

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1321

H.P. 953

House of Representatives, April 24, 1989

Submitted by the Department of Human Services pursuant to Joint Rule 24.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative FOSTER of Ellsworth.

Cosponsored by Senator BRAUN of Knox, Senator BRANNIGAN of Cumberland
and Representative BOUTILIER of Lewiston.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

**An Act to Facilitate the Establishment and Enforcement of Child
Support and Health Insurance Obligations and to Clarify the Law
Concerning the Modification of Child Support Orders.**



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

3 **Sec. 1. 19 MRSA §214, sub-§9**, as repealed and replaced by PL
5 place:

7 9. Support order. The court order may include a
9 requirement for the payment of part or all of the medical
11 expenses, hospital expenses and other health care expenses of the
13 child. The court order shall include a provision requiring the
15 obligated parent to obtain and maintain health insurance coverage
17 for medical, hospitalization and dental expenses, if health
19 insurance is available to the obligated parent at reasonable
21 cost. The court order shall also require the obligated parent to
23 furnish proof of coverage to the obligee within 15 days of
receipt of a copy of the court order. For the purposes of this
section, health insurance shall be considered reasonable in cost
if it is employment-related or other group health insurance. If
health insurance is not available at reasonable cost at the time
of the hearing, the court order shall establish such an
obligation on the part of the obligated parent effective
immediately upon insurance being available at reasonable cost.

25 **Sec. 2. 19 MRSA §214, sub-§11**, as amended by PL 1987, c. 179,
§1, is further amended to read:

27 **11. Modification or termination.** Any order for parental
29 rights and responsibilities with respect to a minor child may be
31 modified or terminated as circumstances require upon the petition
33 of one or both of the parents. Child support orders may be
35 modified retroactively, but only from the date that notice of a
petition for modification has been served, either directly or
through the appropriate agent, to the opposing party. The
parties shall be referred to mediation as under subsection 4.

37 The relocation, or intended relocation, of a child resident in
39 this State to another state by a parent, when the other parent is
41 a resident in this State and there exists an award of shared or
allocated parental rights and responsibilities concerning the
child, is a substantial change in circumstances.

43 **Sec. 3. 19 MRSA §214-A** is enacted to read:

45 §214-A. Effect and implementation of health insurance
obligations; failure of obligated parent to comply

47 1. Failure to obtain insurance. If an obligated parent
49 fails to acquire health insurance coverage established under
section 214, subsection 9, that parent shall be liable for any
51 expenses incurred for that parent's dependent children that would
have been paid by insurance coverage, regardless of who has
incurred such expenses. Incurred liability may be enforced as a

1 child support debt under chapter 7, subchapter V, as well as by
2 judicial action.

3
4 2. Direct payment; parental authorization. Upon receipt
5 of a written authorization from an obligated parent to an insurer
6 to make health insurance payments for that parent's dependent
7 children to the obligee, the insurer shall make all payments
8 directly to the obligee until the authorization is withdrawn.
9 Upon receipt of such authorization from the obligated parent, the
10 obligee shall be deemed subrogated to the rights of the obligated
11 parent under the insurance policy for the children.

12
13 3. Direct payment; court order. Upon receipt of a copy of
14 the court order establishing the obligation of an obligated
15 parent to provide health insurance coverage for that parent's
16 dependent children, and of a demand in writing for the health
17 insurance coverage from the obligee, the insurer shall make all
18 health insurance payments for the children directly to the
19 obligee until otherwise notified by the obligee. In all such
20 cases, the obligee shall be deemed subrogated to the rights of
21 the obligated parent under the insurance policy for the children.

22 **Sec. 4. 19 MRSA §498**, as amended by PL 1985, c. 652, §26, is
23 further amended to read:

24
25 **§498. Determination of current support obligation, support debt**
26 **and health insurance and medical expense obligation in**
27 **absence of court order**

28
29 ~~If no court order of support exists, the department may, by~~
30 ~~hearing and other procedures set forth below, establish a~~
31 ~~periodic payment to satisfy the responsible parent's support~~
32 ~~obligation under sections 442 and 443, establish the debt accrued~~
33 ~~under section 495, establish a periodic payment to satisfy that~~
34 ~~debt and establish the responsible parent's obligation to~~
35 ~~maintain medical insurance coverage and to provide payment for~~
36 ~~other medical expenses incurred on behalf of his dependent~~
37 ~~children.~~

38
39 If no court order of support exists, the department, by
40 hearing, on its own behalf or on behalf of another state or
41 another state's instrumentality, may establish a periodic payment
42 to satisfy the responsible parent's current support obligation
43 under sections 442 and 443, establish the responsible parent's
44 debt accrued under section 495, and establish the responsible
45 parent's obligation to maintain health insurance coverage for any
46 dependent children and to provide payment for other medical
47 expenses incurred on behalf of the dependent children by the
48 department or by another state or another state's
49 instrumentality, by the other parent or any other person with
50 whom the children reside. The department acting on behalf of
51 another state or another state's instrumentality or a person

1 residing in another state shall constitute good cause within the
3 meaning of Title 5, section 9057.

