

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 306

H. P. 236

House of Representatives, January 22, 1969

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Hawkens of Farmington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Revising the Uniform Reciprocal Enforcement of Support Act.

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

Sec. 1. R. S., T. 19, § 332, amended. Section 332 of Title 19 of the Revised Statutes is amended to read as follows:

§ 332. Definitions

As used in this subchapter unless the context requires otherwise:

1. **Court.** "Court" means the Superior Court or the District Court of this State and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

2. **Duty of support.** "Duty of support" ~~includes any~~ means a duty of support ~~whether~~ imposed or imposable by law, or by ~~any court~~ order, decree or judgment of any court, whether interlocutory or final, or whether incidental to ~~a proceeding~~ an action for divorce, judicial or legal separation, separate maintenance or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

2-A. **Governor.** "Governor" includes any person performing the functions of Governor or the executive authority of any state covered by this Act.

3. **Initiating state; initiating court.** "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

4. **Law.** "Law" includes both common and statute law.

5. **Obligee.** "Obligee" means ~~any~~ a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owned is a recipient of public assistance.

6. **Obligor.** "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

6-A. **Prosecuting attorney.** "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

6-B. **Register.** "Register" means to file in the registry of foreign support orders.

6-C. **Registering court.** "Registering court" means any court of this State in which a support order of a rendering state is registered.

6-D. **Rendering state.** "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

7. **Responding state; responding court.** "Responding state" means any state in which any responsive proceeding pursuant to the proceeding in the initiating state is ~~or may be~~ commenced. "Responding court" means the court in which the responsive proceeding is commenced.

8. **State.** "State" includes any state, territory or possession of the United States ~~and~~, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted is in effect.

9. **Support order.** "Support order" means any judgment, decree or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

Sec. 2. R. S., T. 19, § 361, amended. Section 361 of Title 19 of the Revised Statutes is amended to read as follows:

§ 361. Interstate rendition

The Governor of this State may demand ~~from~~ of the governor of ~~any other~~ another state the surrender of ~~any~~ a person found in such other state who is charged **criminally** in this State ~~with the crime~~ of failing to provide for the support of any person in this State ~~and~~; or may surrender on demand by the governor of any other state ~~any~~ a person found in this State who is charged **criminally** in such other state with the ~~crime of~~ failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand ~~although~~ **even if** the person whose surrender is demanded was not in the demanding

state at the time of the commission of the crime and ~~although he had~~ ^{has} not fled therefrom. ~~Neither the~~ ^{The} demand, the oath ~~nor~~ ^{and} any proceedings for extradition pursuant to this section need ~~not~~ ^{not} state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding ~~or other~~ state.

Sec. 3. R. S., T. 19, § 362, repealed and replaced. Section 362 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 362. Conditions of interstate rendition

Before making the demand upon the governor of another state for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

If, under a substantially similar Act, the governor of another state makes a demand upon the Governor of this State for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated, or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

Sec. 4. R. S., T. 19, § 392, amended. Section 392 of Title 19 of the Revised Statutes is amended to read as follows:

§ 392. Remedies of State or political subdivision furnishing support

~~Whenever~~ If the State or a political subdivision thereof furnishes support to an individual obligee, it has the same right to ~~invoke the provisions of this subchapter~~ ^{initiate a proceeding under this Act} as the individual obligee to whom the support was furnished for the purpose of securing reimbursement ~~of expenditures so made for support furnished~~ and of obtaining continuing support.

Sec. 5. R. S., T. 19, § 393, amended. Section 393 of Title 19 of the Revised Statutes is amended to read as follows:

§ 393. How duties of support enforced

All duties of support, including the duty to pay arrearages, are enforceable by ~~petition~~ ^{proceeding} irrespective of relationship between obligor and obligee ~~a proceeding under this Act including the proceeding for civil contempt.~~ ^{The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.} Jurisdiction of all

proceedings hereunder shall be vested in the Superior Court or the District Court. All proceedings may be commenced and acted upon by the Superior Court in vacation before a single justice as well as in term time or by the District Court.

