awarding judgment. Current  
10 law requires a separate court order before attachment  
11 may be had. The new draft requires that the judgment  
12 creditor notify the judgment debtor of the attach-  
13 ment.

14 The new draft deletes section 5 of the original  
15 bill which would have limited the aggregate amount of  
16 exemption in clothing, furniture, appliances and oth-  
17 er household items to \$4,000. This retains current  
18 law which permits up to a \$200 exemption in each in-  
19 dividual item by a debtor whose property is being  
20 sought for sale to satisfy a judgment regardless of  
21 the total value of all the exemptions the debtor  
22 takes under the Maine Revised Statutes, Title 14,  
23 section 4422, subsection 3.

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