

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1583

S.P. 598

In Senate, April 18, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

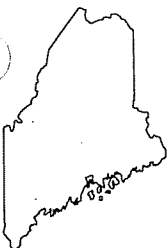
JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CONLEY of Cumberland

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act to Create a Preliminary Injunction for Certain Domestic
Relations Cases.**



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

4 Sec. 1. 19 MRSA §692 is repealed.

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

8 §692-A. Preliminary injunction

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

16 2. Contents of preliminary injunction. The preliminary
18 injunction must contain:

20 A. An order that both parties are enjoined from
22 transferring, encumbering, concealing, selling or otherwise
24 disposing 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;

26 B. An order that both parties are enjoined from molesting,
28 threatening, harassing, disturbing the peace of or
30 committing an assault or battery on the person of the other
party or of any natural or adopted child of either or both
of the parties;

32 C. An order that both parties are enjoined from removing
34 any natural or adopted child of the parties then residing in
36 the State from the jurisdiction of the court without the
prior written consent of the parties or the permission of
the court; and

38 D. A statement that:

40 (1) The preliminary injunction is an official court
42 order. If the injunction is disobeyed, the court may
find the party who disobeys that injunction in contempt
of court;

44 (2) A certified copy of the preliminary injunction may
46 be obtained from the clerk of the court that issued the
preliminary injunction;

48 (3) Either spouse may file a certified copy of the
50 preliminary injunction with that party's local law
enforcement agency;

2 (4) The party who brought the action must file
4 evidence with that party's local law enforcement agency
 that the preliminary injunction was served on that
 party's spouse; and

6 (5) The preliminary injunction is effective until
8 otherwise ordered by the court, until entry of a final
10 divorce judgment or decree of judicial separation or
 until the action is dismissed.

12 3. Time when preliminary injunction effective. The
14 preliminary injunction is effective against the plaintiff upon
16 the commencement of the action and against the defendant upon
18 service of a copy of both the complaint and order in accordance
20 with the Maine Rules of Civil 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.

22 4. Effect of preliminary injunction. The preliminary
24 injunction has the force and effect of an order of a Judge of the
26 Probate Court or District Court or Justice of Superior Court and
28 is enforceable by all remedies made available by law, including
 contempt of court. The order remains in effect until entry of a
 final decree, until the case is dismissed or until otherwise
 ordered by the court.

30 5. Revocation or modification. On 7 days' notice to the
32 other party or on shorter notice as the court may order, either
34 party who is subject to an order may appear and move the
36 dissolution or modification of the order and, in that event, the
 court shall proceed to hear and determine the motion as
 expeditiously as justice requires.

38 6. Mediation. Mediation is not required before a hearing
40 on a motion to revoke or modify a preliminary injunction except
 as directed by the court.

42 7. Rights of the parties. A preliminary injunction does
44 not prejudice the rights of the parties or any child that are to
46 be adjudicated at the subsequent hearings in the proceeding and
 does not limit the power of the court to issue other injunctive
 relief that may be proper under the circumstances.

48 8. Termination. A preliminary injunction terminates when
50 the final decree is entered, when the complaint is dismissed or
 when otherwise ordered by the court.

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

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B. By requiring that person to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction.

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The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

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10. Law enforcement agency. Any party may cause a certified copy of the injunction and return of service on the other party to be registered with the law enforcement agency having jurisdiction of the area in which the party resides or is employed. The party originally registering the injunction shall register any changes or modifications of the injunction with the law enforcement agency.

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11. Mutual order of protection or restraint. No orders issued pursuant to this section may supersede orders issued pursuant to Title 19, chapter 14.

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STATEMENT OF FACT

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This bill is intended to preserve the status quo pending a hearing in a divorce proceeding. Under the bill, parties to a divorce are enjoined from dissipating assets, removing children from the State and harassing the other litigant. The injunction is effective until a hearing establishes the divorcing parties' financial obligations and parental rights and responsibilities. The bill is based on similar laws in Arizona and Colorado.

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The injunction set up in this bill is effective against the plaintiff upon filing of the complaint and effective against the defendant upon service of the complaint. The bill is designed to provide an immediate preliminary court order that is needed for law enforcement officials to enforce state and federal parental kidnapping laws. It is not intended, however, to be used against a victim of domestic violence who needs to flee the State for protection. Most importantly, this bill is designed to reduce emotional liability resulting in conduct financially and psychologically detrimental to children of divorce.

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