

Maine Divorce Laws

Title 19-A: DOMESTIC RELATIONS

Part 2: MARRIED PERSONS

Chapter 21: UNIFORM PREMARITAL AGREEMENT ACT

§601. Short title

This chapter is known and may be cited as the "Uniform Premarital Agreement Act."

§602. Definitions

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

1. Premarital agreement. "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

2. Property. "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

§603. Formalities

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

§604. Content

Parties to a premarital agreement may contract with respect to:

1. Rights and obligations of parties. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

2. Right to buy, sell, use property. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of or otherwise manage and control property;

3. Disposition of property. The disposition of property upon separation, marital dissolution, death or the occurrence or nonoccurrence of any other event;

4. Spousal support. The modification or elimination of spousal support;

5. Making of will. The making of a will, trust or other arrangement to carry out the provisions of the agreement;

6. Death benefit. The ownership rights in and disposition of the death benefit from a life insurance policy;

7. Choice of law. The choice of law governing the construction of the agreement; and

8. Other matter. Any other matter, including their personal rights and obligations, not in violation of public policy or a law imposing a criminal penalty.

The right of a child to receive support may not be adversely affected by a premarital agreement.

§605. Effect of marriage

A premarital agreement becomes effective upon the marriage of the parties.

§606. Effect of children

Except as otherwise provided in this section, an effective premarital agreement is void 18 months after the parties to the agreement become biological or adoptive parents or guardians of a minor. The premarital agreement is not void if, within the 18-month period, the parties sign a written amendment to the agreement either stating that the agreement remains in effect or altering the agreement. Sections 607 and 608 apply to any amendment under this section.

This section does not apply to premarital agreements executed on or after October 1, 1993.

§607. Amendment; revocation

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

§608. Enforcement

1. Not enforceable. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

A. That party did not execute the agreement voluntarily; or

B. The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

2. Support required. If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

3. Unconscionability. An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

§609. Enforcement; void marriage

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

§610. Limitation of actions

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. Equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

§611. Application and construction

This Act must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Subchapter 3: VOID MARRIAGES AND ANNULMENT

§751. Certain marriages void without process

The following marriages are void and dissolved without legal process

1. Solemnized in State. A marriage prohibited in section 701, if solemnized in this State; or

2. Final judgment. A marriage when there is an entry of a final judgment sentencing either party to imprisonment for life.

§752. Annulment of illegal marriages

1. Complaint; court order. When the validity of a marriage is doubted, either party may file a complaint for annulment. The court shall order the marriage annulled or affirmed according to the evidence. The court's order does not affect the rights of the defendant unless the defendant was actually notified of the action or answered the complaint.

2. Parental rights and responsibilities. The court entering an order for annulment may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55.

3. Name change. Upon the request of either spouse to change that person's own name, the court, when entering judgment for annulment:

A. Shall change the name of that spouse to a former name requested; or

B. May change the name of that spouse to any other name requested.

4. Finalization. The trial court may, upon motion for entry of final judgment during the pendency of the appeal period, grant a final judgment of annulment between the parties if the court expressly finds that there is not just cause for delay and entry of judgment will not prejudice the legal or equitable rights of a party during the pendency of an appeal. The filing of a motion under this subsection does not stay an award of child or spousal support or parental rights and responsibilities, except by order of the court under the Maine Rules of Civil Procedure.

5. Annulment because of prior marriage. When a marriage is annulled due to a prior marriage, and the party who was capable of contracting the 2nd marriage contracted the 2nd marriage in good faith, believing that the prior spouse was dead, the former marriage was void or a divorce had been decreed leaving the party to the former marriage free to marry again, that fact must be stated in the decree of nullity.

§753. Action to void marriage

If, after a marriage has been solemnized, the State Registrar of Vital Statistics determines that the parties are not eligible to be married because the age or other requirements provided in this chapter are not satisfied, the state registrar may file an action in District Court to void the marriage.

Chapter 27: JUDICIAL SEPARATION

§851. Judicial separation

1. Grounds.

1-A. Jurisdiction. The District Court has jurisdiction to enter a separation decree:

A. Upon the petition of a married person who lives apart or who desires to live apart from that person's spouse for a period in excess of 60 continuous days; or

B. Upon joint petition of a married couple who live apart or who desire to live apart for a period in excess of 60 continuous days.

2. Place of filing. The person may file a petition for judicial separation in the county or judicial division in which either of the parties lives, except that if the petitioner has left the county or judicial division in which the parties lived together and the respondent still lives in that county or judicial division, the petitioner must file the petition in that county or judicial division. Notice must be given as the Maine Rules of Civil Procedure provide.

3. Order.

4. Mediation. The court shall order the parties to participate in mediation as provided in chapter 3.

5. Parental rights and responsibilities. Upon the petition of either spouse, or of the guardian or next friend of one of the parties who may be mentally ill, the court may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55.

6. Enforcement. The court may enforce obedience to its orders by appropriate process including remedies provided in chapter 65. Nothing in this section may preclude the court from incarcerating a spouse for nonpayment of child support, spousal support or attorney's fees in violation of a court order to do so.

7. Marriage settlement or contract not affected. An action under this section does not invalidate a marriage settlement or contract between the parties.

8. Orders pending final separation decree. Pending a final separation decree, the court may:

A. Order either spouse to pay to the other spouse or to the attorney for the other spouse sufficient money for the defense or prosecution of the separation action;

B. Make reasonable provision for either spouse's support, on a motion for which costs and attorney's fees may be ordered;

C. Enter a decree for parental rights and responsibilities, including support of minor children in accordance with chapter 55. An order for child support under this section may include an order for the payment of all or part of the medical expenses, hospital expenses and other health care expenses of the children or an order to provide a policy or contract for coverage of those expenses. Availability of public assistance to the family may not affect the decision of the court relating to the responsibility of a parent to provide child support;

D. By order, determine the possession of owned or rented real and personal property; and

E. Enforce obedience by appropriate processes on which costs and attorney's fees are taxed as in other actions.

9. Spousal support. The court may:

A. Order spousal support, which must be determined in accordance with the factors set forth in section 951-A;

B. Order periodic spousal support payments, payments of a specific sum or any combination of both;

C. Order either spouse to maintain a policy of health insurance for the benefit of the other spouse and to pay all or a portion of the uninsured health care expenses of the other spouse;

D. Order either spouse to maintain a policy of life insurance upon that person for the benefit of the other spouse or the couple's children;

E. Order either party to pay the costs and attorney's fees of the other party in the defense or prosecution of a judicial separation;

F. At any time, alter or amend an order for spousal support or a specific sum when it appears that justice requires it, except that a court may not increase the spousal support if the original decree prohibits an increase. In making an alteration or amendment, the court shall consider the factors set forth in section 951-A; and

G. Enforce an order for spousal support or attorney's fees and costs in accordance with section 952.

This subsection does not limit the court, by full or partial agreement of the parties or otherwise, from awarding spousal support for a limited period, from awarding spousal support that may not be increased regardless of subsequent events or conditions or otherwise limiting or conditioning the spousal support award in any manner or term that the court considers just.

10. Disposition of property. The court may order the disposition of the parties' property in accordance with section 953. Descent of real estate is governed by section 953.

11. Freedom from restraint and interference. The court may order either spouse to refrain from imposing any restraint on the personal liberty of the other or interfering with the personal privacy of the other and may order other conditions necessary to ensure the peaceful coexistence of the parties.

12. Modification and termination of separation decrees. A separation decree may be modified or is terminated as follows.

A. Upon motion by either party served in accordance with the Maine Rules of Civil Procedure, Rule 4, and after notice and hearing, the court may order the modification of a separation decree upon showing of a substantial change of circumstances justifying the modification. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to modification and remains in full force.

B. Upon the filing of a written declaration signed and acknowledged by both parties stating that they have resumed marital relations, the separation decree terminates. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to termination and remains in full force.

C. Upon entry of a final judgment of divorce between the parties, the separation agreement terminates. However, that portion of the separation decree disposing of the parties' property in accordance with section 953 is not subject to termination and remains in full force.

13. Joinder with divorce action. If a complaint or counterclaim seeking a divorce pursuant to section 901 is filed in an action in which a complaint or counterclaim seeking a separation decree has also been filed, the court shall order the dismissal of the complaint or counterclaim seeking a separation decree if the court grants a divorce.

14. Inheritance not barred. A separation decree does not bar the spouses or the issue of the marriage from inheriting.

15. Fraud. The court may not grant a judicial separation when the parties seek to procure a judicial separation for fraudulent purposes.

§852. Preliminary injunction, effect; attachment or trustee process

1. Issue of preliminary injunction. In all actions for judicial separation the clerk of the court, pursuant to order of the District Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

(1) That each party is enjoined from transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;

(2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and

(3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties.

C. The preliminary injunction must include the following statement:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court.

This court order is effective until the earliest of the following:

(1) The court revokes or modifies it;

(2) A final divorce judgment or decree of judicial separation is entered; or

(3) The action is dismissed."

D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint.

E. The preliminary injunction has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court.

2. Revocation or modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification.

A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on shorter notice as the court may order, either party subject to an order may appear and move the dissolution or modification of the order, and in that event the court shall proceed to hear and determine the motion as expeditiously as justice requires.

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court.

C. A preliminary injunction does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in the proceeding and does not limit the power of the court to issue other injunctive relief that may be proper under the circumstances.

D. A preliminary injunction terminates when:

(1) The court revokes or modifies it;

(2) A final divorce judgment or decree of judicial separation is entered; or

(3) The action is dismissed.

3. Remedies. The court may enforce a preliminary injunction issued pursuant to this section:

A. By finding a person who disobeys or resists the injunction in contempt of court;

B. By requiring a person who disobeys or resists the injunction to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction; or

C. By appropriate processes as in other actions.

The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

4. Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to chapter 101.

5. Attachment of property; trustee process. Attachment of real or personal property or on trustee process may be used in connection with an action for judicial separation.

Part 2: MARRIED PERSONS

Chapter 29: DIVORCE

Subchapter 1: GROUNDS AND PROCEDURES

§901. Action for divorce; procedures

1. Filing of complaint; grounds. A person seeking a divorce may file a complaint for divorce in the District Court if:

A. The plaintiff has resided in good faith in this State for 6 months prior to the commencement of the action;

B. The plaintiff is a resident of this State and the parties were married in this State;

C. The plaintiff is a resident of this State and the parties resided in this State when the cause of divorce accrued; or

D. The defendant is a resident of this State.

The complaint must state one or more grounds listed in section 902, subsection 1.

2. Guardian ad litem. If the alleged cause is mental illness, as provided in section 902, subsection 1, paragraph I, the court shall appoint a guardian ad litem to represent the interests of the defendant.

3. Exclusion of public. In a divorce action, at the request of either party, personally or through that party's attorney, unless the other party who has entered an appearance objects personally or through that other party's attorney, the court shall exclude the public from the court proceedings.

If the court orders that the public is to be excluded, only the parties, their attorneys, court officers and witnesses may be present.

4. Corroborating witness not required. When the merits of a divorce action are not contested, whether or not an answer has been filed, there is no requirement that the testimony of the complaining party be corroborated by witnesses.

5. Fraud. The court may not grant a divorce when the parties seek to procure a divorce for fraudulent purposes.

6. Attorney's fees and costs. The court may order either party to pay the costs and attorney's fees of the other party in the defense or prosecution of a divorce. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

§902. Grounds; defenses

1. Grounds. A divorce may be granted for one of the following causes:

A. Adultery;

B. Impotence;

C. Extreme cruelty;

D. Utter desertion continued for 3 consecutive years prior to the commencement of the action;

E. Gross and confirmed habits of intoxication from the use of liquor or drugs;

F. Nonsupport, when one spouse has sufficient ability to provide for the other spouse and grossly, wantonly or cruelly refuses or neglects to provide suitable maintenance for the complaining spouse;

G. Cruel and abusive treatment;

H. Irreconcilable marital differences; or

I. Mental illness requiring confinement in a mental institution for at least 7 consecutive years prior to the commencement of the action.

2. Irreconcilable differences; counseling. If one party alleges that there are irreconcilable marital differences and the opposing party denies that allegation, the court upon its own motion or upon motion of either party may continue the case and require both parties to receive counseling

by a qualified professional counselor to be selected either by agreement of the parties or by the court. The counselor shall give a written report of the counseling to the court and to both parties. The failure or refusal of the party who denies irreconcilable marital differences to submit to counseling without good reason is prima facie evidence that the marital differences are irreconcilable.

3. Recrimination. Recrimination is a comparative rather than an absolute defense in a divorce action.

4. Condonation. Condonation of the parties is not an absolute defense to any action for divorce but is discretionary with the court.

§903. Preliminary injunction, effect; attachment or trustee process

1. Issue of preliminary injunction. In all actions for divorce or for spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse, the clerk of the court, pursuant to order of the District Court, shall issue a preliminary injunction in the following manner.

A. The preliminary injunction must bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties and state the name and address of the plaintiff's attorney. The preliminary injunction may be obtained in blank from the clerk and must be filled out by the plaintiff's attorney. The plaintiff's attorney is responsible for serving this preliminary injunction, along with the summons and complaint, on the defendant.

B. The preliminary injunction must be directed to each party to the action and must contain the following orders:

(1) That each party is enjoined from transferring, encumbering, concealing, selling or otherwise disposing of the property of either or both of the parties, except in the usual course of business or for the necessities of life, without the written consent of the parties or the permission of the court;

(2) That each party is enjoined from imposing restraint on the personal liberty of the other party or of a biological or adopted child of either or both of the parties; and

(3) That each party is enjoined from voluntarily removing the other party or a child of the parties from a policy of health insurance that provides coverage for the other party or the child of the parties.

C. The preliminary injunction must include the following statement:

"Warning

This is an official court order. If you disobey this order the court may find you in contempt of court.

This court order is effective until the earliest of the following:

(1) The court revokes or modifies it;

(2) A final divorce judgment or decree of judicial separation is entered; or

(3) The action is dismissed."

