

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1834

H.P. 1289

House of Representatives, April 24, 1997

**An Act to Improve the State's Child Support Enforcement and
Overpayment Recovery Laws.**

Submitted by the Department of Human Services pursuant to Joint Rule 204.
Received by the Clerk of the House on April 22, 1997. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative NASS of Acton.
Cosponsored by Senator LONGLEY of Waldo and
Representatives: HATCH of Skowhegan, KERR of Old Orchard Beach, KNEELAND of
Easton, ROWE of Portland, Senators: MICHAUD of Penobscot, MILLS of Somerset.

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

2 **Sec. 1. 4 MRSA §807, sub-§3, ¶J**, as enacted by PL 1995, c. 599,
4 §3, is amended to read:

6 J. For the purposes of defending a civil action filed
8 against a corporation, an officer of the corporation if the
corporation is organized in this State and has 2 or fewer
shareholders; or

10 **Sec. 2. 4 MRSA §807, sub-§3, ¶K** is enacted to read:

12 K. A person who is not an attorney, but who is representing
14 the Department of Human Services in accordance with Title
16 19-A, section 1615; Title 19-A, section 2009, subsection 8;
Title 19-A, section 2201, subsection 1-B; and Title 19-A,
18 section 2202, subsection 1-B.

20 **Sec. 3. 19-A MRSA §1615** is enacted to read:

22 **§1615. Representation of department**

24 The commissioner may designate employees of the department
who are not attorneys to file the record of proceedings commenced
26 under this subchapter in District Court and to represent the
department in court in those proceedings. The commissioner shall
28 ensure that appropriate training is provided to all employees
designated to represent the department under this subchapter.

30 **Sec. 4. 19-A MRSA §2009, sub-§8** is enacted to read:

32 **8. Motions by department.** When the department provides
child support enforcement services, the commissioner may
34 designate employees of the department who are not attorneys to
prepare motions under this section, to file those motions in
36 District Court and to represent the department in court if a
hearing is held. If a hearing is requested, the department is
38 represented at the hearing by counsel. The commissioner shall
ensure that appropriate training is provided to all employees who
40 are designated to represent the department under this section.

42 **Sec. 5. 19-A MRSA 2101, sub-§2**, as enacted by PL 1995, c. 694,
44 Pt. B, §2 and affected by Pt. E, §2, is amended to read:

46 **2. Compliance with a support order.** "Compliance with an
order-of-support a support order" means that the support obligor
48 is no more than 90 60 days in arrears in making payments in full
for current support, in making periodic payments on a support
50 arrearsage pursuant to a written agreement with the department or
in making periodic payments as set forth in an-order-of support

2 order and has obtained or maintained health insurance coverage if
3 required by an-order-of-support a support order.

4 **Sec. 6. 19-A MRSA §2101, sub-§9**, as enacted by PL 1995, c.
5 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

6 **Sec. 7. 19-A MRSA §2101, sub-§13** is enacted to read:

7
8 **13. Support order.** "Support order" means a judgment or
9 order for the support of dependent children issued by any court
10 of the State or another state, including an order in a final
11 decree of divorce or any judgment or order issued in accordance
12 with an administrative procedure established by state law that
13 affords substantial due process and is subject to judicial review.

14
15 **Sec. 8. 19-A MRSA §§2104 and 2105** are enacted to read:

16
17 **§2104. Credit for dependent benefits**

18
19 Credit toward a current child support obligation for
20 dependent benefits paid for the child as a result of the obligor
21 parent's disability must be given to an obligor parent who
22 receives social security, veteran's or other disability insurance
23 benefits. The credit may not exceed the amount of the current
24 obligation for the period for which benefits are paid. Credit
25 may not be given toward a past or future obligation for dependent
26 benefits that exceed the current obligation.

27
28 **§2105. Additional child support enforcement services**

29
30 Notwithstanding any other provision of law, upon written
31 authorization by the Secretary of the United States Department of
32 Health and Human Services, the judicial branch and the department
33 shall provide child support enforcement services in accordance
34 with the United States Social Security Act, Title IV-D, without
35 need of an application for services. When a person is awarded
36 child support, the court shall provide written notice to that
37 person that explains the services provided by the State and the
38 right to refuse services if services are not wanted.

