

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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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
1999

capital reserve funds for revenue obligation securities issued pursuant to this subchapter relating to loans for paper industry job retention projects.

The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the authority that may at any time be outstanding for any purpose, the amounts of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments are valued as of any date of calculation at their then current accreted value rather than their face value.

Sec. 9. Loans authorized. The Finance Authority of Maine may make loans for paper industry job retention projects, as defined in the Maine Revised Statutes, Title 10, section 963-A from up to \$100,000,000 of the proceeds of revenue obligation securities secured by capital reserve funds pursuant to Title 10, section 1053. Notwithstanding any provision of Title 10, chapter 110, loans may aggregate up to \$100,000,000 plus an amount determined by the Finance Authority of Maine of up to an additional aggregate of \$20,000,000 to fund any capital reserve fund established by the authority for these loans. Revenue obligation securities secured by capital reserve funds pursuant to Title 10, section 1053 may not be issued for a paper industry job retention project approved by the authority after February 1, 2001. Any revenue obligation securities issued pursuant to Title 10, section 1053, including revenue obligation securities issued for a paper industry job retention project, are limited obligations of the Finance Authority of Maine payable from revenues from borrowers and any capital reserve funds pledged for those securities as those funds are administered under Title 10, chapter 110, subchapter III and are not payable from any other assets or funds of the Finance Authority of Maine.

Effective June 11, 1999.

CHAPTER 485

H.P. 271 - L.D. 379

An Act to Provide Tax-exempt Status to Organizations That Teach Reading

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

Sec. 1. 36 MRSA §1760, sub-§16, as amended by PL 1987, c. 343, §4, is further amended to read:

16. Hospitals, research centers, churches and schools. Sales to incorporated hospitals, incorporated nonprofit nursing homes licensed by the Department of Human Services, incorporated nonprofit boarding care facilities licensed by the Department of Human Services, incorporated nonprofit home health care agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended, incorporated nonprofit rural community health centers engaged in, or providing facilities for, the delivery of comprehensive primary health care, incorporated nonprofit dental health centers, institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology or operating educational television or radio stations, schools, incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia and regularly organized churches or houses of religious worship, excepting sales, storage or use in activities ~~which~~ that are mainly commercial enterprises. "Schools" means incorporated nonstock educational institutions, including institutions empowered to confer educational, literary or academic degrees, ~~which~~ that have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, ~~which~~ and that keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual.

See title page for effective date.

CHAPTER 486

H.P. 316 - L.D. 432

An Act to Adopt the Uniform Child Custody Jurisdiction and Enforcement Act

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

Sec. 1. 19-A MRSA §1657, sub-§3, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

3. Uniform Child Custody Jurisdiction and Enforcement Act. The jurisdiction granted by this section to make or alter an order concerning parental rights and responsibilities with respect to a minor child

is limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state may have jurisdiction as provided in that Act.

Sec. 2. 19-A MRSA c. 57, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

Sec. 3. 19-A MRSA c. 58 is enacted to read:

CHAPTER 58

UNIFORM CHILD CUSTODY JURISDICTION

AND ENFORCEMENT ACT

SUBCHAPTER 1

GENERAL PROVISIONS

§1731. Short title

This chapter may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act.

§1732. Definitions

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

1. Abandoned. "Abandoned" means left without provision for reasonable and necessary care or supervision.

2. Child. "Child" means an individual who has not attained 18 years of age.

3. Child custody determination. "Child custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

4. Child custody proceeding. "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under subchapter III.

5. Commencement. "Commencement" means the filing of the first pleading in a proceeding.

6. Court. "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

7. Home state. "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than 6 months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

8. Initial determination. "Initial determination" means the first child custody determination concerning a particular child.

