

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1732, L.D. 2391, Bill, "An Act to Provide for Immediate Income Withholding and Periodic Review and Adjustment of Child Support Awards in Support Enforcement Cases of the Department of Human Services, to Provide an Expedited Process for the Commencement of Paternity Actions and to Provide for a Trial Preference for Paternity Actions"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act to Provide for Immediate Income Withholding and a Plan for Periodic Review and Adjustment of Child Support Awards in Support Enforcement Cases of the Department of Human Services'

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

PART A

Sec. A-1. 19 MRSA §498-C is enacted to read:

§498-C. Immediate withholding of earnings

1. Withholding order. Beginning November 1, 1990, a decision establishing or modifying a child support obligation under this subchapter must conform with this subsection.

A. The decision must provide for the withholding of amounts payable as child support, effective from the date of the decision, from the responsible parent's earnings, regardless of whether support payments by the responsible parent are in arrears. The withholding order must:

(1) Specify the amount of earnings to be withheld;

(2) Specify the support enforcement case number; and

(3) Direct that upon receipt of a copy of the withholding order any payor of earnings to the responsible parent shall:

2 (a) Immediately begin to withhold those earnings
4 when earnings are usually paid to the responsible
 parent; and

6 (b) Send each amount of earnings withheld to the
8 department at the address set forth in the
 withholding order within 10 days after each
 withholding of earnings.

10 B. This subsection does not apply if:

12 (1) A party demonstrates and the hearing officer finds
14 that there is good cause not to require immediate
 withholding under this section; or

16 (2) A written agreement between the parties providing
18 an alternative arrangement is filed with the hearing
 officer.

20 2. Priority of order. Notwithstanding any other law, a
22 withholding order under this section has priority over any
24 previously filed attachment, execution, garnishment or assignment
 of earnings that is not made for the purpose of enforcing or
 paying a child support obligation.

26 3. Obligations of payor of earnings. This subsection
28 governs the obligations of a payor of earnings under this section.

30 A. Upon receipt of a copy of a withholding order, a payor
 of earnings to the responsible parent shall:

32 (1) Immediately begin to withhold earnings of the
34 responsible parent when earnings are usually paid to
 the responsible parent; and

36 (2) Send each amount of earnings withheld to the
38 department at the address set forth in the withholding
 order within 10 days after each withholding.

40 B. The payor shall include with all remittances of withheld
42 earnings the responsible parent's support enforcement case
 number set forth in the withholding order.

44 C. The payor may combine amounts withheld for transmittal
46 to the department from more than one responsible parent if
48 the portion attributable to each responsible parent is
 separately designated, except that the payor may not combine
50 amounts if that action would result in a responsible
 parent's withheld earnings being sent to the department more
 than 10 days from the withholding date.

52

2 D. In addition to earnings withheld under the withholding
3 order, the payor may deduct from earnings due the
4 responsible parent a processing fee for each withholding and
5 transmittal transaction. The department shall establish the
6 amount of the processing fee by rule pursuant to Title 5,
7 chapter 375.

8 E. The balance of earnings due the responsible parent must
9 be paid to the responsible parent on the day that parent is
10 usually paid.

11 4. Duration of order. A withholding order is binding upon
12 the payor of earnings to the responsible parent until:

13 A. The order is superseded by another withholding order
14 issued by the department under this subchapter;

15 B. The decision establishing the support obligation is
16 superseded by a court order;

17 C. The payor has been released from the withholding order
18 in writing by the department;

19 D. The child:

20 (1) If not attending secondary school, as defined in
21 Title 20-A, section 1, becomes 18 years of age; or

22 (2) If attending secondary school, as defined in Title
23 20-A, section 1:

24 (a) Graduates, withdraws or is expelled from
25 secondary school; or

26 (b) Becomes 19 years of age; or

27 E. The child is emancipated or adopted.

28 5. Payor to be held harmless. A payor of earnings to the
29 responsible parent who honors a withholding order under this
30 section is discharged from any liability or obligation to the
31 responsible parent for earnings withheld in compliance with the
32 order. The department shall defend and hold harmless any payor
33 for honoring the order.

