

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Twin City Printery  
Lewiston, Maine  
1987

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**PUBLIC LAWS**

OF THE

**STATE OF MAINE**

AS PASSED AT THE  
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2. Research on public lands. The commissioner, director or other chief executive officer of any state agency having jurisdiction over any public land may make that land available on such terms and conditions as he deems reasonable to any public or private nonprofit entity engaged in spruce budworm control research and related silvicultural control research. ~~The Forest Insect Manager director~~ shall likewise encourage private landowners within the State to make their lands available for the same purposes.

Effective September 29, 1987.

## CHAPTER 184

S.P. 305 — L.D. 874

### AN ACT to Revise the Procedures for the Enforcement of Money Judgments.

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

Sec. 1. 14 MRSA §3120 is enacted to read:

#### §3120. Purpose

The purpose of this chapter is to provide an efficient procedure for the enforcement of money judgments. It is not an exclusive procedure and may be utilized with any other available procedure.

Sec. 2. 14 MRSA §3121, sub-§§2-A, 5 and 6 are enacted to read:

2-A. Individual. "Individual" means only a natural person.

5. Person. "Person" means an individual, trust, estate, partnership, association, company, corporation, political subdivision or instrumentality of the State.

6. Sheriff. For the purposes of sections 3134 to 3136, "sheriff" means a sheriff, deputy sheriff, police officer, special police officer or constable.

Sec. 3. 14 MRSA §3121, last ¶, as enacted by PL 1971, c. 408, §1, is amended to read:

Whenever a judgment creditor ~~or~~ judgment debtor ~~or~~ a 3rd party is a corporation or other legal entity and is required to perform any act under this ~~section~~ chapter, such acts shall be performed by the officers, ~~directors~~ or managing agents of the ~~corporation~~ entity or by the persons controlling the entity, whichever is appropriate. Except where personal appearance or testimony is required in response to a subpoena or ~~capias~~ to bring in civil order of arrest under this chapter, the judgment creditor ~~or~~, judgment debtor ~~or~~ 3rd party may act by or through an attorney.

Sec. 4. 14 MRSA §3121-A is enacted to read:

#### §3121-A. Venue

1. Commencement of proceedings. Notwithstanding Title 4, section 155, and any provisions set forth elsewhere, and except as provided in subsection 2, any proceeding under this chapter shall be commenced in a division of the District Court as follows.

A. Except as provided in paragraph D, if the judgment debtor is an individual who resides within this State, the proceeding shall be commenced in the division in which the judgment debtor resides.

B. Except as provided in paragraph D, if the judgment debtor is a nonresident individual, the proceeding shall be commenced in the division in which the debtor is commorant:

C. Except as provided in paragraph D, if the judgment debtor is not an individual, the proceeding shall be commenced in a division in which the debtor maintains a place of business. If the judgment debtor does not maintain a place of business in this State, the proceeding shall be commenced in a division in which a civil summons could be served upon the debtor or in any division in which the action resulting in the judgment could have been brought.

D. Any proceeding under this chapter may be commenced in the division where the judgment creditor, if an individual, resides or, if not an individual, has a place of business.

2. Civil order of arrest; contempt. Any proceeding under this chapter in which the judgment debtor is an individual who resides in this State shall be transferred to the division in which the debtor resides immediately after:

A. The issuance of a civil order of arrest pursuant to section 3134, subsection 1, or section 3136; or

B. The filing of a motion for contempt pursuant to section 3134, subsection 2.

The division in which the judgment debtor resides shall be set forth in the affidavit or statement under oath required by section 3134, subsection 1 or 2, or section 3136, subsection 1. Any civil order of arrest issued pursuant to section 3134, subsection 1, or section 3136, and any contempt subpoena or civil contempt order issued pursuant to section 3134, subsection 2, shall be returnable only to the division in which the judgment debtor resides if that debtor is an individual who resides in this State. Any proceedings in which the judgment debtor is not such a resident individual shall be maintained as provided in subsection 1.

3. Improper venue, transfer, objection. If any proceeding under this chapter is brought or continued

in the wrong division, the court, upon motion or its own initiative, may transfer the proceeding to the proper division. Any objection to improper venue is waived if not made before the entry of any order under this section after the appearance of the judgment debtor before the court. The court, at any time and upon motion or its own initiative, may transfer a proceeding under this subsection to another division for the convenience of the parties or witnesses, or in the interest of justice or equity.

4. Consent. With the approval of the court, any proceeding under this chapter may be commenced or continued in any division consented to by the judgment debtor and the judgment creditor.

Sec. 5. 14 MRSA §3122, as repealed and replaced by PL 1981, c. 389, §1, is repealed and the following enacted in its place:

#### §3122. Subpoenas

1. Disclosure subpoena. A judgment creditor, for the purpose of determining the ability of the judgment debtor to satisfy the judgment, may subpoena the judgment debtor by disclosure subpoena to appear before a judge of the District Court. The subpoenas shall be issued in blank by the clerks of the District Court. The subpoena shall set forth the title of the action; the date and place where the judgment debtor is ordered to appear for the disclosure hearing; an order to produce any documents requested by the judgment creditor; a warning that failure to obey the subpoena may result in the arrest of that person or an order to the debtor's employer to withhold a portion of the debtor's wage, or both; and a notification that the debtor is entitled to be heard on issues concerning his ability to pay the judgment and whether his income or assets are exempt from court order.

