

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1241

H.P. 864

House of Representatives, March 30, 2017

An Act To Encourage Child Support Accountability

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative DeCHANT of Bath.
Cosponsored by Senator GRATWICK of Penobscot and
Representatives: BABBIDGE of Kennebunk, McCREIGHT of Harpswell, Senator: VITELLI
of Sagadahoc.

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

2 **Sec. 1. 18-A MRSA §3-906, sub-§(a)**, as amended by PL 1997, c. 73, §3 and
3 affected by §4, is further amended to read:

4 **(a).** Unless a contrary intention is indicated by the will and except as provided in
5 section 3-917, the distributable assets of a decedent's estate must be distributed as
6 follows.

7 (1). A specific devisee must receive the thing devised to that devisee, and a spouse or
8 child who has selected particular assets of an estate as provided in section 2-402 must
9 receive the items selected.

10 (2). Any homestead or family allowance or pecuniary devise may be satisfied by
11 value in kind, in the personal representative's discretion, if:

12 (i) The person entitled to the payment has not demanded payment in cash;

13 (ii) The property distributed in kind is valued at fair market value as of the date
14 of its distribution; and

15 (iii) No residuary devisee has requested that the asset to be distributed remain a
16 part of the residue of the estate or if, a residuary devisee has requested that the
17 asset to be distributed remain a part of the residue of the estate, there are
18 insufficient other assets to which no residuary devisee has made such a request to
19 permit satisfaction of the estate's obligations and funding of all pecuniary devises
20 made under the ~~decedent's~~ decedent's will.

21 (3). For the purpose of valuation under paragraph (2), securities regularly traded on
22 recognized exchanges, if distributed in kind, are valued at the price for the last sale of
23 like securities traded on the business day prior to distribution or, if there was no sale
24 on that day, at the median between amounts bid and offered at the close of that day.
25 Assets consisting of sums owed the decedent or the estate by solvent debtors as to
26 which there is no known dispute or defense are valued at the sum due with accrued
27 interest or discounted to the date of distribution. For assets that do not have readily
28 ascertainable values, a valuation as of a date not more than 30 days prior to the date
29 of distribution, if otherwise reasonable, controls. For purposes of facilitating
30 distribution, the personal representative may ascertain the value of the assets as of the
31 time of the proposed distribution in any reasonable way, including the employment of
32 qualified appraisers, even if the assets may have been previously appraised.

33 (4). The residuary estate may be distributed by the personal representative in cash or
34 in kind, in accordance with the best interests of the residuary devisees. Residuary
35 assets may be distributed, at the personal representative's discretion, in pro rata or non
36 pro rata shares; except that residuary assets not distributed pro rata must be valued as
37 of the date on which they are distributed.

38 **Sec. 2. 18-A MRSA §3-911**, as enacted by PL 1979, c. 540, §1, is amended to
39 read:

1 **§3-911. Partition for purpose of distribution**

2 When 2 or more heirs or devisees are entitled to distribution of undivided interests in
3 any real or personal property of the estate, the personal representative or one or more of
4 the heirs or devisees may petition the court prior to the formal or informal closing of the
5 estate, to make partition. The personal representative shall notify the court of any lien
6 that may be imposed pursuant to section 3-917 against an heir's or a devisee's interest in
7 the property. After notice to the interested heirs or devisees and to the Department of
8 Health and Human Services if the court determines that the interest of an interested heir
9 or devisee may be subject to a lien pursuant to section 3-917, the court shall partition the
10 property in the same manner as provided by the law for civil actions of partition. The
11 court may direct the personal representative to sell any property ~~which~~ that cannot be
12 partitioned without prejudice to the owners and ~~which~~ that cannot conveniently be
13 allotted to any one party.

14 **Sec. 3. 18-A MRSA §3-917** is enacted to read:

15 **§3-917. Child support debt as lien against inheritance**

16 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
17 following terms have the following meanings.

18 A. "Child support debt" means child support debt that has been liquidated by judicial
19 or administrative action.

20 B. "Department" means the Department of Health and Human Services.

21 C. "Inheritance" means the real or personal property, including cash, that an heir or
22 devisee is entitled to receive from the decedent's estate pursuant to this Title.

23 D. "Registry operator" means the department or an entity with whom the department
24 enters into a contract to maintain the registry pursuant to subsection 2.

25 **2. Registry.** The department shall create and maintain, or shall contract with a
26 private entity to create and maintain, a secure, electronically accessible registry
27 containing information regarding individuals with outstanding child support debt. The
28 department shall regularly enter into the registry information including:

29 A. The name and social security number of each individual with outstanding child
30 support debt;

31 B. The account number or identifier assigned by the department to the outstanding
32 child support debt;

33 C. The amount of the outstanding child support debt; and

34 D. Any other information necessary to effectuate the purposes of this section.

35 **3. Electronic access to information; procedures.** A personal representative shall
36 electronically access the registry under subsection 2 in accordance with this subsection.

37 A. Before distributing an inheritance to an heir or a devisee, the personal
38 representative shall obtain the name, address, date of birth and social security number

1 of the heir or devisee and shall electronically submit this information to the registry
2 operator.

