

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

Legislature having jurisdiction over state and local government matters with an annual report on the employment of an owner's representative, including the written comments from each school unit that has chosen to employ an owner's representative under this section.

**Sec. 2. 5 MRSA §1753, sub-§6**, as enacted by PL 1993, c. 606, §2, is repealed.

See title page for effective date.

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## CHAPTER 187

### H.P. 776 - L.D. 1053

#### An Act to Implement the Recommendations of the Family Law Advisory Commission Concerning Parental Rights and Responsibilities

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

**Sec. 1. 19-A MRSA §1501, sub-§5**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

#### **5. Shared parental rights and responsibilities.**

"Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities, and both parents confer and make joint decisions regarding the child's welfare. Matters pertaining to the child's welfare include, but are not limited to, education, religious upbringing, medical, dental and mental health care, travel arrangements, child care arrangements and residence. Parents who share parental rights and responsibilities shall keep one another informed of any major changes affecting the child's welfare and shall consult in advance to the extent practicable on decisions related to the child's welfare.

**Sec. 2. 19-A MRSA §1653, sub-§2, ¶D**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

D. The order of the court awarding parental rights and responsibilities must include the following:

- (1) Allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child as provided in subsection 3. An award of shared parental rights and responsibilities may include either an alloca-

tion of the child's primary residential care to one parent and rights of parent-child contact to the other parent, or a sharing of the child's primary residential care by both parents;

(2) Conditions of parent-child contact in cases involving domestic abuse as provided in subsection 6;

(3) A provision for child support as provided in subsection 8 or a statement of the reasons for not ordering child support;

(4) A statement that each parent must have access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access; ~~and~~

(5) A statement that violation of the order may result in a finding of contempt and imposition of sanctions as provided in subsection 7; and

(6) A statement of the definition of shared parental rights and responsibilities contained in section 1501, subsection 5, if the order of the court awards shared parental rights and responsibilities.

An order modifying a previous order is not required to include provisions of the previous order that are not modified.

**Sec. 3. 19-A MRSA §1653, sub-§3**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

**3. Best interest of child.** The court, in making an award of parental rights and responsibilities with respect to a child, shall apply the standard of the best interest of the child. In making decisions regarding ~~primary~~ the child's residence and parent-child contact, the court shall consider as primary the safety and well-being of the child. In applying this standard, the court shall consider the following factors:

- A. The age of the child;
- B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

- C. The preference of the child, if old enough to express a meaningful preference;
- D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
- E. The stability of any proposed living arrangements for the child;
- F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;
- G. The child's adjustment to the child's present home, school and community;
- H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;
- I. The capacity of each parent to cooperate or to learn to cooperate in child care;
- J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;
- K. The effect on the child if one parent has sole authority over the child's upbringing;
- L. The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects:
- (1) The child emotionally; and
  - (2) The safety of the child;
- M. The existence of any history of child abuse by a parent; ~~and~~
- N. All other factors having a reasonable bearing on the physical and psychological well-being of the child; and
- O. A parent's prior willful misuse of the protection from abuse process in chapter 101 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may only be considered if established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as

part of its determination of a child's best interest. The voluntary dismissal of a protection from abuse petition may not, taken alone, be treated as evidence of the willful misuse of the protection from abuse process.

**Sec. 4. 19-A MRSA §4007, sub-§1, ¶G,** as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

G. Either awarding temporary custody of minor children or establishing temporary visitation rights with regard to minor children when the visitation is determined to be in the best interest of the child, or both, as determined in accordance with the best interest of the child pursuant to section 1653, subsections 3 to 6. The court's custody and visitation award shall not be binding in any separate action involving an award of parental rights and responsibilities pursuant to chapter 55;

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

Effective October 1, 1997.

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## CHAPTER 188

S.P. 463 - L.D. 1435

### An Act to Clarify Reimbursement by Responsible Parties to the Maine Coastal and Inland Surface Oil Clean-up Fund

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

**Sec. 1. 38 MRSA §551, sub-§8** is enacted to read:

**8. Disbursements to state agencies.** A state agency that seeks reimbursement from the Maine Coastal and Inland Surface Oil Clean-up Fund for costs incurred in undertaking oil spill response activities shall keep time records demonstrating the amount of spill response activities performed for which reimbursement is sought. A state agency may establish a dedicated account for receipt of disbursements from the fund. Disbursements from the fund to a state agency pursuant to subsection 5, paragraph B must be deposited in that account, if it has been established, and may be used by the agency to support its activities.

See title page for effective date.

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