2. Witness subpoena. Any party may subpoena any witness to any hearing provided for in this chapter in the manner authorized by law.

Sec. 6. 14 MRSA §3123, as amended by PL 1981, c. 389, §2, is repealed and the following enacted in its place:

#### §3123. Service disclosure of subpoena

1. Service on individual. The disclosure subpoena shall be served upon an individual judgment debtor by an officer qualified to serve civil process by giving to the judgment debtor, at least 10 days prior to the disclosure hearing, a copy of the subpoena in hand.

2. Service on nonindividual. Service of the disclosure subpoena on a judgment debtor other than an individual shall be made by any method by which service of civil summons may be made at least 10 days prior to the disclosure hearing.

Sec. 7. 14 MRSA §3125, as enacted by PL 1971, c. 408, §1, is repealed and the following enacted in its place:

#### §3125. Appearance and examination of the debtor

1. Disclosure hearing. Unless there is an agreement which meets the requirements of subsection 2, the judgment debtor shall appear at the time and place indicated in the subpoena for a hearing to determine his ability to pay the judgment. The debtor shall be placed under oath and shall disclose his income, assets and any other information which will aid the judgment creditor in enforcing the judgment. Unless the debtor fails to appear for the disclosure hearing, testimony of the debtor shall be taken before the court issues any order pursuant to this chapter.

2. Agreement. If the creditor or the debtor, at or prior to the disclosure hearing, presents the court with a written agreement for an order pursuant to section 3127 with affidavit signed by the judgment debtor on a form provided by the District Court, the court may enter an order for an installment payment in the amount agreed upon by the parties or a lesser amount without the necessity of appearance by the parties. In determining whether to accept, reject or modify to a lesser amount the agreement of the parties, the court shall apply the factors set forth in section 3128.

3. Continuances. A continuance of the disclosure hearing may be granted for good cause.

4. Witnesses. Either party may subpoena any witness to the disclosure hearing for the purpose of taking testimony as to the ability of the judgment debtor to satisfy the judgment.

5. Orders. In appropriate circumstances, the court may issue any combination of orders allowed by this chapter.

6. Termination. If the court is satisfied that the debtor has no earnings, property or other assets from which he can satisfy the judgment, in whole or in part, the disclosure shall be terminated. Failure of the judgment creditor to appear at the time and date set forth in the subpoena shall result in a termination of the disclosure hearing. Any dismissal or withdrawal of the disclosure subpoena by the judgment creditor after it has been served on the debtor shall be considered a termination of the disclosure hearing. A terminated hearing shall be considered a completed hearing for the purposes of section 3124.

Sec. 8. 14 MRSA §3126, as amended by PL 1985, c. 506, Pt. B, §11, is further amended to read:

#### §3126. Fees and costs

The disclosure subpoena and, return of service and the writ of execution or an attested copy thereof shall 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 be added to the judgment, unless the judgment creditor or his

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.

Sec. 9. 14 MRSA §3127, sub-§§1 and 2, as repealed and replaced by PL 1983, c. 155, §1, are amended to read:

1. Court order. Upon a disclosure hearing where when it is shown that the judgment debtor is receiving or will receive money or earnings from a source other than a source which is otherwise exempt from trustee process, attachment and execution under sections 4421 to 4426, the court may order that the judgment debtor make specified installment payments to the judgment creditor; provided that, in the case of a judgment debtor who is ~~a natural person~~ an individual, the maximum amount of earnings for any workweek which is ~~subjected~~ subject to such an installment order may not exceed, except as provided in subsection 2:

A. Twenty-five percent of the judgment debtor's disposable earnings for that week; or

B. The amount by which his disposable earnings for that week exceed ~~30~~ 40 times the federal minimum hourly wage prescribed by the United States Code, Title 29, Section 206 (a) (1), whichever is less.

In the case of earnings for any pay period other than a week, the multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph B, as prescribed by regulations of the Secretary of Labor of the United States, shall limit the amount of the installment order.

