

MAINE STATE LEGISLATURE

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R O F S

L.D. 1594

Date: 3/7/12

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1199, L.D. 1594, Bill, "An Act To Clarify the Requirements of Income Withholding Orders"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 19-A MRSA §2651, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§2651. Income withholding

1. Immediate income withholding. ~~In any action~~ Every support order established or modified under this Title or Title 22 in which a court establishes or modifies a support order, the court shall issue an is subject to immediate income withholding order in accordance with the requirements of this subchapter, unless the court finds good cause or approves an alternative arrangement as provided in section 2657.

2. Immediate income withholding; modification of orders. Upon the motion of an obligee, an obligor or the department, the court shall modify a support order issued before October 13, 1993 to ~~include an~~ provide for immediate income withholding order.

3. Immediate income withholding; implementation of orders. ~~An immediate~~ Immediate income withholding order may be implemented by the department 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 support obligor. ~~An immediate~~ Immediate income withholding order is implemented by serving an attested copy of the support order, along with the notice required under section 2655, upon the obligor's payor of income. Notwithstanding this subsection, the department may implement immediate income withholding by serving the notice required under section 2655 upon the obligor's payor of income without providing an attested copy of the support order.

Sec. 2. 19-A MRSA §2652, as amended by PL 1997, c. 537, §50 and affected by §62, is further amended to read:

COMMITTEE AMENDMENT

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1 §2652. Provisions of child support order

2 ~~An immediate income withholding~~ Except as provided in section 2657, a child
3 support order must provide for ~~the~~ that the obligor is subject to immediate income
4 withholding from the obligor's income of amounts payable as child support, effective
5 from the date of the support order, regardless of whether child support payments by the
6 obligor are past due. The ~~withholding support~~ order must include:

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

9 2. ~~Department member number.~~ The obligor's department support enforcement
10 member number, if applicable, and if known to the court;

11 3. ~~Payor instructions.~~ An instruction to the payor that, upon receipt of a copy of the
12 ~~withholding order, the payor shall:~~

13 A. ~~Immediately begin to withhold the obligor's income when the obligor is usually~~
14 ~~paid;~~

15 B. ~~Send each amount withheld to the department at the address set forth in the order~~
16 ~~within 7 business days of the withholding; and~~

17 C. ~~Identify each amount sent to the department by indicating the department's~~
18 ~~support enforcement member number, if known;~~

19 3-A. **Notice about implementing income withholding.** Notice that immediate
20 income withholding can only be implemented by serving an attested copy of the support
21 order, along with the notice required under section 2655, upon the obligor's payor of
22 income. Notwithstanding this subsection, the department may implement immediate
23 income withholding by serving the notice required under section 2655 upon the obligor's
24 payor of income without providing an attested copy of the support order;

25 3-B. **Instructions.** Instructions on where to obtain the payor notice required under
26 section 2655;

27 4. **Notice regarding collection of arrearages.** A notice that ~~the~~ income withholding
28 ~~order~~ may be used to collect arrearages in addition to current support;

29 5. **Limitation on withholding.** A notice that the amount of the withholding may not
30 exceed the limitations imposed by 15 United States Code, Section 1673(b); and

31 6. **Fees.** A notice to the obligor and payor of income that the payor of income shall
32 withhold and send to the department a fee of \$2 per week in addition to the amount
33 withheld for child support.

34 **Sec. 3. 19-A MRSA §2654**, as amended by PL 1997, c. 669, §10, is further
35 amended to read:

36 §2654. Payor duty

37 A payor of income to an obligor named in a support order subject to immediate
38 withholding order issued under this subchapter shall comply with the provisions of the
39 withholding order upon receipt of a copy of the order the notice required under section
40 2655. The balance of income due an obligor after withholding must be paid to the

1 obligor on the day the obligor is usually paid. A payor may combine amounts withheld
 2 for transmittal to the department from more than one obligor if the portion attributable to
 3 each obligor is separately designated, except that the payor may not combine amounts if
 4 that action would result in an obligor's withheld income being sent to the department
 5 more than 7 business days from the date of withholding.

6 **Sec. 4. 19-A MRSA §2655**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected
 7 by Pt. E, §2, is amended to read:

8 **§2655. Payor notice**

9 The department shall ~~develop and~~ make available to the court and the public a payor
 10 notice, which also constitutes an income withholding order, that conforms to standard
 11 formats prescribed by the federal Secretary of Health and Human Services and complies
 12 with the requirements of the Social Security Act, Title IV-D and the regulations issued
 13 under that Act. ~~Whenever the department, an obligee or an obligor implements a~~
 14 ~~withholding order issued under this subchapter, the party that implements the withholding~~
 15 ~~order shall provide the obligor's payor of income with the payor notice at the time of~~
 16 ~~service of the withholding order.~~

17 **Sec. 5. 19-A MRSA §2657, first ¶**, as enacted by PL 1995, c. 694, Pt. B, §2 and
 18 affected by Pt. E, §2, is amended to read:

19 The court may elect not to ~~issue an~~ render a child support order subject to immediate
 20 income withholding order under this subchapter if:

21 **Sec. 6. 19-A MRSA §2659**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected
 22 by Pt. E, §2, is amended to read:

23 **§2659. Duration of withholding**

24 **1. Ended or released.** ~~An immediate~~ Immediate income withholding under a
 25 support order is binding upon an obligor's payor of income until:

- 26 A. The court orders withholding ended;
- 27 B. If the withholding ~~order~~ was implemented by the obligee as a private withholding
- 28 action, the obligee releases the payor from the terms of the order in writing; or
- 29 C. The department releases the payor from the terms of the support order in writing.
- 30 The department shall issue a release to end immediate income withholding if the
- 31 department is unable to forward funds to the obligee for 3 months, in which case the
- 32 department shall return the funds to the obligor.

