

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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
1997

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

Sec. 1. 22 MRSA §1812-G, sub-§2, as amended by PL 1993, c. 247, §1, is further amended to read:

2. Contents. The Maine Registry of Certified Nursing Assistants must contain a listing of nursing assistants who have successfully completed a nursing assistant training program, hold a certificate of training and meet the eligibility requirements established by the State Board of Nursing. The listing must include, for any nursing assistant listed, a notation of:

A. Any criminal convictions of abuse, neglect or misappropriation of property of an individual, except for Class D and Class E convictions over 10 years old that did not involve as a victim of the act a patient, client or resident of a health care entity; and

B. Any specific documented findings by the state survey agency of abuse, neglect or misappropriation of property of a resident, client or patient. For purposes of this section, "state survey agency" means the agency specified under 42 United States Code, Sections 1395aa and 1396 responsible for determining whether institutions and agencies meet requirements for participation in the State's Medicare and Medicaid programs.

Sec. 2. 22 MRSA §1812-G, sub-§§4 and 5 are enacted to read:

4. Eligibility. The department shall verify the credentials and training of all certified nursing assistants.

5. Verifying certified nursing assistant eligibility. A health care institution, facility or organization employing a certified nursing assistant shall, before hiring a certified nursing assistant, verify with the Maine Registry of Certified Nursing Assistants that the certified nursing assistant is listed on the Maine Registry of Certified Nursing Assistants.

See title page for effective date.

CHAPTER 466

H.P. 1289 - L.D. 1834

An Act to Improve the State's Child Support Enforcement and Overpayment Recovery Laws

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

Sec. 1. 4 MRSA §807, sub-§3, ¶J, as amended by PL 1997, c. 238, §1, is further amended to read:

J. For the purposes of defending a civil action filed against a corporation, an officer of the corporation if the corporation is organized in this State and has 5 or fewer shareholders; or

Sec. 2. 4 MRSA §807, sub-§3, ¶K is enacted to read:

K. A person who is not an attorney, but who is representing the Department of Human Services in accordance with Title 19-A, section 1615; Title 19-A, section 2009, subsection 8; Title 19-A, section 2201, subsection 1-B; and Title 19-A, section 2202, subsection 1-B.

Sec. 3. 19-A MRSA §1615 is enacted to read:

§1615. Representation of department

The commissioner may designate employees of the department who are not attorneys to file the record of proceedings commenced under this subchapter in District Court and to represent the department in court in those proceedings. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subchapter.

Sec. 4. 19-A MRSA §2009, sub-§8 is enacted to read:

8. Motions by department. When the department provides child support enforcement services, the commissioner may designate employees of the department who are not attorneys to prepare motions under this section, to file those motions in District Court and to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this section.

Sec. 5. 19-A MRSA 2101, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

2. Compliance with a support order. "Compliance with an order of support a support order" means that the support obligor is no more than 90 60 days in arrears in making payments in full for current support, in making periodic payments on a support arrearage pursuant to a written agreement with the department or in making periodic payments as set forth in an order of support order and has obtained or maintained health insurance coverage if required by an order of support a support order.

Sec. 6. 19-A MRSA §2101, sub-§9, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 7. 19-A MRSA §2101, sub-§13 is enacted to read:

13. Support order. "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

Sec. 8. 19-A MRSA §§2104 and 2105 are enacted to read:

§2104. Credit for dependent benefits

Credit toward a current child support obligation for dependent benefits paid for the child as a result of the obligor parent's disability must be given to an obligor parent who receives social security, veteran's or other disability insurance benefits. The credit may not exceed the amount of the current obligation for the period for which benefits are paid. Credit may not be given toward a past or future obligation for dependent benefits that exceed the current obligation.

§2105. State child support enforcement services

Notwithstanding any other provision of law, upon written authorization by the Secretary of the United States Department of Health and Human Services, the judicial branch and the department shall provide child support enforcement services in accordance with the United States Social Security Act, Title IV-D, without need of an application for services. When a person is seeking or has been awarded child support, the court shall provide written notice to that person that explains the services provided by the State and the right to refuse services if services are not wanted.

Sec. 9. 19-A MRSA §2201, sub-§§1-A and 1-B are enacted to read:

1-A. Written agreement to pay past-due support. An obligor who is presently unable to pay all past-due support may come into compliance with the support order by executing a written payment agreement with the department and by complying with that agreement. A condition of a written payment agreement must be that the obligor pay the current

child support when due. Before a written payment agreement is executed, the obligor shall:

A. Disclose fully to the department in writing on a form prescribed by the department the obligor's financial circumstances, including income from all sources, assets, liabilities and work history for the past year; and

B. Provide documentation to the department concerning the obligor's financial circumstances, including copies of the most recent state and federal income tax returns, both personal and business, a copy of a recent pay stub representative of current income and copies of other records that show the obligor's income and the present value of assets held by the obligor.

