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

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

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

2. Forcible entry and detainer; replevin; 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 6055, 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 6055, 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.

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

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

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

§ 509. Consumer transactions

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

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

§ 510. Replevin

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

Sec. 5. 14 MRSA §6012, as amended by PL 2001, c. 133, §§1 and 2, is repealed.

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

§ 6055. 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 relationship 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.

Six 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 plaintiff may file a motion to have the defendant held in contempt. A proceeding upon a motion for contempt under this subsection is subject to the Maine Rules of Civil Procedure, Rule

66(d) and for the purposes of this proceeding the entry of the judgment against the defendant creates a rebuttable presumption that the defendant has the ability to put the sheriff or constable into possession of the property.

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

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

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

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

§ 7302. Venue

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

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

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

SUMMARY

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

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

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

The bill aims to clarify where actions to recover personal property must be brought by permitting replevin actions and actions to recover personal property, in most instances, to be brought where any of the

property was located, where the contract giving rise to the claim was signed or where the plaintiff or the defendant reside at the time suit is brought. The bill requires suit to be brought where relevant consumer protection laws mandate when the action involves a consumer credit transaction or other consumer debt.

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