~~Residence of the obligee shall determine the jurisdiction of the court even though the petitioner may have been a party to a divorce granted in another jurisdiction in which support was allowed.~~

Sec. 6. R. S., T. 19, § 394, amended. Section 394 of Title 19 of the Revised Statutes is amended to read as follows:

§ 394. Contents and filing of petition for support; venue

The petition shall be verified and shall state the name and, so far as known to the ~~petitioner~~ obligee, the address and circumstances of the ~~respondent~~ obligor and ~~his dependents~~ the persons for whom support is sought, and all other pertinent information. The ~~petitioner~~ obligee may include in or attach to the petition any information which may help in locating or identifying the ~~respondent~~ obligor including ~~but without limitation by enumeration,~~ a photograph of the ~~respondent~~ obligor, a description of any distinguishing marks ~~of~~ on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints ~~or~~ and his social security number.

The residence of the obligee shall determine the jurisdiction of the court. The court shall not decline or refuse to accept or forward the petition on the ground that it should be filed in some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

Sec. 7. R. S., T. 19, § 395, repealed and replaced. Section 395 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 395. Officials to represent obligee

If this State is acting as an initiating state, the county attorney upon the request of the court shall represent the obligee in any proceedings under this Act. If the county attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation. In any proceeding involving public aid a representative of the Attorney General may represent the obligee.

Sec. 8. R. S., T. 19, § 397, amended. Section 397 of Title 19 of the Revised Statutes is amended to read as follows:

§ 397. Duty of court of this State as initiating state

If the court of this State acting as an initiating state finds that the petition sets forth facts from which it may be determined that the ~~respondent~~ obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the ~~respondent~~ obligor or his property, it shall so certify and cause 3 copies of the ~~complaint,~~ petition and its certificate and one copy of this

~~subchapter Act to be transmitted sent to the responding court in the responding state. If the name and address of such the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause such copies to be transmitted sent to the state information agency or other proper official of the responding state, with a request that ~~it~~ the agency forward them to the proper court and that the court of the responding state acknowledge their receipt to the court of the initiating state.~~

Sec. 9. R. S., T. 19, §§ 398 to 402, repealed and replaced. Sections 398, 399, 400, 401 and 402 of Title 19 of the Revised Statutes are repealed and the following enacted in place thereof:

§ 398. Costs and fees

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding state, including fees for filing of pleadings, service or process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, to be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

§ 399. Jurisdiction by arrest

If the court of this State believes that the obligor may flee it may, as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or, as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in the amount set by the court to assure his appearance at the hearing.

§ 400. State information agency

1. Department of Health and Welfare. The Department of Health and Welfare is designated as the state information agency under this Act. It shall:

A. Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the state information agency of every other state which has adopted this or a substantially similar Act. Upon the adjournment of the Legislature the agency shall distribute copies of any amendments to the Act and a statement of their effective date to all other state information agencies;

B. Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

C. Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the Act it receives from courts or information agencies of other states.

2. Reference. If the state information agency does not know the location of the obligor or his property in the State, it shall refer same to the state location service in the Department of Health and Welfare.

3. Information to Attorney General. After the deposit of 3 copies of the petition and certificate and one copy of the Act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the county attorney is not prosecuting the case diligently it shall inform the Attorney General who may undertake the representation.

§ 401. Duty of the court and officials of this State as responding state

After the responding court receives copies of the petition, certificate and Act from the initiating court the clerk of the court shall docket the case and notify the county attorney of his action.

The county attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the clerk of the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

If the county attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

§ 402. Further duties of court and officials in the responding state

The county attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise, the court cannot obtain jurisdiction, the county attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

If the obligor or his property is not found in the county, and the county attorney discovers that the obligor or his property may be found in another county of this State or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

If the county attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

Sec. 10. R. S., T. 19, §§ 402-A, 402-B and 402-C, additional. Title 19 of the Revised Statutes is amended by adding 3 new sections, 402-A, 402-B and 402-C, to read as follows:

§ 402-A. Hearing and continuance

If the obligee is not present at the hearing and the obligor denies the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit

evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

§ 402-B. Immunity from criminal prosecution

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in his testimony.

