

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

**Legislative Document**

**No. 1813**

S. P. 693

In Senate, January 16, 1980

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Najarian of Cumberland.

Cosponsors: Senator Chapman of Sagadahoc, Senator Perkins of Hancock and Senator Conley of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

**AN ACT to Amend Support and Enforcement of Support Laws in Divorce and Related Cases.**

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

**Sec. 1. 19 MRSA § 214, first ¶, 2nd sentence** is amended to read:

He may order the father **or mother** of the minor child or children to contribute to the support of such minor child or children such sums payable weekly, monthly or quarterly as are deemed reasonable and just and may enforce obedience by appropriate decrees, **under section 773**, execution issuing for said sums when payable and for costs, which decrees shall be in force until further order of the judge or justice.

**Sec. 2. 19 MRSA § 214** is amended by inserting after the first paragraph the following new paragraphs:

**When a custodial parent is receiving aid from the Department of Human Services, for the parties' children, and if the court determines that the noncustodial parent has health insurance available which may be paid for by his employer or labor organization or that the noncustodial parent is financially able to provide health insurance, the court shall require the noncustodial parent to obtain such coverage for his spouse and minor children.**

**When a custodial parent is not receiving aid from the Department of Human Services for the parties' children, the court may order either parent to provide health insurance for the minor.**

**Sec. 3. 19 MRSA § 301, first 3 sentences** are amended to read:

Whenever a ~~man~~ **married person**, having a ~~wife~~ **spouse**, a minor child or children, residing in this State and being of sufficient ability or being able to labor and provide for them, willfully and without reasonable cause, refuses or neglects to provide suitable maintenance for them, the Superior Court, the probate court and the District Court in the county where the ~~wife~~ **spouse** or such minor child or children reside, or in the county where the ~~husband or father~~ **person** may be found on petition of the ~~wife~~ **spouse** for ~~herself~~ **the spouse** and for such child or children, or of such child or children by their guardian or by the municipality that is providing suitable maintenance, after such notice to the ~~husband or father~~ **person** as it may order, and hearing, may order him to contribute to the support of his ~~wife~~ **spouse** and such minor child or children or either of them such sums payable weekly, monthly or quarterly as are deemed reasonable and just, and may enforce obedience by appropriate decrees, **under section 773**. Pending petition hereunder, the court may order the ~~husband~~ **person** to pay to the court for the ~~wife~~ **spouse** sufficient money for the prosecution thereof, upon default of which order execution may issue as in civil action. Execution may issue for said sums when payable, and for costs, and when the ~~husband~~ **person** is committed to jail on execution the county having jurisdiction of the process shall bear the expense of his support.

**Sec. 4. 19 MRSA § 405, sub-§ 3, last sentence**, as amended by PL 1971, c. 393, § 14, is further amended to read:

When the 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~~ **773**.

**Sec. 5. 19 MRSA § 693, first sentence**, as repealed and replaced by PL 1977, c. 439, § 3, is amended to read:

Pending a divorce action, the court may order either spouse to pay to the other spouse, or to the attorney for the other spouse, sufficient money for the defense or prosecution thereof; may make reasonable provision for either spouse's separate support, on a motion for which costs and counsel fees may be ordered; enter such decree, **under section 773**, for the care, custody and support of the minor children as the court deems proper; and in all cases enforce obedience by appropriate processes on which costs and counsel fees shall be taxed as in other actions.

**Sec. 6. 19 MRSA § 721, first ¶, last sentence**, as repealed and replaced by PL 1977, c. 564, § 86, is repealed and the following enacted in its place:

**The court may enforce obedience to any decree, by appropriate processes under section 773.**

**Sec. 7. 19 MRSA § 722, 4th sentence**, as repealed and replaced by PL 1973, c. 434, is amended to read:

At the time of making a final decree in any divorce action, the court may order that execution and such reasonable attorney's fee as the court shall order shall issue against any party to the action charged with the payment of support of minor children or payments of alimony or a specific sum in lieu thereof ~~upon default of any payment, the court shall enforce said payment by criminal contempt and order that the clerk of said court shall issue execution in sum due.~~

**Sec. 8. 19 MRSA § 722, last 5 sentences**, as repealed and replaced by PL 1973, c. 434 are repealed.

**Sec. 9. 19 MRSA § 752**, as last amended by PL 1979, c. 481, § 3, is further amended by adding at the end the following new paragraphs:

