

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
107TH LEGISLATURE

(Filing No. H-701)

COMMITTEE AMENDMENT " A " to H.P. 1468, L.D. 1793, Bill,
"AN ACT to Establish an Alternative Method of Support
Enforcement."

Amend said Bill by striking out everything after the
enacting clause and inserting in place thereof the following:

'Sec. 1. 19 MRSA §303-A is enacted to read:

'§303-A. Scale of suggested support payments

The Department of Health and Welfare shall by rule create
a scale of suggested support payments to assist courts and others
in determining the amount a parent should contribute toward the
support of a child under this chapter. The scale shall consider
gross income, shall designate other resources to be considered,
and shall specify hardship circumstances which would reduce
required payments.

No court, officer, political subdivision or agency of the
state shall be required to use the scale.

Sec. 2. 19 MRSA §448-A is enacted to read:

§448-A. Duty of Department of Health and Welfare to enforce
support obligation

Upon application, the Department of Health and Welfare may
for a fee locate absent parents, enforce support obligations, and
determine paternity on behalf of persons who are not recipients of
public assistance, by actions under any appropriate statute. The
department and the applicant shall sign an agreement in duplicate
describing the fee.

The department shall by rule establish a schedule of fees for enforcement of support obligations. On a showing of necessity, the department may defer or waive any fee.

The department shall retain all fees and apply them toward administration of the location, paternity and support enforcement programs.

Sec. 3. 19 MRSA c. 7, sub-c. V is enacted to read:

SUBCHAPTER V

ALTERNATIVE METHOD OF SUPPORT ENFORCEMENT

ARTICLE 1. GENERAL PROVISIONS

§491. Purpose

With this subchapter the Legislature intends to provide additional remedies for the enforcement of support for dependent children by establishing an alternative method directed to the real and personal property of the responsible parents. These remedies are in addition to, not in lieu of, existing law.

§ 492. Limit on Use

No support obligation or debt incurred before October 1, 1975 shall be enforced by the methods of this subchapter.

§ 493. Definitions

The following words, terms and phrases, when used in this subchapter, shall have the meanings ————— except where the context clearly indicates a different meaning.

1. "Commissioner" means the Commissioner of Health and Welfare, a designee or an authorized representative.
2. "Court order of support" means any judgment or order for the support of dependent children issued by any court of the State of Maine or another state, including an order in a final decree of divorce.
3. "Department" means the \longleftrightarrow Department of Health and Welfare.
4. "Dependent child" means any minor child who is not emancipated.
5. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.
6. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, and all gain derived from capital, from labor or from both combined, including profit gained through sale or conversion of capital assets, but does not include payments by any department or division of the State or Federal government based upon inability to work or obtain employment.
7. "Person" means an individual, trust, estate, partnership, association, company, corporation, political subdivision of the State or instrumentality of the State.

8. "Public assistance" means money payments and medical care furnished to or on behalf of dependent children by the state. It does not include assistance furnished by a political subdivision.

9. "Responsible parent" means the natural or adoptive parent of a dependent child.

§ 494. Service

Service of any notice or lien described in this subchapter may be by certified mail, return receipt requested, by service in hand as specified in civil actions or by publication as specified in civil actions.

1. Date of service. Service shall be completed when the certified mail is received or refused, or when specified in civil actions for service in hand or by publication.

2. Branch banks. Service on any bank or other financial institution maintaining branch offices shall only be effective as to the accounts, credits or other personal property of the responsible parent in the particular branch on which service is made.

ARTICLE 2. SUPPORT DEBT

§ 495. ~~Payment of Public Assistance Creates Debt to Department~~

A payment of public assistance for the benefit of a dependent child creates a debt due the department by any responsible parent in the amount of the public assistance paid.

§ 496. Limitation of Debt

A debt shall not be incurred under section 495 by any responsible parent while that parent receives public assistance for the benefit of any of his or her natural or adopted children. A debt previously incurred under section 495 shall not be collected from any responsible parent while that parent receives public assistance for the benefit of any of his or her natural or adopted children.

When a court order of support has been issued, the debt shall be limited to the amount of the court order.

When a periodic support payment has been established under section 498, the debt shall be limited to the amount stated in the decision.

§ 497. Right of Support Enforcement

If no court order of support exists, the department shall have the right provided in ^{section} 448 to enforce the duty of support.

§ 498. Determination of Amount of Support Debt in Absence of Court Order

If no court order of support exists, the department may, by hearing and other procedures set forth below, establish a periodic payment to satisfy the responsible parent's support obligation under ^{sections} 442 and 443, establish the debt accrued under ^{section} 495, and establish a periodic payment to satisfy that debt.

1. Notice of Hearing. The department shall serve on the responsible parent a notice of hearing not less than (twenty) days before the date of the hearing.

2. Contents of Notice. The notice shall contain:

- A. Debt. A statement of the debt accrued or accruing under section 495 and periodic support payments in the future;
- B. Public Assistance. A statement of the periodic public assistance;
- C. Name of Recipient. A statement of the name of the recipient of the public assistance and the names of the dependent children;
- D. Hearing. A statement of a time and place where the responsible parent may appear for a hearing to show that the debt is not due, or should be modified, and a statement of rights at the hearing;
- E. Non appearance. A statement that if the responsible parent fails to appear, the stated accrued debt and periodic support payments in the future shall be assessed and enforced by collection action.
- F. Collection Actions. A statement that the property of the responsible parent may be subject to lien and foreclosure, administrative seizure and disposition, order to withhold and deliver or other collection actions.

3. Action Upon Failure to Appear. If the responsible parent fails to appear at the hearing on the date specified by the notice

of debt, the hearing officer shall enter a decision pursuant to subsection 4/^{paragraph B}. Within (fifteen) days of the decision, the responsible parent may petition the department to vacate the decision if the responsible parent can show any grounds which would permit relief from judgment in a civil action.

4. Hearing.

← A. Procedure. The hearing shall be conducted according to rules promulgated by the commissioner. The rules shall provide at least the right to confront and cross-examine witnesses, to present witnesses, to be represented by an attorney or other person and to be notified of these rights in writing. The decision shall be limited to evidence presented at the hearing.

← B. Decision. Within (twenty) days of the hearing, the responsible parent shall be served with the decision. The decision shall include a statement of responsibility of the alleged responsible parent, and a statement of the periodic support payment, the amount of debt accrued and the periodic payment against the accrued debt.

← C. Criteria of Decision. The person conducting the hearing shall consider, when deciding on the amount of periodic payment, at least the following criteria:

← (1) The need of the child;

- (2) The income, real property and personal property of the responsible parent;
- (3) The ability of the responsible parent to borrow;
- (4) The ability of the responsible parent to earn;
- (5) The amount of support debt accrued and accruing;
- (6) The need of the responsible parent; and
- (7) The responsibility of the responsible parent for other dependents; but in any case the child for whom support is sought must benefit as much as any other dependent from the income and resources of the responsible parent.

5. Initiation of Collection. The decision of the department the hearing shall establish the debt of the responsible parent. The department may collect the debt after service of the decision in the hearing.

6. Subsequent Court Order. A subsequent court order of support shall supersede the decision to the extent the court order of support differs from the decision.

§ 499. Right of Support Enforcement When Court Order Exists

If a court order of support exists, the department shall be subrogated to the right of any dependent child or person having the custody of the child named in the court order to pursue any support action or any administrative remedy to secure payment of the debt accrued or accruing under section 495 ←—————→ and to enforce the court order. The department shall not be required to seek an amendment to the court order of support in order to subrogate itself to the rights of the payee.

§ 500. Notice of Support Debt when Court Order Exists

When the department is subrogated to a court order of support under section 499, ~~the commissioner~~ ^a may issue to the responsible parent/notice of debt accrued or accruing under section 495.

Notice of debt.

1. The notice of debt shall include:

- A. Debt accrued. A statement of the debt accrued or accruing under section 495;
- B. Terms of court order. A statement of the terms of the court order including the names of the dependent children;
- C. Collection actions. A statement that any property of the debtor is subject to lien and foreclosure, administrative seizure and disposition, order to withhold and deliver or other collection actions;
- D. Payment demanded. A demand for payment of the support debt within 20 days of service of the notice of debt; and
- E. Net proceeds of any action. A statement that the net proceeds of any collection action will be applied to the satisfaction of the support debt.

Commencement of action.

2. Actions to collect any debt accrued or accruing under section 493 ~~may~~ commence after 20 days from the date of service of the notice of debt described in this section.

3. If the commissioner finds that the collection of any support debt accrued or accruing under section 495 is in jeopardy, the commissioner may make demand under subsection 1
← for immediate payment of the support debt, and upon failure or refusal immediately to pay, the commissioner may file and serve liens pursuant to section 503. No
action under sections 504, 506 and 507, may be taken until the notice requirements of subsection 1
are met.

§501. Interest of debt due

Interest of (six percent) per year on any support debt due or owing to the department under section 493 ← → may be collected by the commissioner.

ARTICLE 3. COLLECTION OF SUPPORT DEBT

§ 502. Exemptions

The following exemptions shall apply.

Property otherwise exempt.