After full disclosure, the department shall determine the obligor's ability to pay past-due support and request the obligor to execute a written payment agreement consistent with the obligor's ability to pay, not to exceed the limits on income withholding in section 2356.

1-B. Failure to comply with written agreement. Failure to comply with a written payment agreement is grounds for license revocation unless the obligor notifies the department that the obligor is unable to comply with the agreement and provides the department with evidence of the obligor's current financial circumstances to support the claim. The consequences of failing to comply with a written payment agreement and the requirements to avoid license revocation, if the obligor can not comply with the agreement, must be stated in the agreement. If the obligor claims inability to comply with a written payment agreement, the department, upon motion to the District Court, may request the court to determine the obligor's ability to pay past-due support. After notice and an opportunity for hearing, the court may make a finding of money due, render judgment in that amount and order any relief provided under sections 2603 and 2603-A. For purposes of this subsection, the commissioner may designate employees of the department who are not attorneys to represent the department in District Court. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

Sec. 10. 19-A MRSA §2201, sub-§6, ¶¶B and C, as enacted by PL 1995, c. 694, Pt. B, §2, and affected by Pt. E, §2, are amended to read:

B. The department issues a decision after a hearing that finds the obligor is not in compliance with an order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 3; ~~or~~

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with ~~an order of support~~, a support order;

Sec. 11. 19-A MRSA §2201, sub-§6, ¶¶D and E are enacted to read:

D. The obligor abandons a timely request for a hearing on the department's notice of noncompliance and is not in compliance with the support order; or

E. The obligor fails to comply with a written payment agreement, does not notify the department that the obligor is unable to comply with the agreement and does not provide the department with evidence of the obligor's current financial circumstances.

Sec. 12. 19-A MRSA §2202, sub-§§1-A and 1-B are enacted to read:

1-A. Written agreement to pay past-due support. An obligor who is presently unable to pay all past-due support may come into compliance with the support order by executing a written payment agreement with the department and by complying with that agreement. A condition of a written payment agreement must be that the obligor pay the current child support when due. Before a written payment agreement is executed, the obligor shall:

A. Disclose fully to the department in writing on a form prescribed by the department the obligor's financial circumstances, including income from all sources, assets, liabilities and work history for the past year; and

B. Provide documentation to the department concerning the obligor's financial circumstances, including copies of the most recent state and federal income tax returns, both personal and business, a copy of a recent pay stub representative of current income and copies of other records that show the obligor's income and the present value of assets held by the obligor.

After full disclosure, the department shall determine the obligor's ability to pay past-due support and request the obligor to execute a written payment agreement consistent with the obligor's ability to pay, not to exceed the limits on income withholding in section 2356.

1-B. Failure to comply with written agreement. Failure to comply with a written payment agreement is grounds for license revocation unless the obligor notifies the department that the obligor is unable to comply with the agreement and provides the department with evidence of the obligor's current

financial circumstances to support the claim. The consequences of failing to comply with a written payment agreement and the requirements to avoid license revocation, if the obligor can not comply with the agreement, must be stated in the agreement. If the obligor claims inability to comply with a written payment agreement, the department, upon motion to the District Court, may request the court to determine the obligor's ability to pay past-due support. After notice and an opportunity for hearing, the court may make a finding of money due, render judgment in that amount and order any relief provided under sections 2603 and 2603-A. For purposes of this subsection, the commissioner may designate employees of the department who are not attorneys to represent the department in District Court. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

Sec. 13. 19-A MRSA §2202, sub-§7, ¶¶B and C, as enacted by PL 1995, c. 694, Pt. B, §2, and affected by Pt. E, §2, are amended to read:

B. The department issues a decision after a hearing that finds the obligor is not in compliance with an order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 4; ~~or~~

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with ~~an order of support~~, a support order;

Sec. 14. 19-A MRSA §2202, sub-§7, ¶¶D and E are enacted to read:

D. The obligor abandons a timely request for a hearing on the department's notice of noncompliance and is not in compliance with the support order; or

E. The obligor fails to comply with a written payment agreement, does not notify the department that the obligor is unable to comply with the agreement and does not provide the department with evidence of the obligor's current financial circumstances.

