

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1793

H. P. 1468

House of Representatives, April 8, 1975

On motion of Mrs. Berube of Lewiston, referred to the Committee on Performance Audit. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Berry of Madison.

Cosponsors: Mrs. Berube of Lewiston, Mr. Garsoe of Cumberland and Mr. Carey of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Establish an Alternative Method of Support Enforcement.

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

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

SUBCHAPTER V

ALTERNATIVE METHOD OF SUPPORT ENFORCEMENT

§ 491. Purpose

With this subchapter the Legislature intends to provide additional remedies for the enforcement of support for financially dependent children by establishing an alternative method directed to the real and personal property of the responsible parents.

§ 492. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Commissioner. "Commissioner" means the Commissioner of the Maine State Department of Health and Welfare, a designee or authorized representative.

2. Court order of support. "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 ordering payment of support, including an order in a final decree of divorce.

3. Department. "Department" means the Maine State Department of Health and Welfare.

4. Dependent child. "Dependent child" means any minor child who is not emancipated.

5. Disposable earnings. "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. "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 based upon inability to work or obtain employment.

7. Person. "Person" means an individual, trust, estate, partnership, association, company, corporation, political subdivision of the State or instrumentality of the State.

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

§ 493. Payment of public assistance creates debt to department

Any payment of public assistance for the benefit of any dependent child creates a debt due the department by any responsible parent in the amount of the public assistance paid. When a court order of support has been issued, the debt shall be limited to the amount of the court order.

A debt shall not be incurred by nor at any time collected from any person while that person is receiving public assistance for the benefit of dependent children, unless that person is a responsible parent for other children.

§ 494. Enforcement in the absence of a court order

The department shall have the right provided in section 448 to obtain reimbursement of any public assistance payments expended for the benefit of any dependent child.

§ 495. Notice of debt in absence of court order

If no court order of support exists, the commissioner may issue to the debtor the notice, described in this section, of debt accrued or accruing under section 493.

1. Notice. The notice of debt shall include:

A. Debt. A statement of the debt accrued or accruing under section 493;

B. Public assistance payment. A statement of the monthly public assistance payment;

C. Name of recipient. A statement of the name of the recipient and the names of the dependent children;

D. Demand for payment or answer. A statement that the debtor make immediate payment of the support due or that the debtor answer within 20 days of the service of the notice of debt to the commissioner stating defenses to liability incurred under section 493;

E. Failure to answer; actions. A statement that if no answer is made after 20 days from service of the notice of debt, the support debt shall be enforced by collection action;

F. Collection actions. A statement that the property of the debtor will be subject to lien and foreclosure, administrative seizure and disposition, order to withhold and deliver, or other collection actions;

G. Fair hearing. A statement that the debtor may request, in the answer to the notice, a fair hearing on liability.

2. Actions. If no answer is made within 20 days after service of the notice, as described in this section, of debt accrued or accruing under section 493, actions to collect any debt may be commenced.

3. Fair hearing. When the debtor, within 20 days of service of the notice of debt, makes answer to the commissioner alleging defenses to liability under section 493, the debtor may request a fair hearing on liability.

The decision of the department in the fair hearing shall establish the liability of the debtor for repayment of public assistance moneys expended. The commissioner may collect the support debt after the issue of the decision in the fair hearing.

4. Liens while fair hearing pending. If the commissioner finds that the collection of any support debt accrued or accruing under section 493 is in jeopardy while a fair hearing is pending, the commissioner may file and serve liens pursuant to section 499 while the fair hearing is pending, or thereafter, whether or not appealed. The commissioner in such cases shall make and file in the records of the fair hearing an affidavit stating the reasons for the findings.

If the debtor furnishes a good and sufficient bond satisfactory to the commissioner while the fair hearing is pending, or thereafter, any liens filed or served under this section shall be released.

5. Limitation. No further action may be taken on liens filed and served under subsection 4 until final determination after fair hearing and appeal.

If the decision of the fair hearing is in favor of the debtor, all liens filed or served under subsection 4 shall be released.

§ 496. 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 in order to secure payment of the debt accrued or accruing under section 493. The department shall not be required to seek an amendment to the court order of support in order to substitute itself for the payee.

§ 497. Notice of support debt with court order

When the department is subrogated to a court order of support under section 496, the commissioner may issue to the debtor the notice, described in this section, of debt accrued or accruing under section 493.

1. The notice of debt shall include:

A. Debt accrued. A statement of the debt under section 493;

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 demand. A demand for payment of the support debt within 20 days of service of the notice of debt;

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.

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 493 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, he may file and serve liens pursuant to section 499. No action under sections 500, 503 and 504 may be taken until the notice requirements of subsection 1 are met.

§ 498. 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. In the case of any bank or other financial institution maintaining branch offices, service shall only be effective as to the accounts, credits or other personal property of the debtor in the particular branch upon which service is made.