D. The preliminary injunction is effective against the plaintiff upon the commencement of the action and against the defendant upon service of a copy of both the complaint and order in accordance with the Maine Rules of Civil Procedure. The plaintiff is deemed to have accepted service of the plaintiff's copy of the preliminary injunction and to have actual notice of its contents by filing or causing the complaint to be served. The plaintiff shall cause a copy of the preliminary injunction to be served upon the defendant with a copy of the summons and complaint.

E. The preliminary injunction has the force and effect of an order of a Judge of the Probate Court or District Court or Justice of Superior Court and is enforceable by all remedies made available by law, including contempt of court. The order remains in effect until entry of a final decree, until the case is dismissed or until otherwise ordered by the court.

2. Revocation or modification. A preliminary injunction may be revoked or modified after hearing for good cause shown. The party seeking to revoke or modify the preliminary injunction shall file a motion together with an affidavit that demonstrates the good cause necessary for revocation or modification.

A. Notwithstanding any law to the contrary, on 7 days' notice to the other party or on shorter notice as the court may order, either party subject to an order may appear and move the dissolution or modification of the order, and in that event the court shall proceed to hear and determine the motion as expeditiously as justice requires.

B. Mediation is not required before a hearing on a motion to revoke or modify a preliminary injunction except as directed by the court.

C. A preliminary injunction does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in the proceeding and does not limit the power of the court to issue other injunctive relief that may be proper under the circumstances.

D. A preliminary injunction terminates when:

- (1) The court revokes or modifies it;
- (2) A final divorce judgment or decree of judicial separation is entered; or
- (3) The action is dismissed.

3. Remedies. The court may enforce a preliminary injunction issued pursuant to this section:

A. By finding a person who disobeys or resists the injunction in contempt of court;

B. By requiring a person who disobeys or resists the injunction to pay the costs and attorney's fees that the other party incurred to enforce the preliminary injunction; or

C. By appropriate processes as in other actions.

The remedies provided in this subsection for enforcement of a preliminary injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent the simultaneous or subsequent use of any other remedy.

4. Mutual order of protection or restraint. Orders issued pursuant to this section do not supersede orders issued pursuant to chapter 101.

5. Attachment of property; trustee process. Attachment of real or personal property or on trustee process may be used in connection with an action for divorce or spousal or child support following divorce by a court that lacked personal jurisdiction over the absent spouse.

6. Application. The injunction authorized in this section does not apply to post-divorce actions.

§904. Orders pending divorce

In accordance with section 251, subsection 2, pending a divorce action, the court may:

1. Attorney's fees. Order either spouse to pay to the other spouse, or to the attorney for the other spouse, sufficient money for the defense or prosecution of the action;

2. Support. Make reasonable provision for either spouse's separate support, on a motion for which costs and attorney's fees may be ordered;

3. Minor children. Enter an order for the parental rights and responsibilities with respect to the minor children of the parties in accordance with chapter 55;

4. Enforcement. Enforce obedience by appropriate processes on which costs and attorney's fees are taxed as in other actions;

5. Determine possession. Determine the possession of owned or rented real and personal property pending the final divorce decree; or

6. Free from restraint. On motion of either spouse, prohibit a spouse from imposing restraint on the moving spouse's personal liberty. This subsection does not preclude the court from incarcerating either spouse for nonpayment of child support, spousal support or attorney's fees in violation of a court order to do so.

§905. Investigation when custody of children involved

Whenever in a divorce action the custody of a minor child is involved, the court may request the department to investigate conditions and circumstances of the child and the child's parents. Upon completion of the investigation, the department shall submit a written report to the court and to counsel of record at least 3 days before the date of hearing. The report may not be further copied or distributed by anyone. A person who violates a provision of this section commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Upon request of an interested party, the court shall require the person making the report to testify at the time of hearing. Whoever participates in making a report under this section or participates in a judicial proceeding as a result of the report is immune from civil or criminal liability, unless that person acted in bad faith or with malicious purpose.

If the court requests an investigation for purposes other than suspected abuse or neglect as defined in Title 22, chapter 1071, the court shall order either or both parties to pay to the department part or all of the costs of services under this chapter, unless the court has made a finding of inability to pay. Revenue from investigations or services provided under this chapter are dedicated to the department to defray the cost of these services.

§906. Certain divorces validated

1. Writ of attachment. All divorces already granted in this State on libels inserted in a writ of attachment, and otherwise valid except for the want of attachment nominal or otherwise upon the writ, are validated.

2. Pendency of another claim. All judgments or orders already entered granting a divorce, annulment, disposition of property under section 953 or former Title 19, section 722-A or other disposition, award or division of property incident upon a divorce or annulment, and otherwise final except for the pendency of another claim or counterclaim in the same action, are declared final, nonappealable and effective for all purposes as of the date of entry of the judgment or order. This subsection does not apply to any judgment for divorce, annulment or property disposition in which the appeal period, including any extensions, has commenced but has not expired as of June 30, 1981.

3. Finalization. In an action for divorce under section 902, the trial court may, upon motion for entry of final judgment during the pendency of the appeal period, grant a final judgment of annulment or divorce between the parties if the court expressly finds that there is not just cause for delay and entry of judgment will not prejudice the legal or equitable rights of a party during the pendency of an appeal. The filing of a motion under this subsection does not stay an award of child or spousal support or parental rights and responsibilities, except by order of the court under the Maine Rules of Civil Procedure.

§907. Out-of-state divorces

When residents of the State go out of the State for the purpose of obtaining a divorce for causes that occurred here while the parties lived here or that do not authorize a divorce here, and a divorce is thus obtained, the divorce is void in this State. In all other cases, a divorce decreed out of the State according to the law of the place, by a court having jurisdiction of the cause and of both parties, is valid here.

The validity of a custody determination contained in or ancillary to a valid divorce decree granted by another state is governed by the Uniform Child Custody Jurisdiction Act.

§908. Disclosure and recording of social security numbers

An individual who is a party to a divorce action must disclose that individual's social security number to the court. The social security number of any individual who is subject to a divorce decree must be placed in the court records relating to the decree. The record of an individual's social security number is confidential and is not open to the public. The court shall disclose an individual's social security number to the department for child support enforcement purposes.

Subchapter 2: SPOUSAL SUPPORT AND PROPERTY RIGHTS

§951-A. Spousal support

1. Statement by court. An order granting, denying or modifying spousal support must state:

- A. The type or types of support, if support is awarded;
- B. The method or methods of payment, and the term and limitations imposed, if support is awarded;
- C. If the support awarded is not, in whole or in part, subject to future modification; and
- D. The factors relied upon by the court in arriving at its decision to award or deny spousal support, if the proceeding was contested.

2. Types of spousal support. The court may, after consideration of all factors set forth in subsection 5, award or modify spousal support for one or more of the following reasons.

A. General support may be awarded to provide financial assistance to a spouse with substantially less income potential than the other spouse so that both spouses can maintain a reasonable standard of living after the divorce.

(1) There is a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the action for divorce. There is also a rebuttable presumption that general support may not be awarded for a term exceeding 1/2 the length of the marriage if the parties were married for at least 10 years but not more than 20 years as of the date of the filing of the action for divorce.

(2) If the court finds that a spousal support award based upon a presumption established by this paragraph would be inequitable or unjust, that finding is sufficient to rebut the applicable presumption.

B. Transitional support may be awarded to provide for a spouse's transitional needs, including, but not limited to:

(1) Short-term needs resulting from financial dislocations associated with the dissolution of the marriage; or

(2) Reentry or advancement in the work force, including, but not limited to, physical or emotional rehabilitation services, vocational training and education.

C. Reimbursement support may be awarded to achieve an equitable result in the overall dissolution of the parties' financial relationship in response to exceptional circumstances. Exceptional circumstances include, but are not limited to:

(1) Economic misconduct by a spouse; and

(2) Substantial contributions a spouse made towards the educational or occupational advancement of the other spouse during the marriage.

Reimbursement support may be awarded only if the court determines that the parties' financial circumstances do not permit the court to fully address equitable considerations through its distributive order pursuant to section 953.

D. Nominal support may be awarded to preserve the court's authority to grant spousal support in the future.

E. Interim support may be awarded to provide for a spouse's separate support during the pendency of an action for divorce or judicial separation.

3. Methods of payment; term and limitations. The order must state the method or methods of payment that the court determines just, including, but not limited to, lump-sum and installment payments. The order must also state the term of and any limitations on the award that the court determines just, including, but not limited to:

A. A limit on any increases or decreases in the amount of support;

B. A limit on any increases or decreases in the term of support;

C. A limit on the method or methods of payment of support;

D. A limit on the payment of support related to the remarriage of the payee; and

E. A limit on the payment of support related to cohabitation by the payee.

4. Modification. An award of spousal support is subject to modification when it appears that justice requires unless and to the extent the order awarding or modifying spousal support expressly states that the award, in whole or in part, is not subject to future modification.

5. Factors. The court shall consider the following factors when determining an award of spousal support:

A. The length of the marriage;

B. The ability of each party to pay;

C. The age of each party;

D. The employment history and employment potential of each party;

E. The income history and income potential of each party;

F. The education and training of each party;

G. The provisions for retirement and health insurance benefits of each party;

H. The tax consequences of the division of marital property, including the tax consequences of the sale of the marital home, if applicable;

I. The health and disabilities of each party;

J. The tax consequences of a spousal support award;

K. The contributions of either party as homemaker;

L. The contributions of either party to the education or earning potential of the other party;

M. Economic misconduct by either party resulting in the diminution of marital property or income;

N. The standard of living of the parties during the marriage;

O. The ability of the party seeking support to become self-supporting within a reasonable period of time;

P. The effect of the following on a party's need for spousal support or a party's ability to pay spousal support:

(1) Actual or potential income from marital or nonmarital property awarded or set apart to each party as part of the court's distributive order pursuant to section 953; and

(2) Child support for the support of a minor child or children of the marriage pursuant to chapter 63; and

Q. Any other factors the court considers appropriate.

6. Enforcement. The court may use all necessary legal provisions to enforce its decrees.

7. Real estate and other property; life insurance and other security. The court may order part of the obligated party's real estate or other property, as well as the rents, profits or income from real estate or other property, to be assigned and set out to the other party for life or for such other period determined to be just. The court may also order the obligated party to maintain life insurance or to otherwise provide security for the payment of spousal support in the event the obligation may survive the obligated party's death.

8. Cessation upon death of payee or payor. An order awarding, denying or modifying spousal support may provide that the award survives the death of the payee or payor, or both. Unless otherwise stated in the order awarding spousal support, the obligation to make any payment pursuant to this section ceases upon the death of either the payee or the payor with respect to any payment not yet due and owing as of the date of death.

9. Effect of no award or termination of spousal support. A final judgment that does not award spousal support forever precludes such an award in that action. The complete termination of a spousal support award pursuant to the terms of the award or a final post-judgment order forever precludes the reinstatement of spousal support in that action.

10. Application. This section applies to:

- A. Orders granting or denying spousal support entered on or after September 1, 2000; and
- B. The modification, termination and enforcement of orders granting spousal support entered on or after September 1, 2000.

§952. Payment of spousal support, fees and support

1. Definition. As used in this section, "decree of spousal support, support or costs" means a decree or order:

- A. For spousal support or payment of money instead of spousal support;
- B. For support of children;
- C. For support pending a divorce action;
- D. For payment of related attorney's fees; or
- E. For alteration of an existing decree or order for the custody or support of a child.

2. Order pending petition. Pending a petition to enforce a decree of spousal support, support or costs and after notice and opportunity for a hearing, the court may order either spouse to pay to the other spouse or to the other spouse's attorney sufficient money for the prosecution of or defense against the petition.

3. Attorney's fees. When making a final decree, the court may order a party to pay reasonable attorney's fees. Attorney's fees awarded in the nature of support may be made payable immediately or in installments.

4. Enforcement. The court may enforce an order as provided under chapter 65.

§953. Disposition of property

1. Disposition. In a proceeding for a divorce, for legal separation or for disposition of property following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse the spouse's property and shall divide the marital property in proportions the court considers just after considering all relevant factors, including:

- A. The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;
- B. The value of the property set apart to each spouse; and
- C. The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live in the home for reasonable periods to the spouse having custody of the children.

2. Definition. For purposes of this section, "marital property" means all property acquired by either spouse subsequent to the marriage, except:

- A. Property acquired by gift, bequest, devise or descent;
- B. Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise or descent;
- C. Property acquired by a spouse after a decree of legal separation;
- D. Property excluded by valid agreement of the parties; and

E. The increase in value of property acquired prior to the marriage and the increase in value of a spouse's nonmarital property as defined in paragraphs A to D.

(1) "Increase in value" includes:

(a) Appreciation resulting from market forces; and
(b) Appreciation resulting from reinvested income and capital gain unless either or both spouses had a substantial active role during the marriage in managing, preserving or improving the property.

(2) "Increase in value" does not include:

(a) Appreciation resulting from the investment of marital funds or property in the nonmarital property;
(b) Appreciation resulting from marital labor; and
(c) Appreciation resulting from reinvested income and capital gain if either or both spouses had a substantial active role during the marriage in managing, preserving or improving the property.

3. Acquired subsequent to marriage. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety or community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2.

4. Disposition of marital property. If both parties to a divorce action also request the court in writing to order disposition of marital property acquired by either or both of the parties to the divorce prior to January 1, 1972, or nonmarital property owned by the parties to the divorce action, the court shall also order disposition in accordance with subsection 1.

5. Decree contents. If the final divorce decree disposes of real property, it must name the party or parties responsible for preparing and recording the decree of divorce or abstract of the decree and paying the recording fee after the clerk has prepared or approved the abstract. The decree may name different parties to be responsible for different parcels.

6. Nonowner spouse claims. Notwithstanding the actual notice provisions of Title 14, section 4455 or any other laws, a claim of a nonowner spouse to real estate as "marital property," as defined in this section, does not affect title to the real estate of the owner spouse until the nonowner spouse records in the appropriate registry of deeds either:

A. A copy of the divorce complaint as filed in court;
B. A clerk's certificate of the divorce complaint, as described in Title 14, section 4455, subsection 2; or
C. A decree or abstract of the decree as described in this section.

This recording requirement applies to all divorce proceedings in this State or in any other jurisdiction.

