CHAPTER 502

ENFORCEMENT OF MONEY JUDGMENTS

§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. [PL 1987, c. 184, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §1 (NEW).

§3121. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following words shall have the following meanings: [PL 1971, c. 408, §1 (NEW).]

1. Earnings. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commissions, bonuses or otherwise, and includes periodic payments pursuant to a pension or retirement program.
[PL 1971, c. 408, §1 (NEW).]

2. Disposable earnings. "Disposable earnings" means that part of the earnings of any judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.
[PL 1971, c. 408, §1 (NEW).]

2-A. Individual. "Individual" means only a natural person.
[PL 1987, c. 184, §2 (NEW).]

3. Judgment creditor. "Judgment creditor" means any person, corporation, partnership or other entity who or which is the owner of any judgment unsatisfied in whole or in part, and the Department of Human Services when it is collecting child support.
[PL 1995, c. 419, §6 (AMD).]

4. Judgment debtor. "Judgment debtor" means any person, corporation, partnership or other entity against whom or which a judgment has been entered and that judgment is unsatisfied in whole or in part.
[PL 1971, c. 408, §1 (NEW).]

5. Person. "Person" means an individual, trust, estate, partnership, association, company, corporation, political subdivision or instrumentality of the State.
[PL 1987, c. 184, §2 (NEW).]

6. Sheriff. For the purposes of sections 3134 to 3136, "sheriff" means a sheriff, deputy sheriff, police officer, special police officer or constable.
[PL 1987, c. 184, §2 (NEW).]

Whenever a judgment creditor, judgment debtor or a 3rd party is a corporation or other legal entity and is required to perform any act under this chapter, such acts shall be performed by the officers, directors or managing agents of the 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 civil order of arrest under this chapter, the judgment creditor, judgment debtor or 3rd party may act by or through an attorney. [PL 1987, c. 184, §3 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §§2,3 (AMD). PL 1995, c. 419, §6 (AMD).

§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 and Title 19-A, section 2361, subsection 2, any proceeding under this chapter must 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 must be commenced in the division in which the judgment debtor resides. [PL 1995, c. 419, §7 (AMD).]

B. Except as provided in paragraph D, if the judgment debtor is a nonresident individual, the proceeding must be commenced in the division in which the debtor is commorant. [PL 1995, c. 419, §7 (AMD).]

C. Except as provided in paragraph D, if the judgment debtor is not an individual, the proceeding must 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 must 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. [PL 1995, c. 419, §7 (AMD).]

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, except that a consumer debt proceeding must be commenced, at the option of the creditor, in the division where the consumer transaction occurred or where the judgment debtor resides. Consumer debts are limited to debts arising from purchases that are primarily for personal, family or household purposes. [PL 1989, c. 655 (AMD).]

[PL 1995, c. 694, §17 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

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 [PL 1987, c. 184, §4 (NEW).]

B. The filing of a motion for contempt pursuant to section 3134, subsection 2. [PL 1987, c. 184, §4 (NEW).]

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.

[PL 1987, c. 184, §4 (NEW).]

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.

[PL 1987, c. 184, §4 (NEW).]

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.
[PL 1987, c. 184, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §4 (NEW). PL 1989, c. 655 (AMD). PL 1995, c. 419, §7 (AMD). PL 1995, c. 694, §D17 (AMD). PL 1995, c. 694, §E2 (AFF).

§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.
[PL 1987, c. 184, §5 (NEW).]

2. Witness subpoena. Any party may subpoena any witness to any hearing provided for in this chapter in the manner authorized by law.
[PL 1987, c. 184, §5 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 429 (AMD). PL 1973, c. 477, §§1,2 (AMD). PL 1981, c. 389, §1 (RPR). PL 1987, c. 184, §5 (RPR).

§3123. Service disclosure of subpoena

1. Service on individual.

[PL 1997, c. 21, §1 (RP).]

2. Service on nonindividual.

[PL 1997, c. 21, §1 (RP).]

3. Service of disclosure subpoena. Service of the disclosure subpoena on a judgment debtor must be made by delivering a copy of the subpoena to the judgment debtor by any method by which service of civil summons may be made at least 10 days prior to the disclosure hearing.
[PL 1997, c. 21, §2 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §3 (AMD). PL 1981, c. 389, §2 (AMD). PL 1987, c. 184, §6 (RPR). PL 1997, c. 21, §§1,2 (AMD).

§3124. Successive disclosures

A judgment creditor may subpoena the judgment debtor to disclose no more often than once every 6 months, except upon motion for good cause shown. [PL 1971, c. 408, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW).

