

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

37
R 9/8

L.D. 347

DATE: 2-24-00

(Filing No. H-816)

MAJORITY
JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 243, L.D. 347, Bill, "An Act to Amend the Installment Payment Order Capability of the Disclosure Court"

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

Sec. 1. 14 MRSA §3125, sub-§2, as amended by PL 1987, c. 708, §7, is further amended to read:

2. Agreement. If the creditor or the debtor, at or prior to the disclosure hearing, presents the court with a written agreement for an order pursuant to section 3127 ~~3126-A~~ with affidavit signed by the judgment debtor on a form provided by the District Court, the court may enter an order for an installment payment in the amount agreed upon by the parties or a lesser amount without the necessity of appearance by the parties. In determining whether to accept, reject or modify to a lesser amount the agreement of the parties, the court shall apply the factors set forth in section 3128 ~~3126-A~~, subsection 4.

Sec. 2. 14 MRSA §3125-A, as amended by PL 1995, c. 65, Pt. A, §37 and affected by §153 and Pt. C, §15, is further amended to read:

§3125-A. Debtor subject to loss or suspension of right to operate or register a motor vehicle

A judgment debtor subject to suspension or loss of the right to operate or register a motor vehicle under Title 29-A, section 2251, subsection 10 may request a disclosure hearing on the issue of how to satisfy the judgment. The court may enter an order for an installment payment agreement in the manner agreed upon by the

COMMITTEE AMENDMENT

P. 018

2 parties or a modified order in accord with the factors set forth
4 in section ~~3128~~ 3126-A, subsection 4. If the parties fail to
6 reach an agreement for an order, the judgment debtor may ask the
8 court for the entry of an installment payment agreement in
10 consideration of those factors.

6 Sec. 3. 14 MRSA §3126-A is enacted to read:

8 **§3126-A. Installment payments**

10 Following a disclosure hearing, the court shall determine
12 the amount, if any, of the installment payments that the judgment
14 debtor must make to the judgment creditor.

16 1. Definition. For purposes of this section, "exempt
income" means the debtor's right to receive:

18 A. A social security benefit, unemployment compensation or
20 a local public assistance benefit;

22 B. A veteran's benefit;

24 C. A disability, illness or unemployment benefit;

26 D. Alimony, support or separate maintenance, to the extent
reasonably necessary for the support of the debtor and any
28 dependents of the debtor; and

30 E. A payment or account under a stock bonus, pension,
profit sharing, annuity, individual retirement account or
32 similar plan to the extent described in section 4422,
subsection 13, paragraph E.

34 2. Installment payment order not permitted. The court may
36 not order a judgment debtor to make installment payments if the
judgment debtor is receiving or will receive money or earnings
38 only from a source or sources exempt from attachment and
execution under sections 4421 to 4426.

40 3. Maximum amount of earnings subject to installment
42 payment order. In the case of a judgment debtor who is an
individual, the maximum amount of earnings for any workweek that
44 is subject to an installment order may not exceed the least of:

46 A. Twenty-five percent of the sum of the judgment debtor's
disposable earnings and exempt income for that week;

48 B. The amount by which the sum of disposable earnings and
exempt income for that week exceeds 40 times the minimum

11-15

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

hourly wage prescribed by 29 United States Code, Section 206(a)(1); or

C. The total amount of disposable earnings.

4. Factors to consider in determining amount of installment payment order. In determining the amount of installment payments, the court may take into consideration:

A. The reasonable requirements of the judgment debtor and the judgment debtor's dependents;

B. Any payments the judgment debtor is required to make to satisfy other judgment orders or wage assignments;

C. Other judgment orders or wage assignments that have priority;

D. The amount due on the judgment;

E. The amount of money or earnings being or to be received; and

F. Any other factors the court considers material and relevant.

5. Manner of making payments. The court may prescribe the time, place and manner in which payments are to be made.

6. Certain orders not subject to limitations. The limitations set forth in subsection 3 do not apply to:

A. An order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure if the administrative procedure is established by state law, affords substantial due process and is subject to judicial review;

B. An order of any court of the United States having jurisdiction over cases under 11 United States Code, chapter 13; or

C. A debt due for state or federal tax.

7. Maximum earnings subject to garnishment. The maximum part of the aggregate disposable earnings of an individual for any workweek that is subject to garnishment to enforce an order for the support of any person may not exceed:

2 A. When the individual is supporting a spouse or dependent
3 child, other than a spouse or child with respect to whose
4 support such order is used, 50% of that individual's
5 disposable earnings for that week; and

6 B. When the individual is not supporting such a spouse or
7 dependent child described in paragraph A, 60% of that
8 individual's disposable earnings for that week.

10 If the support order being enforced is made with respect to a
11 period that is prior to the 12-week period that ends with the
12 beginning of that workweek, the percentage of disposable earnings
13 subject to the garnishment is 55% under paragraph A and 65% under
14 paragraph B.

16 **Sec. 4. 14 MRSA §3127**, as amended by PL 1987, c. 184, §9, is
17 repealed.

18 **Sec. 5. 14 MRSA §3127-B, sub-§§1, 2 and 3**, as enacted by PL
19 1987, c. 184, §11, are amended to read:

22 **1. Order.** When it is shown upon ex parte motion and
23 affidavit that the judgment debtor has either failed to timely
24 make 2 or more payments required by an installment order under
25 section ~~3127~~ 3126-A or when the judgment debtor has failed to
26 appear, after having been subpoenaed for a hearing provided for
27 in this chapter, the court may approve the service of an order to
28 withhold and answer on the judgment debtor's employer or other
29 payor of earnings. The order shall must state the amount owed on
30 the judgment debt, interest and costs. If the court has
31 previously determined an installment payment amount under section
32 ~~3127~~ 3126-A, the order shall must state that amount. The order
33 shall must demand an answer under oath listing the dollar amounts
34 of all earnings owed or payable to the debtor and the calculation
35 of the judgment debtor's disposable earnings. The order shall
36 must be served on the employer or other payor and on the judgment
37 debtor within 60 days of the date of the order. A form answer
38 shall must be attached to the order when served on the employer
39 or other payor of earnings.

40 **2. Withhold and answer.** The employer or other payor served
41 with the order shall calculate the maximum dollar amount of the
42 employee's disposable earnings which may be applied to the debt
43 under section ~~3127~~ 3126-A by using the form answer attached to
44 the order. Within 20 days of service of the order, the employer
45 or other payor of earnings shall:

48 A. File the completed form answer with the court;

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

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

12 **3. Hearing on motion.** Within 20 days of the service of the
answer of the employer or other payor of earnings, the judgment
14 debtor or the judgment creditor may request by motion a hearing
to determine what amount, if any, of the judgment debtor's
16 earnings should be ordered payable by the employer or other payor
to the judgment creditor. The motion shall must be served on the
18 employer or other payor as well as the other party. After the
hearing, if the court is satisfied as to the existence and amount
20 of the judgment debtor's disposable earnings payable by the
employer or other payor, it may issue an order to the employer or
22 other payor to withhold an amount, subject to the requirements of
section ~~3127~~ 3126-A, from the earnings of the judgment debtor and
24 pay the amount to the judgment creditor. If the court fails to
find disposable earnings payable by the employer or other payor,
26 it may terminate the withholding required under subsection 2. If
the court terminates withholding or reduces the amount withheld,
28 the court may order appropriate reimbursement of the judgment
debtor by either the employer or the judgment creditor. No
30 reimbursement or retroactive withholding is permitted against the
employee if the court order increases the amount withheld.

32 **Sec. 6. 14 MRSA §3128**, as amended by PL 1987, c. 184, §12, is
34 repealed.

36 **Sec. 7. 14 MRSA §3130**, as repealed and replaced by PL 1973,
c. 477, §5, is amended to read:

38 **§3130. Provisional installment payment order**

40
42 Pending the sale of any property under section 3131, the
court may issue an installment payment order as provided in
44 section ~~3127~~ 3126-A. Upon the completion of the sale, the
judgment creditor must file with the court an affidavit including
46 the items required in an affidavit under section ~~3127~~ 3126-A and
which in addition shall must state the total amount of
48 installment payments received since such installment payment
order was entered, the balance due to the judgment creditor and
the number of installments required to retire the balance

2 remaining on such judgment, if any, which number shall must equal
the balance due divided by the dollar amount provided for each
4 installment in such installment payment order.

6 **Sec. 8. 14 MRSA §3136, sub-§5**, as enacted by PL 1987, c. 184,
§19, is amended to read:

8 **5. Orders.** Upon a finding at the contempt hearing that a
court order has been disobeyed by the person and that the person
10 has the present ability to comply with the order, the person
shall must be adjudged in civil contempt. The court shall ~~have~~
12 has the power to impose such reasonable fine or imprisonment as
the circumstances require, provided that the person is given an
14 opportunity to purge himself that person of the contempt.
Whenever the person personally purges himself that person of the
16 contempt, the court shall release the person from imprisonment
and may remit any fine or a portion of the fine. In addition,
18 the court may enter orders pursuant to sections ~~3127~~ 3126-A,
3127-A, 3127-B, 3130, 3131 and 3132 to assure the person's
20 compliance with the court order and to aid the judgment creditor
in the enforcement of the order.

22 **Sec. 9. 14 MRSA §3141, sub-§7**, as amended by PL 1995, c. 65,
24 Pt. A, §40 and affected by §153 and Pt. C, §15, is further
amended to read:

26 **7. Remedies.** Failure to pay by the date fixed by the
28 court's order or an amended order subjects the defendant to the
contempt procedures provided in section 3142, suspensions under
30 Title 29-A, section 2605, and all procedures for collections
provided for in sections 3127-A, 3127-B, 3131, 3132, 3134, 3135
32 and 3136. An installment agreement under this section must be
considered an agreement under section 3125, and a court order to
34 pay under section ~~3127~~ 3126-A. In addition to other penalties
provided by law, the court may impose on the defendant reasonable
36 costs for any failure to appear.

38 **Sec. 10. 14 MRSA §7486**, as enacted by PL 1989, c. 88, §2, is
repealed.

40 **Sec. 11. 19-A MRSA §2602, sub-§1**, as amended by PL 1997, c.
42 466, §25 and affected by §28, is further amended to read:

44 **1. Installment payments.** In a support order or costs, the
court may include an order to pay specified installment payments
46 as provided under Title 14, sections ~~3127~~ 3126-A to 3136.

48 **Sec. 12. 19-A MRSA §2602, sub-§2**, as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

50

