

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 874

S.P. 305

In Senate, March 23, 1987

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator GAUVREAU of Androscoggin.
Cosponsored by Representative MANNING of Portland,
Representative PARADIS of Augusta, Senator BLACK of Cumberland.

STATE OF MAINE

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

AN ACT to Revise the Procedures for the
Enforcement of Money Judgments.

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

Sec. 1. 14 MRS A §3120 is enacted to read:

§3120. Purpose

The purpose of this chapter is to provide an efficient procedure for the enforcement of money judgments. It is not an exclusive procedure and may be utilized with any other available procedure.

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

1 2-A. Individual. "Individual" means only a nat-
2 ural person.

3 5. Person. "Person" means an individual, trust,
4 estate, partnership, association, company, corpora-
5 tion, political subdivision or instrumentality of the
6 State.

7 Sec. 3. 14 MRSA §3121, last ¶, as enacted by PL
8 1971, c. 408, §1, is amended to read:

9 Whenever a judgment creditor or, judgment debtor
10 or a 3rd party is a corporation or other legal entity
11 and is required to perform any act under this section
12 chapter, such acts shall be performed by the offi-
13 cers, directors or managing agents of the corporation
14 entity or by the persons controlling the entity,
15 whichever is appropriate. Except where personal ap-
16 pearance or testimony is required in response to a
17 subpoena or capias to bring in civil order of arrest
18 under this chapter, the judgment creditor or, judg-
19 ment debtor or 3rd party may act by or through an at-
20 torney.

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

22 §3121-A. Venue

23 1. Venue. Notwithstanding Title 4, section 155,
24 and any provisions set forth elsewhere, any proceed-
25 ing under this chapter shall be commenced in a divi-
26 sion of the District Court as follows.

27 A. If the judgment debtor is an individual who
28 resides within this State, the proceeding shall
29 be commenced in the division in which the debtor
30 resides.

31 B. If the judgment debtor is a nonresident indi-
32 vidual, the proceeding shall be commenced in the
33 division in which the debtor is commorant.

34 C. If the judgment debtor is not an individual,
35 the proceeding shall be commenced in a division
36 in which the debtor maintains a place of busi-
37 ness. If the judgment debtor does not maintain a
38 place of business in this State, the proceeding

1 shall be commenced in a division in which a civil
2 summons could be served upon the debtor or in any
3 division in which the action resulting in the
4 judgment could have been brought.

5 D. With the approval of the court, the proceed-
6 ing may be commenced in any division consented to
7 by the judgment debtor and the judgment creditor.

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

20 Sec. 5. 14 MRSA §3122, as repealed and replaced
21 by PL 1981, c. 389, §1, is repealed and the following
22 enacted in its place:

23 §3122. Subpoenas

24 1. Disclosure subpoena. A judgment creditor,
25 for the purpose of determining the ability of the
26 judgment debtor to satisfy the judgment, may subpoena
27 the judgment debtor by disclosure subpoena to appear
28 before a judge of the District Court. The subpoenas
29 shall be issued in blank by the clerks of the Dis-
30 trict Court. The subpoena shall set forth the title
31 of the action; the date and place where the judgment
32 debtor is ordered to appear for the disclosure hear-
33 ing; an order to produce any documents requested by
34 the judgment creditor; a warning that failure to obey
35 the subpoena may result in the arrest of that person
36 or an order to the debtor's employer to withhold a
37 portion of the debtor's wage, or both; and a notifi-
38 cation that the debtor is entitled to be heard on is-
39 ssues concerning his ability to pay the judgment and
40 whether his income or assets are exempt from court
41 order.

1 2. Witness subpoena. Any party may subpoena any
2 witness to any hearing provided for in this chapter
3 in the manner authorized by law.

4 Sec. 6. 14 MRSa §3123, as amended by PL 1981, c.
5 389, §2, is repealed and the following enacted in its
6 place:

7 §3123. Service of disclosure of subpoena

8 1. Service on individual. The disclosure sub-
9 poena shall be served upon an individual judgment
10 debtor by an officer qualified to serve civil process
11 by giving to the judgment debtor, at least 10 days
12 prior to the disclosure hearing, a copy of the sub-
13 poena in hand.

14 2. Service on nonindividual. Service of the
15 disclosure subpoena on a judgment debtor other than
16 an individual shall be made by any method by which
17 service of civil summons may be made at least 10 days
18 prior to the disclosure hearing.

19 Sec. 7. 14 MRSa §3125, as enacted by PL 1971, c.
20 408, §1, is repealed and the following enacted in its
21 place:

22 §3125. Appearance and examination of the debtor

23 1. Disclosure hearing. Unless there is an
24 agreement which meets the requirements of subsection
25 2, the judgment debtor shall appear at the time and
26 place indicated in the subpoena for a hearing to de-
27 termine his ability to pay the judgment. The debtor
28 shall be placed under oath and shall disclose his in-
29 come, assets and any other information which will aid
30 the judgment creditor in enforcing the judgment. Un-
31 less the debtor fails to appear for the disclosure
32 hearing, testimony of the debtor shall be taken be-
33 fore the court issues any order pursuant to this
34 chapter.

