

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 2025

H.P. 1521

House of Representatives, December 26, 2001

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**An Act to Make Certain Changes to the State's Child Support  
Enforcement Laws.**

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Submitted by the Department of Human Services pursuant to Joint Rule 204.  
Received by the Clerk of the House on December 19, 2001. Referred to the Committee on  
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative NASS of Acton.  
Cosponsored by Senator MILLS of Somerset and  
Representative BERRY of Livermore, Senator: MARTIN of Aroostook.

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

**Sec. 1. 18-A MRSA §5-204, 4th ¶**, as enacted by PL 1999, c. 46, §1, is amended to read:

If a proceeding is brought under subsection (b) or subsection (c), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Human Services provides child support enforcement services, the Commissioner of Human Services may designate employees of the department who are not attorneys to prepare motions under this paragraph, to file those motions in Probate Court and to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph.

**Sec. 2. 19-A MRSA §1652, sub-§1**, as amended by PL 1999, c. 731, Pt. ZZZ, §33 and affected by §42, is further amended to read:

**1. Petition.** If a parent, spouse or child resides in this State, a parent, a spouse, a guardian or a ~~municipality~~ state providing maintenance may petition the District Court or Probate Court to order a nonsupporting parent or spouse to contribute to the support of the nonsupporting person's spouse or child. The petition may be brought in the court in the district or county where the parent, spouse or child resides or in the district or county in which the nonsupporting person may be found.

**Sec. 3. 19-A MRSA c. 65, sub-c. V** is enacted to read:

**SUBCHAPTER V**

**HEALTH INSURANCE WITHHOLDING**

**§2701. Health insurance withholding**

**1. Issuance of orders.** In any action under this Title or Title 22 in which a court establishes or modifies a health insurance provision of a support order, the court shall issue a health insurance withholding order in the format of a National Medical Support Notice in accordance with the requirements of the federal Employee Retirement Income Security Act of 1974 and this subchapter to notify the employer or other provider of insurance of the duty to enroll a dependent child in the health plan of the employer or other provider.

**2. Modification of orders.** Upon the motion of an obligee, an obligor or the department, the court shall modify a support

2 order issued before the effective date of this subchapter to  
3 include a health insurance withholding order.

4 3. Implementation of orders. A health insurance  
5 withholding order may be implemented by the department for a  
6 recipient of the department's support enforcement services, by a  
7 support obligee who does not receive the department's support  
8 enforcement services or by a support obligor. A health insurance  
9 withholding order is implemented by serving an attested copy of  
10 the order upon the obligor's employer or other provider of  
11 insurance.

12 **§2702. Provisions of the health insurance withholding order**

13 A health insurance withholding order must provide for the  
14 immediate enrollment of the child, if otherwise eligible, in the  
15 employer health plan and for withholding from the obligor's  
16 income the obligor's share, if any, of the cost of the health  
17 care coverage for the child enrolled as provided in section 2106.  
18 Enrollment and withholding are effective from the date of the  
19 support order. The withholding order must include:

20 1. Dependent child's name. The name, date of birth and  
21 social security number for each dependent child;

22 2. Department case number. The obligor's department  
23 support enforcement case number, if applicable, and if known to  
24 the court;

25 3. Employer or other provider of insurance; instructions.  
26 An instruction to the employer or other provider of insurance  
27 that, upon receipt of a copy of the health insurance withholding  
28 order, the employer or other provider of insurance shall  
29 implement the health insurance withholding order immediately; and

30 4. Limitation on withholding. A notice that the amount of  
31 the withholding may not exceed the limitations imposed by 15  
32 United States Code, Section 1673(b).

33 **§2703. Employer or other provider of insurance; duty**

34 An employer or other provider of insurance of an obligor  
35 named in a health insurance withholding order issued under this  
36 subchapter shall comply with the provisions of the withholding  
37 order upon receipt of a copy of the order. The balance of income  
38 due an obligor after withholding must be paid to the obligor on  
39 the day the obligor is usually paid.