5 1. Notice of hearing. The department shall serve on the
7 responsible parent a notice of hearing not less than 20 days
9 before the date of the hearing.

11 2. Contents of notice. In addition to conforming with the
13 requirements of the Maine Administrative Procedure Act, Title 5,
15 section 9052, subsection 4, the notice shall contain:

17 A. A statement of the debt accrued or accruing under
19 section 495;

21 B. A statement of the periodic public assistance;

23 C. A statement of the name of the recipient of the public
25 assistance and the names of dependent children;

27 D. A statement of rights at the hearing;

29 E. A statement that if the responsible parent fails to
31 appear, the stated accrued debt, periodic support payments
33 in the future, medical insurance coverage and payment of
35 noncovered medical expenses shall be assessed and enforced
37 by collection action;

39 F. A statement that the property of the responsible parent
41 may be subject to lien and foreclosure, administrative
43 seizure and disposition, order to withhold and deliver or
45 other collection actions and that any debt determined to be
47 owed by the responsible parent may be reported to a consumer
49 reporting agency;

51 G. A statement that the ~~responsible parent may be liable
for medical insurance coverage for his dependents, if the
hearing officer determines that such coverage is available
to the responsible parent through an employer or other group
affiliation at reasonable cost or if current coverage could
be extended to include the dependent children~~ department
will seek to establish a health insurance obligation on the
part of the responsible parent; that the hearing officer
will establish such an obligation effective immediately if
it is determined that health insurance is available to the
responsible parent at reasonable cost; that health insurance
is considered reasonable in cost if it is employment-related
or other group health insurance; and that if it is
determined that health insurance is not available at
reasonable cost at the time of the hearing, the hearing
officer will establish such an obligation on the part of the
responsible parent to be effective immediately upon
insurance being available at reasonable cost; and

1
2 H. A statement that the failure of the responsible parent
3 to maintain any required medical insurance coverage may
4 result in the responsible parent's liability for all medical
5 expenditures made by the department on behalf of the
6 dependent children.
7

8
9 3. Action upon failure to appear. If the responsible parent
10 fails to appear at the hearing on the date specified by the
11 notice of debt, the hearing officer shall enter a decision
12 pursuant to subsection 4, paragraph B. Within 30 days of service
13 of the decision, the responsible parent may petition the
14 department to vacate the decision if the responsible parent can
15 show any grounds which would permit relief from judgment in a
16 civil action.

17 **4. Hearing.**

18
19 A. The hearing shall be conducted according to rules
20 promulgated by the commissioner. The rules shall provide at
21 least the right to confront and cross-examine witnesses, to
22 present witnesses, to be represented by an attorney or other
23 person and to be notified of these rights in writing. The
24 decision shall be limited to evidence presented at the
25 hearing.

26
27 B. The decision shall include a statement of the
28 responsibility of the alleged responsible parent, a
29 statement of the periodic support payment constituting the
30 current support obligation, the amount of public assistance
31 debt accrued, the periodic payment against the accrued debt
32 and the liability of the responsible parent to maintain
33 medical insurance coverage and to provide payment for other
34 medical expenses and the obligation of the responsible
35 parent to maintain health insurance coverage for any
36 dependent children and to provide payment for other medical
37 expenses and shall require the responsible parent to provide
38 written proof to the department of the existence of the
39 required health insurance coverage within 15 days of that
40 parent's receipt of the decision. A copy of the decision
41 shall be served upon the responsible parent. Written notice
42 of the responsible parent's right to review or appeal of the
43 decision within the department or review of the decision by
44 the courts, as the case may be, and of the action required
45 and the time within which the action shall be taken in order
46 to exercise the right of review or appeal shall be given to
47 the responsible parent with the decision. The department
48 shall provide written notice to the responsible parent with
49 its decision of that parent's right to administrative review
50 of the decision within the department or review of the
51 decision by the courts and of the action required and the
time within which the action shall be taken to exercise the

1 right of administrative or judicial review. A review of the
2 decision within the department, except pursuant to
3 subsection 3, shall-be is limited to a review of the record
4 generated by the original hearing.

