

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1990

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Legislative Document

No. 100

H.P. 72

House of Representatives, December 31, 1990

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative RICHARDS of Hampden.

Cosponsored by Representative ANTHONY of South Portland, Representative HASTINGS of Fryeburg and Senator CONLEY of Cumberland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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**An Act to Eliminate the Requirement of Mediation in Certain Domestic Cases.**

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

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4       **Sec. 1. 19 MRSA §214, sub-§4**, as amended by PL 1985, c. 750, §3, is further amended to read:

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

30  
31       **Sec. 2. 19 MRSA §214, sub-§4-A** is enacted to read:

32  
33       **4-A. Waiver of mediation; questions of law.** The court may  
34 hear motions to waive mediation in cases in which there are no  
35 facts at issue and all unresolved issues are questions of law.

36  
37       **Sec. 3. 19 MRSA §581, sub-§4**, as amended by PL 1985, c. 750,  
38 §4, is further amended to read:

39  
40       **4. Mediation.** ~~Prior~~ Except as provided in subsection 4-A,  
41 prior to a contested hearing under this section where when there  
42 are minor children of the parties, the court shall refer the  
43 parties to mediation; except that, for good cause shown, the  
44 court, prior to referring the parties to mediation, may hear  
45 motions for temporary relief, pending final judgment on any issue  
46 or combination of issues for which good cause for temporary  
47 relief has been shown. Upon motion supported by affidavit, the  
48 court may, for extraordinary cause shown, waive the mediation  
49 requirement under this subsection. Any agreement reached by the  
50 parties through mediation on any issues shall must be reduced to  
51 writing, signed by the parties and presented to the court for  
52 approval as a court order. When agreement through mediation is

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

13 **Sec. 4. 19 MRSA §581, sub-§4-A is enacted to read:**

14 4-A. Waiver of mediation; questions of law. The court may  
15 hear motions to waive mediation in cases in which there are no  
16 facts at issue and all unresolved issues are questions of law.

17 **Sec. 5. 19 MRSA §752, sub-§4, as amended by PL 1985, c. 750,**  
18 **§5, is further amended to read:**

19 4. Mediation. Prior ~~Except as provided in subsection 4-A,~~  
20 prior to a contested hearing under this section where when there  
21 are minor children of the parties, the court shall refer the  
22 parties to mediation; except that, for good cause shown, the  
23 court, prior to referring the parties to mediation, may hear  
24 motions for temporary relief, pending final judgment on any issue  
25 or combination of issues for which good cause for temporary  
26 relief has been shown. Upon motion supported by affidavit, the  
27 court may, for extraordinary cause shown, waive the mediation  
28 requirement under this subsection. Any agreement reached by the  
29 parties through mediation on any issues ~~shall~~ must be reduced to  
30 writing, signed by the parties and presented to the court for  
31 approval as a court order. When agreement through mediation is  
32 not reached on any issue, the court must determine that the  
33 parties made a good faith effort to mediate the issue before  
34 proceeding with a hearing. If the court finds that either party  
35 failed to make a good faith effort to mediate, the court may  
36 order the parties to submit to mediation, may dismiss the action  
37 or any part of the action, may render a decision or judgment by  
38 default, may assess attorney's fees and costs or may impose any  
39 other sanction that is appropriate in the circumstances. The  
40 court may also impose an appropriate sanction upon a party's  
41 failure without good cause to appear for mediation after  
42 receiving notice of the scheduled time for mediation.

43 **Sec. 6. 19 MRSA §752, sub-§4-A is enacted to read:**

44 4-A. Waiver of mediation; questions of law. The court may  
45 hear motions to waive mediation in cases in which there are no  
46 facts at issue and all unresolved issues are questions of law.

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## STATEMENT OF FACT

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Under current law, the court is required to refer parties in certain domestic cases to mediation. This bill permits the court to waive the requirement of mediation in cases in which the remaining issues are purely legal.

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