2. Exceptions. The restrictions of subsection 1; ~~paragraph A~~ do not apply in the case of:

A. Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process and which is subject to judicial review;

B. Any order of any court of the United States having jurisdiction over cases under the United States Code, Title 11, chapter 13; or

C. Any debt due for any state or federal tax; or,

~~D. Transactions governed by Title 9-A, section 5-105.~~

Sec. 10. 14 MRSA §3127-A is enacted to read:

§3127-A. Order to 3rd parties to hold and answer

1. Order to hold and answer. Upon a disclosure hearing when it is shown that there is a reasonable likelihood that a 3rd party has possession or control of

property in which the judgment debtor may have an interest or that the 3rd party may be indebted to the judgment debtor for other than earnings, the court, upon request of the judgment creditor, may approve the service on the 3rd party of an order to hold and answer. The order to hold and answer shall state the amount owed on the judgment debt and shall set forth the specific property of the judgment debtor alleged to be in the possession of the 3rd party, as well as any specific debt other than earnings, alleged to be owed to the judgment debtor. The order shall demand an answer under oath from the 3rd party listing all property in the possession of the 3rd party in which the judgment debtor has an interest and listing all debts, other than earnings, owed by the 3rd party to the judgment debtor, as of the date and time the order is served. The order to hold and answer shall state the consequences of the failure of the 3rd party to answer. An order to hold and answer shall be served on the 3rd party and the judgment debtor within 20 days of the date of the order. An answer form shall be supplied to the 3rd party with the order.

2. Answer. Within 20 days of service of the order, the 3rd party shall:

A. File with the court the answer required in the order; and

B. Serve copies of the answer on the judgment debtor and the judgment creditor in the manner provided in the Maine Rules of Civil Procedure, Rule 5.

3. Hold and answer. The 3rd party served with the order to hold and answer, upon receipt of the order, shall withhold and account for any property belonging to the judgment debtor and any debt due the judgment debtor, except earnings. Unless the judgment debtor or the judgment creditor requests a hearing within 20 days of the filing of the answer of the 3rd party, the property or debt listed shall be subject to any order permitted under section 3131 or 3132.

4. Hearing on motion. Within 20 days of the service of the answer of the 3rd party on the other parties, the judgment debtor or the judgment creditor may request by motion a hearing on the extent of the judgment debtor's interest in the property listed, the failure of the 3rd party to list property or money owed, the exempt status of property listed or any other issue concerning the judgment debtor's interest in property in the possession of the 3rd party. The motion shall be served on all parties. If after the hearing the court is satisfied as to the existence and extent of the nonexempt property of the debtor held by the 3rd party, or as to the existence and extent of any nonexempt money debt, other than earnings owed by the 3rd party to the judgment debtor, it shall make an order provided for under section 3131 or 3132.

5. Exception. This section does not apply to collection of amounts due on negotiable instruments or certificates of deposit unless the judgment creditor has

previously obtained possession of the documents pursuant to section 3132 or otherwise.

6. Default. Failure of a 3rd party, duly served with an order to withhold and answer, to timely file an answer shall constitute a default as to questions of possession and ownership between the 3rd party and the judgment debtor of the specific property or debt set forth in the order. In addition, the 3rd party shall be subject to an order pursuant to section 3131 or 3132 and shall be subject to a contempt proceeding.

7. Enlargement of time limits. The time limits in this section may be enlarged as provided in the Maine Rules of Civil Procedure, Rule 6.

Sec. 11. 14 MRSa §3127-B is enacted to read:

§3127-B. Order to employer or payor of earnings

1. Order. When it is shown upon ex parte motion and affidavit that the judgment debtor has either failed to timely make 2 or more payments required by an installment order under section 3127 or when the judgment debtor has failed to appear, after having been subpoenaed for a hearing provided for in this chapter, the court may approve the service of an order to withhold and answer on the judgment debtor's employer or other payor of earnings. The order shall state the amount owed on the judgment debt, interest and costs. If the court has previously determined an installment payment amount under section 3127, the order shall state that amount. The order shall demand an answer under oath listing the dollar amounts of all earnings owed or payable to the debtor and the calculation of the judgment debtor's disposable earnings. The order shall be served on the employer or other payor and on the judgment debtor within 60 days of the date of the order. A form answer shall be attached to the order when served on the employer or other payor of earnings.

2. Withhold and answer. The employer or other payor served with the order shall calculate the maximum dollar amount of the employee's disposable earnings which may be applied to the debt under section 3127 by using the form answer attached to the order. Within 20 days of service of the order, the employer or other payor of earnings shall:

A. File the completed form answer with the court;

B. Serve copies of the answer on the judgment debtor and the judgment creditor in the manner provided in the Maine Rules of Civil Procedure, Rule 5; and

C. Withhold from the employee and pay to the judgment creditor the amount of the previously ordered installment payment or the maximum dollar amount of the employee's disposable earnings which may be applied to the debt, whichever amount is less, until the court orders otherwise or the debt is satisfied.

3. Hearing on motion. Within 20 days of the service of the answer of the employer or other payor of earnings, the judgment debtor or the judgment creditor may request by motion a hearing to determine what amount, if any, of the judgment debtor's earnings should be ordered payable by the employer or other payor to the judgment creditor. The motion shall be served on the employer or other payor as well as the other party. After the hearing, if the court is satisfied as to the existence and amount of the judgment debtor's disposable earnings payable by the employer or other payor, it may issue an order to the employer or other payor to withhold an amount, subject to the requirements of section 3127, from the earnings of the judgment debtor and pay the amount to the judgment creditor. If the court fails to find disposable earnings payable by the employer or other payor, it may terminate the withholding required under subsection 2. If the court terminates withholding or reduces the amount withheld, the court may order appropriate reimbursement of the judgment debtor by either the employer or the judgment creditor. No reimbursement or retroactive withholding is permitted against the employee if the court order increases the amount withheld.