34 6. Notice of termination of payor-payee relationship. When
35 the relationship between the payor of earnings and the
36 responsible parent that provides for the payment of earnings to
37 the responsible parent, whether the relationship is that of
38 employer and employee or any other, is terminated, the payor
39 shall, within 15 days of the termination, send the department a
40 written notice of the termination. The notice must include:

- 2 A. The responsible parent's name, last known address and
3 social security number;
- 4
- 5 B. The support enforcement case number;
- 6
- 7 C. The date of termination of the relationship of payor and
8 payee; and
- 9
- 10 D. If known, the name and address of any new or other payor
11 of earnings to the responsible parent.
- 12
- 13 7. Liability of payor; violations. A payor is liable,
14 after service of the withholding order, for any earnings the
15 payor fails to withhold and send to the department within 10 days
16 of the day that the payee is usually paid. The department may
17 maintain an action against the payor for the earnings the payor
18 did not withhold and send to the department or for the imposition
19 of any of the following civil penalties, or both, plus attorney's
20 fees and court costs.
- 21
- 22 A. A payor who fails to withhold earnings on the day
23 earnings are usually paid to the responsible parent commits
24 a civil violation for which a forfeiture of not more than
25 \$100 may be adjudged for each failure to withhold.
- 26
- 27 B. A payor who fails to send withheld earnings to the
28 department within 10 days of the withholding commits a civil
29 violation for which a forfeiture of not more than \$100 may
30 be adjudged for each failure to timely send withheld
31 earnings.
- 32
- 33 C. A payor who fails to send the notification required by
34 subsection 6 commits a civil violation for which a
35 forfeiture of not more than \$100 may be adjudged.
- 36
- 37 D. A payor who discharges from employment or refuses to
38 employ a responsible parent, or who takes disciplinary
39 action against a responsible parent employed by the payor,
40 or who otherwise discriminates against the responsible
41 parent because of the existence of the withholding order or
42 the obligations imposed upon the payor by the order, is
43 subject to a civil penalty of not more than \$5,000, payable
44 to the State, to be recovered in a civil action. The payor
45 is also subject to an action by the responsible parent for
46 compensatory and punitive damages for those actions, plus
47 attorney's fees and court costs.
- 48
- 49 8. Other remedies. A withholding order under this section
50 does not bar any judicial or administrative enforcement or
51 collection action otherwise available under federal or state law

2 regarding child or spousal support arrearages or a debt for
public assistance under section 495.

4 9. Sunset. This section is repealed April 1, 1991.

6 Sec. A-2. 19 MRSA §777, sub-§3 is enacted to read:

8 3. Liability of payor to obligee. An obligee may maintain
an action for compensatory damages, including attorney's fees and
10 court costs, against a payor who fails to comply with this
12 section.

14 Sec. A-3. 19 MRSA §777-A is enacted to read:

16 §777-A. Income withholding in department support
enforcement cases

18 1. Applicability. Beginning November 1, 1990, this section
20 applies to any action under this Title or Title 22 in which:

22 A. The establishment or modification of child support is
sought;

24 B. A party is involved in a department support enforcement
26 case regarding the same child or children; and

28 C. That party is:

30 (1) A recipient of aid to families with dependent
children;

32 (2) A support enforcement client of the department; or

34 (3) A responsible parent under section 493, subsection
36 9.

38 2. Pleadings. A person subject to subsection 1 shall
affirmatively plead that person's status under subsection 1 and
40 shall also plead the support enforcement case number.

42 3. Income withholding provision of order. An order
establishing or modifying child support must provide for the
44 withholding from the obligor's income of amounts payable as child
support, effective from the date of the order, regardless of
46 whether child support payments by the obligor are in arrears.
This subsection does not apply if:

48 A. A party demonstrates and the court finds that there is
good cause not to require immediate withholding under this
50 section; or

2 B. A written agreement between the parties providing an
alternative arrangement is filed with the court.

4 4. Provisions of withholding order. An income withholding
order issued under this section must include:

6 A. The amount of income to be withheld:

8 B. The department support enforcement case number, if known
10 to the court; and

12 C. A direction to the payor that upon receipt of a copy of
14 the withholding order the payor shall:

16 (1) Immediately begin to withhold income of the
obligor when usually paid to the obligor; and

18 (2) Send the amount withheld and the department
20 support enforcement case number, if known, to the
22 department at the address set forth in the order within
10 days of the withholding.