§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.
[PL 1987, c. 184, §7 (NEW).]

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 3126-A 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 3126-A, subsection 4.
[PL 1999, c. 587, §1 (AMD).]

3. Continuances. A continuance of the disclosure hearing may be granted for good cause.
[PL 1987, c. 184, §7 (NEW).]

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.
[PL 1987, c. 184, §7 (NEW).]

5. Orders. In appropriate circumstances, the court may issue any combination of orders allowed by this chapter.
[PL 1987, c. 184, §7 (NEW).]

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.
[PL 1987, c. 184, §7 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §7 (RPR). PL 1987, c. 708, §7 (AMD). PL 1999, c. 587, §1 (AMD).

§3125-A. Debtor subject to loss or suspension of right to operate or register a motor vehicle

A judgment debtor subject to suspension or loss of the right to operate or register a motor vehicle under Title 29-A, section 2251, subsection 10 may request a disclosure hearing on the issue of how to satisfy the judgment. The court may enter an order for an installment payment agreement in the manner agreed upon by the parties or a modified order in accord with the factors set forth in section 3126-A, subsection 4. If the parties fail to reach an agreement for an order, the judgment debtor may ask the court for the entry of an installment payment agreement in consideration of those factors. [PL 1999, c. 587, §2 (AMD).]

SECTION HISTORY

PL 1991, c. 699, §1 (NEW). PL 1995, c. 65, §A37 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1999, c. 587, §2 (AMD).

§3126. Fees and costs

The disclosure subpoena, 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. [PL 1987, c. 184, §8 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1985, c. 506, §B11 (AMD). PL 1987, c. 184, §8 (AMD).

§3126-A. Installment payments

Following a disclosure hearing, the court shall determine the amount, if any, of the installment payments that the judgment debtor must make to the judgment creditor. [PL 1999, c. 587, §3 (NEW).]

1. Definition. For purposes of this section, "exempt income" means the debtor's right to receive:

A. A social security benefit, unemployment compensation or a local public assistance benefit; [PL 1999, c. 587, §3 (NEW).]

B. A veteran's benefit; [PL 1999, c. 587, §3 (NEW).]

C. A disability, illness or unemployment benefit; [PL 1999, c. 587, §3 (NEW).]

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor; and [PL 1999, c. 587, §3 (NEW).]

E. A payment or account under a stock bonus, pension, profit sharing, annuity, individual retirement account or similar plan to the extent described in section 4422, subsection 13, paragraph E. [PL 1999, c. 587, §3 (NEW).]

[PL 1999, c. 587, §3 (NEW).]

2. Installment payment order not permitted. The court may not order a judgment debtor to make installment payments if the judgment debtor is receiving or will receive money or earnings only from a source or sources exempt from attachment and execution under sections 4421 to 4426.
[PL 1999, c. 587, §3 (NEW).]

3. Maximum amount of earnings subject to installment payment order. In the case of a judgment debtor who is an individual, the maximum amount of earnings for any workweek that is subject to an installment order may not exceed the least of:

A. Twenty-five percent of the sum of the judgment debtor's disposable earnings and exempt income for that week; [PL 1999, c. 587, §3 (NEW).]

B. The amount by which the sum of disposable earnings and exempt income for that week exceeds 40 times the minimum hourly wage prescribed by 29 United States Code, Section 206(a)(1); or [PL 1999, c. 587, §3 (NEW).]

C. The total amount of disposable earnings. [PL 1999, c. 587, §3 (NEW).]

[PL 1999, c. 587, §3 (NEW).]

4. Factors to consider in determining amount of installment payment order. In determining the amount of installment payments, the court may take into consideration:

A. The reasonable requirements of the judgment debtor and the judgment debtor's dependents; [PL 1999, c. 587, §3 (NEW).]

B. Any payments the judgment debtor is required to make to satisfy other judgment orders or wage assignments; [PL 1999, c. 587, §3 (NEW).]

C. Other judgment orders or wage assignments that have priority; [PL 1999, c. 587, §3 (NEW).]

D. The amount due on the judgment; [PL 1999, c. 587, §3 (NEW).]

E. The amount of money or earnings being or to be received; and [PL 1999, c. 587, §3 (NEW).]

F. Any other factors the court considers material and relevant. [PL 1999, c. 587, §3 (NEW).]
[PL 1999, c. 587, §3 (NEW).]

