



# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

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H.P. 1109

House of Representatives, April 20, 2023

**An Act to Implement Changes to the Laws Relating to Judicial Separation and Divorce Regarding Preliminary Injunctions as Recommended by the Family Law Advisory Commission**

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Reported by Representative MOONEN of Portland for the Family Law Advisory Commission pursuant to the Maine Revised Statutes, Title 19-A, section 354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT  
Clerk

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

2 **Sec. 1. 19-A MRSA §852**, as amended by PL 2021, c. 647, Pt. B, §44 and affected  
3 by §65, is further amended to read:

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

5 **1. Issue Issuance of preliminary injunction by the court; service; contents; effect.**

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

8 A. The preliminary injunction must bear the signature or facsimile signature of the  
9 clerk, be under the seal of the court, and contain the name of the court issuing the  
10 preliminary injunction and the names of the parties ~~and state the name and address of~~  
11 ~~the plaintiff's attorney.~~ If the plaintiff is represented, the preliminary injunction must  
12 also state the name and address of the plaintiff's attorney. The preliminary injunction  
13 may be obtained in blank from the clerk ~~and must be filled out by the plaintiff's attorney~~  
14 for a fee. ~~The plaintiff or the plaintiff's attorney is responsible for serving this shall~~  
15 serve the preliminary injunction, along with the summons and complaint, on the  
16 defendant along with the summons and complaint.

17 B. The preliminary injunction must be directed to each party to the action and must  
18 ~~contain the following orders~~ order that, unless the parties otherwise agree in writing or  
19 unless the court orders otherwise:

20 (1) ~~That~~ Except as specifically allowed by paragraph B-1, each party is enjoined  
21 prohibited from damaging, destroying, transferring, encumbering, concealing,  
22 selling or otherwise disposing of the any property of owned or claimed by either  
23 or both of the parties, except in the usual course of business or for the necessities  
24 of life, without the written consent of the parties or the permission of the court;  
25 regardless of whose name the property is in or who holds title to the property.  
26 Violations of this subparagraph include but are not limited to the following:

27 (a) Withdrawing from or borrowing from or against all or any part of the cash  
28 surrender value of a life insurance policy of either party or of a child of the  
29 parties;

30 (b) Withdrawing from or borrowing from or against all or any part of the  
31 retirement, profit-sharing, pension, death or other employee benefit plan or  
32 from an employee savings plan, an individual retirement account or a "Keogh"  
33 retirement account; and

34 (c) Intentionally or knowingly damaging or destroying the personal property  
35 of the parties, including but not limited to any electronically stored materials,  
36 electronic communications, financial records and documents that represent or  
37 embody anything of value;

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

41 (3) ~~That each~~ Each party is ~~enjoined prohibited~~ prohibited from canceling or voluntarily  
42 removing the other party or a child of the parties from a policy of health, dental or  
43 disability insurance that provides coverage for the other party or the child of the

1 parties- and that each party is required to comply with any annual renewal  
2 requirements or deadlines necessary for the maintenance of such policies;

3 (4) Each party is prohibited from canceling or changing in any way, including by  
4 changing a beneficiary of, a casualty, life or motor vehicle policy insuring a party  
5 or the party's property;

6 (5) Each party is prohibited from opening, tampering with, destroying, deleting or  
7 withholding mail, e-mail or text messages or any other form of communication  
8 addressed to the other party; and

9 (6) Each party is prohibited from signing the other party's name on any negotiable  
10 instrument, check or draft, including but not limited to a tax refund, security  
11 deposit, insurance payment or dividend.

12 B-1. Notwithstanding paragraph B, subparagraph (1), the preliminary injunction does  
13 not prohibit a party from accessing funds or incurring debt for the following purposes:

14 (1) To continue the regular operations of an ongoing business;

15 (2) To pay for the necessities of life, including housing, food, transportation,  
16 school, child care and medical expenses;

17 (3) To retain an attorney for the legal separation or divorce proceeding; and

18 (4) To make regular withdrawals or required minimum withdrawals in the normal  
19 course of retirement.

