

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2219

H. P. 2052

House of Representatives, February 18, 1976

Reported by Mrs. Miskavage from the Committee on Judiciary pursuant to H. P. 1765 and printed under Joint Rules No. 3.

EDWIN H. PERT, Clerk

Filed under Joint Rule No. 3, pursuant to H. P. 1765.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Conform Certain Maine Statutes to the 14th Amendment of the Constitution of the United States, to Title VII of the United States Civil Rights Act of 1964, as Amended in 1972, and to the Maine Human Rights Act.

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

Sec. 1. 4 MRSA § 5, 2nd ¶, as last amended by PL 1969, c. 469, § 1, is further amended to read:

If such justice dies in office, or has heretofore died in office, ~~his widow his or her surviving spouse~~, as long as ~~she remains unmarried he or she is not the dependent of another person~~, or if he or she leaves no ~~widow surviving spouse~~, or at ~~her his or her death or remarriage~~ at the time he or she becomes the dependent of another person, then his or her child or children under the age of 18 years and until they respectively reach their 18th birthday, shall annually be entitled to $\frac{3}{8}$ of the currently effective annual salary of a Justice or Chief Justice of the Supreme Judicial Court, as the case may be. In case there is more than one child, the compensation shall be divided equally among them.

Sec. 2. 4 MRSA § 5, last ¶, as last amended by PL 1969, c. 469, § 2, is further amended to read:

If such justice dies having terminated his or her service and having become entitled to compensation as provided in this section, ~~his widow his or her surviving spouse~~, as long as ~~she remains unmarried he or she is not the dependent of another person~~, or if he or she leaves no ~~widow surviving spouse~~, or at ~~her his or her death or remarriage~~ at the time he or she becomes the

dependent of another person, then his or her child or children under the age of 18 years and until they respectively reach their 18th birthday, shall annually be entitled to $\frac{3}{8}$ of the currently effective annual salary of a Justice or Chief Justice of the Supreme Judicial Court, as the case may be. In case there is more than one child, the compensation shall be divided equally among them.

Sec. 3. 4 MRSA § 103, 2nd and last ¶¶, as last amended by PL 1969, c. 469, §§ 3 and 4, are repealed and the following enacted in place thereof:

If such justice dies in office, or has heretofore died in office, his or her surviving spouse, as long as he or she is not the dependent of another person, or if he or she leaves no surviving spouse, or at his or her death or at the time he or she becomes the dependent of another person, then his or her child or children under the age of 18 years and until they respectively reach their 18th birthday, shall annually be entitled to $\frac{3}{8}$ of the currently effective annual salary of a Justice of the Superior Court. In case there is more than one child, the compensation shall be divided equally among them.

If such justice dies having terminated his or her service and having become entitled to compensation as provided in this section, his or her surviving spouse, as long as he or she is not the dependent of another person, or if he or she leaves no surviving spouse, or at his or her death or at the time he or she becomes the dependent of another person, then his or her child or children under the age of 18 years and until they respectively reach their 18th birthday, shall annually be entitled to $\frac{3}{8}$ of the currently effective annual salary of a Justice of the Superior Court. In case there is more than one child, the compensation shall be divided equally among them.

Sec. 4. 4 MRSA § 157-A, 2nd and last ¶¶, as enacted by PL 1973, c. 417, § 2, are amended to read:

If such judge dies in office, or has heretofore died in office, ~~his widow his or her surviving spouse~~, as long as ~~she remains unmarried he or she is not the dependent of another person~~, or if he or she leaves no ~~widow surviving spouse~~ or at ~~her his or her death or remarriage~~ at the time he or she becomes the dependent of another person, then his or her child or children under the age of 18 years and until they respectively reach their 18th birthday, shall annually be entitled to $\frac{3}{8}$ of the currently effective annual salary of a Judge of the District Court. In case there is more than one child, the compensation shall be divided equally among them.

