

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 407

S.P. 128

In Senate, January 23, 1997

An Act to Revise Judicial Separation.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.
Cosponsored by Senator PENDLETON of Cumberland.

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

2
3 **Sec. 1. 19-A MRSA §851, sub-§1**, as enacted by PL 1995, c. 694,
4 Pt. B, §2 and affected by Pt. E, §2, is repealed.

6 **Sec. 2. 19-A MRSA §851, sub-§1-A** is enacted to read:

8 **1-A. Jurisdiction.** The District Court and the Superior
9 Court have jurisdiction to enter a separation decree:

10 A. Upon the petition of a married person who lives apart or
11 who desires to live apart from that person's spouse for a
12 period in excess of 60 continuous days; or

14 B. Upon joint petition of a married couple who live apart
15 or who desire to live apart for a period in excess of 60
16 continuous days.

18 **Sec. 3. 19-A MRSA §851, sub-§3**, as enacted by PL 1995, c. 694,
20 Pt. B, §2 and affected by Pt. E, §2, is repealed.

22 **Sec. 4. 19-A MRSA §851, sub-§§8 to 14** are enacted to read:

24 **8. Orders pending final separation decree.** Pending a final
25 separation decree, the court may:

26 A. Order either spouse to pay to the other spouse or to the
27 attorney for the other spouse sufficient money for the
28 defense or prosecution of the separation action;

30 B. Make reasonable provision for either spouse's support,
31 on a motion for which costs and attorney's fees may be
32 ordered;

34 C. Enter a decree for parental rights and responsibilities,
35 including support of minor children in accordance with
36 chapter 55. An order for child support under this section
37 may include an order for the payment of all or part of the
38 medical expenses, hospital expenses and other health care
39 expenses of the children or an order to provide a policy or
40 contract for coverage of those expenses. Availability of
41 public assistance to the family may not affect the decision
42 of the court relating to the responsibility of a parent to
43 provide child support;

44 D. By order, determine the possession of owned or rented
45 real and personal property; and

2 E. Enforce obedience by appropriate processes on which
3 costs and attorney's fees are taxed as in other actions.

4 **9. Spousal support. The court may:**

6 A. Order spousal support, which must be determined in
7 accordance with the factors set forth in section 951;

8 B. Order periodic spousal support payments, payments of a
10 specific sum or any combination of both;

12 C. Order either spouse to maintain a policy of health
14 insurance for the benefit of the other spouse and to pay all
15 or a portion of the uninsured health care expenses of the
16 other spouse;

17 D. Order either spouse to maintain a policy of life
18 insurance upon that person for the benefit of the other
19 spouse or the couple's children;

20 E. Order either party to pay the costs and attorney's fees
22 of the other party in the defense or prosecution of a
23 judicial separation;

24 F. At any time, alter or amend an order for spousal support
26 or a specific sum when it appears that justice requires it,
27 except that a court may not increase the spousal support if
28 the original decree prohibits an increase. In making an
29 alteration or amendment, the court shall consider the
30 factors set forth in section 951; and

31 G. Enforce an order for spousal support or attorney's fees
32 and costs in accordance with section 952.

33 This subsection does not limit the court, by full or partial
34 agreement of the parties or otherwise, from awarding spousal
35 support for a limited period, from awarding spousal support that
36 may not be increased regardless of subsequent events or
37 conditions or otherwise limiting or conditioning the spousal
38 support award in any manner or term that the court considers just.

39 **10. Disposition of property. The court may order the**
40 **disposition of the parties' property in accordance with section**
41 **953. Descent of real estate is governed by section 953.**

42 **11. Freedom from restraint and interference. The court may**
43 **order either spouse to refrain from imposing any restraint on the**
44 **personal liberty of the other or interfering with the personal**
45 **privacy of the other and may order other conditions necessary to**
46 **ensure the peaceful coexistence of the parties.**

2 **12. Modification and termination of separation decrees.** A
3 separation decree may be modified or is terminated as follows.

4
5 A. Upon motion by either party served in accordance with
6 the Maine Rules of Civil Procedure, Rule 4, and after notice
7 and hearing, the court may order the modification of a
8 separation decree upon showing of a substantial change of
9 circumstances justifying the modification. However, that
10 portion of the separation decree disposing of the parties'
11 property in accordance with section 953 is not subject to
12 modification and remains in full force.

13
14 B. Upon the filing of a written declaration signed and
15 acknowledged by both parties stating that they have resumed
16 marital relations, the separation decree terminates.
17 However, that portion of the separation decree disposing of
18 the parties' property in accordance with section 953 is not
19 subject to termination and remains in full force.

20
21 C. Upon entry of a final judgment of divorce between the
22 parties, the separation agreement terminates. However, that
23 portion of the separation decree disposing of the parties'
24 property in accordance with section 953 is not subject to
25 termination and remains in full force.

26
27 **13. Joinder with divorce action.** If a complaint or
28 counterclaim seeking a divorce pursuant to section 901 is filed
29 in an action in which a complaint or counterclaim seeking a
30 separation decree has also been filed, the court shall order the
31 dismissal of the complaint or counterclaim seeking a separation
32 decree if the court grants a divorce.

33 **14. Inheritance not barred.** A separation decree does not
34 bar the spouses or the issue of the marriage from inheriting.

35 **Sec. 5. Effective date.** This Act takes effect on October 1,
36 1997.

37 38 SUMMARY

39 This bill revises and updates the judicial separation
40 statutes. It provides specific provisions that may be included
41 in the court's order pending a final separation decree. It also
42 provides for spousal and child support, property disposition and
43 modification and termination of a separation decree. The bill
44 coordinates judicial separation procedures with divorce
45 procedures to provide for dismissal of the separation action if a
46 divorce is granted.
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