

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2391

H.P. 1732

House of Representatives, March 1, 1990

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 DELLERT of Gardiner.

Cosponsored by Representative HASTINGS of Fryeburg, Representative RIDLEY of Shapleigh and Senator DUTREMBLE of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

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.



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

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, upon the rendering of a decision establishing or modifying a child support obligation under this subchapter, the department may issue an order for the withholding from earnings of the responsible parent of the amounts payable as child support, including any for work-related day care expense obligation regardless of whether child support payments by the responsible parent are in arrears, on the effective date of the decision. The withholding order, in addition to specifying the amount of earnings to be withheld, must direct that upon receipt of a copy of the withholding order any payor of earnings to the responsible parent shall immediately begin to withhold those earnings when income is usually paid to the responsible parent and shall send each amount of earnings withheld to the department at the address set forth in the withholding order within 10 days following each withholding of earnings.

2. Priority of order. Notwithstanding any other law, a withholding order under this section has priority over any previously filed attachment, execution, garnishment or assignment of earnings not for the enforcement or payment of a child support obligation.

3. Obligations of payor of earnings. Upon receipt of a copy of a withholding order, a payor of earnings to the responsible parent shall immediately begin to withhold earnings of the responsible parent when earnings are usually paid to the responsible parent and send each amount of earnings withheld to the department at the address set forth in the withholding order within 10 days following each withholding. The payor shall include with all remittances of withheld income the responsible parent's support enforcement case number set forth in the withholding order. The payor may combine amounts withheld for transmittal to the department from more than one responsible parent-payee if the portion attributable to each responsible parent-payee is separately designated, except that the combining of amounts may not result in the responsible parent's withheld earnings not being sent to the department within 10 days of the withholding. In addition to earnings withheld under the withholding order, the payor may deduct from earnings due the responsible parent a processing fee for each withholding and transmittal transaction in an amount adopted by the commissioner. The balance of earnings due must be paid to the responsible parent on the day that parent is usually paid.

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

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

8 B. The decision establishing the support obligation is
10 superseded by a court order;

12 C. The children have reached majority or have been
14 otherwise emancipated or adopted; or

16 D. The payor has been released from the withholding order
18 in writing by the department.

20 5. Payor to be held harmless. A payor of earnings to the
22 responsible parent who honors a withholding order under this
24 section is discharged from any liability or obligation to the
26 responsible parent for those earnings. The department shall
28 defend and hold harmless any payor for honoring the order.

30 6. Notification of termination of payor-payee
32 relationship. When a withholding order is in effect and the
34 relationship between the payor of earnings and the responsible
36 parent that gives rise to the payment of earnings to the
38 responsible parent, whether the relationship is that of employer
40 and employee or any other, is terminated, the payor shall, within
42 15 days of the termination, send the department a written
44 notification of the termination. The notification must include
46 the responsible parent's name, support enforcement case number,
48 social security number, address last known to the payor, the date
50 of termination of the relationship of payor and payee and, if
52 known, the name and address of any new or other payor of earnings
to the responsible parent.

7. Liability of payor. A payor is liable for any earnings
that, following service of the withholding order, the payor fails
to withhold and send to the department within 10 days, plus
attorney's fees and court costs. A payor who fails to withhold
earnings on the day earnings are usually paid to the responsible
parent is subject to a civil fine in an amount not to exceed \$100
for each failure to withhold, plus attorney's fees and court
costs. A payor who fails to send withheld earnings to the
department within 10 days of the withholding is subject to a
civil fine in an amount not to exceed \$100 for each failure to
timely send withheld earnings, plus attorney's fees and court
costs. A payor who fails to send the notification required by
subsection 6 is subject to a civil fine in an amount not to
exceed \$100, plus attorney's fees and court costs. A payor who
discharges from employment or refuses to employ a responsible
parent, or who takes disciplinary action against a responsible

2 parent-employee, or who otherwise discriminates against the
3 responsible parent because of the existence of the withholding
4 order or the obligations imposed upon the payor by the order, is
5 subject to a civil fine in an amount not to exceed \$5,000, plus
6 attorney's fees and court costs, and is also subject to an action
7 by the responsible parent for compensatory and punitive damages
8 for those actions. The department may maintain an action against
9 the payor for the earnings the payor did not withhold and send to
10 the department or for the imposition of a civil fine for failure
11 to comply with a withholding order, or both.

12 8. Other remedies. A withholding order under this section
13 does not bar any judicial or administrative enforcement or
14 collection action otherwise available under federal or state law
15 regarding child or spousal support arrearages or a debt for
16 public assistance under section 495.