35 2. Agreement. If the creditor or the debtor, at
36 or prior to the disclosure hearing, presents the
37 court with a written agreement for an order pursuant
38 to section 3127 with affidavit signed by the judgment
39 debtor on a form provided by the District Court, the

1 court may enter an order for an installment payment
2 in the amount agreed upon by the parties or a lessor
3 amount without the necessity of appearance by the
4 parties. In determining whether to accept, reject or
5 modify to a lessor amount the agreement of the par-
6 ties, the court shall apply the factors set forth in
7 section 3128.

8 3. Continuances. A continuance of the disclo-
9 sure hearing may be granted for good cause.

10 4. Witnesses. Either party may subpoena any
11 witness to the disclosure hearing for the purpose of
12 taking testimony as to the ability of the judgment
13 debtor to satisfy the judgment.

14 5. Orders. In appropriate circumstances, the
15 court may issue any combination of orders allowed by
16 this chapter.

17 6. Termination. If the court is satisfied that
18 the debtor has no earnings, property or other assets
19 from which he can satisfy the judgment, in whole or
20 in part, the disclosure shall be terminated. Failure
21 of the judgment creditor to appear at the time and
22 date set forth in the subpoena shall result in a ter-
23 mination of the disclosure hearing. Any dismissal or
24 withdrawal of the disclosure subpoena by the judgment
25 creditor after it has been served on the debtor shall
26 be considered a termination of the disclosure hear-
27 ing. A terminated hearing shall be considered a com-
28 pleted hearing for the purposes of section 3124.

29 Sec. 8. 14 MRSA §3126, as amended by PL 1985, c.
30 506, Pt. B, §11, is further amended to read:

31 §3126. Fees and costs

32 The disclosure subpoena and, return of service
33 and the writ of execution or an attested copy thereof
34 shall be filed with the clerk, together with a filing
35 fee as established by the Supreme Judicial Court pur-
36 suant to Title 4, section 175. The fee and actual
37 costs of service shall be added to the judgment, un-
38 less the judgment creditor or his attorney fails to
39 appear in accordance with section 3125 or unless the
40 judge orders otherwise. Costs of service incurred by

1 the creditor, in addition to the filing fee and the
2 service of the disclosure subpoena, may be imposed
3 upon the judgment debtor or the 3rd party at the dis-
4 cretion of the court.

5 Sec. 9. 14 MRSA §3127, sub-§§1 and 2, as re-
6 pealed and replaced by PL 1983, c. 155, §1, are
7 amended to read:

8 1. Court order. Upon a disclosure hearing where
9 when it is shown that the judgment debtor is receiv-
10 ing or will receive money or earnings from a source
11 other than a source which is otherwise exempt from
12 trustee process, attachment and execution under sec-
13 tions 4421 to 4426, the court may order that the
14 judgment debtor make specified installment payments
15 to the judgment creditor; provided that, in the case
16 of a judgment debtor who is a natural person an
17 individual, the maximum amount of earnings for any
18 workweek which is subjected subject to such an in-
19 stallment order may not exceed, except as provided in
20 subsection 2:

21 A. Twenty-five percent of the judgment debtor's
22 disposable earnings for that week; or

23 B. The amount by which his disposable earnings
24 for that week exceed 30 40 times the federal min-
25 imum hourly wage prescribed by the United States
26 Code, Title 29, Section 206 (a) (1), whichever is
27 less.

28 In the case of earnings for any pay period other than
29 a week, the multiple of the federal minimum hourly
30 wage equivalent in effect to that set forth in para-
31 graph B, as prescribed by regulations of the Secre-
32 tary of Labor of the United States, shall limit the
33 amount of the installment order.

34 2. Exceptions. The restrictions of subsection
35 17 paragraph A do not apply in the case of:

36 A. Any order for the support of any person is-
37 sued by a court of competent jurisdiction or in
38 accordance with an administrative procedure,
39 which is established by state law, which affords
40 substantial due process and which is subject to
41 judicial review;

1 B. Any order of any court of the United States
2 having jurisdiction over cases under the United
3 States Code, Title 11, chapter 13; or

4 C. Any debt due for any state or federal tax,
5 et.

6 D. Transactions governed by Title 9-A, section
7 5-105.

8 Sec. 10. 14 MRSA §3127-A is enacted to read:

9 §3127-A. Order to 3rd parties to hold and answer

10 1. Order to hold and answer. Upon a disclosure
11 hearing when it is shown that there is a reasonable
12 likelihood that a 3rd party has possession or control
13 of property in which the judgment debtor may have an
14 interest or that the 3rd party may be indebted to the
15 judgment debtor for other than earnings, the court,
16 upon request of the judgment creditor, may approve
17 the service on the 3rd party of an order to hold and
18 answer. The order to hold and answer shall state the
19 amount owed on the judgment debt and shall set forth
20 the specific property of the judgment debtor alleged
21 to be in the possession of the 3rd party, as well as
22 any specific debt other than earnings, alleged to be
23 owed to the judgment debtor. The order shall demand
24 an answer under oath from the 3rd party listing all
25 property in the possession of the 3rd party in which
26 the judgment debtor has an interest and listing all
27 debts, other than earnings, owed by the 3rd party to
28 the judgment debtor, as of the date and time the or-
29 der is served. The order to hold and answer shall
30 state the consequences of the failure of the 3rd par-
31 ty to answer. An order to hold and answer shall be
32 served on the 3rd party and the judgment debtor with-
33 in 20 days of the date of the order. An answer form
34 shall be supplied to the 3rd party with the order.

