

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

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No. 1730

H.P. 1109

House of Representatives, April 20, 2023

An Act to Implement Changes to the Laws Relating to Judicial Separation and Divorce Regarding Preliminary Injunctions as Recommended by the Family Law Advisory Commission

Reported by Representative MOONEN of Portland for the Family Law Advisory Commission pursuant to the Maine Revised Statutes, Title 19-A, section 354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

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

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 19-A MRSA §852**, as amended by PL 2021, c. 647, Pt. B, §44 and affected
3 by §65, is further amended to read:

4 **§852. Preliminary injunction, effect; attachment or trustee process**

5 **1. Issue Issuance of preliminary injunction by the court; service; contents; effect.**

6 In all actions for judicial separation ~~the clerk of the court, pursuant to order of,~~ the District
7 Court, shall issue a preliminary injunction order in the following manner.

8 A. The preliminary injunction must bear the signature or facsimile signature of the
9 clerk, be under the seal of the court, and contain the name of the court issuing the
10 preliminary injunction and the names of the parties ~~and state the name and address of~~
11 ~~the plaintiff's attorney.~~ If the plaintiff is represented, the preliminary injunction must
12 also state the name and address of the plaintiff's attorney. The preliminary injunction
13 may be obtained in blank from the clerk ~~and must be filled out by the plaintiff's attorney~~
14 for a fee. ~~The plaintiff or the plaintiff's attorney is responsible for serving this shall~~
15 serve the preliminary injunction, along with the summons and complaint, on the
16 defendant along with the summons and complaint.

17 B. The preliminary injunction must be directed to each party to the action and must
18 ~~contain the following orders~~ order that, unless the parties otherwise agree in writing or
19 unless the court orders otherwise:

20 (1) ~~That~~ Except as specifically allowed by paragraph B-1, each party is enjoined
21 prohibited from damaging, destroying, transferring, encumbering, concealing,
22 selling or otherwise disposing of the any property of owned or claimed by either
23 or both of the parties, except in the usual course of business or for the necessities
24 of life, without the written consent of the parties or the permission of the court;
25 regardless of whose name the property is in or who holds title to the property.
26 Violations of this subparagraph include but are not limited to the following:

27 (a) Withdrawing from or borrowing from or against all or any part of the cash
28 surrender value of a life insurance policy of either party or of a child of the
29 parties;

30 (b) Withdrawing from or borrowing from or against all or any part of the
31 retirement, profit-sharing, pension, death or other employee benefit plan or
32 from an employee savings plan, an individual retirement account or a "Keogh"
33 retirement account; and

34 (c) Intentionally or knowingly damaging or destroying the personal property
35 of the parties, including but not limited to any electronically stored materials,
36 electronic communications, financial records and documents that represent or
37 embody anything of value;

38 (2) ~~That~~ each party is enjoined from imposing restraint on the personal liberty of
39 the other party or of a biological or adopted child of either or both of the parties;
40 and

41 (3) ~~That each~~ Each party is enjoined prohibited from canceling or voluntarily
42 removing the other party or a child of the parties from a policy of health, dental or
43 disability insurance that provides coverage for the other party or the child of the

1 parties- and that each party is required to comply with any annual renewal
2 requirements or deadlines necessary for the maintenance of such policies;

3 (4) Each party is prohibited from canceling or changing in any way, including by
4 changing a beneficiary of, a casualty, life or motor vehicle policy insuring a party
5 or the party's property;

6 (5) Each party is prohibited from opening, tampering with, destroying, deleting or
7 withholding mail, e-mail or text messages or any other form of communication
8 addressed to the other party; and

9 (6) Each party is prohibited from signing the other party's name on any negotiable
10 instrument, check or draft, including but not limited to a tax refund, security
11 deposit, insurance payment or dividend.

12 B-1. Notwithstanding paragraph B, subparagraph (1), the preliminary injunction does
13 not prohibit a party from accessing funds or incurring debt for the following purposes:

14 (1) To continue the regular operations of an ongoing business;

15 (2) To pay for the necessities of life, including housing, food, transportation,
16 school, child care and medical expenses;

17 (3) To retain an attorney for the legal separation or divorce proceeding; and

18 (4) To make regular withdrawals or required minimum withdrawals in the normal
19 course of retirement.

20 C. The preliminary injunction must include the following statement:

21 "Warning

22 This is an official court order. If you disobey this order the court may find you
23 in contempt of court.

24 This court order ~~is effective~~ will remain in effect until the earliest of the
25 following:

26 (1) The court revokes or modifies it;

27 (2) A final divorce judgment or decree of judicial separation is entered; or

28 (3) The action is dismissed."