18 Sec. A-2. 19 MRSA §777-A is enacted to read:

20 §777-A. Income withholding in department support enforcement
21 cases

22 1. Applicability. Beginning November 1, 1990, this section
23 applies to any action under this Title or Title 22 in which the
24 establishment or modification of child support is sought and in
25 which a party is involved in a department support enforcement
26 case regarding the same child or children and is:

- 27
- 28 A. A recipient of aid to families with dependent children;
 - 29
 - 30 B. A support enforcement client of the department; or
 - 31
 - 32 C. A responsible parent under section 493, subsection 9.

33

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

37

38 3. Income withholding provision of order. An order
39 establishing or modifying child support must contain a provision
40 effective beginning the date of the order for the withholding
41 from the obligor's income amounts payable as child support,
42 including any work-related day care expense obligation regardless
43 of whether child support payments by the obligor are in arrears
44 unless a party demonstrates and the court finds that there is
45 good cause not to require immediate withholding under this
46 section or written agreement between the parties providing an
47 alternative arrangement is filed with the court.

48

49 4. Provisions of withholding order. An income withholding
50 order issued pursuant to this section must include:

2 A. The amount of income to be withheld;

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

6 C. A direction to the payor that upon receipt of a copy of the withholding order the payor shall immediately begin to withhold income of the obligor when usually paid to the obligor and send the amount withheld and the department support enforcement case number, if known, to the department at the address set forth in the order within 10 days of the withholding.

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

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

22 7. Priority of order. Notwithstanding any other provision of law, a withholding order under this section has priority over any previously filed attachment, execution, garnishment or assignment of income not for the enforcement or payment of a child support obligation.

28 8. Obligations of payor of income. Upon receipt of a copy of an income withholding order, a payor of income to the obligor shall immediately begin to withhold income of the obligor when usually paid and send each amount of income withheld to the department at the address set forth in the order within 10 days of the withholding. If a department support enforcement case number is set forth in the order or the department advises the payor of that number, the payor shall include that number with all remittances of withheld income. The payor may combine amounts withheld for transmittal to the department from more than one payee if the portion attributable to each payee is separately designated, except that the combining of amounts may not result in the obligor's withheld income not being sent to the department within 10 days of the withholding. The payor may also deduct from income due the obligor a processing fee for each withholding and transmittal transaction in an amount adopted by the commissioner. The balance of income due the obligor must be paid to the obligor on the day the obligor is usually paid.

46 9. Duration of order. An income withholding order is binding until terminated by a subsequent court order, the child attains the age of 18 years or is emancipated or adopted or the payor is released in writing from the terms of the order by the department.

2 10. Payor to be held harmless. Any payor of income to the
4 obligor who honors an income withholding order under this section
is discharged from any liability or obligation to the obligor for
that income. The department defends and holds harmless any payor
for honoring the order.

6
8 11. Notification of termination of payor-obligor
relationship. When the relationship between the payor and the
10 obligor is the basis for payment of income by the payor to the
obligor, whether it is that of employer and employee or any
12 other, is terminated, the payor shall, within 15 days of the
termination, send the department a written notification of
14 termination. The notification must include the obligor's name,
last known address, social security number, department support
16 enforcement case number, the date of termination of the
relationship, and, if known, the name and address of any new or
other payor of income to the obligor.

18
20 12. Liability of payor. A payor is liable for any amounts
22 of income that, following service of an income withholding order
upon the payor, the payor fails to withhold and then send to the
department within 10 days, plus attorney's fees and court costs.
24 A payor who fails to withhold income when income is usually paid
to the obligor is subject to a civil fine in an amount not to
26 exceed \$100 for each failure to withhold, plus attorney's fees
and court costs. A payor who fails to send withheld income to
the department within 10 days of its withholding is subject to a
28 civil fine in an amount not to exceed \$100 for each failure to
transmit timely withheld income, plus attorney's fees and court
30 costs. A payor who fails to send the notification required by
subsection 11 is subject to a civil fine in an amount not to
32 exceed \$100, plus attorney's fees and court costs. A payor who
discharges from employment or refuses to employ an obligor, or
34 who takes disciplinary action against an obligor-employee or who
otherwise discriminates against the obligor because of the
36 existence of an income withholding order or because of the
obligations or additional obligations imposed upon the payor by
38 the order is subject to a civil fine in an amount not to exceed
\$5,000, plus attorney's fees and court costs, and is also subject
40 to an action by the obligor for compensatory and punitive damages
for those actions by the payor. The department may maintain an
42 action against the payor for the earnings the payor did not
withhold and send to the department or for the imposition of a
44 civil fine for failure to comply with a withholding order, or
both.

46
48 13. Other remedies. Neither a provision for immediate
50 income withholding in an order for child support nor an income
withholding order under this section operates as a bar to any
judicial or administrative enforcement or collection action

2 otherwise available under federal or state law with respect to
3 child or spousal support arrearages or with respect to a debt for
4 public assistance under section 495.

5 14. Requirements supplemental. The requirements of this
6 section are in addition to and not in substitution for those of
7 section 777.