35 2. Answer. Within 20 days of service of the or-
36 der, the 3rd party shall:

37 A. File with the court the answer required in
38 the order; and

1 B. Serve copies of the answer on the judgment
2 debtor and the judgment creditor in the manner
3 provided in the Maine Rules of Civil Procedure,
4 Rule 5.

5 3. Hold and answer. The 3rd party served with
6 the order to hold and answer, upon receipt of the or-
7 der, shall withhold and account for any property be-
8 longing to the judgment debtor and any debt due the
9 judgment debtor, except earnings. Unless the judg-
10 ment debtor or the judgment creditor requests a hear-
11 ing within 20 days of the filing of the answer of the
12 3rd party, the property or debt listed shall be sub-
13 ject to any order permitted under section 3131 or
14 3132.

15 4. Hearing on motion. Within 20 days of the
16 service of the answer of the 3rd party on the other
17 parties, the judgment debtor or the judgment creditor
18 may request by motion a hearing on the extent of the
19 judgment debtor's interest in the property listed,
20 the failure of the 3rd party to list property or mon-
21 ey owed, the exempt status of property listed or any
22 other issue concerning the judgment debtor's interest
23 in property in the possession of the 3rd party. The
24 motion shall be served on all parties. If after the
25 hearing the court is satisfied as to the existence
26 and extent of the nonexempt property of the debtor
27 held by the 3rd party, or as to the existence and ex-
28 tent of any nonexempt money debt, other than earnings
29 owed by the 3rd party to the judgment debtor, it
30 shall make an order provided for under section 3131
31 or 3132.

32 5. Exception. This section does not apply to
33 collection of amounts due on negotiable instruments
34 or certificates of deposit unless the judgment credi-
35 tor has previously obtained possession of the docu-
36 ments pursuant to section 3132 or otherwise.

37 6. Default. Failure of a 3rd party, duly served
38 with an order to withhold and answer, to timely file
39 an answer shall constitute a default as to questions
40 of possession and ownership between the 3rd party and
41 the judgment debtor of the specific property or debt
42 set forth in the order. In addition, the 3rd party
43 shall be subject to an order pursuant to section 3131

1 or 3132 and shall be subject to a contempt proceed-
2 ing.

3 7. Enlargement of time limits. The time limits
4 in this section may be enlarged as provided in the
5 Maine Rules of Civil Procedure, Rule 6.

6 Sec. 11. 14 MRSa §3127-B is enacted to read:

7 §3127-B. Order to employer or payor of earnings

8 1. Order. When it is shown upon ex parte motion
9 and affidavit that the judgment debtor has either
10 failed to timely make 2 or more payments required by
11 an installment order under section 3127 or when the
12 judgment debtor has failed to appear, after having
13 been subpoenaed for a hearing provided for in this
14 chapter, the court may approve the service of an or-
15 der to withhold and answer on the judgment debtor's
16 employer or other payor of earnings. The order shall
17 state the amount owed on the judgment debt, interest
18 and costs. If the court has previously determined an
19 installment payment amount under section 3127, the
20 order shall state that amount. The order shall de-
21 mand an answer under oath listing the dollar amounts
22 of all earnings owed or payable to the debtor and the
23 calculation of the judgment debtor's disposable earn-
24 ings. The order shall be served on the employer or
25 other payor and on the judgment debtor within 60 days
26 of the date of the order. A form answer shall be at-
27 tached to the order when served on the employer or
28 other payor of earnings.

29 2. Withhold and answer. The employer or other
30 payor served with the order shall calculate the maxi-
31 mum dollar amount of the employee's disposable earn-
32 ings which may be applied to the debt under section
33 3127 by using the form answer attached to the order.
34 Within 20 days of service of the order, the employer
35 or other payor of earnings shall:

36 A. File the completed form answer with the
37 court;

38 B. Serve copies of the answer on the judgment
39 debtor and the judgment creditor in the manner
40 provided in the Maine Rules of Civil Procedure,
41 Rule 5; and

1 C. Withhold from the employee and pay to the
2 judgment creditor the amount of the previously
3 ordered installment payment or the maximum dollar
4 amount of the employee's disposable earnings
5 which may be applied to the debt, whichever
6 amount is less, until the court orders otherwise
7 or the debt is satisfied.

8 3. Hearing on motion. Within 20 days of the
9 service of the answer of the employer or other payor
10 of earnings, the judgment debtor or the judgment
11 creditor may request by motion a hearing to determine
12 what amount, if any, of the judgment debtor's earn-
13 ings should be ordered payable by the employer or
14 other payor to the judgment creditor. The motion
15 shall be served on the employer or other payor as
16 well as the other party. After the hearing, if the
17 court is satisfied as to the existence and amount of
18 the judgment debtor's disposable earnings payable by
19 the employer or other payor, it may issue an order to
20 the employer or other payor to withhold an amount,
21 subject to the requirements of section 3127, from the
22 earnings of the judgment debtor and pay the amount to
23 the judgment creditor. If the court fails to find
24 disposable earnings payable by the employer or other
25 payor, it may terminate the withholding required under
26 subsection 2. If the court terminates withhold-
27 ing or reduces the amount withheld, the court may order
28 appropriate reimbursement of the judgment debtor
29 by either the employer or the judgment creditor. No
30 reimbursement or retroactive withholding is permitted
31 against the employee if the court order increases the
32 amount withheld.

33 4. Withholding charge. An employer or other
34 payor subject to a withholding order may charge a fee
35 of \$1 per check issued and forwarded to the judgment
36 creditor. This fee shall be deducted from the amount
37 withheld prior to its remittance to the judgment
38 creditor.

39 5. Default. Failure of an employer or other
40 payor of earnings, duly served with an order to with-
41 hold and answer, to timely file an answer shall con-
42 stitute a default and subject the employer or other
43 payor to separate liability for an amount equal to
44 that portion of the judgment debt which could proper-

1 ly have been withheld under subsection 2, plus inter-
2 est. This liability accumulates unless the employer
3 or other payor files a late answer. When the employ-
4 er files a late answer, the accumulated liability
5 continues for 20 days from the answer or, if a motion
6 is filed under subsection 3, until the court makes an
7 order.

8 6. No discharge or contribution. No employee
9 may discharge any employee because his earnings are
10 subject to an order under this section. The employer
11 shall not have a cause of action against the employee
12 to recover any amounts paid by the employer to the
13 creditor under the employer's separate liability as
14 provided under subsection 5.

15 7. Enlargement of time limits. The time limits
16 in this section may be enlarged as provided in the
17 Maine Rules of Civil Procedure, Rule 6.

18 Sec. 12. 14 MRSA §3128, as enacted by PL 1971,
19 c. 408, §1, is amended to read:

20 §3128. Factors in determining the amount of the in-
21 stallment order

22 In fixing the amount of installment payments, the
23 court may take into consideration: The reasonable re-
24 quirements of the judgment debtor and his dependents;
25 any payments required to be made by him in satisfac-
26 tion of other judgment orders and wage assignments;
27 other judgment orders or wage assignments that have
28 priority; the amount due on the judgment; the amount
29 of money or earnings being or to be received; and any
30 other factors and circumstances which the court shall
31 deem material and relevant. The court may prescribe
32 the time, places and manner in which the payments are
33 to be made.

34 Sec. 13. 14 MRSA §3129, as amended by PL 1973,
35 c. 477, §4, is further amended to read:

36 §3129. Modification of orders

37 The court may at any time, on its own motion or
38 on the motion of any party and upon notice and hear-
39 ing, make an order suspending, revising or revoking

1 any order made pursuant to this chapter upon a show-
2 ing that the circumstances of ~~either~~ any party so re-
3 quire.

4 Sec. 14. 14 MRSA §3131, as amended by PL 1983,
5 c. 125, §1, is repealed and the following enacted in
6 its place:

7 §3131. Turnover orders, sales

8 1. Turnover order. When it is shown at a hear-
9 ing under this chapter that the judgment debtor owns
10 personal property or real property which is not whol-
11 ly exempt from attachment or execution pursuant to
12 sections 4421 to 4426, the court shall determine the
13 value of the property or interest and the extent to
14 which the property or interest is exempt. Upon re-
15 quest of the judgment creditor, the court shall order
16 the judgment debtor to turn over to the judgment
17 creditor in partial or full satisfaction of the judg-
18 ment, interest and costs, such items of property
19 which are not in whole or in part exempt and the val-
20 ue of which is determined to be less than or equal to
21 the amount owed on the judgment, interest and costs.

22 2. Sale order. Upon the request of the judgment
23 creditor, the court shall order the sale by the judg-
24 ment creditor of property owned by the judgment debt-
25 or in full or partial satisfaction of the amount owed
26 on the judgment, interest and costs, including the
27 costs of sale, in the following situations:

28 A. When it is determined that the value of whol-
29 ly nonexempt property is greater than the amount
30 owed on the judgment, interest and costs, and the
31 judgment creditor and judgment debtor cannot
32 agree as to which items of property shall be ap-
33 plied to the satisfaction of the judgment;

34 B. When wholly nonexempt property is not availa-
35 ble to fully satisfy the judgment and it is de-
36 termined that the value of partially exempt prop-
37 erty is greater than the exemption available for
38 that item and the property cannot practically be
39 divided into its exempt and nonexempt portions;
40 or

1 C. When the judgment debtor's property is not
2 subject to physical division or it is otherwise
3 impractical to provide for satisfaction of the
4 judgment in kind.