39
40 **Sec. 9. 19-A MRSA §2201, sub-§§1-A and 1-B** are enacted to read:

41
42 **1-A. Written agreement to pay past-due support.** An obligor
43 who is presently unable to pay all past-due support may come into
44 compliance with the support order by executing a written payment
45 agreement with the department and by complying with that
46 agreement. A condition of a written payment agreement must be
47 that the obligor pay the current child support when due. Before
48 a written payment agreement is executed, the obligor shall:

2 A. Disclose fully to the department in writing on a form
4 prescribed by the department the obligor's financial
 circumstances, including income from all sources, assets,
 liabilities and work history for the past year; and

6 B. Provide documentation to the department concerning the
8 obligor's financial circumstances, including copies of the
10 most recent state and federal income tax returns, both
12 personal and business, a copy of a recent pay stub
 representative of current income and copies of other records
 that show the obligor's income and the present value of
 assets held by the obligor.

14 After full disclosure, the department shall determine the
16 obligor's ability to pay past-due support and request the obligor
18 to execute a written payment agreement consistent with the
 obligor's ability to pay, not to exceed the limits on income
 withholding in section 2356.

20 1-B. Failure to comply with written agreement. Failure to
22 comply with a written payment agreement is grounds for license
24 revocation unless the obligor notifies the department that the
 obligor is unable to comply with the agreement and provides the
 department with evidence of the obligor's current financial
26 circumstances to support the claim. The consequences of failing
 to comply with a written payment agreement and the requirements
28 to avoid license revocation, if the obligor can not comply with
 the agreement, must be stated in the agreement. If the obligor
30 claims inability to comply with a written payment agreement, the
 department, upon motion to the District Court, may request the
32 court to determine the obligor's ability to pay past-due
 support. After notice and an opportunity for hearing, the court
34 may make a finding of money due, render judgment in that amount
 and order any relief provided under sections 2603 and 2603-A.
36 For purposes of this subsection, the commissioner may designate
 employees of the department who are not attorneys to represent
38 the department in District Court. The commissioner shall ensure
 that appropriate training is provided to all employees designated
40 to represent the department under this subsection.

42 Sec. 10. 19-A MRSA §2201, sub-§6, ¶¶B and C, as enacted by PL
44 1995, c. 694, Pt. B, §2, and affected by Pt. E, §2, are amended
 to read:

46 B. The department issues a decision after a hearing that
48 finds the obligor is not in compliance with an order of
 support and the obligor has not appealed the decision within
 the 30-day appeal period provided in subsection 3; or

50

2 C. The court enters a judgment on a petition for judicial
review that finds the obligor is not in compliance with an
3 ~~order-of-support,~~ a support order;

4
6 **Sec. 11. 19-A MRS §2201, sub-§6, ¶¶D and E** are enacted to
read:

8 D. The obligor abandons a timely request for a hearing on
10 the department's notice of noncompliance and is not in
compliance with the support order; or

12 E. The obligor fails to comply with a written payment
14 agreement, does not notify the department that the obligor
16 is unable to comply with the agreement and does not provide
the department with evidence of the obligor's current
financial circumstances.

18 **Sec. 12. 19-A MRS §2202, sub-§§1-A and 1-B** are enacted to
read:

20 **1-A. Written agreement to pay past-due support.** An obligor
22 who is presently unable to pay all past-due support may come into
24 compliance with the support order by executing a written payment
26 agreement with the department and by complying with that
agreement. A condition of a written payment agreement must be
28 that the obligor pay the current child support when due. Before
a written payment agreement is executed, the obligor shall:

30 A. Disclose fully to the department in writing on a form
32 prescribed by the department the obligor's financial
circumstances, including income from all sources, assets,
liabilities and work history for the past year; and

34 B. Provide documentation to the department concerning the
36 obligor's financial circumstances, including copies of the
38 most recent state and federal income tax returns, both
40 personal and business, a copy of a recent pay stub
representative of current income and copies of other records
that show the obligor's income and the present value of
assets held by the obligor.

42 After full disclosure, the department shall determine the
44 obligor's ability to pay past-due support and request the obligor
to execute a written payment agreement consistent with the
46 obligor's ability to pay, not to exceed the limits on income
withholding in section 2356.