8
9
10 **PART B**

11 **19 MRSA §303-B is enacted to read:**

12 **§303-B. Periodic review and adjustment of child support in**
13 **support enforcement cases of the Department of Human**
14 **Services**

15 1. Definitions. As used in this section, unless the
16 context otherwise indicates, the following terms have the
17 following meanings.

18 A. "Commissioner" means the Commissioner of Human Services.

19 B. "Department" means the Department of Human Services.

20 C. "Recommendation" means the department's proposed
21 adjustment of a child support award or the department's
22 proposed determination that there should be no change in the
23 amount of a child support award it has reviewed under this
24 section.

25 2. Periodic review and adjustment process for state orders
26 and decisions. On or before October 12, 1990, the department
27 shall create, by rule, and implement a process for the periodic
28 review and adjustment, in accordance with the State's guidelines
29 for child support awards, of the child support awards established
30 by orders issued by courts of this State and by administrative
31 decisions issued by the department under subchapter V that it is
32 enforcing as the State's support enforcement agency under the
33 federal Social Security Act, Subchapter IV, Part D. These child
34 support awards are subject to the review and adjustment process
35 unless:

36 A. In the case of a child support award with respect to an
37 individual with respect to whom an assignment under the
38 federal Social Security Act, Section 402(a)(26) is in
39 effect, the department has determined in accordance with
40 rules promulgated by it which are in accordance with such
41 regulations as the Secretary of the United States Department
42 of Health and Human Services may from time to time
43 promulgate, that such a review would not be in the best
44 interests of the child and neither parent has requested
45 review; or

2 B. In the case of any other child support award described
3 in this subsection, neither parent has requested review.

4

5 3. Periodic review process for other orders and decisions.

6 On or before October 12, 1990, the department shall create, by
7 rule, and implement a process for the periodic review of the
8 child support awards established by orders not issued by a court
9 of this State or by administrative decisions not issued by the
10 department under subchapter V that it is enforcing as the State's
11 support enforcement agency under the federal Social Security Act,
12 Title IV, Part D. These child support awards are subject to the
13 review process unless:

14

15 A. In the case of a child support award with respect to an
16 individual with respect to whom an assignment under the
17 federal Social Security Act, Section 402(a)(26) is in
18 effect, the department has determined in accordance with
19 rules promulgated by it which are in accordance with such
20 regulations as the Secretary of the United States Department
21 of Health and Human Services may from time to time
22 promulgate, that such a review is not in the best interests
23 of the child and neither parent has requested review; or

24

25 B. In the case of any other child support award described
26 in this subsection, neither parent has requested review.

27

28 4. Review periods. Review periods under this subsection
29 are as follows.

30

31 A. For reviews conducted before October 12, 1993, the
32 department may review an order or administrative decision
33 subject to review under subsection 2 or 3 within the period
34 of time after its establishment or after review as the
35 department may provide by rule.

36

37 B. For reviews conducted on or after October 12, 1993, the
38 department shall review an order or administrative decision
39 subject to review under subsection 2 or 3 within 36 months
40 after the establishment of the order or administrative
41 decision or its latest review.

42

43 5. Notification. The department shall provide notification
44 procedures as follows.

45

46 A. The department shall provide, by rule, procedures to
47 ensure that as part of the review and adjustment process for
48 orders and decisions described in subsection 2 the
49 department notify each parent subject to the order or
50 decision of the following:

- 2 (1) A review at least 30 days before the commencement
of that review;
- 4 (2) The right of the parent to request the department
to review the order or decision for child support; and
- 6 (3) The department's recommendation and that the
8 parent has 30 days after the notification of the
10 recommendation to initiate proceedings to challenge the
proposed adjustment or determination.

12 B. The department shall provide, by rule, procedures to
ensure that as part of the review process for orders and
14 decisions described in subsection 3 the department notify
each parent subject to the order or decision of the
16 following:

- 18 (1) A review under subsection 8 at least 30 days
before the commencement of that review; and
- 20 (2) The right of the parent to request the department
22 to review the order or decision for child support in
accordance with subsection 8.

24 6. Reviews of awards established by state courts. The
26 department shall review a child support award established by an
order issued by a court of this State, as follows.

28 A. The department shall conduct the review in accordance
30 with the child support guidelines applicable in judicial
actions that are in effect at the time of the review and
32 issue the department's recommendation. If the review
discloses a deviation of less than 15% between the amount of
34 a child support award being reviewed and the amount of the
award that results from the application of the guidelines,
36 the department shall recommend that there should be no
change in the child support award amount. On expiration of
38 the time within which each parent, subject to the court
order, may challenge the department's recommendation or upon
40 the department's receipt of a timely challenge from both
parents, whichever occurs first, the department shall file
42 with the court that issued the order the following:

- 44 (1) The department's recommendation;
- 46 (2) The computation of the child support award
48 resulting from the application of the guidelines and
the factual basis for that computation;
- 50 (3) The information and any completed forms and
documentation obtained under subsection 9;
- 52

2 (4) Each timely challenge to the department's
4 recommendation that the department has received from a
 parent subject to the court order; and

6 (5) The department's certificate that the time for
8 filing challenges to the department's recommendation
 has expired or the department has not received a timely
 challenge from both parents subject to the court order.

