

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 553

7
8 S.P. 203

In Senate, February 13, 1985

9 Referred to the Committee on Judiciary. Sent down for concurrence and
10 ordered printed.

11 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Carpenter of Aroostook.

12 Cosponsored by Representative Kane of So. Portland, Senator Sewall of
Lincoln and Senator Gauvreau of Androscoggin.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to Reenact Provisions for the Court,
19 for Good Cause, to Hear Certain Contested
20 Motions in Separation, Annulment or Divorce
21 Proceedings Where There are Minor Children
22 of the Parties Prior to Referring to Mediation.
23

24 Emergency preamble. Whereas, Acts of the Legis-
25 lature do not become effective until 90 days after
26 adjournment unless enacted as emergencies; and

27 Whereas, in 1984 the Legislature enacted a law to
28 allow judges, for good cause shown, to hear certain
29 contested motions in separation, annulment or divorce
30 proceedings where there are minor children of the
31 parties, pending a final order and prior to referring
32 the parties to mediation; and

33 Whereas, this law contained a sunset provision
34 that will result in the automatic repeal of this law
35 on March 1, 1985; and

1 Whereas, the continuing ability of judges to hear
2 certain contested motions in separation, annulment or
3 divorce proceedings where there are minor children of
4 the parties is vital to the interest of the parties
5 and the minor children involved; and

6 Whereas, in the judgment of the Legislature,
7 these facts create an emergency within the meaning of
8 the Constitution of Maine and require the following
9 legislation as immediately necessary for the preser-
10 vation of the public peace, health and safety; now,
11 therefore,

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

14 Sec. 1. 19 MRSA §214, sub-§4, as amended by PL
15 1983, c. 862, §48, is further amended to read:

16 4. Mediation. Prior to a contested hearing under
17 this section where there are minor children of the
18 parties, the court shall refer the parties to media-
19 tion; except that, ~~the court,~~ for good cause shown,
20 the court, prior to referring the parties to media-
21 tion, may hear ~~contested~~ motions for relief, pending
22 final judgment, on all issues, including, but not
23 limited to, ~~of~~ parental rights and responsibilities,
24 child support or possession of the family residence
25 pending a final order judgment under this section and
26 prior to referring the parties to mediation. Any
27 agreement reached by the parties through mediation on
28 any issues shall be reduced to writing, signed by the
29 parties and presented to the court for approval as a
30 court order. When agreement through mediation is not
31 reached on any issue, the court must determine that
32 the parties made a good faith effort to mediate the
33 issue before proceeding with a hearing. If the court
34 finds that either party failed to make a good faith
35 effort to mediate, the court may ~~refer the parties~~
36 back to mediation order the parties to submit to me-
37 diation, may dismiss the action or any part of the
38 action, may render a decision or judgment by default,
39 may assess attorney's fees and costs or may impose
40 any other sanction that is appropriate in the
41 circumstances. The court may also impose an appro-
42 priate sanction upon a party's failure without good

1 cause to appear for mediation after receiving notice
2 of the scheduled time for mediation.

3 Sec. 2. 19 MRSA §581, sub-§4, as amended by PL
4 1983, c. 862, §49, is further amended to read:

5 4. Mediation. Prior to a contested hearing under
6 this section where there are minor children of the
7 parties, the court shall refer the parties to media-
8 tion; except that, ~~the court~~, for good cause shown,
9 the court, prior to referring the parties to media-
10 tion, may hear ~~contested~~ motions for relief, pending
11 final judgement, on all issues, including, but not
12 limited to, ~~of~~ parental rights and responsibilities,
13 ~~child support or possession of the family residence~~
14 pending a final order under this section and prior to
15 referring the parties to mediation real and personal
16 property, spousal support and counsel fees. Any
17 agreement reached by the parties through mediation on
18 any issues shall be reduced to writing, signed by the
19 parties and presented to the court for approval as a
20 court order. When agreement through mediation is not
21 reached on any issue, the court must determine that
22 the parties made a good faith effort to mediate the
23 issue before proceeding with a hearing. If the court
24 finds that either party failed to make a good faith
25 effort to mediate, the court may ~~refer the parties~~
26 ~~back to mediation~~ order the parties to submit to me-
27 diation, may dismiss the action or any part of the
28 action, may render a decision or judgment by default,
29 may assess attorney's fees and costs or may impose
30 any other sanction that is appropriate in the
31 circumstances. The court may also impose an appro-
32 priate sanction upon a party's failure without good
33 cause to appear for mediation after receiving notice
34 of the scheduled time for mediation.

35 Sec. 3. 19 MRSA §752, sub-§4, as amended by PL
36 1983, c. 862, §50, is further amended to read:

37 4. Mediation. Prior to a contested hearing under
38 this chapter where there are minor children of the
39 parties, the court shall refer the parties to media-
40 tion; except that, ~~the court~~, for good cause shown,
41 the court, prior to referring the parties to media-
42 tion, may hear ~~contested~~ motions for relief, pending
43 final judgement, on all issues, including, but not

1 limited to, of parental rights and responsibilities,
2 child support or possession of the family residence
3 pending a final order under this chapter and prior to
4 referring the parties to mediation possession of real
5 and personal property, spousal support and counsel
6 fees. Any agreement reached by the parties through
7 mediation on any issues shall be reduced to writing,
8 signed by the parties and presented to the court for
9 approval as a court order. When agreement through me-
10 diation is not reached on any issue, the court must
11 determine that the parties made a good faith effort
12 to mediate the issue before proceeding with a hear-
13 ing. If the court finds that either party failed to
14 make a good faith effort to mediate, the court may
15 refer the parties back to mediation order the parties
16 to submit to mediation, may dismiss the action or any
17 part of the action, may render a decision or judgment
18 by default, may assess attorney's fees and costs or
19 may impose any other sanction that is appropriate in
20 the circumstances. The court may also impose an ap-
21 propriate sanction upon a party's failure without
22 good cause to appear for mediation after receiving
23 notice of the scheduled time for mediation.

24 **Emergency clause.** In view of the emergency cited
25 in the preamble, this Act shall take effect when ap-
26 proved.

27 STATEMENT OF FACT

28 This bill seeks to reenact changes made to the
29 laws providing for mandatory mediation in cases of
30 separation, annulment or divorce where there are mi-
31 nor children of the parties as adopted by an emergen-
32 cy act of the 111th Legislature in September 1984.
33 Since there was no time during the September 1984
34 session of the Legislature to give these revisions a
35 public hearing, the Legislature adopted them with a
36 sunset provision to ensure that the amendments would
37 be subject to a hearing before they became a perma-
38 nent part of the laws.

39 The bill also provides the court with power to
40 deal with recalcitrant parties who refuse to appear
41 or to mediate in good faith. If the courts are to
42 require mediation and the public generally has been

1 supportive of this legislation, the courts must have
2 the power to move the cases through the mediation
3 process efficiently. Otherwise, the great boon of
4 mediation in cases involving minor children will be-
5 come a great source of delay and added frustration
6 instead.

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