48 **1-B. Failure to comply with written agreement.** Failure to
50 comply with a written payment agreement is grounds for license
revocation unless the obligor notifies the department that the

2 obligor is unable to comply with the agreement and provides the
3 department with evidence of the obligor's current financial
4 circumstances to support the claim. The consequences of failing
5 to comply with a written payment agreement and the requirements
6 to avoid license revocation, if the obligor can not comply with
7 the agreement, must be stated in the agreement. If the obligor
8 claims inability to comply with a written payment agreement, the
9 department, upon motion to the District Court, may request the
10 court to determine the obligor's ability to pay past-due
11 support. After notice and an opportunity for hearing, the court
12 may make a finding of money due, render judgment in that amount
13 and order any relief provided under sections 2603 and 2603-A.
14 For purposes of this subsection, the commissioner may designate
15 employees of the department who are not attorneys to represent
16 the department in District Court. The commissioner shall ensure
17 that appropriate training is provided to all employees designated
18 to represent the department under this subsection.

19 **Sec. 13. 19-A MRSA §2202, sub-§7, ¶¶B and C, as enacted by PL**
20 **1995, c. 694, Pt. B, §2, and affected by Pt. E, §2, are amended**
21 **to read:**

22 B. The department issues a decision after a hearing that
23 finds the obligor is not in compliance with an order of
24 support and the obligor has not appealed the decision within
25 the 30-day appeal period provided in subsection 4; ~~or~~

26 C. The court enters a judgment on a petition for judicial
27 review that finds the obligor is not in compliance with an
28 ~~order of support.~~ a support order;

29 **Sec. 14. 19-A MRSA §2202, sub-§7, ¶¶D and E are enacted to**
30 **read:**

31 D. The obligor abandons a timely request for a hearing on
32 the department's notice of noncompliance and is not in
33 compliance with the support order; or

34 E. The obligor fails to comply with a written payment
35 agreement, does not notify the department that the obligor
36 is unable to comply with the agreement and does not provide
37 the department with evidence of the obligor's current
38 financial circumstances.

39 **Sec. 15. 19-A MRSA §2204 is enacted to read:**

40 **§2204. Caretaker relative; change of payee**

41 When the department pays cash aid to a caretaker relative
42 who provides primary residential care for a dependent child for
43

whom a support order has been issued, the obligor's obligation under the support order to pay child support and provide medical support continues. The child support is payable to the department for as long as the department pays cash aid for the child. Upon notice to the obligor and the payee named in the support order, the department may redirect payments under the support order to the caretaker relative if the caretaker relative states under penalty of perjury that physical custody of the child was not obtained illegally. The obligor and the payee may contest action to redirect payments at an administrative hearing. The department shall notify the obligor and the payee of the right to a hearing in the notice. If payments are redirected to a caretaker relative, the department may seek to establish an administrative support order against the nonobligated parent.

Sec. 16. 19-A MRSA §2301, sub-§§1 to 3, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

1. Public assistance. Debts due the department for public assistance are as follows.

A. ~~When an order of support~~ a support order has not been established, a payment of public assistance for the benefit of the dependent child creates a debt due the department from the responsible parent for past support. The amount of debt due the department is established by application of the most current child support scale to the responsible parent's income for the time period in which the department was entitled to support payments. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent had an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income. A present disability to pay child support, legal or otherwise, does not bar a determination of past debt due the department for any relevant period in which the disability did not exist. When the department establishes a periodic support payment by administrative decision, the debt is limited to the amount stated in the decision.

B. ~~When an order of support~~ a support order has been established, the debt due the department from the responsible parent is the amount established under that order.

2 (1) The debt may not be limited by the amount of
4 public assistance paid for the benefit of the dependent
6 child. Amounts collected by the department in excess
of public assistance expended must be distributed
pursuant to section 2401.

8 (2) The issuance of ~~an order of support~~ a support
10 order does not relieve the responsible parent of any
liability for a debt that previously had accrued under
paragraph A.

12
2. **Failure to pay child or spousal support.** For actions
14 initiated pursuant to section 2103, failure to pay support
obligations under ~~an order of support~~ a support order creates a
16 debt due the applicant. Upon execution of a contract between the
department and the applicant, the department may take action to
18 establish, enforce or collect the debt under any appropriate
statute, including, but not limited to, remedies contained in
20 this article. The department is subrogated to the rights of the
payee as provided in section 2351.