5
6 C. The person conducting the hearing shall consider, when
7 deciding on the amount of periodic payment and the
8 availability of medical insurance coverage, at least the
9 following criteria:

- 11 (1) The need of the child;
- 13 (2) The income, real property and personal property of
14 the responsible parent;
- 15 (3) The ability of the responsible parent to borrow;
- 17 (4) The ability of the responsible parent to earn;
- 19 (5) The amount of support debt accrued and accruing;
- 21 (6) The need of the responsible parent;
- 23 (7) The responsibility of the responsible parent for
24 other dependents; but in any case the child for whom
25 support is sought must benefit as much as any other
26 dependent from the income and resources of the
27 responsible parent;
- 29 (8) The responsibility of the responsible parent for
30 creating ~~his-own~~ an unstable financial condition by
31 voluntarily incurring subsequent obligations. This
32 condition shall not relieve ~~him~~ the parent of ~~his~~ the
33 duty to provide support;
- 35 (9) The availability of employer-based medical
36 insurance coverage at a reasonable cost to the
37 responsible parent; and
- 39 (10) The availability of current medical coverage to
40 the responsible parent which could be extended to
41 include the dependent child.

43
44 5. **Initiation of collection.** The decision of the department
45 in the hearing shall establish the debt of the responsible
46 parent. The department may collect the debt after service of the
47 decision in the hearing.

49 6. **Subsequent court order.** An administrative decision under
50 this section shall remain in effect until superseded by a
51 subsequent court order, or subsequent administrative hearing.

1 7. Enforcement under section 448-A. An administrative
2 decision under this section shall be treated as a support
3 obligation for purposes of enforcement under section 448-A.

5 Sec. 5. 19 MRSA §498-A, as enacted by PL 1985, c. 652, §27,
6 is repealed and the following enacted in its place:

7
8 §498-A. Determination of current support obligation and health
9 insurance and medical expense obligation in absence of
10 court order

11
12 If no court order of support exists, the department by
13 hearing on behalf of any individual or governmental applicant for
14 services under section 448-A, or on behalf of any person entitled
15 by federal statute to support enforcement services as a former
16 recipient of public assistance, may establish a periodic payment
17 to satisfy the responsible parent's current support obligation
18 under sections 442 and 443, and establish the responsible
19 parent's obligation to maintain health insurance coverage for any
20 dependent children and to provide payment for other medical
21 expenses incurred on behalf of the dependent children by the
22 other parent of the children or by any other person with whom the
23 children reside. The department acting on behalf of another
24 state or another state's instrumentality or a person residing in
25 another state shall constitute good cause within the meaning of
26 Title 5, section 9057.

27
28 1. Notice of hearing. The department shall serve on the
29 responsible parent a notice of hearing not less than 20 days
30 before the date of the hearing.

31
32 2. Contents of notice. In addition to conforming with the
33 requirements of the Maine Administrative Procedure Act, Title 5,
34 section 9052, subsection 4, the notice shall contain:

35
36 A. A statement that the obligee has applied to the
37 department pursuant to section 448-A, to establish a child
38 support obligation;

39
40 B. A statement of the names of the dependent children for
41 whom support is being sought;

42 C. A statement that the department will seek to establish a
43 health insurance obligation on the part of the responsible
44 parent; that the hearing officer will establish such an
45 obligation effective immediately if it is determined that
46 health insurance is available to the responsible parent at
47 reasonable cost; that health insurance will be considered
48 reasonable in cost if it is employment-related or other
49 group health insurance; and that if it is determined that
50 health insurance is not available at reasonable cost at the
51 time of the hearing, the hearing officer will establish an

1 obligation on the part of the responsible parent to be
2 effective immediately upon insurance being available at
3 reasonable cost;

5 D. A statement that the responsible parent may be ordered
6 to pay for medical, dental, optical and hospital expenses
7 incurred for the benefit of that parent's dependent
8 children, if the hearing officer determines that the
9 responsible parent has sufficient assets to cover those
10 expenses;

11 E. A statement that if the responsible parent fails to
12 appear, periodic support payments in the future, medical
13 insurance coverage and payment of noncovered medical
14 expenses shall be assessed and enforced by collection action;

15 F. A statement that the property of the responsible parent
16 may be subject to lien and foreclosure, administrative
17 seizure and disposition, order to withhold and deliver or
18 other collection actions and that any debt determined to be
19 owed by the responsible parent may be reported to a consumer
20 reporting agency;

21 G. A statement of rights at the hearing; and

22 H. A statement that the failure of the responsible parent
23 to maintain any required medical insurance coverage may
24 result in liability for all medical expenditures made by the
25 department on behalf of the dependent children.