§ 499. Assertion of liens; effect

Twenty-one days after service of the notice of debt under section 497 or 21 days after service of the notice of debt under section 495, or as otherwise

appropriate under section 495, the amount stated in the notice of debt shall be a lien in favor of the department against all property of the debtor with priority of a secured creditor. 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 debtor when a copy of the notice of debt is filed with the registry of deeds and with the office appropriate for a notice with respect to personal property in the county in which such property is located.

2. **Effect.** Whenever the lien has been filed and there is in the possession of any person having notice of said 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; or

B. A determination has been made in a fair hearing pursuant to section 495, or by a court order ordering the release of the lien.

§ 500. Order to withhold and deliver

The commissioner shall proceed as follows with respect to any orders 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 debtor when:

A. A lien has been filed pursuant to section 499; or

B. Twenty-one days have elapsed from the date of service of the notice of debt under section 497 or 21 days have elapsed from the service of the notice of debt under section 495, or as otherwise appropriate under section 495.

The order shall also be served on the debtor.

2. **Order; contents.** The order to withhold and deliver shall state the amount of the support debt and the terms of sections 499 and 501 and shall demand a listing of property, including wages, which is due or belongs to the debtor.

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

4. **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 debtor. After 20 days from the date of service of this order and upon demand of the commissioner, the property of the debtor shall be delivered forthwith to the commissioner.

5. **Delivery of money.** If the money is due under an express or implied contract, or if money is held subject to withdrawal by the debtor, the money shall be delivered by check payable to the commissioner.

6. Bond as alternative. Instead of delivery of the property of the debtor, the commissioner may accept a bond, conditioned upon final determination of liability.

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

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

8. 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.

§ 501. Civil liability upon failure to comply with order or lien

Any person who fails to honor an order to withhold and deliver or, fails to surrender property under section 503, 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.

§ 502. Release of excess to debtor

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 \$100, that person may, without liability under this subchapter, release the excess to the debtor.

§ 503. 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 499, 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 debtor 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 in the manner provided in paragraph B;

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 debtor 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 proceeding, and shall transfer to the purchaser all right, title and interest of the debtor in the property.

§ 504. Foreclosures on filed 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 499 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 499 may be brought in the county where the lien is filed, pursuant to the procedures of Title 10, chapter 631.

§ 505. Debt payment schedule established by commissioner

The commissioner may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a schedule of payments to be paid upon the debt.

§ 506. Lien release; seized property returned; effect

The commissioner may release a support lien or order to withhold and deliver on all or part of the property of the debtor, 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.

§ 507. Interest of debts due

Interest of 6% per year on any support debt due or owing to the department under section 493 may be collected by the commissioner.

§ 508. Judicial relief

Any person who has an interest in property subject to a support lien or an order to withhold and deliver and who claims the lien or order fails to meet any of the requirements of this subchapter may appeal for relief in Superior Court of the county where the property is located. It is the intent of this subchapter that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies shall be exhausted prior to judicial review.

§ 509. Administrative expenses account

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 expenses account from which the commissioner may make disbursement for any expenses incurred in the administration of this subchapter.

§ 510. Employee debtor rights 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. This provision shall not apply if more than 3 support liens or orders to withhold and deliver are served upon the same employer within any consecutive 12 months.

§ 511. Assignment of earnings honored

Any person employing a person owing a support debt or obligation 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.

§ 512. Receipt of public assistance for a child as assignment of rights in support obligation

The acceptance of public assistance for support shall constitute an assignment by the recipient to the department of any and all right, title and interest in any support for the child up to the amount of public assistance money paid as long as the public assistance moneys are paid. The recipient shall also be deemed to have appointed the commissioner as his or her true and lawful 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 as reimbursement for the public assistance moneys previously paid to the recipient.

§ 513. Exemptions

The following exemptions shall apply:

1. Except as provided in subsection 2, any property otherwise exempt from trustee process, attachment and execution should be exempt from an order to withhold and deliver, administrative seizure and disposition, and lien and foreclosure under this subchapter;
2. The amount of earnings of a debtor subject to an order to withhold and deliver shall not exceed the amount by which his disposable earnings per week exceed 30 times the State minimum hourly wage.

§ 514. Distribution of proceeds

Any money realized by the department by proceedings under this subchapter shall be applied to the debtor's account or, at the discretion of the commissioner, shall be paid to the recipient of assistance for the express benefit of the dependent children.

STATEMENT OF FACT

This bill establishes that any payment of public assistance for the benefit of a dependent child creates a debt to the State. The State is then given the right to recover the amount of public assistance paid and is provided with procedures which are directed to the real and personal property of the debtor to implement the recovery. After notice and fair hearing, the State, acting through the Department of Health and Welfare, may file liens on the property of the debtor and, by means of orders to withhold and deliver, administrative seizure and disposition or foreclosure, act to recover the debt due the department.