

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

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
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

Funds advanced for this purpose must be returned to the General Fund no later than June 30, 1995.

Sec. 6. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1993-94	1994-95
ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF		
Tourism Marketing and Development Fund		
All Other	\$2,867,682	\$3,117,682
Provides for the allocation of funds for the implementation of the first 2 years of a 5-year tourism marketing and development strategy.		

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

Effective July 13, 1993.

CHAPTER 472

H.P. 1098 - L.D. 1485

An Act to Require Immediate Income Withholding for All Child Support Orders

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

Sec. 1. 19 MRSA §214, sub-§9, as amended by PL 1989, c. 834, Pt. B, §1, is further amended to read:

9. Support order. The court may order either parent of a minor child to contribute reasonable and just sums as child support payable weekly, monthly or quarterly. Availability of public welfare benefits to the family ~~must~~ may not affect the decision of the court as to the responsibility of a parent to provide child support. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 7, subchapter V. If such an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section must comply with chapter 7, subchapter I-A.

After January 1, 1990, the court may order either parent to provide child support 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.

The court's order may include a requirement for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring the obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if health insurance is available to the obligated parent at reasonable cost. The court order must also require the obligated parent to furnish proof of coverage to the obligee within 15 days of receipt of a copy of the court order. For the purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. If health insurance is not available at reasonable cost at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent effective immediately upon insurance being available at reasonable cost. The court may enforce a support order as provided in chapter 14-A.

When the Department of Human Services provides support enforcement services, the support order must include a provision that requires the responsible parent to keep the department informed of any changes in that parent's current address, the name and address of that parent's current employer and whether the responsible parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information and any subsequent changes.

Sec. 2. 19 MRSA §581, sub-§9, as amended by PL 1989, c. 834, Pt. B, §9, is further amended to read:

9. Support order. The court may order either parent of a minor child to contribute reasonable and just sums as child support payable weekly, monthly or quarterly. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 7, subchapter V. If such an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section must comply with chapter 7, subchapter I-A.

An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring an obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if health insurance is available to the obligated parent at reasonable cost. The court order must also require the obligated parent to furnish proof of such coverage to the obligee within 15 days of receipt of a copy of the court order. For the purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. If health insurance is not available at reasonable cost at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent effective

immediately upon the insurance being available at reasonable cost.

When the Department of Human Services provides support enforcement services, the support order must include a provision that requires the responsible parent to keep the department informed of any changes in that parent's current address, the name and address of that parent's current employer and whether the responsible parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information and any subsequent changes.

Sec. 3. 19 MRSA §752, sub-§10, as amended by PL 1989, c. 834, Pt. B, §11, is further amended to read:

10. Support order. An order of the court for child support may run against the father or the mother in whole or in part or against both, irrespective of the fault of the father or mother in the divorce action. For divorces ordered after January 1, 1990, the order for child support may run until the child graduates, withdraws or is expelled from secondary school as defined in Title 20-A, section 1, or attains the age of 19 years, whichever first occurs after the child attains the age of 18 years. When the order is to run against both, the court shall specify the amount each shall pay. The court shall inquire of the parties concerning the existence of a child support order entered pursuant to chapter 7, subchapter V. If such an order exists, the court shall consider its terms in establishing a child support obligation. A determination or modification of child support under this section must comply with chapter 7, subchapter I-A.

An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child. The court order must include a provision requiring an obligated parent to obtain and maintain health insurance coverage for medical, hospitalization and dental expenses, if health insurance is available to the obligated parent at reasonable cost. The court order must also require the obligated parent to furnish proof of such coverage to the obligee within 15 days of receipt of a copy of the court order. For the purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. If health insurance is not available at reasonable cost at the time of the hearing, the court order must establish the obligation to provide health insurance on the part of the obligated parent effective immediately upon the insurance being available at reasonable cost.

When the Department of Human Services provides support enforcement services, the support order must include a provision that requires the responsible parent to keep the department informed of any changes in that parent's current address, the name and address of that

parent's current employer and whether the responsible parent has access to health insurance coverage at reasonable cost and if so the health insurance policy information and any subsequent changes.

Availability of public welfare benefits to the family **must** may not affect the decision of the court as to the responsibility of a parent to provide child support.

The court may enforce a support order as provided in chapter 14-A.