Sec. 15. 19-A MRSA §2204 is enacted to read:

§2204. Caretaker relative; change of payee

When the department pays cash aid to a caretaker relative who provides primary residential care for a dependent child for whom a support order has been issued, the obligor's obligation under the support order to pay child support and provide medical support continues. The child support is payable to the

department for as long as the department pays cash aid for the child. Upon notice to the obligor and the payee named in the support order, the department may redirect payments under the support order to the caretaker relative if the caretaker relative states under penalty of perjury that physical custody of the child was not obtained illegally. The obligor and the payee may contest action to redirect payments at an administrative hearing. The department shall notify the obligor and the payee of the right to a hearing in the notice. If payments are redirected to a caretaker relative, the department may seek to establish an administrative support order against the nonobligated parent.

Sec. 16. 19-A MRSA §2301, sub-§§1 to 3, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

1. Public assistance. Debts due the department for public assistance are as follows.

A. When ~~an order of support~~ a support order has not been established, a payment of public assistance for the benefit of the dependent child creates a debt due the department from the responsible parent for past support. 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 bar a determination of past debt due the department for any relevant period in which the disability did not exist. When the department establishes a periodic support payment by administrative decision, the debt is limited to the amount stated in the decision.

B. When ~~an order of support~~ a support order has been established, the debt due the department from the responsible parent is the amount established under that order.

(1) The debt may not be limited by the amount of public assistance paid for the benefit of the dependent child. Amounts collected by the department in excess of

public assistance expended must be distributed pursuant to section 2401.

(2) The issuance of ~~an order of support~~ a support order does not relieve the responsible parent of any liability for a debt that previously had accrued under paragraph A.

2. Failure to pay child or spousal support.

For actions initiated pursuant to section 2103, failure to pay support obligations under ~~an order of support~~ a support order creates a debt due the applicant. Upon execution of a contract between the department and the applicant, the department may take action to establish, enforce or collect the debt under any appropriate statute, including, but not limited to, remedies contained in this article. The department is subrogated to the rights of the payee as provided in section 2351.

3. Default judgment. If the responsible parent defaults or otherwise fails to appear, and no ~~order of support~~ support order 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. 17. 19-A MRSA §2304, first ¶, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

When ~~an order of support~~ a support order has not been established, the department may establish the responsible parent's current parental support obligation pursuant to chapter 63, establish the responsible parent's debt for past support, including medical expenses, and establish the responsible parent's obligation to maintain health insurance coverage for each dependent child. The department may proceed on its own behalf or on behalf of another state or another state's instrumentality, an individual or governmental applicant for services under section 2103 or a person entitled by federal law to support enforcement services as a former recipient of public assistance. The department acting on behalf of another state, another state's instrumentality or a person residing in another state constitutes good cause within the meaning of Title 5, section 9057, subsection 5. Notwithstanding any other provision of law, a parental support obligation established under this section 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, is expelled or attains 19 years of age,

whichever occurs first. For purposes of this section, "debt for past support" includes a debt owed to the department under section 2301, subsection 1, paragraph A, a debt owed under section 2103 and a debt that accrues under sections 1504 and 1554.

Sec. 18. 19-A MRSA §2304, sub-§6, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

6. Subsequent order. A decision under this section remains in effect until superseded by a subsequent ~~order of support~~ support order.

Sec. 19. 19-A MRSA §2351, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Subrogation of support rights. If an ~~order of support~~ a support order or a spousal support order exists, the department is subrogated to the right of a dependent child, or person having custody of the child named in the order, to pursue any support action or administrative remedy to secure payment of the debt accrued or accruing under section 2301 and to enforce the order. The department is not required to seek an amendment to the ~~order of support~~ support order or to the spousal support order in order to subrogate itself to the rights of the payee. The department is not required to file a motion to intervene or join in any court proceeding in order to subrogate itself to the rights of the payee and to be treated as a party in any further proceedings regarding the support order.

Sec. 20. 19-A MRSA §2352, first ¶, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

When the department is subrogated to an ~~order of support~~ a support order or a spousal support order under section 2351, the commissioner may issue to the responsible parent a notice of debt accrued or accruing under section 2301.

Sec. 21. 19-A MRSA §2352, sub-§1, ¶¶B and G, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

B. A statement of the terms of the ~~order of support~~ support order, including the names of each dependent child;

G. A statement that at the administrative hearing only the following issues may be considered:

- (1) The receipt of public assistance by the responsible parent;
- (2) Uncredited cash payments;
- (3) The amount of the debt accrued and accruing;

(4) The accuracy of the terms of the ~~order of support~~ support order as stated in the notice of debt; and

(5) The maintenance of any required medical or dental insurance coverage; and

Sec. 22. 19-A MRSA §2358, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed and the following enacted in its place:

2. Notice to responsible parent. When an order is issued, the department shall send a copy of the order to the responsible parent by regular mail at the responsible parent's last known address.