**When a custodial parent is receiving aid from the Department of Human Services for the parties' children and if the court determines that the noncustodial parent has health insurance available which may be paid for by his employer or labor organization, or that the noncustodial parent is financially able to provide health insurance, the court shall require the noncustodial parent to obtain such coverage for his minor children.**

**When a custodial parent is not receiving aid from the Department of Human Services for the parties' children, the court may order either parent to provide health insurance for the minor children.**

**Sec. 10. 19 MRSA c. 13, sub-c. II, Art. 5** is enacted to read:

## ARTICLE 5. DISCLOSURE

### § 761. Disclosure of assets, debts and liabilities

**1. Disclosure required.** In any action for child support, alimony, maintenance or a division of marital property, or in any action for modification of any resulting order, the court shall require each party to furnish, on such standard forms as the court may require, full disclosure of all assets owned in full or in part by either party separately or by the parties jointly. Such disclosure may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but shall not be limited to, real estate, savings accounts, stocks and bonds, mortgages and notes, life insurance, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested and any other financial interest or source. The court shall also require each party to furnish, on the same standard form, information pertaining to all debts and liabilities of the parties. The form used shall contain a statement in conspicuous print that complete disclosure of assets and debts is required by law and deliberate failure to provide complete disclosure constitutes perjury. The court may, on its own initiative, and shall, at the request of either party, require the parties to furnish copies of all state and federal income

tax returns filed by them for the past 2 years, and may require copies of such returns for prior years.

Any asset with a fair market value of \$500 or more which would be considered part of the assets of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties within one year prior to the filing of the petition or complaint or within the length of the marriage, whichever time is shorter, shall be rebuttably presumed to be part of the assets subject to disclosure. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where the assets are otherwise identified in the statement of net worth.

2. Notice of disclosure; filing date. The disclosure form shall be served with the complaint or motion. The completed form shall be filed with the court by each party within 60 days of service upon the respondent. Information contained on such forms shall be updated to the date of the hearing in all contested cases.

3. Confidentiality. Information disclosed under this section is confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action for child support, alimony, maintenance or a division of marital property.

4. Failure to file. When either party fails to timely file a complete disclosure statement as required by this section, the court may accept the statement of the other party as accurate.

5. Constructive trust. When any party deliberately or negligently fails to disclose information required by subsection 1 and as a result any asset or assets with a fair market value of \$500 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition the court granting the annulment, divorce or legal separation or modification thereto to declare the creation of a constructive trust as to all or part of the undisclosed assets, for the benefit of the parties and their minor or dependent children, if any. If it finds that a party has failed to disclose such assets, as required under subsection 1, the court shall grant the petition, and declare as constructive trustee the party in whose name the assets are held. The court may determine appropriate terms and conditions for the trust.

Sec. 11. 19 MRSA c. 13, sub-c. II, Art. 6 is enacted to read:

## ARTICLE 6. SUPPORT ORDERS

### § 771. Notice

All support orders shall include conspicuous notice informing the respondent that a willful failure to obey the order may, after court hearing, result in commitment to jail, for a term not to exceed 90 days, for contempt of court.

**§ 772. Wage assignment**

1. **Order.** Each order for child support, maintenance or alimony shall include an order directing the respondent to assign such salary due, or to be due in the future, from his employer or successor employers to the clerk of the court where judgment was granted, as will be sufficient to meet the maintenance payments, child support payments or alimony imposed by the court for the support of the spouse or minor children, or both. The wage assignment shall take effect upon application of the person receiving payments, who shall state in the application that the respondent has failed to make in full a payment as established by the court within 20 days of the date the payment was due, and when the requirement of subsection 2 has been satisfied, or, at the court's discretion, may take effect immediately.

2. **Notice; hearing.** The clerk of the court, upon application of the person receiving payments, shall send a notice by certified mail to the last known address of any respondent who has failed to make a required maintenance payment, child support payment or alimony payment within 20 days of its due date. The notice shall be postmarked not later than 10 days after the date on which the notice was sent. The respondent may, within that 10-day period, request a hearing on the issue of whether the wage assignment should take effect. Upon such a request the wage assignment shall be held in abeyance pending the outcome of the hearing. A hearing requested under this subsection shall be held within 10 working days after the date of the request. If, at the hearing, the respondent establishes that extraordinary circumstances prevented fulfillment of the maintenance payment, child support payment or alimony payment and that such circumstances are beyond the control of the respondent, the court may direct that the wage assignment be delayed until such time, within 12 months, as another month's payment is missed. If such a delay is granted, the wage assignment shall, upon application, go into effect if, during the following 12 months, the respondent fails to make in full any payment within 20 days of its due date.