If such judge dies having terminated his or her service and having become entitled to compensation as provided in this section, ~~his widow his or her surviving spouse~~, as long as ~~she remains unmarried he or she is not the dependent of another person~~, or if he or she leaves no ~~widow surviving spouse~~, or at ~~her his or her death or remarriage~~ at the time he or she becomes the dependent of another person, then his or her child or children under the age of 18 years and until they respectively reach their 18th birthday, shall annually be entitled to $\frac{3}{8}$ of the currently effective annual salary of a Judge of the District Court. In case there is more than one child, the compensation shall be divided equally among them.

Sec. 5. 18 MRSA § 1953 is amended to read:

§ 1953. Equal division impossible; preferences

When the whole or any part of the premises, of greater value than any party's share, cannot be divided without great inconvenience, the same may be assigned to any one or more of the parties, who will accept and pay to the others such sums as the commissioners award to make the partition just; but such partition shall not be established by the court until all such sums are paid or secured, with interest, to the satisfaction of the parties entitled thereto or to the satisfaction of the judge of the probate court having jurisdiction thereof; nor if inconsistent with the condition of the devise under which they claim; but in such assignment ~~males shall be preferred to females and the elder to the younger children of the same sex~~ elder children shall be preferred to younger children.

Sec. 6. 18 MRSA § 3509, last sentence, as amended by PL 1971, c. 598, § 23, is repealed and the following enacted in place thereof:

On the marriage of any ward under 18 years of age, the authority of his or her guardian ceases.

Sec. 7. 18 MRSA § 3552, first sentence is repealed and the following enacted in place thereof:

If the minor is under 14 years of age, the judge may nominate and appoint his or her guardian, but the most suitable guardian named by either the deceased father or the deceased mother in his or her will shall be appointed.

Sec. 8. 19 MRSA § 161, last 2 sentences are repealed and the following enacted in place thereof:

Real estate directly conveyed to a person by his or her spouse cannot be conveyed by that person without the joinder of his or her spouse, except real estate conveyed to him or her as security or in payment of a bona fide debt actually due him or her from that spouse. When payment was made for property conveyed to a spouse from the property of the conveying spouse or it was conveyed by a spouse to his or her spouse without a valuable consideration, it may be taken as the property of the conveying spouse to pay his or her debts contracted before such purchase.

Sec. 9. 19 MRSA § 582 is repealed and the following enacted in place thereof:

§ 582. Husband deserted or living apart from wife

If a wife, without just cause, deserts her husband, or if he is living apart from her for just cause, and if such desertion or living apart has continued for the period set out in section 581, the probate court may upon petition of the husband, or if he is mentally ill, upon the petition of his guardian or next friend, enter a decree that such husband is so deserted or is so living apart and may prohibit the wife from imposing any restraint on his personal liberty during such time as such court shall by order direct. Such husband may thereafter convey his real property in the same manner as if he were sole, and

no portion of his estate shall descend to his wife at his decease, neither shall she be entitled to receive any distributive share thereof or to waive any will made by him in her favor. Nothing in this section shall preclude the court from incarcerating a husband for nonpayment of child support, alimony or attorney's fees in violation of a court order to do so.

Sec. 10. 19 MRSA § 694 is repealed and the following enacted in place thereof:

§ 694. Court may free either spouse from restraint pending divorce

Pending a divorce action, the court, on motion of either spouse may prohibit his or her spouse from imposing any restraint on his or her personal liberty; and enforce obedience by appropriate processes. Nothing in this section shall preclude the court from incarcerating a husband for nonpayment of child support, alimony or attorney's fees in violation of a court order to do so.

Sec. 11. 22 MRSA § 4761, sub-§ 3 is repealed as follows:

3. ~~Marriage. By marriage to a male member of said tribe; membership by marriage can be acquired only by such persons as are in whole or to the extent of at least $\frac{1}{4}$ part of Indian blood, and it shall not include the previous issue of the person acquiring it. A certificate of marriage signed by the person solemnizing the same, or an attested copy of the record thereof, shall be sufficient evidence of such marriage~~

Sec. 12. 26 MRSA § 701, as amended by PL 1971, c. 620, § 13, is repealed and the following enacted in place thereof:

§ 701. Posting of notice of hours of labor

Every employer shall post and keep posted in a place accessible for his employees, a printed notice stating the labor laws regulating the employment of minors, time of payment of wages, safety and health of employees and such other laws as may be applicable. The printed form of this notice shall be furnished by the Bureau of Labor.