5. Manner of making payments. The court may prescribe the time, place and manner in which payments are to be made.
[PL 1999, c. 587, §3 (NEW).]

6. Certain orders not subject to limitations. The limitations set forth in subsection 3 do not apply to:

A. An order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure if the administrative procedure is established by state law, affords substantial due process and is subject to judicial review; [PL 1999, c. 587, §3 (NEW).]

B. An order of any court of the United States having jurisdiction over cases under 11 United States Code, chapter 13; or [PL 1999, c. 587, §3 (NEW).]

C. A debt due for state or federal tax. [PL 1999, c. 587, §3 (NEW).]
[PL 1999, c. 587, §3 (NEW).]

7. Maximum earnings subject to garnishment. The maximum part of the aggregate disposable earnings of an individual for any workweek that is subject to garnishment to enforce an order for the support of any person may not exceed:

A. When the individual is supporting a spouse or dependent child, other than a spouse or child with respect to whose support such order is used, 50% of that individual's disposable earnings for that week; and [PL 1999, c. 587, §3 (NEW).]

B. When the individual is not supporting such a spouse or dependent child described in paragraph A, 60% of that individual's disposable earnings for that week. [PL 1999, c. 587, §3 (NEW).]

If the support order being enforced is made with respect to a period that is prior to the 12-week period that ends with the beginning of that workweek, the percentage of disposable earnings subject to the garnishment is 55% under paragraph A and 65% under paragraph B.
[PL 1999, c. 587, §3 (NEW).]

8. Order to Department of Labor. When it is shown upon ex parte motion and affidavit that the judgment debtor has failed to make 2 or more payments required by an installment payment order under this section, the court shall order the Department of Labor to provide the judgment creditor with the name and address of the current or most recent employer of the judgment debtor, if any, together with the date the employer last reported wage information concerning the judgment debtor. The affidavit must specify the manner of application of all payments made pursuant to the installment payment order. An order directed to the Department of Labor under this section may be served by the judgment creditor by ordinary mail, accompanied by a reasonable fee set by the Department of Labor calculated to cover the full labor, overhead and other costs of administering the order pursuant to state rules and federal regulations. The Department of Labor shall respond to the judgment creditor within 20 days after receipt of the court order.
[PL 2015, c. 275, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 587, §3 (NEW). PL 2015, c. 275, §1 (AMD).

§3127. Installment payments

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1983, c. 155, §1 (RPR). PL 1987, c. 184, §9 (AMD). PL 1999, c. 587, §4 (RP).

§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.
[PL 1987, c. 184, §10 (NEW).]

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 [PL 1987, c. 184, §10 (NEW).]

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. [PL 1987, c. 184, §10 (NEW).]
[PL 1987, c. 184, §10 (NEW).]

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.
[PL 1987, c. 184, §10 (NEW).]

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.
[PL 1987, c. 184, §10 (NEW).]

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.
[PL 1987, c. 184, §10 (NEW).]

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.
[PL 1987, c. 184, §10 (NEW).]

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.
[PL 1987, c. 184, §10 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §10 (NEW).

§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 3126-A 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 must state the amount owed on the judgment debt, interest and costs. If the court has previously determined an installment payment amount under section 3126-A, the order must state that amount. The order must 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 must 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 must be attached to the order when served on the employer or other payor of earnings.
[PL 1999, c. 587, §5 (AMD).]

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 3126-A 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; [PL 1987, c. 184, §11 (NEW).]

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 [PL 1987, c. 184, §11 (NEW).]

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. [PL 1987, c. 184, §11 (NEW).]
[PL 1999, c. 587, §5 (AMD).]

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 must 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 3126-A, 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.
[PL 1999, c. 587, §5 (AMD).]

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.
[PL 1987, c. 184, §11 (NEW).]

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.
[PL 1987, c. 184, §11 (NEW).]

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.
[PL 1987, c. 184, §11 (NEW).]

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.
[PL 1987, c. 184, §11 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §11 (NEW). PL 1999, c. 587, §5 (AMD).

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

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §12 (AMD). PL 1999, c. 587, §6 (RP).

§3128-A. Order to seek employment

1. Order; exceptions. If a child support obligor claims inability to pay in a disclosure proceeding under section 3125 or Title 19-A, section 2361, the court may order the obligor to seek employment or participate in work activities as defined by section 407(d) of the Social Security Act, and make progress reports on that activity to the court or the Department of Human Services unless:

A. The obligor proves by a preponderance of the evidence that the obligor is engaged in diligent, bona fide efforts to seek work; or [PL 1995, c. 419, §8 (NEW).]

