

MAINE STATE LEGISLATURE

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N I N E T Y - F O U R T H L E G I S L A T U R E

Legislative Document

No. 900

H. P. 1577

House of Representatives, February 18, 1949.

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Fitch of Sebago.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

**AN ACT Relating to Unsatisfied Judgments Resulting from Motor Vehicle
Accidents.**

Be in enacted by the People of the State of Maine, as follows:

R. S., c. 19, §§ 71-A-71-F, additional. Chapter 19 of the revised statutes is hereby amended by adding thereto 6 new sections to be numbered 71-A to 71-F, inclusive, to read as follows:

'Unsatisfied Judgments

Sec. 71-A. Unsatisfied judgment fund.

I. Subject to the provisions of subsections II and IV of this section, the owner of each motor vehicle registered under the provisions of this chapter shall, at the time of registering the same in each year, pay to the secretary of state, in addition to the fees for which provision is made by this chapter, a fee of such amount as may be fixed by order of the secretary of state, but not exceeding \$1 in each year for such motor vehicle registered.

II. Where the owner of a motor vehicle who has paid a fee in respect of the vehicle as required by subsection I of this section has the number

plate assigned to a second motor vehicle owned by him, he shall not be required to pay a fee under subsection I of this section in respect of the vehicle to which the number plate is assigned.

III. The fees paid pursuant to subsection I of this section shall constitute a fund, which shall be known as "The Unsatisfied Judgment Fund" and is hereafter, in sections 71-A to 71-F, inclusive, referred to as "the fund."

IV. If on the 1st day of December in any year the amount of the fund exceeds \$250,000 the secretary of state may suspend the requirement for payment of a fee set out in subsection I of this section; and may on or after the 1st day of December in any year reimpose the provisions of subsection I of this section for the next ensuing year when the amount of the fund is less than \$100,000; and so, from time to time suspend and reimpose the requirements and provisions of subsection I of this section according as the amount of the fund, from time to time exceeds \$250,000 or is less than \$100,000.

V. The secretary of state shall pay over to the treasurer of state the fees collected for the fund pursuant to subsection I of this section; and the fund shall be set up on the books of the state in a separate account to be known as "The Unsatisfied Judgment Account."

VI. Any portion of the fund remaining unexpended at the end of a fiscal year shall be carried forward to the credit of the fund in the next fiscal year.

Sec. 71-B. Judgments. When any person recovers in any court in the state a judgment for an amount exceeding \$100, in an action for damages resulting from bodily injury to, or the death of, any person or damage to property occasioned by, or arising out of, the ownership, maintenance, operation or use, of a motor vehicle on or after the 1st day of January 1950, by the judgment debtor, upon the determination of all proceedings including appeals and upon notice to the treasurer of state, such judgment creditor may apply to a justice of the superior court in term time or vacation for an order directing payment of the judgment out of the fund as hereinafter provided.

Upon the hearing of the application the applicant shall show:

- I. That he has obtained a judgment stating the amount thereof and the amount owing thereon on the date of application;
- II. That he has caused to be issued a writ of execution,

- A. that the sheriff has made a return showing that no goods of the judgment debtor liable to be seized in satisfaction of the judgment debt could be found; or
- B. the amount realized on the sale of goods seized, or otherwise realized, under the writ was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized;
- III. That he has caused the judgment debtor to be examined, pursuant to the law for that purpose provided, touching his estate and effects and his property and means, and in particular as to whether the judgment debtor is insured under a policy of automobile insurance against loss occasioned by his legal liability for bodily injury to, or the death of, another person;
- IV. That he has made exhaustive searches and inquiries to ascertain whether the judgment debtor is possessed of assets, real or personal, liable to be sold or applied in satisfaction of the judgment;
- V. That, by such searches, inquiries, and examination,
- A. he has learned of no assets, real or personal, possessed by the judgment debtor and liable to be sold or applied in satisfaction of the judgment debt; or
- B. he learned of certain assets, describing them, owned by the judgment debtor and liable to be seized or applied in satisfaction of the judgment, and has taken all necessary actions and proceedings for the realization thereof, and the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.
- VI. Whether he has either recovered a judgment in an action against, or made a settlement, in respect of his cause of action, with any other person against whom he has a cause of action for damages for the bodily injury or death;
- VII. That, where he has recovered judgment against another person as aforesaid, he has taken all measures and proceedings with respect to that other person, or under that judgment, that he is required to take under the provisions of this paragraph against the judgment debtor, or under the judgment, with respect to whom or which application is made under this section;

VIII. That, where he has recovered such a judgment, either he has received, and is likely to receive, nothing thereunder, or, he has received, and is likely to receive, thereunder no more than an amount stated in the application; and

IX. That, where he has made a settlement as mentioned in subsection VI, he is entitled to receive thereunder no more than an amount stated in the application.