3 B. Upon receipt of information pursuant to paragraph A, the registry operator shall
4 electronically inform the personal representative whether the heir or devisee is listed
5 in the registry. If the heir or devisee is listed in the registry, the registry operator
6 shall inform the personal representative of the amount of the heir's or devisee's
7 outstanding child support debt and the account number or identifier assigned to the
8 outstanding child support debt and shall provide the personal representative with a
9 notice of withholding that meets the requirements of subsection 5.

10 C. If the registry operator informs the personal representative that the heir or devisee
11 is not listed in the registry or if the personal representative is unable to obtain
12 information from the registry operator after attempting in good faith to do so, the
13 personal representative may immediately distribute the property to the heir or
14 devisee.

15 D. If the registry operator informs the personal representative that the heir or devisee
16 is listed in the registry, the personal representative may not distribute property to the
17 heir or devisee until after the personal representative complies with subsection 6,
18 unless the value of the distribution exceeds the amount of outstanding child support
19 debt, in which case the personal representative may immediately distribute to the heir
20 or devisee the portion of the property that is in excess of the amount of the heir's or
21 devisee's outstanding child support debt.

22 **4. Lien against inheritance.** If the registry operator informs a personal
23 representative pursuant to this section that an heir or devisee is listed in the registry under
24 subsection 2, the department has a valid lien upon and claim of lien against the heir's or
25 the devisee's inheritance in the amount of the heir's or devisee's outstanding child support
26 debt.

27 **5. Notice of withholding.** The personal representative shall provide a written notice
28 of withholding using a form developed by the department to an heir or devisee whose
29 inheritance is subject to a lien under subsection 4. The notice must inform the heir or
30 devisee that an amount equal to the amount of the lien will be withheld from the heir's or
31 the devisee's inheritance unless the heir or devisee pays the personal representative that
32 amount within 30 days. The notice must also inform the heir or devisee of the right to an
33 administrative hearing to challenge the amount or existence of the outstanding child
34 support debt.

35 **6. Withholding of inheritance.** The personal representative shall, to the extent
36 possible, satisfy a lien created under subsection 4 in accordance with this subsection.

37 A. If the heir or devisee whose inheritance is subject to the lien pays the amount of
38 the lien to the personal representative within 30 days of receipt of the notice in
39 subsection 5, the personal representative shall transmit that payment to the
40 department together with a report of the name, address and social security number of
41 the heir or devisee from whom the payment was received, the account number or
42 identifier assigned to the debt and the name and address of the personal

1 representative. The personal representative shall then distribute the inheritance to the
2 heir or devisee.

3 B. If the heir or devisee whose inheritance is subject to the lien does not pay the
4 amount of the lien to the personal representative or request an administrative hearing
5 to challenge the amount or existence of the outstanding child support debt within 30
6 days of receipt of the notice in subsection 5, the personal representative shall
7 withhold from the cash portion of the inheritance an amount equal to the amount of
8 the lien created under subsection 4. If the cash portion of the inheritance is less than
9 the amount of the lien, the personal representative may sell the noncash portion of the
10 inheritance and withhold from the proceeds an amount sufficient to satisfy the lien.
11 The personal representative shall transmit the amount withheld to the department
12 together with a report of the name, address and social security number of the heir or
13 devisee from whom the amount was withheld, the account number or identifier
14 assigned to the debt and the name and address of the personal representative. The
15 personal representative shall then distribute the balance of the inheritance, if any, to
16 the heir or devisee.

17 **7. Administrative hearing.** An heir or devisee who receives a notice of withholding
18 pursuant to subsection 5 has the right, within 30 days of receipt of the notice of
19 withholding, to request from the department an administrative hearing. The hearing is
20 limited to questions regarding the amount or existence of the child support debt as well as
21 whether any postliquidation events have affected the heir's or devisee's liability. The
22 administrative hearing decision constitutes final agency action.

23 **8. Personal representative costs.** The personal representative's reasonable and
24 necessary costs of complying with this section are reimbursable as expenses of
25 administration.

26 **Sec. 4. Department of Health and Human Services to make**
27 **recommendations.** No later than January 15, 2018, the Department of Health and
28 Human Services shall submit to the joint standing committee of the Legislature having
29 jurisdiction over judiciary matters recommendations for implementing a program that
30 requires an unemployed or underemployed child support obligor who has a substantial
31 unpaid child support debt to engage in at least 30 hours per week of uncompensated
32 community service work, receiving an hourly credit against the obligor's child support
33 debt equivalent to the minimum wage. The recommendations must include:

34 1. Recommendations for ensuring that child support obligors who participate in the
35 program engage in uncompensated community service work that benefits the State;

36 2. Recommendations on the program administration structure needed to ensure that
37 child support obligors satisfy program requirements;

38 3. Recommendations regarding the appropriate consequences to child support
39 obligors for noncompliance with program requirements;

40 4. Recommendations for ensuring consistency between a child support obligor's
41 rights and responsibilities under the program and the terms of a judicial or administrative
42 child support order; and