B. The obligor proves by a preponderance of the evidence that the obligor does not have the ability to seek work. [PL 1995, c. 419, §8 (NEW).]
[PL 1997, c. 537, §8 (AMD); PL 1997, c. 537, §§9, 62 (AFF).]

2. Contents. The order must contain, but is not limited to, the following directives:

A. That the obligor seek employment within a specified amount of time; [PL 1995, c. 419, §8 (NEW).]

B. That the obligor file weekly with the court or the Department of Human Services, as applicable, a report on any new employment of the obligor or at least 5 new attempts by the obligor to find employment; [PL 1995, c. 419, §8 (NEW).]

C. That the obligor include in the report filed pursuant to paragraph B the name, address and telephone number of the new employer or the names, addresses and telephone numbers of the employers with whom the obligor attempted to seek employment and the names of the individuals the obligor contacted to inquire about or apply for employment; and [PL 1995, c. 419, §8 (NEW).]

D. That failure to comply with the order is evidence, absent good cause, of willful nonpayment of child support for which the obligor may be held in contempt. [PL 1995, c. 419, §8 (NEW).]

[PL 1995, c. 419, §8 (NEW).]

3. Duration. The order continues in effect for one year.

[PL 2015, c. 186, §1 (AMD).]

4. Subsequent orders. The court may issue any order or combination of orders under this chapter to enforce an order under this section.

[PL 1995, c. 419, §8 (NEW).]

5. Report. If an obligor is ordered to report to the Department of Human Services pursuant to subsection 2, the Department of Human Services shall monitor compliance with the order and may petition the court to enforce the order.

[PL 1995, c. 419, §8 (NEW).]

6. Failure to report. Failure to report or otherwise comply with an order under this section, absent good cause, is evidence of willful nonpayment of child support for which the obligor may be held in contempt under section 3136.

[PL 1995, c. 419, §8 (NEW).]

7. Representation of the Department of Human Services; training. The Commissioner of Human Services may designate employees of the department who are not attorneys to represent the department in District Court in a proceeding filed under this section. The Commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

[PL 1995, c. 419, §8 (NEW).]

8. Rulemaking. The Department of Human Services shall adopt rules to implement its responsibilities under this section.

[PL 1995, c. 419, §8 (NEW).]

9. Repeal.

[PL 1997, c. 537, §10 (RP); PL 1997, c. 537, §62 (AFF).]

SECTION HISTORY

PL 1995, c. 419, §8 (NEW). PL 1995, c. 694, §D18 (AMD). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 537, §§8,10 (AMD). PL 1997, c. 537, §§9,62 (AFF). PL 2011, c. 34, §1 (AMD). PL 2015, c. 186, §1 (AMD).

§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 any party so require. [PL 1987, c. 184, §13 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §4 (AMD). PL 1987, c. 184, §13 (AMD).

§3130. Provisional installment payment order

Pending the sale of any property under section 3131, the court may issue an installment payment order as provided in section 3126-A. Upon the completion of the sale, the judgment creditor must file with the court an affidavit including the items required in an affidavit under section 3126-A and which in addition must state the total amount of installment payments received since such installment payment order was entered, the balance due to the judgment creditor and the number of installments required to retire the balance remaining on such judgment, if any, which number must equal the balance due divided by the dollar amount provided for each installment in such installment payment order. [PL 1999, c. 587, §7 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §5 (RPR). PL 1999, c. 587, §7 (AMD).

§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.
[PL 1987, c. 184, §14 (NEW).]

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; [PL 1987, c. 184, §14 (NEW).]

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 [PL 1987, c. 184, §14 (NEW).]

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. [PL 1987, c. 184, §14 (NEW).]
[PL 1987, c. 184, §14 (NEW).]

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. The judgment creditor shall provide notice of sale to the judgment debtor. In the case of a turnover order, the notice must 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 must be provided within 30 days after the entry of the turnover order. In the case of a sale, the notice must 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 9-1611, and must 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 is liable to the 3rd parties for any loss caused by the failure.
[PL 1999, c. 699, Pt. D, §10 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

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. [PL 1987, c. 184, §14 (NEW).]

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. [PL 1987, c. 184, §14 (NEW).]
[PL 1987, c. 184, §14 (NEW).]

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 9-1610. The sale has the effect accorded dispositions under Title 11, section 9-1617, whether the property is real or personal.
[PL 1999, c. 699, Pt. D, §10 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

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 creditor 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.
[PL 1987, c. 708, §8 (AMD).]