9. Issuing court. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

10. Issuing state. "Issuing state" means the state in which a child custody determination is made.

11. Modification. "Modification" means a child custody determination that changes, replaces, supercedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

12. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

13. Person acting as a parent. "Person acting as a parent" means a person, other than a parent, who:

A. Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

B. Has been awarded legal custody by a court or claims a right to legal custody under the law of this State.

14. Physical custody. "Physical custody" means the physical care and supervision of a child.

15. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

16. Tribe. "Tribe" means an Indian tribe or band or an Alaskan Native village recognized by federal law or formally acknowledged by a state.

17. Warrant. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

§1733. Proceedings governed by other law

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§1734. Application to Indian tribes

1. Proceedings governed by Indian Child Welfare Act. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 United States Code, Section 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

2. Tribe treated as state. A court of this State shall treat a tribe as if it were a state of the United States for the purpose of applying this subchapter and subchapter II.

3. Tribal custody determinations. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter III.

§1735. International application of chapter

1. Foreign country treated as a state. A court of this State shall treat a foreign country as if it were a state of the United States for the purpose of applying this subchapter and subchapter II.

2. Recognition and enforcement of foreign determination. Except as otherwise provided in subsection 3, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter III.

3. Application not required. A court of this State need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

§1736. Effect of child custody determination

A child custody determination made by a court of this State that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this State or notified in accordance with section 1738 or who have submitted to the jurisdiction of the court and who have been given an

opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

§1737. Priority

If a question of existence or exercise of jurisdiction under this Act is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

§1738. Notice to persons outside State

1. Notice given by service of process. Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

2. Proof of service. Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.

3. Notice not required. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§1739. Appearance and limited immunity

1. Not subject to personal jurisdiction for other purpose. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated or of having been physically present for the purpose of participating in the proceeding.

2. Not immune from service of process if subject to personal jurisdiction. A person who is subject to personal jurisdiction in this State on a basis other than physical presence is not immune from service of process in this State. A party present in this State who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

3. Immunity does not extend to unrelated acts. The immunity granted by subsection 1 does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this State.

§1740. Communication between courts

1. Communication permitted. A court of this State may communicate with a court in another state concerning a proceeding arising under this chapter.

2. Participation of parties. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

3. Communication without informing parties; no record required. Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

4. Communication and informing parties; record required. Except as otherwise provided in subsection 3, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

5. Record. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§1741. Taking testimony in another state

1. Testimony of witnesses in another state. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

2. Forms of testimony. A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

3. Exclusion of documentary evidence. Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§1742. Cooperation between courts; preservation of records

1. Request to court of another state. A court of this State may request the appropriate court of another state to:

A. Hold an evidentiary hearing;

B. Order a person to produce or give evidence pursuant to procedures of that state;

C. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

D. Forward to the court of this State a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and

E. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

2. Hearing or order upon request by court of another state. Upon request of a court of another state, a court of this State may hold a hearing or enter an order described in subsection 1.

3. Assessment of expenses. Travel and other necessary and reasonable expenses incurred under subsections 1 and 2 may be assessed against the parties according to the law of this State.

4. Preservation of records. A court of this State shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

SUBCHAPTER II

JURISDICTION

§1745. Initial child custody jurisdiction

1. Jurisdiction over initial determination. Except as otherwise provided in section 1748, a court of this State has jurisdiction to make an initial child custody determination only if:

A. This State is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this State

but a parent or person acting as a parent continues to live in this State;

B. A court of another state does not have jurisdiction under paragraph A or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the more appropriate forum under section 1751 or 1752 and;

(1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere physical presence; and

(2) Substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;

C. All courts having jurisdiction under paragraph A or B have declined to exercise jurisdiction on the ground that a court of this State is the more appropriate forum to determine the custody of the child under section 1751 or 1752; or

D. No court of any other state would have jurisdiction under the criteria specified in paragraph A, B or C.

2. Exclusive jurisdictional basis. Subsection 1 is the exclusive jurisdictional basis for making a child custody determination by a court of this State.

