

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION

2
3 ONE HUNDRED AND TENTH LEGISLATURE

4
5 **Legislative Document**

No. 1839

6
7
8 H. P. 1839 House of Representatives, January 14, 1982
9 Submitted by the Department of Human Services pursuant to Joint
Rule 24.

Referred to the Committee on Judiciary. Sent up for concurrence
and 1,600 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Ketover of Portland.

Cosponsor: Senator Bustin of Kennebec.

11
12 STATE OF MAINE

13
14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-TWO

16
17 **AN ACT to Amend the Child Support Laws to Conform**
18 **with Federal Statutes.**

19
20 Be it enacted by the People of the State of Maine as follows:

21 Sec. 1. 17-A MRSA §552, sub-§2-A is enacted to read:

22 2-A. Prosecution may be brought in any venue where
23 either the dependent or the defendant resides.

24 Sec. 2. 17-A MRSA §552, sub-§3-A is enacted to read:

25 3-A. Nonsupport of dependents is a Class D crime if
26 the actor has been twice before convicted of the same
27 offense.

1 **Sec. 3. 19 MRSA §448-A**, as enacted by PL 1975, c.532,
2 §2, is repealed and the following enacted in its place:

3 §448-A. Duty of Department of Human Services to enforce
4 support obligation

5 Upon application, the Department of Human Services may
6 for a fee locate absent parents, enforce support obligations
7 and determine paternity on behalf of persons who are not
8 recipients of public assistance, by actions under any appro-
9 priate statute. The department and the applicant shall sign
10 an agreement in duplicate describing the application fee.
11 On a showing of necessity, the department may defer or waive
12 that fee.

13 The department shall by rule establish a schedule of
14 fees for enforcement of support obligations. In enforcing
15 support obligations, the department shall impose such fees
16 against the obligor as are mandated by federal law and regu-
17 lations.

18 **Sec. 4. 19 MRSA §493, sub-§6**, as enacted by PL 1975,
19 c. 532, §3, is amended to read:

20 6. "Earnings" means compensation paid or payable for
21 personal services, whether denominated as wages, salary,
22 commission, bonus or otherwise, and specifically includes
23 periodic payments pursuant to pension or retirement pro-
24 grams, or insurance policies of any type, and all gain
25 derived from capital, from labor or from both combined,
26 including profit gained through sale or conversion of capi-
27 tal assets, but does not include and includes payments by
28 any department or division of the State or Federal Govern-
29 ment based upon inability to work or obtain employment.

30 **Sec. 5. 19 MRSA §495, sub-§1**, as enacted by PL 1979,
31 c. 309, §2, is repealed and the following enacted in its
32 place:

33 1. Public assistance. Debts due the department for
34 public assistance are as follows.

35 A. When no court order of support has been estab-
36 lished, a payment of public assistance for the benefit
37 of the dependent child creates a debt due the depart-
38 ment from the responsible parent in the amount of
39 public assistance paid.

1 B. Whenever a court order of support has been estab-
2 lished, the debt due the department from the responsi-
3 ble parent shall be the amount established under that
4 order.

5 (1) The debt shall not be limited by the amount
6 of public assistance paid for the benefit of the
7 dependent child.

8 (2) The issuance of a court order of support
9 shall not relieve the responsible parent of any
10 liability for a debt which previously had accrued
11 under paragraph A.

12 (3) Amounts collected by the department in excess
13 of public assistance expended shall be distributed
14 pursuant to section 513.

