

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

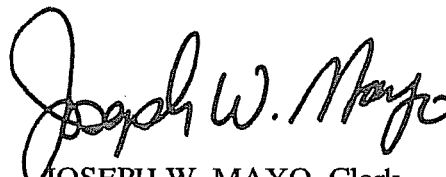
No. 1485

H.P. 1098

House of Representatives, May 10, 1993

An Act to Require Immediate Income Withholding for All Child Support Orders.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative PLOWMAN of Hampden. (GOVERNOR'S BILL)
Cosponsored by Representative: HATCH of Skowhegan, Senators: CARPENTER of York,
CIANCHETTE of Somerset.

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

2
4 **Sec. 1. 19 MRSA §752, sub-§10**, as amended by PL 1989, c. 834,
Pt. B, §11, is further amended to read:

6 **10. Support order.** An order of the court for child support
7 may run against the father or the mother in whole or in part or
8 against both, irrespective of the fault of the father or mother
9 in the divorce action. For divorces ordered after January 1,
10 1990, the order for child support may run until the child
11 graduates, withdraws or is expelled from secondary school as
12 defined in Title 20-A, section 1, or attains the age of 19 years,
13 whichever first occurs after the child attains the age of 18
14 years. When the order is to run against both, the court shall
15 specify the amount each shall pay. The court shall inquire of
16 the parties concerning the existence of a child support order
17 entered pursuant to chapter 7, subchapter V. If such an order
18 exists, the court shall consider its terms in establishing a
19 child support obligation. A determination or modification of
20 child support under this section must comply with chapter 7,
subchapter I-A.

22
23 An order for child support under this section may include an
24 order for the payment of part or all of the medical expenses,
25 hospital expenses and other health care expenses of the child.
26 The court order must include a provision requiring an obligated
27 parent to obtain and maintain health insurance coverage for
28 medical, hospitalization and dental expenses, if health insurance
29 is available to the obligated parent at reasonable cost. The
30 court order must also require the obligated parent to furnish
31 proof of such coverage to the obligee within 15 days of receipt
32 of a copy of the court order. For the purposes of this section,
33 health insurance is considered reasonable in cost if it is
34 employment-related or other group health insurance. If health
35 insurance is not available at reasonable cost at the time of the
36 hearing, the court order must establish the obligation to provide
37 health insurance on the part of the obligated parent effective
38 immediately upon the insurance being available at reasonable cost.

40 When the Department of Human Services provides support
41 enforcement services, the support order must include a provision
42 that requires the responsible parent to keep the department
43 informed of any changes in that parent's current address, the
44 name and address of that parent's current employer and whether
45 the responsible parent has access to health insurance coverage at
46 reasonable cost and if so the health insurance policy information
47 and any subsequent changes.

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49 Availability of public welfare benefits to the family ~~must~~ may
50 not affect the decision of the court as to the responsibility of
51 a parent to provide child support.

2 The court may enforce a support order as provided in chapter 14-A.

4 Sec. 2. 19 MRSA §777, sub-§4 is enacted to read:

6 4. Repeal. This section is repealed on July 1, 1995.

8 Sec. 3. 19 MRSA §777-A, sub-§17 is enacted to read:

10 17. Repeal. This section is repealed on July 1, 1995.

12 Sec. 4. 19 MRSA §777-C is enacted to read:

14 §777-C. Duty to report

16 A responsible parent required by law to pay child support to
18 the Department of Human Services shall inform the department of
20 any changes in the responsible parent's current address or
22 employer. Failure to report a change of address or employer to
24 the department within 15 days is a civil violation for which the
court may impose a fine not to exceed \$200 for each violation.
Each judicial order or administrative decision issued or modified
in this State that includes an order for child support must
include a statement that advises the responsible parent of the
duty to report and the penalty for failure to report.

26 Sec. 5. 19 MRSA c. 14-B is enacted to read:

28 CHAPTER 14-B

30 INCOME WITHHOLDING

32 §780. Income withholding

34 1. Immediate income withholding; issuance of orders.
36 Effective January 1, 1994, in any action under this Title or
38 Title 22 in which a court establishes or modifies a support
40 order, the court shall issue an immediate income withholding
order in accordance with the requirements of this chapter, unless
the court finds good cause or approves an alternative arrangement
as provided in section 780-F.

