

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 76

H.P. 84

House of Representatives, January 16, 2003

### An Act To Ease Congestion in the Courts

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative DAVIS of Falmouth.

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

2  
4       **Sec. 1. 14 MRSA §3126**, as amended by PL 1987, c. 184, §8, is further amended to read:

6       **§3126. Fees and costs**

8       The disclosure subpoena, return of service and ~~the writ of execution or~~ an attested copy thereof ~~shall~~ of the final judgment must be filed with the clerk, together with a filing fee as established by the Supreme Judicial Court pursuant to Title 4, section 175. The fee and actual costs of service shall must be added to the judgment, unless the judgment creditor or ~~his~~ the judgment creditor's attorney fails to appear in accordance with section 3125 or unless the judge orders otherwise. Costs of service incurred by the creditor, in addition to the filing fee and the service of the disclosure subpoena, may be imposed upon the judgment debtor or the 3rd party at the discretion of the court.

20       **Sec. 2. 14 MRSA §4151, last ¶**, as amended by PL 1999, c. 699, Pt. D, §14 and affected by §30, is further amended to read:

24       Following the entry of judgment in a civil action and prior to the ~~issuance of a writ of execution upon the judgment~~ judgment's becoming final, any interest in real or personal property, which is not exempt from attachment and execution, may be attached by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the office of the Secretary of State, with respect to property of a type a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A, of an attested copy of the court order awarding judgment. Fees for the recording of the order must be as otherwise provided for similar documents. Notwithstanding section 4454, the filing constitutes perfection of the attachment. The party whose property has been so attached must be immediately notified by certified letter, mailed by the plaintiff to the party's last known address, which must inform the party that an attachment has been filed against the party's real or personal property and must specify the registry of deeds or office of the Secretary of State in which the attachment has been recorded.

44       **Sec. 3. 14 MRSA §4651-A**, as corrected by RR 2001, c. 1, §17, is amended to read:

48       **§4651-A. Judgment liens**

50       1. **Lien on real estate.** The filing of an ~~execution~~ attested copy of a final judgment duly issued by any state or

2 federal court of sitting in this State ~~or--an--attested--copy~~  
3 ~~thereof~~ with a registry of deeds ~~within one year after issuance~~  
4 ~~of the execution shall create~~ creates a lien in favor of each  
5 judgment creditor upon the right, title and interest of each  
6 judgment debtor in all real estate against which a mortgage would  
7 be duly perfected if filed in the registry ~~and--which--is--not~~  
8 ~~exempt from attachment and execution,~~ subject to any exemption of  
9 the judgment debtor's residence pursuant to section 4422,  
10 subsection 1.

11 **2. Lien on personal property.** The filing of an ~~execution~~  
12 attested copy of a final judgment duly issued by any state or  
13 federal court of sitting in this State ~~or--an--attested--copy~~  
14 ~~thereof~~ in the office of the Secretary of State ~~within one year~~  
15 ~~after issuance of the execution~~ creates a lien in favor of each  
16 judgment creditor upon the right, title and interest of each  
17 judgment debtor in personal property ~~which is not exempt from~~  
18 ~~attachment and execution and which~~ that is of a type against  
19 which a security interest could be perfected by the filing of a  
20 financing statement with the office of the Secretary of State,  
21 subject to any exemption of the judgment debtor's personal  
22 property pursuant to section 4422.

23 **3. Lien on motor vehicles.** The filing of an ~~execution~~  
24 attested copy of a final judgment duly issued by any state or  
25 federal court of sitting in this State ~~or--an--attested--copy~~  
26 ~~thereof~~ where a proof of transfer would be delivered pursuant to  
27 Title 29-A, section 665, subsection 1, and delivery of an  
28 application pursuant to Title 29-A, section 657, ~~within one year~~  
29 ~~after issuance of the execution~~ creates a lien in favor of each  
30 judgment creditor upon the right, title and interest of each  
31 judgment debtor in any motor vehicle for which a title  
32 certificate must be obtained pursuant to Title 29-A, chapter 7,  
33 subject to any exemption of the judgment debtor's motor vehicle  
34 pursuant to section 4422, subsection 2.

35 **4. Amount of lien.** A lien created by this section shall  
36 must be in the amount sufficient to satisfy the judgment together  
37 with interest and costs.

