New Draft of H. P. 821, L. D. 994

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document No. 1762

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Reported by the Majority from the Committee on Judiciary. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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Sec. 1. 19 MRSA § 691, as last amended by PL 1973, c. 532, is repealed and the following enacted in its place:

§ 691. Grounds; jurisdiction

1. Grounds. A divorce may be decreed for one of the following causes:

A. Adultery;

B. Impotence;

C. Extreme cruelty;

D. Utter desertion continued for 3 consecutive years prior to the commencement of the action;

E. Gross and confirmed habits of intoxication from the use of liquor or drugs;

F. Nonsupport, where one spouse being of sufficient ability to provide for the other spouse, grossly or wantonly or cruelly refuses or neglects to provide suitable maintenance for the complaining spouse;

G. Cruel and abusive treatment; and

H. Irreconcilable marital differences.

If one party alleges that there are irreconcilable marital differences and the opposing party denies that allegation, the court upon its own motion or upon

motion of either party may continue the case and require both parties to receive counseling by a qualified professional counselor to be selected either by agreement of the parties or by the court. The counselor shall give a written report of his counseling to the court and to both parties. The failure or refusal of the party who denies irreconcilable marital differences to submit to such counseling without good reason shall be prima facie evidence that the marital differences are irreconcilable.

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.

Recrimination shall be a comparative rather than an absolute defense in any divorce action.

Condonation of the parties shall not be an absolute defense to any action for divorce but shall be discretionary with the court.

2. Jurisdiction. The Superior Court or the District Court shall have jurisdiction of an action for divorce if:

A. The plaintiff has resided in good faith in this State for 6 months prior to the commencement of the action;

B. The plaintiff is a resident of this State and the parties were married in this State;

C. The plaintiff is a resident of this State and the parties resided in this State when the cause of divorce accrued; or

D. The defendant is a resident of this State.

Any person serving on active duty in a branch of the Armed Services of the United States and the spouse of any such person who was not previously a citizen of this State and who, at the time of the commencement of an action for divorce, has been stationed at a military installation or installations or other place in this State for 6 months prior to the commencement of an action for divorce shall for the purposes hereof be deemed to be a resident in good faith of this State and either the county in which the military installation or installations or other place at which he has been stationed is located or of the county in which he has sojourned.

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 bill 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 nonsupport.

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 be 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.

The new draft amends the original bill by providing that, if one party alleges that the marital differences are irreconcilable and the other party denies it, the court can continue the case and require counseling. A written report of the counseling is to be made to the court. The failure or refusal of the opposing party to submit to counseling will be considered prima facie evidence that the differences are irreconcilable.

3. The bill removes the words "and the marriage has broken down" as part of the terminology of 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 divorces from the concept of fault and the name calling, charges and counter charges that result from that concept, 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.

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 new draft 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.

8. The new draft in section 1, clarifies and reorganizes the wording of the statute, without any substantive change in the law, except as noted.