

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 429

H.P. 330 House of Representatives, February 19, 1987
On Motion of Representative PARADIS of Augusta referred
to the Committee on Judiciary. Sent up for concurrence and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative MANNING of Portland.
Cosponsored by Senator GAUVREAU of Androscoggin.

STATE OF MAINE

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

1 AN ACT to Amend the Laws Pertaining to the
2 Enforcement of Money Judgments.
3

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

6 Sec. 1. 14 MRSA §3134, as enacted by PL 1971, c.
7 408, §1, is amended to read:

8 §3134. Failure to appear

9 If the judgment debtor fails to appear after be-
10 ing duly served with a subpoena under section 3123
11 and the judgment creditor has not failed to appear at
12 the time and place named in said the subpoena, the
13 judge shall upon the request of the judgment creditor
14 issue a capias to bring in the debtor to a disclosure
15 hearing at a time and date specified in said capias

1 judgment creditor may proceed pursuant to section
2 3136.

3 Sec. 2. 14 MRSA §3135, as amended by PL 1973, c.
4 477, §7, is repealed and the following enacted in its
5 place:

6 §3135. Capias to bring in

7 After a capias to bring in has been issued pursu-
8 ant to section 3136, the sheriff shall cause the
9 judgment debtor to appear at the time and place
10 stated in the capias to bring in and to that end
11 shall take the judgment debtor into custody. If the
12 time set for the capias hearing is more than 3 hours
13 subsequent to the time the judgment debtor is taken
14 into custody, the judgment debtor shall be admitted
15 to bail upon the terms specified in the capias. In
16 the case of bail upon personal recognizance, the re-
17 cognizance shall be given to the sheriff. In the case
18 of cash or other bail, the bail shall be given to a
19 bail commissioner. If the time set for the capias
20 hearing is 3 or less hours from the time the judgment
21 debtor is taken into custody, the judgment debtor
22 shall not be admitted to bail upon the terms speci-
23 fied in the capias, except by further order of the
24 court.

25 Sec. 3. 14 MRSA §3136, as amended by PL 1973, c.
26 788, §59, is further amended to read:

27 §3136. Contempt, ex parte proceedings

28 Whenever a judgment debtor fails to comply with
29 any order or subpoena under this subchapter and a
30 judgment creditor complains in writing to the court
31 that such an order has been disregarded or disobeyed
32 by the judgment debtor, or if a judgment debtor fails
33 to appear after having given his personal recogni-
34 zance, summary process shall issue by order of the
35 judge, the judgment creditor may serve a motion upon
36 the judgment debtor requiring the judgment debtor to
37 appear for a hearing on a day certain and show cause
38 why he shall not be adjudged guilty of contempt and
39 be punished by such reasonable fine or imprisonment
40 as the circumstances require. Any such motion shall
41 be served upon the judgment debtor in the same manner

1 as specified under section 3123 for service of the
2 disclosure subpoena. The motion, together with the
3 return of service, shall be filed with the court. The
4 court may for good cause enlarge the time for the
5 hearing. If the judgment debtor so served does not
6 appear as directed or does not attend the hearing at
7 the time appointed for the hearing as enlarged, or
8 if, upon hearing, he is found guilty of disregarding
9 or disobeying any order or subpoena under this sub-
10 chapter, he shall be adjudged in contempt. The court
11 may punish him by such reasonable fine or imprison-
12 ment as the case requires. The court shall issue a
13 capias upon the request of the judgment creditor to
14 bring before it to receive sentence a contemner who
15 has failed to appear before it as directed. The capi-
16 as shall specify the terms of bail. The court may al-
17 low the contemner to give further bail to appear at a
18 time certain, when the punishment may be imposed if
19 he continues in contempt; but, when found guilty of
20 contempt a 2nd time in disregarding or disobeying the
21 same order or decree, no bail may be allowed. When
22 that person purges himself of his contempt, the court
23 may suspend the fine or imprisonment or any portion
24 of it. Appeals from any order for punishment shall be
25 had as provided under section 252. The judgment debt-
26 or shall be liable for the costs of court under this
27 section. The court may order that any cash bail
28 posted by a judgment debtor under this section be
29 turned over to the judgment creditor to be applied to
30 the judgment debt, interest and costs. In addition,
31 the judgment creditor may proceed ex parte and the
32 court may enter orders pursuant to sections 3127,
33 3130, 3131, 3132 and 3137, except that no earnings
34 shall may be subject to an installment payment order
35 under section 3127 or an order to an employer or pay-
36 or of earnings under section 3137 except for the ex-
37 cess of earnings over \$100 per week.

