

# MAINE FAMILY LAW ADVISORY COMMISSION

## Report to Maine Legislature on Options to Improve Preliminary Injunctions in Judicial Separation and Divorce Actions

December 7, 2022

The Maine Family Law Advisory Commission (“FLAC”) hereby reports to the Maine Legislature Joint Standing Committee on Judiciary pursuant to Resolve 2021, ch. 148, which directed FLAC “to develop options to improve preliminary injunctions in judicial separation and divorce actions.” This brief report provides the background of the proposed legislation along with an explanation of each proposed amendment.

### **Background**

In 2021, the Maine Legislature issued a “Resolve, Directing The Family Law Advisory Commission To Review Preliminary Injunctions in Judicial Separation and Divorce Actions.” Resolve 2021, ch. 78. In response to that Resolve, FLAC undertook such a review but found itself unable to come to consensus on what actions to propose to the Legislature. A copy of the report that FLAC submitted to the Legislature in January 2022 in response to the 2021 Resolve, which is attached, provides a thorough explanation of FLAC’s process and a discussion of the areas where consensus could not be reached. In that Report, FLAC stated that it proposed to continue working on the topic and requested some additional direction from the Judiciary Committee.

In April 2022, the Maine Legislature issued a second Resolve, ch. 148, “Directing the Family Law Advisory Commission To Develop Options To Improve Preliminary Injunctions in Judicial Separation and Divorce Actions.” After a great deal of discussion, FLAC finally developed unanimous proposals to address the issues identified by the Legislature. FLAC proposes amendments to Title 19-A, §852, which contains the current statutory provisions providing for the automatic issuance of a preliminary injunction when parties seek a judicial separation, and identical amendments to Title 19-A, §903, which contains the current statutory provisions for the automatic issuance of a preliminary injunction when parties seek a divorce.

## Explanation of Proposed Amendments

Section 1 of the proposed bill makes several changes to 19-A M.R.S.A § 852, which mandates the issuance of a preliminary injunction in every judicial separation action filed in the District Court. First, in subsection 1, the proposed language makes clear that the injunction is an order from the court. Proposed amendments to subsections (1)(A) and (B) would make minor changes to improve readability of the injunction language for the many unrepresented individuals who file judicial separation actions. In addition, proposed changes to subsection (1)(B) add new provisions intended to provide greater guidance to parties about the actions they can and cannot take while their judicial separation is being litigated.

The current language of §852(B) sets forth three categories of prohibited conduct under the injunction, as follows:

- (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.

The proposed changes to subsection (1)(B) include specific provisions to ensure that both the parties and their children are protected from loss of insurance coverage, and expands the protection to include dental insurance, disability insurance and motor vehicle insurance. The bill retains language prohibiting parties from disposing of their property and adds additional prohibitions against damaging or destroying the property of the parties, as well as language prohibiting a party from signing the other party's name on any negotiable instrument. The proposed amendment contains specific exceptions for "the regular operation of an on-going business," for "the necessities of life" and specifically allows parties to continue to take previously established regular withdrawals or required minimum distributions in the normal course of retirement. These exceptions are similar to those now contained in §852, but the proposed version contains more specific language to ensure that litigants understand precisely what is and is not permitted. In addition, there are carve-outs to each provision that allow the court to order, or the parties to agree, to take action that would otherwise be a violation of the injunction. For example, a court could order, or the parties could agree in writing to sell a piece of real property while the separation is

being litigated. Lastly, FLAC, after much debate, concluded that a new exception should be created in statute to clarify that a party does not violate the preliminary injunction by accessing funds to hire a lawyer to litigate their judicial separation case. In practice, parties typically use marital funds for litigation, and FLAC determined that it was best to clarify that they had a right to do so.

FLAC also proposes the deletion from 19-A M.R.S.A. §852 (1)(B) of the provision enjoining the parties “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.” 19-A M.R.S.A. § 852(1)(B)(2). After thorough consideration of this provision, including conversations with family law practitioners, District Court judges, and Family Law Magistrates, the members of FLAC determined that this language was not helpful to the litigating parties because its prohibition was unclear, and that protections for the personal liberty of parties and children were more appropriately dealt with in the Protection from Abuse statute. FLAC discussed at considerable length a proposal that would have prohibited parties from relocating their child while their case was pending and would have required a party to notify the other party of their whereabouts if they were traveling out-of-state, however, FLAC concluded that such language was not desirable for a number of reasons, including that it might be a barrier to victims of domestic violence seeking safety.

Section 2 of the proposed bill proposes that all of the changes outlined above also be implemented in 19-A M.R.S.A § 903, which mandates the issuance of a preliminary injunction in every divorce action filed in the District Court.

### **Conclusion**

FLAC believes that these amendments will provide greater clarity for family law practitioners and litigants who are involved in litigation dealing with separation and divorce, and that the amendments will create greater protection for families during the litigation process. A representative of FLAC will attend the public hearing and work sessions on the bill to provide further information and answer questions.

Thank you for your consideration of this proposed legislation.

Dated: December 7, 2022

Respectfully submitted:

Maine Family Law Advisory Commission

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