

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1216

S.P. 397

In Senate, April 10, 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 PARADIS of Augusta,
Representative MACBRIDE of Presque Isle.

STATE OF MAINE

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

1 AN ACT to Implement Certain Recommendations
2 of the Judicial Council's Committee on
3 the Collection of Fines.
4

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

7 Sec. 1. 4 MRSA §173-A, as amended by PL 1985, c.
8 481, Pt. A, §5, is repealed and the following en-
9 acted in its place:

10 §173-A. Costs taxable for the State in civil viola-
11 tion or traffic infraction proceedings

12 Costs in the amount of \$25 shall be automatically
13 taxable for the State in civil violation proceedings
14 for failure to pay a fine imposed for the commission
15 of a civil violation within 30 days of entry of judg-
16 ment.

1 This section applies to all judgments imposing
2 finances which remain unpaid and which predate the ef-
3 fective date of this section.

4 Sec. 2. 14 MRSA c. 502-A is enacted to read:

5 CHAPTER 502-A

6 ENFORCEMENT OF FINES OWED TO THE STATE

7 §3141. Scope and procedure

8 1. Applicability. The procedures established by
9 this chapter apply to all monetary fines, however
10 designated, imposed by a court in a civil violation
11 or traffic infraction proceeding and shall be uti-
12 lized, to the maximum extent possible, to obtain
13 prompt and full payment of all such fines. The pro-
14 cedures established by this chapter may be used to
15 collect any fine imposed as part of a sentence for a
16 criminal conviction. The procedures established by
17 this chapter shall be in addition to, and not in lieu
18 of, those otherwise authorized by law.

19 2. Notice to defendant. At a defendant's ini-
20 tial appearance before a court in a civil violation
21 or traffic infraction proceeding or in a criminal
22 proceeding, the defendant shall be informed by the
23 court that if he is adjudicated to have committed the
24 traffic infraction or civil violation or convicted of
25 the criminal offense and if a fine is imposed by the
26 court, immediate payment of the fine in full is re-
27 quired.

28 3. Immediate payment. When a court has imposed
29 a fine, as described in subsection 1, the imposition
30 of such a fine constitutes an order to pay the full
31 amount of the fine in accordance with this chapter.
32 Following imposition of the fine, the court shall in-
33 form the defendant that full payment of the fine is
34 due immediately and shall inquire of the defendant
35 what arrangements he has made to comply with the
36 court's order to pay the fine. Without utilizing the
37 provisions of subsection 4, the court may allow the
38 defendant a period of time, not to extend beyond the
39 time of the close of the clerk's office on that day,

1 within which to return to the court and tender pay-
2 ment of the fine. If the defendant fails to appear
3 as directed, the court shall issue a bench warrant
4 for his arrest to show cause why he should not be
5 held in contempt and shall suspend the defendant's
6 license or permit to operate motor vehicles in this
7 State and the right to apply for or obtain a license
8 or permit to operate a motor vehicle in this State or
9 his motor vehicle registration.

10 If the defendant claims an inability to pay the fine,
11 the court shall inquire into the defendant's ability
12 to pay and shall make a determination of the defend-
13 ant's financial ability to pay the fine. If the
14 court finds that the defendant has the financial
15 ability to make immediate payment of the fine in
16 full, the court shall order him to pay the fine.
17 Failure or refusal to pay as ordered by the court
18 shall subject the defendant to the contempt proce-
19 dures provided in section 3143.

20 4. Installment payments. If the court concludes
21 that the defendant has the ability to pay the fine,
22 but that requiring the defendant to make immediate
23 payment in full would cause a severe and undue hard-
24 ship for the defendant and his dependents, the court
25 may authorize payment of the fine by means of in-
26 stallment payments in accordance with this subsec-
27 tion. When a court authorizes payment of a fine by
28 means of installment payments, it shall, without a
29 separate disclosure hearing:

30 A. Determine the amount of any immediate partial
31 payment which the defendant must pay;

32 B. Issue an order directing the defendant to
33 make specified installment payments to the clerk
34 of the court;

35 C. Establish a fixed date on which the defendant
36 must make payment of the final installment of any
37 fine to the clerk of the court; and

38 D. Require the defendant to surrender his li-
39 cense to operate a motor vehicle as security for
40 the payment of the fine. Upon the surrender of
41 the license, the defendant shall be given a tem-

porary license containing a specific expiration date which shall be the date set by the court for the payment of the fine. Upon payment of the fine as ordered, the defendant shall be entitled to the return of the license, unless it is otherwise subject to suspension.

In fixing the amount of the installment payments, the court shall issue an order which will complete payment of the fine as promptly as possible without creating a severe and undue hardship for the defendant and his dependents.

5. Appointment of agent. Any defendant who has been authorized by the court to pay a fine by installments shall be considered to have irrevocably appointed the clerk of the court as his agent upon whom all papers affecting his liability may be served.

6. Ability to pay the fine. "Ability to pay" means that the resources of the defendant and his dependents, including all available income and resources, are sufficient to provide the defendant and his dependents with a reasonable subsistence compatible with health and decency.

§3142. Contempt hearing

Unless the defendant shows that his failure to pay a fine was not attributable to a willful refusal to obey the order or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find the defendant in civil contempt and may punish him by such reasonable fine or imprisonment as the case requires. The defendant shall be allowed to purge himself of his contempt by complying with the court's order to pay.