4. Withholding charge. An employer or other payor subject to a withholding order may charge a fee of \$1 per check issued and forwarded to the judgment creditor. This fee shall be deducted from the amount withheld prior to its remittance to the judgment creditor.

5. Default. Failure of an employer or other payor of earnings, duly served with an order to withhold and answer, to timely file an answer shall constitute a default and subject the employer or other payor to separate liability for an amount equal to that portion of the judgment debt which could properly have been withheld under subsection 2, plus interest. This liability accumulates unless the employer or other payor files a late answer. When the employer files a late answer, the accumulated liability continues for 20 days from the answer or, if a motion is filed under subsection 3, until the court makes an order.

6. No discharge or contribution. No employer may discharge any employee because his earnings are subject to an order under this section. The employer shall not have a cause of action against the employee to recover any amounts paid by the employer to the creditor under the employer's separate liability as provided under subsection 5.

7. Enlargement of time limits. The time limits in this section may be enlarged as provided in the Maine Rules of Civil Procedure, Rule 6.

Sec. 12. 14 MRSa §3128, as enacted by PL 1971, c. 408, §1, is amended to read:

§3128. Factors in determining the amount of the installment order

In fixing the amount of installment payments, the court may take into consideration: The reasonable requirements of the judgment debtor and his dependents; any payments required to be made by him in satisfaction of other judgment orders and wage assignments; other judgment orders or wage assignments that have priority; the amount due on the judgment; the amount of money or earnings being or to be received; and any other factors and circumstances which the court shall deem material and relevant. The court may prescribe the time, places and manner in which the payments are to be made.

Sec. 13. 14 MRSA §3129, as amended by PL 1973, c. 477, §4, is further amended to read:

§3129. Modification of orders

The court may at any time, on its own motion or on the motion of any party and upon notice and hearing, make an order suspending, revising or revoking any order made pursuant to this chapter upon a showing that the circumstances of either any party so require.

Sec. 14. 14 MRSA §3131, as amended by PL 1983, c. 125, §1, is repealed and the following enacted in its place:

§3131. Turnover orders, sales

1. Turnover order. When it is shown at a hearing under this chapter that the judgment debtor owns personal property or real property which is not wholly exempt from attachment or execution pursuant to sections 4421 to 4426, the court shall determine the value of the property or interest and the extent to which the property or interest is exempt. Upon request of the judgment creditor, the court shall order the judgment debtor to turn over to the judgment creditor in partial or full satisfaction of the judgment, interest and costs, such items of property which are not in whole or in part exempt and the value of which is determined to be less than or equal to the amount owed on the judgment, interest and costs.

2. Sale order. Upon the request of the judgment creditor, the court shall order the sale by the judgment creditor of property owned by the judgment debtor in full or partial satisfaction of the amount owed on the judgment, interest and costs, including the costs of sale, in the following situations:

A. When it is determined that the value of wholly nonexempt property is greater than the amount owed on the judgment, interest and costs, and the judgment creditor and judgment debtor cannot agree as to which items of property shall be applied to the satisfaction of the judgment;

B. When wholly nonexempt property is not available to fully satisfy the judgment and it is determined that the value of partially exempt property is greater than the exemption available for that item and the property cannot practically be divided into its exempt and

nonexempt portions; or

C. When the judgment debtor's property is not subject to physical division or it is otherwise impractical to provide for satisfaction of the judgment in kind.

3. Notice of turnover order and sale. The judgment creditor shall give notice of any turnover order or sale to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property when the interest is recorded, possessory or of which the judgment creditor has actual knowledge. He shall provide notice of sale to the judgment debtor. In the case of a turnover order, the notice shall include a copy of the order, the name and address of the judgment creditor and the name and address of the attorney, if any, representing the judgment creditor in the disclosure proceeding. Notice of a turnover order shall be provided within 30 days after the entry of the turnover order. In the case of a sale, the notice shall be of the type which a secured creditor is required to provide to a debtor in a sale of secured property subject to Title 11, section 9-504, subsection (3), and shall be provided at the time required under that section. If the judgment creditor fails to provide the required notice of sale or turnover order to others, the creditor shall be liable to the 3rd parties for any loss caused by the failure.

4. Redemption and time of sale. Any real property subject to a sale order may be redeemed from the sale order within 90 days from the date of the order by payment to the judgment creditor of the amount of the judgment, costs and interest through the date of payment.

A. If redemption does not occur within the redemption period, the judgment creditor shall sell the real property within 30 days after the end of that period, unless the 30-day period is extended for cause by order upon motion made within the 30-day period.

B. The judgment creditor shall sell personal property subject to a sale order within 30 days of the order, unless that time period is extended for cause by order upon motion made within the 30-day period. The property may be redeemed before the sale occurs by payment to the judgment creditor of the amount of the judgment, costs and interest through the date of payment, plus expenses of sale incurred through that date.

