

# MAINE STATE LEGISLATURE

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L.D. 2115

(Filing No. H- 567)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
113TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1555, L.D. 2115,  
Bill, "AN ACT to Make Certain Statutory Changes to  
Facilitate District Court Judicial Administration."

Amend the bill by striking out everything after  
the enacting clause and inserting in its place the  
following:

'Sec. 1. 4 MRSA §173-A, as repealed and  
replaced by PL 1987, c. 414, §1, is amended to read:

§173-A. Costs taxable for the State in civil  
violation or traffic infraction proceedings

Costs in the amount of \$25 shall be automatically  
taxable for the State in civil violation and traffic  
infraction proceedings for failure to pay a fine  
imposed for the commission of a civil violation or  
traffic infraction within 30 days of entry of judgment  
or within 30 days of the date fixed for a final  
installment payment if the fine is to be paid under a  
plan approved under Title 14, section 3141, subsection  
4.

~~This section applies to all judgments imposing  
fines which remain unpaid and which predate the  
effective-date-of-this-section.~~

Sec. 2. 5 MRSA §4652, as enacted by PL 1987, c.  
515, §1, is amended to read:

1     §4652. Filing of petition

2             Proceedings under this chapter shall be filed,  
3 heard and determined in the District Court or Superior  
4 Court of the division or county in which either the  
5 plaintiff or the defendant resides. If the plaintiff  
6 has left the plaintiff's residence to avoid abuse  
7 harassment, the plaintiff may bring an action in the  
8 division or county of the plaintiff's previous  
9 residence or new residence.

10            **Sec. 3.**     5 MRSA §4653, sub-§1, as enacted by PL  
11 1987, c. 515, §1, is amended to read:

12            1.     Filing. Any person who has been a victim of  
13 harassment may seek relief by filing a sworn petition  
14 in an appropriate court alleging that abuse  
15 harassment.

16            **Sec. 4.**     5 MRSA §4654, sub-§2, ¶A, as enacted by  
17 PL 1987, c. 515, §1, is amended to read:

18            A. It appears clearly from a verified petition or  
19 an affidavit accompanying the petition that:

20                    (1) Before the defendant or his attorney can  
21 be heard, the plaintiff may be in immediate  
22 and present danger of physical abuse from the  
23 defendant or may suffer extreme emotional  
24 distress as a result of the defendant's  
25 conduct;

26                    (2) Either the plaintiff has or has not  
27 contacted any law enforcement officials  
28 concerning the alleged harassment; and

29                    (3) The plaintiff has provided sufficient  
30 information to substantiate the alleged  
31 harassment;

32            **Sec. 5.**     5 MRSA §4655, sub-§1, ¶A, as enacted by  
33 PL 1987, c. 515, §1, is amended to read:

34            A. Directing the defendant to refrain from  
35 harassing, threatening, assaulting, molesting,  
36 attacking or otherwise abusing the plaintiff;

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1           Sec. 6. 5 MRSA §4658, sub-§3, as enacted by PL  
2           1987, c. 515, §1, is amended to read:

3           3. Self-defense. The right to relief, under this  
4           chapter, shall not be affected by the plaintiff's use  
5           of reasonable force in response to ~~abuse~~ harassment  
6           by the defendant.

7           Sec. 7. 14 MRSA §3125, sub-§2, as enacted by PL  
8           1987, c. 184, §7, is amended to read:

9           2. Agreement. If the creditor or the debtor, at  
10          or prior to the disclosure hearing, presents the court  
11          with a written agreement for an order pursuant to  
12          section 3127 with affidavit signed by the judgment  
13          debtor on a form provided by the District Court, the  
14          court may enter an order for an installment payment in  
15          the amount agreed upon by the parties or a ~~lessor~~  
16          lesser amount without the necessity of appearance by  
17          the parties. In determining whether to accept, reject  
18          or modify to a ~~lessor~~ lesser amount the agreement  
19          of the parties, the court shall apply the factors set  
20          forth in section 3128.

21          Sec. 8. 14 MRSA §3131, sub-§6, as enacted PL  
22          1987, c. 184, §14, is amended to read:

23          6. Sale proceeds. When the property is subject  
24          to a security interest, mortgage, lien, encumbrance or  
25          other interest which is subordinate to that of the  
26          judgment creditor and which is recorded, possessory or  
27          of which the judgment ~~debtor~~ creditor has actual  
28          knowledge, which secures the payment of any  
29          indebtedness, the judgment creditor shall remit the  
30          excess of any sale proceeds over the amount owed on  
31          the judgment, costs and interest through the sale  
32          date, plus the expenses of sale, to the holder of the  
33          interest up to the amount of the indebtedness. The  
34          judgment creditor shall remit to the 3rd party any  
35          exempt portion of the sale proceeds subject to the 3rd  
36          party's interest. The judgment creditor shall remit  
37          any further excess, plus any exempt portion of the  
38          sale proceeds which is not subject to a 3rd party  
39          interest, to the judgment debtor and shall be entitled  
40          to any deficiency.

