

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 17, 2005

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2005

average annual wage per capita personal income in the county in which the qualified employee is employed and whose state income withholding taxes are subject to reimbursement to the qualified business under this chapter. "Qualified employees must be residents of this State" does not include employees shifted to a qualified business from an affiliated business. The commissioner shall determine whether a shifting of employees has occurred.

Sec. 24. 36 MRSA §6757, as enacted by PL 1995, c. 669, §5, is repealed.

Sec. 25. 36 MRSA §6758, sub-§2, as repealed and replaced by PL 1999, c. 127, Pt. A, §51, is amended to read:

2. Determination by assessor. On or before June 30th of each year, the assessor shall determine the employment tax increment of each qualified business for the preceding calendar year. A qualified business may receive up to ~~75%~~ 80% of the employment tax increment generated by that business as determined by the assessor, subject to the further limitations in section 6754, subsection 2. That amount is referred to as "retained employment tax increment revenues."

Sec. 26. Application. That section of this Act that amends the Maine Revised Statutes, Title 30-A, section 5250-I, subsections 17 and 18 applies retroactively to June 12, 2003, except that changes to subsection 17, paragraph A are effective upon enactment. That section of this Act that amends Title 30-A, section 5250-J, subsection 3 applies retroactively to June 12, 2003. The amendment in this Act of Title 30-A, section 5250-K, subsection 3 applies retroactively to June 12, 2003. That section of this Act that repeals Title 36, section 1760, subsection 86 applies retroactively to sales occurring on or after July 1, 2005. That section of this Act that amends Title 36, section 1760, subsection 87 applies to qualified sales occurring on or after July 1, 2005. That section of this Act that enacts Title 36, section 2016 applies to qualified sales occurring on or after July 1, 2005. Those sections of this Act that repeal and replace Title 36, section 2529, subsection 1, paragraphs A and B and subsection 2 apply retroactively to tax years beginning on or after January 1, 2004. Those sections of this Act that repeal and replace Title 36, section 5219-W, subsection 1, paragraphs A and B and subsections 2 and 3 apply retroactively to tax years beginning on or after January 1, 2004. That section of this Act that amends Title 36, section 6753, subsection 7 applies retroactively to applications submitted by a qualified business on or after September 13, 2003. That section of this Act that amends Title 36, section 6753, subsection 12 applies retroactively to applications submitted by a qualified business on or after September 13, 2003. That section of this Act that

repeals Title 36, section 6757 applies retroactively to applications submitted by a qualified business on or after September 13, 2003. That section of this Act that amends Title 36, section 6758, subsection 2 applies retroactively to January 1, 2004.

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

Effective June 9, 2005.

CHAPTER 352

H.P. 1125 - L.D. 1589

An Act To Improve Child Support Services

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

Sec. 1. 15 MRSA §3314, sub-§5, as amended by PL 1997, c. 752, §23 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

5. Support orders. Whenever the court commits a juvenile to the Department of Health and Human Services, to a Department of Corrections juvenile correctional facility or to a relative or other person, the court ~~may~~ shall order either or both parents of the juvenile to pay ~~a reasonable amount of support for the juvenile child support in accordance with the child support guidelines under Title 19-A, section 2006.~~ The order is enforceable under Title 19-A, section 2603.

Sec. 2. 19-A MRSA §1615, as enacted by PL 1997, c. 466, §3 and affected by §28, is amended 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 both those proceedings and proceedings filed by other parties. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subchapter.

Sec. 3. 19-A MRSA §2006, sub-§4, as amended by PL 2003, c. 415, §8, is further amended to read:

4. Computation of parental support obligation. The total basic support obligation must be divided between the parties in proportion to their

respective gross incomes. The court or hearing officer shall order the party not providing primary residential care to pay, in money, that party's share of the total basic support obligation to the party providing primary residential care. The primary residential care provider is presumed to spend the primary care provider's share directly on each child. If the court or hearing officer determines that the parties provide substantially equal care for a child for whom support is sought, presumptive support must be calculated in accordance with subsection 5, paragraph D-1. Both parents are responsible for child support if a caretaker relative provides primary residential care for the child. The caretaker relative's income may not be considered in determining the parents' child support obligation.

Sec. 4. 19-A MRSA §2006, sub-§8, ¶¶E and F, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

E. If each child for whom a parental support obligation is being established has attained 12 years of age, a specific sum to be paid depending on the number of minor children remaining with the primary care provider. Because the support guidelines are based on the actual costs of raising a given number of children in a household, the order must provide a specific dollar amount for every combination of minor children. The Except as provided in paragraph G, the court or hearing officer may not apportion support between the parents by determining the parental support obligation amount and dividing by the total number of children; and

F. If the court or hearing officer ultimately determines that the order for current support is to be set under section 2007, the court or hearing officer shall incorporate into the order its the written findings of the court or hearing officer in support of the deviation; and

Sec. 5. 19-A MRSA §2006, sub-§8, ¶G is enacted to read:

G. With regard to any initial or modified child support order that affects more than one child and that was entered before January 18, 2005, unless that order states the manner in which the order must be modified upon the events listed in subparagraphs (1) to (4), that the order be automatically modified pursuant to this paragraph to address any of the following events:

(1) Any child reaches 18 years of age and has graduated from secondary school;

(2) Any child reaches 19 years of age without having graduated from secondary school;

(3) Any child obtains an order of emancipation; or

(4) Any child dies.