3. Physical presence or personal jurisdiction not necessary or sufficient. Physical presence of or personal jurisdiction over a party or a child is not necessary or sufficient to make a child custody determination.

§1746. Exclusive, continuing jurisdiction

1. Exclusive, continuing jurisdiction. Except as otherwise provided in section 1748, a court of this State that has made a child custody determination consistent with section 1745 or 1747 has exclusive, continuing jurisdiction over the determination until:

A. A court of this State determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training and personal relationships; or

B. A court of this State or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this State.

2. Modification without exclusive, continuing jurisdiction. A court of this State that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 1745.

§1747. Jurisdiction to modify determination

Except as otherwise provided in section 1748, a court of this State may not modify a child custody determination made by a court of another state unless a court of this State has jurisdiction to make an initial determination under section 1745, subsection 1, paragraph A or B and:

1. Jurisdiction of other state; more convenient forum. The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 1746 or that a court of this State would be a more convenient forum under section 1751; or

2. Not residents of other state. A court of this State or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

§1748. Temporary emergency jurisdiction

1. Abandoned child; emergency. A court of this State has temporary emergency jurisdiction if the child is present in this State and the child has been abandoned or it is necessary in an emergency to protect the child because the child or a sibling or parent of the child is subjected to or threatened with mistreatment or abuse.

2. No previous determination and no pending proceeding. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 1745 to 1747, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 1745 to 1747. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 1745 to 1747, a child custody determination made under this section becomes a final determination, if it so provides, and this State becomes the home state of the child.

3. Previous determination or pending proceeding. If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 1745 to 1747, any order issued by a court of this State under this section must specify in the order a period

that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 1745 to 1747. The order issued in this State remains in effect until an order is obtained from the other state within the period specified or the period expires.

4. Communication with court in another state. A court of this State that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 1745 to 1747, shall immediately communicate with the other court. A court of this State that is exercising jurisdiction pursuant to sections 1745 to 1747, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order.

§1749. Notice; opportunity to be heard; joinder

1. Notice and opportunity to be heard required. Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 1738 must be given to all persons entitled to notice under the law of this State as in child custody proceedings between residents of this State, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

2. Enforceability without notice and opportunity to be heard. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

3. Joinder and intervention of parties. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this State as in child custody proceedings between residents of this State.

§1750. Simultaneous proceedings

1. Pending proceeding in another state. Except as otherwise provided in section 1748, a court of this State may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state

because a court of this State is a more convenient forum under section 1751.

2. Examination of documents; communication with court. Except as otherwise provided in section 1748, a court of this State, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 1753. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this State shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this State is a more appropriate forum, the court of this State shall dismiss the proceeding.

3. Modification proceeding; enforcement proceeding in another state. In a proceeding to modify a child custody determination, a court of this State shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

A. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;

B. Enjoin the parties from continuing with the proceeding for enforcement; or

C. Proceed with the modification under conditions it considers appropriate.

§1751. Inconvenient forum

1. Court of this State an inconvenient forum. A court of this State that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

2. Factors relevant to determining whether inconvenient forum. Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

A. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

B. The length of time the child has resided outside this State;

C. The distance between the court in this State and the court in the state that would assume jurisdiction;

D. The relative financial circumstances of the parties;

E. Any agreement of the parties as to which state should assume jurisdiction;

F. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

G. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

H. The familiarity of the court of each state with the facts and issues in the pending litigation.

3. Determination of inconvenient forum. If a court of this State determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

4. Divorce or other proceeding. A court of this State may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§1752. Jurisdiction declined by reason of conduct

1. Jurisdiction based on unjustifiable conduct. Except as otherwise provided in section 1748 or by other law of this State, if a court of this State has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

A. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

B. A court of the state otherwise having jurisdiction under sections 1745 to 1747 determines that this State is a more appropriate forum under section 1751; or

C. No court of any other state would have jurisdiction under the criteria specified in sections 1745 to 1747.

2. Appropriate remedy. If a court of this State declines to exercise its jurisdiction pursuant to subsection 1, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 1745 to 1747.