10 B. Upon the filing required by paragraph A, the court shall
12 determine the matter in accordance with rules adopted by the
14 Supreme Judicial Court, except that mediation may not be
 required as a condition precedent to or in connection with
 the court's determination of the matter.

16 7. Reviews of awards established by the department under
18 subchapter V. The department shall review child support awards
 established under subchapter V as follows.

20 A. The department shall conduct the review in accordance
22 with the child support guidelines applicable in department
24 determinations of child support in effect at the time of
26 review and shall issue its proposed recommendation. If the
28 review discloses a deviation of less than 15% between the
30 amount of a child support award being reviewed and the
32 amount of the award that would result from the application
34 of the guidelines, the department shall issue a
36 recommendation that there should be no change in the child
 support award amount. If the department's recommendation is
 not timely challenged by a parent subject to the
 administrative decision which established the award being
 reviewed, the department's recommendation becomes the final
 agency action of the department and, except as subject to
 judicial review under the Maine Rules of Civil Procedure,
 Rule 80-C, finally determines the review conducted under
 this section.

38 B. A timely challenge to the department's recommendation
40 constitutes a timely request for an administrative review
42 under section 515. The decision resulting from that review
 must be based on the following:

44 (1) The department's recommendation;

46 (2) The computation of the child support award
48 resulting from the application of the guidelines and
 the factual basis for that computation;

50 (3) The information and any completed forms and
 documentation obtained under subsection 9; and

2 (4) Each timely challenge to the department's
4 recommendation that the department has received from a
 parent under this section.

6 On administrative review under section 515, if the hearing
8 officer determines that there is a deviation of less than
10 15% between the amount of the child support award being
12 reviewed and the amount of the award that results from the
14 application of the guidelines, then the hearing officer must
16 decide that no change be made in the child support award.
 The administrative review decision under section 515
 constitutes final agency action of the department and,
 except as subject to judicial review under the Maine Rules
 of Civil Procedure, Rule 80-C, finally determines the review
 conducted under this section.

18 8. Orders and decisions of other states. For a review of a
20 child support award established by an order not issued by a court
 of this State or by an administrative decision not issued by the
 department under subchapter V, the department shall:

22 A. Proceed under subsection 9 with respect to the award;

24 B. Send to the support enforcement agency under the federal
26 Social Security Act, Subchapter IV, Part D, of the state in
28 which the order or administrative decision was issued the
 information and documentation the department has obtained
 under subsection 9; and

30 C. Request the support enforcement agency under the federal
32 Social Security Act, Subchapter IV, Part D, to review the
34 child support award amount under that state's procedures
 under the federal Social Security Act, Section 466(a)(10).

36 9. Disclosure of information for reviews. Disclosure for
 review under this section is as follows.

38 A. The department may request by regular mail of any
40 person, as defined by section 493, subsection 7, the
42 following information concerning a parent subject to the
44 order or administrative decision establishing the child
46 support award being reviewed: complete name, social
 security number, present and past employment status,
 earnings, last known address, assets and availability and
 description of health insurance coverage for the children.

48 B. If the department does not receive a response to a
50 request under paragraph A within 2 weeks of its mailing, the
52 department may serve a demand upon the person to whom the
 request was directed for the information sought. The demand
 may be served by certified mail, return receipt requested,
 or by service in hand. A demand may be served by any

2 authorized representative of the commissioner or any person
3 authorized to serve process under the Maine Rules of Civil
4 Procedure, Rule 4.

6 C. Notwithstanding paragraph A, the following requirements
7 apply.

8 (1) If the review is conducted under subsection 6, the
9 scope of the request or demand for information made to
10 a parent must be equal to the scope of information
11 required for the application of the guidelines for
12 child support awards in judicial proceedings in this
13 State and that the Supreme Judicial Court requires, by
14 rule, parties to submit in actions under this Title or
15 Title 22 for the establishment or modification of a
16 child support award. The department may request and
17 demand that each parent subject to the order complete
18 and return to the department the forms that the Supreme
19 Judicial Court, by rule, requires parties to complete
20 in those actions.

22 (2) If the review is conducted under subsection 7, the
23 scope of the request or demand must be equal to the
24 scope of information required for the application of
25 the child support award guidelines in proceedings under
26 subchapter V.

28 (3) If the review is conducted under subsection 8, the
29 scope of the request or demand may be equal to the
30 scope of information required for application of the
31 support guidelines of the state in which the court
32 order or administrative decision was issued.