5. Method and effect of sale. Sale of the property may be by public or private sale and by any method which is commercially reasonable. The judgment creditor may buy at any sale at which a secured party could buy if the sale occurred pursuant to Title 11, section 9-504, subsection (3). The sale shall have the effect accorded dispositions under Title 11, section 9-504, subsection (4), whether the property is real or personal.

6. Sale proceeds. When the property is subject to a security interest, mortgage, lien, encumbrance or other interest which is subordinate to that of the judgment creditor and which is recorded, possessory or of which



the judgment debtor has actual knowledge, which secures the payment of any indebtedness, the judgment creditor shall remit the excess of any sale proceeds over the amount owed on the judgment, costs and interest through the sale date, plus the expenses of sale, to the holder of the interest up to the amount of the indebtedness. The judgment creditor shall remit to the 3rd party any exempt portion of the sale proceeds subject to the 3rd party's interest. The judgment creditor shall remit any further excess, plus any exempt portion of the sale proceeds which is not subject to a 3rd party interest, to the judgment debtor and shall be entitled to any deficiency.

7. Affidavit of sale. Within 30 days of the sale, the judgment creditor shall file with the court an affidavit setting forth the date, place, manner, expenses and proceeds of the sale and reciting that a copy of the affidavit has been delivered to the judgment debtor, or mailed to the last known address of the judgment debtor, and to any 3rd party entitled to receive notice of the sale under subsection 3.

8. Challenge to sale. The judgment debtor or the 3rd party may contest the accounting of the sale, including the manner in which it was conducted, by motion filed within 30 days of the mailing or delivery of the affidavit to the debtor. Any challenge shall not affect ownership of, or title to, the property sold, but shall be for money damages only. If the sale is challenged by the judgment debtor and it is found that the judgment creditor failed to comply with the requirements of this section, it shall be presumed that the proceeds of a properly conducted sale would have at least fully satisfied the judgment. Such a presumption against the judgment creditor may be overcome only by clear and convincing evidence.

9. Lien. An order entered pursuant to this section shall constitute a lien against the property which is the subject of the order and against the proceeds of any disposition of the property by the judgment debtor which occurs at any time after entry of the order. The lien shall extend to proceeds of any disposition of the property, real or personal, subject to the lien of the judgment creditor to the extent that a secured party would have an interest in the proceeds under Title 11, section 9-306. The lien shall be for the full amount of the unpaid judgment, interest and costs, and shall become perfected as to 3rd parties on the earlier of:

A. The time the judgment creditor or purchaser takes possession of the property;

B. If the property is real estate, the time when an attested copy of the turnover or sale order is filed with the registry of deeds where a mortgage would be filed to be duly perfected;

C. If the property is personalty against which a security interest may be perfected by filing pursuant to Title 11, the time when an attested copy of the turnover or sale order is filed with the filing officer where

a filing would be required under Title 11, section 9-401;

D. If the property is a motor vehicle for which a certificate of title is required, the time when an attested copy of the turnover or sale order is delivered to the office of the Secretary of State where notice would be delivered pursuant to Title 29, section 2374, subsection 1; or

E. If the judgment creditor or purchaser takes possession of the property, or if an order is recorded, filed or delivered pursuant to this subsection during the pendency of any properly perfected pre-judgment or post-judgment attachment obtained in the underlying action, or any judgment lien created pursuant to section 4651, the time when the attachment or lien was duly perfected against the property.

10. Equitable powers. The court is given equitable powers to make all appropriate orders to effectuate or compel obedience to turnover or sale orders.

Sec. 15. 14 MRSA §3132, as amended by PL 1983, c. 125, §2, is repealed and the following enacted in its place:

§3132. Possessory lien

When it is shown at a hearing under this chapter that the judgment debtor owns or otherwise has an interest in personal property in which a security interest may be perfected only by possession as set forth in Title 11, article 8 or 9, upon request of the judgment creditor, the court shall order a lien on the judgment debtor's interest in so much of such property as is not exempt from attachment and execution pursuant to sections 4421 to 4426, and as will satisfy the unpaid judgment plus interest and costs. Any lien ordered under this section shall be perfected as to 3rd parties as of the time the judgment creditor takes possession of the property or the document evidencing the property.

Any lien ordered under this section shall extend to the proceeds of any disposition of any property subject to the lien of the judgment creditor which occurs at any time after entry of the lien order to the same extent that a secured party would have an interest in such proceeds pursuant to Title 11, section 9-306. The court is given equitable power to make all appropriate orders, including, but not limited to, turnover orders, to assist the judgment creditor in perfecting a lien under this section and to effectuate or compel obedience to any orders issued pursuant to this section.

Sec. 16. 14 MRSA §3133, as enacted by PL 1971, c. 408, §1, is repealed.

Sec. 17. 14 MRSA §3134, as enacted by PL 1971, c. 408, §1, is repealed and the following enacted in its place:

§3134. Failure to appear

1. Issuance of civil order of arrest. If the judgment debtor fails to appear after being duly served with a subpoena under section 3123 and the judgment creditor appears at the time and place named in that subpoena, the creditor may request the court to issue a civil order of arrest. The court shall issue a civil order of arrest upon the filing by the creditor of an affidavit stating that he knows of no infirmity, disability or good cause preventing the appearance of the debtor, which affidavit also sets forth the address and telephone number where the creditor or his representative can be reached and the address of the debtor.