3. Assessment of expenses. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection 1, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this State unless authorized by law other than this chapter.

§1753. Information to be submitted to court

1. Required information. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last 5 years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

A. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any;

B. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and

C. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

2. Stay until information furnished. If the information required by subsection 1 is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

3. Additional information. If the declaration as to any of the items described in subsection 1, paragraphs A to C is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

4. Continuing duty to inform court. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

5. Confidentiality. If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.

§1754. Appearance of parties and child

1. Appearance of party or other persons in this State. In a child custody proceeding in this State, the court may order a party to the proceeding who is in this State to appear before the court in person with or without the child. The court may order any person who is in this State and who has physical custody or control of the child to appear in person with the child.

2. Appearance of party outside this State. If a party to a child custody proceeding whose presence is desired by the court is outside this State, the court may order that a notice given pursuant to section 1738 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

3. Orders to ensure safety. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

4. Payment of travel and other expenses. If a party to a child custody proceeding who is outside this State is directed to appear under subsection 2 or desires to appear personally before the court with or without the child, the court may require another party

to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

SUBCHAPTER III

ENFORCEMENT

§1761. Definitions

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

1. Petitioner. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

2. Respondent. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

§1762. Enforcement under Hague Convention

Under this subchapter a court of this State may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

§1763. Duty to enforce

1. Recognition and enforcement of determination of another state. A court of this State shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

2. Remedies. A court of this State may utilize any remedy available under other law of this State to enforce a child custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§1764. Temporary visitation

1. Temporary order for enforcement. A court of this State that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

A. A visitation schedule made by a court of another state; or

B. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

2. Duration of order. If a court of this State makes an order under subsection 1, paragraph B, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in subchapter II. The order remains in effect until an order is obtained from the other court or the period expires.

§1765. Registration of child custody determination

1. Registration procedure. A child custody determination issued by a court of another state may be registered in this State, with or without a simultaneous request for enforcement, by sending to the appropriate court in this State:

A. A letter or other document requesting registration;

B. Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

C. Except as otherwise provided in section 1753, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

2. Filing and notice. On receipt of the documents required by subsection 1, the registering tribunal shall:

A. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

B. Serve notice upon the persons named pursuant to subsection 1, paragraph C and provide them with an opportunity to contest the registration in accordance with this section.

3. Information in notice. The notice required by subsection 2, paragraph B must state that:

A. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this State;

B. A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

C. Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

4. Hearing to contest. A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

A. The issuing court did not have jurisdiction under subchapter II;

B. The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II; or

C. The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 1738, in the proceedings before the court that issued the order for which registration is sought.

5. Confirmation of registration. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

6. Further contest precluded. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§1766. Enforcement of registered determination

1. Any relief normally available. A court of this State may grant any relief normally available under the law of this State to enforce a registered child custody determination made by a court of another state.

2. Recognition and enforcement without modification. A court of this State shall recognize and enforce, but may not modify, except in accordance with subchapter II, a registered child custody determination of a court of another state.

§1767. Simultaneous proceedings

If a proceeding for enforcement under this subchapter is commenced in a court of this State and the

court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under subchapter II, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§1768. Expedited enforcement of child custody determination

1. Petition for enforcement verified. A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

2. Petition contents. A petition for enforcement of a child custody determination must state:

A. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

B. Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;

C. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding;

D. The present physical address of the child and the respondent, if known;

E. Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

F. If the child custody determination has been registered and confirmed under section 1765, the date and place of registration.

3. Order directing appearance; hearing.

Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next

judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

4. Contents of order. An order issued under subsection 3 must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section 1772 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

A. The child custody determination has not been registered and confirmed under section 1765 and that:

(1) The issuing court did not have jurisdiction under subchapter II;

(2) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II;

(3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 1738, in the proceedings before the court that issued the order for which enforcement is sought; or

B. The child custody determination for which enforcement is sought was registered and confirmed under section 1764, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under subchapter II.

