

ACTS, 1982. - Chap. 481.

Chap. 481. AN ACT ESTABLISHING LONG-ARM JURISDICTION TO ENFORCE SUPPORT ORDERS IN THE PROBATE COURT.

Be it enacted, etc., as follows:

SECTION 1. Chapter 208 of the General Laws is hereby amended by inserting after section 36 the following section:-

Section 36A. (1) In any case in which an obligor is under court order to pay alimony or support and maintenance or child support in an action or judgment for divorce under this chapter or in an action or judgment for separate support under chapter two hundred and nine, the court which entered the support order shall retain continuing jurisdiction over the parties to the order and may enter an order of trustee process against the disposable earnings of the obligor, both those presently due and owing and those which will be due and owing at a future time, up to an amount permitted by federal law. Before the court may enter such an order, it shall find that all other domestic remedies available to collect support have been exhausted or would be ineffective.

For the purpose of this section, the words "disposable earnings" shall mean that part of the compensation paid or payable to the obligor for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension or retirement program, which remains after the deduction of any amounts required by law to be withheld; and the word "trustee" shall mean the person, firm, association, or corporation by whom the obligor is employed.

(2) A complaint seeking an order of trustee process may be sought by the spouse or parent, custodian or guardian of the child, a family service officer or probation officer, or in the case of persons receiving public assistance, the department of public welfare. The complaint will be filed in the court which issued the judgment of divorce or separate support or in which the action for divorce or separate support is pending under the docket number of the action for divorce or separate support and shall state that the obligor is under a court order to provide support, the amount of the order, the amount of the arrearage, if any; that all other domestic remedies available to collect support have been exhausted or would be ineffective; the name and address of the employer of the obligor; the obligor's monthly disposable earnings from said employer, which may be based upon information and belief, and the amount sought to be trusted. The complaint shall be served on both the obligor and

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his employer in accordance with applicable law and rules for service of process; provided, however, that where the court had personal jurisdiction over the obligor in the original action for divorce or separate support, personal service on such obligor shall not be required as long as the obligor receives adequate and reasonable notice of the proceeding.

(3) After a hearing on the merits, the court may enter an order of trustee process against the obligor's disposable earnings. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be trusteeed for each pay period. The order shall be subject to review by the court for modification and dissolution upon the filing of a motion, with a sworn affidavit supporting same.

(4) Upon receipt of an order for trustee process, the trustee shall transmit each pay period without delay to the clerk of the court, or to the family service office of the court or any other party designated by the court, the amount ordered by the court to be trusteeed for each such period. These funds shall be disbursed to the party designated by the court. If the person entitled to receive said support is a recipient of public assistance, such funds shall be disbursed directly to the department of public welfare up to the amount of aid being paid to the recipient by the department.

(5) No employer may discharge, suspend, or discipline an employee by reason of his having been trusteeed pursuant to this section. Any employer who violates this clause shall be liable to the employee for compensation and employment benefits lost, if any, during the time of the unlawful discharge, suspension, or discipline.

(6) The commonwealth and any of its political sub-divisions shall be subject to trustee process under this section as if they were private parties.

(7) Any remedy provided pursuant to this section shall be in addition to, and not in lieu of, any other remedy available for the enforcement of support obligations.

SECTION 2. Section 33 of chapter 209 of the General Laws, as most recently amended by section 47 of chapter 400 of the acts of 1975, is hereby further amended by adding the following sentence:- Trustee process of an obligor's disposable earnings may likewise be made by the filing of a complaint under the provisions of section thirty-six A of chapter two hundred and eight. All procedures under said section thirty-six A of said chapter two hundred and eight shall apply following the filing of said complaint.

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SECTION 3. Section 1 of chapter 246 of the General Laws, as most recently amended by section 124 of chapter 377 of the acts of 1975, is hereby further amended by adding the following sentence:- Trustee process may likewise be issued in actions to enforce an order for alimony, maintenance or child support by the filing of a complaint and following the procedures set forth in section thirty-six A of chapter two hundred and eight, and no bond shall be required to be filed as otherwise provided herein in such actions.

SECTION 4. Said chapter 246 is hereby further amended by inserting after section 4A the following section:-

Section 4B. Notwithstanding any other provision of law to the contrary, in an action to enforce a support order pursuant to section thirty-six A of chapter two hundred and eight, the action shall be brought in the court which issued the order for alimony, maintenance or child support.

SECTION 5. The second paragraph of section 28 of said chapter 246, added by section 10 of chapter 428 of the acts of 1981, is hereby amended by inserting after the word "seventy-three", in line 4, the words:- and in such actions, including an action for trustee process to enforce a support order under section thirty-six A of chapter two hundred and eight, the provisions of federal law limiting the amounts which may be trustee, assigned or attached in order to satisfy an alimony, maintenance or child support order shall apply in lieu of said provisions of this section.

SECTION 6. Paragraph Fourth of section 32 of said chapter 246 is hereby amended by inserting after the word "contingency", in line 3, as appearing in the Tercentenary Edition, the words:- ; provided, however, that nothing herein shall prevent the attachment by means of trustee process of an obligor's wages, pension or other compensation for employment in an action pursuant to section thirty-six A of chapter two hundred and eight.

SECTION 7. Paragraph Eighth of said section 32 of said chapter 246, as most recently amended by section 9 of chapter 501 of the acts of 1975, is hereby further amended by adding the following sentence:- The provisions of this paragraph shall not apply to actions for trustee process to enforce support obligations pursuant to section thirty-six A of chapter two hundred and eight.

Approved November 19, 1982.