

# MAINE STATE LEGISLATURE

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1 (After Deadline)  
2 SECOND REGULAR SESSION  
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE  
5

6 Legislative Document

No. 2321

8 S.P. 928

In Senate, April 2, 1986

9 Approved for introduction by a majority of the Legislative Council  
10 pursuant to Joint Rule 27.

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

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Carpenter of Aroostook.

Cosponsored by Representative Kane of So. Portland.

12  
13 STATE OF MAINE  
14

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

18 AN ACT to Provide Funding through Fees and  
19 Trim Expenses of the Court Mediation  
20 Service.  
21

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

24 Sec. 1. 4 MRSA §18, sub-§§6 and 7 are enacted to  
25 read:

26 6. Fees. When the court refers parties to the  
27 Court Mediation Service after the filing of a com-  
28 plaint or petition under Title 19, section 214 or 581  
29 or Title 19, chapter 13, the Court Mediation Service  
30 shall assess the parties a \$60 fee. Unless one or  
31 both of the parties file a motion to amend or enforce  
32 a final decree under Title 19, section 214 or 581 or  
33 Title 19, chapter 13, the Court Mediation Service  
34 shall not assess the parties any fees beyond the ini-  
35 tial \$60 fee. When the court refers the parties to  
36 the Court Mediation Service after the filing of a

1 motion to amend or enforce a final decree under Title  
2 19, section 214 or 581 or Title 19, chapter 13, the  
3 Court Mediation Service shall assess the parties an-  
4 other \$60 fee.

5 A party may file an in forma pauperis application for  
6 waiver of a fee established by this subsection. If  
7 the court finds that the party does not have suffi-  
8 cient funds to pay the fee, it shall order the fee  
9 waived.

10 7. Certified private mediators. The Judicial  
11 Department, through the Court Mediation Committee,  
12 shall certify private mediators as being qualified to  
13 provide mediation under Title 19, sections 214 and  
14 581 and Title 19, chapter 13. Upon certification, a  
15 private mediator shall, at his own expense, attend  
16 the next occurring Court Mediation Service training  
17 session. To maintain certification, a private media-  
18 tor shall, at his own expense, attend an annual Court  
19 Mediation Service training session. Private media-  
20 tors must be recertified annually to provide media-  
21 tion under this subsection.

22 A certified private mediator providing mediation un-  
23 der Title 19, section 214 or 581 or Title 19, chapter  
24 13, shall not receive any compensation from the Judi-  
25 cial Department. Parties referred to a private me-  
26 diator under Title 19, section 214 or 581 or Title  
27 19, chapter 13, shall not be assessed the fee estab-  
28 lished in subsection 6.

29 When a certified private mediator provides mediation  
30 under Title 19, section 214 or 581 or Title 19, chap-  
31 ter 13, the mediator shall complete and file with the  
32 court a mediation results form provided by the Court  
33 Mediation Service.

34 Sec. 2. 14 MRSA §7484, sub-§2-A is enacted to  
35 read:

36 2-A. Filing fee. The fee for filing a statement  
37 of claim commencing a small claims action shall be  
38 \$20 for each defendant joined and to be served in the  
39 action.

40 Sec. 3. 19 MRSA §214, sub-§4, as amended by PL  
41 1985, c. 53, §1, is further amended to read:

1           4. Mediation. Prior to a contested hearing under  
2 this section where there are minor children of  
3 the parties, the court shall refer the parties to mediation;  
4 except that, for good cause shown, the  
5 court, prior to referring the parties to mediation,  
6 may hear motions for temporary relief, pending final  
7 judgment on any issue or combination of issues for  
8 which good cause for temporary relief has been shown.  
9 The court may refer the parties to the Court Mediation  
10 Service or, upon agreement of the parties, to a  
11 private mediator of the parties' choice who is certified  
12 by the court. Any agreement reached by the parties  
13 through mediation on any issues shall be reduced  
14 to writing, signed by the parties and presented to  
15 the court for approval as a court order. When agreement  
16 through mediation is not reached on any issue,  
17 the court must determine that the parties made a good  
18 faith effort to mediate the issue before proceeding  
19 with a hearing. If the court finds that either party  
20 failed to make a good faith effort to mediate, the  
21 court may order the parties to submit to mediation,  
22 may dismiss the action or any part of the action, may  
23 render a decision or judgment by default, may assess  
24 attorney's fees and costs or may impose any other  
25 sanction that is appropriate in the circumstances.  
26 The court may also impose an appropriate sanction  
27 upon a party's failure without good cause to appear  
28 for mediation after receiving notice of the scheduled  
29 time for mediation.

30           Sec. 4. 19 MRSA §581, sub-§4, as amended by PL  
31 1985, c. 53, §2, is further amended to read:

32           4. Mediation. Prior to a contested hearing under  
33 this section where there are minor children of  
34 the parties, the court shall refer the parties to mediation;  
35 except that, for good cause shown, the  
36 court, prior to referring the parties to mediation,  
37 may hear motions for temporary relief, pending final  
38 judgment on any issue or combination of issues for  
39 which good cause for temporary relief has been shown.  
40 The court may refer the parties to the Court Mediation  
41 Service or, upon agreement of the parties, to a  
42 private mediator of the parties' choice who is certified  
43 by the court. Any agreement reached by the parties  
44 through mediation on any issues shall be reduced  
45 to writing, signed by the parties and presented to

1 the court for approval as a court order. When agree-  
2 ment through mediation is not reached on any issue,  
3 the court must determine that the parties made a good  
4 faith effort to mediate the issue before proceeding  
5 with a hearing. If the court finds that either party  
6 failed to make a good faith effort to mediate, the  
7 court may order the parties to submit to mediation,  
8 may dismiss the action or any part of the action, may  
9 render a decision or judgment by default, may assess  
10 attorney's fees and costs or may impose any other  
11 sanction that is appropriate in the circumstances.  
12 The court may also impose an appropriate sanction  
13 upon a party's failure without good cause to appear  
14 for mediation after receiving notice of the scheduled  
15 time for mediation.