34 D. Any person may disclose to the department any of the
35 information described in paragraph A, as modified by
36 paragraph C, that is sought in a request or demand by the
37 department, when that disclosure is not prohibited by
38 federal statute, statutes of this State nor privileged under
39 the Maine Rules of Evidence, without incurring any liability
40 because of the disclosure.

42 E. The department may require that a response to a request
43 or demand be affirmed under the penalties for unsworn
44 falsification under Title 17-A, section 453.

46 F. A request or demand must include a copy of the substance
47 of this subsection, an answer form and a business-reply or
48 prepaid self-addressed envelope.

2 G. Knowing failure to respond to a demand for information
3 within 10 days following the date of service of the demand
4 is a civil violation for which a forfeiture not to exceed
5 \$1,000 may be adjudged.

6 H. Refusal or knowing failure to disclose to the department
7 any of the information described in paragraph A, as modified
8 by paragraph C, that is sought in a demand for information
9 by the department, when that disclosure is not prohibited by
10 federal statute, statutes of this State nor privileged under
11 the Maine Rules of Evidence, is a civil violation for which
12 a forfeiture not to exceed \$1,000 may be adjudged.

13 I. In a review under subsection 6, refusal or knowing
14 failure of a parent subject to order to complete and return
15 the forms required to be completed by parties to an action
16 under this Title or Title 22 for the establishment or
17 modification of a child support award, is a civil violation
18 for which a forfeiture not to exceed \$1,000 may be adjudged.

20
21 **PART C**

22 **Sec. C-1. 19 MRSA §276-A is enacted to read:**

23 **§276-A. Trial priority**

24
25 Any action for the determination of paternity under this
26 subchapter, whether initially an action brought under this
27 subchapter or a proceeding under chapter 7, subchapter VI, on a
28 trial calendar in either the District Court or the Superior Court
29 must be given a trial priority. Application by a party is not
30 required under this section.

31
32 **Sec. C-2. 19 MRSA c. 7, sub-c. VI is enacted to read:**

33 **SUBCHAPTER VI**

34 **EXPEDITED PROCESS FOR THE COMMENCEMENT**
35 **OF PATERNITY ACTIONS**

36 **§517. Definitions**

37 As used in this subchapter, unless the context indicates
38 otherwise, the following terms have the following meanings.

39 **1. Alleged father. "Alleged father" means:**

40
41 **A. A man who is alleged to have engaged in sexual**
42 **intercourse with a child's mother during a possible time of**
43 **conception of the child;**

2 B. A man who is alleged to have engaged in sexual
4 intercourse with a child's mother during a possible time of
conception of the child that resulted in the conception of
the child;or

6 C. A man who is presumed to be a child's father under the
8 Maine Rules of Evidence, Rule 302.

10 2. Blood or tissue typing tests. "Blood or tissue typing
12 tests" means tests that demonstrate through examination of
14 genetic markers either that an alleged father is not the natural
father of a child or that there is a probability that an alleged
father is the natural father of a child.

16 3. Commissioner. "Commissioner" means the Commissioner of
Human Services.

18 4. Department. "Department" means the Department of Human
20 Services.

22 5. Proceeding. "Proceeding" means the administrative
24 proceeding provided in this subchapter for the commencement of an
action to establish paternity under chapter 5, subchapter III.

26 **§518. Additional persons subject to jurisdiction**

28 1. Application. To ensure maximum protection to citizens
30 of this State the department shall apply this section to assert
jurisdiction over nonresident alleged fathers to the fullest
extent permitted by the due process clause of the United States
32 Constitution, Amendment XIV.

34 2. Cause of action. Any person, whether or not a citizen
36 or resident of this State, who, in this State, engages in sexual
intercourse resulting in paternity within the meaning of chapter
5, subchapter III submits himself to the jurisdiction of the
38 department for the purpose of commencing a paternity action under
chapter 5, subchapter III as provided by this subchapter.

40 **§519. Limitation on recovery from father**

42 An alleged father's liability for past expenses incurred is
44 limited to the 6 years preceding service of the notice under
section 521.

46 **§520. Service**

48 Service of a notice issued under section 521 upon a person
50 in this State must be made by service in hand, and may be made by
an authorized representative of the commissioner or by any person
52 or official authorized by the Maine Rules of Civil Procedure,
Rule 4.

2 Service of a notice upon any person subject to the
3 jurisdiction of this State pursuant to this subchapter, as
4 provided in section 518, must be made by personally serving the
5 notice upon the person in this State, or outside this State, and
6 has the same force and effect as a notice served within this
7 State.