Sec. 13. 26 MRSA § 702, as amended by PL 1971, c. 620, § 13, is repealed and the following enacted in place thereof:

§ 702. Record of work hours of minors under 16

Every employer shall keep a time book or record for every minor under 16 years of age employed in any occupation, except agriculture or household work, stating the number of hours worked by each minor under 16 years of age on each day of the week. Such time book or record shall be open at all reasonable hours to the inspection of the director, a director's deputy or any authorized agent of the bureau. Any employer who fails to keep the record required by this section or makes any false entry therein, or refuses to exhibit the time book or record or makes any false statement to the director, a director's deputy or any authorized agent of the bureau in reply to any question in carrying out section 701 and this section shall be liable for a violation thereof.

Sec. 14. 26 MRSA § 703 is repealed.

Sec. 15. 26 MRSA §§ 731-737, as amended, are repealed.

Sec. 16. 26 MRSA § 738 is amended to read:

§ 738. Penalty for employers

Any person who violates any of the provisions of sections 701 and 702 ~~731 to 734, 736 and 737~~ shall be punished by a fine of not less than \$25 nor more than \$50 for the first offense; for the 2nd offense by a fine of not less than \$50 nor more than \$200; for a 3rd offense and for every subsequent offense by a fine of not less than \$250 nor more than \$500.

Sec. 17. 32 MRSA § 4203, as last amended by PL 1971, c. 598, § 82, is repealed and the following enacted in place thereof:

§ 4203. Minors

No person shall place a tattoo mark or figure upon a person under the age of 18 years.

Sec. 18. 34 MRSA § 758 is enacted to read:

§ 758. Care of children of inmates and prisoners

If any inmate or prisoner at the time of his commitment to State Prison or the Men's Correctional Center shall be the father of and have under his exclusive care, any child, which might be otherwise left without proper care or guardianship, the judge committing such man shall cause such child to be committed to such children's home as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care or to the custody of the Department of Human Services. Any commitment of a child under this section to the custody of any children's home, or to any relative or other person, or to the Department of Human Services shall be subject to Title 22, sections 3793 to 3795.

Sec. 19. 34 MRSA § 1007, sub-§ 1, ¶ B, as enacted by PL 1967, c. 150, is repealed and the following enacted in place thereof:

B. Conducting his or her own business or occupation including in the case of a person primarily responsible for the housekeeping and domestic needs of his or her family, housekeeping and attending the needs of his or her family;

Sec. 20. 37-A MRSA § 28, sub-§ 4, as enacted by PL 1971, c. 580, § 1, is repealed and the following enacted in place thereof:

4. Spouse. The term "spouse" shall be construed to mean the legally married spouse of the veteran, not divorced, or the widow or widower of the veteran, not previously divorced and who has not become the dependent of another person.

Sec. 21. 37-A MRSA § 29, first sentence and 4th sentence, as enacted by PL 1971, c. 580, § 1, are amended to read:

Aid shall be granted under sections 28 to 37 to the needy ~~wife~~ spouse, child or parent or parents, residing in the State, of a veteran, who if living, is disabled and a resident of the State or who is deceased.

The bureau shall require satisfactory proof as to the disability of a veteran and its effect on his **or her** ability to provide for himself **or herself** and dependents.

Sec. 22. 37-A MRSA § 50-J, as enacted by PL 1973, c. 788, § 196, is amended to read:

§ 50-J. Definition

For the purposes of administering this subchapter, an orphan of a veteran shall be defined as a child not under 16 years of age whose father **or mother** served in the military or naval forces of the United States and was killed in action or died from a service-connected disability as a result of such service or who is living and is determined to have a total disability, permanent in nature, resulting from a service-connected disability as a result of such service. Children of a veteran who at time of death was totally and permanently disabled due to service-connected disability, but whose death was not related to service-connected disability, shall be eligible for benefits under this subchapter. Orphans, whose fathers **or mothers** entered the service from Maine or who have resided in the State for 5 years immediately preceding application for aid under this subchapter and which children have graduated from high school and are not over 21 years of age at the time of first entering a vocational school or an educational institution of collegiate grade, shall be eligible for benefits provided under this subchapter; except that an orphan who has been unable to enter before the age of 21 because engaged in service in the Armed Forces of the United States may enter when not over 25 years of age.

