LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

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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
2002

Emergency clause. In view of the emergency cited in the preamble, sections 1, 2 and 4 to 9 of this Act take effect when approved.

Effective March 25, 2002, unless otherwise indicated.

CHAPTER 554

H.P. 1521 - L.D. 2025

An Act to Make Certain Changes to the State's Child Support Enforcement Laws

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

Whereas, compliance with federal child support requirements with regard to the National Medical Support Notice is essential for continued receipt by the State of federal child support funding; and

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

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

Sec. 1. 4 MRSA §807, sub-§3, ¶I, as amended by PL 1997, c. 669, §1, is further amended to read:

I. A person who is not an attorney, but is representing the Department of Human Services in a child support enforcement matter as provided by Title 14, section 3128-A, subsection 7; Title 18-A, section 5-204; and Title 19-A, section 2361, subsection 10;

Sec. 2. 18-A MRSA §5-204, 4th ¶, as enacted by PL 1999, c. 46, §1, is amended to read:

If a proceeding is brought under subsection (b) or subsection (c), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Human Services provides child support enforcement services, the Commissioner of Human Services may designate employees of the department who are not attorneys 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 paragraph.

Sec. 3. 19-A MRSA §1605, sub-§2, ¶¶K and L, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

K. A statement that if, prior to the filing in a court, the alleged father executes and delivers to the department and the department accepts an acknowledgment of paternity, the proceeding must terminate and the department may proceed against him under chapter 65, subchapter II, article 3; ~~and~~

L. A statement that the alleged father may, within 25 days after notice has been mailed to him that the record has been filed in a court, assert any defense, in law or fact, if the record is filed because the alleged father:

(1) Refuses to submit to blood or tissue-typing tests; or

(2) Fails to execute and deliver to the department an acknowledgment of paternity~~.~~; and

Sec. 4. 19-A MRSA §1605, sub-§2, ¶M is enacted to read:

M. A statement that the department may require the alleged father to submit to blood or tissue-typing tests prior to accepting an acknowledgment of paternity if it appears that there may be more than one alleged father, and may file the action in court if the alleged father refuses to submit to testing.

Sec. 5. 19-A MRSA §1608, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended by adding a new 2nd paragraph to read:

When the department initiates proceedings against one alleged father when there may be more than one alleged father, the department may require the parties to submit to blood or tissue-typing tests prior to accepting an acknowledgment of paternity from the alleged father. If the alleged father refuses to participate in testing, the department may file the action in court.

Sec. 6. 19-A MRSA §1614, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§1614. Acknowledgment of paternity

If, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, and if the department does not require the alleged father to participate in blood or tissue-typing tests, the pro-

ceeding must be terminated and the department may proceed against the father under chapter 65, subchapter II, article 3 with respect to any remedy provided under that article.

Sec. 7. 19-A MRSA §1652, sub-§1, as amended by PL 1999, c. 731, Pt. ZZZ, §33 and affected by §42, is further amended to read:

1. Petition. If a parent, spouse or child resides in this State, a parent, a spouse, a guardian or a ~~municipality~~ state providing maintenance may petition the District Court or Probate Court to order a nonsupporting parent or spouse to contribute to the support of the nonsupporting person's spouse or child. The petition may be brought in the court in the district or county where the parent, spouse or child resides or in the district or county in which the nonsupporting person may be found.

Sec. 8. 19-A MRSA §2001, sub-§3, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

3. Child support table. "Child support table" means the schedule that ~~reflects the percentage of combined gross income that parents living in the same household in this State ordinarily spend on their children that~~ has been adopted by the department under ~~former Title 19, section 303-A~~ section 2011.

Sec. 9. 19-A MRSA §2001, sub-§4, as repealed and replaced by PL 2001, c. 264, §1, is amended to read:

4. Extraordinary medical expenses. "Extraordinary medical expenses" means recurring, uninsured medical expenses in excess of $250 per child or group of children per calendar year that can reasonably be predicted by the court or hearing officer at the time of establishment or modification of a support order. Responsibility for nonrecurring or subsequently occurring uninsured medical expenses in excess of $250 in the aggregate per child or group of children supported per calendar year must be divided between the parties in proportion to their adjusted gross incomes. These expenses include, but are not limited to, insurance copayments and deductibles, reasonable and necessary costs for orthodontia, dental treatment, eye care, eyeglasses, prescriptions, asthma treatment, physical therapy, chronic health problems and professional counseling or psychiatric therapy for diagnosed mental disorders.

