

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1199

H.P. 898 House of Representatives, April 9, 1987
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative ALLEN of Washington.
Cosponsored by Senator BALDACCI of Penobscot and
Representative HOGLUND of Portland.

STATE OF MAINE

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

AN ACT to Amend the Laws Regarding Small
Claims.

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

6 Sec. 1. 11 MRSA §4-401, sub-§(1) is amended to
7 read:

8 (1) As against its customer, a bank may charge
9 against his account any item which is otherwise properly
10 payable from that account even though the charge
11 creates an overdraft. Notwithstanding any other pro-
12 vision of article 3 or this article, a bank shall
13 charge against the account of its customer any item
14 which is otherwise properly payable from that account
15 even though the charge creates an overdraft when that
16 charge is in an amount equal to or less than the ju-
17 risdictional amount set by Title 14, section 7482.

1 Sec. 2. 14 MRSA §3137, first ¶, as amended by PL
2 1973, c. 477, §9, is further amended to read:

3 If the judgment debtor fails to make 3 consecu-
4 tive payments as required by the installment payment
5 order and fails to show sufficient cause why he is
6 not complying with said that order or, if the judg-
7 ment debtor fails to appear after having given his
8 personal recognizance or if the judgment debtor in a
9 small claims action under chapter 738 fails to appear
10 after notice under section 7484-A, the court may or-
11 der the employer or other payor of earnings of the
12 judgment debtor to pay subsequent installments on any
13 installment payment order directly to the judgment
14 creditor; provided that no such payment shall be made
15 from earnings not subject to an installment payment
16 order under section 3127 and in the case of such an
17 order made ex parte, to the limitation set forth in
18 section 3136.

19 Sec. 3. 14 MRSA §7484, sub-§1, as enacted by PL
20 1981, c. 667, §2, is amended to read:

21 1. Notice to defendant. The clerk shall cause
22 all notices given to the defendant in a small claims
23 action, including, but not limited to, notice of the
24 claim, date, time and place of the hearing and notice
25 of any disclosure hearing, to be sent by postpaid
26 registered or certified mail, addressed to the last
27 known post office address of the defendant. The no-
28 tice of the small claims action may include with it
29 the notice of a disclosure hearing as provided in
30 section 7484-A. The rules of procedure shall estab-
31 lish whether all disclosure hearings must be held im-
32 mediately succeeding a judgment, whether judges shall
33 have discretion to hold disclosure hearings immedi-
34 ately succeeding judgments or whether all disclosure
35 hearings must occur on some date after the hearing on
36 the underlying small claim;

37 Sec. 4. 14 MRSA §7484, sub-§5, as enacted by PL
38 1981, c. 667, §2, is repealed and the following en-
39 acted to read:

40 5. Disclosure. There shall be a simplified en-
41 forcement of money judgment proceeding as provided in
42 section 7484-A through which a judgment creditor may

1 obtain the appearance of the judgment debtor at a
2 disclosure hearing.

3 Sec. 5. 14 MRSA §7484-A is enacted to read:

4 §7484-A. Disclosure proceedings

5 The procedures in this section apply to disclo-
6 sure proceedings held to enforce a money judgment ob-
7 tained in a small claims action.

8 1. Notice. The notice of a disclosure hearing
9 shall be served on a defendant or judgment debtor by
10 registered or certified mail, with restricted deliv-
11 ery and return receipt requested. The notice shall
12 contain:

13 A. A statement that the defendant or judgment
14 debtor is required to appear before the District
15 Court at a time and place to satisfy any judgment
16 recovered against the defendant or judgment debt-
17 or in a small claims action in the District Court
18 on a certain date. If the judgment has been re-
19 covered when the disclosure notice is sent, the
20 notice shall state the amount of the judgment.
21 The notice shall state that, if a judgment has
22 not been recovered when the disclosure notice is
23 sent and a judgment is not recovered in the small
24 claims action, the disclosure hearing will not
25 occur;

26 B. A statement of any records or other informa-
27 tion the defendant or judgment debtor must
28 produce at the disclosure hearing;

29 C. A statement that failure to appear at the
30 hearing may result in:

31 (1) A lien being placed against property of
32 the judgment debtor to secure payment of the
33 judgment;

34 (2) A court order that the judgment debtor
35 make specified installment payments to the
36 judgment creditor;

1 (3) A court order that the judgment debtor
2 turn over certain property to the judgment
3 creditor; or

4 (4) A court order that an employer or other
5 payor of earnings of the judgment debtor pay
6 installments directly to the judgment credi-
7 tor.

8 2. Hearing. A disclosure hearing following a
9 judgment in a small claims action shall be conducted
10 as is a disclosure hearing under chapter 502. The
11 court may order a lien on property under section
12 3132, an installment payment under section 3127 or
13 3130, a turn over or sale under section 3131 or an
14 employer or other payor payment of installments under
15 section 3137. The court may modify an installment
16 payment order under section 3129.

17 3. Failure to appear. If the judgment debtor
18 fails to appear at the disclosure hearing at the time
19 specified in the disclosure notice, the court shall
20 issue any order described in subsection 2, based on
21 any evidence from the small claims action or pre-
22 sented at the disclosure hearing by the judgment
23 creditor as to the judgment debtor's assets and in-
24 come.

25 The clerk shall serve a copy of any order issued un-
26 der this subsection on the judgment debtor by regis-
27 tered or certified mail, with restricted delivery and
28 return receipt requested. Within 30 days of service
29 of the order, the judgment debtor may petition the
30 court to vacate the order. The court may vacate the
31 order if the judgment debtor shows at a hearing on
32 the petition, to be held within 14 days of the peti-
33 tion, any grounds that permit relief from the order.

34 STATEMENT OF FACT

35 The purpose of this bill is to simplify the no-
36 tice requirements for disclosure hearings after a
37 judgment is recovered in a small claims court action.

1 This bill provides that the notice of a disclo-
2 sure hearing may be sent to a defendant with the no-
3 tice of the small claims action. In this way, the
4 disclosure hearing may occur immediately after a
5 small claims judgment is recovered.

6 Under this bill, the defendant or judgment debtor
7 receives one notice, by registered or certified mail,
8 of a disclosure hearing. If the judgment debtor
9 fails to appear at the hearing, the court shall issue
10 an order requiring the judgment debtor to satisfy the
11 judgment by any manner currently permitted by the
12 laws on enforcement of money judgments.

13 The bill requires any order issued when the judg-
14 ment debtor fails to appear, to be sent by registered
15 or certified mail to the judgment debtor. Within 30
16 days of receipt of that mailing, the judgment debtor
17 may petition the court to vacate the order.

18 Under current law, a plaintiff in a small claims
19 action must notify the defendant of the action. If
20 the plaintiff recovers a judgment, the plaintiff must
21 send a separate notice of a disclosure hearing to the
22 judgment debtor. If the judgment debtor fails to ap-
23 pear at the disclosure hearing, the judgment creditor
24 must ask the court to issue a *capias* requiring the
25 sheriff to bring the judgment debtor to another dis-
26 closure hearing. This bill requires only one notice
27 of a disclosure hearing to be sent.

28 Finally, the bill also requires banks to honor
29 checks, even though to do so will result in an over-
30 draft in a customer's account, when the check is in
31 an amount equal to or less than the jurisdictional
32 amount for a small claims action.

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