As of the date of an event listed in subparagraphs (1) to (4), the total child support amount stated in the order must be decreased by the child support amount assigned to that child in the worksheets accompanying the child support order or as set forth in the order.

Sec. 6. 19-A MRSA §2009, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

1. Motion to modify support. A party, including the department, may file a motion to modify support. The commissioner may designate employees of the department who are not attorneys to represent the department in court proceedings to hear a motion to modify support filed by the department or any other party. Unless a party also files a motion to amend the divorce judgment, a petition to amend under section 1653, subsection 10 or a motion for judicial review under Title 22, section 4038, the child support obligation is the sole issue to be determined by the court on a motion to modify support. The court, in its discretion, may bifurcate the support issue from other issues presented by the party's pleadings.

Sec. 7. 19-A MRSA §2103, sub-§2, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

2. Enforcement of support obligations. The department may, for a fee, locate absent parents, defend ~~against child support reductions orders~~, establish support obligations, seek motions to ~~increase~~ modify support obligations, enforce support obligations and determine paternity on behalf of applicants who are not recipients of public assistance, by actions under an appropriate statute, including, but not limited to, remedies established in subchapter H 2, article 3, to establish and enforce the support obligations. The department and the applicant shall sign an agreement in duplicate describing the fee. The department may defer or waive that fee.

Sec. 8. 19-A MRSA §2201, sub-§1, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended by amending the last paragraph to read:

The notice must include the address and telephone number of the department's support enforcement office that issues the notice and a statement of the need to obtain a written confirmation of compliance from that office as provided in subsection 8. The department shall attach a copy of the obligor's order of support to the notice. Service of the notice must be made by

certified mail, return receipt requested, ~~or~~ by service in hand, or as specified in the Maine Rules of Civil Procedure. For purposes of this section, authorized representatives of the commissioner may serve the notice.

Sec. 9. 19-A MRSA §2304, sub-§4, ¶F, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

F. That the responsible parent may appeal the decision within 30 days of the date of mailing of the decision by requesting the department to hold an administrative ~~review~~ appeal hearing. The decision must also state that the resulting appeal hearing must be based on the evidence submitted at the underlying hearing, if any. Evidence not part of the hearing record may be considered at the appeal hearing only if the evidence was offered but incorrectly excluded at the underlying hearing.

Sec. 10. 19-A MRSA §2358, sub-§5, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

5. Withhold and deliver. A person served with an order to withhold and deliver shall withhold immediately any property, including wages, due to or belonging to the responsible parent. After 20 days from the date of receipt of this order and upon demand of the commissioner, the property of the responsible parent must be delivered to the commissioner. An order to withhold and deliver issued by an out-of-state child support agency or court must be honored by a financial institution authorized to do business in this State as defined in Title 9-B, section 131, subsection 17-A or credit union authorized to do business in this State as defined in Title 9-B, section 131, subsection 12-A.

Sec. 11. 19-A MRSA §2451, first ¶, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

Within 30 days of receiving notice of any action under this article, including an administrative decision establishing an obligation to provide health insurance and payment for other medical expenses, ~~and including an administrative decision that did not establish an obligation to provide health insurance and payment for other medical expenses~~, the responsible parent or the department may move for a review of any action under this article by serving a request for review, together with an affidavit stating the grounds upon which the request is based, upon the other party. The department may review any action under this article without proceeding under this section. The department acting on behalf of another state or its instrumentality or a person residing in another state constitutes good cause

within the meaning of Title 5, section 9057, subsection 5.

Sec. 12. 19-A MRSA §2451, sub-§2, ¶A, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

A. The hearing must be conducted according to rules adopted by the commissioner. ~~The Except as provided by section 2304, subsection 4, paragraph F, the~~ rules must provide both the moving and responding parties at least the right to confront and cross-examine witnesses, to present witnesses, to be represented by an attorney or other person and to be notified of these rights in writing. The decision must be limited to evidence presented at the hearing.

Sec. 13. Automatic modification study; report. The Department of Health and Human Services, working with the Family Law Advisory Commission, established in the Maine Revised Statutes, Title 19-A, section 351, shall study the need for legislation that provides the automatic modification of all orders establishing or modifying child support upon a child reaching any of the events listed in the Maine Revised Statutes, Title 19-A, section 2006, subsection 8, paragraph G. The department shall submit its report, accompanied by any recommendations, to the Joint Standing Committee on Judiciary by January 1, 2006. Following receipt and review of the report, the committee may report out legislation to the 122nd Legislature.

See title page for effective date.

CHAPTER 353

H.P. 610 - L.D. 859

An Act To Provide Greater Civil Relief Protection for Members of the Military

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

Sec. 1. 18-A MRSA §2-506, as enacted by PL 1979, c. 540, §1, is amended to read:

§2-506. Choice of law as to execution

A written will is valid if executed in compliance with section 2-502 or 2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national or if executed in compliance with 10 United States Code, Section 1044d.