38 **5. Notice to judgment debtor.** A lien created by this  
39 section becomes void and loses its status as a perfected security  
40 interest with respect to the right, title and interest of any  
41 particular judgment debtor and with respect to any other  
42 creditors of the judgment debtor unless the judgment creditor  
43 notifies the judgment debtor by certified or registered mail sent  
44 to the judgment debtor's last known address on or before the 20th  
45 day after filing or recording of the existence of the lien. The  
46 notice must contain the following:  
47  
48  
49  
50

1  
2 A. The fact that a lien has been filed;

4 B. The date and place the lien was filed;

6 C. The amount of the judgment and costs as stated in the ~~execution~~ judgment;

8 D. The name of the judgment creditor and attorney, if any, including their addresses; and

10 E. The following statement: "To dissolve this lien, please contact (the creditor or the creditor's attorney)."

14 **6. Filing during pendency of attachment; date of perfection.** If a lien created by this section is filed or recorded during the pendency of any prejudgment or post-judgment attachment obtained in the underlying civil action against property subject to the lien, the effective date of the lien in the property must relate back to the date of perfection of the attachment. The relation back applies only to that portion of the lien up to the amount of the attachment. The remainder of such a lien, and the full amount of a lien created when no attachment is pending, becomes effective and perfected from the date of the filing or recording of the ~~execution~~ judgment.

26 **7. Enforcement.** The lien provided in this section may be enforced by a turnover or sale order pursuant to section 3131.

28 **8. Abuse of lien process.** A creditor who fails to discharge an-~~execution~~ a judgment lien filed against property of a debtor that is exempt from attachment and execution is liable to the debtor for actual damages suffered as a result of the failure to discharge if the debtor gave written notice and proof to the creditor that the property filed against is exempt from attachment and execution and the creditor failed to discharge the ~~execution~~ judgment lien within 15 days after receiving the notice and proof. A debtor who prevails in an action to recover damages under this subsection is entitled to reasonable attorney's fees and costs incurred in bringing the action.

40 **9. Duration of lien; renewal.** A lien created pursuant to this section after the effective date of this subsection continues for a period of 20 years from the date of the filing of the ~~writ-of-execution~~ attested copy of the final judgment or of the recording of the ~~writ-of-execution~~ attested copy of the final judgment in the registry of deeds, unless the judgment is paid, discharged or released. A lien may be renewed once for a period of 20 years from the filing or recording of a-~~renewal, -pluries-or~~ alias-writ-of-execution a further attested copy of the final judgment in the same manner as the original ~~writ-of-execution~~

2 attested copy of the final judgment was filed or recorded, with  
the same notice as required by subsection 5.

4 A. If the ~~renewal-writ~~ further attested copy of the final  
judgment is filed or recorded before the expiration of the  
6 20-year period of the original ~~writ-of-execution~~ attested  
copy of the final judgment, the ~~renewal-writ~~ further  
8 attested copy of the final judgment relates back to the date  
that the original ~~writ-of-execution~~ attested copy of the  
10 final judgment was filed or recorded and prevents the  
expiration of the lien.

12 B. A lien created pursuant to this section when the date of  
the recording of the writ of execution in the registry of  
14 deeds is more than 18 years prior to the effective date of  
this subsection may be renewed as provided in this  
16 subsection if the renewal writ or attested copy of the final  
18 judgment is recorded within 2 years of the effective date of  
this subsection.

20 **Sec. 4. 14 MRSA §4652** is repealed.

22 **Sec. 5. 14 MRSA §4654** is amended to read:

24 **§4654. Execution not timely; motion against debtor**

26 When execution is not issued within the ~~times~~ time  
28 prescribed by sections-4652-and section 4653, motion against the  
debtor may be made to show cause why execution on the judgment  
30 should not be issued, and if no sufficient cause is shown,  
execution may be issued thereon.

32  
34 **SUMMARY**

36 The purpose of this bill is to ease congestion in the courts  
by eliminating the requirement that executions be issued by the  
38 clerks to initiate disclosure proceedings and to perfect liens.  
Under this bill, attested copies of final judgments of any court  
40 in the State, whether state or federal, are used for these  
purposes, with the liens subject to the debtor's statutory  
42 exemptions. In addition, this bill repeals the limitation that  
executions issue within one year of final judgment.