Sec. 4. 19 MRSA §777, sub-§4 is enacted to read:

4. Repeal. This section is repealed on July 1, 1995.

Sec. 5. 19 MRSA §777-A, sub-§17 is enacted to read:

17. Repeal. This section is repealed on July 1, 1995.

Sec. 6. 19 MRSA §777-C is enacted to read:

§777-C. Duty to report

A responsible parent required by law to pay child support to the Department of Human Services shall inform the department of any changes in the responsible parent's current address or employer. Failure to report a change of address or employer to the department within 15 days is a civil violation for which a forfeiture not to exceed \$200 may be adjudged for each violation. Each judicial order or administrative decision issued or modified in this State that includes an order for child support must include a statement that advises the responsible parent of the duty to report and the penalty for failure to report.

Sec. 7. 19 MRSA c. 14-B is enacted to read:

CHAPTER 14-B

INCOME WITHHOLDING

§780. Income withholding

1. Immediate income withholding; issuance of orders. Effective January 1, 1994, in any action under this Title or Title 22 in which a court establishes or modifies a support order, the court shall issue an immediate income withholding order in accordance with the requirements of this chapter, unless the court finds good cause or approves an alternative arrangement as provided in section 780-F.

2. Immediate income withholding; modification of orders. Upon the motion of an obligee, an obligor or the

Department of Human Services, the court shall modify a support order issued before the effective date of this chapter to include an immediate income withholding order.

3. Immediate income withholding; implementation of orders. An immediate income withholding order may be implemented by the Department of Human Services for a recipient of the department's support enforcement services, by a support obligee who does not receive the department's support enforcement services or by a support obligor. An immediate income withholding order is implemented by serving an attested copy of the order upon the obligor's payor of income.

§780-A. Provisions of withholding order

An immediate income withholding order must provide for the withholding from the obligor's income of amounts payable as child support, effective from the date of the support order, regardless of whether child support payments by the obligor are past due. The withholding order must include:

1. Amount withheld. The amount of income to be withheld for payment of the obligor's current parental support obligation;

2. Department member number. The obligor's Department of Human Services support enforcement member number, if applicable, and if known to the court;

3. Payor instructions. An instruction to the payor that upon receipt of a copy of the withholding order the payor shall:

A. Immediately begin to withhold the obligor's income when the obligor is usually paid;

B. Send each amount withheld to the Department of Human Services at the address set forth in the order within 10 days of the withholding; and

C. Identify each amount sent to the Department of Human Services by indicating the department's support enforcement member number, if known;

4. Notice regarding collection of arrearages. A notice that the withholding order may be used to collect arrearages in addition to current support; and

5. Limitation on withholding. A notice that the amount of the withholding may not exceed the limitations imposed by the United States Code, Title 15, Section 1673(b).

§780-B. Administering agency

The Department of Human Services shall adopt and administer procedures to receive, document, and dis-

tribute all support payments collected pursuant to this chapter. The Commissioner of Human Services may establish by rule a fee for use of these services. The department shall retain all fees and apply them toward the administration of the division of support enforcement and recovery.

§780-C. Payor duty

A payor of income to an obligor named in a withholding order issued under this chapter must comply with the provisions of the withholding order upon receipt of a copy of the order. The balance of income due an obligor after withholding must be paid to the obligor on the day the obligor is usually paid. A payor may combine amounts withheld for transmittal to the Department of Human Services 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 date of withholding.

§780-D. Payor notice

The Department of Human Services shall develop and make available to the public a payor notice that complies with the requirements of Title IV-D of the Social Security Act and the regulations issued thereunder. Whenever the department, an obligee or an obligor implements a withholding order issued under this chapter, the party that implements the withholding order shall provide the obligor's payor of income with the payor notice at the time of service of the withholding order.

§780-E. Past-due support

Upon meeting the conditions of this section, the Department of Human Services or an obligee may use an income withholding order issued under this chapter to collect past-due support. Past-due support may be collected in addition to or apart from current support. Notwithstanding the provisions of this section, the court may order payment of past-due support by income withholding upon a determination by the court of the amount past due. If the court so orders, the department or obligee need not proceed in accordance with this section and may issue the withholding order to collect the past-due support immediately.

1. Collection of past-due support by department. Before the Department of Human Services may implement an income withholding order issued under this section to collect past-due support, the department must establish the amount of support past due, unless the amount has been established by judicial or administrative action, agreement of the parties or by operation of law.

A. If the obligor's debt for past-due support has been established by judicial or administrative ac-

tion, agreement of the parties or by operation of law, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support.