7. Decree or abstract as deed. All rights acquired under former Title 19, section 721 or 723 on or before December 31, 1971 and all rights acquired under this section by a party in the real estate of the other party are effective against a person when the decree of divorce or an abstract of the decree is filed in the registry of deeds for the county or registry district where the real estate is situated. The decree or abstract, at a minimum, must contain:

A. The caption of the case, including the names of the parties, and any changes to the parties' names after the decree;
B. The date the judgment is final and the court that issued the decree;
C. An adequate description of the real estate, such as by reference to the volume and page number of an instrument recorded in the registry of deeds or the probate court record, or an adequate description by metes and bounds or by reference to the volume and page number of the registry of deeds' records of a survey plan of the property;
D. Any provision of the decree intended by the court to constitute an encumbrance against real estate, including any conditions pertaining to the encumbrance, in the verbatim language used by the court. If the abstract does not contain the provision required by this paragraph, an encumbrance may not be considered effective against a 3rd party unless the encumbrance has been memorialized in a separate, duly recorded instrument; and
E. A clear statement of the ownership interest of the parties in the real estate intended by the court to result from that decree.

An inconsequential failure to provide all the details required pursuant to paragraphs A to E does not create an invalid abstract for purposes of this section.

The failure of a party to record the decree or an abstract of the decree within a time period prescribed by former Title 19, section 725 does not affect the rights of that party as against the

other party or the other party's heirs or devisees. The recording of the decree or abstract of the decree has the force and effect of a quitclaim deed releasing all interest in the real estate described in the decree or abstract of the decree, whether the interest is in fee or by statute.

8. Out-of-state divorce decrees. When a divorce has been granted out of the State, the plaintiff, or the plaintiff's attorney, shall cause a duly authenticated copy of the order to be recorded with the register of deeds in each of the counties where the real estate or any part of the real estate is situated. The appropriate recording fee must be paid prior to the recording.

9. Omitted property. If a final divorce decree fails to set apart or divide marital property over which the court had jurisdiction, the omitted property is deemed held by both parties as tenants in common. On the motion of either party, the court may set aside or divide the omitted property between the parties, as justice may require.

§954. Income withholding

1. Availability and establishment of income withholding. Spousal support orders issued or modified by the courts in this State must have a provision for the withholding of income to ensure that withholding as a means of obtaining spousal support is available if arrearages occur. Except as provided in chapter 65, subchapter IV, income withholding against all spousal support obligations ordered by a court within the State must be implemented as follows.

A. New orders of spousal support must include a provision withholding the amount of spousal support from the income, regardless of the source, of the person obligated to pay the support. If an existing order of alimony or spousal support does not include a withholding order, the obligee may file a motion to amend the spousal support order to include an order for withholding, which the court shall grant.

B. Each order for withholding must provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make the spousal support payments and that no withholding may be made until the following conditions are met:

(1) Either the obligor requests that income withholding be implemented or the obligee determines that the payments the obligor has failed to make under the spousal support order are at least equal to the amount payable for one month;

(2) The obligee serves written notice of the amount of arrearage upon the obligor and informs the obligor that the obligee has procured a court order for income withholding;

(3) The obligee mails a copy of the determination of arrearage and a copy of the court's withholding order to the payor of funds;

(4) The obligee mails to the Department of Health and Human Services a copy of the determination of arrearage and a copy of the court's withholding order to enable the department to proceed pursuant to subsection 2; and

(5) The obligor has a 20-day period, after receiving the notice pursuant to subparagraph (2), to file a motion for determination of arrearages with respect to the amount of spousal support owed and to simultaneously request an ex parte stay of service on the payor of funds until the motion for determination is heard. Any stay issued by the court under this subsection expires in 60 days and may be reissued only upon a showing by the obligor that the obligor has made reasonable efforts to obtain a hearing on the motion for determination of arrearages during the effective period of the stay.

C. An order modifying the amount of spousal support issued after a hearing on a motion to modify spousal support may provide that payments be made outright by withholding. If so, paragraph B does not apply.

D. Notwithstanding any law to the contrary, the withholding order is binding on the payor of funds once service has been made upon the payor. The payor is liable for any amounts the payor fails to withhold after receiving notice. The payor shall withhold from the income payable to the obligor the amount specified in the order and shall monthly or more frequently remit the amounts withheld to the department. The payor may withhold a \$2 processing fee in addition to the amount withheld for support. The amount withheld may not exceed the limitations imposed by section 2356 or by 15 United States Code, Section 1673. An employer who, in contravention of this section, discharges from employment, refuses to employ or takes disciplinary action against any obligor because of the existence of an order and the obligations or additional obligations that it imposes upon the employer is subject to a fine in an amount not to exceed \$5,000.

E. When a withholding order is in effect and the obligor's employment is terminated or the periodic payment terminates, the obligor's employer or other payor of funds shall notify the department of

the termination within 30 days of the termination date. The notice must include the obligor's home address and the name and address of the obligor's new employer or payor of funds, if known.

F. The order of withholding with regard to a current support obligation must be terminated if:

- (1) The department is unable to forward funds to the obligee for 3 months; or
- (2) The spousal support obligation has been eliminated by a subsequent court order.

A termination may not occur while an arrearage remains unless other provisions for its repayment have been made.

If the department is unable to forward the funds to the obligee for 3 months the funds must be returned to the obligor and notice must be given to the obligor's employer or other payor to cease withholding.

2. Department designated as administering agency. The department is designated as the agency responsible for adopting and administering procedures to receive, record and disburse all spousal support payments collected pursuant to this section.

3. Liability of payor to obligee. An obligee may maintain an action for compensatory damages, including attorney's fees and court costs, against a payor who knowingly fails to comply with this section.

Subchapter 3: PARENTAL RIGHTS AND RESPONSIBILITIES

§1001. Parental rights and responsibilities

The court entering an order for divorce may make an order awarding parental rights and responsibilities with respect to a minor child of the parties in accordance with chapter 55.

Subchapter 4: CHANGE OF NAME

§1051. Name change

Upon the request of either spouse to change that person's own name, the court, when entering judgment for divorce:

1. Former name. Shall change the name of that spouse to a former name requested; or
2. Any other name requested. May change the name of that spouse to any other name requested.

Part 3: PARENTS AND CHILDREN

Chapter 59: VISITATION RIGHTS OF GRANDPARENTS

§1801. Short title

This chapter is known and may be cited as the "Grandparents Visitation Act."

§1802. Definitions

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

1. Grandparent. "Grandparent" is a biological or adoptive parent of a child's biological or adoptive parent. "Grandparent" includes a biological or adoptive parent of a child's biological or adoptive parent whose parental rights have been terminated pursuant to Title 18-A, section 9-204 or Title 22, chapter 1071, subchapter VI, but only until the child's adoption.

§1803. Petition

1. Standing to petition for visitation rights. A grandparent of a minor child may petition the court for reasonable rights of visitation or access if:

- A. At least one of the child's parents or legal guardians has died;
- B. There is a sufficient existing relationship between the grandparent and the child; or
- C. When a sufficient existing relationship between the grandparent and the child does not exist, a sufficient effort to establish one has been made.

2. Procedure. The following procedures apply to petitions for rights of visitation or access under subsection 1, paragraph B or C.

A. The grandparent must file with the petition for rights of visitation or access an affidavit alleging a sufficient existing relationship with the child, or that sufficient efforts have been made to establish a relationship with the child. When the petition and accompanying affidavit are filed with the court, the grandparent shall serve a copy of both on at least one of the parents or legal guardians of the child

B. The parent or legal guardian of the child may file an affidavit in response to the grandparent's petition and accompanying affidavit. When the affidavit in response is filed with the court, the parent or legal guardian shall deliver a copy to the grandparent.

C. The court shall determine on the basis of the petition and the affidavit whether it is more likely than not that there is a sufficient existing relationship or, if a sufficient relationship does not exist, that a sufficient effort to establish one has been made.

D. If the court's determination under paragraph C is in the affirmative, the court shall hold a hearing on the grandparent's petition for reasonable rights of visitation or access and shall consider any objections the parents or legal guardians may have concerning the award of rights of visitation or access to the grandparent. The standard for the award of reasonable rights of visitation or access is provided in subsection 3.

3. Best interest of the child. The court may grant a grandparent reasonable rights of visitation or access to a minor child upon finding that rights of visitation or access are in the best interest of the child and would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's grandparents, including the amount of previous contact;

C. The preference of the child, if old enough to express a meaningful preference;

D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;

E. The stability of any proposed living arrangements for the child;

F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;

G. The child's adjustment to the child's present home, school and community;

H. The capacity of the parent and grandparent to cooperate or to learn to cooperate in child care;

I. Methods of assisting cooperation and resolving disputes and each person's willingness to use those methods;

J. Any other factor having a reasonable bearing on the physical and psychological well-being of the child; and

K. The existence of a grandparent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203.

4. Modification or termination. The court may modify or terminate any rights granted under this section as circumstances require. Modification or termination of rights must be consistent with this section.

5. Enforcement. The court may issue any orders necessary to enforce orders issued under this section or to protect the rights of parties.

6. Costs and fees. The court may award costs, including reasonable attorney's fees, for defending or prosecuting actions under this chapter.

7. Supervision required; convictions for sexual offenses. Notwithstanding any other provision of this chapter, the court may award a grandparent who is convicted of a child-related sexual offense visitation with a minor grandchild only if the court finds that contact between the grandparent and the child is in the best interest of the child and that adequate provision for the safety of the child can be made. For purposes of this section, "child-related sexual offense" has the same meaning as in section 1653, subsection 6-A.

The court may require that visitation may occur only if there is another person or agency present to supervise visitation. If the court allows a family or household member to supervise grandparent-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

A. Minimize circumstances when the family of the grandparent who is a sex offender or sexually violent predator would be supervising visits;

B. Ensure the safety and well-being of the child; and

C. Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

§1804. Mediation

The court may refer the parties to mediation at any time after the petition is filed and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

§1805. Jurisdiction

An action may be commenced in the District Court for the district in which the minor child resides. If a child protective proceeding pursuant to Title 22, chapter 1071 that involves the minor child is pending, the court may consolidate the action filed under this chapter with that child protection proceeding.

An action must be commenced in accordance with the Maine Rules of Civil Procedure. Proceedings under this chapter are governed by the Maine Rules of Civil Procedure.

Chapter 63: CHILD SUPPORT GUIDELINES

§2001. Definitions

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

1. Basic support entitlement. "Basic support entitlement" means the sum derived from the child support table appropriate to the age of each child and the parties' gross income.

2. Child care costs. "Child care costs" means the actual child care costs incurred by the parties for each child for whom support is being established that are related to that party's employment, education or training and are reasonable or customary in the area in which that party resides.

3. Child support table. "Child support table" means the schedule that has been adopted by the department under section 2011.

3-A. Enhanced support entitlement. "Enhanced support entitlement" means the basic support entitlement multiplied by a factor of 1.5.

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.

5. Gross income. "Gross income" means gross income of a party as follows.

A. Gross income includes income from an ongoing source, including, but not limited to, salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust funds, annuities, capital gains, social security benefits, disability insurance benefits, prizes, workers' compensation benefits, spousal support actually received pursuant to a preexisting order from a spouse who is not the parent of the child for whom support is being determined, and educational grants, fellowships or subsidies that are available for personal living expenses. Gross income does not include child support received by either party for children other than the child for whom support is being determined.

B. Gross income includes expense reimbursements or in-kind payments received by a party in the course of employment or self-employment or operation of a business if the expense reimbursements or in-kind payments reduce personal living expenses.

C. Gross income includes gross receipts minus ordinary and necessary expenses when a party is self-employed or derives income from proprietorship of a business, joint ownership of a partnership or a closely held business operation, and rents minus ordinary and necessary expenses. At the discretion of the court, amounts allowable by the United States Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits may or may not be treated as ordinary and necessary expenses. The court may also determine that other business expenses, including, but not limited to, business losses, are inappropriate for determining gross income for purposes of calculating child support.

D. Gross income may include the difference between the amount a party is earning and that party's earning capacity when the party voluntarily becomes or remains unemployed or underemployed, if sufficient evidence is introduced concerning a party's current earning capacity. In the absence of evidence in the record to the contrary, a party that is personally providing primary care for a child under the age of 3 years is deemed not available for employment. The court shall consider anticipated child care and other work-related expenses in determining whether to impute income, or how much income to impute, to a party providing primary care to a child between the ages of 3 and 12 years. A party who is incarcerated in a correctional or penal institution is deemed available only for employment that is available through such institutions.

E. Gross income of an obligor does not include the amount of preexisting spousal maintenance to a former spouse who is not the parent of the child for whom support is being determined or a child support obligation actually paid pursuant to court or administrative order, or an appropriate amount of child support being voluntarily paid by a party who has a legal obligation to support that child.

G. Gross income does not include the amount of money received from means-tested public assistance programs, including, but not limited to, Temporary Assistance for Needy Families, supplemental security income, food stamps and general assistance.

6. Parental support obligation. "Parental support obligation" means the portion of total basic or enhanced support obligation a party is ordered to pay in money as child support.

7. Primary residence. "Primary residence" means the residence of a child where that child receives residential care for more than 50% of the time on an annual basis if the parents do not provide substantially equal care as defined in subsection 8-A.

8. Primary residential care provider. "Primary residential care provider" means the party who provides residential care for a child for more than 50% of the time on an annual basis if the parents do not provide substantially equal care as defined in subsection 8-A.

8-A. Substantially equal care. "Substantially equal care" means that both parents participate substantially equally in the child's total care, which may include, but is not limited to, the child's residential, educational, recreational, child care and medical, dental and mental health care needs.

9. Support guidelines. "Support guidelines" means the child support table and the criteria for application of the table set forth in section 2006.

10. Total basic support obligation. "Total basic support obligation" means the sum of money determined by adding the basic support entitlement, child care costs, extraordinary medical expenses and health insurance premiums.

10-A. Total enhanced support obligation. "Total enhanced support obligation" means the sum of money determined by calculating the enhanced support entitlement. "Total enhanced support obligation" does not include child care costs, extraordinary medical expenses and health insurance premiums.

