

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**SECOND SPECIAL SESSION**

December 12, 1991 to January 7, 1992

**SECOND REGULAR SESSION**

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SECOND REGULAR SESSION  
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PUBLISHED BY THE REVISOR OF STATUTES  
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TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1992

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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ter parent or guardian who furnished a child under 16 years of age an air rifle, a firearm or ammunition for use in a supervised manner.

See title page for effective date.

## CHAPTER 673

### H.P. 1222 - L.D. 1780

#### An Act to Provide More Effective Recovery of Child Support

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

**Whereas,** under current law, the Department of Human Services has no authority to distribute support payments to ensure a fair share to each family of children, a key issue currently pending before the Federal Court in Maine; and

**Whereas,** under current law, the Department of Human Services does not have authority to administratively order responsible parents in nonwelfare cases to pay for past necessary expenses and out-of-pocket medical costs, therefore limiting the effectiveness of the expedited paternity process enacted last year; and

**Whereas,** under current law, a responsible parent's past debt due the Department of Human Services for public assistance paid is the amount of public assistance paid, even if the responsible parent's past earning capacity could not provide that level of support; and

**Whereas,** quicker and more efficient processing of all child support cases is especially important in times when the State is reducing resources available to families, thus making the securing of child support for those families even more crucial; and

**Whereas,** the more efficient processing of these cases will enable the State to monitor state compliance with federal audit standards; and

**Whereas,** the changes will result in a net increase in revenue by increasing the reimbursement for state aid to families with dependent children payments; 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:**

**Sec. 1. 19 MRSA §280-C** is enacted to read:

#### **§280-C. Presumption of legitimacy not applicable**

**1. Presumption not applicable.** The presumption of legitimacy provided in the Maine Rules of Evidence, Rule 302 does not apply if:

A. The experts conclude that reliable blood or tissue tests show that the presumed father is not the biological parent of the child; or

B. The experts conclude that reliable blood or tissue tests show that the alleged father is not excluded and that the probability of the alleged father's paternity is 97% or higher.

**Sec. 2. 19 MRSA §314, sub-§1, ¶D,** as enacted by PL 1989, c. 834, Pt. A, is repealed and the following enacted in its place:

D. If a party fails to comply with this subsection, the court may, in its discretion:

(1) Impose economic sanctions; or

(2) Presume for the purpose of determining a current support obligation that the party has an earning capacity equal to the average weekly wage of a worker within this State as determined by the most recent Department of Labor statistics. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the noncomplying party earns a greater or lesser actual income.

**Sec. 3. 19 MRSA §405, sub-§§1 and 2,** as amended by PL 1971, c. 393, §14, are further amended to read:

**1. Recognizance.** To require the obligor to furnish recognizance in the form of a cash deposit or bond of ~~such~~ a character and in ~~such an~~ amount as the court ~~may deem~~ determines proper to ~~assure~~ ensure payment of any amount required to be paid by the obligor;

**2. Payments.** To require the obligor to make payments at specified intervals to the clerk of the court and to report personally to ~~such~~ the clerk at such times as may be ~~deemed~~ determined necessary;

**Sec. 4. 19 MRSA §405, sub-§3,** as amended by PL 1985, c. 652, §15, is further amended to read:

**3. Violations.** To punish under the power of contempt the obligor who violates any order of the court, or to issue any order pursuant to chapter 14-A. When the obligor is committed to jail for contempt, as provided, the county having jurisdiction of the process shall bear

the expense of his the obligor's support and commitment and he the obligor may be discharged in the same manner as provided by section 722-; and

**Sec. 5. 19 MRSA §405, sub-§4** is enacted to read:

**4. Blood tests.** When this State is the responding state and the petition from the initiating state contains an allegation of paternity that is denied by the respondent, the court, on its own motion or the motion of a party, shall order the parties to submit to blood tests pursuant to sections 272 to 280-B.

**Sec. 6. 19 MRSA §448-A, sub-§§7 and 8** are enacted to read:

**7. State's role in support enforcement cases.** In any child support action brought by the department under this Title or Title 22, the department or prosecuting attorney represents solely the interest of the State in providing child support enforcement services under federal law. Nothing in this section may be construed to modify statutory mandate, authority or confidentiality required of any governmental agency, nor does representation by a prosecuting attorney create an attorney-client relationship between the attorney and any party, other than the State.

For the purpose of this subsection, "prosecuting attorney" means an assistant attorney general, an assistant district attorney, an attorney under contract or an attorney in the employ of the department.

