

# MAINE STATE LEGISLATURE

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STATE OF MAINE

SENATE

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 432, L.D. 1184, Bill, "An Act To Improve the Process for Recovering Personal Property and for Filing Actions Involving Consumer Credit"

Amend the bill in section 1 by striking out all of subsection 2 (page 1, lines 3 to 13 in L.D.) and inserting the following:

2. Forcible entry and detainer; trustee process; attachment. An action for forcible entry and detainer or replevin shall must be brought in the division in which the property involved is located. Any Except as otherwise provided in subsection 3-A, an action to recover personal property pursuant to Title 14, section 7071, or for replevin, may be brought either in the division where a plaintiff or defendant resides, where the underlying transaction involving the personal property was made or where any of the personal property is located, or to which the court orders the personal property to be brought or kept pursuant to Title 14, section 7071, subsection 5. An action commenced by trustee process shall must be brought in accordance with Title 14, chapter 501. Any An action involving attachment shall may be brought in the division where the plaintiff resides or where the defendant resides or where the property involved is located.'

Amend the bill in section 2 in subsection 3-A in the 2nd line (page 1, line 16 in L.D.) by inserting after the following: "transaction" the following: 'or a rental-purchase agreement'

Amend the bill in section 3 in §509 in the first paragraph in the 2nd line (page 1, line 23 in L.D.) by inserting after the following: "transaction" the following: 'or a rental-purchase agreement'

Amend the bill in section 4 in §510 in the first paragraph in the 2nd line (page 1, line 29 in L.D.) by inserting after the following: "resides" the following: ', where the underlying transaction involving the personal property was made'

Amend the bill by striking out all of section 6 and inserting the following:

'Sec. 6. 14 MRSA c. 726 is enacted to read:

COMMITTEE AMENDMENT

CHAPTER 726

ALTERNATIVE ACTION FOR THE RECOVERY OF PERSONAL PROPERTY

§7071. Actions to recover personal property

1. Action to resolve dispute. If 2 or more persons claim a right in, title to or possession of personal property, a claimant may bring a civil action in District Court to resolve a dispute among the claimants. The plaintiff may bring the action by way of summary proceeding under subsection 2 or plenary proceeding under subsection 9.

2. Summary proceeding. If an action in subsection 1 is brought as a summary proceeding, the summons must state the day when the action is returnable, which may not be less than 7 days from the date of service of the summons, and must notify the defendant that in case of the defendant's failure to appear and state a defense on the return day, judgment by default will be rendered against the defendant. The defendant may appear and defend against the action without filing a responsive pleading. The action may not be joined with any other action or claim and a defendant may not file a counterclaim. The action may not be removed to Superior Court. At the hearing on the action, the plaintiff must support its claim of an interest in or other right to possession of the personal property at issue by a preponderance of the evidence.

3. Discovery. In a summary proceeding, the court may for cause shown allow discovery, which may be on an expedited schedule.

4. Venue. An action under this section may be brought in accordance with Title 4, section 155. Relocation of the personal property may not be a basis for a change of venue.

5. Court authority. The court has equitable power to make an appropriate order in relation to the personal property and the parties to the action and to compel obedience to its judgment and orders. A court order under this subsection may include an order regarding the location to which the personal property must be brought or kept or a turnover order under section 3131, subsection 1.

6. Judgment; issuance of writ of possession. When the defendant defaults or the plaintiff is otherwise entitled to judgment, the court shall render judgment concerning the possession of the personal property in favor of the plaintiff. The judgment must order the turnover of the personal property to the plaintiff on such terms as the court directs. The court may also grant preliminary, interim or other equitable relief upon a sufficient showing that the preliminary, interim or other equitable relief is justified.

Seven calendar days after the judgment is entered, the court shall upon request of the plaintiff issue a writ of possession requiring the sheriff or constable to put the plaintiff into possession of the plaintiff's personal property. This subsection does not preclude the court from granting preliminary, interim or other equitable relief.

7. Service and return of writ of possession; contempt. A writ of possession is returnable within 3 years from the date of issuance. The writ may be served by a sheriff or a constable. When a writ of possession has been served on the defendant by a constable or sheriff, the defendant must put the sheriff or constable into possession of the property within 2 days of the date on which the writ is served upon that defendant or the

1 plaintiff may file a motion to have the defendant held in contempt. A proceeding upon a  
2 motion for contempt under this subsection is subject to the Maine Rules of Civil  
3 Procedure, Rule 66(d) and for the purposes of this proceeding the entry of the judgment  
4 against the defendant creates a rebuttable presumption that the defendant has the ability to  
5 put the sheriff or constable into possession of the property. This presumption shifts the  
6 burden of production of evidence to the defendant, but the burden of persuasion remains  
7 upon the plaintiff in any contempt proceeding.

8 **8. Appeal.** An appeal of a judgment or order under this section is governed by Title  
9 4, section 57 and the Maine Rules of Appellate Procedure, except that any issue triable by  
10 right by a jury may be appealed to a trial de novo in Superior Court. A request to District  
11 Court for a stay pending appeal is governed by the Maine Rules of Civil Procedure, Rule  
12 62(d).

13 **9. Plenary proceeding.** If an action under this section is brought as a plenary  
14 proceeding, the Maine Rules of Civil Procedure apply, except that the action may not be  
15 joined with any other action or claim and a defendant may not file a counterclaim and the  
16 action may not be removed to Superior Court.

17 **10. Equitable Remedy.** The remedy provided in this section is a remedy in equity  
18 and is in addition to and not in lieu of another remedy.'

19 **SUMMARY**

20 This amendment amends the bill to clarify that, for venue purposes, consumer  
21 transactions include rental-purchase agreements in addition to consumer credit  
22 transactions.

23 The amendment retains, with a few changes, the text for the new cause of action to  
24 resolve disputes over rights in, title to or possession of personal property and to eliminate  
25 the personal property forcible entry and detainer action, but establishes a new separate  
26 chapter for the new cause of action.

27 This amendment provides that the court may issue a writ of possession 7 days after  
28 the judgement is entered, which is consistent with current law. The bill allows a writ to be  
29 issued 6 days after the entry of the judgment.

30 The bill provides that, in a contempt proceeding that may be brought against a  
31 defendant who does not comply with the writ of possession within 2 days of service, the  
32 judgment creates a rebuttable presumption that the defendant has the ability to put the  
33 sheriff or constable into possession of the property. This amendment clarifies that the  
34 presumption shifts the burden of production of evidence to the defendant, but that the  
35 burden of persuasion remains upon the plaintiff in the contempt proceeding.

36 The bill as amended is not intended to create any new right to a jury trial, or to  
37 expand any right to a jury trial that may now exist under the Maine Revised Statutes,  
38 Title 14, section 6012.

**COMMITTEE AMENDMENT**