11. Twelve through 17 years; between the ages of 12 and 18 years. The age categories "12 through 17 years" and "between the ages of 12 and 18 years" as used in the child support table and elsewhere in the support guidelines are deemed to include a child between 18 and 19 years of age who is attending a secondary school for whom an obligation of support is established or deemed to remain in force pursuant to Public Law 1989, chapter 156.

§2002. Application

Notwithstanding any other provisions of law, this chapter applies to a court action or administrative proceeding in which a child support order is issued or modified under Title 18-A, section 5-204, this Title or Title 22 and to any court action or administrative proceeding in which past support is awarded.

§2003. Forms

For the purposes of this chapter, the Supreme Judicial Court is authorized to prescribe or revise forms by administrative order or rule.

§2004. Income information and child support worksheets

1. Court actions. This subsection governs the exchange and filing of income affidavits, child support worksheets and supporting documentation in court actions.

A. In a court action to determine or modify support of a minor child, the plaintiff and defendant shall exchange, prior to mediation, affidavits regarding income and assets. These affidavits must conform with the forms provided by the court and must be accompanied by supporting documentation of current income, such as pay stubs, tax returns, employer statements or, if the plaintiff or defendant is self-employed, receipts and expenses.

B. The parties shall exchange prior to the commencement of mediation a completed child support worksheet. The worksheet must be completed in accordance with the support guidelines.

C. At least 3 days prior to a court hearing, whether contested or uncontested, the parties shall file with the court and exchange, if they have not already done so, the completed affidavits and child support worksheets. The parties are not required to file with the court the supporting documentation.

D. If a party fails to comply with this subsection, the court may, in its discretion:

(1) Impose economic sanctions; or

(2) Presume for the purpose of determining a current support obligation that the party has an earning capacity equal to the average weekly wage of a worker in this State as determined by the most recent Department of Labor statistics. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the noncomplying party earns a greater or lesser actual income.

E. The court may admit Department of Labor statistics into evidence for purposes of computing a parental support obligation.

2. Administrative proceedings. The department shall adopt rules regarding the provision of information necessary to apply the child support guidelines in administrative proceedings.

§2005. Rebuttable presumption

In a proceeding to establish or modify child support or to establish an award for past support, there is a rebuttable presumption that the parental support obligation derived from the support guidelines is the amount ordered to be paid, unless support is established under section 2006, subsection 5 or section 2007. The court or hearing officer shall review the adequacy of a child support amount agreed to by the parties with reference to the parental support obligation.

§2006. Support guidelines

1. Determination of basic support entitlement. After the court or hearing officer determines the annual gross income of both parties, the 2 incomes must be added together to provide a combined annual gross income and applied to the child support table to determine the basic support entitlement for each child.

When there is a child within each age category, the court or hearing officer shall refer to the table and locate the figure in the left-hand column that is closest to the parents' combined annual gross income. In each age category the court or hearing officer shall determine the dollar figure for the total number of children for whom support is being determined, multiply the dollar figure in each age category by the number of children in that category and add the 2 products. The resulting dollar amount represents the basic support entitlement.

2. Past support. This chapter applies to an award of past support. Past support is calculated by applying the current support guidelines to the period for which past support is owed.

3. Total basic support obligation. The total basic support obligation is determined by adding the child care costs, health insurance premiums and extraordinary medical expenses to the basic support entitlement as follows.

A. When each child is under the age of 12 years, the sums actually being expended for child care costs must be added to the basic support entitlement to determine the total basic support obligation.

B. If a child is incurring extraordinary medical expenses, the future incidence of which is determinable because of the permanent, chronic or recurring nature of the illness or disorder, the sums actually being expended for the medical expenses must be added to the basic support entitlement to determine the total basic support obligation.

C. If a party is paying health insurance premiums, the sums actually being expended for health insurance premiums for the child or children for whom support is being ordered must be added to the basic support entitlement to determine the total basic support obligation. The court shall determine the pro rata share of the health insurance premium actually expended that is attributable to each child.

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.

5. Special circumstances. The court or hearing officer shall consider the following special circumstances in determining child support.

A. When the parent who is not the primary care provider is legally obligated to support a child in that party's household other than the child for whom a support order is being sought, an adjustment must be made to that party's parental support obligation. The adjustment is made by using the nonprimary residential care provider's annual gross income to compute a theoretical support obligation under the support guidelines for each child in that household. Neither the child support received by nor the financial contributions of the other parent of each child in the household are considered in the theoretical support calculation. The obligation is then subtracted from the annual gross income, and the adjusted income is the amount used to calculate support. The adjustment is used in all appropriate cases, except when the result would be a reduction in an award previously established.

B. When the parties' combined annual gross income exceeds \$240,000, the child support table is not applicable, except that the basic weekly child support entitlement of a child is presumed to be not less than that set forth in the table for a combined annual gross income of \$240,000.

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.

D. When the parties have equal annual gross incomes and provide substantially equal care for each child for whom support is being determined, neither party is required to pay the other a parental support obligation. The parties shall share equally the child care costs, health insurance premiums and uninsured medical expenses.

D-1. When the parties do not have equal annual gross incomes but provide substantially equal care for each child for whom support is being determined, the presumptive parental support obligation must be determined as follows.

(1) The enhanced support entitlement for each child must be determined.

(2) Using the enhanced support entitlement, a parental support obligation for each child must be determined by dividing the total enhanced support obligation between the parties in proportion to their respective gross incomes.

(3) The party with the higher annual gross income has a presumptive obligation to pay the other party the lower of:

(a) The difference between their parental support obligations as calculated in subparagraph (2); and

(b) The presumptive parental support obligation determined for the payor party using the basic support entitlement under the support guidelines as though the other party provided primary residential care of the child.

(4) The parties shall share the child care costs, health insurance premiums and uninsured medical expenses in proportion to their incomes.

E. When each party is the primary residential care provider for at least one of the children involved, a child support obligation must first be computed separately for each party for each child residing primarily with the other party, based on a calculation pursuant to the support guidelines, and using as input in each calculation the number of children in each household, rather than the total number of children. The amounts determined in this manner represent the theoretical support obligation due each party for support of each child for whom the party has primary residential responsibility. Each party's proportionate share of child care costs and health insurance premiums is added to the amounts calculated, and the party owing the greater amount of child support shall pay the difference between the 2 amounts as a parental support obligation.

6. Prospective child support award. An order establishing a child support award for a child who has attained 10 years of age must also establish an award for the child as if the child were 12 years of age. The prospective award becomes effective on the child's 12th birthday without further order or decision of the court or hearing officer, and the order establishing or modifying the prospective award must state this fact.

7. Incorporated findings. As part of its current child support order, the court or hearing officer shall make the following findings:

A. The names and dates of birth of each child for whom support is being sought;

B. The annual gross income of each party and the combined annual income of both parties;

C. The amount of the basic weekly support entitlement attributable to each child under 12 years of age, as indicated per child per week on the child support table;

D. The amount of the basic weekly support entitlement attributable to each child 12 years of age and over, as indicated per child per week on the child support table;

E. The name and date of birth of each child for whom work-related day care expenses are paid and the amount of those expenses;

F. The name and date of birth of each child for whom extraordinary medical expenses are paid and the amount of those expenses;

G. The parental support obligation of the party ordered to pay child support; and

H. The name and date of birth of each child for whom health insurance premiums are paid and the amount of those premiums.

These findings are made by incorporating the completed child support worksheet into the order for current support.

8. Requirements of support provisions. To assist in a formal review proceeding, and to enable the parties to reduce the incidence of formal modification procedures, an order establishing parental support obligation must include:

A. The name of each child;

B. A beginning date for the parental support obligation;

C. A breakdown of the parental support obligation, including:

(1) The amount for basic support entitlements and the amount for enhanced support entitlements, if applicable;

(2) The amount for child care costs;

(3) The amount for extraordinary medical expenses;

(4) The percentage of the total child care costs and extraordinary medical expenses included in the parental support obligation, if applicable; and

(5) The amount for health insurance premiums;

D. For each child who has attained 10 years of age, a prospective award under subsection 6;

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 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 written findings in support of the deviation.

9. Notice of right to review. A judicial order or administrative order issued or modified in this State that includes an order for child support must include a statement that advises parents of the right to request the issuing authority to review and, if appropriate, modify the child support order according to the State's child support guidelines.

10. Disclosure and recording of social security numbers. A person who is a party to an action to establish or modify a support order shall disclose that person's social security number to the court or the department, whichever conducts the proceeding. The social security number of a person who is subject to a support order must be placed in the records relating to the support order. The record of a person's social security number is confidential and is not open to the public. The court shall disclose a person's social security number to the department for child support enforcement purposes.

§2007. Deviation from child support guidelines

1. Rebutting presumption. If the court or hearing officer finds that a child support order based on the support guidelines would be inequitable or unjust due to one or more of the considerations listed under subsection 3, that finding is sufficient to rebut the presumption established in section 2005.

2. Proposed findings. A party in a court action proposing deviation from the application of the support guidelines shall provide the court with written proposed findings showing that the application of the presumptive amount would be inequitable or unjust.

3. Criteria for deviating from support guidelines. Criteria that may justify deviation from the support guidelines are as follows:

A. The application of section 2006, subsection 5, paragraph D or D-1 would be unjust, inequitable or not in the child's best interest;

B. The number of children for whom support is being determined is greater than 6;

C. The interrelation of the total support obligation established under the support guidelines for child support, the division of property and an award of spousal support made in the same proceeding for which a parental support obligation is being determined;

D. The financial resources of each child;

E. The financial resources and needs of a party, including nonrecurring income not included in the definition of gross income;

F. The standard of living each child would have enjoyed had the marital relationship continued;

G. The physical and emotional conditions of each child;

H. The educational needs of each child;

I. Inflation with relation to the cost of living;

J. Available income and financial contributions of the domestic associate or current spouse of each party;

K. The existence of other persons who are actually financially dependent on either party, including, but not limited to, elderly, disabled or infirm relatives, or adult children pursuing post-secondary education. If the primary care provider is legally responsible for another minor child who resides in the household and if the computation of a theoretical support obligation on behalf of the primary care provider would result in a significantly greater parental support obligation on the part of the nonprimary care provider, that factor may be considered;

L. The tax consequences if the obligor is awarded any tax benefits. In determining the allocation of tax exemptions for children, the court may consider which party will have the greatest benefit from receiving the allocation;

N. The fact that income at a reasonable rate of return may be imputed to nonincome-producing assets with an aggregate fair market value of \$10,000 or more, other than an ordinary residence or other asset from which each child derives a substantial benefit;

O. The existence of special circumstances regarding a child 12 years of age or older, for the child's best interest, requires that the primary residential care provider continue to provide for employment-related day care;

P. An obligor party's substantial financial obligation regarding the costs of transportation of each child for purposes of parent and child contact. To be considered substantial, the transportation costs must exceed 15% of the yearly support obligation; and

Q. A finding by the court or hearing officer that the application of the support guidelines would be unjust, inappropriate or not in the child's best interest.

§2008. Stipulation

A stipulation of the parties establishing child support must be reviewed by the court or hearing officer to determine if the amount stipulated is in substantial compliance with the presumptive application of the guidelines and, if a deviation is proposed, whether it is justified and appropriate under section 2007. The court or hearing officer shall review a proposed order that gives the stipulation effect to determine its compliance with this section.

§2009. Modification of existing support orders

1. Motion to modify support. A party, including the department, may file a motion to modify support. 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.

2. Retroactive. Child support orders may be modified retroactively but only from the date that notice of a petition for modification has been served upon the opposing party, pursuant to the Maine Rules of Civil Procedure.

3. Substantial change of circumstances because of variance. If a child support order varies more than 15% from a parental support obligation determined under section 2006, the court or hearing officer shall consider the variation a substantial change of circumstances and if it has been less than 3 years since the order was issued or modified, the court or hearing officer shall modify the order according to the child support guidelines under chapter 63. If it has been 3 years or longer since the order was issued or modified, the court or hearing officer shall review the order without requiring proof or showing of a change of circumstances and shall modify the order if the amount of the child support award under the order differs from the amount that would be awarded under the guidelines. If a child support order was established under section 2007, a 15% variation between the amount of the order and the parental support obligation determined under section 2006 does not constitute a substantial change of circumstances.

4. Service. Except as provided in this section, a motion to modify support is governed by the Maine Rules of Civil Procedure.

A. Service in hand must be made upon the responding party, as follows:

(1) Service within the State must be made:

(a) By mailing a copy of the motion and accompanying documents by first class mail, postage prepaid, to the responding party, together with 2 copies of a notice and acknowledgement form and a return envelope, postage prepaid; or

(b) If no acknowledgement of service under division (a) is received by the sender within 20 days after the date of mailing, service of the summons and complaint may be made by a sheriff or a deputy within the sheriff's county, or other person authorized by law, or by a person specially appointed by the court for that purpose;

(2) Service outside the State must be made:

(a) By registered mail or certified mail, restricted delivery and return receipt requested; or

(b) By a person authorized to serve civil process by the laws of the place of service, or by a person specially appointed to serve the motion and accompanying documents; or

(3) Service by any other method specifically approved by the court.

B. The motion must be accompanied by:

(1) A notice that the court may enter an order without hearing if the party does not request a hearing;

(2) A notice of the right to request a hearing;

(3) A notice of the requirement of mediation prior to a hearing;

(4) The income affidavit of the moving party or the party receiving the assistance of the department, as well as the responding party's affidavit, if available;

(5) A proposed order, incorporating the child support worksheet; and

(6) Any stipulation entered into by the parties.

5. Request for hearing. A request for hearing must be made in writing within 30 days of receipt of service and be accompanied by the requesting party's income affidavit and child support worksheet. If a party requests a hearing, the matter must be referred for mediation prior to trial.

6. Order without hearing. If a party does not request a hearing within 30 days after service, the court may enter an order modifying support without hearing using the proposed order, as long as the proposed modified support obligation is equal to or greater than the obligation resulting from the application of section 2005. If a downward deviation is proposed, the court shall hold a hearing prior to entering an order. The court may apply the presumptions set out in section 2004, subsection 1, paragraph D.