8
9
10 **§521. Notice of proceeding to commence an action under chapter**
11 **5, subchapter III**

12 1. Notice of proceeding. The department may commence an
13 action under chapter 5, subchapter III by serving a notice on an
14 alleged father. The department may not serve such a notice
15 unless it has a sworn statement or affirmation under the penalty
16 for unsworn falsification from the child's mother claiming that
17 the alleged father engaged in sexual intercourse with her during
18 a possible time of conception of the child, or engaged in sexual
19 intercourse with her during a possible time of conception of the
20 child which resulted in the conception of the child, or is a man
21 who is presumed under state law to be the child's father. If the
22 mother is a minor, the sworn statement or affirmation may be that
23 of the guardian or next friend of the mother.

24 2. Contents of notice. In addition to conforming with the
25 requirements of the Maine Administrative Procedure Act, Title 5,
26 section 9052, subsection 4, the notice must include:

27
28 A. A statement that service of the notice on the alleged
29 father constitutes the commencement of an action under
30 chapter 5, subchapter III, for the determination of
31 paternity and any related issues under this subchapter;

32
33 B. A statement identifying any of the following as the
34 reason for filing the record of the proceeding in the
35 Superior Court or the District Court.

36 (1) The alleged father fails to deny paternity.

37 (2) The alleged father refuses to submit to blood or
38 tissue typing tests.

39 (3) The alleged father fails to execute and deliver to
40 the department an acknowledgment of paternity of the
41 child within 15 days of the mailing to him by ordinary
42 mail of a copy of the blood or tissue typing results
43 that do not exclude him as the natural father of the
44 child;

45 C. A statement that if the department files a record of the
46 proceeding, the department may seek relief under section 522;

2 D. The child's name and place and date of birth;

4 E. The name of the child's mother and the name of the
6 person or agency having custody of the child, if other than
8 the mother;

10 F. The probable date on or period during which the child
12 was conceived;

14 G. An allegation that the alleged father engaged in sexual
16 intercourse with the child's mother during a possible time
18 of conception of the child, or engaged in sexual intercourse
20 with the child's mother during a possible time of conception
22 of the child that resulted in the conception of the child,
24 or is a man who is presumed to be the child's father under
26 the Maine Rules of Evidence, Rule 302; and that the alleged
28 father is or may be the natural father of the child;

30 H. An allegation that the child was or may have been
32 conceived as a result of sexual intercourse engaged in by
34 the mother and the alleged father with each other in this
36 State, and that the alleged father is subject to personal
38 jurisdiction under section 518, if applicable;

40 I. A statement that the alleged father may deny the
42 allegation of paternity by filing a written denial of
44 paternity with the department within 20 days after service
46 of the notice; that if the alleged father fails to file a
48 written denial with the department within 20 days after
50 service of the notice upon him, the proceeding will be filed
52 in a court of proper jurisdiction as a paternity action
under chapter 5, subchapter III; and that the question of
paternity and any related issues under this subchapter may
be resolved against him by the court without further notice
to him;

J. A statement that if the alleged father files a written
denial of paternity with the department within 20 days after
service of the notice upon him:

(1) The department shall provide an expert examiner of
blood or tissue types to conduct blood or tissue typing
tests on the mother, child and alleged father; the
alleged father is required to submit to blood or tissue
typing tests that may include, but are not limited to,
tests of red cell antigens, red cell isoenzymes, human
leukocyte antigens and serum proteins; and the
department shall pay the initial cost of the blood or
tissue typing tests;

(2) And if the alleged father refuses to submit to
those tests, the proceeding will be filed in a court of

2 proper jurisdiction as a paternity action under chapter
3 5, subchapter III, and the court may resolve the
4 question of paternity and any related issues under this
5 subchapter against the alleged father;

6 (3) And if the alleged father is not excluded by the
7 test results, and he does not, within 15 days of the
8 ordinary mailing to him of a copy of the blood or
9 tissue typing results and report, execute and deliver
10 to the department an acknowledgment of paternity of the
11 child in accordance with the laws of the state in which
12 the child was born, the proceeding will be filed in a
13 court of proper jurisdiction as a paternity action
14 under chapter 5, subchapter III; and

15 (4) If the alleged father is excluded by the test
16 results as the natural father of the child, the
17 proceeding is filed in a court of proper jurisdiction
18 as a paternity action under chapter 5, subchapter III,
19 for disposition under section 280;

20
21
22 K. A statement that if, prior to the filing of the record
23 of the proceeding in a court of proper jurisdiction for any
24 of the reasons set forth in paragraph B, the alleged father
25 executes and delivers to the department an acknowledgment of
26 paternity of the child in accordance with the laws of the
27 state in which the child was born, the proceeding must
28 terminate, and the department may proceed against him under
29 subchapter V with respect to any remedy provided under that
30 subchapter; and

31
32 L. A statement that the alleged father is not required to
33 file an additional denial of paternity and he may within 25
34 days after notice has been mailed to him that the record of
35 the proceeding has been filed in a court of proper
36 jurisdiction as an action under chapter 5, subchapter III,
37 assert any defense, in law or fact, as provided by the Maine
38 Rules of Civil Procedure, Rule 12(b), if the record of the
39 proceeding is filed in Superior Court or District Court
40 because the alleged father:

41 (1) Refuses to submit to blood or tissue typing tests;
42 or

43 (2) Fails to execute and deliver to the department an
44 acknowledgment of paternity of the child within 15 days
45 of the mailing to him, by ordinary mail, of a copy of
46 blood or tissue typing test results that do not exclude
47 him as the natural father of the child.

