

MAINE STATE LEGISLATURE

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AMS

L.D. 2267

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1620, L.D. 2267, Bill, "An Act to Amend the Definition of Marital Property"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 19-A MRSA §953, sub-§2, ¶E, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

E. The increase in value of property acquired prior to the marriage and the increase in value of a spouse's nonmarital property as defined in paragraphs A to D.

(1) "Increase in value" includes:

(a) Appreciation resulting from market forces; and

(b) Appreciation resulting from reinvested income and capital gain unless either or both spouses had a substantial active role during the marriage in managing, preserving or improving the property.

(2) "Increase in value" does not include:

(a) Appreciation resulting from the investment of marital funds or property in the nonmarital property;

(b) Appreciation resulting from marital labor; and

(c) Appreciation resulting from reinvested income and capital gain if either or both spouses had a

substantial active role during the marriage in
managing, preserving or improving the property.'

SUMMARY

This amendment replaces the bill.

This revision of the Maine Revised Statutes, Title 19-A, section 953, subsection 2, paragraph E responds to the decisions of Clum v. Graves, 1999 ME 77 and Harriman v. Harriman, 1998 ME 108 and makes 2 changes to the operation of Maine's marital property law.

First, it excludes the increase in value of nonmarital property from the definition of marital property if no marital effort or money is expended. The portion of the increase resulting from the reinvestment of the property's income or appreciation during the marriage, so long as neither spouse had a substantial and active role in the management, preservation or improvement of the property during the marriage, remains nonmarital. For example, if dividends, interest or capital gains were routinely reinvested in a spouse's nonmarital retirement, investment, savings or other financial account, the resulting increase in value remains nonmarital property. On the other hand, if funds invested in a spouse's nonmarital account involved the substantial active involvement of either or both spouses, the increase in value may be found to be marital property. The determination of what constitutes "substantial and active" involvement by a spouse will depend upon the type of management, maintenance or improvement customarily associated with the type of property at issue.

A spouse's active and substantial involvement does not depend upon whether the spouse received compensation for the spouse's efforts. A spouse's active but uncompensated time spent managing the spouse's premarital stock portfolio during the marriage is marital effort and any increase in the value of the portfolio flowing from reinvested income will be treated as marital property. Similarly, the increase in value of a nonmarital business during marriage resulting from reinvesting the business's income in the business will also be treated as marital property if either or both spouses actively managed the business during the marriage. See MacDonald v. MacDonald, 582 A.2d 976 (Me. 1990). Nominal, inconsequential or sporadic actions by a spouse in connection with nonmarital property will not cause the increase in value of the property attributable to reinvested income to be treated as marital property. See Nordberg v. Nordberg, 658 A.2d 217 (Me. 1995).

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2 This provision also does not require proof that a spouse's
3 active and substantial involvement in the asset's management,
4 preservation or improvement was directly responsible for the
5 income generated by a nonmarital asset. It is a spouse's
6 dedication of time and skills to the property during the marriage
7 that brings the property's income within the ambit of the
8 marriage's "shared enterprise." It is not necessary to prove
9 that the spouse's involvement was responsible for the income
10 produced by the property.

12 The 2nd change made by the amendment is to expand the
13 exception to the marital property presumption to include
14 nonmarital property acquired during the marriage. The
15 predecessor provision applied to only the "increase in value of
16 property acquired prior to the marriage." This amendment
17 modifies this limiting language so that it now applies to all
18 nonmarital property, whether acquired prior to marriage or during
19 the marriage through gift, bequest, devise or descent or property
20 excluded by agreement of the parties.

22 The amendment does not address situations in which spouses
23 rely exclusively on their marital funds during the marriage so as
24 to preserve either or both spouse's premarital investment,
25 retirement or similar accounts. The courts can achieve an
26 equitable distribution in such circumstances through the
27 provisions of Title 19-A, section 953, subsection 1, paragraph B,
28 requiring the court to consider the value of the nonmarital
29 property set apart to each spouse in arriving at an equitable
30 distribution, as well as through an award of reimbursement
31 spousal support.

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