29 D. The preliminary injunction is effective against the plaintiff upon the
30 commencement of the action and against the defendant upon service of a copy of both
31 the complaint and ~~order~~ the preliminary injunction in accordance with the Maine Rules
32 of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's
33 copy of the preliminary injunction and to have actual notice of its contents by filing or
34 causing the complaint to be served. ~~The plaintiff shall cause a copy of the preliminary~~
35 ~~injunction to be served upon the defendant with a copy of the summons and complaint.~~

36 E. The preliminary injunction has the force and effect of and is an order of a Judge of
37 the ~~Probate Court or District Court or Justice of Superior Court~~ and is enforceable by
38 all remedies made available by law, including contempt of court. ~~The order remains~~
39 ~~in effect until entry of a final decree, until the case is dismissed or until otherwise~~
40 ~~ordered by the court.~~

1 **2. Revocation or modification by the court.** A preliminary injunction may be
2 revoked or modified by the court after hearing for good cause shown. The party seeking
3 to revoke or modify the preliminary injunction shall file a motion together with an affidavit
4 that demonstrates the good cause necessary for revocation or modification.

5 A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on
6 shorter notice as the court may order, either party subject to ~~an order~~ a preliminary
7 injunction may appear and move the dissolution or modification of the ~~order~~
8 preliminary injunction, and in that event the court shall proceed to hear and determine
9 the motion as expeditiously as justice requires.

10 B. Mediation is not required before a hearing on a motion to revoke or modify a
11 preliminary injunction except as directed by the court.

12 C. ~~A The court may modify or add to the terms of the preliminary injunction does not~~
13 ~~prejudice the rights of the parties or a child that are to be adjudicated at subsequent~~
14 ~~hearings in at any time during the pendency of the proceeding and does not limit the~~
15 ~~power of the court to issue other injunctive relief that may be proper under the~~
16 ~~circumstances.~~

17 D. A preliminary injunction terminates and ceases to have effect when:

18 (1) The court revokes or modifies it, except that, if the court modifies the
19 preliminary injunction, the modified preliminary injunction takes effect upon the
20 termination of the existing preliminary injunction and remains effective until later
21 terminated as provided in this paragraph;

22 (2) A final divorce judgment or decree of judicial separation is entered; or

23 (3) The action is dismissed.

24 **3. Remedies.** The court may enforce a preliminary injunction issued pursuant to this
25 section:

26 A. By finding a person who disobeys or resists the injunction in contempt of court;

27 B. By requiring a person who disobeys or resists the injunction to pay the costs and
28 attorney's fees that the other party incurred to enforce the preliminary injunction; or

29 C. By appropriate processes as in other actions.

30 The remedies provided in this subsection for enforcement of a preliminary injunction are
31 in addition to any other civil or criminal remedies available, including civil contempt of
32 court. The use of one remedy does not prevent the simultaneous or subsequent use of any
33 other remedy.

34 ~~**4. Mutual order of No effect on protection or restraint orders.**~~ Orders issued
35 pursuant to this section do not supersede orders issued pursuant to former chapter 101 or
36 to chapter 103.

37 **5. Attachment of property; trustee process.** Attachment of real or personal property
38 or on trustee process may be used in connection with an action for judicial separation.

39 **Sec. 2. 19-A MRSA §903**, as amended by PL 2021, c. 647, Pt. B, §45 and affected
40 by §65, is further amended to read:

41 **§903. Preliminary injunction, effect; attachment or trustee process**

1 **1. Issue Issuance of preliminary injunction by the court; service; contents; effect.**

2 In all actions for divorce or for spousal or child support following divorce by a court that
3 lacked personal jurisdiction over the absent spouse, ~~the clerk of the court, pursuant to order~~
4 ~~of the District Court,~~ shall issue a preliminary injunction order in the following manner.

5 A. The preliminary injunction must bear the signature or facsimile signature of the
6 clerk, be under the seal of the court; and contain the name of the court issuing the
7 preliminary injunction and the names of the parties ~~and~~. If the plaintiff is represented,
8 the preliminary injunction must also state the name and address of the plaintiff's
9 attorney. The preliminary injunction may be obtained in blank from the clerk ~~and must~~
10 ~~be filled out by the plaintiff's attorney for a fee.~~ The plaintiff or the plaintiff's attorney
11 ~~is responsible for serving this~~ shall serve the preliminary injunction, ~~along with the~~
12 ~~summons and complaint,~~ on the defendant along with the summons and complaint.