26 3. Action upon failure to appear. If the responsible
27 parent fails to appear at the hearing on the date specified by
28 the notice of debt, the hearing officer shall enter a decision
29 pursuant to subsection 4, paragraph B. Within 30 days of service
30 of the decision, the responsible parent may petition the
31 department to vacate the decision if the responsible parent can
32 show any grounds which permit relief from judgment in a civil
33 action.

34 4. Hearing. The hearing shall be conducted as follows.

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

42 B. The decision shall include a statement of the
43 responsibility of the responsible parent, a statement of the
44 periodic support payment constituting the current support
45 payment.

1 obligation, and the obligation of the responsible parent to
3 maintain health insurance coverage for any dependent
5 children and to provide payment for other medical expenses
7 and shall require the responsible parent to provide written
9 proof to the department of the existence of the required
11 health insurance coverage within 15 days of that parent's
13 receipt of the decision. The department shall provide
15 written notice to the responsible parent with its decision
17 of the parent's right to an administrative review of the
19 decision within the department or review of the decision by
21 the courts and of the action required and the time within
23 which the action shall be taken to exercise the right of an
25 administrative review. A review of the decision within the
27 department, except pursuant to subsection 3, shall be
29 limited to a review of the record generated by the original
31 hearing.

17 C. The person conducting the hearing shall consider, when
19 deciding on the amount of periodic payment and the
21 availability of medical insurance coverage, at least the
23 following criteria:

23 (1) The need of the child;

25 (2) The income, real property and personal property of
27 the responsible parent;

29 (3) The ability of the responsible parent to borrow;

31 (4) The ability of the responsible parent to earn;

33 (5) The need of the responsible parent;

35 (6) The responsibility of the responsible parent for
37 other dependents; but in any case the child for whom
39 support is sought must benefit as much as any other
41 dependent from the income and resources of the
43 responsible parent;

45 (7) The responsibility of the responsible parent for
47 creating an unstable financial condition by voluntarily
49 incurring subsequent obligations. This condition shall
51 not relieve that parent of the duty to provide support;

(8) The availability of employer-based, or other group
affiliation, medical insurance coverage at a reasonable
cost to the responsible parent; and

(9) The availability of current medical coverage to
the responsible parent which could be extended to
include the dependent child.

1 5. Subsequent court order. An administrative decision
2 under this section shall remain in effect until superseded by a
3 subsequent court order or subsequent administrative hearing.

5 Sec. 6. 19 MRSA §498-B is enacted to read:

7 §498-B. Effect and implementation of health insurance
8 obligations; failure of responsible parent to comply

9
10 1. Responsible parent's failure to comply. If a
11 responsible parent fails to acquire the health insurance coverage
12 established under section 498 or section 498-A, that parent shall
13 be liable for any expenses incurred for any dependent children
14 that would have been paid by the insurance coverage, regardless
15 of incurred expenses. Incurred liability may be enforced as a
16 child support debt under this subchapter or by judicial action.

17
18 2. Insurer's obligation under authorization. Upon receipt
19 of a written authorization by a responsible parent to make health
20 insurance payments for that parent's dependent children to the
21 department, whether or not public assistance is being expended
22 for the benefit of the children, an insurer shall be required to
23 make all payments directly to the department until the
24 authorization is withdrawn. Upon receipt of authorization from
25 the responsible parent, the department shall be deemed subrogated
26 to the rights of the responsible parent under the insurance
27 policy for the children.

28 3. Insurer's obligation under order or decision and
29 notice. Upon receipt of a copy of a court order or
30 administrative decision establishing the obligation of a
31 responsible parent to provide health insurance coverage for that
32 parent's dependent children, and of a copy of a notice from the
33 department that public assistance is being expended for the
34 benefit of the responsible parent's children or that it is
35 furnishing support enforcement services to a person with whom the
36 children reside other than the responsible parent, an insurer
37 shall be required to make all health insurance payments for the
38 children directly to the department until otherwise notified by
39 the department. In all such cases, the responsibility of the
40 department shall be deemed subrogated to the rights of the
41 responsible parent under the insurance policy for the children.