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.
[PL 1987, c. 184, §14 (NEW).]

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.
[PL 1987, c. 184, §14 (NEW).]

9. Lien. An order entered pursuant to this section constitutes 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 extends 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 9-1315, subsection (1). The lien must be for the full amount of the unpaid judgment, interest and costs, and becomes perfected as to 3rd parties on the earlier of:

A. The time the judgment creditor or purchaser takes possession of the property; [PL 1987, c. 184, §14 (NEW).]

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; [PL 1987, c. 184, §14 (NEW).]

C. If the property is personalty of a type a security interest in which may be perfected by filing pursuant to Title 11, the time when an attested copy of the turnover or sale order is filed in the office of the Secretary of State; [PL 1999, c. 699, Pt. D, §11 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

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-A, section 665, subsection 1; or [PL 1995, c. 65, Pt. A, §38 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

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 prejudgment 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. [PL 1987, c. 184, §14 (NEW).]

[RR 1999, c. 2, §14 (COR); RR 1999, c. 2, §15 (AFF).]

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

[PL 1987, c. 184, §14 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §6 (RPR). PL 1983, c. 125, §1 (AMD). PL 1987, c. 184, §14 (RPR). PL 1987, c. 708, §8 (AMD). PL 1995, c. 65, §A38 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). RR 1999, c. 2, §14 (COR). RR 1999, c. 2, §15 (AFF). PL 1999, c. 699, §§D10,11 (AMD). PL 1999, c. 699, §D30 (AFF).

§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-A or 9-A, 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 is perfected as to 3rd parties as of the time the judgment creditor takes possession of the property or the document evidencing the property. [PL 1999, c. 699, Pt. D, §12 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

Any lien ordered under this section extends 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 9-1315, subsection (1). 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. [PL 1999, c. 699, Pt. D, §12 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1983, c. 125, §2 (AMD). PL 1987, c. 184, §15 (RPR). PL 1999, c. 699, §D12 (AMD). PL 1999, c. 699, §D30 (AFF).

§3133. Judgment creditor's remedies

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §16 (RP).

§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 or with an order to appear and disclose under Title 19-A, section 2361, 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 written request of the creditor stating that the creditor knows of no infirmity, disability or good cause preventing the appearance of the debtor. The request must contain the address and telephone number where the creditor or the creditor's representative can be reached and the address of the debtor. [PL 1995, c. 694, Pt. D, §19 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

2. Alternative methods. Instead of requesting a civil order of arrest pursuant to subsection 1:

A. The judgment creditor may request the court to issue an order for appearance, and the court shall order the debtor to appear in court at a certain date and time for further disclosure proceedings. This order must be served upon the debtor in hand by the sheriff, who shall obtain from the debtor a personal recognizance bond to appear in court at the specified date and time; or [PL 2013, c. 150, §1 (NEW).]

B. The creditor may proceed by way of a motion for contempt for failure to appear. This motion must 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 appearance pursuant to paragraph A. [PL 2013, c. 150, §1 (NEW).]

[PL 2015, c. 275, §2 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §17 (RPR). PL 1987, c. 708, §9 (AMD). PL 1995, c. 419, §9 (AMD). PL 1995, c. 694, §D19 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2013, c. 150, §1 (AMD). PL 2015, c. 275, §2 (AMD).

§3135. Civil order of arrest

A civil order of arrest issued under section 3134, subsection 1, or section 3136, must direct the sheriff to arrest the individual named in the order and bring the individual to a hearing any day the court is in session. In the case of a nonindividual debtor, the civil order of arrest must be issued 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. [PL 1997, c. 17, §1 (AMD).]

After a civil order of arrest has been issued, the sheriff shall cause the debtor named in the order to be arrested and shall deliver the debtor without undue delay to the division of the District Court designated in the civil order of arrest or obtain from the debtor a personal recognizance bond to appear in court at the specified date and time. The sheriff may take such steps determined necessary for the sheriff's safety or the safety of others then present, including searching the debtor for weapons, if the sheriff 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. [PL 2011, c. 177, §1 (AMD).]

After the judgment debtor is brought to the court, the clerk shall promptly notify the judgment creditor or the judgment creditor's attorney of record in person or by telephone that the presence of one of them 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 the judgment creditor's 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 the debtor's personal recognizance for appearance on a date certain. [PL 2011, c. 177, §1 (AMD).]