For the further purpose of administering this subchapter, a widow **or widower** of a veteran shall be defined as a person whose ~~husband~~ spouse met the residency and service requirements of this section, and the widow **or widower** of any person who was killed in action or who dies from a service-connected disability as determined by the Veterans Administration, or the ~~wife~~ spouse of any veteran who has a total disability, permanent in nature, resulting from a service-connected disability as determined by the Veterans Administration, or the widow **or widower** of a veteran who died while a disability so evaluated was in existence.

This subchapter shall apply to the ~~wives~~ spouses and children of those members of the Armed Forces on active duty who have been listed for more than 90 days as missing in action, captured or forcibly detained or interned in the line of duty by a foreign government or power.

Sec. 23. 37-A MRSA § 50-K, first sentence, as enacted by PL 1973, c. 788, § 196, as amended by PL 1975, c. 623, § 61, is further amended to read:

In order to assist any person qualifying as an orphan or as a widow **or widower**, ~~wife~~ spouse or child of a veteran or member of the Armed Forces in accordance with section 50-J in securing higher education, the bureau shall pay, for any person which it finds eligible for such assistance, a maximum of \$300 per year, for a period of time not exceeding 8 semesters of attendance nor exceeding 6 consecutive academic years from the date of first entrance, towards the cost of such higher education.

Sec. 24. 37-A MRSA § 50-L, as enacted by PL 1973, c. 788, § 196, and as amended by PL 1975, c. 623, § 63, is further amended to read:

§ 50-L. Free tuition

All children qualifying as orphans and widows or **widowers** qualifying under this subchapter, and the ~~wives~~ **spouses** and children of those members of the Armed Forces described in the 3rd paragraph of section 50-J, shall be **admitted to state supported post-secondary vocational schools or institutions of collegiate grade free of tuition.**

Sec. 25. 39 MRSA § 58, 2nd ¶, as last repealed and replaced by PL 1965, c. 408, § 6, is amended to read:

If the dependent of the employee to whom compensation will be payable upon his death is the widow of such employee, upon her death or ~~remarriage~~ **at the time she becomes a dependent of another person**, compensation to her shall cease and the compensation to which she would have been entitled thereafter, but for such death or ~~remarriage dependency~~, shall be paid to the child or children, if any, of the deceased employee, including adopted and step-children, under the age of 18 years, or over ~~such that age~~ but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or ~~remarriage dependency~~. If the dependent is the widower, upon his death **or at the time he becomes a dependent of another person**, the remainder of the compensation which would otherwise have been payable to him shall be payable to the children above specified, if any, who at the time thereof are dependent upon him. In case there is more than one child thus dependent, the compensation shall be divided equally among them. Except in the case of dependents who are physically or mentally incapacitated from earning, compensation payable to any dependent child under the age of 18 years shall cease upon such child's reaching the age of 18 years or upon marriage.

Sec. 26. 39 MRSA § 143 is amended to read:

§ 143. Surviving spouse or next of kin, actions by

If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under section 141, an employee is instantly killed or dies without conscious suffering, his ~~widow~~ **surviving spouse** or, if he **or she** leaves no ~~widow~~ **surviving spouse**, his **or her** next of kin, who, at the time of his **or her** death, were dependent upon his **or her** wages for support, shall have a right of action for damages against the employer.

STATEMENT OF FACT

The purpose of this bill is to amend or repeal the existing Maine laws which are currently in violation of the 14th Amendment of the Constitution of the United States, Title VII of the United States Civil Rights Act of 1964, as amended in 1972, or the Maine Human Rights Act, as these laws have been interpreted by the courts or decisions of the Equal Employment Opportunity Commission.