7. Motion to set aside. An order entered without hearing pursuant to this section may not be set aside except on motion in which the moving party demonstrates good cause for the failure to request a hearing and a meritorious defense to the proposed order. The Chief Justice may establish costs to be paid by a party moving to set aside an order modifying child support after an order has been entered following that party's failure to file a timely written response.

8. Motions by department. When the department provides child support enforcement services, the commissioner may designate employees of the department who are not attorneys to prepare motions under this section, to file those motions in District Court and 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 section.

§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.

Chapter 65: SUPPORT ENFORCEMENT

Subchapter 1: GENERAL PROVISIONS

§2101. Definitions

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

1. Board. "Board" means a bureau, board or commission listed in Title 10, section 8001 or 8001-A, other licenser that is affiliated with or is a part of the Department of Professional and Financial Regulation, the Board of Overseers of the Bar or any other state agency or municipality that issues a license authorizing a person to engage in a business, occupation, profession or industry and any state agency, bureau, board, commission or municipality that issues a license or permit to hunt, fish, operate a boat or engage in any other sporting or recreational activity.

2. Compliance with a support order. "Compliance with a support order" means that the support obligor has obtained or maintained health insurance coverage if required by a support order and is:

A. No more than 60 days in arrears in making any of the following payments:

(1) Payments in full for current support;

(2) Periodic payments on a support arrearage pursuant to a written agreement with the department; and

(3) Periodic payments as set forth in a support order; and

B. No more than 30 days in arrears in making payments as described in paragraph A if the obligor has been in arrears for more than 30 days in making payments as described in paragraph A at least 2 times within the past 24 months.

3. Custodial parent. "Custodial parent" means a natural or adoptive parent, caretaker relative or legal custodian of a dependent child who is the child's primary residential care provider.

4. Dependent child. "Dependent child" means any minor child who is not emancipated.

5. Disposable earnings. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

6. Earnings. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, and all

gain derived from capital, from labor or from both combined, including profit gained through sale or conversion of capital assets, and unemployment compensation benefits and workers' compensation benefits.

7. License. "License" means a license, certification, registration, permit, approval or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business or industry, and a license or permit to hunt, fish, operate a boat or engage in any other sporting or recreational activity, but does not mean a registration, permit, approval or similar document evidencing the granting of authority to engage in the business of banking pursuant to Title 9-B.

8. Licensee. "Licensee" means an individual holding a license, certification, registration, permit, approval or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business or industry except an individual holding a registration, permit, approval or similar document evidencing the granting of authority to engage in the business of banking pursuant to Title 9-B.

9. Order of support.

9. Support order.

10. Order for spousal support; order for support; order for costs; spousal support order.

11. Public assistance. "Public assistance" means money payments and medical care furnished to or on behalf of dependent children by the State. It does not include assistance furnished by a political subdivision.

12. Responsible parent. "Responsible parent" means the natural or adoptive parent of a dependent child.

13. Support order. "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

§2102. Enforcement of rights

The obligee may enforce the right of support against the obligor, and the State or any political subdivision of the State may proceed on behalf of the obligee to enforce that right of support against the obligor. When the State or a political subdivision of the State furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing an award for past support and of obtaining continuing support. The obligee's right of support includes an independent right to seek appropriate attorney's fees for handling the action. An award of attorney's fees may be collected by any means available under the law, including, but not limited to, remedies available under Title 14 and Title 36, section 5276-A.

§2103. Duty of department to enforce support obligations

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

A. "Applicant" means an individual, including a person receiving services under section 2108, state, political subdivision of a state or instrumentality of a state.

B. "Support obligations" means the amount due an obligee for support under an order of support and includes any arrearages of support that have accrued.

2. Enforcement of support obligations. The department may, for a fee, locate absent parents, defend against support reductions, establish support obligations, seek motions to increase 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 II, 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.

3. Fees and costs. The department shall charge a fee of \$2 per week to all obligors whose child support payments are made to the department to reduce the department's costs in providing support enforcement services. The department may collect fees owed by the obligor by using any remedies available for collection of child support. The department shall retain all fees and apply

them toward Temporary Assistance for Needy Families or the child support enforcement programs. The department shall apply amounts collected toward fees only after the amount owed to the family for the current period is paid. The department shall collect the fee from obligors whose child support is paid to the department under an income withholding order by notifying the payor of income to the obligor to increase withholding by \$2 per week. The department or any other person is not required to issue a new or amended withholding order to collect the fee, but shall notify the obligor in advance of the increase in withholding.

4. Attorney's fees. The Office of the Attorney General or attorneys acting under Title 5, section 191 may seek appropriate attorney's fees at the prevailing community rate for legal representation of individuals under this section. An award of attorney's fees may be collected by any means available under the laws, including, but not limited to, remedies available under Title 14 and Title 36, section 5276-A.

5. State's role in support enforcement cases. In a child support action brought by the department under this Title or Title 22, the department or prosecuting attorney represents solely the interest of the State in providing child support enforcement services under federal law. This section may not be construed to modify statutory mandate, authority or confidentiality required of any governmental agency, nor does representation by a prosecuting attorney create an attorney-client relationship between the attorney and any party, other than the State.

For the purpose of this subsection, "prosecuting attorney" means an assistant attorney general, an assistant district attorney, an attorney under contract or an attorney in the employ of the department.

6. Obligation established. The current support obligations in cases brought in accordance with this section are established pursuant to chapter 63. An obligation for past support due is established by application of the most current child support scale to the responsible parent's income for the time period in which the applicant was entitled to support payments and may include reimbursement for past medical expenses. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent had an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income. A present disability to pay child support, legal or otherwise, does not bar a determination of past debt due the applicant for any relevant period in which the disability did not exist.

If the responsible parent defaults or otherwise fails to appear, and no order of support has been established, the court or administrative hearing officer shall presume that the responsible parent has an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income.

§2104. State registry of support orders

1. Record of all support orders. On or before October 1, 1998, the department shall maintain a record of each support order established or modified in the State. The record must include standardized data elements, including the names, social security numbers and dates of birth of the parties. The department shall update and monitor the record relating to each support order in all cases in which support rights are assigned to the department or for which the department otherwise provides support enforcement services. The department and the judicial branch shall work cooperatively to develop efficient procedures for implementing the requirements of this subsection.

2. Automated data matching. The department shall compare by automated data processing the record of each support order maintained by the department with the records of the Federal Government, other states and other state agencies for the purposes of matching, receiving and disclosing information as required by 42 United States Code, Chapter 7, Subchapter IV, Part D (1996). All state agencies shall work cooperatively with the department to develop automated procedures for providing the department with information the department is permitted access to for purposes of carrying out its responsibilities under the Social Security Act, Chapter 7, Subchapter IV, Part D.

§2105. Duty of department to recognize and enforce actions of other states

The department shall recognize and enforce the authority of agencies of other states that are responsible for administering the Social Security Act, 42 United States Code, Chapter 7, Subchapter IV (1996) to take actions under Section 325(a)(2) of the Personal Responsibility and Work Opportunity Act of 1996, Public Law 104-193, 110 Stat. 2105. The department shall enforce the actions of other states as necessary by filing a civil action in the District Court.

§2106. Dependent health care coverage

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.

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.

2. Employer duty to withhold premiums from employee and pay insurer. An employer who enrolls a dependent child under this section shall withhold from the employee's compensation the employee's share, if any, of the cost of the health care coverage for the child enrolled and pay that amount to the insurer, except that the amount of compensation withheld by the employer may not exceed the limits provided for in section 2356. If withholding the maximum amount of the employee's disposable earnings under section 2356 does not cover the employee's initial share of the cost, the employer may elect not to enroll the employee's dependent child.

3. Duty to maintain coverage. An employer may not disenroll or eliminate coverage for a child enrolled under this section unless:

- A. The employer is provided with satisfactory written evidence that the court or administrative order is no longer in effect;
- B. The employer is provided with satisfactory written evidence that the child is or will be enrolled in comparable health coverage that will take effect no later than the date when the child is disenrolled;
- C. The employer has eliminated family health care coverage for all of its employees; or
- D. The parent who is ordered to provide health care coverage for the child terminates employment.

4. Answer. The employer shall respond to a parent who requests enrollment within 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.

5. Notice of coverage and plan changes. If a child is enrolled under this section, the employer shall provide information to the custodial parent that includes the name of the insurer and the extent of the coverage provided and make available any necessary claim forms or enrollment membership cards. The employer shall inform the custodial parent of a change in coverage, change in insurer or if the plan is terminated. The employer shall provide the custodial parent with any information about the plan that the employer provides to covered employees.

§2107. Credit for dependent benefits (REALLOCATED FROM TITLE 19-A, SECTION 2104)

If a child receives dependent benefits as a result of the obligor parent's disability, any tribunal establishing, reviewing or modifying the child support obligation or debt shall give the obligor parent credit for the dependent benefits paid to the child.

1. Calculation of child support obligation; order. The tribunal shall calculate the obligor's child support obligation and issue a child support order pursuant to the child support guidelines in chapter 63. The obligation may not be reduced by the dependent benefits paid to the child.

2. Findings; credit for benefits paid. The tribunal shall make the following findings:

- A. That the child currently receives dependent benefits as a result of the obligor parent's disability;
- B. That the receipt of these benefits satisfied part or all of the obligation; and
- C. That the obligor must receive credit against the established obligation for the benefits received. Credit may not exceed the amount of the current obligation for the period for which the benefits are paid. Credit may not be given toward a past or future obligation for dependent benefits that exceed the current obligation.

§2108. State child support enforcement services (REALLOCATED FROM TITLE 19-A, SECTION 2105)

Notwithstanding any other provision of law, upon written authorization by the Secretary of the United States Department of Health and Human Services, the judicial branch and the department shall provide child support enforcement services in accordance with the United States Social Security Act, Title IV-D, without need of an application for services. When a person is seeking or has been awarded child support, the court shall provide written notice to that person that explains the services provided by the State and the right to refuse services if services are not wanted.

§2109. Limitations on collection of child support

A person other than an employee of the department who enters into an agreement with another to collect child support is subject to the following limitations.

1. Fee limitation. In a contingent-fee contract for the collection of child support, the fee may be based only upon the amount of unpaid past child support arrearage calculated as of the date when the contract is signed. A fee may not be based on current or future child support payments and may be assessed only on funds actually received by the child support obligee.

2. Collection practices limitations. Each person who enters into an agreement with another to collect child support is subject to the provisions of Title 32, chapter 109-A if either the support obligee or the support obligor is a resident of this State.

3. Requirement for written contract. Each agreement between a person who collects or offers to collect child support and a child support obligee must be in writing, dated and signed by the support obligee. The contract must contain a full and detailed description of the services to be performed for the support obligee and the terms and conditions of payment. The contract may not contain a penalty for termination at any time by the support obligee.

4. Basis of compensation. A collector of child support obligations may not impose a charge or fee for any child support payments collected primarily through the efforts of a governmental agency.

Subchapter 2: ENFORCEMENT BY DEPARTMENT

Article 1: Location of Persons, Income and Other Property

§2151. Locating those liable for support of dependents

To assist in locating parents who have deserted their children and other persons liable for support of dependents, the department may request information from the records of all departments, boards, bureaus and other agencies of this State and those departments, boards, bureaus and other agencies shall provide the necessary information. Only information directly bearing on the identity and whereabouts of a person owing or asserted to be owing an obligation of support may be requested and used or transmitted by the department pursuant to the authority conferred by this section. The department may make such information available only to public officials and agencies of this State, other states and the political subdivisions of this State and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents for the purpose of enforcing their liability for support. The department may

make information available to federal agencies conducting activities under 42 United States Code, Chapter 7, Subchapter IV, Part D (1996). The department must be provided automated access to records it is permitted access to under this section if the records are maintained in an automated data base.

§2152. Disclosure of information in medical support recoupment and child support cases

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

A. "Assets" means any interest in real or personal property.

B. "Medicaid recipient" means an individual authorized by the department to receive services under the provisions of the United States Social Security Act, Title XIX and successors to it.

2. Request for information concerning responsible parents. Except as provided in subsection 5, the department may request of any person information needed to establish, modify or enforce a support order, including a responsible parent's or alleged responsible parent's:

A. Complete name;

B. Social security number;

C. Date and place of birth;

D. Present and past employment status;

E. Earnings;

F. Current or last known address;

G. Assets and liabilities;

H. Availability and description of present or previous health insurance coverage for a dependent child; and

I. Health insurance benefits paid or applied for under a policy of health insurance for a dependent child.

3. Request for information concerning present and former Medicaid recipients. The department may request of any person information relating to the following matters concerning a present or former Medicaid recipient:

A. Availability and description of health insurance coverage; and

B. Health insurance benefits paid or applied for under a policy of health insurance.

4. Demand for information.

5. If paternity has not been established. If an alleged responsible parent is a putative father of a child conceived and born out of wedlock, a request for information must be limited to the following matters concerning the alleged responsible parent:

A. Complete name;

B. Date and place of birth;

C. Present and past employment status;

D. Social security number; and

E. Current or last known address.

5-A. Duty to disclose. All persons, as defined in section 101, subsection 9, shall respond fully and promptly to a request for information made by the department under this section and to a request for similar information made by another state's child support enforcement agency, except that information that is privileged under the Maine Rules of Evidence need not be disclosed.

6. Immunity from liability. A person who discloses information requested by the department under this section or who discloses similar information requested by another state's child support enforcement agency is immune from liability to any other person because of the disclosure, unless the information is privileged under the Maine Rules of Evidence.

7. Affirmation of responses. The department may require that a response to a request for information be affirmed under the penalties for unsworn falsification under Title 17-A, section 453.

8. Facilitation of responses. The department or other requesting agency shall provide a prepaid, preaddressed envelope with each request for information.

9. Notice to responsible parent or alleged responsible parent. When requesting information as provided by this section, the department shall send a copy of the request to the responsible parent or alleged responsible parent by regular mail to the responsible parent or alleged responsible parent's last known address.