24 5. Department copy of orders. The clerk of the court shall
send to the department an attested copy of the order establishing
26 or modifying the award of child support and an attested copy of
the income withholding order.

28 6. Service of process. The department may serve an income
withholding order under this section as provided in section 494.

30 7. Priority of order. Notwithstanding any other provision
32 of law, a withholding order under this section has priority over
34 any previously filed attachment, execution, garnishment or
36 assignment of income that is not made for the purpose of
enforcing or paying a child support obligation.

38 8. Obligations of payor of income. This subsection governs
the obligations of a payor of income under this section.

40 A. Upon receipt of a copy of an income withholding order, a
payor of income to the obligor shall:

42 (1) Immediately begin to withhold income of the
44 obligor when usually paid; and

46 (2) Send each amount of income withheld to the
48 department at the address set forth in the order within
10 days of the withholding.

50 B. If a department support enforcement case number is set
forth in the order or the department notifies the payor of

2 that number, the payor shall include that number with all
3 remittances of withheld income.

4 C. The payor may combine amounts withheld for transmittal
5 to the department from more than one obligor if the portion
6 attributable to each obligor is separately designated,
7 except that the payor may not combine amounts if that action
8 would result in an obligor's withheld income being sent to
9 the department more than 10 days from the withholding date.

10 D. The payor may also deduct from income due the obligor a
11 processing fee for each withholding and transmittal
12 transaction. The Department of Human Services shall
13 establish the amount of the processing fee by rule pursuant
14 to Title 5, chapter 375.

15 E. The balance of income due the obligor must be paid to
16 the obligor on the day the obligor is usually paid.

17 9. Duration of order. A withholding order is binding upon
18 the payor of income to the obligor until:

19 A. The order is terminated by a subsequent court order;

20 B. The payor is released in writing from the terms of the
21 order by the department;

22 C. The child becomes 18 years of age, except as provided in
23 subsection 10; or

24 D. The child is emancipated or adopted.

25 10. Exception to duration of order for attending secondary
26 school. If the child is attending secondary school as defined in
27 Title 20-A, section 1 and if a court has ordered the obligor to
28 provide child support until the child graduates, withdraws or is
29 expelled from school or becomes 19 years of age, a withholding
30 order is binding upon the payor of income to the obligor until
31 the child:

32 A. Graduates, withdraws, or is expelled from secondary
33 school; or

34 B. Becomes 19 years of age.

35 11. Payor to be held harmless. Any payor of income to the
36 obligor who honors an income withholding order under this section
37 is discharged from any liability or obligation to the obligor for
38 income withheld in compliance with the order. The department
39 shall defend and hold harmless any payor for honoring the order.
40

12. Notice of termination of payor-payee relationship.

2 When the relationship between the payor and the obligor that
4 provides for the payment of income by the payor to the obligor,
6 whether it is that of employer and employee or any other, is
8 terminated, the payor shall, within 15 days of the termination,
10 send the department a written notice of termination. The notice
12 must include:

14 A. The obligor's name, last known address and social
16 security number;

18 B. The department support enforcement case number;

20 C. The date of termination of the relationship; and

22 D. If known, the name and address of any new or other payor
24 of income to the obligor.

26 13. Liability of payor. A payor is liable, after service
28 of an income withholding order upon the payor, for any income
30 that the payor fails to withhold and send to the department
32 within 10 days of the day that the obligor is usually paid. The
34 department may maintain an action against the payor for the
36 income the payor did not withhold and send to the department or
38 for the imposition of any of the following civil penalties, or
40 both, plus attorney's fees and court costs.

42 A. A payor who fails to withhold income when income is
44 usually paid to the obligor commits a civil violation for
46 which a forfeiture of not more than \$100 may be adjudged for
48 each failure to withhold.

50 B. A payor who fails to send withheld income to the
52 department within 10 days of its withholding commits a civil
54 violation for which a forfeiture of not more than \$100 may
56 be adjudged for each failure to timely send withheld income.

