

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1109 - L.D. 1730

**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**

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

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

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

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

In all actions for judicial separation ~~the clerk of the court, pursuant to order of,~~ the District Court, shall issue a preliminary injunction order 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, and contain the name of the court issuing the preliminary injunction and the names of the parties ~~and state the name and address of the plaintiff's attorney.~~ If the plaintiff is represented, the preliminary injunction must also 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 for a fee.~~ The plaintiff or the plaintiff's attorney is responsible for serving this shall serve the preliminary injunction, along with the summons and complaint, on the defendant along with the summons and complaint.

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

(1) ~~That~~ Except as specifically allowed by paragraph B-1, each party is enjoined prohibited from damaging, destroying, transferring, encumbering, concealing, selling or otherwise disposing of the any property of owned or claimed by 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, regardless of whose name the property is in or who holds title to the property. Violations of this subparagraph include but are not limited to the following:

- (a) Withdrawing from or borrowing from or against all or any part of the cash surrender value of a life insurance policy of either party or of a child of the parties;
 - (b) Withdrawing from or borrowing from or against all or any part of the retirement, profit-sharing, pension, death or other employee benefit plan or from an employee savings plan, an individual retirement account or a "Keogh" retirement account; and
 - (c) Intentionally or knowingly damaging or destroying the personal property of the parties, including but not limited to any electronically stored materials, electronic communications, financial records and documents that represent or embody anything of value;
- ~~(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~~ Each party is ~~enjoined~~ prohibited from ~~canceling~~ or voluntarily removing the other party or a child of the parties from a policy of health, dental or disability insurance that provides coverage for the other party or the child of the parties; and that each party is required to comply with any annual renewal requirements or deadlines necessary for the maintenance of such policies;
- (4) Each party is prohibited from canceling or changing in any way, including by changing a beneficiary of, a casualty, life or motor vehicle policy insuring a party or the party's property;
- (5) Each party is prohibited from opening, tampering with, destroying, deleting or withholding mail, e-mail or text messages or any other form of communication addressed to the other party; and
- (6) Each party is prohibited from signing the other party's name on any negotiable instrument, check or draft, including but not limited to a tax refund, security deposit, insurance payment or dividend.

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

- (1) To continue the regular operations of an ongoing business;
- (2) To pay for the necessities of life, including housing, utilities, food, transportation, school, child care and medical expenses;
- (3) To retain an attorney for the legal separation or divorce proceeding; and
- (4) To make regular withdrawals or required minimum withdrawals in the normal course of retirement.

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~~ will remain in effect 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~~ the preliminary injunction 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 and is 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 by the court. A preliminary injunction may be revoked or modified by the court 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~~ a preliminary injunction may appear and move the dissolution or modification of the ~~order~~ preliminary injunction, 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~~ The court may modify or add to the terms of the preliminary injunction ~~does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in at any time during the pendency of 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 and ceases to have effect when:

- (1) The court revokes or modifies it, except that, if the court modifies the preliminary injunction, the modified preliminary injunction takes effect upon the termination of the existing preliminary injunction and remains effective until later terminated as provided in this paragraph;
- (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 No effect on protection or restraint orders.~~ Orders issued pursuant to this section do not supersede orders issued pursuant to former chapter 101 or to chapter 103.

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.

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

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

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

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 order 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, and contain the name of the court issuing the preliminary injunction and the names of the parties and, if the plaintiff is represented, the preliminary injunction must also 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 for a fee.~~ The plaintiff or the plaintiff's attorney is responsible for serving this shall serve the preliminary injunction, along with the summons and complaint, on the defendant along with the summons and complaint.

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

(1) ~~That Except as specifically allowed by paragraph B-1, each party is enjoined prohibited from damaging, destroying, transferring, encumbering, concealing, selling or otherwise disposing of the any property of owned or claimed by 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; regardless of whose name the property is in or who holds title to the property. Violations of this subparagraph include but are not limited to the following:~~

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

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

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

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

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

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

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

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

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

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

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

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

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~~ will remain in effect 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~~ the preliminary injunction 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 and is 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 by the court. A preliminary injunction may be revoked or modified by the court 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~~ a preliminary injunction may appear and move the dissolution or modification of the ~~order~~ preliminary injunction, 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~~ The court may modify or add to the terms of the preliminary injunction ~~does not prejudice the rights of the parties or a child that are to be adjudicated at subsequent hearings in at any time during the pendency of 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 and ceases to have effect when:

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

(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~~ No effect on protection or restraint orders. Orders issued pursuant to this section do not supersede orders issued pursuant to former chapter 101 or to chapter 103.

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~~ Except as provided in subsection 1, the injunction authorized in this section does not apply to post-divorce actions.