20 C. The preliminary injunction must include the following statement:

21 "Warning

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

24 This court order ~~is effective~~ will remain in effect until the earliest of the  
25 following:

26 (1) The court revokes or modifies it;

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

28 (3) The action is dismissed."

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

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

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

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

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

12          C. ~~A The court may modify or add to the terms of the preliminary injunction does not~~  
13 ~~prejudice the rights of the parties or a child that are to be adjudicated at subsequent~~  
14 ~~hearings in at any time during the pendency of the proceeding and does not limit the~~  
15 ~~power of the court to issue other injunctive relief that may be proper under the~~  
16 ~~circumstances.~~

17          D. A preliminary injunction terminates and ceases to have effect when:

18               (1) The court revokes or modifies it, except that, if the court modifies the  
19 preliminary injunction, the modified preliminary injunction takes effect upon the  
20 termination of the existing preliminary injunction and remains effective until later  
21 terminated as provided in this paragraph;

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

23               (3) The action is dismissed.

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

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

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

29           C. By appropriate processes as in other actions.

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

34           ~~**4. Mutual order of No effect on protection or restraint orders.**~~ Orders issued  
35 pursuant to this section do not supersede orders issued pursuant to former chapter 101 or  
36 to chapter 103.

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

39           **Sec. 2. 19-A MRSA §903**, as amended by PL 2021, c. 647, Pt. B, §45 and affected  
40 by §65, is further amended to read:

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

1           **1. Issue Issuance of preliminary injunction by the court; service; contents; effect.**

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

5           A. The preliminary injunction must bear the signature or facsimile signature of the  
6           clerk, be under the seal of the court; and contain the name of the court issuing the  
7           preliminary injunction and the names of the parties ~~and~~. If the plaintiff is represented,  
8           the preliminary injunction must also state the name and address of the plaintiff's  
9           attorney. The preliminary injunction may be obtained in blank from the clerk ~~and must~~  
10          ~~be filled out by the plaintiff's attorney for a fee.~~ The plaintiff or the plaintiff's attorney  
11          ~~is responsible for serving this~~ shall serve the preliminary injunction, ~~along with the~~  
12          ~~summons and complaint,~~ on the defendant along with the summons and complaint.

13          B. The preliminary injunction must be directed to each party to the action and must  
14          ~~contain the following orders~~ order that, unless the parties otherwise agree in writing or  
15          ~~unless the court orders otherwise:~~

16               (1) ~~That~~ Except as specifically allowed by paragraph B-1, each party is enjoined  
17               prohibited from damaging, destroying, transferring, encumbering, concealing,  
18               selling or otherwise disposing of the any property of owned or claimed by either  
19               or both of the parties, ~~except in the usual course of business or for the necessities~~  
20               of life, without the written consent of the parties or the permission of the court;  
21               regardless of whose name the property is in or who holds title to the property.  
22               Violations of this subparagraph include but are not limited to the following:

23                       (a) Withdrawing from or borrowing from or against all or any part of the cash  
24                       surrender value of a life insurance policy of either party or of a child of the  
25                       parties;

26                       (b) Withdrawing from or borrowing from or against all or any part of the  
27                       retirement, profit-sharing, pension, death or other employee benefit plan or  
28                       from an employee savings plan, an individual retirement account or a "Keogh"  
29                       retirement account; and

30                       (c) Intentionally or knowingly damaging or destroying the personal property  
31                       of the parties, including but not limited to any electronically stored materials,  
32                       electronic communications, financial records and documents that represent or  
33                       embody anything of value;

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

37               (3) ~~That each~~ Each party is ~~enjoined~~ prohibited from canceling or voluntarily  
38               removing the other party or a child of the parties from a policy of health, dental or  
39               disability insurance that provides coverage for the other party or the child of the  
40               parties; and that each party is required to comply with any annual renewal  
41               requirements or deadlines necessary for the maintenance of such policies;

42               (4) Each party is prohibited from canceling or changing in any way, including by  
43               changing a beneficiary of, a casualty, life or motor vehicle policy insuring a party  
44               or the party's property;



1 injunction may appear and move the dissolution or modification of the ~~order~~  
2 preliminary injunction, and in that event the court shall proceed to hear and determine  
3 the motion as expeditiously as justice requires.