10. Penalties for nondisclosure. A person who knowingly fails to respond to a request for information, who knowingly fails to disclose information requested or who knowingly refuses to disclose, commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

11. Confidentiality of information; unlawful dissemination; penalty. All information collected in connection with the department's child support enforcement activity and medical support recoupment pursuant to this section is confidential and available only for the use of appropriate departmental personnel and legal counsel for the department in carrying out their functions. A person is guilty of unlawful dissemination if that person knowingly disseminates information in violation of this subsection. Unlawful dissemination is a Class E crime, which, notwithstanding Title 17-A, section 1252, subsection 2, paragraph E, is punishable by a fine of not more than \$500 or by imprisonment for not more than 30 days.

12. Admissible evidence. If a person, in response to a request for information pursuant to this section, provides records or data from regularly conducted business, the information is admissible as a public record pursuant to the Maine Rules of Evidence 803(8)(A) and is not within the investigative report exception found in the Maine Rules of Evidence 803(8)(B) because the information is provided pursuant to a duty imposed by law and is inherently reliable.

§2153. Publication of delinquent child support obligors

1. Publication. The department may publish in the State's newspapers the names of delinquent child support obligors who owe unpaid child support. Publication may include the place of residence and the amount of unpaid child support of each obligor.

2. Immunity. Newspapers and their employees are immune from any criminal or civil liability as a result of publication under subsection 1, unless publication is a result of negligent or intentional misconduct.

§2154. Employment information

1. Employment information. Upon notice by the department, an employer doing business in this State shall report to the department the:

A. Hiring of a person who resides or works in this State to whom the employer anticipates paying earnings; and

B. Rehiring or return to work of an employee who was laid off, furloughed, separated, granted a leave without pay or terminated from employment

2. Exceptions.

3. W-4 form. An employer required to report under subsection 1 may report by mailing the employee's copy of the W-4 form, transmitting a facsimile of the W-4 form, sending magnetic tape in a compatible format or by other means, as mutually agreed to by the employer and the department, that will result in timely reporting.

4. Report. An employer shall submit a report within 7 days of the hiring, rehiring or return to work of the employee. The report must contain:

A. The employee's name, address, social security number and date of birth; and

B. The employer's name, address and employment security reference number or unified business identifier number.

4-A. Independent contractors. The following entities shall report to the department the hiring of an independent contractor to perform work for the State under a contract or subcontract in the same manner, except for reporting the date of birth, as the hiring of an employee is reported under subsection 4:

A. The State, when acting in the capacity of a contracting agency;

B. A contractor who contracts with the State; and

C. A subcontractor of a contractor under paragraph B.

The contractor's or subcontractor's taxpayer identification number may be reported in the place of the contractor's or subcontractor's social security number.

5. Retention of records.

6. Penalties. An employer who knowingly fails to report as required under this section must be given a written warning by the department for the first violation and is subject to a civil penalty of up to \$200 per month for each subsequent violation after the warning has been given. All violations within a single month are considered a single violation for purposes of assessing the penalty.

7. Transmissions to the National Directory of New Hires. Within 3 business days after the date information regarding a newly hired or rehired employee is entered into the department's computer system, the department shall transmit the information to the National Directory of New Hires maintained by the federal Department of Health and Human Services. After obtaining the information from the Department of Labor, the department shall send the National Directory of

New Hires quarterly reports of wages and unemployment compensation benefits paid to persons who are reported to the department under this section as specified by federal regulations.

8. Use of new hire information. The department shall use the information it receives under this section to locate persons and identify sources of income for purposes of:

- A. Establishing, enforcing and modifying child support obligations;
- B. Collecting overpayments of public assistance and overissue of food stamps when benefits are no longer being paid; and
- C. Determining eligibility and enforcing eligibility rules for cash assistance, food stamps, Medicaid and other benefit programs funded or administered by the department.

9. Access to information. The Department of Labor, the Workers' Compensation Board and the State Tax Assessor may have access to the information reported to the department for purposes of program administration.

§2155. Duty to report

A responsible parent required by law to pay child support to the department shall inform the department of any changes in the responsible parent's current address or employer. Failure to report a change of address or employer to the department within 15 days is a civil violation for which a forfeiture not to exceed \$200 may be adjudged for each violation. Each judicial order or administrative decision issued or modified in this State that includes an order for child support must include a statement that advises the responsible parent of the duty to report and the penalty for failure to report.

§2156. Annual statement

The department shall send an annual statement of arrearages to all obligors who owe past-due child support that the department is authorized to collect. The statement must include notice to the obligor that the department may collect the amount owed by issuing an order to seize and sell property. The statement may include other notices that the department considers appropriate. The department shall send the statement to the obligor by regular mail to the obligor's last known address. If the obligor disagrees with the department's statement of arrearages, the obligor must immediately notify the department.

§2157. Notice of right to have support order reviewed

Not less than once every 3 years, the department shall send written notice to parents who are subject to a support order being enforced by the department of the right to have the order reviewed and, if appropriate, modified according to the applicable child support guidelines.

Article 2: Enforcement

§2201. Notice to licensing boards and obligor; judicial review

1. Notice. The department may serve notice upon a support obligor who is not in compliance with an order of support that informs the obligor of the department's intention to submit the obligor's name to the appropriate board as a licensee who is not in compliance with an order of support. The notice must inform the obligor that:

- A. The obligor may request an administrative hearing to contest the issue of compliance;
- B. A request for hearing must be made in writing and must be received by the department within 20 days of service;
- C. If the obligor requests a hearing within 20 days of service, the department shall stay the action to certify the obligor to a board for noncompliance with an order of support pending a decision after hearing;
- D. If the obligor does not request a hearing within 20 days of service and is not in compliance with an order of support, the department shall certify the obligor to the appropriate board for noncompliance with an order of support;
- E. If the department certifies the obligor to a board for noncompliance with an order of support, the board must revoke the obligor's license and refuse to issue or reissue a license until the obligor provides the board with a written confirmation of compliance from the department that states the obligor is in compliance with the obligor's order of support. A revocation by an agency or a refusal

by an agency to reissue, renew or otherwise extend the license or certificate of authority is deemed a final determination within the meaning of Title 5, section 10002;

F. If the obligor files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, the department shall stay action to certify the obligor to a board for noncompliance with an order of support; and

G. The obligor can comply with an order of support by:

(1) Paying current support;

(2) Paying all past-due support or, if unable to pay all past-due support and a periodic payment for past-due support has not been ordered by the court, by making periodic payments in accordance with a written payment agreement with the department; and

(3) Meeting the obligor's health insurance obligation.

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 as specified in the Maine Rules of Civil Procedure. For purposes of this section, authorized representatives of the commissioner may serve the notice.

1-A. Written agreement to pay past-due support. An obligor who is presently unable to pay all past-due support may come into compliance with the support order by executing a written payment agreement with the department and by complying with that agreement. A condition of a written payment agreement must be that the obligor pay the current child support when due. Before a written payment agreement is executed, the obligor shall:

A. Disclose fully to the department in writing on a form prescribed by the department the obligor's financial circumstances, including income from all sources, assets, liabilities and work history for the past year; and

B. Provide documentation to the department concerning the obligor's financial circumstances, including copies of the most recent state and federal income tax returns, both personal and business, a copy of a recent pay stub representative of current income and copies of other records that show the obligor's income and the present value of assets held by the obligor.

After full disclosure, the department shall determine the obligor's ability to pay past-due support and request the obligor to execute a written payment agreement consistent with the obligor's ability to pay, not to exceed the limits on income withholding in section 2356.

1-B. Failure to comply with written agreement. Failure to comply with a written payment agreement is grounds for license revocation unless the obligor notifies the department that the obligor is unable to comply with the agreement and provides the department with evidence of the obligor's current financial circumstances to support the claim. The consequences of failing to comply with a written payment agreement and the requirements to avoid license revocation, if the obligor can not comply with the agreement, must be stated in the agreement. If the obligor claims inability to comply with a written payment agreement, the department, upon motion to the District Court, may request the court to determine the obligor's ability to pay past-due support. After notice and an opportunity for hearing, the court may make a finding of money due, render judgment in that amount and order any relief provided under sections 2603 and 2603-A. For purposes of this subsection, the commissioner may designate employees of the department who are not attorneys to represent the department in District Court. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

2. Administrative hearing. An obligor may request an administrative hearing upon service of the notice described in subsection 1. The request for hearing must be made in writing and must be received by the department within 20 days of service. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter IV. The issues that may be determined at hearing are limited to whether the obligor is required to pay child support under an order of support and whether the obligor is in compliance with an order of support. The obligor may raise additional issues, including the reasonableness of a payment agreement in light of the obligor's current circumstances, to be preserved for appeal.

3. Decision after hearing. The department shall render a decision after hearing without undue delay as to whether the obligor is in compliance with the obligor's order of support. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30

days of the date of the decision. The department shall send an attested copy of the decision to the obligor by regular mail to the obligor's most recent address of record.

4. Appeal to Superior Court. If the obligor appeals the department's decision under subsection 3, the Superior Court may hear and determine issues raised at the hearing, including the reasonableness of a payment agreement in light of the obligor's current circumstances.

5. Stay. If an obligor timely requests a hearing to contest the issue of compliance, the department may not certify the name of the obligor to a board for noncompliance with an order of support until the department issues a decision after hearing that finds the obligor is not in compliance with an order of support.

6. Certification of noncompliance. The department may certify in writing to the appropriate board that a support obligor is not in compliance with an order of support if:

A. The obligor does not timely request a hearing upon service of a notice issued under subsection 1 and is not in compliance with an order of support 21 days after service of the notice;

B. The department issues a decision after a hearing that finds the obligor is not in compliance with an order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 3;

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with a support order;

D. The obligor abandons a timely request for a hearing on the department's notice of noncompliance and is not in compliance with the support order; or

E. The obligor fails to comply with a written payment agreement, does not notify the department that the obligor is unable to comply with the agreement and does not provide the department with evidence of the obligor's current financial circumstances.

The department shall send by regular mail a copy of a certification of noncompliance filed with a board to the obligor at the obligor's most recent address of record.

7. Notice from board. A board shall notify an obligor certified by the department under subsection 6, without undue delay, that the obligor's application for the issuance or renewal of a license may not be granted or that the obligor's license has been revoked because the obligor's name has been certified by the department as a support obligor who is not in compliance with an order of support.

8. Written confirmation of compliance. When an obligor who is served notice under subsection 1 subsequently complies with the official order of support, the department shall provide the obligor with written confirmation that the obligor is in compliance with the order of support.

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

10. Agreements. The department and the various boards shall enter into agreements that are necessary to carry out the requirements of this section, but only to the extent the department determines it is cost-effective.

11. Motion to modify order of support; stay. This section does not prohibit a support obligor from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. The department shall stay action to certify the obligor to a board for noncompliance with an order of support if the obligor files a motion to modify support with the court and notifies the department of the motion or requests the department to amend a support obligation established by the department.

12. Reporting. On or before April 1, 1994, or as soon as economically feasible and at least annually, all boards subject to this section and the Department of Professional and Financial Regulation, Division of Administrative Services shall provide to the department specified information, on magnetic tape or other machine-readable form, according to standards established by the department, about applicants for licensure and all current licensees. The Department of Professional and Financial Regulation, Office of Securities shall provide the specified information for only those current licensees that are residents of this State. The information to be provided must include all of the following information about the licensee:

A. Name;

B. Address of record;

C. Federal employer identification number or social security number;

D. Type of license;

E. Effective date of license or renewal;

F. Expiration date of license; and

G. Active or inactive status.

13. Effect of noncompliance. The department, upon receipt of the licensee information referred to in subsection 12, shall identify and notify each board and the Department of Professional and Financial Regulation, Division of Administrative Services, of the names of its licensees who are support obligors subject to this section. The notice must include the social security number and address of the support obligor, the name, address and telephone number of the department's designee for implementing this section and a certification by the department that it has verified that the licensee is a support obligor subject to this section. When the department notifies a board under this subsection, the department shall provide adequate notice of its action to the obligor. The notice must inform the obligor of the right to request a hearing on the issue of whether the obligor is in compliance with an order of support. The board may not issue or renew a license to a person whose name is on the most recent list from the department until the board receives a copy of the written confirmation of compliance specified in subsection 8.

14. Subsequent reissuance, renewal or other extension of license or certificate. The board may reissue, renew or otherwise extend the license or certificate of authority in accordance with the board's rules after the board receives a copy of the written confirmation of compliance specified in subsection 8. A board may waive any applicable requirement for reissuance, renewal or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest.

15. Program review. In furtherance of the public policy of increasing collection of child support, the department shall report the following to the Legislature and the Governor on January 31, 1999 and biennially thereafter:

- A. The number of support obligors identified as licensees subject to this section;
- B. The number of support obligors identified by the department under this section who are not in compliance with a support order; and
- C. The number of actions taken by the department under this section and the results of those actions.

§2202. Family financial responsibility

1. Purpose. The Legislature finds and declares that child support is a basic legal right of the State's parents and children, that mothers and fathers have a legal obligation to provide financial support for their children and that child support payments can have a substantial impact on child poverty and state welfare expenditures. It is therefore the Legislature's intent to encourage payment of child support to decrease overall costs to the State's taxpayers while increasing the amount of financial support collected for the State's children. The department is authorized to initiate action under this section against individuals who are not in compliance with an order of support.

1-A. Written agreement to pay past-due support. An obligor who is presently unable to pay all past-due support may come into compliance with the support order by executing a written payment agreement with the department and by complying with that agreement. A condition of a written payment agreement must be that the obligor pay the current child support when due. Before a written payment agreement is executed, the obligor shall:

- A. Disclose fully to the department in writing on a form prescribed by the department the obligor's financial circumstances, including income from all sources, assets, liabilities and work history for the past year; and
- B. Provide documentation to the department concerning the obligor's financial circumstances, including copies of the most recent state and federal income tax returns, both personal and business, a copy of a recent pay stub representative of current income and copies of other records that show the obligor's income and the present value of assets held by the obligor.

After full disclosure, the department shall determine the obligor's ability to pay past-due support and request the obligor to execute a written payment agreement consistent with the obligor's ability to pay, not to exceed the limits on income withholding in section 2356.