**8. Obligation established.** The current support obligations in cases brought in accordance with this section are established pursuant to subchapter I-A. An obligation for past necessary support due is established by application of the most current child support scale to the responsible parent's income for the time period in which the applicant was entitled to support payments and may include reimbursement for past medical expenses. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent had an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income. A present disability to pay child support, legal or otherwise, does not operate to bar a determination of past debt due the applicant for any relevant period in which the disability did not exist.

If the responsible parent defaults or otherwise fails to appear, and no court or administrative order of support has been established, the court or administrative hearing officer shall presume that the responsible parent has an earning capacity equal to the average weekly wage of a

worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income.

**Sec. 7. 19 MRSA §495, sub-§1, ¶A,** as enacted by PL 1981, c. 657, §4, is amended to read:

A. When no court order of support has been established, a payment of public assistance for the benefit of the dependent child creates a debt due the department from the responsible parent in the amount of public assistance paid. The amount of debt due the department is established by application of the most current child support scale to the responsible parent's income for the time period in which the department was entitled to support payments. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent had an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income. A present disability to pay child support, legal or otherwise, does not operate to bar a determination of past debt due the department for any relevant period in which the disability did not exist. When a periodic support payment has been established under section 498, the debt shall be is limited to the amount stated in the decision.

**Sec. 8. 19 MRSA §495, sub-§1-B** is enacted to read:

**1-B. Default judgment.** If the responsible parent defaults or otherwise fails to appear, and no court or administrative order of support has been established, the court or administrative hearing officer shall presume that the responsible parent has an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income than the one specified by this subsection may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income.

**Sec. 9. 19 MRSA §498, sub-§4, ¶B,** as amended by PL 1989, c. 337, §3, is further amended to read:

B. The decision shall must include a statement of the responsibility of the alleged responsible parent, a statement of the periodic support payment constituting the current support obligation, the amount of public assistance the debt accrued due

the department as established under section 495, subsection 1, paragraph A and the obligation of the responsible parent to maintain health insurance coverage for any dependent children and to provide payment for other medical expenses and ~~shall~~ must require the responsible parent to provide written proof to the department of the existence of the required health insurance coverage within 15 days of that parent's receipt of the decision. A copy of the decision ~~shall~~ must be served upon the responsible parent. The department shall provide written notice to the responsible parent with its decision of that parent's right to administrative review of the decision within the department or review of the decision by the courts and of the action required and the time within which the action ~~shall~~ must be taken to exercise the right of administrative or judicial review. A review of the decision within the department, except pursuant to subsection 3, is limited to a review of the record generated by the original hearing.

**Sec. 10. 19 MRSA §498-A, first ¶,** as repealed and replaced by PL 1989, c. 337, §4, is amended to read:

If no court order of support exists, the department by hearing on behalf of any individual or governmental applicant for services under section 448-A, or on behalf of any person entitled by federal statute to support enforcement services as a former recipient of public assistance, may establish a periodic payment to satisfy the responsible parent's current support obligation under ~~sections 442 and 443~~ section 443-A, ~~establish the responsible parent's debt accrued under sections 273 and 443-A~~ and establish the responsible parent's obligation to maintain health insurance coverage for any dependent children and to provide payment for other medical expenses incurred on behalf of the dependent children by the other parent of the children or by any other person with whom the children reside. The department acting on behalf of another state or another state's instrumentality or a person residing in another state ~~shall constitute~~ constitutes good cause within the meaning of Title 5, section 9057, subsection 5. Notwithstanding ~~sections 442 and 443~~ section 443-A, after January 1, 1990, the responsible parent's support obligation ~~shall continue~~ continues beyond the child's 18th birthday if the child is attending secondary school as defined in Title 20-A, section 1, until the child graduates, withdraws or is expelled from secondary school or attains the age of 19, whichever first occurs.

**Sec. 11. 19 MRSA §498-A, sub-§4, ¶B,** as repealed and replaced by PL 1989, c. 337, §4, is amended to read:

B. The decision ~~shall~~ must include a statement of the responsibility of the responsible parent, a statement of the periodic support payment constituting the current support obligation, the debt due the applicant as established under section 448-A, sub-

section 8 and the obligation of the responsible parent to maintain health insurance coverage for any dependent children and to provide payment for other medical expenses and ~~shall~~ must require the responsible parent to provide written proof to the department of the existence of the required health insurance coverage within 15 days of that parent's receipt of the decision. A copy of the decision ~~shall~~ must be served upon the responsible parent. The department shall provide written notice to the responsible parent with its decision of the parent's right to an administrative review of the decision within the department or review of the decision by the courts and of the action required and the time within which the action ~~shall~~ must be taken to exercise the right of an administrative review. A review of the decision within the department, except pursuant to subsection 3, ~~shall~~ must be limited to a review of the record generated by the original hearing.