42
43 Sec. 7. 19 MRSA §515, first ¶, as amended by PL 1985, c. 652,
44 §39, is further amended to read:

45
46 Within 30 days of receiving notice of any action under this
47 subchapter, including an administrative decision establishing an
48 obligation to provide health insurance and payment for other
49 medical expenses, and including an administrative decision which
50 did not establish an obligation to provide health insurance and
51 payment for other medical expenses, the responsible parent or the

1 department may move for a review of any action under this
3 subchapter by serving a request for review, together with an
5 affidavit stating the grounds upon which the request is based,
7 upon the other party. The department may review any action under
9 this subchapter without proceeding under this section. The
11 department acting on behalf of another state or its
13 instrumentality or a person residing in another state constitutes
15 good cause within the meaning of Title 5, section 9057.

17 **Sec. 8. 19 MRSA §752, sub-§12,** as repealed and replaced by PL
19 1987, c. 721, is amended to read:

21 **12. Modification of orders; compulsory process.** Upon the
23 motion of one or both of the parents, or any agency or person who
25 has been granted parental rights and responsibilities or contact
27 with respect to a child under this section, the court may alter
29 its order concerning parental rights and responsibilities or
31 contact with respect to a minor child as circumstances require.
33 Child support orders may be modified retroactively, but only from
35 the date that notice of a petition for modification has been
37 served, either directly or through the appropriate agent to the
39 opposing party. The parties shall be referred to mediation as
41 under subsection 4.

43 The relocation, or intended relocation, of a child resident in
45 this State to another state by a parent, when the other parent is
47 a resident in this State and there exists an award of shared or
49 allocated parental rights and responsibilities concerning the
51 child, is a substantial change in circumstances.

In execution of the powers given it under this Title, the court
may employ any compulsory process which it deems proper, by
execution attachment or other effectual form, on which costs
shall be taxed as in other actions.

35 **Sec. 9 19 MRSA §776, sub-§4,** as enacted by PL 1979, c. 668,
37 §6, is repealed and the following enacted in its place:

39 **4. Health insurance.** If a support order contains an order
41 for a parent to provide health, medical or hospital insurance
43 coverage and if the insured child is receiving public assistance,
45 then the insuring parent shall provide the department with proof
47 of the insurance coverage within 15 days of receipt of a copy of
49 the order, and shall provide the department with written notice
51 of any change in that coverage within 15 days of the change.

47 **Sec. 10. 19 MRSA §778** is enacted to read:

49 **§778. Modification of support order**

51 Any order for support with respect to a minor child may be
modified or terminated as circumstances require upon the petition

1 or motion of a party. Child support orders may be modified
3 retroactively, but only from the date that notice of a petition
5 for modification has been served, either directly or through the
7 appropriate agent to the opposing party.

7 STATEMENT OF FACT

9 The Maine Revised Statutes, Title 19, section 776,
11 subsection 4, requires responsible parents who have been ordered
13 to provide health, medical or hospital insurance coverage on
15 behalf of children who receive public assistance to provide the
17 Department of Human Services with proof of insurance coverage and
19 with written notice of any change in that coverage. The law does
21 not specify a time frame in which proof or notification must be
23 given; nor does it require judges to inform responsible parents
25 of this requirement as part of the court order. Finally, the
27 scope of existing law is confined to children who receive public
29 assistance, and is not applicable when the department is
31 providing services pursuant to its non-aid to families with
33 dependent children child support enforcement program. This bill
35 corrects these deficiencies by providing a specified time period
in which a responsible parent would have to provide proof or
notice to the department, require judges to include the notice
provision in orders requiring responsible parents to provide
insurance coverage, and would require responsible parents in
nonwelfare cases to furnish the department with proof of coverage
and notification of subsequent changes upon receiving notice that
a parent with whom the children primarily reside receives non-aid
to families with dependent children support enforcement
services. In addition to strengthening Maine's laws concerning
health insurance and medical expense obligations, the bill
assists the department in fulfilling the State's responsibilities
as a responding state in interstate support enforcement cases.

37 The purpose of sections 2, 8 and 10 is to comply with
39 federal law, United states Code, Title 42, Section 66 (a)(9).
41 Current Maine law provides that child support orders may be
43 modified retroactively from the date a motion for modification
45 has been filed. These sections will require that the order may
be amended only from the date the parties receive notice of the
motion or petition for modification. The United States
Department of Health and Human Services has advised that failure
to secure this legislation by the end of this legislative session
may result in the loss of all Title IV-D federal funding.