5 3. Notice of turnover order and sale. The judg-
6 ment creditor shall give notice of any turnover order
7 or sale to any person who has a security interest,
8 mortgage, lien, encumbrance or other interest in the
9 property when the interest is recorded, possessory or
10 of which the judgment creditor has actual knowledge.
11 He shall provide notice of sale to the judgment debt-
12 or. In the case of a turnover order, the notice
13 shall include a copy of the order, the name and ad-
14 dress of the judgment creditor and the name and ad-
15 dress of the attorney, if any, representing the judg-
16 ment creditor in the disclosure proceeding. Notice
17 of a turnover order shall be provided within 30 days
18 after the entry of the turnover order. In the case
19 of a sale, the notice shall be of the type which a
20 secured creditor is required to provide to a debtor
21 in a sale of secured property subject to Title 11,
22 section 9-504, subsection (3), and shall be provided
23 at the time required under that section. If the
24 judgment creditor fails to provide the required no-
25 tice of sale or turnover order to others, the credi-
26 tor shall be liable to the 3rd parties for any loss
27 caused by the failure.

28 4. Redemption and time of sale. Any real prop-
29 erty subject to a sale order may be redeemed from the
30 sale order within 90 days from the date of the order
31 by payment to the judgment creditor of the amount of
32 the judgment, costs and interest through the date of
33 payment.

34 A. If redemption does not occur within the re-
35 demption period, the judgment creditor shall sell
36 the real property within 30 days after the end of
37 that period, unless the 30-day period is extended
38 for cause by order upon motion made within the
39 30-day period.

40 B. The judgment creditor shall sell personal
41 property subject to a sale order within 30 days
42 of the order, unless that time period is extended
43 for cause by order upon motion made within the

1 30-day period. The property may be redeemed be-
2 fore the sale occurs by payment to the judgment
3 creditor of the amount of the judgment, costs and
4 interest through the date of payment, plus ex-
5 penditures of sale incurred through that date.

6 5. Method and effect of sale. Sale of the prop-
7 erty may be by public or private sale and by any
8 method which is commercially reasonable. The judg-
9 ment creditor may buy at any sale at which a secured
10 party could buy if the sale occurred pursuant to Ti-
11 tle 11, section 9-504, subsection (3). The sale
12 shall have the effect accorded dispositions under Ti-
13 tle 11, section 9-504, subsection (4), whether the
14 property is real or personal.

15 6. Sale proceeds. When the property is subject
16 to a security interest, mortgage, lien, encumbrance
17 or other interest which is subordinate to that of the
18 judgment creditor and which is recorded, possessory
19 or of which the judgment debtor has actual knowledge,
20 which secures the payment of any indebtedness, the
21 judgment creditor shall remit the excess of any sale
22 proceeds over the amount owed on the judgment, costs
23 and interest through the sale date, plus the expenses
24 of sale, to the holder of the interest up to the
25 amount of the indebtedness. The judgment creditor
26 shall remit to the 3rd party any exempt portion of
27 the sale proceeds subject to the 3rd party's inter-
28 est. The judgment creditor shall remit any further
29 excess, plus any exempt portion of the sale proceeds
30 which is not subject to a 3rd party interest, to the
31 judgment debtor and shall be entitled to any defi-
32 ciency.

33 7. Affidavit of sale. Within 30 days of the
34 sale, the judgment creditor shall file with the court
35 an affidavit setting forth the date, place, manner,
36 expenses and proceeds of the sale and reciting that a
37 copy of the affidavit has been delivered to the judg-
38 ment debtor, or mailed to the last known address of
39 the judgment debtor, and to any 3rd party entitled to
40 receive notice of the sale under subsection 3.

41 8. Challenge to sale. The judgment debtor or
42 the 3rd party may contest the accounting of the sale,
43 including the manner in which it was conducted, by

1 motion filed within 30 days of the mailing or deliv-
2 ery of the affidavit to the debtor. Any challenge
3 shall not affect ownership of, or title to, the prop-
4 erty sold, but shall be for money damages only. If
5 the sale is challenged by the judgment debtor and it
6 is found that the judgment creditor failed to comply
7 with the requirements of this section, it shall be
8 presumed that the proceeds of a properly conducted
9 sale would have at least fully satisfied the judg-
10 ment. Such a presumption against the judgment credi-
11 tor may be overcome only by clear and convincing evi-
12 dence.

