

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1999

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Legislative Document

No. 2276

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H.P. 1629

House of Representatives, December 10, 1999

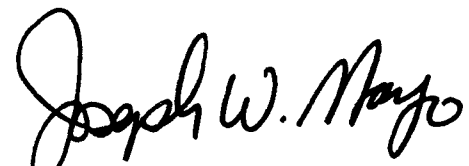
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### **An Act to Revise the Spousal Support Statute.**

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Reported by Representative THOMPSON for the Family Law Advisory Commission pursuant to Maine Revised Statutes, Title 19-A, section 354, subsection 2.

Received by the Clerk of the House on December 8, 1999. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 218.

  
JOSEPH W. MAYO, Clerk

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

2  
4       **Sec. 1. 19-A MRSA §851, sub-§9, ¶¶A and F**, as enacted by PL 1997, c. 224, §4 and affected by §5, are amended to read:

6           A. Order spousal support, which must be determined in accordance with the factors set forth in section 951 ~~951-A~~;

8  
10           F. At any time, alter or amend an order for spousal support or a specific sum when it appears that justice requires it, except that a court may not increase the spousal support if the original decree prohibits an increase. In making an alteration or amendment, the court shall consider the factors set forth in section 951 ~~951-A~~; and

12  
14  
16       **Sec. 2. 19-A MRSA §951**, as amended by PL 1997, c. 629, §1, is repealed.

18       **Sec. 3. 19-A MRSA §951-A** is enacted to read:

20       **§951-A. Spousal support**

22           **1. Statement by court.** An order granting, denying or modifying spousal support must state:

24           A. The type or types of support, if support is awarded;

26           B. The method or methods of payment, and the term and limitations imposed, if support is awarded;

28           C. If the support awarded is not, in whole or in part, subject to future modification; and

30           D. The factors relied upon by the court in arriving at its decision to award or deny spousal support, if the proceeding was contested.

32           **2. Types of spousal support.** The court may, after consideration of all factors set forth in subsection 5, award or modify spousal support for one or more of the following reasons.

34           A. General support may be awarded to provide financial assistance to a spouse with substantially less income potential than the other spouse so that both spouses can maintain a reasonable standard of living after the divorce.

36           (1) There is a rebuttable presumption that general support may not be awarded if the parties were married

2 for less than 10 years as of the date of the filing of  
3 the action for divorce. There is also a rebuttable  
4 presumption that general support may not be awarded for  
5 a term exceeding 1/2 the length of the marriage if the  
6 parties were married for at least 10 years but not more  
7 than 20 years as of the date of the filing of the  
8 action for divorce.

9  
10 (2) If the court finds that a spousal support award  
11 based upon a presumption established by this paragraph  
12 would be inequitable or unjust, that finding is  
13 sufficient to rebut the applicable presumption.

14 B. Transitional support may be awarded to provide for a  
15 spouse's transitional needs, including, but not limited to:

16  
17 (1) Short-term needs resulting from financial  
18 dislocations associated with the dissolution of the  
19 marriage; or

20  
21 (2) Reentry or advancement in the work force,  
22 including, but not limited to, physical or emotional  
23 rehabilitation services, vocational training and  
24 education.

25  
26 C. Reimbursement support may be awarded to achieve an  
27 equitable result in the overall dissolution of the parties'  
28 financial relationship in response to exceptional  
29 circumstances. Exceptional circumstances include, but are  
30 not limited to:

31  
32 (1) Economic misconduct by a spouse; and

33  
34 (2) Substantial contributions a spouse made towards  
35 the educational or occupational advancement of the  
36 other spouse during the marriage.

37  
38 Reimbursement support may be awarded only if the court  
39 determines that the parties' financial circumstances do not  
40 permit the court to fully address equitable considerations  
41 through its distributive order pursuant to section 953.

42  
43 D. Nominal support may be awarded to preserve the court's  
44 authority to grant spousal support in the future.

45  
46 E. Interim support may be awarded to provide for a spouse's  
47 separate support during the pendency of an action for  
48 divorce or judicial separation.

2           3. Methods of payment; term and limitations. The order  
3 must state the method or methods of payment that the court  
4 determines just, including, but not limited to, lump-sum and  
5 installment payments. The order must also state the term of and  
6 any limitations on the award that the court determines just,  
7 including, but not limited to:

8           A. A limit on any increases or decreases in the amount of  
9 support;

10           B. A limit on any increases or decreases in the term of  
11 support;

12           C. A limit on the method or methods of payment of support;

13           D. A limit on the payment of support related to the  
14 remarriage of the payee; and

15           E. A limit on the payment of support related to  
16 cohabitation by the payee.

17           4. Modification. An award of spousal support is subject to  
18 modification when it appears that justice requires unless and to  
19 the extent the order awarding or modifying spousal support  
20 expressly states that the award, in whole or in part, is not  
21 subject to future modification.