40 **§2704. Service of process**

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2 Service under this subchapter may be by certified mail or in  
3 accordance with the requirements of the Maine Rules of Civil  
4 Procedure, Rule 4. The department may serve a health insurance  
5 withholding order as provided in section 2254.

6 **§2705. Duration of withholding**

8 A health insurance withholding order is binding upon an  
9 obligor's employer or provider of insurance until:

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

12 2. Release by obligee. If the health insurance order was  
13 implemented by the obligee as a private withholding action, the  
14 obligee releases the employer or provider of health insurance  
15 from the terms of the order in writing; or

16 3. Release by department. The department releases the  
17 employer or provider of health insurance from the terms of the  
18 order in writing.

19 The department, or obligee if the obligee implemented the  
20 withholding order as a private action, shall issue promptly a  
21 release of the withholding order in all cases in which there is  
22 no longer a health insurance obligation. The department or  
23 obligee, as applicable, shall refund to the obligor amounts  
24 withheld improperly because a release is not issued timely.

25 **§2706. Priority of order**

26 A health insurance withholding order issued under this  
27 subchapter has priority over any previously filed attachment,  
28 execution, garnishment or assignment of income that is not made  
29 for the purpose of enforcing or paying child or spousal support.

30 **§2707. Notice of termination**

31 When an employer or other provider of health insurance is  
32 unable to continue withholding from an obligor's income because  
33 the relationship between the employer or other provider of  
34 insurance and the obligor ends, the employer or other provider of  
35 insurance shall send the department a written notice of  
36 termination within 15 days of the termination of the  
37 relationship. The notice must include:

38 1. Obligor's identification. The obligor's name, last  
39 known address and social security number;

40 2. Department case number. The obligor's department  
41 support enforcement case number;

2           3. Termination date. The date of termination of the  
relationship; and

4  
6           4. New employer or other provider of insurance. If known,  
the name and address of a new employer or other provider of  
insurance of the obligor.

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10       **§2708. Employer or other provider of insurance; liability**

12           Upon service of a health insurance withholding order, an  
employer or other provider of insurance is liable for any medical  
expenses that would have been covered by the insurance if  
implemented. The department, or obligee if the obligee  
implemented the health insurance withholding order as a private  
action, may maintain a civil action against the employer or other  
provider of insurance if the employer or other provider of  
insurance does not implement the insurance withholding order and  
for the imposition of any of the civil penalties provided for in  
this section, plus attorney's fees and court costs.

22           1. Failure to implement. An employer or other provider of  
insurance who knowingly fails to implement a health insurance  
withholding order commits a civil violation for which a  
forfeiture not to exceed \$100 for each failure to implement may  
be adjudged.

28           2. Failure to notify. An employer or other provider of  
insurance who knowingly fails to send the notification required  
by section 2707 commits a civil violation for which a forfeiture  
not to exceed \$100 may be adjudged.

32           3. Discrimination against obligors. An employer or other  
provider of insurance who discharges from employment or refuses  
to employ an obligor or who takes disciplinary action against an  
obligor or who otherwise discriminates against the obligor  
because of the existence of a health insurance withholding order  
or the obligations imposed upon the employer or other provider of  
insurance by the order is subject to a civil penalty not to  
exceed \$5,000, payable to the State, to be recovered in a civil  
action. The employer or other provider of insurance is also  
subject to an action by the obligor for compensatory and punitive  
damages for those actions, plus attorney's fees and court costs.

44       **§2709. Employer or other provider of insurance; fee**

46           The commissioner may establish by rule a fee for the  
administrative cost of each withholding that an employer or  
provider of insurance may deduct in addition to the amount  
withheld for support.

2       **§2710. Attested copies**

4           The clerk of the court shall send to the department an  
6       attested copy of each order in which a health insurance  
      obligation is established or modified.