The government may appear and be heard on the application and may show cause why the order should not be made.

If the justice is satisfied

I. Of the truth of the matters shown by the applicant as required by the 2nd paragraph of this section; and

II. That the applicant has taken all reasonable steps to learn what means of satisfying the judgment are possessed by the judgment debtor; and

III. That there is good reason for believing that the judgment debtor has no assets liable to be sold or applied in satisfaction of the judgment or of the balance owing thereon, and is not insured under a policy of automobile insurance by the terms of which the insurer is liable to pay, in whole or in part, the amount of the judgment, the justice may make an order directed to the treasurer of state requiring him, subject to the provisions of this section, to pay from the fund the amount of the judgment or the balance owing thereon, and, subject as herein provided, the treasurer of state shall comply with the order.

In making an order under the provisions of the preceding paragraph, the justice shall reduce the amount that he would otherwise require to be paid from the fund, by a sum equal to any amount or amounts that the applicant has received or, in the opinion of the justice, is likely to receive, under or in respect of a judgment that he has recovered against, or a settlement that he has made with, any other person against whom he has or had a cause of action for damages for the bodily injury or death mentioned in the 1st paragraph of this section. An order made under the preceding paragraph shall be subject to appeal.

The treasurer of state shall not be required to pay from the fund under an order,

I. In the case of a judgment resulting from bodily injury to, or the death of, 1 person in 1 accident, more than \$10,000 exclusive of costs; and

II. In the case of a judgment resulting from bodily injury to, or the death of, more than 1 person in 1 accident, and subject to such limit of \$10,000 for each person so injured or killed, more than \$20,000 exclusive of costs;

III. In the case of a judgment resulting from damage to property resulting from any 1 accident more than \$5,000 exclusive of costs.

The treasurer of state shall not be required to pay from the fund under an order for costs of an action, including costs of the application made under the provisions of this section more than the actual disbursements incurred and $\frac{1}{2}$ of the fees payable in respect of the action and application, as taxed on a party and party basis.

Sec. 71-C. Payment from fund. The treasurer of state shall not pay from the fund any sum in compliance with an order until the judgment creditor assigns the judgment to him.

Sec. 71-D. When license privileges may be restored. Where the license or privileges of any person, or the registration of a motor vehicle registered in his name, has been suspended or cancelled under the provisions of sections 71-A to 71-F, inclusive, and the treasurer of state has paid from the fund any amount in or towards satisfaction of a judgment and costs, or either of them, recovered against that person, the cancellation or suspension shall not be removed, nor the license, privileges or registration, restored, nor shall any new license or privilege be issued or granted to, or registration be permitted to be made by that person until he has repaid in full to the treasurer of state the amount so paid by him together with interest thereon at 4% per year from the date of such payment and satisfied all requirements in respect of giving proof of financial responsibility.

Sec. 71-E. Action may be brought against secretary of state in certain cases.

I. Where bodily injury to, or the death of, any person is occasioned by an accident in which a motor vehicle is in any manner, directly or indirectly, involved, if the identity of the owner and of the driver of the motor vehicle cannot be ascertained after searches and inquiries for that purpose have been made as hereinafter provided, any person who would be entitled to bring an action against the owner or driver to recover damages for the bodily injury or death may apply by way of originating notice, not earlier than 1 month and not later than 1 year after the date of the accident, to a justice of the superior court, in term time or vaca-

tion, for an order permitting him to bring such an action against the secretary of state, suing him by that name, as a nominal defendant.

II. The applicant shall serve notice of the application on the secretary of state; and the secretary of state may appear and be heard on the application, and may show cause why the order should not be made.

III. Upon the hearing of the application the applicant shall show

A. that bodily injury or death has been occasioned to some person by, or arising out of, the ownership, maintenance, occupation, or use, of a motor vehicle;

B. that he has made, or caused to be made, the most thorough searches and inquiries to learn the identity of the owner and the driver of the motor vehicle, and has been unable to do so, and is not aware of the identity of either of them; and

C. that he is a person entitled to bring the action.

IV. If the justice is satisfied of the truth of the matters shown by the applicant as required by subsection III and that the applicant has complied with that subsection, he may make the order.