22           5. Factors. The court shall consider the following factors  
23 when determining an award of spousal support:

24           A. The length of the marriage;

25           B. The ability of each party to pay;

26           C. The age of each party;

27           D. The employment history and employment potential of each  
28 party;

29           E. The income history and income potential of each party;

30           F. The education and training of each party;

31           G. The provisions for retirement and health insurance  
32 benefits of each party;

33           H. The tax consequences of the division of marital  
34 property, including the tax consequences of the sale of the  
35 marital home, if applicable;

2           I. The health and disabilities of each party;

4           J. The tax consequences of a spousal support award;

6           K. The contributions of either party as homemaker;

8           L. The contributions of either party to the education or  
earning potential of the other party;

10          M. Economic misconduct by either party resulting in the  
diminution of marital property or income;

12          N. The standard of living of the parties during the  
marriage;

16          O. The ability of the party seeking support to become  
self-supporting within a reasonable period of time;

18          P. The effect of the following on a party's need for  
20 spousal support or a party's ability to pay spousal support:

22                 (1) Actual or potential income from marital or  
24 nonmarital property awarded or set apart to each party  
as part of the court's distributive order pursuant to  
section 953; and

26                 (2) Child support for the support of a minor child or  
28 children of the marriage pursuant to chapter 63; and

30          Q. Any other factors the court considers appropriate.

32          6. Enforcement. The court may use all necessary legal  
provisions to enforce its decrees.

34          7. Real estate and other property; life insurance and other  
36 security. The court may order part of the obligated party's real  
estate or other property, as well as the rents, profits or income  
38 from real estate or other property, to be assigned and set out to  
the other party for life or for such other period determined to  
40 be just. The court may also order the obligated party to  
maintain life insurance or to otherwise provide security for the  
42 payment of spousal support in the event the obligation may  
survive the obligated party's death.

44          8. Cessation upon death of payee or payor. An order  
46 awarding, denying or modifying spousal support may provide that  
the award survives the death of the payee or payor, or both.  
48 Unless otherwise stated in the order awarding spousal support,  
the obligation to make any payment pursuant to this section  
50 ceases upon the death of either the payee or the payor with

2 respect to any payment not yet due and owing as of the date of  
3 death.

4 9. Effect of no award or termination of spousal support. A  
5 final judgment that does not award spousal support forever  
6 precludes such an award in that action. The complete termination  
7 of a spousal support award pursuant to the terms of the award or  
8 a final post-judgment order forever precludes the reinstatement  
9 of spousal support in that action.

10 10. Application. This section applies to orders granting  
11 or denying spousal support entered on or after September 1, 2000,  
12 as well as the modification, termination and enforcement of  
13 orders granting spousal support entered on or after that date.

## 16 SUMMARY

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18  
19 This bill is a recommendation of the Family Law Advisory  
20 Commission pursuant to the Maine Revised Statutes, Title 19-A,  
21 section 354, subsection 2. This bill replaces the current law on  
22 spousal support with more comprehensive requirements concerning  
23 the award of spousal support. The Family Law Advisory Commission  
24 prepared this bill in response to the following recommendation by  
25 the Maine Commission on Gender, Justice and the Courts in its  
26 December 4, 1996 report.

27 "Although the alimony statute offers parties and their  
28 lawyers a broad array of bases for pursuing an alimony award, the  
29 Legislature should consider amending the statute to provide a  
30 clear statement of the purpose for alimony to guide the court in  
31 weighing the various factors."

32  
33 The bill requires the courts to approach the determination  
34 of spousal support in a uniform manner. The bill also  
35 establishes 2 rebuttable presumptions designed to bring greater  
36 uniformity and predictability to spousal support determinations.  
37 The absence of any criteria has increased the unpredictability of  
38 spousal support determinations, which, in turn, promotes  
39 contested litigation. Because the presumptions are rebuttable,  
40 the courts will retain their traditional discretion to fashion  
41 spousal support awards that are responsive to the particular  
42 circumstances of each case.

43  
44 The bill also permits a spousal support award to provide  
45 that all or a portion of the award, including, but not limited  
46 to, the limitations associated with the award, is not subject to  
47 future modification. Under existing law, the question of whether  
48 a spousal support award may be modified can be the subject of

2 lengthy and expensive litigation even in those cases in which the parties had previously entered into a written antimodification agreement. See e.g., Lyon v. Lyon, 1999 ME 75.