



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1419

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H.P. 1007

House of Representatives, April 16, 2013

### **An Act To Allow a Setoff of a Third-party Bailor's Property under Certain Conditions**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative DION of Portland.  
Cosponsored by Senator GERZOFKY of Cumberland and  
Representatives: FREDETTE of Newport, FREY of Bangor, MARKS of Pittston, PLANTE of  
Berwick.

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

2 **Sec. 1. 15 MRSA §1074**, as amended by PL 2003, c. 673, Pt. P, §1, is further  
3 amended to read:

4 **§1074. Property of defendant and 3rd parties as bail**

5 **1. Cash.** Whenever cash is deposited as bail to secure the appearance of and  
6 conformance to conditions of release by a defendant in a criminal proceeding, either  
7 preconviction or post-conviction, the cash is deemed to be the property of the defendant  
8 unless, at the time the cash is deposited, the defendant or the person offering the cash as  
9 bail designates under oath another person to whom the cash belongs. If a person other  
10 than the defendant has been designated as the owner of the cash, it must be returned to  
11 that person unless otherwise forfeited or subject to setoff under subsection 3-A. If the  
12 defendant is deemed to be the owner of the cash, it must be returned to the defendant  
13 unless otherwise forfeited or subject to setoff as provided in this section.

14 **1-A. Miscellaneous costs.** The Chief Justice of the Supreme Judicial Court is  
15 authorized to use General Fund appropriations to cover miscellaneous costs associated  
16 with the operation of the account of deposited cash bail.

17 **2. Real estate.** When a defendant in a criminal proceeding is the owner of real estate  
18 and offers that real estate as security for appearance before any court, the defendant must  
19 file a bail lien and otherwise comply with the requirements of section 1071 as if the  
20 defendant were a surety. A discharge of the bail lien is governed by section 1071, unless  
21 the bail has been forfeited or is subject to setoff in accordance with this section.

22 **3. Setoff of defendant's property.** When a defendant has deposited cash or other  
23 property owned by the defendant as bail or has offered real estate owned by the defendant  
24 and subject to a bail lien as bail and the cash, other property or real estate has not been  
25 forfeited, the court, before ordering the cash or other property returned to the defendant or  
26 discharging the real estate bail lien, shall determine whether the cash, other property or  
27 real estate or any portion of the cash, other property or real estate is subject to setoff as  
28 authorized by this section. The court may order all or a portion of the bail owned by a  
29 defendant that has not been forfeited to be first paid and applied to one or more of the  
30 following:

31 A. Any fine, forfeiture, penalty or fee imposed upon a defendant as part of the  
32 sentence for conviction of any offense arising out of the criminal proceeding for  
33 which the bail has been posted and the sentence for conviction of any offense in an  
34 unrelated civil or criminal proceeding;

35 B. Any amount of restitution the defendant has been ordered to pay as part of the  
36 sentence imposed in the proceeding for which bail has been posted and in any  
37 unrelated proceeding;

38 C. Any amount of attorney's fees or other expense authorized by the court at the  
39 request of the defendant or attorney and actually paid by the State on behalf of the  
40 defendant on the ground that the defendant has been found to be indigent in the  
41 proceeding for which bail has been posted and in any unrelated proceeding; and

1 D. Any surcharge imposed by Title 4, section 1057.

2 The court shall apply any bail collected pursuant to this subsection first to restitution.

3 **3-A. Setoff of 3rd party's property.** When a person other than the defendant has  
4 deposited cash or other property owned by the person as bail on behalf of the defendant  
5 or has offered real estate owned by the person and subject to a bail lien as bail on behalf  
6 of the defendant and the cash, other property or real estate has not been forfeited, the  
7 court, before ordering the cash or other property returned to the person or discharging the  
8 real estate bail lien, shall determine whether the cash, other property or real estate or any  
9 portion of the cash, other property or real estate is subject to setoff as authorized by this  
10 section. The court may order all or a portion of the bail owned by the person that has not  
11 been forfeited to be first paid and applied to one or more of the following:

12 A. Any fine, forfeiture, penalty or fee owed by the person arising out of any civil or  
13 criminal proceeding;

14 B. Any amount of restitution the person has been ordered to pay as part of any court  
15 proceeding;

16 C. Any amount of attorney's fees or other expense authorized by the court at the  
17 request of the person or the person's attorney and actually paid by the State on behalf  
18 of the person on the ground that the person has been found to be indigent in any  
19 proceeding; and

20 D. Any surcharge imposed by Title 4, section 1057.

21 The court shall apply any bail collected pursuant to this subsection first to restitution.

22 **4. Enforcement orders.** If the court determines that bail owned by a defendant or  
23 3rd party should be ordered set off as authorized by this section, the court may issue any  
24 appropriate orders considered necessary to enforce the setoff. The orders may include,  
25 but are not limited to:

26 A. A direction to the clerk of courts to pay cash bail directly to a specified person,  
27 organization or government;

28 B. An order directed to a public official or the defendant requiring that other  
29 property or real estate be sold and the proceeds paid to a specified person,  
30 organization or government; and

31 C. An order requiring the defendant to convey clear and marketable title or other  
32 evidence of ownership of interest in real estate or other property to a specified person,  
33 organization or government.

34 **SUMMARY**

35 This bill allows a court to set off a portion of the bail posted by a 3rd person on  
36 behalf of a defendant to pay any fine, fee or restitution that is owed by the 3rd person.