B. If the obligor's debt for past-due support is not established, the department may establish the amount past due by proceeding under section 500, by asking the court to determine the amount past due, or by reaching agreement with the obligor as to the amount past due. Once the obligor's debt for past-due support has been established, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support.

2. Collection of past-due support by private action. To collect past-due support by an income withholding order issued under this chapter, an obligee who does not receive support enforcement services from the Department of Human Services must:

A. Determine that the amounts payable under the support order are equal to or greater than the amount due for 30 days; and

B. Serve written notice of the obligee's determination of past-due support upon the obligor at least 20 days before service of the determination of past-due support and a copy of the income withholding order upon the obligor's payor of income.

An obligee may serve an income withholding order upon the obligor's payor of income 21 days after service of the obligee's determination of past-due support upon the obligor unless the obligor files a motion for determination of past-due support with the court and an ex parte request for a stay of withholding in accordance with subsection 3. If the obligor does not file a motion for determination of past-due support with the court and request the court to issue an ex parte stay of withholding, the obligee may serve a copy of the obligee's determination of past-due support and a copy of the withholding order upon the obligor's payor of income. The obligee shall send copies of the determination of past-due support and the withholding order served upon the payor of income to the department by regular mail at the time of service. Upon receipt of the copies, the department shall issue a letter to the obligor and obligee that confirms receipt, provides a support enforcement case number to identify payments and explains the department's role as the administering agency.

3. Stay. The court may grant a stay of the withholding of past-due support claimed upon request of the obligor as long as the obligor timely files a motion for determination of past-due support. A stay issued by the court under this subsection must expire in 60 days and may be reissued only upon a showing by the obligor that the obligor has made reasonable efforts to obtain a hear-

ing on the motion for determination of past-due support during the stay.

§780-F. Good cause; alternative arrangements

The court may elect not to issue an immediate income withholding order under this chapter if:

1. Demonstration of good cause. A party demonstrates and the court finds that there is good cause not to require immediate income withholding; or

2. Written agreement. A written agreement between the parties providing an alternative arrangement is filed with and approved by the court.

For purposes of this section a finding of good cause by the court must be based on a determination that immediate income withholding would not be in the best interests of the child and a showing by the responsible parent that any previously ordered support was paid timely. The court shall explain the basis for a finding of good cause in the support order.

§780-G. Service of process

Service under this chapter may be by certified mail or in accordance with the requirements of the Maine Rules of Civil Procedure, Rule 4. The Department of Human Services may serve an income withholding order as provided in section 494.

§780-H. Duration of withholding

An immediate income withholding order is binding upon an obligor's payor of income until:

1. Court order. The court orders withholding ended;

2. Release by department. The Department of Human Services releases the payor from the terms of the order in writing; or

3. Release by obligee. If the withholding order was implemented by the obligee as a private withholding action, the obligee releases the payor from the terms of the order in writing.

The Department of Human Services shall issue a release to end immediate income withholding if the department is unable to forward funds to the obligee for 3 months, in which case the department shall return the funds to the obligor. The department, or obligee, if the obligee implemented the withholding order as a private action, shall issue promptly a release of the withholding order in all cases in which there is no longer a current support obligation and all past-due support has been paid. The department or obligee, as applicable, shall refund the obligor amounts withheld improperly because a re-

lease is not issued timely. An obligee is liable to the department for amounts received from the department that the obligee is not entitled to receive. An income withholding order issued under this chapter may not be released or ended if the obligor has a current parental support obligation or owes a debt for past-due support unless the court finds good cause or approves an alternative arrangement for payment of support in accordance with section 780-F.

§780-I. Priority of order

Notwithstanding any other provision of law, an immediate income withholding order issued under this chapter has priority over any previously filed attachment, execution, garnishment or assignment of income that is not made for the purpose of enforcing or paying child or spousal support.

§780-J. Notice of termination

Whenever a payor of income is unable to continue withholding from an obligor's income because the relationship between the payor and obligor ends, the payor shall send the Department of Human Services a written notice of termination within 15 days. The notice must include:

1. Obligor's identification. The obligor's name, last known address and social security number;

2. Department member number. The obligor's Department of Human Services support enforcement member number;

3. Termination date. The date of termination of the relationship; and

4. New payor. If known, the name and address of a new payor of income to the obligor.

§780-K. Payor liability

Upon service of an immediate income withholding order, a payor is liable for any income that the payor knowingly fails to withhold and send to the Department of Human Services within 10 days of the day that the obligor is usually paid. The department, or obligee if the obligee implemented the withholding order as a private action, may maintain a civil action against the payor for the income the payor does not withhold and send to the department as required by the withholding order and for the imposition of any of the civil penalties provided for in this section, plus attorney's fees and court costs.