Sec. 10. 19-A MRSA §2006, sub-§5, ¶C, as amended by PL 2001, c. 264, §4, is further amended to read:

C. The subsistence needs of the nonprimary care provider must be taken into account when establishing the parental support obligation. If the annual gross income of the nonprimary care provider is less than the federal poverty guideline, the nonprimary care provider's weekly parental support obligation for each child for whom a support award is being established or modified may not exceed 10% of the nonprimary care provider's weekly gross income, regardless of the amount of the parties' combined annual gross income. The child support table includes a self-support reserve for obligors earning less than $12,600 per year. If the nonprimary care provider's annual gross income, without adjustments, is in the self-support reserve, the amount listed in the table for the number of children is the nonprimary care provider's basic support obligation, regardless of the parties' combined annual gross income. The nonprimary care provider's proportional share of childcare, health insurance premiums and extraordinary medical expenses are added to this basic support obligation.

Sec. 11. 19-A MRSA §2011 is enacted to read:

§2011. Child support table established

The department, in consultation with the Supreme Judicial Court and interested parties, shall adopt rules in accordance with Title 5, chapter 375, establishing a child support table that reflects the percentage of combined gross income that parents living in the same household in this State ordinarily spend on their children. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 12. 19-A MRSA §2106, sub-§1, as enacted by PL 1997, c. 537, §29 and affected by §62, is amended to read:

1. Enrollment of dependent children in employer health plans. If a parent is required by a support order to provide health care coverage for a child and the parent is eligible for family health care coverage through an employer doing business in the State, upon application by either parent, the employer or plan administrator shall enroll the child, if otherwise eligible, in the employer health plan without regard to any enrollment season restrictions, except as provided by subsection 2. If the employer offers more than one plan, the employer or plan administrator shall enroll the child in the plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available, if the plan's services are available where the child resides. If the services of the employee's plan or the least costly plan are not available where the child resides, the employer or plan administrator shall enroll the child in the least costly plan that is available where the child resides. If the

plan requires that the participant be enrolled in order for the child to be enrolled, and the participant is not currently enrolled, the employer or the plan administrator must enroll both the participant and the child. The enrollments must be without regard to open season restrictions. The court or the department shall order health care coverage using the format of the federal National Medical Support Notice as required by the Child Support Performance and Incentives Act of 1998, Public Law 105-200, 42 United States Code, Section 666(a)(19)(A) and the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1169(a)(5)(C). The employer or other payor of income shall complete Part A of the National Medical Support Notice and the plan administrator shall complete Part B.

Sec. 13. 19-A MRSA §2106, sub-§4, as enacted by PL 1997, c. 537, §29 and affected by §62, is amended to read:

4. Answer. The employer shall respond to a parent who requests enrollment within ~~30~~ 20 days and confirm:

A. That the child has been enrolled in the employer's health plan;

B. The date when the child will be enrolled, if enrollment is pending; or

C. That coverage can not be provided, stating the reasons why coverage can not be provided.

Sec. 14. 19-A MRSA §2308, as amended by PL 1997, c. 537, §§42 and 43 and affected by §62, is further amended to read:

§2308. Medical support notice

1. Issuance of notice. The department, on its own behalf, on behalf of a custodial parent who applies for the department's support enforcement services or on behalf of another state's Title IV-D agency, political subdivision or agent, may issue to a responsible parent's employer or other payor of income a ~~health insurance withholding order~~ medical support notice to enforce a responsible parent's obligation to obtain or maintain health insurance coverage or other health care services for each dependent child of the responsible parent. The medical support notice must be in the format of the federal National Medical Support Notice as required by the Child Support Performance and Incentives Act of 1998, Public Law 105-200, 42 United States Code, Section 666(a)(19)(A) and the federal Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1169(a)(5)(C). The employer or other payor of income shall complete Part A of the National Medical Support Notice and the plan administrator shall complete Part B.

2. Employer notice. A ~~health insurance withholding order~~ medical support notice must be accompanied by an employer notice that contains the substance of subsections 3 to 16.

3. Duty to enroll. An employer or other payor of income served with a ~~health insurance withholding order~~ medical support notice shall enroll each dependent child of the employee named in the withholding order as a covered person in a group health insurance plan or other similar plan providing health care services or coverage offered by the employer, without regard to any enrollment season restrictions, if the child is eligible for such coverage under the employer's enrollment provisions, and deduct any required premiums from the employee's earnings to pay for the insurance.

