

# 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)

R of S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

L.D. 874

(Filing No. S- 66 )

STATE OF MAINE  
SENATE  
113TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 305, L.D. 874,  
Bill, "AN ACT to Revise the Procedures for the En-  
forcement of Money Judgments."

Amend the Bill in section 2 by striking out the  
first 2 lines (page 1, lines 12 and 13 in L.D.) and  
inserting in their place the following:

'Sec. 2. 14 MRSA §3121, sub-§§2-A, 5 and 6 are  
enacted to read:'

Further amend the Bill in section 2 by inserting  
at the end the following:

'6. Sheriff. For the purposes of sections 3134  
to 3136, "sheriff" means a sheriff, deputy sheriff,  
police officer, special police officer or constable.'

Further amend the Bill by striking out all of  
section 4 and inserting in its place the following:

'Sec. 4. 14 MRSA §3121-A is enacted to read:  
§3121-A. Venue

1. Commencement of proceedings. Notwithstanding  
Title 4, section 155, and any provisions set forth  
elsewhere, and except as provided in subsection 2,  
any proceeding under this chapter shall be commenced  
in a division of the District Court as follows.

A. Except as provided in paragraph D, if the  
judgment debtor is an individual who resides  
within this State, the proceeding shall be com-  
menced in the division in which the judgment  
debtor resides.

COMMITTEE AMENDMENT " A" to S.P. 305, L.D. 874

1 B. Except as provided in paragraph D, if the  
2 judgment debtor is a nonresident individual, the  
3 proceeding shall be commenced in the division in  
4 which the debtor is commorant.

5 C. Except as provided in paragraph D, if the  
6 judgment debtor is not an individual, the pro-  
7 ceeding shall be commenced in a division in which  
8 the debtor maintains a place of business. If the  
9 judgment debtor does not maintain a place of  
10 business in this State, the proceeding shall be  
11 commenced in a division in which a civil summons  
12 could be served upon the debtor or in any divi-  
13 sion in which the action resulting in the judg-  
14 ment could have been brought.

15 D. Any proceeding under this chapter may be com-  
16 menced in the division where the judgment credi-  
17 tor, if an individual, resides or, if not an in-  
18 dividual, has a place of business.

19 2. Civil order of arrest; contempt. Any pro-  
20 ceeding under this chapter in which the judgment  
21 debtor is an individual who resides in this State  
22 shall be transferred to the division in which the  
23 debtor resides immediately after:

24 A. The issuance of a civil order of arrest pur-  
25 suant to section 3134, subsection 1, or section  
26 3136; or

27 B. The filing of a motion for contempt pursuant  
28 to section 3134, subsection 2.

29 The division in which the judgment debtor resides  
30 shall be set forth in the affidavit or statement un-  
31 der oath required by section 3134, subsection 1 or 2,  
32 or section 3136, subsection 1. Any civil order of  
33 arrest issued pursuant to section 3134, subsection 1,  
34 or section 3136, and any contempt subpoena or civil  
35 contempt order issued pursuant to section 3134, sub-  
36 section 2, shall be returnable only to the division

COMMITTEE AMENDMENT " A " to S.P. 305, L.D. 874

1 in which the judgment debtor resides if that debtor  
2 is an individual who resides in this State. Any pro-  
3 ceedings in which the judgment debtor is not such a  
4 resident individual shall be maintained as provided  
5 in subsection 1.

6 3. Improper venue, transfer, objection. If any  
7 proceeding under this chapter is brought or continued  
8 in the wrong division, the court, upon motion or its  
9 own initiative, may transfer the proceeding to the  
10 proper division. Any objection to improper venue is  
11 waived if not made before the entry of any order un-  
12 der this section after the appearance of the judgment  
13 debtor before the court. The court, at any time and  
14 upon motion or its own initiative, may transfer a  
15 proceeding under this subsection to another division  
16 for the convenience of the parties or witnesses, or  
17 in the interest of justice or equity.