§ 402-C. Rules of evidence

In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the Superior or District Court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty to support, subject only to any defenses available to an obligor with respect to paternity under section 411 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

Sec. 11. R. S., T. 19, § 403, amended. Section 403 of Title 19 of the Revised Statutes is amended to read as follows:

§ 403. Order of support

If the court of the responding state finds a duty of support, it may order the ~~respondent~~ obligor to furnish support or reimbursement therefor and subject the property of the ~~respondent~~ obligor to such order. Support orders made pursuant to this Act shall require that payments be made to the clerk of the court of the responding state. The court and county attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the county attorney shall send a certified copy of the order to the county attorney of any county in which it appears that proceedings would be effective. The county attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

Sec. 12. R. S., T. 19, § 404, repealed and replaced. Section 404 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 404. Responding court to transmit copies to initiating court

The responding court shall cause a copy of all support orders to be sent to the initiating court.

Sec. 13. R. S., T. 19, §§ 405, 406 and 407, amended. Sections 405, 406 and 407 of Title 19 of the Revised Statutes are amended to read as follows:

§ 405. Additional powers of responding court

In addition to the foregoing powers, ~~the court of this State when acting as the a responding state has the power to~~ court may subject the ~~respondent obligor~~ to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

1. **Recognizance.** To require the ~~respondent obligor~~ to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the ~~respondent obligor~~.

2. **Payments.** To require the ~~respondent obligor~~ to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.

3. **Violations.** ~~To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court or an execution may issue as in actions of tort. To punish under the power of contempt the obligor who violates any order of the court, or to issue executions as in actions of debt. When the respondent obligor is committed to jail for contempt or on execution issued, as provided, the county having jurisdiction of the process shall bear the expense of his support and commitment and he may be discharged in the same manner as provided by section 722.~~

§ 406. Additional duties of court in this State when acting as responding state

The court of this State when acting as a responding state shall have the following duties which may be carried out through the clerk of the court:

1. **Transmit payments.** Upon the receipt of a payment made by the ~~respondent obligor~~ pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

2. **Certified statement of payments.** Upon request to furnish to the court of the initiating state a certified statement of all payments made by the ~~respondent obligor~~.

§ 407. Additional duty of court of this State when acting as initiating state

The court of this State, when acting as an initiating state, shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the ~~respondent obligor~~ or transmitted by the court of the responding state.

Sec. 14. R. S., T. 19, § 409, repealed and replaced. Section 409 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 409. Application of payments

A support order made by a court in this State pursuant to this Act does not nullify and is not nullified by a support order made by a court in this State pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar Act or any other law, regardless

of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

Sec. 15. R. S., T. 19, §§ 411, 412 and 413, additional. Title 19 of the Revised Statutes is amended by adding 3 new sections, 411, 412 and 413, to read as follows :

§ 411. Paternity

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

§ 412. Interstate application

This Act applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the county attorney of their receipt. The county attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for the State as a responding state.

§ 413. Appeals

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

Sec. 16. R. S., T. 19, c. 7, sub-c. II, article 4, additional. Subchapter II of chapter 7 of Title 19 of the Revised Statutes is amended by adding a new article 4, to read as follows :

Article 4. Registration of Foreign Support Orders

§ 414. Additional remedies

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

§ 415. Registration

The obligee may register the foreign support order in a court in this State in the manner, with the effect and for the purposes provided in this subchapter.

§ 416. Registry of foreign support orders

The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

§ 417. Official to represent obligee

If this State is acting either as a rendering or a registering state, the county attorney upon the request of the court shall represent the obligee in proceedings under this subchapter.

If the county attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

§ 418. Registration procedure; notice

An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court 3 certified copies of the order with all modifications thereof, one copy of the reciprocal enforcement of support act of the state in which the order was made, and a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this Act.

Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall docket the case and notify the county attorney of his action. The county attorney shall proceed diligently to enforce the order.

§ 419. Effect of registration; enforcement procedure

Upon registration the registered support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an

action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

§ 420. Uniformity of interpretation

This Act shall be construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

§ 421. Short title

This Act shall be cited as the Revised Uniform Reciprocal Enforcement of Support Act.