

# 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.**

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

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.

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## 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.

**Sec. 2. 18-A MRSA §5-508, sub-§(i)** is enacted to read:

(i) Notwithstanding subsections (c) and (d), any military power of attorney executed in accordance with 10 United States Code, Section 1044b is valid in this State.

**Sec. 3. 18-A MRSA §5-818** is enacted to read:

**§5-818. Military advanced medical directives**

A military advanced medical directive executed in accordance with 10 United States Code, Section 1044c is valid in this State.

**Sec. 4. 37-B MRSA §343** is enacted to read:

**§343. Parental rights and responsibilities; parent on active duty**

**1. Departure under military orders.** A court may not consider departure from the family residence or absence from the child or children as an adverse factor in determining parental rights and responsibilities with respect to a minor child when the departing parent is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and whose absence is due to compliance with military orders.

**2. Change of residence of child prohibited when parent under military orders.** A court may not order a change of the primary physical residence of a child when one of the child's parents is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and whose absence from the State is due to compliance with military orders unless the change is in the best interest of the child.

**3. Application.** This section applies only if the service of the member referred to in subsection 1 or subsection 2 is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty without their consent; or

B. Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

**Sec. 5. 37-B MRSA §389**, as repealed and replaced by PL 2003, c. 404, §6, is repealed.

**Sec. 6. 37-B MRSA §389-A** is enacted to read:

**§389-A. Service members' civil relief**

**1. Short title.** This section may be known and cited as "the Maine Servicemembers' Civil Relief Act."

**2. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Court" means any administrative agency, civil court or venue of a proceeding involving a case management officer.

B. "Service member" means a member of the uniformed services as that term is defined in 10 United States Code, Section 101(a)(5) or a member of the state military forces as that term is described in section 102, on active state service as that term is defined in section 101-A.

**3. Stay of proceeding.** Any action or proceeding in any court in which a service member is involved, either as plaintiff, defendant or attorney, if the plaintiff, defendant or attorney is a member of the National Guard or the Reserves of the United States Armed Forces, during the period of any military service or within 60 days after any military service, at the discretion of the court, or by the member's own motion or motion of the court, may be stayed at any stage of the proceeding unless, in the opinion of the court, the ability of the plaintiff to prosecute the action, the defendant to conduct the defendant's defense or the attorney to represent either party is not materially affected by reason of the member's military service, except that an action or proceeding involving a child may not be stayed unless the stay is in the best interest of the child.

**4. Appearance.** An application for a stay of a court or administrative proceeding pursuant to the Servicemembers' Civil Relief Act of 2003, 50 United States Code App. Sections 501 to 596, or this section does not constitute an appearance for any purpose.

**5. Electronic means; testimony and evidence.** Upon motion of a service member who is a party in a civil case, the court shall allow the service member to present testimony and evidence by electronic means when the military duties of the service member have a material effect on the service member's ability to appear in person at a regularly scheduled hearing, unless good cause is shown. For purposes of this subsection, "electronic means" includes, but is not limited to, telephone, video teleconference and the Internet.

**6. Expedited hearing.** Upon motion of a service member who is a party in a civil case, the court shall hold an expedited hearing when the military duties of the service member have a material effect on

the service member's ability to appear in person at a regularly scheduled hearing, unless good cause is shown.

**7. Transfer of parent-child contact rights.**

Upon motion of a service member, or upon the court's own motion, in a case involving parent-child contact, the court shall allow the service member to temporarily transfer the service member's contact rights to a relative, by blood or marriage, who has a significant connection with the child or children when the military duties of the service member have a material effect on the ability of the service member to exercise those rights, unless the transfer is not in the best interest of the child.

See title page for effective date.

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**CHAPTER 354**

**H.P. 985 - L.D. 1421**

**An Act To Address the  
Constitutionality of Maine's  
Resident-only Lobster License**

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

**Sec. 1. 12 MRSA §6421, sub-§5**, as corrected by RR 2001, c. 2, Pt. A, §§14 and 15, is amended to read:

**5. Eligibility.** ~~A Class I, Class II, Class III, apprentice,~~ noncommercial or student lobster and crab fishing license may only be issued to an individual who is a resident. A Class I, Class II or Class III license may be issued to a person only if the person:

- A. Possessed a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year;
- C. Meets the requirements of the apprentice program under section 6422 or section 6475; or
- D. Did not possess a Class I, Class II or Class III lobster and crab fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year.

**Sec. 2. 12 MRSA §6421, sub-§7-A**, as amended by PL 2003, c. 20, Pt. WW, §2, is repealed and the following enacted in its place:

**7-A. Fee.** Except as provided in subsection 8, the fee for the license is:

A. Fifty-six dollars for a resident Class I license for applicants under 18 years of age;

A-1. Three hundred and thirty-six dollars for a nonresident Class I license for applicants under 18 years of age;

B. One hundred and thirteen dollars and seventy-five cents for a resident Class I license for applicants 18 years of age or older;

B-1. Six hundred and eighty-two dollars and seventy-five cents for a nonresident Class I license for applicants 18 years of age or older;

C. Two hundred twenty-eight dollars and fifty cents for a resident Class II license;

C-1. Thirteen hundred seventy-one dollars and fifty cents for a nonresident Class II license;

D. Three hundred forty-one dollars and twenty-five cents for a resident Class III license;

D-1. Two thousand forty-seven dollars and twenty-five cents for a nonresident Class III license;

E. Fifty-six dollars for a resident apprentice lobster and crab fishing license for applicants under 18 years of age;

E-1. Three hundred thirty-six dollars for a nonresident apprentice lobster and crab fishing license for applicants under 18 years of age;

F. One hundred and fourteen dollars for a resident apprentice lobster and crab fishing license for applicants 18 years of age or older;

F-1. Six hundred and eighty-two dollars and seventy-five cents for a nonresident apprentice lobster and crab fishing license for applicants 18 years of age or older;

G. Fifty-six dollars for a student lobster and crab fishing license; and

H. Fifty-six dollars for a noncommercial lobster and crab fishing license.

**Sec. 3. 12 MRSA §6451, sub-§1**, as amended by PL 2003, c. 520, §6, is further amended to read:

**1. Allocation of license fees.** Ten dollars of each \$113.75 fee, \$10 of each \$114 fee, \$20 of each \$228.50 fee, \$30 of each \$341.25 fee, \$30 of each \$336 fee, \$60 of each \$682.75 fee, \$120 of each \$1,371.50 fee, \$180 of each \$2,047.25 fee and \$5 of each \$56 fee for each lobster and crab fishing license must be allocated to the Lobster Fund, which must be