

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

propriated from the General Fund to carry out the purposes of this Act.

1987-88

LEGISLATURE

Commission on Land Conservation and
Economic Development

Personal Services \$ 4,950
All Other 5,050

Total \$10,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 29, 1987.

CHAPTER 515

H.P. 1309 — L.D. 1787

AN ACT to Revise the Harassment Law.

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

Sec. 1. 5 MRSA c. 337-A is enacted to read:

CHAPTER 337-A

PROTECTION FROM HARASSMENT

§4651. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Court. "Court" means any District Court or Superior Court.

2. Harassment. "Harassment" means any repeated act of intimidation, harassment, physical force or threat of physical force whether or not performed under color of law, directed against any person, family or their property or advocate with the intention of causing fear or intimidation or to deter free exercise or enjoyment of any rights or privileges secured by the Constitution of Maine and the United States Constitution. This definition does not include any act protected by the constitutional guarantee of free speech.

3. Law enforcement agency. "Law enforcement agency" means the State Police, a sheriff's department or a municipal police department.

§4652. Filing of petition

Proceedings under this chapter shall be filed, heard

and determined in the District Court or Superior Court of the division or county in which either the plaintiff or the defendant resides. If the plaintiff has left the plaintiff's residence to avoid abuse, the plaintiff may bring an action in the division or county of the plaintiff's previous residence or new residence.

§4653. Commencement of proceedings

1. Filing. Any person who has been a victim of harassment may seek relief by filing a sworn petition in an appropriate court alleging that abuse.

2. Assistance. The court shall provide separate forms with a summons and clerical assistance to assist either party to proceed under this chapter in completing and filing a petition or other necessary documents. This assistance shall not include legal advice or assistance in drafting legal documents.

3. Fees. No fee may be charged for forms or filing of a petition. A plaintiff may apply for the right to proceed in forma pauperis.

§4654. Hearings

1. Full hearing. Within 21 days of the filing of a petition, a hearing shall be held at which the plaintiff shall prove the allegation of harassment by a preponderance of the evidence.

2. Temporary orders. The court may enter any temporary orders, authorized under subsection 4, without written or oral notice to the defendant or his attorney if:

A. It appears clearly from an affidavit accompanying the petition that:

(1) Before the defendant or his attorney can be heard, the plaintiff may be in immediate and present danger of physical abuse from the defendant or may suffer extreme emotional distress as a result of the defendant's conduct;

(2) Either the plaintiff has or has not contacted any law enforcement officials concerning the alleged harassment; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment;

B. When reasonable, the plaintiff or the court has made reasonable efforts to give written or oral notice to the defendant or his attorney that the plaintiff is seeking a temporary order; and

C. The court provides written reasons for entering a temporary order.

3. Emergency relief. Emergency relief shall be available as follows.

A. When the courthouse is closed and no other provision can be made for protection of a victim of harassment, a petition may be filed before any Judge of the District Court or Justice of the Superior Court. Upon a meeting of the requirements of subsection 2, the court may enter any temporary orders, authorized under subsection 4, as it deems necessary to protect the plaintiff from harassment.

B. If a petition is filed under this subsection, the petition and any order issued pursuant to it shall be immediately certified to the clerk of the District Court or Superior Court having venue. This certification to the court shall have the effect of commencing proceedings and invoking the other provisions of this chapter.

C. An order shall remain in effect pending a hearing pursuant to subsection 1.

4. Interim relief. The court, in an ex parte proceeding, may enjoin the defendant from engaging in any of the following:

A. Imposing any restraint upon the person or liberty of the plaintiff;

B. Threatening, assaulting, molesting, harassing or otherwise disturbing the peace of the plaintiff;

C. Entering the plaintiff's residence; or

D. Taking, converting or damaging property in which the plaintiff may have a legal interest.

5. Service of order. If the court issues a temporary order or orders emergency or interim relief, it shall order a law enforcement agency to serve the defendant personally with the order, the petition and the summons. To protect the plaintiff, the court may order the omission or deletion of the plaintiff's address from any papers served on the defendant.

6. Dissolution or modification. Notwithstanding any statutory provision to the contrary, on 2 days' notice to the plaintiff or on such shorter notice as the court may order, a person who is subject to any order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion expeditiously. At that hearing, the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing in this section may be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

7. Extension. If a hearing under subsection 1 is continued, the court may make or extend such temporary orders as it deems necessary.