8       **§2711. Application for services**

10           The department shall furnish and the clerk of the court  
12       shall make application forms and blank contracts for the  
14       department's support enforcement services available to all  
16       individuals awarded child support. The department shall also  
18       furnish the clerk with forms that enable an individual to refuse  
20       services. The clerk shall send to the department all application  
22       forms, contracts and refusal forms submitted, together with the  
24       attested copies of the orders that the clerk is required to send  
      the department under section 2664. Each individual who is  
      awarded child support by the court must complete either the  
      application form and contract or the form for refusal of  
      services. The court shall inform a person who is awarded child  
      support that that person must complete either the application and  
      contract for services or the form to refuse services and submit  
      it to the clerk.

26       **§2712. Immunity**

28           An employer or other provider of insurance who honors a  
30       health insurance withholding order under this subchapter may not  
32       be held liable by the obligor for income withheld in compliance  
      with the order.

34       **§2713. Other remedies**

36           A health insurance withholding order issued under this  
38       subchapter is an additional remedy to enforce a support order and  
      does not limit the use of other legal remedies that may be  
      available.

40       **§2714. Rulemaking**

42           The department shall adopt rules to implement its  
44       responsibilities under this subchapter. Rules adopted pursuant  
46       to this section are routine technical rules as defined in Title  
      5, chapter 375, subchapter II-A.

48       **§2715. Health insurance withholding orders issued by other states**

50           1. Use of other state's health insurance withholding law.  
      When an employer or other provider of insurance receives a health

2 insurance withholding order issued by another state, the employer  
3 or other provider of insurance shall apply the health insurance  
4 withholding law of the state of the obligor's principal place of  
5 employment when determining;

6 A. The fee of the employer or other provider of insurance  
7 for processing a health insurance withholding order;

8  
9 B. The maximum amount permitted to be withheld from the  
10 obligor's income;

11 C. The time by which the employer or other provider of  
12 insurance must implement the health insurance;

13 D. The priorities for health insurance withholding and  
14 allocation for multiple child support obligees; and

15 E. Any health insurance withholding terms or conditions not  
16 specified in the order.

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18 2. Compliance. An employer or other provider of insurance  
19 who complies with a health insurance withholding order that is  
20 regular on its face is not subject to civil liability to any  
21 individual or agency for conduct in compliance with the order.

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23 **§2716. Standard format of order**

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25 A health insurance withholding order must conform with  
26 standard formats prescribed by the federal Secretary of Health  
27 and Human Services.

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29 **§2717. Automated issuance of health insurance withholding order**

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31 The department may issue a health insurance withholding  
32 order electronically if the employer or other provider of  
33 insurance has the ability to receive the order in that manner.

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39 **SUMMARY**

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41 This bill amends the Maine Revised Statutes, Title 19-A,  
42 section 1652 to replace the reference to municipalities providing  
43 maintenance. This reflects the change in responsibility since the  
44 statute was first written. At that time, municipalities were  
45 responsible for providing aid to families. That responsibility  
46 has been shifted to the State with the payment of temporary  
47 assistance for needy families.

48  
49 The bill adds a provision to the court's enforcement of  
50 support orders to provide for the use of a health insurance



2 withholding order, which will be in the form of the National  
3 Medical Support Notice mandated by the Federal Government under  
4 45 Code of Federal Regulations, Section 303.32. Federal law  
5 mandates that completion of the National Medical Support Notice  
6 is equivalent to the execution of a qualified medical support  
7 order and must be honored as such by all insurance providers  
8 covered under the federal Employee Retirement Income Security Act  
9 of 1974. This will simplify processing for all concerned and  
10 most importantly enhance health care coverage for children.

11  
12 The bill amends the Probate Code to allow the Commissioner  
13 of Human Services to designate employees of the Department of  
14 Human Services who are not attorneys to represent the department  
in Probate Court when the department is providing child support  
enforcement services.