41          Sec. 9. 14 MRSA §3134, as repealed and replaced

1 by PL 1987, c. 184, §17, is amended to read:

2 §3134. Failure to appear

3 1. Issuance of civil order of arrest. If the  
4 judgment debtor fails to appear after being duly  
5 served with a subpoena under section 3123 and the  
6 judgment creditor appears at the time and place named  
7 in that subpoena, the creditor may request the court  
8 to issue a civil order of arrest. The court shall  
9 issue a civil order of arrest upon the filing by  
10 the written request of the creditor of an  
11 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  
14 request must contain the address and telephone number  
15 where the creditor or his representative can be  
16 reached and the address of the debtor.

17 2. Alternative method. Instead of requesting a  
18 civil order of arrest, the creditor may proceed by way  
19 of a motion for contempt for failure to appear. This  
20 motion shall be under oath or accompanied by an  
21 affidavit and shall be served upon the debtor with a  
22 contempt subpoena in the manner set forth in section  
23 3136. If the debtor, after being duly served with a  
24 contempt subpoena, fails to appear at the time and  
25 place named in the contempt subpoena, the court may  
26 find the debtor in civil contempt and shall issue a  
27 civil order of arrest under section 3136, subsection 4  
28 or, at the creditor's request, shall issue an order  
29 for the debtor to appear in court at a certain date  
30 and time for further proceedings, which order shall be  
31 served upon the debtor in hand by the sheriff who  
32 shall obtain from the debtor his personal recognizance  
33 bond to appear in court at the specified date and time.

34 Sec. 10. 14 MRSA §3135, 2nd ¶, as enacted by PL  
35 1987, c. 184, §18, is amended to read:

36 After a civil order of arrest has been issued, the  
37 sheriff shall cause the individual named in the order  
38 to be arrested and shall deliver him without undue  
39 delay to the division of the District Court that  
40 issued designated in the civil order of arrest. The  
41 sheriff may take such steps as he determines necessary  
42 for his safety or the safety of others then present,

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1 including searching the debtor for weapons, if he has  
2 a reasonable suspicion that the debtor has a weapon,  
3 and handcuffing the debtor if that is necessary to  
4 transport the debtor to the court or to cause the  
5 debtor to remain peaceably at the court. Upon arrival  
6 at the court, the sheriff shall notify the clerk or  
7 bailiff that the debtor is present and may release the  
8 debtor into the custody of the bailiff. The sheriff  
9 shall instruct the debtor that the debtor must wait at  
10 the court until released by the court or clerk. Upon  
11 release of the debtor into the custody of the bailiff,  
12 the sheriff need not remain with the debtor at the  
13 court.

14       **Sec. 11. 14 MRSA §3141, sub-§3, as enacted by**  
15 **PL 1987, c. 414, §2, is amended to read:**

16       3. Immediate payment. When a court has imposed a  
17 fine, as described in subsection 1, the imposition of  
18 such a fine constitutes an order to pay the full  
19 amount of the fine in accordance with this chapter.  
20 Following imposition of the fine, the court shall  
21 inform the defendant that full payment of the fine is  
22 due immediately and shall inquire of the defendant  
23 what arrangements he has made to comply with the  
24 court's order to pay the fine. Without utilizing the  
25 provisions of subsection 4, the court may allow the  
26 defendant a period of time, not to extend beyond the  
27 time of the close of the clerk's office on that day,  
28 within which to return to the court and tender payment  
29 of the fine. If the defendant fails to appear as  
30 directed, the court shall issue a civil order of  
31 arrest. The arrest order shall be carried out by the  
32 sheriff as a civil order of arrest is carried out  
33 under section 3135. If the underlying offense  
34 involves any violation of Title 23, section 1980;  
35 Title 28-A, section 2052; or Title 29, the court shall  
36 also, upon the defendant's failure to appear, suspend  
37 the defendant's license or permit to operate motor  
38 vehicles in this State and the right to apply for or  
39 obtain a license or permit to operate a motor vehicle  
40 in this State ~~or his motor vehicle registration.~~

41 If the defendant claims an inability to pay the fine,  
42 the court shall inquire into the defendant's ability  
43 to pay and shall make a determination of the

1 defendant's financial ability to pay the fine. If the  
2 court finds that the defendant has the financial  
3 ability to make immediate payment of the fine in full,  
4 the court shall order him to pay the fine. Failure or  
5 refusal to pay as ordered by the court shall subject  
6 the defendant to the contempt procedures provided in  
7 section 3142.

