

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

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

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

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ONE HUNDRED AND FOURTEENTH LEGISLATURE

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their choice by a cross or check mark placed within a corresponding square below the word "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal voters are in favor of the Act, the Governor shall proclaim that fact without delay, and the Act shall become effective 30 days after the date of the proclamation.

The Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this Act necessary to carry out the purpose of this referendum.

PART B

Sec. B-1. 5 MRSA §6207, sub-§2, ¶¶A and C, as enacted by PL 1987, c. 506, §§1 and 4, are amended to read:

A. Contains recreation lands, prime physical features of the Maine landscape, areas of special scenic beauty, farmland or open space, undeveloped shorelines, wetlands, fragile mountain areas or lands with other conservation, wilderness or recreation values;

C. Provides nonmotorized or motorized public access to recreation opportunities or those natural resources identified in this section.

Sec. B-2. 7 MRSA §18 is enacted to read:

§18. Holding of real estate

The commissioner may accept, hold, administer and retain interests in real estate in order to further the purposes of this Title.

Part A - Effective pending referendum.

Part B - See title page for effective date.

CHAPTER 877

H.P. 1732 - L.D. 2391

An Act to Provide for Immediate Income Withholding and a Plan for Periodic Review and Adjustment of Child Support Awards in Support Enforcement Cases of the Department of Human Services

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

PART A

Sec. A-1. 19 MRSA §498-C is enacted to read:

§498-C. Immediate withholding of earnings

1. Withholding order. Beginning November 1, 1990, a decision establishing or modifying a child support obligation under this subchapter must conform with this subsection.

A. The decision must provide for the withholding of amounts payable as child support, effective from the date of the decision, from the responsible parent's earnings, regardless of whether support payments by the responsible parent are in arrears. The withholding order must:

(1) Specify the amount of earnings to be withheld;

(2) Specify the support enforcement case number; and

(3) Direct that upon receipt of a copy of the withholding order any payor of earnings to the responsible parent shall:

(a) Immediately begin to withhold those earnings when earnings are usually paid to the responsible parent; and

(b) Send each amount of earnings withheld to the department at the address set forth in the withholding order within 10 days after each withholding of earnings.

B. This subsection does not apply if:

(1) A party demonstrates and the hearing officer finds that there is good cause not to require immediate withholding under this section; or

(2) A written agreement between the parties providing an alternative arrangement is filed with the hearing officer.

2. Priority of order. Notwithstanding any other law, a withholding order under this section has priority over any previously filed attachment, execution, garnishment or assignment of earnings that is not made for the purpose of enforcing or paying a child support obligation.

3. Obligations of payor of earnings. This subsection governs the obligations of a payor of earnings under this section.

A. Upon receipt of a copy of a withholding order, a payor of earnings to the responsible parent shall:

(1) Immediately begin to withhold earnings of the responsible parent when earnings are usually paid to the responsible parent; and

(2) Send each amount of earnings withheld to the department at the address set forth in the withholding order within 10 days after each withholding.

B. The payor shall include with all remittances of withheld earnings the responsible parent's support enforcement case number set forth in the withholding order.

C. The payor may combine amounts withheld for transmittal to the department from more than one responsible parent if the portion attributable to each responsible parent is separately designated, except that the payor may not combine amounts if that action would result in a responsible parent's withheld earnings being sent to the department more than 10 days from the withholding date.

D. The balance of earnings due the responsible parent must be paid to the responsible parent on the day that parent is usually paid.

4. Duration of order. A withholding order is binding upon the payor of earnings to the responsible parent until:

A. The order is superseded by another withholding order issued by the department under this subchapter;

B. The decision establishing the support obligation is superseded by a court order;

C. The payor has been released from the withholding order in writing by the department;

D. The child:

(1) If not attending secondary school, as defined in Title 20-A, section 1, becomes 18 years of age; or

(2) If attending secondary school, as defined in Title 20-A, section 1:

(a) Graduates, withdraws or is expelled from secondary school; or

(b) Becomes 19 years of age; or

E. The child is emancipated or adopted.

5. Payor to be held harmless. A payor of earnings to the responsible parent who honors a withholding order under this section is discharged from any liability or obligation to the responsible parent for earnings withheld in compliance with the order. The department shall defend and hold harmless any payor for honoring the order.

6. Notice of termination of payor-payee relationship. When the relationship between the payor of earn-

ings and the responsible parent that provides for the payment of earnings to the responsible parent, whether the relationship is that of employer and employee or any other, is terminated, the payor shall, within 15 days of the termination, send the department a written notice of the termination. The notice must include:

A. The responsible parent's name, last known address and social security number;

B. The support enforcement case number;

C. The date of termination of the relationship of payor and payee; and

D. If known, the name and address of any new or other payor of earnings to the responsible parent.

7. Liability of payor; violations. A payor is liable, after service of the withholding order, for any earnings the payor fails to withhold and send to the department within 10 days of the day that the payee is usually paid. The department may maintain an action against the payor for the earnings the payor did not withhold and send to the department or for the imposition of any of the following civil penalties, or both, plus attorney's fees and court costs.