V. Where an order is made under subsection IV, the applicant therefor may within 1 month thereafter bring and maintain an action in the court having jurisdiction in respect thereof against the secretary of state, suing him by that name, as a nominal defendant, to recover damages for the bodily injury or death occasioned by the accident; and the secretary of state may defend the action.

VI. The applicant may add the costs of the application to the amount of his claim for which action is brought pursuant to subsection V.

VII. The secretary of state shall not be liable, either personally or in his capacity as secretary of state, to satisfy a judgment recovered pursuant to this section.

VIII. The plaintiff in an action brought under this section, after he has recovered judgment therein, may make application for an order under the provisions of section 71-B.

IX. Where the action is brought in the superior court, the plaintiff therein may apply in his statement of claim for an order under section 71-B, instead of applying to the court as provided in that section.

X. Where an application is made pursuant to subsection VIII or IX, upon being satisfied

- A. that the action was brought pursuant to an order made under subsection IV,
- B. that judgment therein has been recovered by the applicant,
- C. that all proceedings therein including appeals have been determined, and
- D. that the applicant is still unaware of the identity of the owner and of the driver of the motor vehicle,

the justice may make the order for which application is made, and, subject as herein provided, the treasurer of state shall comply with the same.

XI. Where an application is made under subsection VIII or IX the nominal defendant against whom judgment has been recovered shall, for the purposes of section 71-B, be deemed to be a judgment debtor to whom that section applies; and, except as in this section otherwise provided, the provisions of section 71-B, other than the 2nd and 4th paragraphs thereof shall apply to the application and to any order made pursuant to this section.

Sec. 71-F. Further action stayed; costs, judgments.

I. Where an action is brought under section 71-E, and, before judgment is recovered therein, the identity of the owner or the driver, or both, of the motor vehicle to which reference is made in that section is ascertained, no further proceedings in the action shall be taken; but the costs incurred in the action by the person bringing the same shall be a debt due to him by the owner and by the driver of the motor vehicle severally, and may be added by such person to the amount of his claim against the owner or the driver or both.

II. Where a judgment is recovered under section 71-E, and subsequently the identity of the owner or driver, or both, of the motor vehicle to which reference is made in that section is ascertained,

A. the person who brought the action, or

B. if the judgment has been paid from the fund, the treasurer of state, may apply to a justice of the superior court, in term time or vacation, for an order directing that the amount of the damages awarded by the judgment and the costs included therein, together with the costs of the application made under this section, shall be awarded to the applicant as a judgment of the court to be recovered against the person or persons

named as respondent in the application, namely the owner or driver, or both, of the motor vehicle, as the case may be,

III. Where an application is made under this section, the justice shall hear the evidence and, if he is satisfied that

A. a respondent named in the application was, at the time of the accident that caused the bodily injury or death giving rise to the action in which the judgment was recovered, the owner or driver, or both, of a motor vehicle involved in that accident; and

B. that the respondent mentioned in paragraph A is the person whose identity the applicant was unable to ascertain, by reason of which inability the applicant obtained an order under subsection IV of section 71-E;

he may make the order for which application is made; and the order shall be entered as a judgment of the court against the person or persons named therein and for the amount stated therein.

IV. It shall not be a defense to the making of an order under subsection III for a person named in the application to show that the accident, or the bodily injury or death giving rise to the action, was not caused by, or did not occur by reason of, any negligence or improper conduct on his part.

V. Where a judgment is entered as provided in subsection III pursuant to a judgment recovered under section 71-E, the entry of the judgment first mentioned as aforesaid shall be deemed to be satisfaction of the judgment recovered under section 71-E.

VI. The provisions of subsection V shall not prevent the treasurer of state taking any action that he may be entitled to take to recover any sum paid by him from the fund.

VII. Where the treasurer of state pays from the fund the amount of the judgment against a nominal defendant pursuant to an order made under section 71-E, if subsequently an order is made and entered as a judgment under subsection III against the owner or driver, or both, of a motor vehicle, the amount so paid by the treasurer of state shall be deemed to have been paid in or towards satisfaction of a judgment against the owner or driver, or both, within the meaning of section 71-D.

IX. The statute of limitation shall not apply to an application made under the provisions of this section.'