

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

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
2000

4. Party states. "Party states" means the states of New Hampshire, Vermont and Maine and other New England states pursuant to section 402.

5. Tri-state Lotto. "Tri-state Lotto," or other such name as may be adopted by the party states, means a combined lotto game for all member states, with common tickets, common advertising and a common prize pool.

Sec. 3. State Liquor and Lottery Commission directed to seek partnerships. The State Liquor and Lottery Commission is directed to seek partnerships with other states that will enhance lottery revenues. The commission shall investigate the State's membership in the Multi-State Lottery Commission conducting the "Big Game" Lottery and any similar multi-state lottery compact. In the event its investigation results in the development of a potential new partnership with another state or states, the commission is directed to propose legislation authorizing the State's membership in the "Big Game" Lottery, or other similar multi-state lottery compact, at the next regularly scheduled session of the Legislature.

Sec. 4. Contingent effective date. Pursuant to the Maine Revised Statutes, Title 8, section 420, those sections of this Act that amend Title 8, sections 402 and 404 take effect only if concurrent legislation is adopted by states party to the Tri-state Lotto Compact.

See title page for effective date, unless otherwise indicated.

CHAPTER 587

H.P. 243 - L.D. 347

An Act to Amend the Installment Payment Order Capability of the Disclosure Court

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

Sec. 1. 14 MRSA §3125, sub-§2, as amended by PL 1987, c. 708, §7, is further amended to read:

2. Agreement. If the creditor or the debtor, at or prior to the disclosure hearing, presents the court with a written agreement for an order pursuant to section ~~3127~~ 3126-A with affidavit signed by the judgment debtor on a form provided by the District Court, the court may enter an order for an installment payment in the amount agreed upon by the parties or a lesser amount without the necessity of appearance by the parties. In determining whether to accept, reject or modify to a lesser amount the agreement of the parties,

the court shall apply the factors set forth in section ~~3128~~ 3126-A, subsection 4.

Sec. 2. 14 MRSA §3125-A, as amended by PL 1995, c. 65, Pt. A, §37 and affected by §153 and Pt. C, §15, is further amended to read:

§3125-A. Debtor subject to loss or suspension of right to operate or register a motor vehicle

A judgment debtor subject to suspension or loss of the right to operate or register a motor vehicle under Title 29-A, section 2251, subsection 10 may request a disclosure hearing on the issue of how to satisfy the judgment. The court may enter an order for an installment payment agreement in the manner agreed upon by the parties or a modified order in accord with the factors set forth in section ~~3128~~ 3126-A, subsection 4. If the parties fail to reach an agreement for an order, the judgment debtor may ask the court for the entry of an installment payment agreement in consideration of those factors.

Sec. 3. 14 MRSA §3126-A is enacted to read:

§3126-A. Installment payments

Following a disclosure hearing, the court shall determine the amount, if any, of the installment payments that the judgment debtor must make to the judgment creditor.

1. Definition. For purposes of this section, "exempt income" means the debtor's right to receive:

A. A social security benefit, unemployment compensation or a local public assistance benefit;

B. A veteran's benefit;

C. A disability, illness or unemployment benefit;

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor; and

E. A payment or account under a stock bonus, pension, profit sharing, annuity, individual retirement account or similar plan to the extent described in section 4422, subsection 13, paragraph E.

2. Installment payment order not permitted. The court may not order a judgment debtor to make installment payments if the judgment debtor is receiving or will receive money or earnings only from a source or sources exempt from attachment and execution under sections 4421 to 4426.

3. Maximum amount of earnings subject to installment payment order. In the case of a

judgment debtor who is an individual, the maximum amount of earnings for any workweek that is subject to an installment order may not exceed the least of:

A. Twenty-five percent of the sum of the judgment debtor's disposable earnings and exempt income for that week;

B. The amount by which the sum of disposable earnings and exempt income for that week exceeds 40 times the minimum hourly wage prescribed by 29 United States Code, Section 206(a)(1); or

C. The total amount of disposable earnings.

4. Factors to consider in determining amount of installment payment order. In determining the amount of installment payments, the court may take into consideration:

A. The reasonable requirements of the judgment debtor and the judgment debtor's dependents;

B. Any payments the judgment debtor is required to make to satisfy other judgment orders or wage assignments;

C. Other judgment orders or wage assignments that have priority;

D. The amount due on the judgment;

E. The amount of money or earnings being or to be received; and

F. Any other factors the court considers material and relevant.

5. Manner of making payments. The court may prescribe the time, place and manner in which payments are to be made.

6. Certain orders not subject to limitations. The limitations set forth in subsection 3 do not apply to:

A. An order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure if the administrative procedure is established by state law, affords substantial due process and is subject to judicial review;