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2 §522. Court orders; relief

4 The department may request that the court:

6 1. Natural father. Establish the alleged father as the natural father of the child;

8 2. Weekly support. Order the alleged father to pay such sums per week in child support as the court determines reasonable and just;

10 3. To whom payments made. Order the alleged father to make support payments directly to the department whenever the mother is receiving aid to families with dependent children from the department for the child or is a support enforcement client of the department and at all other times directly to the mother;

12 4. Reimbursement. Order the alleged father to reimburse the mother or the department or other payor of public assistance, as applicable, for the past support, birth expenses and medical expenses incurred on behalf of the child to the time of trial and grant judgment to the mother or the department or other payor of public assistance, as applicable, in the amount, with execution to issue immediately;

14 5. Medical expenses. Order the alleged father to pay all reasonable medical, dental, hospital and optical expenses for the child, to provide medical and health insurance coverage for the child and to provide evidence of that coverage to the department under section 776;

16 6. Attorney's fees. Order the alleged father to pay reasonable attorney's fees under section 271, and costs, including, but not limited to, prejudgment interest, for prosecution of the action;

18 7. Income withholding period. Order income withholding as available under or required by law; and

20 8. Other relief. Grant such other and further relief as the court determines just and proper.

22 §523. Applicability of Maine Rules of Civil Procedure, Rule 5(b)

24 The Maine Rules of Civil Procedure, Rule 5(b), applies to a proceeding maintained under this subchapter.

26 §524. Multiple alleged fathers

28 When it appears to the department that there may be more than one alleged father of a child, the department may maintain proceedings under this subchapter against each alleged father,

2 simultaneously or successively. Failure to serve a notice on an
4 alleged father does not bar the department from maintaining a
6 proceeding under this subchapter against any other alleged father
8 of the same child.

6 **§525. Failure of alleged father to deny paternity**

8 If the alleged father fails to file a written denial of
10 paternity with the department within 20 days after service of
12 notice upon him, the department's attorney may file the record of
14 the proceeding in a court of proper jurisdiction as a paternity
16 action under chapter 5, subchapter III. This filing constitutes
18 a filing under the Maine Rules of Civil Procedure, Rule 3. Upon
20 this filing, the proceeding is an action under chapter 5,
22 subchapter III.

18 **§526. Blood or tissue typing tests**

20 1. Requirement of tests. If the alleged father files a
22 written denial of paternity with the department within 20 days
24 after service of the notice upon him, the department shall
26 schedule blood or tissue typing tests for the mother, the child
28 and the alleged father which may include, but not be limited to,
30 tests of red cell antigens, red cell isoenzymes, human leukocyte
32 antigens and serum proteins. The tests must be performed by an
34 expert examiner in a laboratory that is accredited for parentage
36 testing by the American Association of Blood Banks and that
38 performs DNA probes, selected by the department.

30 2. Scheduling of tests. The department shall notify the
32 alleged father in writing by ordinary mail of the date, time and
34 place of his blood or tissue typing tests. The tests may not be
36 conducted within less than 15 days following the mailing of the
38 department's notice, except with the consent of the alleged
40 father. The test must be conducted in an office of the
42 department, where practicable. The department shall take into
44 account the alleged father's place of residence or employment in
46 selecting the location of the test.

40 3. Rescheduling of tests. If the alleged father does not
42 submit to the tests set forth in subsection 2, the department
44 shall notify him in writing by ordinary mail that if he does not,
46 within 15 days, request the department to reschedule the tests,
48 his failure to appear constitutes a refusal to submit to the
50 tests, and the department shall proceed under section 528. If
52 the alleged father timely requests rescheduling, the department
shall reschedule the test. The rescheduled test may not be
conducted within less than 15 days following the mailing of the
department's notice of rescheduling. The test must be conducted
in an office of the department, where practicable. The
department shall take into account the alleged father's place of
residence or employment in selecting the location of the test.

2 The notice of rescheduling must also advise the alleged father
4 that if he fails to submit to the rescheduled test that failure
constitutes a refusal to submit to the tests, and the department
shall proceed under section 528.

6 **§527. Refusal of alleged father to submit to blood or tissue**
8 **tests**

10 If an alleged father refuses to submit to blood or tissue
12 typing tests, the department's attorney may file the record of
14 the proceeding in a court of proper jurisdiction as a paternity
16 action under chapter 5, subchapter III. The filing constitutes a
18 filing under the Maine Rules of Civil Procedure, Rule 3. Upon
this filing, the proceeding is an action under chapter 5,
subchapter III, and the alleged father's refusal to submit to
blood or tissue typing tests constitutes a refusal to submit to
those tests under section 277 in that action.