2. Alternative method. Instead of requesting a civil order of arrest, the creditor may proceed by way of a motion for contempt for failure to appear. This motion shall be under oath or accompanied by an affidavit and shall be served upon the debtor with a contempt subpoena in the manner set forth in section 3136. If the debtor, after being duly served with a contempt subpoena, fails to appear at the time and place named in the contempt subpoena, the court may find the debtor in civil contempt and shall issue a civil order of arrest under section 3136, subsection 4 or, at the creditor's request, shall issue an order for the debtor to appear in court at a certain date and time for further proceedings, which order shall be served upon the debtor in hand by the sheriff who shall obtain from the debtor his personal recognizance bond to appear in court at the specified date and time.

Sec. 18. 14 MRSA §3135, as amended by PL 1973, c. 477, §7, is repealed and the following enacted in its place:

#### §3135. Civil order of arrest

A civil order of arrest issued under section 3134, subsection 1, or section 3136, shall direct the sheriff to arrest the individual named in the order and bring the individual to a hearing on the days or date specified in the civil order of arrest. In the case of a nonindividual debtor, a civil order of arrest shall issue for the arrest of any officer, director or managing agent of the debtor or other agent appointed by the debtor to accept service and who was served with the disclosure subpoena.

After a civil order of arrest has been issued, the sheriff shall cause the individual named in the order to be arrested and shall deliver him without undue delay to the division of the District Court that issued the civil order of arrest. The sheriff may take such steps as he determines necessary for his safety or the safety of others then present, including searching the debtor for weapons, if he has a reasonable suspicion that the debtor has a weapon, and handcuffing the debtor if that is necessary to transport the debtor to the court or to cause the debtor to remain peaceably at the court. Upon arrival at the court, the sheriff shall notify the clerk or bailiff that the debtor is present and may release the debtor into the custody of the bailiff. The sheriff shall instruct the debtor that the debtor must wait at the court until released

by the court or clerk. Upon release of the debtor into the custody of the bailiff, the sheriff need not remain with the debtor at the court.

After the judgment debtor is brought to the court, the clerk shall promptly notify the judgment creditor or his attorney of record in person or by telephone that his presence is required for a hearing. If a disclosure or contempt hearing cannot be held that day due to the inability of the judgment creditor or his attorney to appear or due to the absence of the judge or the inability of the court to hear the matter because of other business, the court or clerk shall release the debtor upon his personal recognizance for his appearance on a date certain. If the debtor fails to appear for the disclosure or contempt hearing after being released upon his personal recognizance, the court may issue additional civil orders of arrest to bring the debtor before the court for hearing.

Unless the judgment debtor shows good cause for his failure to appear after being duly served with a disclosure subpoena under section 3123 or a contempt subpoena under section 3136, the debtor shall be ordered to pay the costs of issuing and serving the civil order for arrest. The costs of issuing and serving the civil order for arrest shall be \$25 plus mileage at a rate of 21¢ per mile.

Sec. 19. 14 MRSA §3136, as amended by PL 1973, c. 788, §59, is repealed and the following enacted in its place:

#### §3136. Contempt

1. Motion for contempt. Whenever a judgment debtor or any other person fails to comply with any court order entered pursuant to this chapter, except an order against a judgment debtor issued for failure to comply with a disclosure subpoena, the judgment creditor may file a motion with the court to hold that person in contempt. The motion shall be under oath and set forth the facts that give rise to the motion or shall be accompanied with a supporting affidavit setting forth the facts.

2. Contempt subpoena. For the purpose of the contempt hearing, the judgment creditor shall have the right to subpoena the person sought to be held in contempt. Contempt subpoenas shall be issued in blank by the clerks of the District Court. The contempt subpoena shall set forth the title of the action, the date and place where the person sought to be held in contempt is ordered to appear for the contempt hearing, an order to produce any documents requested by the judgment creditor, a warning that failure to obey the contempt subpoena may result in the arrest of that person and that a finding of contempt by the court may result in the person being fined or imprisoned, or both, until the person complies with the court order.

3. Service of contempt subpoena and motion. The subpoena shall be served with a copy of the motion for contempt and supporting affidavit, if any, upon the person sought to be held in contempt at least 10 days prior

to the hearing by an officer qualified to serve civil process in the same manner as provided in section 3123.

4. Failure to appear. If the person sought to be held in contempt fails to appear after being duly served with a contempt subpoena and the judgment creditor appears at the time and place named in the subpoena, upon the request of the judgment creditor, the judge shall issue a civil order of arrest directing the sheriff to arrest the person and bring the person to the court on the days or date specified in the civil order of arrest. In the case of a nonindividual, a civil order of arrest shall be issued for the arrest of any officer, director or managing agent who was served with the contempt subpoena.