22
3. **Default judgment.** If the responsible parent defaults or
24 otherwise fails to appear, and no ~~order of support~~ support order
has been established, the court or administrative hearing officer
26 shall presume that the responsible parent has an earning capacity
equal to the average weekly wage of a worker within this State as
28 determined by the Department of Labor statistics for the
applicable years. A different annual income than the one
30 specified by this subsection may be used if there is sufficient
reliable evidence to conclude reasonably that the responsible
32 parent earned a greater or lesser actual income.

34 **Sec. 17. 19-A MRSA §2304, first ¶,** as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

36
38 When ~~an order of support~~ a support order has not been
established, the department may establish the responsible
parent's current parental support obligation pursuant to chapter
40 63, establish the responsible parent's debt for past support,
including medical expenses, and establish the responsible
42 parent's obligation to maintain health insurance coverage for
each dependent child. The department may proceed on its own
44 behalf or on behalf of another state or another state's
instrumentality, an individual or governmental applicant for
46 services under section 2103 or a person entitled by federal law
to support enforcement services as a former recipient of public
48 assistance. The department acting on behalf of another state,
another state's instrumentality or a person residing in another
50 state constitutes good cause within the meaning of Title 5,

2 section 9057, subsection 5. Notwithstanding any other provision
of law, a parental support obligation established under this
4 section continues beyond the child's 18th birthday, if the child
is attending secondary school as defined in Title 20-A, section
6 1, until the child graduates, withdraws, is expelled or attains
19 years of age, whichever occurs first. For purposes of this
8 section, "debt for past support" includes a debt owed to the
department under section 2301, subsection 1, paragraph A, a debt
10 owed under section 2103 and a debt that accrues under sections
1504 and 1554.

12 **Sec. 18.19-A MRSA §2304, sub-§6**, as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

14 **6. Subsequent order.** A decision under this section remains
16 in effect until superseded by a subsequent ~~order--of--support~~
support order.

18 **Sec. 19. 19-A MRSA §2351, sub-§1**, as enacted by PL 1995, c.
20 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

22 **1. Subrogation of support rights.** If an ~~order-of-support~~ a
support order or a spousal support order exists, the department
24 is subrogated to the right of a dependent child, or person having
custody of the child named in the order, to pursue any support
26 action or administrative remedy to secure payment of the debt
accrued or accruing under section 2301 and to enforce the order.
28 The department is not required to seek an amendment to the ~~order~~
~~of--support~~ support order or to the spousal support order in order
30 to subrogate itself to the rights of the payee. The department
is not required to file a motion to intervene or join in any
32 court proceeding in order to subrogate itself to the rights of
the payee and to be treated as a party in any further proceedings
34 regarding the support order.

36 **Sec. 20. 19-A MRSA §2352, first ¶**, as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

38 When the department is subrogated to an ~~order-of-support~~ a
40 support order or a spousal support order under section 2351, the
commissioner may issue to the responsible parent a notice of debt
42 accrued or accruing under section 2301.

44 **Sec. 21. 19-A MRSA §2352, sub-§1, ¶¶B and G**, as enacted by PL
1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to
46 read:

48 **B.** A statement of the terms of the ~~order-of-support~~ support
order, including the names of each dependent child;

50

2 G. A statement that at the administrative hearing only the
following issues may be considered:

4 (1) The receipt of public assistance by the
responsible parent;

6 (2) Uncredited cash payments;

8 (3) The amount of the debt accrued and accruing;

10 (4) The accuracy of the terms of the ~~order-of-support~~
12 support order as stated in the notice of debt; and

14 (5) The maintenance of any required medical or dental
insurance coverage; and

16 **Sec. 22. 19-A MRSA §2358, sub-§2**, as enacted by PL 1995, c.
18 694, Pt. B, §2 and affected by Pt. E, §2, is repealed and the
following enacted in its place:

20 **2. Notice to responsible parent.** When an order is issued,
22 the department shall send a copy of the order to the responsible
24 parent by regular mail at the responsible parent's last known
address.

26 **Sec. 23. 19-A MRSA §2361, sub-§1**, as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

28 **1. Order.** The commissioner may commence an action under
30 Title 14, chapter 502 by directing a responsible parent to appear
before the department to disclose under oath information that
32 relates to the responsible parent's ability to pay child
support. The commissioner may require a responsible parent who
34 is directed to appear to provide documents, papers and other
evidence about the responsible parent's income and assets for the
36 purpose of enforcing ~~an order-of-support~~ a support order. An
order to appear and disclose must be served on the responsible
38 parent as provided by the Maine Rules of Civil Procedure, Rule 4.