42 2. Immediate income withholding; modification of orders.
44 Upon the motion of an obligee, an obligor or the Department of
46 Human Services, the court shall modify a support order issued
before the effective date of this chapter to include an immediate
income withholding order.

48 3. Immediate income withholding; implementation of orders.
50 An immediate income withholding order may be implemented by the
52 Department of Human Services for a recipient of the department's
support enforcement services, by a support obligee who does not
receive the department's support enforcement services or by a

2 support obligor. An immediate income withholding order is
3 implemented by serving an attested copy of the order upon the
4 obligor's payor of income.

6 **§780-A. Provisions of withholding order**

8 An immediate income withholding order must provide for the
9 withholding from the obligor's income of amounts payable as child
10 support, effective from the date of the support order, regardless
11 of whether child support payments by the obligor are past due.
12 The withholding order must include:

14 1. Amount withheld. The amount of income to be withheld
15 for payment of the obligor's current parental support obligation;

16 2. Department member number. The obligor's Department of
17 Human Services support enforcement member number, if applicable,
18 and if known to the court;

20 3. Payor instructions. An instruction to the payor that
21 upon receipt of a copy of the withholding order the payor shall:

22 A. Immediately begin to withhold the obligor's income when
23 the obligor is usually paid;

24 B. Send each amount withheld to the Department of Human
25 Services at the address set forth in the order within 10
26 days of the withholding; and

27 C. Identify each amount sent to the Department of Human
28 Services by indicating the department's support enforcement
29 member number, if known;

30 4. Notice regarding collection of arrearages. A notice
31 that the withholding order may be used to collect arrearages in
32 addition to current support; and

33 5. Limitation on withholding. A notice that the amount of
34 the withholding may not exceed the limitations imposed by section
35 502 or by the United States Code, Title 15, Section 1673(b).

36 **§780-B. Administering agency**

37 The Department of Human Services shall adopt and administer
38 procedures to receive, document, and distribute all support
39 payments collected pursuant to this chapter. The Commissioner of
40 Human Services may establish by rule a fee for use of these
41 services. The department shall retain all fees and apply them
42 toward the administration of the division of support enforcement
43 and recovery.

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§780-C. Payor duty

A payor of income to an obligor named in a withholding order issued under this chapter must comply with the provisions of the withholding order upon receipt of a copy of the order. The balance of income due an obligor after withholding must be paid to the obligor on the day the obligor is usually paid. A payor may combine amounts withheld for transmittal to the Department of Human Services from more than one obligor if the portion attributable to each obligor is separately designated, except that the payor may not combine amounts if that action would result in an obligor's withheld income being sent to the department more than 10 days from the date of withholding.

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§780-D. Payor notice

The Department of Human Services shall develop and make available to the public a payor notice that complies with the requirements of Title IV-D of the Social Security Act and the regulations issued thereunder. Whenever the department, an obligee or an obligor implements a withholding order issued under this chapter, the party that implements the withholding order shall provide the obligor's payor of income with the payor notice at the time of service of the withholding order.

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§780-E. Past-due support

Upon meeting the conditions of this section, the Department of Human Services or an obligee may use an income withholding order issued under this chapter to collect past-due support. Past-due support may be collected in addition to or apart from current support. Notwithstanding the provisions of this section, the court may order payment of past-due support by income withholding upon a determination by the court of the amount past due. If the court so orders, the department or obligee need not proceed in accordance with this section and may issue the withholding order to collect the past-due support immediately.

1. Collection of past-due support by department. Before the Department of Human Services may implement an income withholding order issued under this section to collect past-due support, the department must establish the amount of support past due, unless the amount has been established by judicial or administrative action, agreement of the parties or by operation of law.

A. If the obligor's debt for past-due support has been established by judicial or administrative action, agreement of the parties or by operation of law, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support.

2 B. If the obligor's debt for past-due support is not
4 established, the department may establish the amount past
6 due by proceeding under section 500, by asking the court to
8 determine the amount past due, or by reaching agreement with
10 the obligor as to the amount past due. Once the obligor's
12 debt for past-due support has been established, the
14 department shall serve the income withholding order upon the
16 obligor's payor of income to collect the past-due support.