58 C. A payor who fails to send the notification required by
60 subsection 12 commits a civil violation for which a
62 forfeiture of not more than \$100 may be adjudged.

64 D. A payor who discharges from employment or refuses to
66 employ an obligor, or who takes disciplinary action against
68 an obligor employed by the payor or who otherwise
70 discriminates against the obligor because of the existence
72 of an income withholding order or the obligations imposed
74 upon the payor by the order, is subject to a penalty of not
76 more than \$5,000, payable to the State, to be recovered in a
78 civil action. The payor is also subject to an action by the
80 obligor for compensatory and punitive damages for those
82 actions, plus attorney's fees and court costs.

2 14. Other remedies. Neither a provision for immediate
4 income withholding in an order for child support nor an income
6 withholding order under this section bars any judicial or
8 administrative enforcement or collection action otherwise
10 available under federal or state law with respect to child or
12 spousal support arrearages or with respect to a debt for public
14 assistance under section 495.

16 15. Requirements supplemental. The requirements of this
18 section are in addition to and not in substitution for those of
20 section 777.

22 16. Sunset. This section is repealed April 1, 1991.

24 **PART B**

26 **Sec. B-1. Legislative plan for reviews of child support awards.** The
28 Department of Human Services, in consultation with the Supreme
30 Judicial Court, the Family Law Section of the Maine State Bar
32 Association, and Pine Tree Legal Assistance, Incorporated, shall
34 develop a plan in accordance with of the federal Social Security
36 Act, Section 466(a)(10), for reviews of child support awards.
38 The department shall report the plan to the 115th Legislature and
40 the Executive Director of the Legislative Council by January 15,
42 1991.

44 **Sec. B-2. Rulemaking.** The Department of Human Services
46 shall, by rulemaking pursuant to the Maine Administrative
48 Procedure Act, adopt a plan for reviews of child support awards
50 as required to be effective October 12, 1990 by the federal
Social Security Act, Section 466(a)(10).

FISCAL NOTE

The Department of Human Services and the Judicial Department
have indicated that the additional costs associated with
implementing the provisions of this legislation are expected to
be minimal and can be absorbed within their respective budgeted
resources.'

STATEMENT OF FACT

This amendment replaces the bill.

This amendment changes Part A of the original bill as follows.

1. It reformats all of the proposed language for ease in understanding.

COMMITTEE AMENDMENT "A" to H.P. 1732, L.D. 2391

2 2. It amends the language that requires immediate income
withholding for all support enforcement cases of the Department
4 of Human Services establishing or modifying a child support
obligation on or after November 1, 1990. As amended, it requires
6 the decision to include an order for income withholding. The
original bill required the department to issue a withholding
8 order, but did not authorize any exemptions. This amendment
allows for exemption from an immediate withholding order upon
10 good cause, as determined by the hearing officer or upon a
written alternative arrangement agreed to by both parties and
12 filed with the hearing officer.

14 3. It amends one of the conditions under which the
withholding order is terminated by changing the condition from
16 the time the child reaches the "age of maturity" to the time the
child reaches the age of 18 years or, if still in school, reaches
18 the age of 19, graduates, is expelled or withdraws.

20 4. It amends the bill by adding attorney's fees and costs
as part of the recoverable expenses in certain actions against a
22 payor.

24 5. It makes certain grammatical corrections.

26 6. It deletes references to work-related day care expense
obligations.

28 The sections on immediate income withholding are repealed on
April 1, 1991.

30 This amendment replaces Part B of the bill with 2 sections
32 requiring the Department of Human Services to develop plans
regarding reviews of child support awards in compliance with
34 federal law. The department must develop a plan in accordance
with the Maine Administrative Procedure Act for review of child
36 support awards to meet the October 12, 1990 deadline as required
by federal law. The department must also consult with the
38 Judicial Department, Pine Tree Legal Assistance, Incorporated,
and the Family Law Section of the Maine State Bar Association in
40 developing a plan for reviews of child support awards, which will
be reviewed by the Legislature. This plan must be submitted to
42 the 115th Legislature and the Executive Director of the
Legislative Council by January 15, 1991.

44 This amendment deletes Part C.