40 **Sec. 24. 19-A MRSA §2601**, as enacted by PL 1995, c. 694, Pt.
B, §2 and affected by Pt. E, §2, is amended to read:

42 **§2601. Contempt**

44
46 Upon a motion to enforce ~~an order-of-support~~ a support order
or costs, the court may issue summary process and may find the
48 defaulting person guilty of contempt as provided under Title 14,
section 252.

2 **Sec. 25. 19-A MRSA §2602, sub-§1**, as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

4 **1. Installment payments.** ~~In an order of support~~ a support
6 order or costs, the court may include an order to pay specified
installment payments as provided under Title 14, sections 3127 to
8 3136.

10 **Sec. 26. 19-A MRSA §2603-A** is enacted to read:

12 **§2603-A. License revocation for nonpayment of child support**

14 Upon a motion to enforce a support order, after notice and
16 an opportunity for a hearing, the court may make a finding of
money due, render judgment for that amount and, to compel
18 payment, order:

20 **1. Suspension of driver's license.** Suspension of the
obligor's driver's license or licenses and right to operate a
22 motor vehicle;

24 **2. Revocation of occupational licenses.** Revocation of the
obligor's occupational, business, trade or professional licenses;
26 and

28 **3. Revocation of recreational licenses.** Revocation of the
obligor's hunting, fishing, boating and other recreational or
30 sporting licenses.

32 The court may issue an order to prevent issuance or renewal
of licenses under this section. An order to suspend, revoke or
34 prevent issuance or renewal of licenses must be based on a
finding by the court that the obligor has the present ability to
36 pay all or part of the support owed. The court shall specify in
its order ways to avoid the loss of licenses and requirements for
38 obtaining licenses that are lost or may not be obtained as a
result of an order issued under this section.

40 **Sec. 27. 22 MRSA §3811, sub-§3**, as enacted by PL 1993, c. 654,
42 §1, is amended to read:

44 **3. Overpayment.** "Overpayment" means program benefits that
an individual or assistance unit receives that exceed the amount
46 of program benefits for which the individual or assistance unit
is eligible when the department or a court has determined that
48 the benefits were received as a result of an intentional program
violation, an unintentional error by the individual or household
or an error by the department. "Overpayment" includes any

2 overpayment made before or after the effective date of this
subsubsection.

4 **Sec. 28. Effective date.** This Act takes effect October 1, 1997.

6
8 **SUMMARY**

10 This bill improves the State's child support enforcement and
welfare overpayment recovery laws as follows.

12 1. The court is authorized to revoke driver's,
14 occupational, professional and recreation licenses for nonpayment
of child support.

16 2. The Commissioner of Human Services is authorized to
18 designate employees of the Department of Human Services who are
not attorneys to prepare and issue motions to modify child
20 support orders.

22 3. The Commissioner of Human Services is authorized to
24 designate employees of the department who are not attorneys to
file in court paternity actions that have been commenced by the
department and to represent the department in those actions.

26 4. The definition of "compliance with a support order" for
28 purposes of license revocation actions taken by the Department of
Human Services is changed from 90 days without payment to 60 days
30 without payment.

32 5. Procedures for making and enforcing agreements to pay
34 past-due support in license revocation actions are established.
If an agreement is broken, employees that are not attorneys of
the Department of Human Services may ask the court to determine
36 the obligor's ability to pay the past-due support.

38 6. Child support obligors are entitled to credit toward
40 current support obligations for social security, veteran's and
other dependent benefits paid as a result of the obligor's
disability.

42 7. When there is an existing child support order and the
44 Department of Human Services pays cash aid to a caretaker
relative other than the obligor or the payee named in the order
46 of support, the obligation to pay child support continues and the
department may redirect payments to the caretaker relative who is
48 providing primary care for the child after notice and opportunity
for hearing is issued to the obligor and to the payee.

2 8. Use of administrative remedies of the Department of
Human Services to recover public assistance overpayments is
4 extended to cases in which overpayments result from unintentional
or agency errors.

6 9. It changes the statutory language "order of support" to
"support order."