13 9. Lien. An order entered pursuant to this sec-
14 tion shall constitute a lien against the property
15 which is the subject of the order and against the
16 proceeds of any disposition of the property by the
17 judgment debtor which occurs at any time after entry
18 of the order. The lien shall extend to proceeds of
19 any disposition of the property, real or personal,
20 subject to the lien of the judgment creditor to the
21 extent that a secured party would have an interest in
22 the proceeds under Title 11, section 9-306. The lien
23 shall be for the full amount of the unpaid judgment,
24 interest and costs, and shall become perfected as to
25 3rd parties on the earlier of:

26 A. The time the judgment creditor or purchaser
27 takes possession of the property;

28 B. If the property is real estate, the time when
29 an attested copy of the turnover or sale order is
30 filed with the registry of deeds where a mortgage
31 would be filed to be duly perfected;

32 C. If the property is personalty against which a
33 security interest may be perfected by filing pur-
34 suant to Title 11, the time when an attested copy
35 of the turnover or sale order is filed with the
36 filing officer when a filing would be required
37 under Title 11, section 9-401;

38 D. If the property is a motor vehicle for which
39 a certificate of title is required, the time when
40 an attested copy of the turnover or sale order is
41 delivered to the office of the Secretary of State
42 when notice would be delivered pursuant to Title
43 29, section 2374, subsection 1; or

1 E. If the judgment creditor or purchaser takes
2 possession of the property, or if an order is re-
3 corded, filed or delivered pursuant to this sub-
4 section during the pendency of any properly per-
5 fectured prejudgment or post-judgment attachment
6 obtained in the underlying action, or any judg-
7 ment lien created pursuant to section 4651, the
8 time when the attachment or lien was duly per-
9 fectured against the property.

10 10. Equitable powers. The court is given equi-
11 table powers to make all appropriate orders to effec-
12 tuate or compel obedience to turnover or sale orders.

13 Sec. 15. 14 MRSA §3132, as amended by PL 1983,
14 c. 125, §2, is repealed and the following enacted in
15 its place:

16 §3132. Possessory lien

17 When it is shown at a hearing under this chapter
18 that the judgment debtor owns or otherwise has an in-
19 terest in personal property in which a security in-
20 terest may be perfected only by possession as set
21 forth in Title 11, article 8 or 9, upon request of
22 the judgment creditor, the court shall order a lien
23 on the judgment debtor's interest in so much of such
24 property as is not exempt from attachment and execu-
25 tion pursuant to sections 4421 to 4426, and as will
26 satisfy the unpaid judgment plus interest and costs.
27 Any lien ordered under this section shall be perfect-
28 ed as to 3rd parties as of the time the judgment
29 creditor takes possession of the property or the docu-
30 ment evidencing the property.

31 Any lien ordered under this section shall extend
32 to the proceeds of any disposition of any property
33 subject to the lien of the judgment creditor which
34 occurs at any time after entry of the lien order to
35 the same extent that a secured party would have an
36 interest in such proceeds pursuant to Title 11, sec-
37 tion 9-306. The court is given equitable power to
38 make all appropriate orders, including, but not lim-
39 ited to, turnover orders, to assist the judgment
40 creditor in perfecting a lien under this section and
41 to effectuate or compel obedience to any orders is-
42 sued pursuant to this section.

1 Sec. 16. 14 MRSA §3133, as enacted by PL 1971,
2 c. 408, §1, is repealed.

3 Sec. 17. 14 MRSA §3134, as enacted by PL 1971,
4 c. 408, §1, is repealed and the following enacted in
5 its place:

6 §3134. Failure to appear

7 If the judgment debtor fails to appear after be-
8 ing duly served with a subpoena under section 3123
9 and the judgment creditor appears at the time and
10 place named in the subpoena, and the creditor files
11 an affidavit stating that he knows of no infirmity,
12 disability or good cause preventing the appearance of
13 the debtor, which affidavit also sets forth the ad-
14 dress and telephone number where the creditor or his
15 representative may be reached and the address of the
16 debtor, the judge shall issue a civil order of arrest
17 directing the sheriff to arrest the debtor and bring
18 the debtor to a disclosure hearing on the days or
19 date specified in the civil order of arrest. In the
20 case of a nonindividual debtor, a civil order of ar-
21 rest shall be issued for the arrest of any officer,
22 director or managing agent of the debtor or other
23 agent appointed by the debtor to accept service and
24 who was served with the disclosure subpoena.

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

28 §3135. Civil order of arrest

29 After a civil order of arrest has been issued
30 pursuant to section 3134 or 3136, the sheriff shall
31 cause the individual named in the order to be ar-
32 rested and shall deliver him without undue delay to
33 the division of the District Court that issued the
34 civil order of arrest. After the judgment debtor is
35 brought to the court, the clerk shall promptly notify
36 the judgment creditor or his attorney of record in
37 person or by telephone that his presence is required
38 for a hearing. If a disclosure or contempt hearing
39 cannot be held that day due to the inability of the
40 judgment creditor or his attorney to appear or due to
41 the absence of the judge or the inability of the

1 court to hear the matter because of other business,
2 the court or clerk shall release the individual upon
3 his personal recognizance for his appearance on a
4 date certain. If the individual fails to appear for
5 the disclosure or contempt hearing after being re-
6 leased upon his personal recognizance, the court may
7 issue additional civil orders of arrest to bring the
8 debtor before the court for hearing.

9 Unless the judgment debtor shows good cause for
10 his failure to appear after being duly served with a
11 disclosure subpoena under section 3123 or a contempt
12 subpoena under section 3136, the debtor shall be or-
13 dered to pay the costs of issuing and serving the
14 civil order for arrest.