1. / Except as provided in subsection 2, ← → any property otherwise exempt from trustee process, attachment and execution shall be exempt from an order to withhold and deliver, administrative seizure and disposition, and lien and foreclosure under this subchapter.

weekly earnings,

2. / Weekly earnings of the responsible parent shall be exempt from an order to withhold and deliver up to:

A. Thirty times the state minimum hourly wage; and

B. A minimum amount for each natural or adopted child of the responsible parent dependent on the responsible parent and not included in a court order of support or a decision under section 498. The commissioner shall by rule establish the amount.

§ 503. Assertion of liens

Twenty-one days after service of the notice of debt under section 500 or upon service of the decision under section 498, the amount stated in the notice of debt or in the decision shall be a lien in favor of the department against all property of the responsible parent. This lien shall be separate and apart from and in addition to any other lien created by, or provided for in, this Title.

1. Filing. The lien shall attach to all real and personal property of the responsible parent when the notice of debt or the decision is filed, in the county in which such property is located, with the registry of deeds and with the office appropriate for a notice with respect to personal property.

2. Effect. Whenever the lien has been filed and there is in the possession of any person having notice of the lien any property which may be subject to the lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed unless:

A. A release or waiver signed by the commissioner has been delivered to the person in possession;

- B. A determination has been made in a hearing pursuant to section 515 → ; or
- C. A court has ordered the release of the lien.

§ 504. Order to withhold and deliver

The commissioner shall proceed as follows with respect to any order to withhold and deliver.

1. Service of order. The commissioner may serve on any person an order to withhold and deliver any property, including wages, which is due or belongs to the responsible parent when:

- A. A lien has been filed pursuant to section 503; or
- B. Twenty-one days have elapsed from the date of service of the notice of debt under section 500 or a decision has been served under → section 498.

2. Service on responsible parent. The order shall also be served on the responsible parent.

3. Order; contents. The order to withhold and deliver shall state the amount of the support debt accrued and accruing and the terms of sections 503 and 509 ← → and shall demand a listing of property, including wages, which is due or belongs to the responsible parent.

4. Answer. Any person served with an order to withhold and deliver shall answer the order within 20 days of service of the order.

5. Withhold and deliver. Any person served with an order to withhold and deliver shall withhold immediately any property, including wages, due to or belonging to the responsible parent. After 20 days from the date of service of this order and upon demand of the commissioner, the property of the responsible parent shall be delivered forthwith to the commissioner.

6. Delivery of money. If the money is due under an express or implied contract, or if money is held subject to withdrawal by the responsible parent, the money shall be delivered by check payable to the Treasurer of the State.

7. Bond as alternative. Instead of the property of the responsible parent, the commissioner may accept a bond conditioned upon final determination of liability.

8. Effect of honoring order. Any person who honors an order to withhold and deliver shall be discharged from any liability or obligation to the responsible parent for such property.

← The department warrants that it will defend and hold harmless any such persons for honoring the order.

9. Term of order. The order to withhold and deliver shall remain in effect, requiring withholding of each successive earnings disbursement, until the amount of debt stated in the order has been withheld.

§ 505. Release of excess withheld

If any person has, subject to an order to withhold and deliver,

earnings, deposits, accounts or balances in excess of the amount of the debt claimed by the department plus (one hundred dollars), that person may, without liability under this subchapter, release the excess to the responsible parent.

§ 506. Administrative seizure and disposition of property

The commissioner shall proceed as follows with respect to administrative seizure and disposition of property.

1. Seizure and surrender. Whenever a lien has been filed pursuant to section 503, the commissioner may collect the debt stated in the lien by seizing, if this can be done without breach of the peace, or demanding surrender of, any property subject to the lien and disposing of it.

2. Disposition; notice. The commissioner, as soon as practicable after seizure, shall notify the responsible parent and any person claiming an interest in the property about the seizure and proposed disposition.

3. Disposition; optional methods. Either of the following methods may be used in the disposition of any property under this section:

- A. The property seized may be disposed of in any commercially reasonable manner; or
- B. The seized property may be turned over to the recipient of assistance for the express benefit of the dependent child involved, if the commissioner and the responsible parent agree on the value of the property.

4. Bill of ~~Sale~~ or ~~Deed~~. The commissioner may issue a bill of sale or deed to the purchaser. The bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of the proceedings and shall transfer to the purchaser all right, title and interest of the responsible parent in the property.

§ 507. Foreclosure on liens

The commissioner shall proceed as follows with respect to foreclosures on filed liens.

1. Liens on real property. Actions to foreclose liens on real property filed under section 503 < > may be brought in the county where the lien is filed pursuant to the procedures of Title 10, chapter 603.

2. Liens on personal property. Actions to foreclose liens on personal property filed under section 503 may be brought in the county where the lien is filed pursuant to the procedures of Title 10, chapter 631.

