

§2361. Order to appear and disclose

1. Order. The commissioner may commence an action under Title 14, chapter 502 by directing a responsible parent to appear before the department to disclose under oath information that relates to the responsible parent's ability to pay child support. The commissioner may require a responsible parent who is directed to appear to provide documents, papers and other evidence about the responsible parent's income and assets for the purpose of enforcing a support order. Notwithstanding section 2254, an order to appear and disclose must be served on the responsible parent by personal service as provided for personal service of summons by the Maine Rules of Civil Procedure, Rule 4(d). Personal service within the State of an order to appear and disclose may be made by an authorized representative of the commissioner. Personal service outside the State of an order to appear and disclose may be made in the manner provided for personal service of summons outside the State by the Maine Rules of Civil Procedure, Rule 4(e).

[PL 2009, c. 290, §32 (AMD).]

2. Venue. The department may commence the action by ordering the obligor to appear at an office of the department, as long as the distance to be travelled by the obligor is no more than 100 miles from the obligor's place of residence. If the department files the action in court, the department shall file the action in the division of the District Court where the obligor resides or in the division that has ordered the obligor to pay child support, if any.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Notice to responsible parent. The department shall include a notice to the responsible parent with each order to appear and disclose. The notice must include the following information:

A. The date, time and place of the disclosure proceeding; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

B. The amount of child support the responsible parent owes; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

C. That the department may file a record of the proceeding in court to collect the debt; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

D. That, if the department files a record of the proceeding in court, the court will notify the responsible parent by regular mail of the date, time and place of the court hearing; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

E. That, if a record of the proceeding is filed in court, the court may issue any lawful order, including a sale or turnover order, an order to seek employment or a civil order of arrest; [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

F. That, if a record of the proceeding is filed in court and the responsible parent is not making regular child support payments, the burden of proof is on the responsible parent to show why regular payments can not be made; [PL 1997, c. 407, §2 (AMD); PL 1997, c. 407, §5 (AFF); PL 1997, c. 537, §46 (AMD); PL 1997, c. 537, §62 (AFF).]

G. The penalties as provided by this section that could be incurred by the responsible parent for failure to appear, failure to provide documents, papers and other evidence as required or intentionally providing false information; [RR 1997, c. 1, §17 (COR).]

H. That the responsible parent must provide to the department the name and last known address of any other person that has an ownership in any property in which the responsible parent has an ownership interest; and [RR 1997, c. 1, §18 (COR).]

I. That failure to comply with the order to appear and disclose may result in revocation of the obligor's driver's license, occupational licenses or other licenses as defined in section 2101, subsection 7. [RR 1997, c. 1, §19 (RAL).]

The notice must be accompanied by a copy of the support order under which the responsible parent owes child support.

[RR 1997, c. 1, §§17-19 (COR).]

4. Notice to obligee. The department shall provide notice to the obligee of the time and place of the disclosure proceeding and the nature of the proceeding.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

5. Limitation of action. The department may issue an order to appear and disclose only if the responsible parent owes \$500 or more in overdue child support, the amount has been owed for at least 60 days and the responsible parent is not making reasonable, regular payments to reduce the debt.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

6. Continuance. The department may grant a continuance of the proceeding for good cause.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

7. Transcribable record. The department shall prepare an official, transcribable record of all proceedings held under this section.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

8. Failure to appear. If the responsible parent fails to appear after being served with an order to appear and disclose, the department may request a civil order of arrest pursuant to Title 14, sections 3134 and 3135 for violating the order to appear and disclose by filing a copy of the order to appear and disclose, proof of service of the order and an affidavit attesting that the responsible parent failed to appear for the administrative disclosure proceeding.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

9. Court action. The commissioner may file the record of a proceeding in the District Court to ask the court for any appropriate relief under Title 14, chapter 502, including an order requiring the responsible parent to seek employment and report that activity to the department. The record must be accompanied by a motion. The department shall notify the responsible parent by regular mail upon filing the record in court. The notice to the responsible parent must include a copy of the department's motion. The filing of the record, along with proof of service of the order to appear and disclose, constitutes a filing under the Maine Rules of Civil Procedure, Rule 3(1) and further service is not required.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

10. Representation of the department. The commissioner may designate employees of the department who are not attorneys to represent the department in District Court in a proceeding filed under this section. A designated employee may prepare and sign the motion as required under subsection 9. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

11. Employee protection. An employer who discharges, refuses to employ or takes disciplinary action against a responsible parent, or who otherwise discriminates against the parent because the parent must appear before the department pursuant to this section is liable in an action by the responsible parent for compensatory and punitive damages, plus attorney's fees and court costs.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

12. Penalties. Failure to appear before the department, absent good cause, is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged. Failure to provide documents, papers and other evidence as required, absent good cause, is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged. Intentionally providing false information is a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged for each violation.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

13. Repeal.

[PL 1997, c. 669, §9 (RP).]

14. License revocation. If an obligor who is served with a support order under subsection 1 fails to appear without good cause or fails to provide documents, papers and other evidence as required by the order without good cause, the department may certify the obligor's noncompliance to the Secretary of State for suspension of the obligor's driver's license and right to operate a motor vehicle and to any board or other entity in the State that issues a license as defined in section 2101, subsection 7. Upon receipt of a certification of noncompliance from the department, the Secretary of State, board or other entity shall cause any licenses held by the obligor to be suspended or revoked and may not issue or renew a license to the obligor until the department issues a written statement that the obligor has complied with the order. A suspension, revocation or refusal by a board or other licensing entity to reissue, renew or otherwise extend a license or permit of an obligor certified by the department is a final determination within the meaning of Title 5, section 10002.

[PL 1997, c. 537, §48 (NEW); PL 1997, c. 537, §62 (AFF).]

SECTION HISTORY

PL 1995, c. 694, Pt. B, §2 (NEW). PL 1995, c. 694, Pt. E, §2 (AFF). RR 1997, c. 1, §§17-19 (COR). PL 1997, c. 407, §§2,3 (AMD). PL 1997, c. 407, §5 (AFF). PL 1997, c. 466, §23 (AMD). PL 1997, c. 466, §28 (AFF). PL 1997, c. 537, §§46-48 (AMD). PL 1997, c. 537, §62 (AFF). PL 1997, c. 669, §9 (AMD). PL 2009, c. 290, §32 (AMD).

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