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

6 C. ~~A~~ The court may modify or add to the terms of the preliminary injunction does not  
7 ~~prejudice the rights of the parties or a child that are to be adjudicated at subsequent~~  
8 ~~hearings in at any time during the pendency of the proceeding and does not limit the~~  
9 ~~power of the court to issue other injunctive relief that may be proper under the~~  
10 ~~circumstances.~~

11 D. A preliminary injunction terminates and ceases to have effect when:

12 (1) The court revokes or modifies it, except that, if the court modifies the  
13 preliminary injunction, the modified preliminary injunction takes effect upon the  
14 termination of the existing preliminary injunction and remains effective until later  
15 terminated as provided in this paragraph;

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

17 (3) The action is dismissed.

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

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

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

23 C. By appropriate processes as in other actions.

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

28 **4. ~~Mutual order of~~ No effect on protection or restraint orders.** Orders issued  
29 pursuant to this section do not supersede orders issued pursuant to former chapter 101 or  
30 to chapter 103.

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

35 **6. Application.** ~~The~~ Except as provided in subsection 1, the injunction authorized in  
36 this section does not apply to post-divorce actions.

## 37 SUMMARY

38 This bill contains the recommendations of the Family Law Advisory Commission  
39 pursuant to the Maine Revised Statutes, Title 19-A, section 354, subsection 2 for changing  
40 the laws governing preliminary injunctions in judicial separation and divorce proceedings.

1 The bill amends the statutes that provide for the mandatory issuance of a preliminary  
2 injunction in judicial separation and divorce proceedings filed in the District Court by:

3 1. Clarifying the statutory language to help unrepresented individuals understand its  
4 provisions, including by clarifying that the preliminary injunction is an order of the District  
5 Court and by providing greater guidance to the parties about the actions that the parties are  
6 and are not prohibited from engaging in while the preliminary injunction is in effect;

7 2. Retaining the provision prohibiting each party from disposing of the property of the  
8 parties while the preliminary injunction is in effect, adding additional prohibitions against  
9 damaging or destroying the property of the parties and providing examples of the types of  
10 activities that constitute a violation of this prohibition;

11 3. Expanding the provision that prohibits each party from causing the other party or  
12 the parties' children to lose their health insurance coverage while the preliminary injunction  
13 is in effect to include prohibitions against a party causing the loss of dental, disability,  
14 casualty, life and motor vehicle insurance coverage;

15 4. Newly specifying that each party is prohibited from interfering with mail, e-mail,  
16 text messages and other forms of communication addressed to the other party and that each  
17 party is prohibited from signing the other party's name to a negotiable instrument while the  
18 preliminary injunction is in effect;

19 5. Clarifying the provision of current law specifying that the preliminary injunction  
20 does not prohibit the parties from encumbering or disposing of property in the usual course  
21 of business or for the necessities of life and further providing that the preliminary injunction  
22 does not prohibit the parties from accessing funds or incurring debt to retain an attorney  
23 for the legal separation or divorce proceeding or to make regular withdrawals in the normal  
24 course of retirement. In practice, parties typically use marital funds for these purposes and  
25 the commission determined that it would be helpful to clarify within statute that the parties  
26 have a right to do so; and

27 6. Removing the provision of current law that prohibits the parties from imposing  
28 restraint on the personal liberty of the other party or of a biological or adopted child of  
29 either or both of the parties while the preliminary injunction is in effect because the  
30 commission believes both that this language is unclear and that protections for the personal  
31 liberty of the parties and of the parties' children are more appropriately addressed through  
32 the protection from abuse process.