

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 586

H.P. 449

House of Representatives, February 11, 2003

An Act To Clarify and Improve the Fairness of the Law of Trustee Process

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NORBERT of Portland.
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: MUSE of Fryeburg, SHERMAN of Hodgdon, TARDY of Newport, Senators:
BRENNAN of Cumberland, LaFOUNTAIN of York, MAYO of Sagadahoc.

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

4 **Sec. 1. 5 MRSA §86**, as corrected by RR 2001, c. 2, Pt. B, §2
and affected by §58, is amended by adding at the end a new
6 paragraph to read:

8 For filing and recording a designated office for service of
trustee process under Title 14, section 2608-A, §25.

10 **Sec. 2. 14 MRSA §2603** is amended to read:

12 **§2603. Effect of service on trustee; service on
14 partnership**

16 Service on the trustee binds all goods, effects or credits
of the principal defendant entrusted to and deposited in his the
18 trustee's possession, to respond to the final judgment in the
action, as when attached by ordinary process if process
20 describing the principal defendant with reasonable certainty is
received at a time and in a manner that affords the trustee a
22 reasonable opportunity to act on it. When a partnership is made a
trustee on trustee process, service upon one member of the firm
24 shall--be is a sufficient attachment of the property of the
principal defendant in the possession of the firm, provided--such
26 if that service be is made at any place of business of the firm
or, if such that service is made elsewhere, that legal service be
28 is afterward made upon the other members of the firm.

30 **Sec. 3. 14 MRSA §2604** is amended to read:

32 **§2604. County where action brought; divorce; financial
institution as trustee; counterclaim**

34 If all the trustees live in the same county, the action
36 shall must be brought there; if they reside in different
counties, in any county in which one of them resides; and in a
trustee process against a corporation, its residence shall--be is
38 deemed to be in the county in which it has its established or
usual place of business, held its last annual meeting or usually
40 holds its meetings; except that an action in which a railroad
corporation is named and alleged as trustee may be brought in any
42 county in which said the railroad corporation runs and operates
its road; and except that an action in which a banking financial
44 institution is named and alleged as trustee may be brought in any
county in which said--banking the financial institution maintains
46 a place of business. Service--may--be--made--on--the--manager--of--such
banking--institution--in--the--county--having--jurisdiction--over--the
48 parties--named--in--the--action--

2 When trustee process is used in connection with the
3 commencement of an action for divorce, the action must be brought
4 in the county in which the court has jurisdiction over the
5 parties named in the action, and the alleged trustee, although
6 residing in another county, may be summoned to appear in the
7 county in which said the court has jurisdiction over the parties
8 named in the action and must answer and make disclosure in such
9 that county. The court sitting therein shall have full power and
10 authority to award from the funds found to be held by the alleged
11 trustee and belonging to the defendant such sum or sums as it may
12 deem proper as an award for alimony or in lieu thereof.

13 When trustee process is used in connection with a
14 counterclaim arising out of the transaction or occurrence that is
15 the subject matter of the opposing party's claim, the alleged
16 trustee may be summoned to appear in the county in which the
17 action is pending, even though he that trustee does not reside or
18 maintain a usual place of business in that county.

19 **Sec. 4. 14 MRSA §2608** is amended to read:

20 **§2608. Corporation as trustee; answer and disclosure**

21 All Except as provided in section 2608-A, all domestic
22 corporations and all foreign or alien companies or corporations
23 established by the laws of any other state or country and having
24 a place of business or doing business within this State may be
25 summoned as trustees, and trustee summonses may be served on them
26 as other process is served on any such companies or corporations.
27 They may answer by attorney or agent and make disclosures, which
28 shall ~~must~~ be signed and sworn to by such an attorney or agent or
29 such ~~other~~ another person upon whom legal service of the summons
30 may be made. The same proceedings shall ~~must~~ thereupon be had
31 throughout except necessary changes in form, as in other cases of
32 foreign attachment.

33 **Sec. 5. 14 MRSA §2608-A** is enacted to read:

34 **§2608-A. Service on financial institution as trustee**

35 Service of trustee process on a financial institution
36 authorized to do business in this State, as defined in Title 9-B,
37 section 131, is effected by one of the following means:

38 **1. Designated office.** Personal service by any lawful means
39 upon the office designated by the financial institution for
40 service of trustee process in a registry maintained for this
41 purpose by the Secretary of State; or

2 **2. Acceptance by designated officer or employee.**
3 Acceptance of service in writing by an officer or employee of the
4 financial institution expressly authorized to accept service of
5 trustee process.