§4655. Relief

1. Protection order; consent agreement. The court, after a hearing and upon finding that the defendant has committed the harassment alleged, may grant any protection order or approve any consent agreement to bring about a cessation of harassment, which may include:

A. Directing the defendant to refrain from threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff;

B. Directing the defendant to refrain from going on the premises of the plaintiff's residence;

C. Directing the defendant to refrain from interference with the plaintiff's property;

D. Ordering payment of monetary compensation to the plaintiff for losses suffered as a direct result of the harassment. Compensatory losses shall be limited to loss of earnings or support; reasonable expenses incurred for personal injuries or property damage; and reasonable moving expenses. Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded. If it appears from the petition that an order under this paragraph may be granted, the plaintiff or defendant may remove the issue of monetary compensation to the Superior Court where a jury trial may be had. Removal shall be requested by motion prior to a hearing under section 4654;

E. Ordering the defendant to pay court costs or reasonable attorneys fees; and

F. Entering any other orders deemed necessary or appropriate in the discretion of the court.

2. Duration. Any protective order or approved consent agreement shall be for a fixed period not to exceed one year. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from harassment. Upon motion by either party, for sufficient cause, the court may modify the order or agreement from time to time as circumstances require.

3. Consequences of violation. Any protective order or approved consent agreement shall indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement.

4. Title to property. No order or agreement may affect title to any real property.

5. Bond prohibited. The court shall not require the execution of a bond by the plaintiff prior to issuance of any order of protection.

6. Law enforcement agency to serve defendant. The court shall order a law enforcement agency to serve the defendant personally with any protective order or consent decree.

§4656. Confidentiality of plaintiff's address

To protect the plaintiff, the court may order the omission or deletion of the plaintiff's address from any papers available to the public.

§4657. Notification

The clerk shall issue, without fee, a copy of an order, agreement, amendment or revocation to the plaintiff, the defendant and, as the court directs, to the law enforcement agencies most likely to enforce it.

§4658. Procedure

1. Civil rules apply. Unless otherwise indicated in this chapter, all proceedings shall be in accordance with the Maine Rules of Civil Procedure. Appeals may be taken as provided by the Maine Rules of Civil Procedure and may be only for error of law or abuse of discretion.

2. Proceedings independent. A proceeding under this chapter shall be in addition to any other available civil or criminal remedies.

3. Self-defense. The right to relief, under this chapter, shall not be affected by the plaintiff's use of reasonable force in response to abuse by the defendant.

4. Intoxication. Voluntary intoxication shall not be a defense to an action under this chapter.

§4659. Violation

1. Crime committed. Violation of a temporary, emergency, interim or final protective order or a court approved consent agreement, when the defendant has prior actual notice of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 4655, subsection 1, paragraphs D to F. Violation of these paragraphs shall be treated as contempt and punished in accordance with law.

2. Warrantless arrest. Wherever possible, warrants shall be obtained by law enforcement officers before making arrests for criminal violation of an order or consent agreement. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation of an order or consent agreement may be without warrant upon probable cause, whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order, provided that the existence of such a protective order is confirmed immediately after arrest through the law enforcement officer or his department obtaining a written copy of the protective order from the appropriate law enforcement agency.

§4660. Law enforcement agency responsibilities

1. Reports. Each law enforcement agency shall report all incidents of harassment as required by the State Bureau of Identification under Title 25, section 1544.

2. Agency procedures. Law enforcement agencies shall establish procedures to ensure that dispatchers and officers at the scene of an alleged incident of harassment or violation of an order of protection can be informed of any recorded prior incident of harassment involving the abused party and can verify the effective dates and terms of any recorded protection order.

3. Officer training. Law enforcement agencies shall provide officers employed by them with an education and training program designed to inform the officers of the problems of harassment, procedures to deal with these problems and the provisions of this chapter. The amount and degree of officer training, beyond the distribution of information, shall be determined by each local law enforcement agency.

4. Maine Criminal Code enforcement. A law enforcement officer at the scene of an alleged incident of harassment shall use the same standard of enforcing relevant sections of the Maine Criminal Code when the incident involves harassment as when it involves another type of abuse.