15 **Sec. 6. 19 MRSA §496, 2nd ¶, as enacted by PL 1975, c.**
16 **532, §3, is repealed as follows:**

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

19 **Sec. 7. 19 MRSA §502, sub-§1, as enacted by PL 1975,**
20 **c. 532, §3, is repealed and the following enacted in its**
21 **place:**

22 1. Exempt property. Only the following property shall
23 be exempt from an order to withhold and deliver, administra-
24 tive seizure and disposition, and lien and foreclosure under
25 this subchapter:

26 A. The responsible parent's aggregate interest, not to
27 exceed \$7,500 in value, in real or personal property
28 that the responsible parent uses as a residence, in a
29 cooperative that owns property that the responsible
30 parent uses as a residence or in a burial plot for the
31 responsible parent, provided that if the responsible
32 parent's interest is held jointly with any other person
33 or persons, the exemption shall not exceed in value the
34 lesser of \$7,500 or the product of the debtor's frac-
35 tional share times \$15,000;

36 B. The responsible parent's interest, not to exceed
37 \$1,200 in value, in one motor vehicle;

38 C. The responsible parent's interest, not to exceed
39 \$200 in value in any particular item, in household fur-

1 nishings, household goods, wearing apparel, appliances,
2 books, animals, crops or musical instruments, that are
3 held primarily for the personal, family or household
4 use of the responsible parent;

5 D. The responsible parent's aggregate interest, not to
6 exceed \$500 in value, in jewelry held primarily for the
7 personal, family or household use of the responsible
8 parent and the responsible parent's interest in a
9 wedding ring and an engagement ring;

10 E. The responsible parent's aggregate interest, not to
11 exceed \$1,000 in value, in any implements, professional
12 books or tools of the trade of the responsible parent
13 or the trade of a dependent of the responsible parent
14 including, but not limited to, power tools, materials
15 and stock designed and procured by him and necessary
16 for carrying on his trade or business and intended to
17 be used or wrought therein;

18 F. The responsible parent's interest in the following
19 items held primarily for the personal, family or house-
20 hold use of the responsible parent:

21 (1) One cooking stove;

22 (2) All furnaces or stoves used for heating; and

23 (3) All cooking and heating fuel not to exceed 10
24 cords of wood, 5 tons of coal, 1,000 gallons of
25 petroleum products or its equivalent;

26 G. The responsible parent's interest in the following
27 items held primarily for the personal, family or house-
28 hold use of the responsible parent:

29 (1) All food provisions, whether raised or pur-
30 chased, reasonably necessary for 6 months;

31 (2) All seeds, fertilizers, feed and other mate-
32 rials reasonably necessary to raise and harvest
33 food through one growing season; and

34 (3) All tools and equipment reasonably necessary
35 for raising and harvesting food;

36 H. The responsible parent's interest in one of every
37 type of farm implement reasonably necessary for the
38 responsible parent to raise and harvest agricultural

1 products commercially, including any personal property
2 incidental to its maintenance and operation;

3 I. The responsible parent's interest in one boat, not
4 exceeding 5 tons burden, used by the responsible parent
5 primarily for commercial fishing;

6 J. Professionally prescribed health aids for the
7 responsible parent or a dependent of the responsible
8 parent;

9 K. The responsible parent's right to receive the fol-
10 lowing:

11 (1) A social security benefit;

12 (2) A local public assistance benefit; and

13 (3) Child support to the extent reasonably neces-
14 sary for the support of a dependent of the respon-
15 sible parent; and

16 L. The responsible parent's right to receive:

17 (1) An award under a crime victim's reparation
18 law;

19 (2) A payment on account of the wrongful death of
20 the spouse of the responsible parent, to the
21 extent reasonably necessary for the support of any
22 dependent of the responsible parent and spouse or
23 dependent of the spouse;

24 (3) A payment under a life insurance contract
25 that insured the life of the spouse of the respon-
26 sible parent, to the extent reasonably necessary
27 for the support of any dependent of the responsi-
28 ble parent and spouse or dependent of the spouse;

29 (4) A payment on account of personal bodily
30 injury, of the responsible parent or his spouse,
31 to the extent reasonably necessary for the support
32 of the responsible parent or his spouse and of any
33 dependent of the responsible parent and spouse or
34 dependent of the spouse; and

35 (5) A payment in compensation of loss of future
36 earnings of the responsible parent or the respon-
37 sible parent's spouse to the extent reasonably

1 necessary for the support of the responsi-
2 ble parent or spouse and any dependent of the responsil
3 parent and spouse or dependent of the spouse.