33 **2. Support paid; refund.** The department, or obligee if the obligee implemented the
 34 withholding ~~order~~ as a private action, shall issue promptly a release of the withholding
 35 provisions of the support order in all cases in which there is no longer a current support
 36 obligation and all past-due support has been paid. The department or obligee, as
 37 applicable, shall refund the obligor amounts withheld improperly because a release is not
 38 issued timely. An obligee is liable to the department for amounts received from the
 39 department that the obligee is not entitled to receive.

40 ~~An income~~ Income withholding order ~~issued~~ ordered under this subchapter may not be
 41 released or ended if the obligor has a current parental support obligation or owes a debt

1 for past-due support, unless the court finds good cause or approves an alternative
 2 arrangement for payment of support in accordance with section 2657.

3 **Sec. 7. 19-A MRSA §2660**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected
 4 by Pt. E, §2, is amended to read:

5 **§2660. Priority of order**

6 Notwithstanding any other provision of law, ~~an immediate income withholding order~~
 7 ~~issued~~ ordered under this subchapter has priority over any previously filed attachment,
 8 execution, garnishment or assignment of income that is not made for the purpose of
 9 enforcing or paying child or spousal support.

10 **Sec. 8. 19-A MRSA §2662, first ¶**, as amended by PL 1997, c. 669, §11, is
 11 further amended to read:

12 Upon service of ~~an immediate income withholding order~~ the notice required under
 13 section 2655, a payor is liable for any income that the payor knowingly fails to withhold
 14 and send to the department within 7 business days of the day on which the obligor is
 15 usually paid. The department, or obligee if the obligee implemented the withholding
 16 ~~order~~ as a private action, may maintain a civil action against the payor for the income the
 17 payor does not withhold and send to the department as required by the ~~withholding~~
 18 support order and for the imposition of any of the civil penalties provided for in this
 19 section, plus attorney's fees and court costs.

20 **Sec. 9. 19-A MRSA §2662, sub-§4**, as enacted by PL 1995, c. 694, Pt. B, §2 and
 21 affected by Pt. E, §2, is amended to read:

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

30 **Sec. 10. 19-A MRSA §2664**, as enacted by PL 1995, c. 694, Pt. B, §2 and
 31 affected by Pt. E, §2, is amended to read:

32 **§2664. Copies**

33 The clerk of the court shall send to the department ~~an attested~~ a copy of each order in
 34 which a child support obligation is established or modified ~~and an attested copy of the~~
 35 ~~immediate income withholding order.~~

36 **Sec. 11. 19-A MRSA §2667**, as enacted by PL 1995, c. 694, Pt. B, §2 and
 37 affected by Pt. E, §2, is amended to read:

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§2667. Payor immunity

A payor of income who honors a child support order subject to income withholding, an income withholding order under this subchapter or a notice under section 2655 may not be held liable by the obligor for income withheld in compliance with the order.

Sec. 12. 19-A MRSA §2668, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§2668. Other remedies

~~An income~~ Income withholding order ~~issued~~ ordered under this subchapter is an additional remedy to enforce a support order and does not limit the use of other legal remedies that may be available for collection of child and spousal support.

Sec. 13. 19-A MRSA §2671, as enacted by PL 1997, c. 537, §52 and affected by §62, is repealed.'

SUMMARY

This amendment replaces the bill. It amends the laws pertaining to the requirements of income withholding orders. It adds the requirement that the court notify any individual or department implementing an income withholding order of the requirement to serve the obligor's payor of income with both the support order that is subject to immediate income withholding and the payor notice required under the Maine Revised Statutes, Title 19-A, section 2655. It eliminates the need for the court to issue an income withholding order that conforms with standard formats prescribed by the federal Secretary of Health and Human Services and instead requires the court to instruct an obligee or an obligor seeking to implement a withholding order on where to obtain the payor notice. The amendment also requires the Department of Health and Human Services to make available to the public a payor notice that conforms to the standard formats prescribed by the federal Secretary of Health and Human Services and to notify the courts as to where an obligee or an obligor seeking to implement a withholding order can obtain the payor notice.

FISCAL NOTE REQUIRED
(See Attached)



Approved: 02/29/12 *MAC*

125th MAINE LEGISLATURE

LD 1594

LR 2444(02)

An Act To Clarify the Requirements of Income Withholding Orders

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-746)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Department of Health and Human Services can be absorbed within existing budgeted resources.