4. Choice of plan. If more than one plan is offered by the employer, the employer or the plan administrator shall enroll each qualified child prospectively in the insurance plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available, ~~providing that~~ as long as the plan's services are available where the child resides. If the services of the employee's plan or the least costly plan are not available where the child resides, the employer or the plan administrator shall enroll each qualified child prospectively in the least costly plan that is available where the child resides. If the plan requires that the participant be enrolled in order for the child to be enrolled, and the participant is not currently enrolled, the employer or the plan administrator must enroll both the participant and the child. The enrollments must be made without regard to enrollment season restrictions.

5. Answer. An employer shall respond to a ~~health insurance withholding order~~ medical support notice in writing within ~~30~~ 20 days of service. The employer shall advise the department of the plan in which each child is enrolled or if a child is ineligible for any plan through the employer. The department shall include ~~a~~ preprinted answer ~~form~~ forms for the employer's and plan administrator's use and shall include the ~~form~~ forms and a prepaid, self-addressed envelope with each ~~health insurance withholding order~~ medical support notice. The plan administrator must complete and return the Part B response within 40 business days of service.

6. Mistake of fact; affirmative defenses. A responsible parent may claim a mistake of fact or assert affirmative defenses to contest the issuance of a ~~health insurance withholding order~~ medical support notice. The department shall establish by rule an administrative process for reviewing claims of mistake and investigating affirmative defenses.

7. Duration of notice. A ~~health insurance withholding order~~ medical support notice remains in force until the employee terminates employment, the employer or other payor of earnings is released from the order in writing by the department or release is ordered by a court.

8. Change of plan. After it is initially determined in response to a ~~health insurance withholding order~~ medical support notice that a child is eligible for coverage, the employer or plan administrator must make subsequent enrollment changes to include the child if the group health insurance plan is changed and provide notices of any changes in coverage to the department.

9. Fee. The commissioner may establish by rule a fee that an employer may charge an employee for each withholding and for a change of plan.

10. Failure to honor. Failure of an employer or other payor of earnings or the plan administrator to comply with the requirements of a ~~health insurance withholding order~~ medical support notice is a civil violation for which the department may recover up to $1,000 in a civil action.

11. Priority of notice. A ~~health insurance withholding order~~ medical support notice has priority over any previously filed attachment, execution, garnishment or assignment of earnings that is not for the purpose of enforcing or paying a child support obligation.

12. Employer protected. The department shall defend and hold harmless any employer or other payor of earnings or plan administrator who honors a ~~health insurance withholding order~~ medical support notice.

13. Immunity. The employer or plan administrator may not be held liable for medical expenses incurred on behalf of a dependent child because of the employer's or plan administrator's failure to enroll the dependent child in a health insurance or health care plan after being directed to do so by the department.

14. Employee protected. An employer who discharges, refuses to employ or takes disciplinary action against a responsible parent, or who otherwise discriminates against that parent because of the existence of the ~~order~~ medical support notice or the obligation the ~~order~~ medical support notice imposes upon the employer, is subject to a civil penalty of not more than $5,000 payable to the State, to be recovered in a civil action. The employer is also subject to an action by the responsible parent for compensatory and punitive damages, plus attorney's fees and court costs.

15. Service. A ~~health insurance withholding order~~ medical support notice must be served on the responsible parent's employer or other payor of earnings. Service may be by certified mail, return receipt requested, by an authorized representative of the commissioner, by personal service as permitted by the Maine Rules of Civil Procedure, Rule 4 or as otherwise permitted by sections 2253 and 2254. The department shall send a copy of the ~~health insurance withholding order~~ medical support notice to the responsible parent at the responsible parent's most recent address of record.

16. Withholding order and support notice combined. The department may combine a ~~health insurance withholding order~~ medical support notice with a child support income withholding order issued under section 2306.

17. Rules. The department shall adopt rules to implement and enforce the requirements of this section.

Sec. 15. 19-A MRSA §2605, sub-§3, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

3. Notice to State. In an action to establish ~~a~~ or vacate a paternity order or support order, enforce a support order, amend a support order or to collect support arrearages, if the action relates to a period when the child has received, is receiving or will receive public assistance or the party is receiving support enforcement services pursuant to section 2103, the party bringing the action must send a copy of the motion or petition ~~must be furnished~~ and all accompanying documents by ordinary mail to the department ~~at least 21 days before the hearing~~ when the motion or petition is filed with the court. If the party bringing the action fails to comply with this subsection, the court may allow the department additional time to file all necessary pleadings.

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

Effective March 25, 2002.

CHAPTER 555

H.P. 1495 - L.D. 1998

An Act to Establish the Asthma Prevention and Control Program in the Department of Human Services, Bureau of Health

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

Sec. 1. 22 MRSA c. 275 is enacted to read: