

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1184

S.P. 432

In Senate, March 25, 2009

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**An Act To Improve the Process for Recovering Personal Property  
and for Filing Actions Involving Consumer Credit**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator HASTINGS of Oxford.  
Cosponsored by Representative DILL of Cape Elizabeth.

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

2 **Sec. 1. 4 MRSA §155, sub-§2** is amended to read:

3 **2. Forcible entry and detainer; replevin; trustee process; attachment.** An action  
4 for forcible entry and detainer or replevin ~~shall~~ must be brought in the division in which  
5 the property involved is located. ~~Any~~ Except as otherwise provided in subsection 3-A, an  
6 action to recover personal property pursuant to Title 14, section 6055, or for replevin,  
7 may be brought either in the division where a plaintiff or defendant resides, where the  
8 underlying transaction involving the personal property was made or where any of the  
9 personal property is located, or to which the court orders the personal property to be  
10 brought or kept pursuant to Title 14, section 6055, subsection 5. An action commenced  
11 by trustee process ~~shall~~ must be brought in accordance with Title 14, chapter 501. ~~Any~~  
12 An action involving attachment ~~shall~~ may be brought in the division where the plaintiff  
13 resides or where the defendant resides or where the property involved is located.

14 **Sec. 2. 4 MRSA §155, sub-§3-A** is enacted to read:

15 **3-A. Consumer transactions.** Notwithstanding any other provision of law, an  
16 action brought against a consumer arising from a consumer credit transaction must be  
17 filed in accordance with Title 9-A, section 5-113, except that an action brought pursuant  
18 to Title 32, section 11013, subsection 3, paragraph N must be brought where provided for  
19 in that paragraph.

20 **Sec. 3. 14 MRSA §509** is enacted to read:

21 **§509. Consumer transactions**

22 Notwithstanding any other provision of this chapter, an action brought against a  
23 consumer arising from a consumer credit transaction must be brought in accordance with  
24 Title 9-A, section 5-113, except that an action brought pursuant to Title 32, section  
25 11013, subsection 3, paragraph N must be brought where provided for in that paragraph.

26 **Sec. 4. 14 MRSA §510** is enacted to read:

27 **§510. Replevin**

28 Except as otherwise provided in section 509, an action for replevin must be brought  
29 either in the division or county where a plaintiff or defendant resides or where any of the  
30 personal property is located.

31 **Sec. 5. 14 MRSA §6012**, as amended by PL 2001, c. 133, §§1 and 2, is repealed.

32 **Sec. 6. 14 MRSA §6055** is enacted to read:

33 **§6055. Actions to recover personal property**

34 **1. Action to resolve dispute.** If 2 or more persons claim a right in, title to or  
35 possession of personal property, a claimant may bring a civil action in District Court to

1 resolve a dispute among the claimants. The plaintiff may bring the action by way of  
2 summary proceeding under subsection 2 or plenary proceeding under subsection 9.

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

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

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

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

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

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

33 **7. Service and return of writ of possession; contempt.** A writ of possession is  
34 returnable within 3 years from the date of issuance. The writ may be served by a sheriff  
35 or a constable. When a writ of possession has been served on the defendant by a  
36 constable or sheriff, the defendant must put the sheriff or constable into possession of the  
37 property within 2 days of the date on which the writ is served upon that defendant or the  
38 plaintiff may file a motion to have the defendant held in contempt. A proceeding upon a  
39 motion for contempt under this subsection is subject to the Maine Rules of Civil  
40 Procedure, Rule 66(d) and for the purposes of this proceeding the entry of the judgment  
41 against the defendant creates a rebuttable presumption that the defendant has the ability to  
42 put the sheriff or constable into possession of the property.

1 **8. Appeal.** An appeal of a judgment or order under this section is governed by Title  
2 4, section 57 and the Maine Rules of Appellate Procedure. A request to District Court for  
3 a stay pending appeal is governed by the Maine Rules of Civil Procedure, Rule 62(d).

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

8 **10. Equitable Remedy.** The remedy provided in this section is a remedy in equity  
9 and is in addition to and not in lieu of another remedy. Except as otherwise required by  
10 applicable law, there is no right to a jury trial in any proceeding brought pursuant to this  
11 section.

12 **Sec. 7. 14 MRSA §7302** is repealed and the following enacted in its place:

13 **§7302. Venue**

14 Except as provided in section 509 and in Title 4, section 155, subsection 3-A, an  
15 action for replevin may be brought in either District Court or Superior Court in the county  
16 or division where a plaintiff or defendant resides or where any of the personal property  
17 sought to be replevied is located.

18 **Sec. 8. 32 MRSA §11013, sub-§3, ¶N,** as enacted by PL 1985, c. 702, §2, is  
19 repealed and the following enacted in its place:

20 **N.** Threatening to bring legal action in the debt collector's own name or instituting a  
21 suit on behalf of others or furnishing legal advice, except that a debt collector who is  
22 also an attorney may bring an action under this paragraph in the name of the creditor  
23 in any division or county permitted by 15 United States Code, Section 1692i and may  
24 furnish legal advice to the creditor with respect to a debt.

25 **SUMMARY**

26 This bill creates a new equitable cause of action to resolve disputes over rights in,  
27 title to or possession of personal property and to eliminate the personal property forcible  
28 entry and detainer action. The new course of action includes summary process, prompt  
29 relief and streamlined procedural requirements.

30 This bill makes it clear that the remedy of this action is equitable in nature and does  
31 not entail a right to trial by jury.

32 This bill gives the District Court broad discretion in fashioning appropriate equitable  
33 relief and also makes provisions with respect to discovery and appeals that differ from the  
34 present practice in forcible entry and detainer actions.

35 The bill aims to clarify where actions to recover personal property must be brought  
36 by permitting replevin actions and actions to recover personal property, in most instances,  
37 to be brought where any of the property was located, where the contract giving rise to the  
38 claim was signed or where the plaintiff or the defendant reside at the time suit is brought.

1 The bill requires suit to be brought where relevant consumer protection laws mandate  
2 when the action involves a consumer credit transaction or other consumer debt.

3 Finally, this bill allows a debt collector who is also an attorney to collect a consumer  
4 debt or provide legal advice with respect to that debt.