15 Sec. 19. 14 MRSA §3136, as amended by PL 1973,
16 c. 788, §59, is repealed and the following enacted in
17 its place:

18 §3136. Contempt

19 1. Motion for contempt. Whenever a judgment
20 debtor or any other person fails to comply with any
21 court order entered pursuant to this chapter, except
22 an order against a judgment debtor issued for failure
23 to comply with a disclosure subpoena, the judgment
24 creditor may file a motion with the court to hold
25 that person in contempt. The motion shall be under
26 oath and set forth the facts that give rise to the
27 motion or shall be accompanied with a supporting af-
28 fidavit setting forth the facts.

29 2. Contempt subpoena. For the purpose of the
30 contempt hearing, the judgment creditor shall have
31 the right to subpoena the person sought to be held in
32 contempt. Contempt subpoenas shall be issued in
33 blank by the clerks of the District Court. The con-
34 tempt subpoena shall set forth the title of the ac-
35 tion, the date and place where the person sought to
36 be held in contempt is ordered to appear for the con-
37 tempt hearing, an order to produce any documents re-
38 quested by the judgment creditor, a warning that
39 failure to obey the contempt subpoena may result in
40 the arrest of that person and that a finding of con-
41 tempt by the court may result in the person being
42 finned or imprisoned, or both, until the person com-
43 plies with the court order.

1 3. Service of contempt subpoena and motion. The
2 subpoena shall be served with a copy of the motion
3 for contempt and supporting affidavit, if any, upon
4 the person sought to be held in contempt at least 10
5 days prior to the hearing by an officer qualified to
6 serve civil process in the same manner as provided in
7 section 3123.

8 4. Failure to appear. If the person sought to
9 be held in contempt fails to appear after being duly
10 served with a contempt subpoena and the judgment
11 creditor appears at the time and place named in the
12 subpoena, upon the request of the judgment creditor,
13 the judge shall issue a civil order of arrest direct-
14 ing the sheriff to arrest the person and bring the
15 person to the court on the days or date specified in
16 the civil order of arrest. In the case of a
17 nonindividual, a civil order of arrest shall be is-
18 ssued for the arrest of any officer, director or man-
19 aging agent who was served with the contempt subpoe-
20 na.

21 5. Orders. Upon a finding at the contempt hear-
22 ing that a court order has been disobeyed by the per-
23 son and that the person has the present ability to
24 comply with the order, the person shall be adjudged
25 in civil contempt. The court shall have the power to
26 impose such reasonable fine or imprisonment as the
27 circumstances require, provided that the person is
28 given an opportunity to purge himself of the con-
29 tempt. Whenever the person purges himself of the
30 contempt, the court shall release the person from im-
31 prisonment and may remit any fine or a portion of the
32 fine. In addition, the court may enter orders pursu-
33 ant to sections 3127, 3127-A, 3127-B, 3130, 3131 and
34 3132 to assure the person's compliance with the court
35 order and to aid the judgment creditor in the en-
36 forcement of the order.

37 Nothing contained in this section may limit in
38 any way the court's power to enter a finding of crim-
39 inal contempt in appropriate circumstances.

40 Sec. 20. 14 MRSA §3137, as amended by PL 1981,
41 c. 389, §3, is repealed.

42 Sec. 21. 14 MRSA §4601, as amended by PL 1981,
43 c. 279, §6, is further amended to read:

1 §4601. Duration of attachment

2 An attachment of real or personal estate contin-
3 ues during the time within which an appeal may be
4 taken from the judgment and during the pendency of
5 any appeal. When a judgment for the plaintiff has be-
6 come final by expiration of the time for appeal, by
7 dismissal of an appeal or on certificate of decision
8 from the law court, any such attachment shall contin-
9 ue for 60 days; except attachments of real estate
10 taken on execution; or equities of redemption sold on
11 execution; or an obligee's conditional right to a
12 conveyance of real estate sold on execution; or prop-
13 erty attached and replevied; or property attached be-
14 longing to a person dying thereafter, or specially
15 provided for in any other case. In the case of at-
16 tachments of real estate, the aforesaid 60-day period
17 may be extended for a definite period, and thereafter
18 extended for definite periods, with attachment re-
19 maining in full force and effect, by an order signed
20 by any judge or justice of the court having jurisdic-
21 tion over the cause of action upon which the attach-
22 ment is based, provided said order is signed and re-
23 corded in the office of the register of deeds in the
24 county or district where the said real estate or some
25 part of it is situated within the said 60-day period.
26 An attachment of real estate shall expire at the end
27 of 5 years from the date of filing the same in the
28 office of the register of deeds in the county or dis-
29 trict where the said real estate or some part of it
30 is situated, unless the said register shall, within
31 said period, at the request of the plaintiff or his
32 attorney bring forward the same upon the book of at-
33 tachments, and at the expiration of 5 years from the
34 time of such first or any subsequent bringing for-
35 ward, such attachment shall expire unless within said
36 period it is again brought forward in like manner.
37 The register shall be entitled to the same fee for
38 bringing forward such attachment upon the book of at-
39 tachments as for the original entry thereof, and
40 shall be entitled to the fee set in Title 23, section
41 751 for recording an order for such extension.

42 In addition to any other provisions of law, at-
43 tachments of real or personal estates may be enforced
44 and their duration may be extended as provided in
45 sections 3131, 3132 and 4651

1 Sec. 22. 14 MRSA §4651, as amended by PL 1985,
2 c. 187, §4, is further amended to read:

3 §4651. Issue and return

4 Executions may be issued on a judgment of the Su-
5 perior Court or the District Court after 24 hours
6 from the time the judgment has become final by the
7 expiration of the time for appeal, by dismissal of an
8 appeal or on certificate of decision from the law
9 court, unless the court has pursuant to rule ordered
10 execution at an earlier time, and shall be returnable
11 within one year after issuance.

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

28 1. Filing of lien. The fact that a lien has
29 been filed,

30 2. Date and place of filing. The date and place
31 the lien was filed,

32 3. Amount of debt or damage. The amount of the
33 debt or damage contained in the execution,

34 4. Name of judgment creditor. The name of the
35 judgment creditor and, if desired, his attorney, in-
36 cluding their addresses, and

37 5. Statement. The following statement: "To dis-
38 solve this lien, please contact (the creditor or his
39 attorney)."

1 If a lien created by this section is filed during
2 the pendency of any prejudgment or postjudgment at-
3 tachment obtained in the underlying civil action, the
4 effective date of the lien shall relate back to the
5 date of perfection of the attachment. The lien cre-
6 ated by this section shall continue so long as the
7 judgment in the underlying civil action shall remain
8 unpaid and unsatisfied, unless sooner released or
9 otherwise discharged.

10 Sec. 23. 14 MRSA §4651-A is enacted to read:

11 §4651-A. Execution liens

12 1. Lien on real estate. The filing of an execu-
13 tion duly issued by any court of this State or an at-
14 tested copy thereof with a registry of deeds within
15 one year after issuance of the execution shall create
16 a lien in favor of each judgment creditor upon the
17 right, title and interest of each judgment debtor in
18 all real estate against which a mortgage would be du-
19 ly perfected if filed in the registry and which is
20 not exempt from attachment and execution.

21 2. Lien on personal property. The filing of an
22 execution duly issued by any court of this State or
23 an attested copy thereof with the proper place or
24 places for perfecting a security interest in personal
25 property pursuant to Title 11, section 9-401, subsec-
26 tions (1) and (5) within one year after issuance of
27 the execution shall create a lien in favor of each
28 judgment creditor upon the right, title and interest
29 of each judgment debtor in personal property which is
30 not exempt from attachment and execution and which is
31 of a type against which a security interest could be
32 perfected by filing pursuant to Title 11, section
33 9-401.

34 3. Lien on motor vehicles. The filing of an ex-
35 ecution duly issued by any court of this State or an
36 attested copy thereof when a proof of transfer would
37 be delivered pursuant to Title 29, section 2374, sub-
38 section 1, within one year after issuance of the exe-
39 cution shall create a lien in favor of each judgment
40 creditor upon the right, title and interest of each
41 judgment debtor in any motor vehicle for which a ti-
42 tle certificate must be obtained pursuant to Title
43 29, chapter 21.

1 4. Amount of lien. A lien created by this sec-
2 tion shall be in the amount sufficient to satisfy the
3 judgment together with interest and costs.

4 5. Notice to judgment debtor. A lien created by
5 this section shall become void with respect to the
6 right, title and interest of any particular judgment
7 debtor, unless the judgment creditor notifies the
8 judgment debtor by certified or registered mail sent
9 to his last known address on or before 20 days after
10 filing or recording of the existence of the lien.
11 The notice shall contain the following:

12 A. The fact that a lien has been filed;

13 B. The date and place the lien was filed;

14 C. The amount of the judgment and costs as
15 stated in the execution;

16 D. The name of the judgment creditor and attor-
17 ney, if any, including their addresses; and

18 E. The following statement: "To dissolve this
19 lien, please contact (the creditor or his attor-
20 ney)."

21 6. Filing during pendency of attachment; date of
22 perfection. If a lien created by this section is
23 filed or recorded during the pendency of any
24 prejudgment or post-judgment attachment obtained in
25 the underlying civil action against property subject
26 to the lien, the effective date of the lien in the
27 property shall relate back to the date of perfection
28 of the attachment. The relation back shall apply on-
29 ly to that portion of the lien up to the amount of
30 the attachment. The remainder of such a lien, and
31 the full amount of any lien created when no attach-
32 ment is pending, shall become effective and be per-
33 fected from the date of the filing or recording of
34 the execution. Any lien created pursuant to this
35 section shall continue so long as the judgment in the
36 underlying civil action, or any portion thereof, plus
37 costs and interest, shall remain unpaid, undischarged
38 or unreleased.

1 The current law lacks guidelines and uniformity
2 and thus restricts the ability of the courts and the
3 parties to resolve collection of civil judgments
4 fairly and efficiently.

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