4 Sec. 8. 19 MRSA §502, sub-§§ 1-A and 1-B are enacted
5 to read:

6 1-A. Exempt property acquired within 90 days. If,
7 within 90 days of an order to withhold or deliver, lien and
8 foreclosure or an administrative seizure and disposition,
9 the responsible parent transfers his nonexempt property and
10 as a result acquires, improves or increases in value prop-
11 erty otherwise exempt under subsection 1, his interest in
12 that property shall not be exempt.

13 1-B. Interest in excess of exemption. If the respon-
14 sible parent's interest in any property exempt under subsec-
15 tion 1 exceeds the exempt amount, the whole of the property
16 may be sold.

17 A. The proceeds of a sale under this subsection shall
18 be distributed in the following order:

19 (1) To the responsible parent in the amount of
20 his exempt interest;

21 (2) To the Department of Human Services, to the
22 extent of its claim; and

23 (3) To the responsible parent, the balance of the
24 proceeds.

25 B. With respect to a residence in which the responsi-
26 ble parent has an exempt interest, the responsible
27 parent may designate as exempt from sale under this
28 subsection any part of the residence having a value not
29 in excess of the amount of his exemption.

30 Sec. 9. 19 MRSA §504, sub-§2, as enacted by PL 1975,
31 c. 532, §3, is repealed and the following enacted in its
32 place:

33 2. Notice to the responsible parent. The order shall
34 also be mailed to the responsible parent.

35 Sec. 10. 19 MRSA §515, sub-§1, first sentence, as
36 amended by PL 1975, c. 623, §19-A, is repealed and the fol-
37 lowing enacted in its place:

1 If the responsible parent moves, within 7 days of receipt of
2 the request for review, the department shall send the
3 responsible parent a notice of hearing setting a hearing
4 date not less than 15 nor more than 30 days from the date of
5 service of the request for review.

6

Statement of Fact

7 The purpose of this bill is to clarify certain aspects
8 of child support enforcement as well as to conform other
9 statutes to recent federal legislation.

10 Section 1 of the bill would allow criminal nonsupport
11 cases to be tried in one of 2 venues. Although this provi-
12 sion is present in one criminal nonsupport statute, Title
13 19, section 481, it is not present in the Maine Criminal
14 Code. Having a choice of venues is essential, to avoid
15 unnecessary travel on behalf of witnesses.

16 Section 2 would allow for increased severity in sen-
17 tencing for criminal nonsupport, if the person has been
18 previously convicted twice for the same offense. The experi-
19 ence of the Department of Human Services indicates that
20 some absent parents will not support their dependents,
21 despite 2 previous convictions.

22 Section 3 is amended to implement new federal legis-
23 lation which imposes a "surcharge" upon an obligor for his
24 previous failure to have paid support.

25 Section 4 modifies the definition of "earnings" to con-
26 form with the recently enacted federal legislation, Public
27 Law 97-35, Section 2335.

28 Sections 5 and 6 clarify the law and the Department of
29 Human Services' policy concerning the collection of past due
30 child support obligations, when public assistance is
31 expended. The current language is ambiguous and has
32 resulted in court challenges to the department's practices.
33 This bill will remove all doubt, as well as insuring compli-
34 ance with the federal regulations.

35 Sections 7 and 8 are massive rewrites of Title 19,
36 section 502, subsection 1, necessitated by the enactment of
37 Public Law 1981, chapter 431. Chapter 431, deals with ex-
38 emptions applicable in bankruptcy cases, as well as other
39 civil litigation. Without this bill, it would not be fea-

1 sible, or practical, for the department to lien or garnish
2 any other items, other than wages.

3 Sections 9 and 10 allow the Department of Human Ser-
4 vices to mail certain items by regular mail, rather than
5 registered mail, or certified mail, return receipt
6 requested. In addition, section 10 conforms the depart-
7 ment's procedures to those under the Maine Administrative
8 Procedure Act, Title 5, chapter 375, thus paralleling the
9 current practices of the clerks of court in the State.