1-B. Failure to comply with written agreement. Failure to comply with a written payment agreement is grounds for license revocation unless the obligor notifies the department that the obligor is unable to comply with the agreement and provides the department with evidence of the obligor's current financial circumstances to support the claim. The consequences of failing to comply with a written payment agreement and the requirements to avoid license revocation, if the obligor can not comply with the agreement, must be stated in the agreement. If the obligor claims inability to comply with a written payment agreement, the department, upon motion to the District Court, may request the court to determine the obligor's ability to pay past-due support. After

notice and an opportunity for hearing, the court may make a finding of money due, render judgment in that amount and order any relief provided under sections 2603 and 2603-A. For purposes of this subsection, the commissioner may designate employees of the department who are not attorneys to represent the department in District Court. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

2. Notice. The commissioner may serve notice upon a support obligor who is not in compliance with an order of support that informs the obligor of the commissioner's intention to certify the obligor to the Secretary of State as an individual who is not in compliance with an order of support. The notice must inform the obligor that:

- A. The obligor may contest the issue of compliance at an administrative hearing;
- B. A request for hearing must be made in writing and must be received by the department within 20 days of service;
- C. If the obligor requests a hearing within 20 days of service, the department shall stay the action to certify the obligor to the Secretary of State for noncompliance with an order of support pending a decision after hearing;
- D. If the obligor does not timely request a hearing to contest the issue of compliance and does not obtain a written confirmation of compliance from the department, the commissioner shall certify the obligor to the Secretary of State for noncompliance with an order of support;
- E. If the commissioner certifies the obligor to the Secretary of State, the Secretary of State must suspend any motor vehicle operator's licenses that the obligor holds and the obligor's right to apply for or obtain a motor vehicle operator's license;
- F. If the obligor requests a hearing, the obligor shall direct the request to the department's support enforcement office that is responsible for handling the obligor's case;
- G. If the obligor files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, the department shall stay action to certify the obligor to the Secretary of State for noncompliance with an order of support; and
- H. The obligor can comply with an order of support by:
 - (1) Paying current support;
 - (2) Paying all past-due support or, if unable to pay all past-due support and a periodic payment for past-due support has not been ordered by the court, by making periodic payments in accordance with a written payment agreement with the department; and
 - (3) Meeting the obligor's health insurance obligation.

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 for the obligor 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. The notice must be served by certified mail, return receipt requested, by service in hand, or as specified in the Maine Rules of Civil Procedure. For purposes of this section, an authorized representative of the commissioner may serve the notice.

3. Administrative hearing. An obligor may request an administrative hearing within 20 days of service of the notice described in subsection 2. The request for hearing must be in writing and must be received by the department within 20 days. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV. The issues that may be determined at hearing are limited to whether the obligor is required to pay child support under an order of support and whether the obligor is in compliance with an order of support, although the obligor may raise additional issues, including the reasonableness of a payment agreement in light of the obligor's current circumstances, to be preserved for appeal.

4. Decision after hearing. The department shall render a decision after hearing without undue delay as to whether the obligor is in compliance with the obligor's order of support. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send an attested copy of the decision to the obligor by regular mail to the obligor's most recent address of record.

5. Appeal to Superior Court. If the obligor appeals the department's decision under subsection 4, the Superior Court may hear and determine issues raised at the hearing, including the reasonableness of a payment agreement in light of the obligor's current circumstances.

6. Stay. If an obligor timely requests a hearing to contest the issue of compliance, the department may not certify the name of the obligor to the Secretary of State for noncompliance

with an order of support until the department issues a decision after hearing that finds the obligor is not in compliance with an order of support.

7. Certification. The commissioner may certify in writing to the Secretary of State that a support obligor is not in compliance with an order of support if:

A. The obligor does not timely request a hearing upon service of a notice issued under subsection 2 and is not in compliance with an order of support 21 days after service of the notice;

B. The department issues a decision after a hearing that finds the obligor is not in compliance with an order of support and the obligor has not appealed the decision within the 30-day appeal period provided in subsection 4;

C. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with a support order;

D. The obligor abandons a timely request for a hearing on the department's notice of noncompliance and is not in compliance with the support order; or

E. The obligor fails to comply with a written payment agreement, does not notify the department that the obligor is unable to comply with the agreement and does not provide the department with evidence of the obligor's current financial circumstances.

The department shall send by regular mail a copy of a certification of noncompliance filed with the Secretary of State to the obligor at the obligor's most recent address of record.

8. Written confirmation of compliance. When an obligor who is served notice under subsection 2 subsequently complies with the order of support, the department shall provide the obligor with written confirmation that the obligor is in compliance with the order of support.

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

10. Agreement. The department may enter into an agreement with the Secretary of State to carry out the requirements of this section.

11. Motion to modify court order of support; stay. This section does not prohibit a support obligor from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. The department shall stay action to certify the obligor to the Secretary of State for noncompliance with an order of support if the obligor files a motion to modify support with the court and notifies the department of the motion or requests the department to amend a support obligation established by the department.

12. Program review. In furtherance of the public policy of increasing collection of child support, the department shall report the following to the Legislature and the Governor on January 31, 1999 and biennially thereafter:

A. The number of notices served upon support obligors by the department under this section;

B. The number of obligors served notice under this section who request a hearing;

C. The number of hearings held under this section, the results of the hearings and the number of cases settled without a hearing;

D. The number of support obligors certified to the Secretary of State for noncompliance with a court order of support under this section; and

E. The costs incurred in the implementation and enforcement of this section and the department's estimate of the amount of child support collected due to the department's actions under this section.

13. Premium from noncustodial parents. The Department of Health and Human Services, Division of Support Enforcement and Recovery shall collect a premium from noncustodial parents whose children are MaineCare members and who have legally been determined to be responsible for medical care contributions for these children.

§2203. Order to seize and sell

1. Execution of support liens. The department may issue an order to seize and sell to execute a support lien established under former Title 19, section 503 or 503-A or section 2357 or to enforce and collect any money judgment assessed under chapter 51, chapter 53, chapter 55, chapter 63 or this chapter. An order to seize and sell has the same effect as a writ of execution issued by the District Court or the Superior Court.

2. Issuance of order. An order to seize and sell is an order, under official seal of the department, directed to a county sheriff or a levying officer authorized by law to enforce a District Court or Superior Court judgment. The order must command the recipient of the order to seize and sell specific nonexempt real and personal property of an obligor to satisfy the support lien upon which the order is based. The department must know or have reason to believe the obligor has a

substantial ownership interest in the property identified in the order. Before issuing the order, the department must search the records of the applicable registry of deeds for real property and the records of the Secretary of State for personal property to determine if there are other persons who have an ownership interest in the property.

3. Content of order. An order to seize and sell must be signed by the commissioner or the commissioner's designee. The order must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, plus fees and costs, if any. The order must identify the specific property that is the subject of the order. The order must include notice that tells the obligor and other persons who are known to have an ownership interest in the property how to contest the seizure and sale of the property, including notice of the right to an administrative hearing within 5 business days. The order must list the type and value of property that is exempt as provided in subsection 15.

4. Order limited. The county sheriff or levying officer may not seize property not specifically identified in the order.

5. Sheriff or levying officer. An order to seize and sell may be sent by the department to a county sheriff or levying officer. When the order is issued, the department shall serve a copy of the order on all persons other than the obligor who the department knows have an ownership interest in the property identified in the order. If personal service is unsuccessful, the department shall mail the order to the person's last known address by regular mail. Upon receipt of the order, the sheriff or levying officer shall proceed to execute the order in the same manner as prescribed for execution of a judgment. A sheriff or levying officer shall return the order, along with any funds collected, to the department within 90 days of the receipt of the order. Funds resulting from execution of the order must first be applied to the sheriff's or levying officer's costs, then to any superior liens and then to the support lien or other money obligation and any inferior liens of which the department has notice. Any amounts in excess of this distribution must be paid to the obligor. If the order is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

6. Right to hearing. Before the sale, the obligor and any other persons who claim an ownership interest in the property seized under an order to seize and sell have a right to an administrative hearing to contest the seizure and sale of the property and to establish the value of their relative interest in the property. A request for a hearing must be in writing and must be received by the department within 10 calendar days of the seizure. Upon receiving a request for a hearing, the department shall notify all persons who the department has reason to believe have an ownership interest in the property of the time, place and nature of the hearing.

A. Anyone requesting a hearing has the right to a preliminary hearing within 5 business days of the hearing request. At the preliminary hearing, if the hearing officer determines that there is reasonable ground to believe the seizure was lawful and that the obligor owes a support debt that could be satisfied in whole or in part by nonexempt property that has been seized, the hearing officer shall require the seizure to remain in force and schedule a final hearing, allowing all parties reasonable time to collect evidence and prepare for the final hearing. If the hearing officer determines that the seizure was not lawful or that the obligor does not owe a support debt that could be satisfied in whole or in part by nonexempt property that has been seized, the hearing officer shall declare the order to seize and sell void.

B. The department shall notify any person who the department has reason to believe has an ownership interest in the seized property of the time and place of the final hearing. At the final hearing, the hearing officer shall determine:

- (1) Whether the obligor owes a support debt;
- (2) Whether the support debt could be satisfied in whole or in part by the property seized;
- (3) The percentage share of ownership of all persons claiming an ownership interest in the property;
- (4) The amount of the debtor's interest in the property that is exempt; and
- (5) The value of the interest in the property owned by nonobligor parties with an interest superior to that of the department.

7. Commercially reasonable sale. The sheriff or levying officer may sell the property seized as a unit or in parcels and at any time and place and on any terms not otherwise prohibited by this section, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. The property may not be sold for less than the debtor's interest in the property that is exempt. The property may not be sold for less than the full value of the interest in the property owned by the nonobligor parties with an interest superior to that of the department. The department reserves the right to reject any and all bids.

8. Notice of sale. Within 30 days of receiving notice of a sale from the county sheriff or levying officer, the department shall send by regular mail an accounting and proposed distribution of the net proceeds of the sale to the obligor, all joint owners of the property sold and any known lienholders with an interest in the property. The accounting and proposed distribution must include notice of the right to challenge the proposed distribution at an administrative hearing within 30 days. The department may not distribute the proceeds of the sale until the appeal period has run and all appeals have been decided.

9. Release. Upon receiving payment in full of the order amount plus fees and costs, if any, the department shall release the order to seize and sell. Upon receiving partial payment of the order amount or if the department determines that a release or partial release of the order will facilitate the collection of the unpaid amount, fees and costs, the department may release or may partially release the order to seize and sell. The department shall release the order if it determines the order is unenforceable.

10. Right to redeem. An obligor or other person or entity having an interest in real or personal property seized under an order to seize and sell at any time prior to the sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the county sheriff or levying officer serving the order. Upon payment in full, the property must be restored to the obligor or other person or entity having an interest in that property and all proceedings on the order must cease.

11. Right to redeem after sale. An obligor or other person or entity having an interest in real property seized and sold by a county sheriff or levying officer pursuant to an order to seize and sell may, within 240 days after the sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser, plus interest at the statutory interest rate payable on judgments recovered in the District Court and the Superior Court.

12. Release not a bar to other action. At any time after seizure and sale of property under an order to seize and sell, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is ensured or if the release will facilitate collection of the support lien or money obligation. The release or return of the property does not prevent future action to collect the order amount from that property or other property.

13. Statute of limitations. The department may issue an order to seize and sell to collect a support lien or other money obligation under chapter 51, chapter 53, chapter 55, chapter 63 or this chapter at any time within the statutory limitation period for enforcing and collecting child support amounts.

14. Additional remedies. The use of an order to seize and sell is not exclusive and the department may use any other remedy provided by law for the collection of child support.

15. Exempt property. The following property is exempt from seizure and sale, except to the extent that it has been fraudulently conveyed by the obligor:

A. The obligor's aggregate interest, not to exceed \$12,500 in value, in real or personal property that the obligor uses as a residence;

B. The obligor's interest, not to exceed \$2,500 in value, in one motor vehicle;

C. The obligor's interest, not to exceed \$200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for the personal, family or household use of the obligor or a dependent of the obligor;

D. The obligor's aggregate interest, not to exceed \$5,000 in value, in any implements, professional books or tools of the trade of the obligor or the trade of a dependent of the obligor, including, but not limited to, power tools, materials and stock designed and procured by the obligor and necessary for carrying on the obligor's trade or business and intended to be used or wrought in that trade or business;

E. The obligor's interest in the following items held primarily for the personal, family or household use of the obligor or a dependent of the obligor:

(1) One cooking stove;

(2) All furnaces or stoves used for heating; and

(3) All cooking and heating fuel not to exceed 10 cords of wood, 5 tons of coal or 1,000 gallons of petroleum products or the equivalent amount of another type of fuel;

F. The obligor's interest in the following items held primarily for the personal, family or household use of the obligor or a dependent of the obligor:

(1) All food provisions, whether raised or purchased, reasonably necessary for 6 months;

(2) All seeds, fertilizers, feed and other material reasonably necessary to raise and harvest food through one growing season; and

- (3) All tools and equipment reasonably necessary for raising and harvesting food;
- G. The obligor's interest in one of every type of farm implement reasonably necessary for the obligor to raise and harvest agricultural products commercially, including any personal property incidental to the maintenance and operation of the farm implements;
- H. The obligor's interest in one boat, not exceeding 5 tons burden, used by the debtor primarily for commercial fishing; and
- I. Professionally prescribed health aids for the obligor or a dependent of the obligor.

§2204. Caretaker relative; change of payee

When the department pays cash aid to a caretaker relative who provides primary residential care for a dependent child for whom a support order has been issued, the obligor's obligation under the support order to pay child support and provide medical support continues. The child support is payable to the department for as long as the department pays cash aid for the child. Upon notice to the obligor and the payee named in the support order, the department may redirect payments under the support order to the caretaker relative if the caretaker relative states under penalty of perjury that physical custody of the child was not obtained illegally. The obligor and the payee may contest action to redirect payments at an administrative hearing. The department shall notify the obligor and the payee of the right to a hearing in the notice. If payments are redirected to a caretaker relative, the department may seek to establish an administrative support order against the nonobligated parent.