B. An order of any court of the United States having jurisdiction over cases under 11 United States Code, chapter 13; or

C. A debt due for state or federal tax.

7. Maximum earnings subject to garnishment. The maximum part of the aggregate disposable

earnings of an individual for any workweek that is subject to garnishment to enforce an order for the support of any person may not exceed:

A. When the individual is supporting a spouse or dependent child, other than a spouse or child with respect to whose support such order is used, 50% of that individual's disposable earnings for that week; and

B. When the individual is not supporting such a spouse or dependent child described in paragraph A, 60% of that individual's disposable earnings for that week.

If the support order being enforced is made with respect to a period that is prior to the 12-week period that ends with the beginning of that workweek, the percentage of disposable earnings subject to the garnishment is 55% under paragraph A and 65% under paragraph B.

Sec. 4. 14 MRSA §3127, as amended by PL 1987, c. 184, §9, is repealed.

Sec. 5. 14 MRSA §3127-B, sub-§§1, 2 and 3, as enacted by PL 1987, c. 184, §11, are amended to read:

1. Order. When it is shown upon ex parte motion and affidavit that the judgment debtor has either failed to timely make 2 or more payments required by an installment order under section ~~3127~~ 3126-A or when the judgment debtor has failed to appear, after having been subpoenaed for a hearing provided for in this chapter, the court may approve the service of an order to withhold and answer on the judgment debtor's employer or other payor of earnings. The order ~~shall~~ **must** state the amount owed on the judgment debt, interest and costs. If the court has previously determined an installment payment amount under section ~~3127~~ 3126-A, the order ~~shall~~ **must** state that amount. The order ~~shall~~ **must** demand an answer under oath listing the dollar amounts of all earnings owed or payable to the debtor and the calculation of the judgment debtor's disposable earnings. The order ~~shall~~ **must** be served on the employer or other payor and on the judgment debtor within 60 days of the date of the order. A form answer ~~shall~~ **must** be attached to the order when served on the employer or other payor of earnings.

2. Withhold and answer. The employer or other payor served with the order shall calculate the maximum dollar amount of the employee's disposable earnings which may be applied to the debt under section ~~3127~~ 3126-A by using the form answer attached to the order. Within 20 days of service of the order, the employer or other payor of earnings shall:

A. File the completed form answer with the court;

B. Serve copies of the answer on the judgment debtor and the judgment creditor in the manner provided in the Maine Rules of Civil Procedure, Rule 5; and

C. Withhold from the employee and pay to the judgment creditor the amount of the previously ordered installment payment or the maximum dollar amount of the employee's disposable earnings which may be applied to the debt, whichever amount is less, until the court orders otherwise or the debt is satisfied.

3. Hearing on motion. Within 20 days of the service of the answer of the employer or other payor of earnings, the judgment debtor or the judgment creditor may request by motion a hearing to determine what amount, if any, of the judgment debtor's earnings should be ordered payable by the employer or other payor to the judgment creditor. The motion ~~shall~~ must be served on the employer or other payor as well as the other party. After the hearing, if the court is satisfied as to the existence and amount of the judgment debtor's disposable earnings payable by the employer or other payor, it may issue an order to the employer or other payor to withhold an amount, subject to the requirements of section ~~3427~~ 3126-A, from the earnings of the judgment debtor and pay the amount to the judgment creditor. If the court fails to find disposable earnings payable by the employer or other payor, it may terminate the withholding required under subsection 2. If the court terminates withholding or reduces the amount withheld, the court may order appropriate reimbursement of the judgment debtor by either the employer or the judgment creditor. No reimbursement or retroactive withholding is permitted against the employee if the court order increases the amount withheld.

Sec. 6. 14 MRSA §3128, as amended by PL 1987, c. 184, §12, is repealed.

Sec. 7. 14 MRSA §3130, as repealed and replaced by PL 1973, c. 477, §5, is amended to read:

§3130. Provisional installment payment order

Pending the sale of any property under section 3131, the court may issue an installment payment order as provided in section ~~3427~~ 3126-A. Upon the completion of the sale, the judgment creditor must file with the court an affidavit including the items required in an affidavit under section ~~3427~~ 3126-A and which in addition ~~shall~~ must state the total amount of installment payments received since such installment payment order was entered, the balance due to the judgment creditor and the number of installments required to retire the balance remaining on such

judgment, if any, which number ~~shall~~ must equal the balance due divided by the dollar amount provided for each installment in such installment payment order.