6 **Sec. 6. 14 MRSA §2614** is amended to read:

8 **§2614. Trustee not appearing defaulted**

10 When a person summoned as trustee neglects to appear and
11 answer to the action, ~~he shall~~ the trustee must be defaulted and
12 adjudged trustee as ~~alleged~~ to the extent that such a person
13 holds goods, effects or credits of the principal defendant
14 otherwise available to satisfy the unsatisfied portion of final
15 judgment. Nothing in this section limits the additional remedies
16 available under this chapter for the trustee's failure to
17 disclose, including the assessment of costs under section 2701
18 or, in a proper case, contempt.

20 **Sec. 7. 14 MRSA §2901** is amended to read:

22 **§2901. Discontinuance of action**

24 When a trustee action is discontinued or settled by the
25 principal parties ~~thereto~~ to the action, the trustee ~~shall be~~ is
26 entitled to no costs, ~~provided if~~ if the plaintiff or his ~~the~~
27 plaintiff's attorney shall, at least 7 days before the trustee's
28 disclosure under oath is required to be served, ~~notify~~ notifies
29 the trustee in writing that the action has been discontinued.
30 Upon conclusion of the principal action, when the goods, effects
31 or credits trustee are not to be used to satisfy a judgment, the
32 plaintiff or the plaintiff's attorney shall notify the trustee in
33 writing within 30 days of the extinguishment of plaintiff's claim
34 to such property.

36 If the trustee discloses possession of goods, effects or
37 credits of the principal defendant, or by virtue of default is
38 adjudged trustee, and the trustee funds are not collected or
39 released within 7 years, they must be presumed abandoned under
40 Title 33, chapter 41 unless the trustee is served with a
41 certificate of the clerk of the appropriate court, between 30 and
42 90 days prior to such date, evidencing that the principal action
43 is still pending.

44 **Sec. 8. 14 MRSA §2952** is amended to read:

46 **§2952. Judgment against trustee where no examination**

48 After notice of ~~sueh~~ a motion under section 2951 has been
49 served ~~on him~~, if he ~~the person~~ neglects to appear and answer
50

2 ~~therefo~~ to the motion, he shall that person must be defaulted and
4 adjudged trustee to the extent that the person holds goods,
6 effects or credits of the principal defendant otherwise available
8 to satisfy the unsatisfied portion of final judgment. If he was
10 not examined in the original action, judgment shall be rendered
12 against him for the whole sum remaining due on the judgment
14 against the principal defendant. Nothing in this section limits
16 the additional remedies available under this chapter for the
18 trustee's failure to disclose, including the assessment of costs
20 under section 3102.

22 **Sec. 9. 14 MRSA §3102** is amended to read:

24 **§3102. Default for nonappearance; costs**

26 When the person summoned under section 3101 does not appear
28 and answer to the action, ~~he shall~~ that person must be defaulted,
30 adjudged trustee to the extent provided in section 2614 and be
32 liable to costs. If he ~~he~~ that person appears at the return day and
34 submits to an examination on oath and is discharged, ~~he shall~~ the
36 person must be allowed his legal costs. If he ~~he~~ the person is
38 charged, ~~he~~ the person may retain the amount of his costs. When
40 the plaintiff dismisses his ~~the~~ action against him ~~the trustee~~ or
42 the principal, the trustee shall must be allowed his costs.

26

28 **SUMMARY**

28

30 This bill makes a series of changes to the laws governing
32 trustee process to provide fair treatment of alleged trustees
34 without interfering with the ability of judgment creditors to
36 reach funds to satisfy judgments. To ensure that financial
institutions are able to properly identify and promptly act upon
trustee process, financial institutions would be able to
designate with the Secretary of State a specific office for
service of process or to agree to accept service made otherwise.

38 The bill clarifies that an alleged trustee has a reasonable
40 opportunity to act upon the process served upon it, in the same
42 way that a bank has a reasonable time to act upon a stop payment
order.

44 In the event of a default, under the bill the trustee is
46 adjudged trustee for the amount of the principal defendant's
48 property actually in its possession up to the amount of the
judgment, not for a greater amount, thus eliminating potential
windfalls. In the event that the trustee fails to make
disclosure, other statutory remedies, such as assessment of costs
and, in a proper case, contempt penalties, remain available.

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2 This bill provides that failure to claim or release trusteed
3 funds, in the absence of further court process, would give rise
4 to a presumption of abandonment under the Uniform Unclaimed
Property Act and subsequent reporting and payment to the
Treasurer of State.