5. Arrest in certain situations. When a law enforcement officer has probable cause to believe that there has been a criminal violation of a court approved consent agreement or a protective order issued pursuant to this chapter or that a violation of Title 17-A, section 207, has occurred involving harassment, he shall arrest and take into custody the alleged offender.

6. Officer responsibilities. Whenever a law enforcement officer has reason to believe that a person has been the victim of harassment, the officer shall immediately use all reasonable means to prevent further abuse, including:

A. Remaining on the scene as long as he reasonably believes there is a danger to the physical safety of that person without the presence of a law enforcement officer;

B. Assisting that person in obtaining medical treatment necessitated by an assault, including driving the victim to the emergency room of the nearest hospital;

C. Giving that person immediate and adequate written notice of his rights, which shall include information summarizing the procedures and relief available to victims of harassment; or

D. Arresting the abusing party with or without a warrant pursuant to section 4659, subsection 2.

Sec. 2. 17 MRSA c. 93-C is enacted to read:

CHAPTER 93-CHARASSMENT BASED ON CHARACTERISTICS§2931. Prohibition

No person, whether or not acting under color of law, may, by force or threat of force, intentionally injure, intimidate or interfere with, or intentionally attempt to injure, intimidate or interfere with or intentionally oppress or threaten any other person in the free exercise or enjoyment of any right or privilege, secured to him by the Constitution of Maine or laws of the State or by the United States Constitution or laws of the United States.

As used in this section, "intentionally" has the meaning set forth in Title 17-A, section 35.

§2932. Penalty

A violation of this chapter is a Class D crime.

Sec. 3. 25 MRSA §1544, last ¶, as enacted by PL 1979, c. 578, §6, is amended to read:

The bureau shall establish a category for abuse by adults of family or household members and a category for harassment, as defined in Title 5, chapter 337-A, which shall be supplementary to its other reported information. The bureau shall prescribe the information to be submitted in the same manner as for all other categories of the uniform crime reports.

Effective September 29, 1987.

CHAPTER 516

H.P. 537 — L.D. 721

AN ACT to Provide Relief from Property Taxes through Extension of the Elderly Tax and Rent Refund Circuit Breaker to Both Elderly and Nonelderly Individuals.

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

Sec. 1. 36 MRSA c. 901, as amended, is repealed.

Sec. 2. 36 MRSA 6162, as enacted by PL 1979, c. 726, §7, is repealed.

Sec. 3. 36 MRSA c. 907 is enacted to read:

CHAPTER 907THE HOUSEHOLD TAX AND RENT REFUND ACT§6201. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. Benefit base. "Benefit base" means property taxes accrued or rent constituting property taxes accrued.

2. Claimant. "Claimant" means a person who has filed a claim under this chapter and was domiciled in this State and owned or rented a homestead in this State during the entire calendar year preceding the year in which he files claim for relief under this chapter. When 2 individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the State Tax Assessor and his decision shall be final. If a homestead is occupied by 2 or more individuals, and more than one individual is able to qualify as a claimant the individuals may determine among them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the State Tax Assessor and his decision shall be final. Ownership of a homestead under this chapter may be by fee, by life tenancy, by bond for deed, as mortgagee or any other possessory interest in which the owner is personally responsible for the tax for which he claims a refund.

3. Elderly household. "Elderly household" means a household in which:

A. At least one member of the household has attained the age of 62 during the year for which relief is requested;

B. The claimant is currently not married and has attained the age of 55 during the year for which relief is requested and is, due to disability, receiving federal disability payments, such as supplemental security income; or

C. The claimant is currently married and has attained the age of 55 during the year for which relief is requested and both the claimant and the claimant's spouse are, due to disability, receiving federal disability payments, such as supplemental security income.

4. Gross rent. "Gross rent" means rental paid at arm's length solely for the right of occupancy of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement. If the landlord and tenant have not dealt with each other at arm's length, and the State Tax Assessor is satisfied that the gross rent charged was excessive, he may adjust the gross rent to a reasonable amount for purposes of this subchapter.

5. Homestead. "Homestead" means the dwelling, owned or rented by the claimant, and occupied by the claimant and his dependents as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. "Owned" includes