5. Orders. Upon a finding at the contempt hearing that a court order has been disobeyed by the person and that the person has the present ability to comply with the order, the person shall be adjudged in civil contempt. The court shall have the power to impose such reasonable fine or imprisonment as the circumstances require, provided that the person is given an opportunity to purge himself of the contempt. Whenever the person purges himself of the contempt, the court shall release the person from imprisonment and may remit any fine or a portion of the fine. In addition, the court may enter orders pursuant to sections 3127, 3127-A, 3127-B, 3130, 3131 and 3132 to assure the person's compliance with the court order and to aid the judgment creditor in the enforcement of the order.

Nothing contained in this section may limit in any way the court's power to enter a finding of criminal contempt in appropriate circumstances.

Sec. 20. 14 MRSA §3137, as amended by PL 1981, c. 389, §3, is repealed.

Sec. 21. 14 MRSA §4601, as amended by PL 1981, c. 279, §6, is further amended to read:

#### §4601. Duration of attachment

An attachment of real or personal estate continues during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, any such attachment shall continue for 60 days; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case. In the case of attachments of real estate, the aforesaid 60-day period may be extended for a definite period, and thereafter extended for definite periods, with attachment remaining in full force and effect, by an order signed by any judge or justice of the court having jurisdiction over the cause of action upon which the attachment is based, provided

said order is signed and recorded in the office of the register of deeds in the county or district where the said real estate or some part of it is situated within the said 60-day period. An attachment of real estate shall expire at the end of 5 years from the date of filing the same in the office of the register of deeds in the county or district where the said real estate or some part of it is situated, unless the said register shall, within said period, at the request of the plaintiff or his attorney bring forward the same upon the book of attachments, and at the expiration of 5 years from the time of such first or any subsequent bringing forward, such attachment shall expire unless within said period it is again brought forward in like manner. The register shall be entitled to the same fee for bringing forward such attachment upon the book of attachments as for the original entry thereof, and shall be entitled to the fee set in Title 33, section 751 for recording an order for such extension.

In addition to any other provisions of law, attachments of real or personal estates may be enforced and their duration may be extended as provided in sections 3131, 3132 and 4651

Sec. 22. 14 MRSA §4651, as amended by PL 1985, c. 187, §4, is further amended to read:

#### §4651. Issue and return

Executions may be issued on a judgment of the Superior Court or the District Court after 24 hours from the time the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, unless the court has pursuant to rule ordered execution at an earlier time, and shall be returnable within one year after issuance.

The filing with a registry of deeds or the proper place for perfecting a security interest in personal property pursuant to Title 11, section 9-401, subsection 1, of an execution, or an attested copy thereof, issued by any court of competent jurisdiction shall create a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in so much of the judgment debtor's real estate which is lying within the county in which the registry of deeds is located and personal property which are not exempt from attachment and execution as will satisfy the judgment together with interest and costs. A lien created by this paragraph is void unless the judgment creditor notifies the judgment debtor, by certified mail to his last known address, of the existence of the lien. The notice shall contain the following:

- 1.— Filing of lien.—The fact that a lien has been filed;
- 2.— Date and place of filing.—The date and place the lien was filed;
- 3.— Amount of debt or damage.—The amount of the debt or damage contained in the execution;

4. Name of judgment creditor. The name of the judgment creditor and, if desired, his attorney, including their addresses; and

5. Statement. The following statement: "To dissolve this lien, please contact (the creditor or his attorney)."

If a lien created by this section is filed during the pendency of any prejudgment or postjudgment attachment obtained in the underlying civil action, the effective date of the lien shall relate back to the date of perfection of the attachment. The lien created by this section shall continue so long as the judgment in the underlying civil action shall remain unpaid and unsatisfied, unless sooner released or otherwise discharged.

Sec. 23. 14 MRSA §4651-A is enacted to read:

§4651-A. Execution liens

1. Lien on real estate. The filing of an execution duly issued by any court of this State or an attested copy thereof with a registry of deeds within one year after issuance of the execution shall create a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in all real estate against which a mortgage would be duly perfected if filed in the registry and which is not exempt from attachment and execution.

2. Lien on personal property. The filing of an execution duly issued by any court of this State or an attested copy thereof with the proper place or places for perfecting a security interest in personal property pursuant to Title 11, section 9-401, subsections (1) and (5) within one year after issuance of the execution shall create a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in personal property which is not exempt from attachment and execution and which is of a type against which a security interest could be perfected by filing pursuant to Title 11, section 9-401.

3. Lien on motor vehicles. The filing of an execution duly issued by any court of this State or an attested copy thereof where a proof of transfer would be delivered pursuant to Title 29, section 2374, subsection 1, and delivery of an application pursuant to Title 29, section 2376, within one year after issuance of the execution shall create a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in any motor vehicle for which a title certificate must be obtained pursuant to Title 29, chapter 21.