13 B. The preliminary injunction must be directed to each party to the action and must
14 ~~contain the following orders~~ order that, unless the parties otherwise agree in writing or
15 unless the court orders otherwise:

16 (1) ~~That~~ Except as specifically allowed by paragraph B-1, each party is enjoined
17 prohibited from damaging, destroying, transferring, encumbering, concealing,
18 selling or otherwise disposing of the any property of owned or claimed by either
19 or both of the parties, except in the usual course of business or for the necessities
20 of life, without the written consent of the parties or the permission of the court;
21 regardless of whose name the property is in or who holds title to the property.
22 Violations of this subparagraph include but are not limited to the following:

23 (a) Withdrawing from or borrowing from or against all or any part of the cash
24 surrender value of a life insurance policy of either party or of a child of the
25 parties;

26 (b) Withdrawing from or borrowing from or against all or any part of the
27 retirement, profit-sharing, pension, death or other employee benefit plan or
28 from an employee savings plan, an individual retirement account or a "Keogh"
29 retirement account; and

30 (c) Intentionally or knowingly damaging or destroying the personal property
31 of the parties, including but not limited to any electronically stored materials,
32 electronic communications, financial records and documents that represent or
33 embody anything of value;

34 (2) ~~That each party is enjoined from imposing restraint on the personal liberty of~~
35 ~~the other party or of a biological or adopted child of either or both of the parties;~~
36 ~~and~~

37 (3) ~~That each~~ Each party is ~~enjoined prohibited~~ prohibited from canceling or voluntarily
38 removing the other party or a child of the parties from a policy of health, dental or
39 disability insurance that provides coverage for the other party or the child of the
40 parties; and that each party is required to comply with any annual renewal
41 requirements or deadlines necessary for the maintenance of such policies;

42 (4) Each party is prohibited from canceling or changing in any way, including by
43 changing a beneficiary of, a casualty, life or motor vehicle policy insuring a party
44 or the party's property;

1 (5) Each party is prohibited from opening, tampering with, destroying, deleting or
2 withholding mail, e-mail or text messages or any other form of communication
3 addressed to the other party; and

4 (6) Each party is prohibited from signing the other party's name on any negotiable
5 instrument, check or draft, including but not limited to a tax refund, security
6 deposit, insurance payment or dividend.

7 B-1. Notwithstanding paragraph B, subparagraph (1), the preliminary injunction does
8 not prohibit a party from accessing funds or incurring debt for the following purposes:

9 (1) To continue the regular operations of an ongoing business;

10 (2) To pay for the necessities of life, including housing, food, transportation,
11 school, child care and medical expenses;

12 (3) To retain an attorney for the legal separation or divorce proceeding; and

13 (4) To make regular withdrawals or required minimum withdrawals in the normal
14 course of retirement.

15 C. The preliminary injunction must include the following statement:

16 "Warning

17 This is an official court order. If you disobey this order the court may find you
18 in contempt of court.

19 This court order ~~is effective~~ will remain in effect until the earliest of the
20 following:

21 (1) The court revokes or modifies it;

22 (2) A final divorce judgment or decree of judicial separation is entered; or

23 (3) The action is dismissed."

24 D. The preliminary injunction is effective against the plaintiff upon the
25 commencement of the action and against the defendant upon service of a copy of both
26 the complaint and ~~order~~ the preliminary injunction in accordance with the Maine Rules
27 of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's
28 copy of the preliminary injunction and to have actual notice of its contents by filing or
29 causing the complaint to be served. ~~The plaintiff shall cause a copy of the preliminary~~
30 ~~injunction to be served upon the defendant with a copy of the summons and complaint.~~

31 E. The preliminary injunction has the force and effect of and is an order of a Judge of
32 the ~~Probate Court or District Court or Justice of Superior Court~~ and is enforceable by
33 all remedies made available by law, including contempt of court. ~~The order remains~~
34 ~~in effect until entry of a final decree, until the case is dismissed or until otherwise~~
35 ~~ordered by the court.~~

36 **2. Revocation or modification by the court.** A preliminary injunction may be
37 revoked or modified by the court after hearing for good cause shown. The party seeking
38 to revoke or modify the preliminary injunction shall file a motion together with an affidavit
39 that demonstrates the good cause necessary for revocation or modification.

40 A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on
41 shorter notice as the court may order, either party subject to ~~an order~~ a preliminary

1 injunction may appear and move the dissolution or modification of the ~~order~~
2 preliminary injunction, and in that event the court shall proceed to hear and determine
3 the motion as expeditiously as justice requires.