§1769. Service of petition and order

Except as otherwise provided in section 1771, the petition and order must be served by any method authorized by the law of this State upon the respondent and any person who has physical custody of the child.

§1770. Hearing and order

1. Immediate physical custody of child. Unless the court issues a temporary emergency order pursuant to section 1748, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

A. The child custody determination has not been registered and confirmed under section 1765 and that:

(1) The issuing court did not have jurisdiction under subchapter II;

(2) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under subchapter II; or

(3) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 1738, in the proceedings before the court that issued the order for which enforcement is sought; or

B. The child custody determination for which enforcement is sought was registered and confirmed under section 1765 but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under subchapter II.

2. Award of fees, costs and expenses. The court shall award the fees, costs and expenses authorized under section 1772 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

3. Refusal to answer. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

4. Privilege and immunity may not be invoked. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

§1771. Warrant to take physical custody of child

1. Application for warrant. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

2. Issuance of warrant; hearing. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 1768, subsection 2.

3. Contents of warrant. A warrant to take physical custody of a child must:

A. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

B. Direct law enforcement officers to take physical custody of the child immediately; and

C. Provide for the placement of the child pending final relief.

4. Service of petition, warrant, order. The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

5. Enforcement of warrant. A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

6. Conditions to ensure appearance. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

§1772. Costs, fees and expenses

1. Award to prevailing party; exception. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the court finds that special circumstances make the award of these expenses unjust.

2. Award against a state. The court may not assess fees, costs or expenses against a state unless authorized by law other than this chapter.

§1773. Recognition and enforcement

A court of this State shall accord full faith and credit to an order issued by another state and consistent with this chapter that enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under subchapter II.

§1774. Appeals

An appeal may be taken from a final order in a proceeding under this subchapter in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 1764, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§1775. Role of prosecutor

1. Action by prosecutor. In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor may take any lawful action, including resorting to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child or enforce a child custody determination if there is:

- A. An existing child custody determination;
- B. A request to do so from a court in a pending child custody proceeding;
- C. A reasonable belief that a criminal statute has been violated; or
- D. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

2. Prosecutor acts on behalf of court. A prosecutor acting under this section acts on behalf of the court and may not represent any party.

§1776. Role of law enforcement

At the request of a prosecutor acting under section 1775, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor with responsibilities under section 1775.

§1777. Costs and expenses

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under section 1775 or 1776.

SUBCHAPTER IV

MISCELLANEOUS PROVISIONS

§1781. Application and construction

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§1782. Effective date

This chapter takes effect January 1, 2000.

§1783. Transitional provision

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before January 1, 2000 is governed by the law in effect at the time the motion or other request was made.

Sec. 4. 19-A MRSA §4004, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§4004. Application of other acts

The provisions and limitations of the Uniform Child Custody Jurisdiction and Enforcement Act ~~do not~~ apply to a proceeding under this chapter ~~unless~~ regardless of whether it is joined with another proceeding under section 4010, subsection 2.

Sec. 5. 19-A MRSA §4007, sub-§1, ¶G, as amended by PL 1997, c. 187, §4 and affected by §5, is further amended to read:

G. Either awarding temporary custody of minor children or establishing temporary visitation rights with regard to minor children when the visitation is determined to be in the best interest of the child, or both, as determined in accordance with the best interest of the child pursuant to section 1653, subsections 3 to 6. The court's custody and visitation award ~~shall~~ is not ~~be~~ binding in any separate action involving an award of parental rights and responsibilities pursuant to chapter 55 or in a similar action brought in another jurisdiction exercising child custody jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act;

Sec. 6. Effective date. This Act is effective January 1, 2000.

Effective January 1, 2000.

CHAPTER 487

S.P. 198 - L.D. 587

An Act to Ameliorate Penalties for Late Filing of Municipal Tax Returns

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