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

5. Notice to judgment debtor. A lien created by this section shall become void with respect to the right, title and interest of any particular judgment debtor, unless the judgment creditor notifies the judgment debtor by

certified or registered mail sent to his last known address on or before 20 days after filing or recording of the existence of the lien. The notice shall contain the following:

A. The fact that a lien has been filed;

B. The date and place the lien was filed;

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

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

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

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 postjudgment attachment obtained in the underlying civil action against property subject to the lien, the effective date of the lien in the property shall relate back to the date of perfection of the attachment. The relation back shall apply 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 any lien created when no attachment is pending, shall become effective and be perfected from the date of the filing or recording of the execution. Any lien created pursuant to this section shall continue so long as the judgment in the underlying civil action, or any portion thereof, plus costs and interest, shall remain unpaid, undischarged or unreleased.

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

Sec. 24. 26 MRSA §627, as amended by PL 1983, c. 782, §5, is further amended to read:

§627. Assignment of wages

No assignment of wages is valid against any other person than the parties thereto, unless such assignment is recorded by the clerk in the town where the assignor is employed while earning such wages. If said assignor is employed in an unorganized place while earning such wages, said assignment to be valid against any other person than the parties thereto shall be recorded in the office of the register of deeds for the registry district in which said unincorporated place is located office of the Secretary of State. No such assignment of wages shall be valid against the employer, unless he has actual notice thereof.

An assignment of wages executed in satisfaction of a child support obligation shall have absolute priority over all previously filed orders against earnings entered pursuant to the Revised Statutes, Title 14, section 3127-B and former section 3137, and over any other assignment of wages, which orders and assignments were entered

after the effective date of this paragraph July 24, 1984.

Effective September 29, 1987.

## CHAPTER 185

S.P. 309 — L.D. 888

### AN ACT to Facilitate the Movement of Emergency Relief Vehicles.

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

Sec. 1. 29 MRSA §246-A, sub-§1, as amended by PL 1985, c. 523, §1, is further amended to read:

1. Application. Notwithstanding any other provision of law, a person owning, operating or causing operation of a vehicle on the highways of this State, subject to Title 36, chapter 453, 457, 459 or 463-A, shall apply to the Secretary of State for a fuel use identification decal for each vehicle covered by those reports or licensing requirement, except vehicles owned and operated by government agencies, vehicles bearing dealer registration plates pursuant to subchapter III-A and, recreational vehicles, and authorized emergency vehicles as defined in section 1, subsection 1-B, based in another jurisdiction and operating in or through this State in response to a declared emergency.

Sec. 2. 29 MRSA §260 is enacted to read:

#### §260. Authorized emergency vehicles

Authorized emergency vehicles as defined in section 1, subsection 1-B duly registered in another jurisdiction and operating in or through this State as a result of a declared emergency shall be exempt from further registration requirements.

Effective September 29, 1987.

## CHAPTER 186

S.P. 419 — L.D. 1299

### AN ACT Relating to the Capitalization of the Maine Capital Corporation.

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

Sec. 1. 10 MRSA §952, sub-§2, as amended by PL 1983, c. 700, §3, is further amended to read:

2. Investment limited. Its investment in any one Maine business firm shall be limited to a maximum of ~~20%~~ 25% of its equity capital;

The Maine Capital Corporation shall not invest in any firm in which a person, or his or her spouse or dependent children, owning common stock of the Maine Capital Corporation holds over a 25% interest;

Sec. 2. 10 MRSA §952, sub-§6, as amended by PL 1981, c. 364, §1, is further amended to read:

6. Payment of dividends. It shall not declare or pay any dividends to its shareholders during its first 5 years of operation and thereafter any dividends shall be paid only on common stock whose holders are not using the credit for investment in the Maine Capital Corporation allowed under Title 36, section 5216. Dividends paid shall be limited to a maximum of 50% of retained earnings, with the balance being reinvested according to subsections 1 and 2; and

Sec. 3. 10 MRSA §952, sub-§7, as amended by PL 1983, c. 700, §3, is further amended to read:

7. Financial statement. It shall cause to be prepared an audited financial statement, certified by an independent certified public accountant, within 60 days after the close of each fiscal year of its operations, which report shall be distributed to the Governor and the committee of the Legislature having jurisdiction over taxation and made available to the public, detailing its investment and financial activities; and

Sec. 4. 10 MRSA §952, sub-§8 is enacted to read:

8. Capitalization and capital. For purposes of this chapter, the terms "capitalization" and "capital" include both equity and debt capital.

Effective September 29, 1987.

## CHAPTER 187

S.P. 460 — L.D. 1417

### AN ACT Concerning the Affidavit of Paternity.

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

22 MRSA §2761, sub-§4, as amended by PL 1985, c. 683, is further amended to read:

4. Illegitimate child. Except as otherwise provided in this subsection, in the case of a child conceived and born out of wedlock, the name of the putative father shall not be entered on the certificate without his written consent and that of the mother. The signature of the putative father on the written consent shall be acknowledged before an official authorized to take oaths. ~~Within a reasonable time after the acknowledgment, the official taking the acknowledgment shall make a good faith effort to notify the mother of the child for whom paternity has been acknowledged. Notification shall be by~~