§ 508. Release of ~~Lien~~ or ~~Order~~ to ~~Withhold~~

The commissioner may release a support lien or order to withhold and deliver on all or part of the property of the responsible parent or return seized property without liability, if the commissioner deems adequate an assurance of payment or if the collection of the debt will be facilitated. The release or return shall not

operate to prevent further action to collect from same or other property.

§ 509. Failure to ~~Com~~ply with ~~Order~~ or ~~Lien~~

Any person who fails to honor an order to withhold and deliver, or fails to surrender property under section 506,
or fails to honor an assignment of wages presented
by the commissioner shall be liable to the department in an
amount equal to the debt which is the basis of the lien, order
to withhold and deliver, demand for surrender or assignment of
wages, together with costs, interest and reasonable attorney fees.

§ 510. Employee ~~Protected~~

No employer may discharge an employee because a support lien
or order to withhold and deliver has been served against the
employee's earnings.

§ 511. Assignment of ~~Earnings~~

Any person employing a person owing a support debt shall
honor a duly executed assignment of earnings presented by the
commissioner. This requirement to honor the assignment of earnings
and the assignment of earnings itself shall be applicable whether
the earnings are to be paid presently or in the future and shall
continue in force until released in writing by the commissioner.
Payment pursuant to an assignment of earnings presented by the
commissioner shall serve as full acquittance under any contract

of employment, and the State warrants it shall defend and hold harmless any person who honors the assignment of earnings. The commissioner shall not be liable for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

No employee shall be discharged by reason of a presentation of an assignment of earnings.

§ 512. Assignment of ~~Right of Support Enforcement~~

The receipt of public assistance for a child shall constitute an assignment by the recipient to the department of all rights to support for the child including any support unpaid at the time of assignment as long as public assistance is paid.

The recipient shall also be deemed to have appointed the commissioner as his or her attorney in fact to perform the specific act of endorsing over to the department any and all drafts, checks, money orders or other negotiable instruments for support of the child.

ARTICLE 4. PROCEEDS

§513. Distribution of Proceeds

Any money realized by the department by proceedings under this subchapter shall reduce the debt of a responsible parent under section 495 and shall be paid to the recipient of assistance for the express benefit of the dependent children to the extent permissible by federal law and regulations.

§ 514. Unidentified Funds

All fees, costs, attorney fees, interest payments and funds received by the commissioner, unidentifiable as to the support account against which they should be credited, shall be held in an administrative expense account from which the commissioner may make disbursement for any expenses incurred in the administration
← of this subchapter.

ARTICLE 5. REVIEW

§ 515. Administrative Review

The responsible parent or the department may move for a review of any action under this subchapter by serving a request for review, together with an affidavit stating the grounds upon which the request is based, upon the other party. The department may review any action under this subchapter, except the decision under ^{section} 498, ^{subsection 4.}

1. Notice of Hearing. If the responsible parent moves, within seven days of receipt of the request for review, the department shall serve upon the responsible parent a notice of hearing setting a hearing date not less than fifteen nor more than thirty days from the date of service of the request for review.

← If the department moves, the department shall serve with the request for review a notice of hearing setting a date not less than fifteen nor more than thirty days from the date of service of the notice.

2. Hearing,

- A. Procedure. The hearing shall be conducted according to rules promulgated by the commissioner. The rules shall provide at least the right to confront and cross-examine witnesses, to present witnesses, to be represented by an attorney or other person, and to be notified of these rights in writing. The decision shall be limited to evidence presented at the hearing.
- B. Result. Within twenty days, the responsible parent shall be served with a notice of the results.

3. No Stay. A request for review shall not stay any department action.

§ 516. Judicial Review

Any person who is aggrieved by any final action of the commissioner under this subchapter may file an action under Rule 80B of the Maine Rules of Civil Procedure seeking review of that action. Administrative remedies shall be exhausted prior to such review.

Statement of Fact

A new federal law, P.L. 93-647, requires the states, if they wish to receive federal money, to create and implement new procedures for support enforcement. This bill meets the requirements of the new law, by establishing: that a recipient of public assistance must assign rights of support to the Department of Health and Welfare; that any payment of public assistance creates a debt due the department from responsible parent; and that the department must enforce support for persons who do not receive public assistance, upon payment of a fee.

This bill then makes the enforcement of support much simpler by permitting the department to use administrative remedies similar to those available to the Internal Revenue Service. The department may file liens on the property of the responsible parent and, by means of orders to withhold and deliver, administrative seizure and disposition or foreclosure, act to recover the support.

Reported by the Committee on Performance Audit.

Reproduced and distributed under the direction of the Clerk of the House.
6/10/75

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