An assignment made under this section shall be binding upon the employer and successor employers one week after service upon the employer of a certified copy of the order, by personal service or by registered or certified mail, until further order of the court. Compliance by an employer with the order operates as a discharge of the employer's liability to the employee as to that portion of the employee's wages so affected.

Each order which includes a wage assignment shall include an order that the respondent must notify the clerk of the court where the judgment was granted of any change of employer within 10 days of such change. Upon receipt of the notice the clerk shall notify the successor employer of that assignment.

3. **Wage deduction; restrictions.** For each payment, the employer shall receive \$1 which shall be deducted from the money to be paid the employee. The employer may not use such assignments as a basis for the discharge of an employee or for any disciplinary action against the employee. An employer who

discharges or disciplines an employee in violation of this subsection may be fined not more than \$200 and may be required to make full restitution to the aggrieved employee, including reinstatement and back pay.

**§ 773. Enforcement of support orders**

1. **Motions.** The motion served to initiate an enforcement proceeding shall include a conspicuous notice warning the respondent that failure to appear in court may result in immediate arrest, and that if the court finds that the respondent willfully disobeyed the support order and had the ability to pay, he may be committed to a jail term of up to 90 days for contempt of court.

2. **Hearing date.** Upon a motion brought to enforce child support, alimony or a specific sum in place of alimony, maintenance, a division of marital property or attorney's fees, the clerk shall schedule a hearing within 30 days from the date of filing of the motion.

3. **Scope of orders.** Upon a motion brought under this section, the court may make one or more of the following orders:

- A. Order immediate assignment of wages as outlined in section 772;
- B. Order an immediate lien on real estate and personal property;
- C. Order arrearages paid on a weekly or monthly basis or in one or more lump sums; or
- D. Order such other relief as is just.

4. **Default.** The court shall enforce its order for support through a criminal contempt procedure. Failure by respondent to make any payment due for alimony, for payment of money in place of alimony, for the support of minor children, for support pending the divorce action or for payment of counsel fees shall be deemed a criminal contempt if the respondent had the ability to make the payment at the time it was due. The court, upon finding a respondent in criminal contempt of its order shall impose the following sentences: For the first offense, up to 10-day commitment to the county jail; for the 2nd offense, up to 30-day commitment to the county jail; and for any subsequent offense, up to 90-day commitment to the county jail. When the respondent is committed to jail having been found in criminal contempt, the county having jurisdiction of the process shall bear the expense of his support and commitment. The court shall order the clerk of the court to issue execution in sum due. The respondent may petition the court issuing the execution for relief, whereupon a judge of the court, after due notice to the opposing party and hearing, may order his discharge from imprisonment on such terms and conditions as justice may require. Counsel fees awarded in the nature of support to the spouse may be made payable forthwith, or in weekly or monthly installments all as the judge may see fit.

Sec. 12. 22 MRSA § 3280, 3rd ¶, last sentence, as enacted by PL 1973, c. 790, § 3, is amended to read:

The State shall pay the expense of commitment and support when the defendant is committed to jail on execution and he may be discharged in the same manner as provided by Title 19, section 722 773.

#### STATEMENT OF FACT

The purpose of this bill is to amend the domestic relations laws that pertain to the court award of separate support, child support payments or alimony to allow easier collection of such payments. Providing for immediate collection of past due support payments will result in a cost savings to the State, as fewer custodial parents will be forced to seek Aid to Families with Dependent Children support.

This bill adds a number of sections under Title 19, chapter 13, subchapter II, Articles 5 and 6. It provides for a disclosure of assets by each party in any action for child support, alimony and maintenance or division of marital property. An order may, for good cause shown, include an assignment of wages by the employer to the respondent to meet the payments. When a motion is brought for enforcement of court ordered payments, the court may immediately assign wages, put a lien on real estate and personal property or order arrearages paid. Upon default of any payment, the court shall enforce the payment by criminal contempt and, finding the respondent in contempt, shall impose a jail sentence of up to 90 days.

Also, if the custodial parent is receiving aid from the Department of Human Services and the noncustodial parent is able to provide health insurance, the court may require him to obtain such coverage for the minor children.