

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

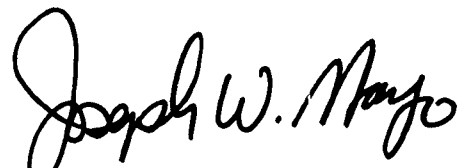
No. 668

H.P. 487

House of Representatives, February 28, 1995

An Act to Improve the Civil Order of Arrest Procedure.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Vassalboro.

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

4 **Sec. 1. 14 MRSA §3134, sub-§3** is enacted to read:

6 3. Second civil order of arrest. If one or more civil
8 orders of arrest have been issued previously against the judgment
10 debtor for the same judgment, the court, when issuing a
12 subsequent civil order of arrest, shall:

14 A. Require cash bond in the full amount of the judgment
16 plus costs; or

18 B. Order the judgment debtor to be confined in the county
20 jail for up to 7 days until the disclosure hearing is held.

22 **Sec. 2. 14 MRSA §3135**, as amended by PL 1991, c. 498, §1, is
24 further amended to read:

26 **§3135. Civil order of arrest**

28 A The District Court, in issuing a civil order of arrest
30 issued under section 3134, subsection 1, or section 3136, shall
32 direct the sheriff to arrest the individual named in the order
34 and bring the individual to a hearing on the days or date
36 specified in the civil order of arrest. In the case of a
38 nonindividual debtor, the District Court shall issue a civil
40 order of arrest shall--issue for the--arrest--of any officer,
42 director or, managing agent of--the--debtor or other agent
44 appointed by the debtor to accept service and who was be served
46 with the disclosure subpoena.

48 After a civil order of arrest has been issued, the sheriff
50 shall cause arrest the individual named in the order to--be
arrested and shall deliver him that individual without undue
delay to the division of the District Court designated in the
civil order of arrest. The sheriff may take such steps as he the
sheriff determines necessary for his the safety or--the--safety of
the sheriff or others then present, including searching the
debtor for weapons, if he the sheriff has a reasonable suspicion
that the debtor has a weapon, and handcuffing the debtor if that
is necessary to transport the debtor to the court or to cause the
debtor to remain peaceably at the court. Upon arrival at the
court, the sheriff shall notify the clerk or bailiff that the
debtor is present and may release the debtor into the custody of
the bailiff. The sheriff shall instruct the debtor that the
debtor must wait at the court until released by the court or
clerk. The sheriff shall also inform the debtor that if
additional civil orders of arrest are issued for failure to
appear, the debtor will be jailed for up to 7 days until the
disclosure or contempt hearing, unless the debtor posts cash bond

2 in the amount of the judgment. Upon release of the debtor into
the custody of the bailiff, the sheriff need not remain with the
debtor at the court.

4
6 After the judgment ~~judgment~~ debtor is brought to the court,
the clerk shall promptly notify the judgment creditor or ~~his~~ the
8 judgment creditor's attorney of record in person or by telephone
that ~~his presence is required for a hearing~~ the judgment debtor
10 is present at the court. The judgment creditor or the judgment
12 creditor's attorney must appear at the court, unless the judgment
14 creditor has already filed with the court a list of questions for
16 the judge or a special disclosure officer appointed by the court
18 to ask the judgment debtor at the disclosure or contempt
20 hearing. The judge or the special disclosure officer may act on
22 behalf of the absent judgment creditor at the hearing. If a
disclosure or contempt hearing cannot be held that day ~~due to the~~
24 ~~inability of the judgment creditor or his attorney to appear or~~
26 ~~due to the absence of the judge or the inability of the court to~~
hear the matter because of other business, the court or clerk
shall release the debtor upon his the debtor's personal
recognizance for his the debtor's appearance on a date certain.
If the debtor fails to appear for the disclosure or contempt
hearing after being released upon his the debtor's personal
recognizance, the court may issue additional civil orders of
arrest to bring the debtor before the court for hearing.

28 Unless the judgment debtor shows good cause for failure to
appear after being duly served with a disclosure subpoena under
section 3123 or a contempt subpoena under section 3136, the
debtor must be ordered to pay the costs of issuing and serving
the civil order for arrest. The costs of issuing and serving the
civil order for arrest are \$25 plus mileage at a rate of 22¢ per
mile. The fee payable to sheriffs and their deputies for civil
orders for arrest is governed by Title 30-A, section 421,
subsection 6.

36 **Sec. 3. 14 MRSA §3136, sub-§4,** as enacted by PL 1987, c. 184,
38 §19, is amended to read:

40 **4. Failure to appear.** If the person sought to be held in
contempt fails to appear after being duly served with a contempt
subpoena and the judgment creditor either appears at the time and
42 place named in the subpoena or has already submitted to the court
44 a list of questions for the judge or a special disclosure officer
46 appointed by the court to ask the person, upon the request of the
judgment creditor, the judge shall issue a civil order of arrest
directing the sheriff to arrest the person and bring the person
48 to the court on the days or date specified in the civil order of
arrest. In the case of a nonindividual, a civil order of arrest
50 shall must be issued for the arrest of any officer, director or
managing agent who was served with the contempt subpoena.

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STATEMENT OF FACT

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Because enforcement of money judgments often takes place where the debtor lives, creditors are often unable to appear on short notice as required by the current civil order of arrest procedure. Under this bill, a judge or a special disclosure officer can substitute for creditors.

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Because the enforcement of money judgments can be cumbersome, some debtors ignore it. Under this bill, on the 2nd arrest for the same judgment, debtors will be jailed unless they post cash bond. The jailing is not for failure to pay but for failure to appear in the first civil order of arrest process to determine why the debtor has not paid and whether the debtor is able to pay. The bill requires that the debtors be warned at the first arrest that this consequence will follow.

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