8 **Sec. 12. 14 MRSA §3141, sub-§4,** as enacted by  
9 PL 1987, c. 414, §2, is repealed and the following  
10 enacted in its place:

11 4. Installment payments. If the court concludes  
12 that the defendant has the ability to pay the fine,  
13 but that requiring the defendant to make immediate  
14 payment in full would cause a severe and undue  
15 hardship for the defendant and the defendant's  
16 dependents, the court may authorize payment of the  
17 fine by means of installment payments in accordance  
18 with this subsection. When a court authorizes payment  
19 of a fine by means of installment payments, it shall  
20 issue, without a separate disclosure hearing, an order  
21 that the fine be paid in full by a date certain and  
22 that in default of payment the defendant must appear  
23 in court to explain the failure to pay. Failure to  
24 pay by the date fixed by the court's order or an  
25 amended order shall subject the defendant to the  
26 contempt procedures provided in section 3142.

27 In fixing the date of payment, the court shall issue  
28 an order which will complete payment of the fine as  
29 promptly as possible without creating a severe and  
30 undue hardship for the defendant and the defendant's  
31 dependents.

32 **Sec. 13. 14 MRSA §§3142 and 3143,** as enacted by  
33 PL 1987, c. 414, §2, are amended to read:

34 §3142. Contempt hearing

35 Unless the defendant shows that his failure to pay  
36 a fine was not attributable to a willful refusal to  
37 obey the order or to a failure on his part to make a  
38 good faith effort to obtain the funds required for the  
39 payment, the court ~~shall~~ may find the defendant in  
40 civil contempt and may punish him by such reasonable  
41 fine or imprisonment as the case requires. The

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1 defendant shall be allowed to purge himself of his  
2 contempt by complying with the court's order to pay or  
3 to an amended order to pay.

4 §3143. Default judgments

5 If a person who has been summoned or ordered to  
6 answer for a civil violation or a traffic infraction  
7 fails to appear, the court shall direct the clerk to  
8 send notice by a regular mail to appear to the person  
9 at the address appearing on the summons or order to  
10 appear.

11 The notice shall advise the person that he was  
12 summoned or ordered to answer for a civil violation or  
13 a traffic infraction and failed to appear on the date  
14 directed. The notice shall set a new date and time  
15 for the person's appearance to answer the civil  
16 violation or traffic infraction and shall inform the  
17 person that failure to appear on this occasion will  
18 result in the adjudication of the person having  
19 committed the offense and the imposition of a fine.  
20 Notice under this section shall be complete upon  
21 mailing.

22 Notwithstanding the Maine Rules of Civil  
23 Procedure, Rule 55, or the Maine District Court Rules  
24 of Civil Procedure, Rule 55, if a person who has been  
25 summoned or ordered to answer for a civil violation or  
26 a traffic infraction fails to appear, has been mailed  
27 notice as provided in this section and thereafter  
28 again fails to appear, the court, on its own motion,  
29 shall adjudicate the defendant to have committed the  
30 offense and shall impose a fine. In the case of an  
31 adjudication for a traffic infraction, the court shall  
32 immediately suspend the defendant's license or permit  
33 to operate motor vehicles in this State or the right  
34 to apply for or obtain a license or permit to operate  
35 motor vehicles in this State ~~or the registration of~~  
36 ~~motor vehicles registered by the defendant,~~ in  
37 accordance with Title 29, section 2301-A. Relief from  
38 a default judgment entered pursuant to this section  
39 may be addressed to the court and may be granted in  
40 the court's discretion upon a finding that it will  
41 further the interest of justice.





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1 be made returnable to the District Court division in  
2 which the defendant resides rather than to the court  
3 which issues the order. This change will simplify the  
4 collection process when the debtor and creditor reside  
5 in different District Court divisions.

6 Section 11 of the amendment adds cross-references  
7 to 2 laws which create traffic-related offenses but  
8 which are not included within the Maine Revised  
9 Statutes, Title 29. Along with section 13, the  
10 section also removes the requirement that a court  
11 suspend the motor vehicle registration of a person  
12 accused of a traffic infraction if that person fails  
13 to appear when ordered by the court.

14 Section 12 of the amendment removes the  
15 requirements that a court, in permitting a defendant  
16 to pay a fine by installment payments, must determine  
17 the amount that the defendant can afford to pay  
18 immediately and must establish a payment schedule.  
19 Under the amendment, a court will simply issue an  
20 order setting a date within which payment must be made  
21 and may amend that order if necessary.

22 Section 13 of the amendment eliminates the  
23 requirement that a court find a defendant who fails to  
24 pay his fine in contempt of court and allows the court  
25 discretion to find a defendant in contempt.

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