

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
SENATE
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 598, L.D. 1583, Bill, "An Act to Create a Preliminary Injunction for Certain Domestic Relations Cases"

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

'Sec. 1. 19 MRSA §692 is repealed.

Sec. 2. 19 MRSA §692-A is enacted to read:

§692-A. Preliminary injunction, effect; attachment or trustee process

1. Issue of preliminary injunction. In all actions for divorce, for judicial separation or for spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, pursuant to order of the District Court or Superior Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

2. of 8.

COMMITTEE AMENDMENT "A" to S.P. 598, L.D. 1583

2 (1) That each party is enjoined from transferring,
4 encumbering, concealing, selling or otherwise disposing
6 of any property of either or both of the parties,
except in the usual course of business or for the
necessities of life, without the written consent of the
parties or the permission of the court;

8 (2) That each party is enjoined from imposing any
10 restraint on the personal liberty of the other party or
12 of any natural or adopted child of either or both of
the parties; and

14 (3) That each party is enjoined from voluntarily
16 removing the other party or any child or children of
the parties from any policy of health insurance that
provides coverage for the other party or the child or
children of the parties.

18 C. The preliminary injunction must include the following
20 statement:

22 "Warning

24 This is an official court order. If you disobey this
26 order the court may find you in contempt of court.

28 This court order is effective until the earliest of the
following:

- 30 (1) The court revokes or modifies it;
- 32 (2) A final divorce judgment or decree of judicial
34 separation is entered; or
- 36 (3) The action is dismissed."

38 D. The preliminary injunction is effective against the
40 plaintiff upon the commencement of the action and against
42 the defendant upon service of a copy of both the complaint
44 and order in accordance with the Maine Rules of Civil
46 Procedure. The plaintiff is deemed to have accepted service
of the plaintiff's copy of the preliminary injunction and to
have actual notice of its contents by filing or causing the
complaint to be served. The plaintiff shall cause a copy of
the preliminary injunction to be served upon the defendant
with a copy of the summons and complaint.

48 E. The preliminary injunction has the force and effect of
50 an order of a Judge of the Probate Court or District Court
or Justice of Superior Court and is enforceable by all
52 remedies made available by law, including contempt of
court. The order remains in effect until entry of a final

2 decree, until the case is dismissed or until otherwise
3 ordered by the court.

4 2. Revocation or modification. A preliminary injunction
5 may be revoked or modified after hearing for good cause shown.
6 The party seeking to revoke or modify the preliminary injunction
7 shall file a motion together with an affidavit that demonstrates
8 the good cause necessary for revocation or modification.

10 A. Notwithstanding any law to the contrary, on 7 days'
11 notice to the other party or on shorter notice as the court
12 may order, either party subject to an order may appear and
13 move the dissolution or modification of the order, and in
14 that event the court shall proceed to hear and determine the
15 motion as expeditiously as justice requires.

16 B. Mediation is not required before a hearing on a motion
17 to revoke or modify a preliminary injunction except as
18 directed by the court.

19 C. A preliminary injunction:

20
21 (1) Does not prejudice the rights of the parties or
22 any child that are to be adjudicated at subsequent
23 hearings in the proceeding and does not limit the power
24 of the court to issue other injunctive relief that may
25 be proper under the circumstances; and

26 (2) Terminates when:

27 (i) The court revokes or modifies it;

28 (ii) A final divorce judgment or decree of
29 judicial separation is entered; or

30 (iii) The action is dismissed.

31
32 3. Remedies. The court may enforce a preliminary
33 injunction issued pursuant to this section:

34 A. By finding a person who disobeys or resists the
35 injunction in contempt of court;

36 B. By requiring a person who disobeys or resists the
37 injunction to pay the costs and attorney's fees that the
38 other party incurred to enforce the preliminary injunction;
39 and

40 C. By appropriate processes as in other actions.

41
42 The remedies provided in this subsection for enforcement of a
43 preliminary injunction are in addition to any other civil or

R. 24 8

2 criminal remedies available, including civil contempt of court.
3 The use of one remedy does not prevent the simultaneous or
4 subsequent use of any other remedy.

5 4. Mutual order of protection or restraint. Orders issued
6 pursuant to this section do not supersede orders issued pursuant
7 to Title 19, chapter 14.

8 5. Attachment of property; trustee process. Attachment of
9 real or personal property or on trustee process may be used in
10 connection with an action for divorce, judicial separation or
11 spousal or child support following divorce by a court that lacked
12 personal jurisdiction over the absent spouse.

13 6. Application. The injunction authorized in this section
14 does not apply to post-divorce actions.

18 **FISCAL NOTE**

19 This bill provides for a preliminary injunction in domestic
20 relations cases under which parties are enjoined from dissipating
21 assets and restraining the other spouse's liberty. The
22 additional work load and administrative costs associated with
23 issuance of a preliminary injunction can be absorbed within the
24 budgeted resources of the Judicial Department.
25

28 **STATEMENT OF FACT**

29 This bill is intended to preserve the status quo pending a
30 hearing in a divorce proceeding. Under the bill, parties to a
31 divorce are enjoined from dissipating assets and restraining the
32 other spouse's liberty. The injunction is effective until a
33 hearing establishes the divorcing parties' financial obligations
34 and parental rights and responsibilities. The bill is based on
35 similar laws in Arizona and Colorado.
36

37 The injunction set up in this bill is effective against the
38 plaintiff upon filing of the complaint and effective against the
39 defendant upon service of the complaint. Most importantly, this
40 bill is designed to reduce emotional liability resulting in
41 conduct financially and psychologically detrimental to children
42 of divorce.
43
44

Reported by Senator Holloway for the Committee on Judiciary.
Reproduced and Distributed Pursuant to Senate Rule 12.
(5/30/91) (Filing No. S-265)