18 **2. Collection of past-due support by private action.** To
20 collect past-due support by an income withholding order issued
22 under this chapter, an obligee who does not receive support
24 enforcement services from the Department of Human Services must:

26 A. Determine that the amounts payable under the support
28 order are equal to or greater than the amount due for 30
30 days; and

32 B. Serve written notice of the obligee's determination of
34 past-due support upon the obligor at least 20 days before
36 service of the determination of past-due support and a copy
38 of the income withholding order upon the obligor's payor of
40 income.

42 An obligee may serve an income withholding order upon the
44 obligor's payor of income 21 days after service of the obligee's
46 determination of past-due support upon the obligor unless the
48 obligor files a motion for determination of past-due support with
50 the court and an ex parte request for a stay of withholding in
52 accordance with subsection 3. If the obligor does not file a
motion for determination of past-due support with the court and
request the court to issue an ex parte stay of withholding, the
obligee may serve a copy of the obligee's determination of
past-due support and a copy of the withholding order upon the
obligor's payor of income. The obligee shall send copies of the
determination of past-due support and the withholding order
served upon the payor of income to the department by regular mail
at the time of service. Upon receipt of the copies, the
department shall issue a letter to the obligor and obligee that
confirms receipt, provides a support enforcement case number to
identify payments and explains the department's role as the
administering agency.

44 **3. Stay.** The court may grant a stay of the withholding of
46 past-due support claimed upon request of the obligor as long as
48 the obligor timely files a motion for determination of past-due
50 support. A stay issued by the court under this subsection must
52 expire in 60 days and may be reissued only upon a showing by the
obligor that the obligor has made reasonable efforts to obtain a
hearing on the motion for determination of past-due support
during the stay.

2 **§780-F. Good cause; alternative arrangements**

4 The court may elect not to issue an immediate income
withholding order under this chapter if:

6 1. Demonstration of good cause. A party demonstrates and
the court finds that there is good cause not to require immediate
8 income withholding; or

10 2. Written agreement. A written agreement between the
parties providing an alternative arrangement is filed with and
12 approved by the court.

14 For purposes of this section a finding of good cause by the
court must be based on a determination that immediate income
16 withholding would not be in the best interests of the child and a
showing by the responsible parent that any previously ordered
18 support was paid timely. The court shall explain the basis for a
finding of good cause in the support order.

20 **§780-G. Service of process**

22 Service under this chapter may be by certified mail or in
24 accordance with the requirements of the Maine Rules of Civil
Procedure, Rule 4. The Department of Human Services may serve an
26 income withholding order as provided in section 494.

28 **§780-H. Duration of withholding**

30 An immediate income withholding order is binding upon an
obligor's payor of income until:

32 1. Court order. The court orders withholding ended;

34 2. Release by department. The Department of Human Services
36 releases the payor from the terms of the order in writing; or

38 3. Release by obligee. If the withholding order was
implemented by the obligee as a private withholding action, the
40 obligee releases the payor from the terms of the order in writing.

42 The Department of Human Services shall issue a release to
end immediate income withholding if the department is unable to
44 forward funds to the obligee for 3 months, in which case the
department shall return the funds to the obligor. The
46 department, or obligee, if the obligee implemented the
withholding order as a private action, shall issue promptly a
48 release of the withholding order in all cases in which there is
no longer a current support obligation and all past-due support
50 has been paid. The department or obligee, as applicable, shall
refund the obligor amounts withheld improperly because a release
52 is not issued timely. An obligee is liable to the department for

2 amounts received from the department that the obligee is not
3 entitled to receive. An income withholding order issued under
4 this chapter may not be released or ended if the obligor has a
5 current parental support obligation or owes a debt for past-due
6 support unless the court finds good cause or approves an
7 alternative arrangement for payment of support in accordance with
8 section 780-F.

10 **§780-I. Priority of order**

11 Notwithstanding any other provision of law, an immediate
12 income withholding order issued under this chapter has priority
13 over any previously filed attachment, execution, garnishment or
14 assignment of income that is not made for the purpose of
15 enforcing or paying child or spousal support.