Article 3: Alternative Method of Support Enforcement

Subchapter 3: ENFORCEMENT BY COURT

§2601. Contempt

Upon a motion to enforce a support order or costs, the court may issue summary process and may find the defaulting person guilty of contempt as provided under Title 14, section 252.

§2602. Support orders

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 3126-A to 3136.

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 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.

3. Disclosure hearing. The court may make an order under subsection 1 without a separate disclosure hearing, if the court has already determined the person's ability to pay and the person's receipt of money from a source other than a source that is otherwise exempt from trustee process, attachment and execution.

§2603. Enforcement of orders

Upon a motion to enforce a judgment of spousal support, support or costs, after notice and an opportunity for hearing, the court may make a finding of money due, render judgment for that amount, and order:

1. Execution and levy. Execution and levy as provided under Title 14, chapter 403;
2. Installment payments. Specified installment payments as provided under Title 14, sections 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;
3. Order to employer or payor of earnings. The employer or other payor of earnings to make direct payments, if the court has ordered installment payments under section 2602 or otherwise. This order has absolute priority over all previously filed orders against earnings and assignments of earnings not relating to enforcement of spousal support, child support or costs;
4. Attachment. Attachment as provided under Title 14, chapter 507;

5. Execution. Execution as provided under Title 14, chapter 509;
6. Other methods. Any other method of enforcement that may be used in a civil action; or
7. Security. The judgment debtor to give security, post a bond or give some other guarantee to secure payment of the judgment.

§2603-A. License revocation for nonpayment of child support

Upon a motion to enforce a support order, after notice and an opportunity for a hearing, the court may make a finding of money due, render judgment for that amount and, to compel payment, order:

1. Suspension of driver's license. Suspension of the obligor's driver's license or licenses and right to operate a motor vehicle;
2. Revocation of occupational licenses. Revocation of the obligor's occupational, business, trade or professional licenses; and
3. Revocation of recreational licenses. Revocation of the obligor's hunting, fishing, boating and other recreational or sporting licenses.

The court may issue an order to prevent issuance or renewal of licenses under this section. An order to suspend, revoke or prevent issuance or renewal of licenses must be based on a finding by the court that the obligor has the present ability to pay all or part of the support owed. The court shall specify in its order ways to avoid the loss of licenses and requirements for obtaining licenses that are lost or may not be obtained as a result of an order issued under this section.

The court shall notify the Secretary of State of a driver's license suspension ordered pursuant to this section. Upon receipt of such an order, the Secretary of State shall immediately notify the person of the court order of suspension. The Secretary of State may not terminate a suspension issued pursuant to this section until the court orders reinstatement and the person pays a reinstatement fee to the Secretary of State. The court shall immediately notify the Secretary of State when a person complies with a child support order. The court orders of suspension and reinstatement must be on a form acceptable to the Secretary of State.

§2604. Garnishment of military retirement pay

Spouses and ex-spouses of retired military personnel may garnish by order of the court up to 50% of the disposable retired or retainer pay to satisfy child support orders and spousal support orders. This section applies regardless of the date of the child support order or spousal support order or the residence of the spouse or ex-spouse. For purposes of this section, "disposable retired or retainer pay" means the total monthly retired or retainer pay to which a retired military person is entitled, other than the retired pay of a member retired for disability under 10 United States Code, Chapter 61, less amounts excluded by 10 United States Code, Chapter 71, Section 1408.

§2605. Orders relating to the receipt of public assistance or support enforcement services

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

- A. "Public assistance" means public assistance as provided under Title 22, section 3173, 3271, 3762 or 3790.
- B. "Support enforcement services" means the services provided by the department under section 2103.
- C. "Support order" means a decree or order for support of a child, for support pending a divorce action or for alteration of a custody or support order.
- D. "Support payments" means money ordered to be paid directly to a parent for the support of a child.

2. Pleading public assistance or support enforcement services. In an action to establish a support order, enforce a support order, amend a support order or to collect support arrearages, if the child is receiving or has received public assistance in a relevant time period, the party bringing the action shall affirmatively plead that fact. If the party is receiving support enforcement services, the party shall affirmatively plead that fact.

3. Notice to State. In an action to establish 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 and all accompanying documents by ordinary mail to the department 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.

4. Health insurance. If a support order contains an order for a parent to provide health, medical or hospital insurance coverage and if the insured child is receiving public assistance, then the insuring parent shall provide the department with proof of the insurance coverage within 15 days of receipt of a copy of the order and with written notice of any change in that coverage within 15 days of the change.

5. State reimbursement. If a child is receiving public assistance, the support order must require that support payments be made to the department for the period of public assistance.

§2606. Discovery of past income in department support enforcement cases

The responsible parent has an obligation to supply evidence regarding past income in order to calculate the debt owed the department or an applicant for services under section 2103 if the evidence is reasonably available. A request for evidence regarding past income may be made through a document request pursuant to the Maine Rules of Civil Procedure, Rule 34.

Failure to provide the evidence in the time period set forth in the Maine Rules of Civil Procedure, Rule 34, absent a showing of good cause for failure to do so or notification to the department of good faith attempts to secure the information, allows the court to draw any reasonable inference from the evidence available, including an inference that the responsible parent had a greater earning capacity than the average weekly wage of a worker in this State as defined by the most recent Department of Labor statistics. This remedy is in addition to remedies available under rules of discovery.

§2607. Modification of support order

Modification of child support orders is governed by section 2009.

§2608. Effect and implementation of health insurance obligations; failure of responsible party to comply

1. Failure to obtain insurance. If an obligated parent fails to acquire health insurance coverage as required under section 1653, that parent is liable for any expenses incurred for that parent's dependent children that would have been paid by the insurance coverage, regardless of who has incurred the expenses. Incurred liability may be enforced as a child support debt under chapter 65, subchapter II, article 3 or by judicial action.

2. Direct payment; parental authorization. Upon receipt of a written authorization from an obligated parent to an insurer to make health insurance payments for that parent's dependent children to the obligee, the insurer shall make all payments directly to the obligee until the authorization is withdrawn. Upon receipt of such authorization from the obligated parent, the obligee is deemed subrogated to the rights of the obligated parent under the insurance policy for the children.

3. Direct payment; court order. Upon receipt of a copy of the court order establishing the obligation of an obligated parent to provide health insurance coverage for that parent's dependent children, and of a demand in writing for the health insurance coverage from the obligee, the insurer shall make all health insurance payments for the children directly to the obligee until otherwise notified by the obligee. In all such cases, the obligee is deemed subrogated to the rights of the obligated parent under the insurance policy for the children.

§2609. Definition

As used in this subchapter, "order of support or costs" or "judgment of spousal support, support or costs" means a judgment or order for spousal support or payment of money instead of spousal support, for support of children, for support pending a divorce action, for payment of related costs and attorney's fees or for alteration of an existing judgment or order for the custody or support of a child.

Subchapter 4: INCOME WITHHOLDING

§2651. Income withholding

1. Immediate income withholding; issuance of orders. In any action under this Title or Title 22 in which a court establishes or modifies a support order, the court shall issue an immediate income withholding order in accordance with the requirements of this subchapter, unless the court finds good cause or approves an alternative arrangement as provided in section 2657.

2. Immediate income withholding; modification of orders. Upon the motion of an obligee, an obligor or the department, the court shall modify a support order issued before October 13, 1993 to include an immediate income withholding order.

3. Immediate income withholding; implementation of orders. An immediate income withholding order may be implemented by the department for a recipient of the department's support enforcement services, by a support obligee who does not receive the department's support enforcement services or by a support obligor. An immediate income withholding order is implemented by serving an attested copy of the order upon the obligor's payor of income.

§2652. Provisions of withholding order

An immediate income withholding order must provide for the withholding from the obligor's income of amounts payable as child support, effective from the date of the support order, regardless of whether child support payments by the obligor are past due. The withholding order must include:

1. Amount withheld. The amount of income to be withheld for payment of the obligor's current parental support obligation;

2. Department member number. The obligor's department support enforcement member number, if applicable, and if known to the court;

3. Payor instructions. An instruction to the payor that, upon receipt of a copy of the withholding order, the payor shall:

A. Immediately begin to withhold the obligor's income when the obligor is usually paid;

B. Send each amount withheld to the department at the address set forth in the order within 7 business days of the withholding; and

C. Identify each amount sent to the department by indicating the department's support enforcement member number, if known;

4. Notice regarding collection of arrearages. A notice that the withholding order may be used to collect arrearages in addition to current support;

5. Limitation on withholding. A notice that the amount of the withholding may not exceed the limitations imposed by 15 United States Code, Section 1673(b); and

6. Fees. A notice to the obligor and payor of income that the payor of income shall withhold and send to the department a fee of \$2 per week in addition to the amount withheld for child support.

§2653. Administering agency

The department shall adopt and administer procedures to receive, document and distribute all support payments collected pursuant to this subchapter. The commissioner may establish by rule a fee for use of these services. The department shall retain all fees and apply them toward the administration of the division of support enforcement and recovery.

§2654. Payor duty

A payor of income to an obligor named in a withholding order issued under this subchapter shall comply with the provisions of the withholding order upon receipt of a copy of the order. The balance of income due an obligor after withholding must be paid to the obligor on the day the obligor is usually paid. A payor may combine amounts withheld for transmittal to the department from more than one obligor if the portion attributable to each obligor is separately designated, except that the payor may not combine amounts if that action would result in an obligor's withheld income being sent to the department more than 7 business days from the date of withholding.

§2655. Payor notice

The department shall develop and make available to the public a payor notice that complies with the requirements of the Social Security Act, Title IV-D and the regulations issued under that Act. Whenever the department, an obligee or an obligor implements a withholding order issued under this subchapter, the party that implements the withholding order shall provide the obligor's payor of income with the payor notice at the time of service of the withholding order.

§2656. Past-due support

1. Withholding order. Upon meeting the conditions of this section, the department or an obligee may use an income withholding order issued under this subchapter to collect past-due support. Past-due support may be collected in addition to or apart from current support. Notwithstanding the provisions of this section, the court may order payment of past-due support by income withholding upon a determination by the court of the amount past due. If the court so orders, the department or obligee need not proceed in accordance with this section and may issue the withholding order to collect the past-due support immediately.

2. Collection of past-due support by department. Before the department may implement an income withholding order issued under this section to collect past-due support, the department must establish the amount of support past due, unless the amount has been established by judicial or administrative action, agreement of the parties or by operation of law.

A. If the obligor's debt for past-due support has been established by judicial or administrative action, agreement of the parties or by operation of law, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support.

B. If the obligor's debt for past-due support is not established, the department may establish the amount past due by proceeding under section 2352, by asking the court to determine the amount past due or by reaching agreement with the obligor as to the amount past due. Once the obligor's debt for past-due support has been established, the department shall serve the income withholding order upon the obligor's payor of income to collect the past-due support.

3. Collection of past-due support by private action. To collect past-due support by an income withholding order issued under this subchapter, an obligee who does not receive support enforcement services from the department must:

A. Determine that the amounts payable under the support order are equal to or greater than the amount due for 30 days; and

B. Serve written notice of the obligee's determination of past-due support upon the obligor at least 20 days before service of the determination of past-due support and a copy of the income withholding order upon the obligor's payor of income.

An obligee may serve an income withholding order upon the obligor's payor of income 21 days after service of the obligee's determination of past-due support upon the obligor unless the obligor files a motion for determination of past-due support with the court and an ex parte request for a stay of withholding in accordance with subsection 4. If the obligor does not file a motion for determination of past-due support with the court and request the court to issue an ex parte stay of withholding, the obligee may serve a copy of the obligee's determination of past-due support and a copy of the withholding order upon the obligor's payor of income. The obligee shall send copies of the determination of past-due support and the withholding order served upon the payor of income to the department by regular mail at the time of service. Upon receipt of the copies, the department shall issue a letter to the obligor and obligee that confirms receipt, provides a support enforcement case number to identify payments and explains the department's role as the administering agency.

4. Stay. The court may grant a stay of the withholding of past-due support claimed upon request of the obligor as long as the obligor timely files a motion for determination of past-due support. A stay issued by the court under this subsection must expire in 60 days and may be reissued only upon a showing by the obligor that the obligor has made reasonable efforts to obtain a hearing on the motion for determination of past-due support during the stay.

§2659. Duration of withholding

1. Ended or released. An immediate income withholding order is binding upon an obligor's payor of income until:

A. The court orders withholding ended;

B. If the withholding order was implemented by the obligee as a private withholding action, the obligee releases the payor from the terms of the order in writing; or

C. The department releases the payor from the terms of the order in writing. The department shall issue a release to end immediate income withholding if the department is unable to forward funds to the obligee for 3 months, in which case the department shall return the funds to the obligor.

2. Support paid; refund. The department, or obligee if the obligee implemented the withholding order as a private action, shall issue promptly a release of the withholding order in all cases in which there is no longer a current support obligation and all past-due support has been paid. The department or obligee, as applicable, shall refund the obligor amounts withheld improperly because a release is not issued timely. An obligee is liable to the department for amounts received from the department that the obligee is not entitled to receive.

An income withholding order issued under this subchapter may not be released or ended if the obligor has a current parental support obligation or owes a debt for past-due support, unless the court finds good cause or approves an alternative arrangement for payment of support in accordance with section 2657.

§2660. Priority of order

Notwithstanding any other provision of law, an immediate income withholding order issued under this subchapter has priority over any previously filed attachment, execution, garnishment or assignment of income that is not made for the purpose of enforcing or paying child or spousal support.

§2661. Notice of termination

When a payor of income is unable to continue withholding from an obligor's income because the relationship between the payor and obligor ends, the payor shall send the department a written notice of termination within 15 days. The notice must include:

1. Obligor's identification. The obligor's name, last known address and social security number;
2. Department case number. The obligor's department support enforcement case number;
3. Termination date. The date of termination of the relationship; and
4. New payor. If known, the name and address of a new payor of income to the obligor.

§2666. Spousal support

Awards for spousal support are subject to immediate income withholding under this subchapter if the award is for a period during which child support is awarded.

§2673. Definition of income

For purposes of this subchapter, "income" means any periodic form of payment due to a person, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability benefits, payments pursuant to a pension or retirement program and interest.