§3143. Default judgments

Notwithstanding the Maine Rules of Civil Procedure, Rule 55, or the Maine District Court Rules of Civil Procedure, Rule 55, if a person who has been summonsed or ordered to answer for a civil violation or a traffic infraction fails to appear, the court, on its own motion, shall adjudicate the defendant to

1 have committed the offense and shall impose a fine.
2 The court shall immediately suspend the defendant's
3 license or permit to operate motor vehicles in this
4 State or the right to apply for or obtain a license
5 or permit to operate motor vehicles in this State or
6 the registration of motor vehicles registered by the
7 defendant, in accordance with Title 29, section
8 2301-A. Relief from a default judgment shall be by
9 motion in accordance with the Maine Rules of Civil
10 Procedure, Rule 60(b) and the Maine District Court
11 Rules of Civil Procedure, a copy of which shall be
12 served upon the Attorney General or the district at-
13 torney, as the case may be, representing the State.

14 §3144. Criminal failure to appear; cost of extradi-
15 tion

16 It is the intent of the Legislature that, when
17 appropriate, the respective district attorney shall
18 utilize Title 17-A, section 17, subsection 4, and
19 prosecute defendants who fail to appear. Any costs
20 of extradition of a defendant who has been charged
21 with the offense of failure to appear shall be as-
22 sessed against the defendant and shall be reimbursed
23 to the extradition account in the appropriate
24 prosecutorial district.

25 §3145. Appeal

26 A court order to pay a fine for a civil violation
27 or a traffic infraction shall be stayed by the court
28 upon request of the defendant if an appeal is taken
29 and if the defendant deposits all of the fine with
30 the clerk of the court. If, on appeal, the judgment
31 is reversed, the clerk shall immediately refund to
32 the defendant, or to such person as the defendant di-
33 rects, any funds deposited to cover the defendant's
34 fine. If the judgment is affirmed, the funds depos-
35 ited shall be applied by the clerk in payment of the
36 fine. The clerk shall immediately notify the defend-
37 ant and the court that an application has been made
38 and the fine paid in full.

39 §3146. Exemptions

40 The exemptions from attachment and execution
41 specified in sections 4421 to 4426 do not apply to
42 the collection of fines covered by this chapter.

1 §3147. Payment by credit care

2 The Judicial Department may implement a procedure
3 for the payment of fines by use of major credit cards
4 and may assess a reasonable fee upon the defendant to
5 cover any administrative expenses incurred in connec-
6 tion with the use of credit cards as a method of pay-
7 ment of fines.

8 STATEMENT OF FACT

9 The purposes of this bill are based upon the rec-
10 ommendations and suggestions for legislation pre-
11 sented to the Judicial Council of Maine by the Com-
12 mittee on the Collection of Fines. A narrative de-
13 scription of most of these provisions may be found in
14 the Final Report of the Committee on the Collection
15 of Fines to the Judicial Council of Maine, dated Au-
16 gust 23, 1985.

17 Many of these same recommendations were embodied
18 in Legislative Document Number 2133, which was sub-
19 mitted to the Second Regular Session of the 112th
20 Legislature. However, due to the fact that the pro-
21 posed legislation was quite comprehensive and in view
22 of the short legislative session available to consid-
23 er the provisions of the bill, it was withdrawn after
24 having been referred to the Joint Standing Committee
25 on Judiciary.

26 During the ensuing months, the Judicial Depart-
27 ment has made substantial progress in improving the
28 procedures for the collection of fines owed to the
29 State. The Judicial Department has now implemented
30 a procedure authorizing the courts to accept out-
31 of-state checks, and in some courts are now accept-
32 ing, on an experimental basis, payment of fines by
33 credit cards. In addition, from August 1, 1985, to
34 August 31, 1986, approximately \$465,000 in unpaid
35 fines were referred to the State's collection agency
36 and approximately \$124,000 has actually been recov-
37 ered.

38 At its meeting held on October 3, 1986, the Judi-
39 cial Council considered whether, in view of these ad-

1 ministrative improvements in the collection of fines,
2 it was necessary or desirable to pursue the major
3 legislative proposals embodied in Legislative Docu-
4 ment 2133. It was the unanimous position of the Ju-
5 dicial Council that certain recommendations of the
6 Committee on the Collection of Fines were still
7 worthwhile to pursue, but that major alterations in
8 the fine collection procedure, such as those origi-
9 nally envisioned by the committee, were not needed at
10 this time.

11 At its meeting held on December 5, 1986, the Ju-
12 dicial Council unanimously approved adoption of the
13 recommendations contained in this bill.

14 Section 1 of the bill provides that costs are au-
15 tomatically taxable against a defendant who has
16 failed to pay a fine within 30 days after entry judg-
17 ment. This avoids the necessity of having to get an
18 additional court order to impose taxable costs and is
19 consistent with the theory that fines shall be paid
20 immediately.

21 Section 2 creates a new chapter containing new
22 procedures for the collection of civil fines.

23 The Maine Revised Statutes, Title 14, section
24 3141, is a statement of legislative policy and is
25 self-explanatory.

26 Section 3142 requires that a defendant be noti-
27 fied at his first appearance that, if a fine is im-
28 posed, immediate payment is expected. This section
29 provides that a court-imposed fine is an order to
30 pay, with no requirement of a separate disclosure
31 hearing. This section authorizes installment pay-
32 ments, but gives the court guidance in ordering this.

33 Section 3143 sets up a clear contempt procedure.

34 Section 3144 provides for default judgments.

35 Section 3145 urges the district attorneys to uti-
36 lize failure to appear prosecutions when appropriate.

37 Section 3146 provides for an appeal of a court
38 fine and is virtually identical to the criminal rule.

Section 3147 provides that a court-imposed fine is not subject to the exemptions from attachment and execution found in the Maine Revised Statutes, Title 14.

Section 3148 authorizes the Judicial Department to establish a procedure to accept credit cards as payment of fines and to pass along any administrative fee to the defendant.

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