18 4. Consent. With the approval of the court, any  
19 proceeding under this chapter may be commenced or  
20 continued in any division consented to by the judg-  
21 ment debtor and the judgment creditor.'

22 Further amend the Bill in section 6 in that part  
23 designated "§3123." in the first line (page 4, line 7  
24 in L.D.) by striking out the following: "of"

25 Further amend the Bill in section 11 in that part  
26 designated "§3127-B." in subsection 6, in the first  
27 line (page 11, line 8 in L.D.) by striking out the  
28 following: "employee" and inserting in its place the  
29 following: 'employer'

30 Further amend the Bill in section 14 in that part  
31 designated "§3131." in subsection 9, paragraph C, in  
32 the 5th line (page 15, line 36 in L.D.) by striking  
33 out the following: "when" and inserting in its place  
34 the following: 'where'

35 Further amend the Bill in section 14 in that part  
36 designated "§3131." in subsection 9, paragraph D, in

COMMITTEE AMENDMENT " A " to S.P. 305, L.D. 874

1 the 5th line (page 15, line 42 in L.D.) by striking  
2 out the following: "when" and inserting in its place  
3 the following: 'where'

4 Further amend the Bill by striking out all of  
5 sections 17 and 18 and inserting the following in  
6 their place:

7 'Sec. 17. 14 MRSA §3134, as enacted by PL 1971,  
8 c. 408, §1, is repealed and the following enacted in  
9 its place:

10 §3134. Failure to appear

11 1. Issuance of civil order of arrest. If the  
12 judgment debtor fails to appear after being duly  
13 served with a subpoena under section 3123 and the  
14 judgment creditor appears at the time and place named  
15 in that subpoena, the creditor may request the court  
16 to issue a civil order of arrest. The court shall  
17 issue a civil order of arrest upon the filing by the  
18 creditor of an affidavit stating that he knows of no  
19 infirmity, disability or good cause preventing the  
20 appearance of the debtor, which affidavit also sets  
21 forth the address and telephone number where the  
22 creditor or his representative can be reached and the  
23 address of the debtor.

24 2. Alternative method. Instead of requesting a  
25 civil order of arrest, the creditor may proceed by  
26 way of a motion for contempt for failure to appear.  
27 This motion shall be under oath or accompanied by an  
28 affidavit and shall be served upon the debtor with a  
29 contempt subpoena in the manner set forth in section  
30 3136. If the debtor, after being duly served with a  
31 contempt subpoena, fails to appear at the time and  
32 place named in the contempt subpoena, the court may  
33 find the debtor in civil contempt and shall issue a  
34 civil order of arrest under section 3136, subsection  
35 4 or, at the creditor's request, shall issue an order  
36 for the debtor to appear in court at a certain date  
37 and time for further proceedings, which order shall

H. of S.

COMMITTEE AMENDMENT "A" to S.P. 305, L.D. 874

1 be served upon the debtor in hand by the sheriff who  
2 shall obtain from the debtor his personal recogni-  
3 zance bond to appear in court at the specified date  
4 and time.

5 **Sec. 18. 14 MRSA §3135**, as amended by PL 1973,  
6 c. 477, §7, is repealed and the following enacted in  
7 its place:

8 §3135. Civil order of arrest

9 A civil order of arrest issued under section  
10 3134, subsection 1, or section 3136, shall direct the  
11 sheriff to arrest the individual named in the order  
12 and bring the individual to a hearing on the days or  
13 date specified in the civil order of arrest. In the  
14 case of a nonindividual debtor, a civil order of ar-  
15 rest shall issue for the arrest of any officer, di-  
16 rector or managing agent of the debtor or other agent  
17 appointed by the debtor to accept service and who was  
18 served with the disclosure subpoena.