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

2. Failure to send income withheld. A payor who knowingly fails to send income withheld to the Department of Human Services within 10 days of its withholding commits a civil violation for which a forfeiture not to exceed \$100 for each failure to timely send income withheld from an obligor may be adjudged.

3. Failure to notify. A payor who knowingly fails to send the notification required by section 780-J commits a civil violation for which a forfeiture not to exceed \$100 may be adjudged.

4. Discrimination against obligors. 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 civil penalty not to exceed \$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.

§780-L. Payor fee

The Commissioner of Human Services may establish by rule a fee for the administrative cost of each withholding that a payor may deduct in addition to the amount withheld for support.

§780-M. Attested copies

The clerk of the court shall send to the Department of Human Services an attested copy of each order in which a child support obligation is established or modified and an attested copy of the immediate income withholding order.

§780-N. Application for services

The Department of Human Services shall furnish and the clerk of the court shall make available to all individuals awarded child support application forms and blank contracts for the department's support enforcement services. The department shall also furnish the clerk with forms that enable an individual to refuse services. The clerk shall send to the department all application forms, contracts and refusal forms submitted, together with the attested copies of the orders that the clerk is required to send the department under section 780-M. Each individual who is awarded child support by the court must complete either the application form and contract or the form for refusal of services. The court shall inform a person who is awarded child support that that person must complete either the application and contract for services or the form to refuse services and submit them to the clerk.

§780-O. Spousal support

Awards for spousal support are subject to immediate income withholding under this chapter if the award is for a period during which child support is awarded.

§780-P. Payor immunity

A payor of income who honors an income withholding order under this chapter may not be held liable by the obligor for income withheld in compliance with the order.

§780-Q. Other remedies

An income withholding order issued under this chapter is an additional remedy to enforce a support order and does not limit the use of other legal remedies that may be available for collection of child and spousal support.

§780-R. Rulemaking

The Department of Human Services shall adopt rules to implement its responsibilities under this chapter.

Sec. 8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1993-94	1994-95
HUMAN SERVICES, DEPARTMENT OF		
Administration - Income Maintenance		
Positions - Legislative Count	(2.0)	(2.0)
Personal Services	\$26,226	\$56,648
All Other	3,100	6,200
Capital Expenditures	6,000	
TOTAL	\$35,326	\$62,848
Provides funds to process immediate income withholding orders within the Division of Support Enforcement and Recovery, including funds for 2 Human Services Aide III positions and related expenses.		
Aid to Families with Dependent Children		
All Other	(\$112,000)	(\$225,000)
Provides for the deappropriation of funds due to increased child support collections from immediate income withholding orders.		
DEPARTMENT OF HUMAN SERVICES		
TOTAL	(\$76,674)	(\$162,152)

Sec. 9. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1993-94	1994-95
HUMAN SERVICES, DEPARTMENT OF		
Aid to Families with Dependent Children		
All Other	\$451,802	\$903,604
Provides for the allocation of funds due to increased child support collections from immediate income withholding orders.		
DEPARTMENT OF HUMAN SERVICES		
TOTAL	\$451,802	\$903,604

See title page for effective date.

CHAPTER 473

S.P. 478 - L.D. 1477

An Act to Implement the Recommendations of the Special Commission on Electoral Practices

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

Sec. 1. 21-A MRSA §31, as enacted by PL 1985, c. 161, §6, is repealed.

Sec. 2. 21-A MRSA §§32 and 33 are enacted to read:

§32. Violations and penalties

1. Class E crime. A person commits a Class E crime if that person:

A. Knowingly violates a provision of this Title for which no penalty has been provided; or

B. Knowingly displays or distributes political advertisements in or on state-owned or state-leased property.

This paragraph does not apply to acts on state highways or to displays on motor vehicles not owned by the State while temporarily parked in parking areas on land maintained by the State. This paragraph does not apply to acts in or on a state-owned or state-leased building for a period beginning 48 hours before and ending 48 hours after that building is used by a political party to conduct a political activity within the building.