Sec. 8. 14 MRSA §3136, sub-§5, as enacted by PL 1987, c. 184, §19, is amended to read:

5. Orders. Upon a finding at the contempt hearing that a court order has been disobeyed by the person and that the person has the present ability to comply with the order, the person ~~shall~~ must be adjudged in civil contempt. The court ~~shall have~~ has the power to impose such reasonable fine or imprisonment as the circumstances require, provided that the person is given an opportunity to purge ~~himself that~~ person of the contempt. Whenever the person personally purges ~~himself that person~~ of the contempt, the court shall release the person from imprisonment and may remit any fine or a portion of the fine. In addition, the court may enter orders pursuant to sections ~~3427~~ 3126-A, 3127-A, 3127-B, 3130, 3131 and 3132 to assure the person's compliance with the court order and to aid the judgment creditor in the enforcement of the order.

Sec. 9. 14 MRSA §3141, sub-§7, as amended by PL 1995, c. 65, Pt. A, §40 and affected by §153 and Pt. C, §15, is further amended to read:

7. Remedies. Failure to pay by the date fixed by the court's order or an amended order subjects the defendant to the contempt procedures provided in section 3142, suspensions under Title 29-A, section 2605, and all procedures for collections provided for in sections 3127-A, 3127-B, 3131, 3132, 3134, 3135 and 3136. An installment agreement under this section must be considered an agreement under section 3125, and a court order to pay under section ~~3427~~ 3126-A. In addition to other penalties provided by law, the court may impose on the defendant reasonable costs for any failure to appear.

Sec. 10. 14 MRSA §7486, as enacted by PL 1989, c. 88, §2, is repealed.

Sec. 11. 19-A MRSA §2602, sub-§1, as amended by PL 1997, c. 466, §25 and affected by §28, is further amended to read:

1. Installment payments. In a support order or costs, the court may include an order to pay specified installment payments as provided under Title 14, sections ~~3427~~ 3126-A to 3136.

Sec. 12. 19-A MRSA §2602, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

2. Future obligations. The court may order installment payments for future obligations under the decree. The court may enforce its decree ordering

installment payments as provided under Title 14, sections ~~3127~~ 3126-A to 3136. In enforcement actions under those sections, the person ordered to pay is deemed a judgment debtor and the person entitled to receive the payments a judgment creditor.

Sec. 13. 19-A MRSA §2603, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

2. Installment payments. Specified installment payments as provided under Title 14, sections ~~3127~~ 3126-A to 3136, without a separate disclosure hearing, if the court has already determined the judgment debtor's ability to pay and the debtor's receipt of money from a source other than a source that is otherwise exempt from trustee process, attachment and execution;

See title page for effective date.

CHAPTER 588

H.P. 704 - L.D. 971

An Act to Allow Three Hunters to Hunt Deer Together

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

Sec. 1. 12 MRSA §7458, sub-§10, as amended by PL 1989, c. 705, §2, is further amended to read:

10. Driving deer. A Except as provided in subsection 15, paragraph I, a person is guilty of driving deer if that person participates in a hunt for deer, during which an organized or planned effort is made to drive deer.

Sec. 2. 12 MRSA §7458, sub-§15, ¶I is enacted to read:

I. Notwithstanding subsection 10, 3 or fewer persons may hunt together as long as they do not use noisemaking devices.

See title page for effective date.

CHAPTER 589

S.P. 883 - L.D. 2298

An Act to Clarify the Law Relating to the Renewal of Liquor Licenses

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

Sec. 1. 28-A MRSA §653, sub-§1, ¶C, as enacted by PL 1995, c. 140, §5, is amended to read:

C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal within 120 days of the filing of the application.

See title page for effective date.

CHAPTER 590

S.P. 922 - L.D. 2373

An Act to Prevent Misuse of Mortuary Trust Funds

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

Whereas, in the last year there have been incidents involving the misuse of mortuary trust funds by funeral directors; and

Whereas, the provisions in this Act amend the laws governing mortuary trust funds to limit the actual handling of mortuary trust funds by funeral directors; and

Whereas, this Act is needed for the protection of Maine consumers; and

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

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