**Sec. 12. 19 MRSA §498-D** is enacted to read:

**§498-D. Discovery of past income**

The responsible parent has an obligation to supply evidence regarding past income in order to calculate the debt owed the department or an applicant for services under section 448-A if the evidence is reasonably available. The responsible parent has 30 days to supply evidence of past income if requested to do so by the department. A request for evidence regarding past income may be made through an administrative form developed by the department.

Failure to provide the evidence, absent a showing of good cause for failure to do so or notification to the department of good faith attempts to secure the information, allows the administrative hearing officer to draw any reasonable inference from the evidence available, including an inference that the responsible parent had a greater earning capacity than the average weekly wage of a worker within this State as defined by the most recent Department of Labor statistics.

**Sec. 13. 19 MRSA §513,** as enacted by PL 1975, c. 532, §3, is repealed and the following enacted in its place:

**§513. Distribution of proceeds**

**1. Pro rata distribution when insufficient funds received.** The following provisions apply when a responsible parent is under court or administrative orders of support for more than one family of children and at least one family of children is either a recipient of public assistance or a beneficiary under section 448-A. For purposes of this subsection, a "family of children" consists of all blood-related and adopted children of the responsible parent that reside apart from any other children

that the responsible parent is under a court or administrative order to support.

A. If the department fails to receive sufficient funds to meet the responsible parent's current support obligation to all of the children of all of the families, the department shall distribute pro rata the funds received so that each family of children receives the percentage of the funds received that represents that family's share of current support when calculated from the responsible parent's total current support obligation for all families.

B. Even if the responsible parent makes a designation or otherwise directs a distribution to the families of children, the department shall distribute the funds received as provided in paragraph A if the designation or other direction would result in a distribution not in compliance with paragraph A.

C. The department shall distribute the funds received as provided in paragraph A regardless of the source of the collection of the funds.

D. The department must be held harmless as to any claim of the responsible parent for its distribution of funds received as provided in paragraph A.

2. Reduction of debt under section 495. Any money realized by the department by proceedings under this subchapter reduces the debt of a responsible parent under section 495 and must be paid to the recipient of assistance for the express benefit of the dependent children to the extent permissible by federal law and regulations.

**Sec. 14. 19 MRSA §777-B** is enacted to read:

**§777-B. Discovery of past income in department support enforcement cases**

The responsible parent has an obligation to supply evidence regarding past income in order to calculate the debt owed the department or an applicant for services under section 448-A if the evidence is reasonably available. A request for evidence regarding past income may be made through a document request pursuant to the Maine Rules of Civil Procedure, Rule 34.

Failure to provide the evidence in the time period set forth in the Maine Rules of Civil Procedure, Rule 34, absent a showing of good cause for failure to do so or notification to the department of good faith attempts to secure the information, allows the court to draw any reasonable inference from the evidence available, including an inference that the responsible parent had a greater earning capacity than the average weekly wage of a worker within this State as defined by the most recent

Department of Labor statistics. This remedy is in addition to remedies available under rules of discovery.

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

Effective March 17, 1992.

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## CHAPTER 674

### H.P. 1473 - L.D. 2085

#### **An Act to Amend the Laws Governing Placement of Insurance in the Surplus Lines Market**

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

**Whereas,** current law requires that brokers of surplus lines insurance remit a surplus tax once a year; and

**Whereas,** changing the law so that brokers must remit the tax on a monthly basis will help revenues by making that money available immediately; 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:**

**Sec. 1. 24-A MRSA §§2016 and 2017,** as amended by PL 1973, c. 585, §12, are repealed and the following enacted in their place:

**§2016. Periodic reports and tax payments**

**1.** Each broker shall file on or before the 15th day of each month a report with the superintendent showing the amount of insurance placed for any person or organization, the location of each risk, the gross premium charged, the name of each insurer with which the insurance was placed, the date and term of each insurance contract issued during the preceding month and any other pertinent information required by the superintendent. The report must show in the same detail each contract cancelled during the month covered by the report and the return premium on it.

Within 45 days of the end of each calendar quarter, the broker shall pay to the Treasurer of State 3% of the difference between the gross premiums and the return premiums reported for the business transacted during the preceding calendar quarter.