16 Sec. 5. 19 MRSA §636, as amended by PL 1985, c.  
17 396, §2, is further amended to read:

18 §636. Court authority to order mediation

19 The court may, in any case under this subchapter,  
20 at any time refer the parties to mediation on any is-  
21 sues. The court may refer the parties to the Court  
22 Mediation Service or, upon agreement of the parties,  
23 to a private mediator of the parties' choice who is  
24 certified by the court. Any agreement reached by the  
25 parties through mediation on any issues shall be re-  
26 duced to writing, signed by the parties and presented  
27 to the court for approval as a court order. When  
28 agreement through mediation is not reached on any is-  
29 sue the court must determine that the parties made a  
30 good faith effort to mediate the issue before pro-  
31 ceeding with a hearing. If the court finds that ei-  
32 ther party failed to make a good faith effort to me-  
33 diate, the court may order the parties to submit to  
34 mediation, may dismiss the action or any part of the  
35 action, may render a decision or judgment by default,  
36 may assess attorney's fees and costs or may impose  
37 any other sanction that is appropriate in the circum-  
38 stances. The court may also impose an appropriate  
39 sanction upon a party's failure without good cause to  
40 appear for mediation after receiving notice of the  
41 scheduled time for mediation.

42 Sec. 6. 19 MRSA §665, as amended by PL 1985, c.  
43 396, §3, is further amended to read:

1        §665. Court authority to order mediation

2            The court may, in any case under this subchapter,  
3 at any time refer the parties to mediation on any is-  
4 sues. The court may refer the parties to the Court  
5 Mediation Service or, upon agreement of the parties,  
6 to a private mediator of the parties' choice who is  
7 certified by the court. Any agreement reached by the  
8 parties through mediation on any issues shall be re-  
9 duced to writing, signed by the parties and presented  
10 to the court for approval as a court order. When  
11 agreement through mediation is not reached on any is-  
12 sue, the court must determine that the parties made a  
13 good faith effort to mediate the issue before pro-  
14 ceeding with a hearing. If the court finds that ei-  
15 ther party failed to make a good faith effort to me-  
16 diate, the court may order the parties to submit to  
17 mediation, may dismiss the action or any part of the  
18 action, may render a decision or judgment by default,  
19 may assess attorney's fees and costs or may impose  
20 any other sanction that is appropriate in the circum-  
21 stances. The court may also impose an appropriate  
22 sanction upon a party's failure without good cause to  
23 appear for mediation after receiving notice of the  
24 scheduled time for mediation.

25            Sec. 7. 19 MRSA §752, sub-§4, as amended by PL  
26 1985, c. 53, §4, is further amended to read:

27            4. Mediation. Prior to a contested hearing un-  
28 der this section where there are minor children of  
29 the parties, the court shall refer the parties to me-  
30 diation; except that, for good cause shown, the  
31 court, prior to referring the parties to mediation,  
32 may hear motions for temporary relief, pending final  
33 judgment on any issue or combination of issues for  
34 which good cause for temporary relief has been shown.  
35 The court may refer the parties to the Court Media-  
36 tion Service or, upon agreement of the parties, to a  
37 private mediator of the parties' choice who is certi-  
38 fied by the court. Any agreement reached by the par-  
39 ties through mediation on any issues shall be reduced  
40 to writing, signed by the parties and presented to  
41 the court for approval as a court order. When agree-  
42 ment through mediation is not reached on any issue,  
43 the court must determine that the parties made a good  
44 faith effort to mediate the issue before proceeding

1 with a hearing. If the court finds that either party  
2 failed to make a good faith effort to mediate, the  
3 court may order the parties to submit to mediation,  
4 may dismiss the action or any part of the action, may  
5 render a decision or judgment by default, may assess  
6 attorney's fees and costs or may impose any other  
7 sanction that is appropriate in the circumstances.  
8 The court may also impose an appropriate sanction  
9 upon a party's failure without good cause to appear  
10 for mediation after receiving notice of the scheduled  
11 time for mediation.

12 STATEMENT OF FACT

13 Section 1 of this bill establishes a \$60 media-  
14 tion fee to be paid by parties referred to the Court  
15 Mediation Service under the law requiring mediation  
16 of contested divorce, annulment and separation cases  
17 where the parties have a minor child. The fee will  
18 be paid only once per case, regardless of the number  
19 of mediation sessions the parties attend.

20 Section 1 also requires the Court Mediation Com-  
21 mittee to certify private mediators as being quali-  
22 fied to mediate divorce, annulment and separation  
23 cases in satisfaction of the law's mandatory media-  
24 tion requirement. Sections 3 to 7 further implement  
25 this provision. These sections permit the parties to  
26 be referred to a certified private mediator if the  
27 parties so choose.

28 Section 2 sets a filing fee for small claims ac-  
29 tions at \$20. The current filing fee is \$15. The  
30 increase in the fee is intended to offset costs of  
31 small claims mediations performed by the Court Media-  
32 tion Service.

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