4 B. Mediation is not required before a hearing on a motion to revoke or modify a
5 preliminary injunction except as directed by the court.

6 C. ~~A~~ The court may modify or add to the terms of the preliminary injunction does not
7 ~~prejudice the rights of the parties or a child that are to be adjudicated at subsequent~~
8 ~~hearings in at any time during the pendency of the proceeding and does not limit the~~
9 ~~power of the court to issue other injunctive relief that may be proper under the~~
10 ~~circumstances.~~

11 D. A preliminary injunction terminates and ceases to have effect when:

12 (1) The court revokes or modifies it, except that, if the court modifies the
13 preliminary injunction, the modified preliminary injunction takes effect upon the
14 termination of the existing preliminary injunction and remains effective until later
15 terminated as provided in this paragraph;

16 (2) A final divorce judgment or decree of judicial separation is entered; or

17 (3) The action is dismissed.

18 **3. Remedies.** The court may enforce a preliminary injunction issued pursuant to this
19 section:

20 A. By finding a person who disobeys or resists the injunction in contempt of court;

21 B. By requiring a person who disobeys or resists the injunction to pay the costs and
22 attorney's fees that the other party incurred to enforce the preliminary injunction; or

23 C. By appropriate processes as in other actions.

24 The remedies provided in this subsection for enforcement of a preliminary injunction are
25 in addition to any other civil or criminal remedies available, including civil contempt of
26 court. The use of one remedy does not prevent the simultaneous or subsequent use of any
27 other remedy.

28 **4. ~~Mutual order of~~ No effect on protection or restraint orders.** Orders issued
29 pursuant to this section do not supersede orders issued pursuant to former chapter 101 or
30 to chapter 103.

31 **5. Attachment of property; trustee process.** Attachment of real or personal property
32 or on trustee process may be used in connection with an action for divorce or spousal or
33 child support following divorce by a court that lacked personal jurisdiction over the absent
34 spouse.

35 **6. Application.** ~~The~~ Except as provided in subsection 1, the injunction authorized in
36 this section does not apply to post-divorce actions.

37 SUMMARY

38 This bill contains the recommendations of the Family Law Advisory Commission
39 pursuant to the Maine Revised Statutes, Title 19-A, section 354, subsection 2 for changing
40 the laws governing preliminary injunctions in judicial separation and divorce proceedings.

1 The bill amends the statutes that provide for the mandatory issuance of a preliminary
2 injunction in judicial separation and divorce proceedings filed in the District Court by:

3 1. Clarifying the statutory language to help unrepresented individuals understand its
4 provisions, including by clarifying that the preliminary injunction is an order of the District
5 Court and by providing greater guidance to the parties about the actions that the parties are
6 and are not prohibited from engaging in while the preliminary injunction is in effect;

7 2. Retaining the provision prohibiting each party from disposing of the property of the
8 parties while the preliminary injunction is in effect, adding additional prohibitions against
9 damaging or destroying the property of the parties and providing examples of the types of
10 activities that constitute a violation of this prohibition;

11 3. Expanding the provision that prohibits each party from causing the other party or
12 the parties' children to lose their health insurance coverage while the preliminary injunction
13 is in effect to include prohibitions against a party causing the loss of dental, disability,
14 casualty, life and motor vehicle insurance coverage;

15 4. Newly specifying that each party is prohibited from interfering with mail, e-mail,
16 text messages and other forms of communication addressed to the other party and that each
17 party is prohibited from signing the other party's name to a negotiable instrument while the
18 preliminary injunction is in effect;

19 5. Clarifying the provision of current law specifying that the preliminary injunction
20 does not prohibit the parties from encumbering or disposing of property in the usual course
21 of business or for the necessities of life and further providing that the preliminary injunction
22 does not prohibit the parties from accessing funds or incurring debt to retain an attorney
23 for the legal separation or divorce proceeding or to make regular withdrawals in the normal
24 course of retirement. In practice, parties typically use marital funds for these purposes and
25 the commission determined that it would be helpful to clarify within statute that the parties
26 have a right to do so; and

27 6. Removing the provision of current law that prohibits the parties from imposing
28 restraint on the personal liberty of the other party or of a biological or adopted child of
29 either or both of the parties while the preliminary injunction is in effect because the
30 commission believes both that this language is unclear and that protections for the personal
31 liberty of the parties and of the parties' children are more appropriately addressed through
32 the protection from abuse process.