38 Sec. 4. 14 MRSA §3137, first ¶, as amended by PL
39 1973, c. 477, §9, is further amended to read:

40 If the judgment debtor fails to make 3 consec-
41 utive payments as required by the installment payment
42 order and fails to show sufficient cause why he is
43 not complying with said order or fails to attend the
44 hearing designated in the judgment creditor's motion
45 served upon the judgment debtor under section 3136 or

1 if the judgment debtor fails to appear after having
2 given his personal recognizance bail, the court may
3 shall order the employer or other payor of earnings
4 of the judgment debtor to pay subsequent installments
5 on any installment payment order or to withhold and
6 pay the statutory amount, as defined in this section,
7 directly to the judgment creditor; provided that no
8 such payment shall may be made from earnings not sub-
9 ject to an installment payment order under section
10 3127 and in the case of such an order made ex parte,
11 to the limitation set forth in section 3136.

12 Sec. 5. 14 MRSA §3137, as amended by PL 1981, c.
13 389, §3, is further amended by adding after the first
14 paragraph 4 new paragraphs to read:

15 The court shall issue orders under this section
16 in the absence of the judgment debtor if the judgment
17 debtor has failed to attend the hearing designated in
18 the judgment creditor's motion served upon the judg-
19 ment debtor under section 3136, or if the judgment
20 debtor fails to appear after having given bail or if
21 the judgment creditor has served the judgment debtor
22 with a motion to withhold wages under this section,
23 which motion has been served in the same manner as
24 specified under section 3123 for service of the dis-
25 closure subpoena.

26 The employer or other payor of earnings need not
27 be notified of any hearing under this section, except
28 that an employer or other payor of earnings subject
29 to an order under this section may charge a fee of \$1
30 for each check issued and forwarded to the judgment
31 creditor. This fee shall be deducted from the amount
32 withheld prior to its remittance to the judgment
33 creditor and shall be deemed a cost of court for
34 which the judgment debtor shall be liable.

35 The statutory amount specified in this section
36 shall be ordered by the court in those cases in which
37 an installment order has not been issued under sec-
38 tion 3127. The court shall order the employer or oth-
39 er payor of earnings to compute the statutory amount
40 which shall be equal to the maximum amount of earn-
41 ings which may be withheld from the judgment debtor
42 under section 3127, subsection 1, and to pay that
43 amount directly to the judgment creditor.

1 The judgment creditor shall serve the judgment
2 debtor, by regular mail addressed to the judgment
3 debtor's last known address, with a copy of any order
4 issued under this section. Together with this ser-
5 vice, the judgment creditor shall notify the judgment
6 debtor that the judgment debtor may request the court
7 to amend or modify for good cause shown any order is-
8 sued under this section by filing a motion with the
9 court requesting relief with a copy of the motion to
10 be mailed to the judgment creditor and his attorney,
11 if any.

12

STATEMENT OF FACT

13 Section 1 of the bill authorizes a judgment cred-
14 itor to proceed with a motion to hold the judgment
15 creditor in contempt if the debtor has failed to ap-
16 pear in court in response to a disclosure subpoena.

17 Section 2 provides that any capias authorized by
18 the court under the Maine Revised Statutes, Title 14,
19 section 3136, will be effected by taking the judgment
20 debtor into custody. The sheriff or bail commissioner
21 is directed to release the debtor upon the bail terms
22 specified in the capias if more than 3 hours elapse
23 before the time set for hearing. Otherwise, the sher-
24 iff shall bring the debtor to the courthouse for the
25 hearing.

26 Section 3 eliminates the current statutory proce-
27 dure under which the judgment creditor must obtain a
28 show cause order from the court in order to proceed
29 upon the judgment debtor's failure to make court-
30 ordered installment payments. This procedure has been
31 criticized by the Law Court in Mitchell v. Flynn, 478
32 A.2d 1133, Me. 1984. Instead, the judgment creditor
33 will be able to move the case along through the vehi-
34 cle of a motion for contempt. The new procedure will
35 be available when the debtor does not appear in re-
36 sponse to the disclosure subpoena. The contempt hear-
37 ing will be conducted in accordance with established
38 principles of law as developed under the Maine Re-
39 vised Statutes, Title 14, section 252.

1 Sections 4 and 5 clarify the circumstances under
2 which the court may order the garnishment of wages.
3 In those cases in which the court has previously made
4 an installment payment order, a garnishment order
5 will issue upon motion of the judgment creditor if
6 the judgment debtor misses 3 consecutive
7 installments. When no such installment order has yet
8 issued, the court will order the employer to withhold
9 the so-called "statutory amount." This amount equals
10 the maximum amount of earnings subject to withholding
11 under Title 14, section 3127. In general, this amount
12 is equal to the lesser of 25% of the debtor's dispos-
13 able earnings or the amount by which the debtor's
14 earnings exceed 30 times the federal minimum wage.
15 Such orders upon the employer for the "statutory
16 amount" may only issue if the debtor has failed to
17 appear in response to the creditor's motion for con-
18 tempt or after having posted bail on a capias issued
19 by the court. Sections 4 and 5 provide that the debt-
20 or may ask the court to modify any garnishment order
21 issued under this section. While the employer has no
22 right to receive notice of the creditor's motion to
23 garnish the debtor's wages, the employer will be able
24 to charge a \$1 fee for each check sent to the credi-
25 tor.

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