Sec. 23. 19-A MRSA §2361, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Order. The commissioner may commence an action under Title 14, chapter 502 by directing a responsible parent to appear before the department to disclose under oath information that relates to the responsible parent's ability to pay child support. The commissioner may require a responsible parent who is directed to appear to provide documents, papers and other evidence about the responsible parent's income and assets for the purpose of enforcing an ~~order of support~~ a support order. An order to appear and disclose must be served on the responsible parent as provided by the Maine Rules of Civil Procedure, Rule 4.

Sec. 24. 19-A MRSA §2601, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§2601. Contempt

Upon a motion to enforce an ~~order of support~~ a support order or costs, the court may issue summary process and may find the defaulting person guilty of contempt as provided under Title 14, section 252.

Sec. 25. 19-A MRSA §2602, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Installment payments. In an ~~order of support~~ a support order or costs, the court may include an order to pay specified installment payments as provided under Title 14, sections 3127 to 3136.

Sec. 26. 19-A MRSA §2603-A is enacted to read:

§2603-A. License revocation for nonpayment of child support

Upon a motion to enforce a support order, after notice and an opportunity for a hearing, the court may make a finding of money due, render judgment for that amount and, to compel payment, order:

1. Suspension of driver's license. Suspension of the obligor's driver's license or licenses and right to operate a motor vehicle;

2. Revocation of occupational licenses. Revocation of the obligor's occupational, business, trade or professional licenses; and

3. Revocation of recreational licenses. Revocation of the obligor's hunting, fishing, boating and other recreational or sporting licenses.

The court may issue an order to prevent issuance or renewal of licenses under this section. An order to suspend, revoke or prevent issuance or renewal of licenses must be based on a finding by the court that the obligor has the present ability to pay all or part of the support owed. The court shall specify in its order ways to avoid the loss of licenses and requirements for obtaining licenses that are lost or may not be obtained as a result of an order issued under this section.

The court shall notify the Secretary of State of a driver's license suspension ordered pursuant to this section. Upon receipt of such an order, the Secretary of State shall immediately notify the person of the court order of suspension. The Secretary of State may not terminate a suspension issued pursuant to this section until the court orders reinstatement and the person pays a reinstatement fee to the Secretary of State. The court shall immediately notify the Secretary of State when a person complies with a child support order. The court orders of suspension and reinstatement must be on a form acceptable to the Secretary of State.

Sec. 27. 22 MRSA §3811, sub-§3, as enacted by PL 1993, c. 654, §1, is amended to read:

3. Overpayment. "Overpayment" means program benefits that an individual or assistance unit receives that exceed the amount of program benefits for which the individual or assistance unit is eligible when the department or a court has determined that the benefits were received as a result of an intentional program violation, an unintentional error by the individual or household or an error by the department. "Overpayment" includes any overpayment made before or after the effective date of this subsection.

Sec. 28. Effective date. This Act takes effect October 1, 1997.

Effective October 1, 1997.

CHAPTER 467

S.P. 664 - L.D. 1892

An Act to Criminalize Unpermitted Visual Surveillance under the Clothing of a Person in a Public Place by Mechanical or Electronic Equipment

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

Sec. 1. 17-A MRSA §511, sub-§1, as amended by PL 1975, c. 499, §1, is further amended to read:

1. A person is guilty of violation of privacy if, except in the execution of a public duty or as authorized by law, ~~he~~ that person intentionally:

A. Commits a civil trespass on property with the intent to overhear or observe any person in a private place; ~~or~~

B. Installs or uses in a private place without the consent of the person or persons entitled to privacy ~~therein in that place,~~ any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place; ~~or~~

C. Installs or uses outside a private place without the consent of the person or persons entitled to privacy therein, any device for hearing, recording, amplifying or broadcasting sounds originating in that place ~~which that~~ would not ordinarily be audible or comprehensible outside that place; ~~or~~

D. Engages in visual surveillance in a public place by means of mechanical or electronic equipment with the intent to observe or photograph, or record, amplify or broadcast an image of any portion of the body of another person present in that place when that portion of the body is in fact concealed from public view under clothing and a reasonable person would expect it to be safe from surveillance.

Sec. 2. 17-A MRSA §511, sub-§1-A is enacted to read:

1-A. It is a defense to a prosecution under subsection 1, paragraph D that the person subject to surveillance had in fact attained 14 years of age and had consented to the visual surveillance.

See title page for effective date.