If the debtor fails to appear at the time and place specified in a notice of disclosure hearing in a small claims action or in a disclosure subpoena or contempt subpoena issued pursuant to section 3134, subsection 2 or in a personal recognizance bond obtained by the sheriff, clerk or court, and upon request of the judgment creditor, the court shall order the Department of Labor to provide the judgment creditor with the name and address of the current or most recent employer of the debtor, if any, together with the date the employer last reported wage information concerning the debtor and issue an additional civil order of arrest pursuant to section 3134 directing the sheriff to cause the debtor named in the order to be arrested and delivered to the District Court without obtaining from the debtor a personal recognizance bond. [PL 2015, c. 275, §3 (AMD).]

An order directed to the Department of Labor under this section may be served by the judgment creditor by ordinary mail, accompanied by a reasonable fee set by the Department of Labor calculated to cover the full labor, overhead and other costs of administering the order pursuant to state rules and federal regulations. The Department of Labor shall respond to the judgment creditor within 20 days after receipt of the court order. [PL 2015, c. 275, §4 (AMD).]

A debtor admitted to personal recognizance bond under this section or section 3134 shall date and sign the bond and provide the following information: date of birth, hair color, eye color, height, weight, gender, race, telephone number, name of employer, address of employer and days and hours of employment. [PL 2015, c. 275, §5 (AMD).]

A debtor who fails to appear for a disclosure or contempt hearing after being released upon the debtor's personal recognizance commits a Class E crime. [PL 2011, c. 177, §1 (NEW).]

Unless the judgment debtor shows good cause for failure to appear after being duly served with a disclosure subpoena under section 3123, a contempt subpoena under section 3136 or an order to appear and disclose under Title 19-A, section 2361, the debtor must 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 are $25 plus mileage at a rate of 42¢ per mile. The fee payable to sheriffs and their deputies for civil orders for arrest is governed by Title 30-A, section 421, subsection 6. [PL 2009, c. 205, §2 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §7 (AMD). PL 1987, c. 184, §18 (RPR). PL 1987, c. 708, §10 (AMD). PL 1991, c. 498, §1 (AMD). PL 1995, c. 419, §10 (AMD). PL 1995, c. 694, §D20 (AMD). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 17, §§1,2 (AMD). PL 2009, c. 205, §§1, 2 (AMD). PL 2011, c. 177, §1 (AMD). PL 2013, c. 150, §§2, 3 (AMD). PL 2015, c. 275, §§3-7 (AMD).

§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.
[PL 1987, c. 184, §19 (NEW).]

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.
[PL 1987, c. 184, §19 (NEW).]

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.
[PL 1987, c. 184, §19 (NEW).]

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 any day the court is in session. In the case of a nonindividual, the civil order of arrest must be issued for the arrest of any officer, director or managing agent who was served with the contempt subpoena.
[PL 1997, c. 17, §3 (AMD).]

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 must be adjudged in civil contempt. The court has the power to impose such reasonable fine or imprisonment as the circumstances require, provided that the person is given an opportunity to purge that person of the contempt. Whenever the person personally purges that person 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 3126-A, 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.
[PL 1999, c. 587, §8 (AMD).]

Nothing contained in this section may limit in any way the court's power to enter a finding of criminal contempt in appropriate circumstances. [PL 1987, c. 184, §19 (RPR).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §8 (AMD). PL 1973, c. 788, §59 (AMD). PL 1987, c. 184, §19 (RPR). PL 1997, c. 17, §3 (AMD). PL 1999, c. 587, §8 (AMD).

§3137. Orders to employers or payors of earnings

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §9 (AMD). PL 1981, c. 389, §3 (AMD). PL 1987, c. 184, §20 (RP).

§3138. Enforcement of administrative orders

An administrative order of any agency or department requiring the payment of money to that agency or department is enforceable through the Superior Court under the following procedure. A certified copy of the administrative order must be filed with the court in the county in which the administrative order was issued. The administrative order must be accompanied by an affidavit from an authorized representative of the agency or department or from an assistant attorney general acting as counsel for the agency. The affidavit must state the facts showing that the agency or department provided notice of and opportunity for a hearing to contest the claim, that all applicable time periods for appeal have run and that the administrative order is final. [PL 2011, c. 181, §1 (NEW).]

The court shall then render a pro forma decision in accordance with the administrative order of the agency, which has the same effect as if it were rendered in an action in which equitable relief is sought, duly heard and determined by the court. The decision may thereafter be enforced as a money judgment pursuant to this chapter and chapter 502-A. [PL 2011, c. 181, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 181, §1 (NEW).

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