16 **§780-J. Notice of termination**

17 Whenever a payor of income is unable to continue withholding
18 from an obligor's income because the relationship between the
19 payor and obligor ends, the payor shall send the Department of
20 Human Services a written notice of termination within 15 days.
21 The notice must include:

22 1. **Obligor's identification.** The obligor's name, last
23 known address and social security number;

24 2. **Department member number.** The obligor's Department of
25 Human Services support enforcement member number;

26 3. **Termination date.** The date of termination of the
27 relationship; and

28 4. **New payor.** If known, the name and address of a new
29 payor of income to the obligor.

30 **§780-K. Payor liability**

31 Upon service of an immediate income withholding order, a
32 payor is liable for any income that the payor knowingly fails to
33 withhold and send to the Department of Human Services within 10
34 days of the day that the obligor is usually paid. The
35 department, or obligee, if the obligee implemented the
36 withholding order as a private action, may recover from the payor
37 in a civil action income the payor does not withhold and send to
38 the department as required by the withholding order, in addition
39 to the civil penalties provided for in this section, plus
40 attorney's fees and court costs.

41 1. **Failure to withhold.** A payor who knowingly fails to
42 withhold income when income is usually paid to the obligor
43 commits a civil violation for which the court may order a penalty
44 of not more than \$100 for each failure to withhold.

2 2. Failure to send income withheld. A payor who knowingly
4 fails to send income withheld to the Department of Human Services
6 within 10 days of its withholding commits a civil violation for
8 which the court may order a penalty of not more than \$100 for
10 each failure to timely send income withheld from an obligor.

12 3. Failure to notify. A payor who knowingly fails to send
14 the notification required by section 780-J commits a civil
16 violation for which the court may order a penalty of not more
18 than \$100.

20 4. Discrimination against obligors. A payor who discharges
22 from employment or refuses to employ an obligor, or who takes
24 disciplinary action against an obligor employed by the payor or
26 who otherwise discriminates against the obligor because of the
28 existence of an income withholding order or the obligations
30 imposed upon the payor by the order, is subject to a penalty of
32 not more than \$5,000, payable to the State, to be recovered in a
34 civil action. The payor is also subject to an action by the
36 obligor for compensatory and punitive damages for those actions,
38 plus attorney's fees and court costs.

40 **§780-L. Payor fee**

42 The Commissioner of Human Services may establish by rule a
44 fee for the administrative cost of each withholding that a payor
46 may deduct in addition to the amount withheld for support.

48 **§780-M. Attested copies**

50 The clerk of the court shall send to the Department of Human
52 Services an attested copy of each order in which a child support
54 obligation is established or modified and an attested copy of the
56 immediate income withholding order.

58 **§780-N. Application for services**

60 The Department of Human Services shall furnish and the clerk
62 of the court shall make available to all individuals awarded
64 child support application forms and blank contracts for the
66 department's support enforcement services. The department shall
68 also furnish the clerk with forms that enable an individual to
70 refuse services. The clerk shall send to the department all
72 application forms, contracts and refusal forms submitted,
74 together with the attested copies of the orders that the clerk is
76 required to send the department under section 780-M. Each
78 individual who is awarded child support by the court must
80 complete either the application form and contract or the form for
82 refusal of services. The court shall inform a person who is
84 awarded child support that that person must complete either the
86 application and contract for services or the form to refuse
88 services and submit them to the clerk.

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3 **§780-O. Spousal support**

4 Awards for spousal support are subject to immediate income
5 withholding under this chapter if the award is for a period
6 during which child support is awarded.

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8 **§780-P. Payor immunity**

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10 A payor of income who honors an income withholding order
11 under this chapter may not be held liable by the obligor for
12 income withheld in compliance with the order.

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14 **§780-Q. Other remedies**

15
16 An income withholding order issued under this chapter is an
17 additional remedy to enforce a support order and does not limit
18 the use of other legal remedies that may be available for
19 collection of child and spousal support.

20 **§780-R. Rulemaking**

21
22 The Department of Human Services shall adopt rulemaking to
23 implement its responsibilities under this chapter.

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26 **STATEMENT OF FACT**

27
28 This bill requires all child support orders issued by a
29 court in this State to include an order for immediate income
30 withholding unless the court finds good cause or approves an
alternative arrangement.