A. A payor who knowingly fails to withhold earnings on the day earnings are usually paid to the responsible parent commits a civil violation for which a forfeiture of not more than \$100 may be adjudged for each failure to withhold.

B. A payor who knowingly fails to send withheld earnings to the department within 10 days of the withholding commits a civil violation for which a forfeiture of not more than \$100 may be adjudged for each failure to timely send withheld earnings.

C. A payor who knowingly fails to send the notification required by subsection 6 commits a civil violation for which a forfeiture of not more than \$100 may be adjudged.

D. A payor who discharges from employment or refuses to employ a responsible parent, or who takes disciplinary action against a responsible parent employed by the payor, or who otherwise discriminates against the responsible parent because of the existence of the withholding order or the obligations imposed upon the payor by the order, is subject to a civil penalty of not more than \$5,000, payable to the State, to be recovered in a civil action. The payor is also subject to an action by the responsible parent for compensatory and punitive damages for those actions, plus attorney's fees and court costs.

8. Other remedies. A withholding order under this section does not bar any judicial or administrative enforcement or collection action otherwise available under federal or state law regarding child or spousal support

arrearages or a debt for public assistance under section 495.

9. Sunset. This section is repealed April 1, 1991.

Sec. A-2. 19 MRSA §777, sub-§3 is enacted to read:

3. Liability of payor to obligee. An obligee may maintain an action for compensatory damages, including attorney's fees and court costs, against a payor who knowingly fails to comply with this section.

Sec. A-3. 19 MRSA §777-A is enacted to read:

§777-A. Income withholding in department support enforcement cases

1. Applicability. Beginning November 1, 1990, this section applies to any action under this Title or Title 22 in which:

A. The establishment or modification of child support is sought;

B. A party is involved in a department support enforcement case regarding the same child or children; and

C. That party is:

(1) A recipient of aid to families with dependent children;

(2) A support enforcement client of the department; or

(3) A responsible parent under section 493, subsection 9.

2. Pleadings. A person subject to subsection 1 shall affirmatively plead that person's status under subsection 1 and shall also plead the support enforcement case number.

3. Income withholding provision of order. An order establishing or modifying child support must provide for the withholding from the obligor's income of amounts payable as child support, effective from the date of the order, regardless of whether child support payments by the obligor are in arrears. This subsection does not apply if:

A. A party demonstrates and the court finds that there is good cause not to require immediate withholding under this section; or

B. A written agreement between the parties providing an alternative arrangement is filed with the court.

4. Provisions of withholding order. An income withholding order issued under this section must include:

A. The amount of income to be withheld;

B. The department support enforcement case number, if known to the court; and

C. A direction to the payor that upon receipt of a copy of the withholding order the payor shall:

(1) Immediately begin to withhold income of the obligor when usually paid to the obligor; and

(2) Send the amount withheld and the department support enforcement case number, if known, to the department at the address set forth in the order within 10 days of the withholding.

5. Department copy of orders. The clerk of the court shall send to the department an attested copy of the order establishing or modifying the award of child support and an attested copy of the income withholding order.

6. Service of process. The department may serve an income withholding order under this section as provided in section 494.

7. Priority of order. Notwithstanding any other provision of law, a withholding order under this section has priority over any previously filed attachment, execution, garnishment or assignment of income that is not made for the purpose of enforcing or paying a child support obligation.

8. Obligations of payor of income. This subsection governs the obligations of a payor of income under this section.

A. Upon receipt of a copy of an income withholding order, a payor of income to the obligor shall:

(1) Immediately begin to withhold income of the obligor when usually paid; and

(2) Send each amount of income withheld to the department at the address set forth in the order within 10 days of the withholding.

B. If a department support enforcement case number is set forth in the order or the department notifies the payor of that number, the payor shall include that number with all remittances of withheld income.

C. The payor may combine amounts withheld for transmittal to the department from more than one obligor if the portion attributable to each obligor is separately designated, except that the payor may not combine amounts if that action would result in an obligor's withheld income being sent to the department more than 10 days from the withholding date.

D. The balance of income due the obligor must be paid to the obligor on the day the obligor is usually paid.

9. Duration of order. A withholding order is binding upon the payor of income to the obligor until:

A. The order is terminated by a subsequent court order;

B. The payor is released in writing from the terms of the order by the department;

C. The child becomes 18 years of age, except as provided in subsection 10; or

D. The child is emancipated or adopted.

10. Exception to duration of order for attending secondary school. If the child is attending secondary school as defined in Title 20-A, section 1 and if a court has ordered the obligor to provide child support until the child graduates, withdraws or is expelled from school or becomes 19 years of age, a withholding order is binding upon the payor of income to the obligor until the child:

A. Graduates, withdraws, or is expelled from secondary school; or

B. Becomes 19 years of age.

11. Payor to be held harmless. Any payor of income to the obligor who honors an income withholding order under this section is discharged from any liability or obligation to the obligor for income withheld in compliance with the order. The department shall defend and hold harmless any payor for honoring the order.