19 After a civil order of arrest has been issued,  
20 the sheriff shall cause the individual named in the  
21 order to be arrested and shall deliver him without  
22 undue delay to the division of the District Court  
23 that issued the civil order of arrest. The sheriff  
24 may take such steps as he determines necessary for  
25 his safety or the safety of others then present, in-  
26 cluding searching the debtor for weapons, if he has  
27 a reasonable suspicion that the debtor has a weapon,  
28 and handcuffing the debtor if that is necessary to  
29 transport the debtor to the court or to cause the  
30 debtor to remain peaceably at the court. Upon arriv-  
31 al at the court, the sheriff shall notify the clerk  
32 or bailiff that the debtor is present and may release  
33 the debtor into the custody of the bailiff. The  
34 sheriff shall instruct the debtor that the debtor  
35 must wait at the court until released by the court or  
36 clerk. Upon release of the debtor into the custody  
37 of the bailiff, the sheriff need not remain with the  
38 debtor at the court.

COMMITTEE AMENDMENT " A " to S.P. 305, L.D. 874

1           After the judgment debtor is brought to the court,  
2 the clerk shall promptly notify the judgment creditor  
3 or his attorney of record in person or by telephone  
4 that his presence is required for a hearing. If a  
5 disclosure or contempt hearing cannot be held that  
6 day due to the inability of the judgment creditor or  
7 his attorney to appear or due to the absence of the  
8 judge or the inability of the court to hear the mat-  
9 ter because of other business, the court or clerk  
10 shall release the debtor upon his personal recogni-  
11 zance for his appearance on a date certain. If the  
12 debtor fails to appear for the disclosure or contempt  
13 hearing after being released upon his personal recog-  
14 nizance, the court may issue additional civil orders  
15 of arrest to bring the debtor before the court for  
16 hearing.

17           Unless the judgment debtor shows good cause for  
18 his failure to appear after being duly served with a  
19 disclosure subpoena under section 3123 or a contempt  
20 subpoena under section 3136, the debtor shall be or-  
21 dered to pay the costs of issuing and serving the  
22 civil order for arrest. The costs of issuing and  
23 serving the civil order for arrest shall be \$25 plus  
24 mileage at a rate of 21¢ per mile.'

25           Further amend the Bill in section 23, in that  
26 part designated "\$4651-A." in subsection 3, in the  
27 3rd line (page 22, line 36 in L.D.) by striking out  
28 the following: "when" and inserting in its place the  
29 following: 'where'

30           Further amend the Bill in section 23, in that  
31 part designated "\$4651-A." in subsection 3, in the  
32 5th line (page 22, line 38 in L.D.) by inserting af-  
33 ter the following: "section 1," the following: 'and  
34 delivery of an application pursuant to Title 29, sec-  
35 tion 2376,'

R. of S.

COMMITTEE AMENDMENT " A " to S.P. 305, L.D. 874

1

STATEMENT OF FACT

2

This amendment makes 2 substantive changes in the bill.

3

4

1. Under the bill, the venue for disclosure proceedings was a division of the District Court where the judgment debtor resided. This amendment permits a disclosure proceeding to be commenced where the judgment debtor or judgment creditor resides. If the judgment debtor fails to appear at the initial disclosure proceeding and a civil order of arrest or contempt subpoena is issued, the proceeding must be transferred to the District Court division where the debtor resides if it was commenced in the division where the creditor resides.

5

6

7

8

9

10

11

12

13

14

15

2. Under the bill, the failure of a judgment creditor to appear at the initial disclosure proceeding resulted in the issuance of a civil order of arrest for the debtor. This amendment permits a judgment creditor a choice of remedies if the debtor fails to appear. The creditor may ask the court for a civil order of arrest, which requires the sheriff to bring the debtor to the court, or for a contempt subpoena, which will be served on the debtor and inform him that he must appear in court at a certain date, place and time or be subject to arrest if he fails to appear.

16

17

18

19

20

21

22

23

24

25

26

27

2753050887

Reported by Senator Brannigan for the Committee on Judiciary. Reproduced and Distributed Pursuant to Senate Rule 12.

(5/14/87)

(Filing No. S-66)