

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 994

H. P. 821

House of Representatives, March 15, 1977

On motion of Mr. Spencer of Standish, referred to Committee on Judiciary.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Tarbell of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Modify the Grounds for Divorce and the Proceedings to Obtain
a Divorce.**

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

Sec. 1. 19 MRSA § 691, 1st ¶, as last amended by PL 1973, c. 532, is repealed and the following enacted in its place:

A divorce from the bonds of matrimony may be decreed in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for 3 consecutive years next prior to the filing of the complaint, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment, the marital differences are irreconcilable or non-support, where one spouse being of sufficient ability or being able to labor and provide for the other spouse, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for the complaining spouse; provided the parties were married in this State or cohabited here after marriage, or if the plaintiff resided here when the cause of divorce accrued or had resided here in good faith for 6 months prior to the commencement of proceedings, or if the defendant is a resident of this State. When there is collusion between the parties to procure a divorce, it shall not be granted. An agreement to proceed with the divorce on the grounds of irreconcilable marital differences shall not be considered a collusive agreement. Condonation of the parties shall not be an absolute defense to any action for divorce but shall be discretionary with the court. Recrimination shall be a comparative rather than an absolute defense in any divorce action. The Superior and District Courts have jurisdiction of actions for divorce in all counties.

Sec. 2. 19 MRSA § 722-A, sub-§ 4 is enacted to read:

4. **Disposition of marital property.** If both parties to a divorce action also request the court in writing to order disposition of marital property acquired by either or both of the parties to the divorce prior to January 1, 1972, or nonmarital property owned by the parties to the divorce action, the court shall also order such disposition in accordance with subsection 1.

Sec. 3. 19 MRSA § 726 is enacted to read:

§ 726. **Corroborating witness**

When the merits of a divorce action are not contested, whether or not an answer has been filed, there shall be no requirement that the testimony of the complaining party be corroborated by witnesses.

STATEMENT OF FACT

This legislation accomplishes several purposes:

1. It conforms the divorce statute with federal and state law against discrimination on account of sex, by allowing either spouse, regardless of sex, to obtain a divorce from the other on account of financial non-support.

2. It provides that to obtain a divorce on the grounds of irreconcilable marital differences it shall no longer be mandatory that both parties receive marriage counseling and that a report of that counseling effort is made available to the court. It is the experience of Maine lawyers that the mandatory counseling requirement, rather than encouraging marital counseling as was its intent, actually deters it. This occurs because one who wishes to coerce a more favorable property settlement in a divorce action often opposes the grounds for the divorce as well as the property provisions of it, to gain bargaining leverage. If irreconcilable differences are grounds for a divorce only if there has been counseling, then one who intends to oppose the divorce in order to coerce a better financial settlement is careful to avoid going to a marriage counselor, since that might provide another possible ground for divorce. Thus, the counseling which might be able to reconcile the parties and save the marriage, is avoided in the interest of financial self-protection. In order to allow people to freely go to a counselor and freely discuss their difficulties, without any thought that it would have repercussions on their legal position in the divorce, it is advisable to remove the legal requirement for counseling from the divorce statute.

3. It removes the words, "and the marriage has broken down," as a legal requirement for obtaining a divorce for the cause of irreconcilable marital differences. Experience has proved that in some courts, those words are interpreted in such a way that the availability of divorces on the basis of irreconcilable marital differences is unduly limited. In order to free up divorces from fault and name calling, charges and counter charges, it is appropriate to remove those words from the statute enacted in 1974. Moreover, when a

couple is proceeding for a divorce based on irreconcilable marital differences, it is implicit that the marriage has in fact broken down, and those words add nothing to the situation.

4. It clarifies the law regarding collusion, by providing that agreeing to obtain a divorce on the grounds of irreconcilable marital differences shall not be construed to be a collusive agreement.

5. It removes the sentence, "Either party may be a witness." The recently enacted Maine Rules of Evidence Rule 504 (d) makes clear that there is no husband-wife privilege in divorce actions, thus making that language no longer necessary.

6. It allows the court, by agreement of both parties, to divide all the property of both parties in a divorce in a fair and just way, in accordance with Title 19, section 722-A, regardless of whether that property was obtained before or after the enactment of that statute in 1972. In the case of *Young v. Young*, 329 A.2d 386, decided December 5, 1974, the Supreme Judicial Court of Maine decided that section 722-A should not normally apply to property acquired by a couple prior to the enactment of that statute because it violates the constitutional prohibition of ex post facto lawmaking. This proposed legislation would allow both parties to waive that constitutional right as defined in that case, and ask the court to apply the criteria in section 722-A in order to have the presiding judge make a fair division of all their material property, regardless of when it was acquired by them.

7. At present, it is the practice in all divorces including those where the grounds for the divorce are uncontested (the vast majority in Maine) to require the complaining party's testimony to be corroborated by 2 supporting witnesses. This bill would remove that requirement where the merits of a divorce are not contested at the final divorce hearing. Witnesses would still be required in contested cases, where their participation would normally be helpful to the court in dispensing justice.