12. Notice of termination of payor-payee relationship. When the relationship between the payor and the obligor that provides for the payment of income by the payor to the obligor, whether it is that of employer and employee or any other, is terminated, the payor shall, within 15 days of the termination, send the department a written notice of termination. The notice must include:

A. The obligor's name, last known address and social security number;

B. The department support enforcement case number;

C. The date of termination of the relationship; and

D. If known, the name and address of any new or other payor of income to the obligor.

13. Liability of payor. A payor is liable, after service of an income withholding order upon the payor, for any income that the payor knowingly fails to withhold and send to the department within 10 days of the day that the obligor is usually paid. The department may maintain

an action against the payor for the income the payor did not withhold and send to the department or for the imposition of any of the following civil penalties, or both, plus attorney's fees and court costs.

A. A payor who knowingly fails to withhold income when income is usually paid to the obligor commits a civil violation for which a forfeiture of not more than \$100 may be adjudged for each failure to withhold.

B. A payor who knowingly fails to send withheld income to the department within 10 days of its withholding commits a civil violation for which a forfeiture of not more than \$100 may be adjudged for each failure to timely send withheld income.

C. A payor who knowingly fails to send the notification required by subsection 12 commits a civil violation for which a forfeiture of not more than \$100 may be adjudged.

D. A payor who discharges from employment or refuses to employ an obligor, or who takes disciplinary action against an obligor employed by the payor or who otherwise discriminates against the obligor because of the existence of an income withholding order or the obligations imposed upon the payor by the order, is subject to a penalty of not more than \$5,000, payable to the State, to be recovered in a civil action. The payor is also subject to an action by the obligor for compensatory and punitive damages for those actions, plus attorney's fees and court costs.

14. Other remedies. Neither a provision for immediate income withholding in an order for child support nor an income withholding order under this section bars any judicial or administrative enforcement or collection action otherwise available under federal or state law with respect to child or spousal support arrearages or with respect to a debt for public assistance under section 495.

15. Requirements supplemental. The requirements of this section are in addition to and not in substitution for those of section 777.

16. Sunset. This section is repealed April 1, 1991.

PART B

Sec. B-1. Legislative plan for reviews of child support awards. The Department of Human Services, in consultation with the Supreme Judicial Court, the Family Law Section of the Maine State Bar Association, and Pine Tree Legal Assistance, Incorporated, shall develop a plan in accordance with the federal Social Security Act, Section 466(a)(10), for reviews of child support awards. The department shall report the plan to the 115th Legislature and the Executive Director of the Legislative Council by January 15, 1991.

Sec. B-2. Rulemaking. The Department of Human Services shall, by rulemaking pursuant to the Maine Administrative Procedure Act, adopt a plan for reviews of child support awards as required to be effective October 12, 1990 by the federal Social Security Act, Section 466(a)(10).

See title page for effective date.

CHAPTER 878

S.P. 927 - L.D. 2345

An Act to Correct Errors and Inconsistencies in the Laws of Maine

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Acts of this and previous Legislatures have resulted in certain technical errors and inconsistencies in the Laws of Maine; and

Whereas, these errors and inconsistencies create uncertainties and confusion in interpreting legislative intent; and

Whereas, it is vitally necessary that these uncertainties and this confusion be resolved in order to prevent any injustice or hardship to the citizens of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 1 MRSA §402, sub-§2, ¶B, as amended by PL 1989, c. 358, §1 and c. 443, §1, is repealed and the following enacted in its place:

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;

Sec. A-2. 1 MRSA §402, sub-§3, ¶E, as amended by PL 1989, c. 358, §4 and c. 443, §2, is repealed and the following enacted in its place:

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for fac-

ulty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;

Sec. A-3. 2 MRSA §6, sub-§2, as amended by PL 1989, c. 501, Pt. BB, §1 and c. 585, Pt. A, §1, is repealed and the following enacted in its place:

2. Range 90. The salaries of the following state officials and employees shall be within salary range 90:

Superintendent of Banking;

Bureau of Consumer Credit Protection Superintendent;

State Tax Assessor;

Superintendent of Insurance;

Associate Commissioner for Programs, Department of Mental Health and Mental Retardation;

Associate Commissioner of Administration, Department of Mental Health and Mental Retardation;

Associate Commissioner for Institutional Management; and

Executive Director, Maine Waste Management Agency.

Sec. A-4. 2 MRSA §6, sub-§3, as amended by PL 1989, c. 483, Pt. A, §1 and c. 501, Pt. BB, §2, is repealed and the following enacted in its place:

3. Range 89. The salaries of the following state officials and employees shall be within salary range 89:

Director of Public Improvements;

State Budget Officer;

State Controller;

Director of the Bureau of Forestry;

Chief of the State Police;

Director, State Planning Office;

Director, Energy Resources Office;

Public Advocate;

Commissioner of Defense and Veterans' Services;

Director of Human Resources;