

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

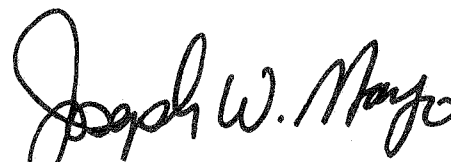
No. 1689

H.P. 1190

House of Representatives, March 27, 1997

An Act to Provide Court-ordered Income Withholding of Spousal Support.

Submitted by the Judicial Department pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative TOWNSEND of Portland.
Cosponsored by Senator BENOIT of Franklin and
Representatives: POWERS of Rockport, SAXL of Bangor.

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

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Sec. 1. 19-A MRSA §954 is enacted to read:

§954. Income withholding

1. Availability and establishment of income withholding.

Spousal support orders issued or modified by the courts in this State must have a provision for the withholding of income to ensure that withholding as a means of obtaining spousal support is available if arrearages occur. Income withholding against all spousal support obligations ordered by a court within the State must be implemented as follows.

A. New orders of spousal support must include a provision withholding the amount of spousal support from the income, regardless of the source, of the person obligated to pay the support. If an existing order of alimony or spousal support does not include a withholding order, the obligee may file a motion to amend the spousal support order to include an order for withholding, which the court shall grant.

B. Each order for withholding must provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make the spousal support payments and that no withholding may be made until the following conditions are met:

(1) Either the obligor requests that income withholding be implemented or the obligee determines that the payments the obligor has failed to make under the spousal support order are at least equal to the amount payable for one month;

(2) The obligee serves written notice of the amount of arrearage upon the obligor and informs the obligor that the obligee has procured a court order for income withholding;

(3) The obligee mails a copy of the determination of arrearage and a copy of the court's withholding order to the payor of funds;

(4) The obligee mails to the Department of Human Services a copy of the determination of arrearage and a copy of the court's withholding order to enable the department to proceed pursuant to subsection 2; and

(5) The obligor has a 20-day period, after receiving the notice pursuant to subparagraph (2), to file a

2 motion for determination of arrearages with respect to
3 the amount of spousal support owed and to
4 simultaneously request an ex parte stay of service on
5 the payor of funds until the motion for determination
6 is heard. Any stay issued by the court under this
7 subsection expires in 60 days and may be reissued only
8 upon a showing by the obligor that the obligor has made
9 reasonable efforts to obtain a hearing on the motion
10 for determination of arrearages during the effective
11 period of the stay.

12 C. An order modifying the amount of spousal support issued
13 after a hearing on a motion to modify spousal support may
14 provide that payments be made outright by withholding. If
15 so, paragraph B does not apply.

16 D. Notwithstanding any law to the contrary, the withholding
17 order is binding on the payor of funds once service has been
18 made upon the payor. The payor is liable for any amounts
19 the payor fails to withhold after receiving notice. The
20 payor shall withhold from the income payable to the obligor
21 the amount specified in the order and shall monthly or more
22 frequently remit the amounts withheld to the department.
23 For implementing the order to withhold, the payor is
24 entitled to charge a processing fee as adopted by the
25 commissioner under section 2370. This charge must be
26 deducted from the amount withheld prior to its remittance to
27 the department. The amount specified in the order may not
28 exceed the limitations imposed by section 2356 or by 15
29 United States Code, Section 1673. An employer who, in
30 contravention of this section, discharges from employment,
31 refuses to employ or takes disciplinary action against any
32 obligor because of the existence of an order and the
33 obligations or additional obligations that it imposes upon
34 the employer is subject to a fine in an amount not to exceed
35 \$5,000.

36 E. When a withholding order is in effect and the obligor's
37 employment is terminated or the periodic payment terminates,
38 the obligor's employer or other payor of funds shall notify
39 the department of the termination within 30 days of the
40 termination date. The notice must include the obligor's
41 home address and the name and address of the obligor's new
42 employer or payor of funds, if known.

43 F. The order of withholding with regard to a current
44 support obligation must be terminated if:

45 (1) The department is unable to forward funds to the
46 obligee for 3 months; or

2 (2) The spousal support obligation has been eliminated
3 by a subsequent court order.

4 A termination may not occur while an arrearage remains
5 unless other provisions for its repayment have been made.

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7 If the department is unable to forward the funds to the obligee
8 for 3 months the funds must be returned to the obligor and notice
9 must be given to the obligor's employer or other payor to cease
10 withholding.

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12 2. Department designated as administering agency. The
13 department is designated as the agency responsible for adopting
14 and administering procedures to receive, document, track and
15 monitor all spousal support payments collected pursuant to this
16 section. The department may establish a fee for use of these
17 services.

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

23 **Sec. 2. Effective date.** This Act takes effect October 1, 1997.

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SUMMARY

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29 This bill requires that when a court orders spousal support,
30 a provision is made in the order for the withholding of income if
31 arrearages occur. The bill provides for the implementation of an
32 income withholding order by setting out the requirements for
33 notice and the obligations of the payor, such as an employer.
34 The conditions under which a withholding order may be terminated
35 are described. The Department of Human Services will administer
36 the collection of payments. An action may be brought by the
37 obligee against a payor who knowingly fails to comply with these
38 provisions.