20 **§528. Procedures after blood tests**

22 1. Transmittal of test results. Upon receipt of the
24 results of the blood tests, the department shall send copies of
26 the results by ordinary mail to the alleged father and to the
child's mother or to the mother's guardian or next friend if the
mother is a minor.

28 2. Exclusion of alleged father. If the alleged father is
30 excluded by the test results as the natural father of the child,
32 the department's attorney may file the record of the proceeding
34 in a court of proper jurisdiction as a paternity action under
chapter 5, subchapter III, for disposition under section 280.
The filing constitutes a filing under the Maine Rules of Civil
Procedure, Rule 3, and the proceeding is an action under chapter
5, subchapter III.

36 3. Nonexclusion of alleged father. If the alleged father
38 is not excluded by the test results, and he does not, within 15
40 days of the mailing to him of a copy of the blood or tissue
42 typing results and report, execute and deliver to the department
44 by ordinary mail, an acknowledgment of paternity of the child in
46 accordance with the laws of the state in which the child was
48 born, the department's attorney may file the record of the
50 proceeding, inclusive of the blood or tissue typing test results,
in a court of proper jurisdiction as a paternity action under
chapter 5, subchapter III. The filing is a filing under the
Maine Rules of Civil Procedure, Rule 3, and the proceeding is an
action under chapter 5, subchapter III. Section 280 applies to
the action even though the blood and tissue typing tests were
performed and the results prepared as part of an administrative
proceeding under this subchapter. The alleged father's

2 participation in the tests may not prejudice any application by
4 the alleged father under section 278 for an order appointing an
6 additional examiner of blood or tissue types.

8 **§529. Applicability of Maine Rules of Civil Procedure, Rule 12(b)**

10 If a record of the proceeding is filed in a court of proper
12 jurisdiction under section 527 or section 528, subsection 3, the
14 alleged father is not required to file an additional denial of
16 paternity. He may assert any defense, in law or fact, as
18 provided by the Maine Rules of Civil Procedure, Rule 12(b). Any
20 defense must be asserted within 25 days after the mailing by
22 ordinary mail of a notice to the alleged father that the record
24 of the proceeding has been filed in a court of proper
26 jurisdiction as an action under chapter 5, subchapter III. The
28 notice must contain the substance of this section.

30 **§530. Acknowledgment of paternity**

32 If, prior to the filing of the record of the proceeding in a
34 court of proper jurisdiction pursuant to section 525, 527 or
36 section 528, subsection 3, the alleged father executes and
38 delivers to the department an acknowledgment of paternity of the
40 child in accordance with the laws of the state in which the child
42 was born, the proceeding must abate, and the department may
44 thereupon proceed against the father under subchapter V with
46 respect to any remedy provided under that section.

48 **STATEMENT OF FACT**

50 The purpose of Part A of this bill is to fulfill the
52 requirement of the federal Social Security Act, Section 466
(b)(3)(A), as enacted by the federal Family Support Act of 1988,
for immediate income withholding for child support in Title IV-D
cases, support enforcement cases of the Department of Human
Services, by November 1, 1990.

The purpose of Part B is to meet the requirement of the
federal Family Support Act of 1988 for a state plan for reviewing
and adjusting child support awards in accordance with child
support award guidelines that will be effective by October 12,
1990; and to do so in such a way as to enable the State to
fulfill the requirement for a triennial review process by October
12, 1993, or earlier at the State's election. The federal
mandate for triennial reviews and adjustments of child support
awards poses serious implementation problems. This bill enables
the Department of Human Services to start implementing the
triennial review requirement as soon as possible in order to have
an effective process in place by October 12, 1993.

2 The purpose of Part C is to enable the Department of Human
3 Services, as the State's child support enforcement agency under
4 the federal Social Security Act, Title IV, Part D, to comply with
5 the federal performance and audit requirements relative to the
6 establishment of paternity set forth in 45 Code of Federal
7 Regulations 303.5(a)(1)(2)(3), promulgated August 4, 1989, and
8 effective October 1, 1990, both with regard to new cases and the
9 case backlog of 6,000. Presently, actions for the determination
10 of paternity under the Uniform Act on Paternity of the State can
11 be commenced only in the Superior Court or the District Court.
12 Section C-1 provides for a trial preference for paternity
13 actions. Section C-2 provides an expedited process for the
14 commencement of paternity actions which parallels the preliminary
15 provisions of the Uniform Act on Paternity of the State. All
16 paternity trials and default hearings would continue to be held
17 only by either the District Court or the Superior Court, and all
18 determinations of paternity and nonpaternity would continue to be
made only by the District Court or Superior Court.